



Department of Energy, Mines,
Industry Regulation and Safety
Energy Policy WA

Decision Regulatory Impact Statement – On-site Power Supply Arrangements

June 2024

Working together for a **brighter** energy future.

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Glossary and abbreviations

TERM	EXPLANATION
ACL	The Australian Consumer Law (ACL) is a single, national law, which applies in the same way nationally and in each state and territory. It is the principal consumer protection law in Australia.
AES Code	A proposed code of practice applicable to providers of prescribed services under the Alternative Electricity Services registration framework.
AES registration framework	The registration framework for alternative electricity services in Western Australia enabled under Part 3A of the Electricity Industry Act 2004.
Alternative electricity service or AES	A service prescribed as an alternative electricity service under the AES registration framework, such as potentially embedded network services or on-site power supply services.
Consultation Regulatory Impact Statement (CRIS)	A requirement under the Better Regulation Program of the Department of Treasury for a consultation document that sets out key details and potential impacts of a regulatory proposal and seeks stakeholder feedback.
DEMIRS	Department of Energy, Mines, Industry, Regulation and Safety
DER	Distributed Energy Resources such as solar photovoltaic panels, batteries and electric vehicle charging infrastructure
Disclosure Statement	Standard information to be disclosed to a customer before an OPS service is provided.
End-use customer or customer	A person who buys electricity for their own personal consumption (or consumption by their household or business) and does not sell that electricity on to someone else.
Energy Ombudsman	Western Australian Energy and Water Ombudsman.
ERA	Economic Regulation Authority, which is the regulator of the electricity licensing framework and will be the regulator of the AES registration framework.
Grid	means the Western Power or Horizon Power network, as applicable, or an embedded network supplying the customer's premises
NETCC	New Energy Technology Consumer Code (NETCC) is a set of standards designed to protect consumers when purchasing new energy tech. It is a voluntary code of conduct designed by peak industry and consumer bodies to build upon existing mandatory consumer protection regulations defined by the Australian Competition and Consumer Commission (ACCC).
On-site power supply arrangement (OPSA)	means an agreement between an OPS Service Provider and a Customer to provide an OPS service, which must be in writing.
On-site power supply service (OPS service)	means a service that entitles a person to consume some or all of the electricity produced and/or stored by an OPS system pursuant to an OPSA, that may include, but is not limited to:

TERM	EXPLANATION
	(a) purchasing electricity on a cent per kilowatt hour basis; and/or (b) an entitlement to consume electricity through a subscription; and/or (c) a service or services provided pursuant to a membership.
On-site power supply service provider (OPS service provider)	means a person who provides, or offers to provide, an OPS service to a customer.
On-site power supply system (OPS system)	means a system that: • produces and/or stores electricity that a customer is entitled to use, even if that entitlement does not apply to all electricity produced and/or stored and/or does not apply at all times; • is connected behind the Western Power or Horizon Power network and installed at a customer's supply address (or at the property on which the embedded networks which supplies the supply address is located); and • is owned and controlled by a person or persons other than the customer or owner of the supply address.
Prescribed AES	means an activity prescribed by regulations as an alternative electricity service once the AES registration framework is in place.
Small Use Code	Code of Conduct for the Supply of Electricity to Small Use Customers 2022 which is the code that set out the standards of conduct that licensed electricity retailers and distributors must comply with.
small-use electricity customer	A customer to whom electricity is sold for the purpose of consumption and who consumes not more than 160 MWh of electricity per year.
SPPA Exemption Order	Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016
the Act	Electricity Industry Act 2004

Executive summary

It has been almost 20 years since the *Electricity Industry Act 2004* (the Act) came into effect and set up the electricity licensing and exemption framework. The framework was established at a time when electricity supplies were for the most part centrally generated and supplied to consumers via large transmission and distribution networks under supply contracts with retailers.

Licences were applied to large operators (e.g. retailers like Synergy), while exemptions from the licensing requirements recognised that not all arrangements would be practical to be licensed. For example, operators of caravan parks were exempted from the requirement to hold a retail electricity licence as they tend to be smaller operators and they do not sell electricity as their core business¹.

There is, however, now a growing range of atypical electricity retail services that involve the selling and management of electricity under differing arrangements, such as the sale and supply of electricity in embedded networks, to those provided by 'typical' licensed electricity retailers.

These arrangements, referred to in this paper as alternative electricity services (AES), include services like the sale and supply of electricity in embedded networks, on-site power supply (OPS) services, peer to peer trading, electricity aggregation services and electric vehicle charging services. AES business models can include the retailing, storage, aggregation, generation, and/or distribution of electricity, and could incorporate a membership-based or subscription payment arrangement for electricity or electricity services.

Following a 2019 review of the electricity licensing and exemption framework in Western Australia, Energy Policy WA developed the AES registration framework to apply customer protection obligations on persons offering electricity services through emerging and atypical business models that fall outside the licensing framework, or for which the licensing framework is not fit for purpose.

Legislative amendments to the Act to establish the AES framework took effect on 23 April 2024.

The amended Act does not prescribe services required to register as an AES. If a need to regulate a service has been identified, then the service will be prescribed in regulations as an AES, and providers of that service will then need to register and meet any relevant obligations in the Act, regulations and mandatory AES Code of Practice (AES Code).

During an 8-week period from 22 of February to 19 April 2024 Energy Policy WA sought feedback by way of a [Consultation regulatory Impact Statement \(CRIS\)](#). The CRIS considered options to regulate on-site power supply (OPS) services, including whether OPS services should be covered by the AES registration framework. An OPS service allows a customer to use all, or part, of the electricity produced on-site at their property by an electricity generation and/or storage system that is owned by a third party. OPS services include solar power purchase agreements and can also be offered on a subscription basis.

This paper uses the terms on-site power purchase arrangement (OPSA) and OPS service depending on the context. 'OPSA' is used to refer to the arrangement or contract, while 'OPS service' refers to a service being provided under the contract.

On 7 March 2024 Energy Policy WA held an online public forum for stakeholders on the proposed regulation of OPS services in Western Australia. Fifty-three stakeholders attended.

The policy objective was to find the best and most practical way to extend customer protections to OPSA customers, including an adequate dispute resolution pathway and a suitable compliance and enforcement mechanism, without imposing unnecessary regulatory burden on providers.

¹ [Electricity Industry \(Caravan Park Operators\) Exemption Order 2005](#)

Four formal submissions were received. Feedback on proposed code obligations for OPS service providers was also received during the consultation period.

Based on stakeholder feedback to the CRIS and cost benefit analysis, Energy Policy WA considers Option 3 – the AES registration framework with tailored code obligations to be the best option to meet the policy objective.

Accordingly, Energy Policy WA recommends that OPS services be regulated under the new AES registration framework.

Key policy decisions

The following key policy decisions have been made in accordance with Energy Policy WA recommendations, as follows:

- OPS services should be regulated under the new AES registration framework with tailored customer protections.
- Regulations should be made pursuant to section 59C of the Act to prescribe the provision of OPS services as an “activity”.
- The costs of requiring the OPS service provider to register under the AES registration framework are proportional to the benefits.
- The ERA should undertake a public interest test and public consultation when assessing applications from OPS service providers, because a public interest test would increase customer trust and ensure OPS service providers are comprehensively assessed before being able to provide the services.
- Licensed electricity retailers should be able to provide OPS services under the authorisation of their retail licence with additional conditions for consistency with the AES Code. Further work, in consultation with the ERA, should be done to determine what conditions are required.
- That feedback on specific code provisions (e.g. life support, hardship, financial and domestic violence assistance, disclosure requirements where an OPS service is provided in an embedded network) will be used to inform development of the initial mandatory AES Code as it relates to OPS service providers.

2. Introduction

2.1 Overview of this paper

This DRIS sets out a decision on the regulation of OPS services in Western Australia. This follows consideration of feedback received from stakeholders as part of a Consultation Regulatory Impact Statement (CRIS) which sought feedback on the best option for the future regulation of OPS services.

Section 1 sets out what an OPSA is, the problem statement and project objective.

Section 2 provides an overview of the consultation process.

Section 3 provides a summary of the stakeholder feedback received during the consultation process.

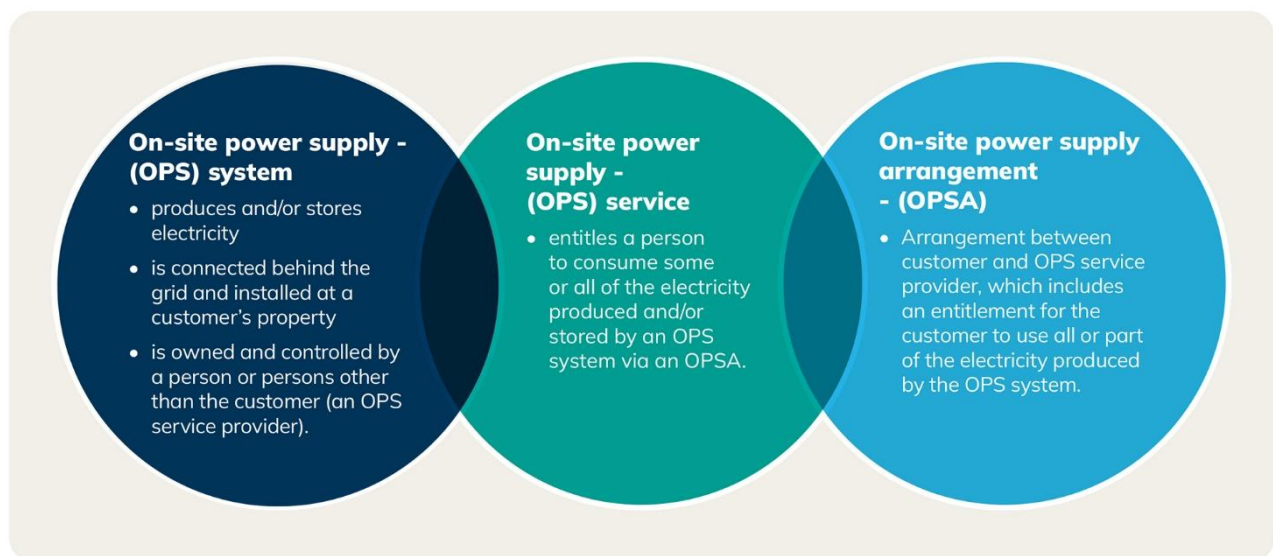
Section 4 summarises feedback on the costs and benefits of the preferred option.

Section 5 provides the recommendation on how OPSA should be regulated.

Section 6 provides an overview of the implementation issues.

2.2 What is OPSA?

Figure 1: What is on-site power supply system, service and arrangement?



The most popular example of this arrangement is where a company installs a solar system and/or batteries at a customer's property (behind the grid-connected meter). The company continues to own and maintain the system for a period and the customer is entitled to use all or part of the electricity produced:

- by paying for it on a cents per kilowatt basis (otherwise known as a solar power purchase agreement or SPPA); or
- by paying a regular subscription and/or membership fee; or
- as part of another service relating to the system at the customer's property (where the use of electricity is included in the agreement); or
- any combination of the above.

While solar and/or batteries are the most popular forms of OPS system, there may be other technologies in the future that will be provided to customers under similar arrangements.

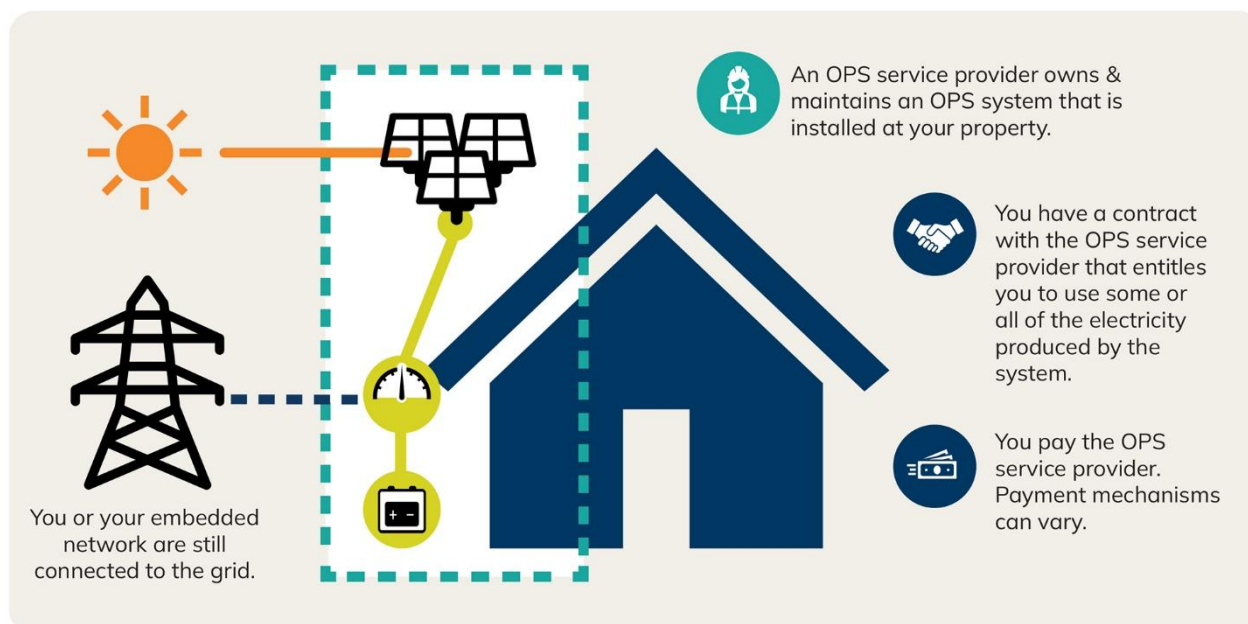
An OPS system is not a system owned by the customer, or where the customer has a finance or capital lease arrangement provided by a bank or another person with an Australian Financial Services Licence or Australian Credit Licence where:

- (a) the payments under such arrangement are not linked to the consumption or use of electricity from the OPS System; and**
- (b) the person providing the finance or capital lease, and its related entities, have no right or obligation to procure, install, operate or maintain the equipment.**

In some cases, the OPSA may include a term that at the end of the contract period the customer then owns the system either automatically, or by paying a nominal amount or depreciated value.

While an OPSA is often between the property owner and the business that owns the system, sometimes a property owner will allow an occupant (like a tenant) to enter into an OPSA with an OPS service provider.

Figure 2: On-site power supply



2.2.1 SPPAs

A SPPA is an OPS service where the customer purchases the electricity produced by a solar system installed at their property on a per unit (c/kWh) basis.

Businesses currently need an individual exemption to sell and supply electricity via SPPAs. The former Minister for Energy announced a hold on considering any additional SPPA exemption applications in May 2019 to allow for a comprehensive review of the electricity licensing and exemptions framework. Energy Policy WA has been approached by several businesses that would like to provide SPPAs to customers but cannot do so without an exemption or bearing the costs of obtaining a licence.

A decision about how to regulate OPS services is necessary to open this market up to new participants.

There are currently 19 SPPA providers (10 active) that have an individual exemption from the requirement to hold a retail licence. There are about 183 energy systems installed under these arrangements.

The SPPA Exemption Order includes conditions that the provider must comply with.

- Conditions include the requirement to provide a written disclosure statement to customers, which aims to ensure that consumers are provided with clear written information on the features and characteristics of SPPA product offerings and have access to a means of resolving complaints or disputes with their SPPA supplier.
- Entities operating under the SPPA Exemption Order are also required to report certain information each financial year to the Coordinator for Energy, including statistics on the number of SPPAs entered into and the generation capacity of the solar systems covered by the SPPAs.

There is no formal enforcement framework to monitor compliance with the Exemption Order. If a company operating under the Order doesn't meet any of the above conditions (no matter how minor the breach), the exemption automatically ceases to apply for the period of the breach and the entity that held the exemption can no longer legally conduct its business.²

2.2.2 Other types of OPSA business models

Energy Policy WA is also aware of a business model where the customer does not purchase the electricity but pays a regular subscription to the company that owns the OPS system. Under this business model, the contract that outlines the customer's obligations and rights related to the OPS system also entitles the customer to use the electricity produced by the system.

The size of the energy system (and battery in some cases) is optimised for the customer's needs and it is therefore anticipated that for many customers the OPS system will meet most of their electricity needs, especially in summer. This means that the OPS system is, for extended periods, the customer's primary electricity supply.

This business model appears to be growing in popularity and there are currently at least 2,000 residential customers known to have signed up to this business model in Western Australia. It is anticipated that the number of customers supplied with electricity in this way will grow over the coming years.

The structure of this business model does not appear to fit into the current electricity licencing and exemption framework as it does not involve the sale of electricity to customers, but instead an entitlement to use electricity is a side benefit to the provision of a different service.

Although Energy Policy WA is aware of only one customer complaint relating to this service, the scale of this atypical electricity supply model, the growing number of customers that are attracted to this option, and that for many the OPS system meets most of their electricity needs, warrants consideration for a form of regulatory oversight and electricity-specific customer protections.

2.2.3 Out of Scope

It should be noted that the scope of this Consultation Paper does not relate to:

- finance or capital lease arrangements provided by a bank or another person with an Australian Financial Services Licence or Australian Credit Licence where:
 - the payments under such arrangement are not linked to the consumption or use of electricity from the OPS system, and

² If the SPPA provider stops supplying electricity, the customer is still able to source electricity through their grid connection.

- the person providing the finance or capital lease, and its related entities, have no right or obligation to procure, install, operate or maintain the equipment;
- aggregation services;
- demand side management;
- energy efficiency services;
- where entitlement to use a system like solar panels and/or a battery is part of a rental agreement for a property where they system is installed; or
- outright purchase of a system like solar panels or a battery.

2.3 The new AES registration framework

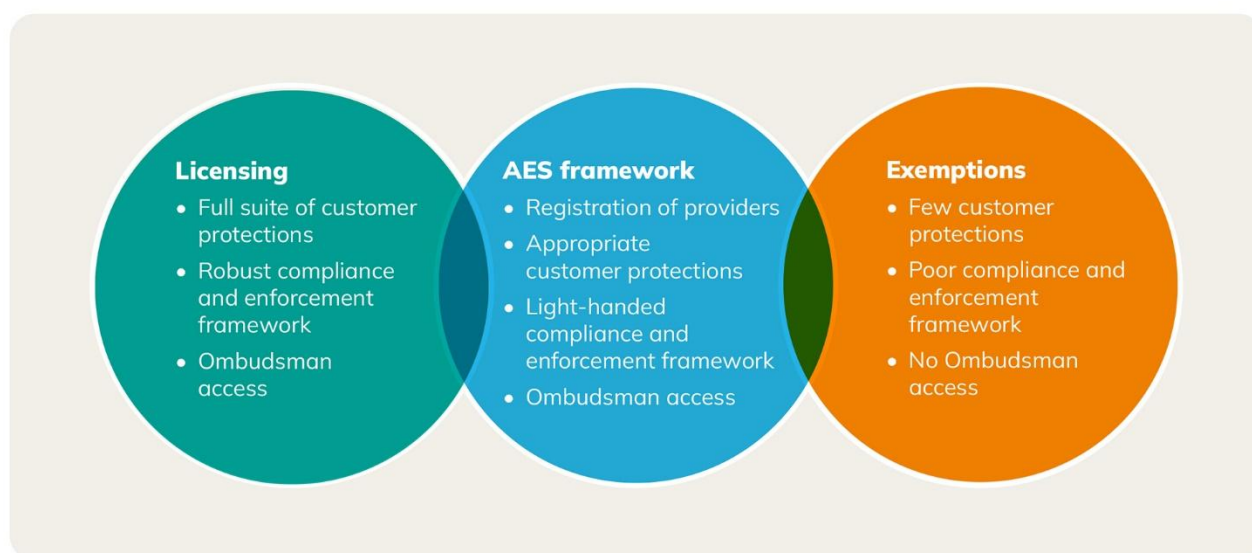
The AES registration framework operates alongside the existing electricity licensing and exemption frameworks established under Part 2 of the Act.

The framework requires providers of a prescribed service to register, become a member of the Electricity Ombudsman scheme and comply with obligations contained in a single code of practice, the AES Code. This registration framework delivers enforceable protections for electricity customers of those AES providers.

To allow flexibility for the framework to be applied to new and innovative services, the activities regulated under the AES registration framework are prescribed in regulation. The requirements for providers of each prescribed service can be tailored to the particular characteristics of that service. The ERA will be responsible for monitoring compliance with, and enforcement of, the registration framework, as well as for maintaining the register of AES providers.

The AES registration framework is intended to be flexible enough to cover a broad range of electricity-related activities into the future, if and when a need for regulation of those activities arises. It is designed to provide a fit for purpose regulatory regime to extend protections to customers of innovative and emerging electricity services.

Figure 3: Comparison of licensing, AES and exemptions frameworks



Consistent with the Principles of the Better Regulation Program, before any activity is regulated under the AES registration framework a regulatory impact assessment will be undertaken, including stakeholder consultation, to examine whether regulation is warranted, whether the AES registration framework is the appropriate form of regulation for the activity, and – if so – the regulatory settings that should be applied for that activity.

2.4 Problem statement

There are four specific problems with the status quo:

- New SPPA (one type of OPS service) providers can only enter the market if they hold an electricity licence, as exemptions have been closed to SPPA providers until a decision is made about how OPSA will be regulated in the future. So far no SPPA provider wanting to enter the market has taken up this option due to the relatively high costs and regulatory obligations that come with licensing.
- Existing SPPA customers have only very basic customer protections, but often rely heavily on the electricity produced by the OPS system.
- If a SPPA provider doesn't meet any of the conditions of their exemption (for example doesn't provide the basic protections), then the exemption ceases to have effect until the breach is rectified. This means that legally, the SPPA provider must stop all their operations until it can meet the condition.
- A known type of OPS service is outside the scope of the existing electricity licensing and exemption regime entirely, despite being used by about 2,000 residential customers.

Both a licensed retailer and OPS service provider can supply the same customer with electricity, but the nature of the service is different, as is the relationship between these energy sellers and that customer.

A key difference is that, because an OPSA customer continues to have a separate primary source of electricity supplied by a licensed retailer, they always have a relationship with that provider to fall back on and will continue to have reliable energy supply if the OPS system fails or there are issues with the OPS service provider.

However, customers often use an OPS service to manage or reduce their electricity costs and therefore an issue with a customer's OPS service could have significant financial consequences for that customer.

Further, OPSA can often commit customers to seven to 10-year contract terms (or longer) and may include expensive pay out figures for early contract terminations.

This means that an OPSA customer makes a long-term and often significant financial commitment to be entitled to use all or part of the electricity produced by the OPS system. This makes it very important for customers to:

- have all the information about their rights and obligations under the OPSA ahead of signing the agreement; and
- access to minimum customer protections that can provide the customer with an important safety net to manage disputes with their OPS service provider, or if they should experience financial hardship or domestic violence making it difficult to pay the OPSA fees and charges.

Since 2018, the number of energy systems installed under SPPAs has doubled (from 81 to 183 systems), which is substantial growth despite the market being closed off to new market participants.

In addition, around 2,000 residential customers and steadily increasing number of additional customers, are now entitled to use electricity produced by an OPS system under a subscription-based OPS service model, which falls outside the scope of the existing licensing and exemption framework. This growing number of OPSA customers do not have access to an independent dispute resolution pathway or any enforceable energy-specific customer protections.

2.5 Policy objective

As outlined in the CRIS, the policy objective is to find the best and most practical way to extend protections to OPSA customers, including an adequate dispute resolution pathway and relevant customer protections supported by a suitable compliance and enforcement mechanism, without imposing unnecessary regulatory burden on OPS service providers.

3. Consultation

In 2019, the Minister for Energy asked Energy Policy WA to review the regulatory framework for electricity retail licensing and exemptions, and released a statement that paused further consideration of licence exemptions for solar power purchase agreement providers.

The review was completed in November 2020, with the release of the Final Report, [*Tailoring customer protections for alternative electricity services – a registration framework*](#), which identified a preferred regulatory framework to give customers of alternative electricity services better protections, including access to the Energy Ombudsman.

The Final Report recommended that OPS services (then called ‘Behind the Meter services’, or BTM services) be considered for registration under the new AES framework.

- A [*draft behind-the-meter Code*](#) for this purpose was developed in parallel with the development of the registration framework, with the help of a working group consisting of Government entities and industry participants.

The AES registration framework came into effect on 23 April 2024.

In the lead up to the passing of legislation that gave effect to the framework, on 22 February 2024 Energy Policy WA launched an 8-week comprehensive consultation process, in the form of a CRIS, for the future regulation of OPSA.³

Energy Policy WA also sent a short survey direct to those SPPA providers (a form of OPSA) with current individual licence exemptions to understand more about the business model and customer demographics (Section 4.1).

The CRIS outlined that the lack of specific and/or easily enforceable customer protections under the current form of regulation for OPS services has the potential to negatively affect customers.

The consultation sought feedback on the different options for regulating the provision of OPS services, ranging from maintaining the status quo to requiring OPS service providers to register under the AES registration framework.

The scope of this CRIS related to any arrangement for an OPS system, where the customer is entitled to use all/or part of the electricity produced by the OPS system.

The regulated party would be the person who has a contract with a customer for the provision of an OPS system at the customer’s premises.

3.1 Options considered

The CRIS outlined four options and provided a high-level analysis of the indicative impacts of each option. Figure 4 outlines the options that were considered at a high level.

³ The CRIS is available at [regulating the provision of on-site power supply services-consultation regulatory impact statement crisis.pdf](https://www.wa.gov.au/government/publications/regulating-the-provision-of-on-site-power-supply-services-consultation-regulatory-impact-statement-cris.pdf) (www.wa.gov.au)

Figure 4 – Options considered in the CRIS

Option 1 – Status Quo	• New entrants need to get licensed, some operate under an exemption
Option 2 – Licensing	• SPPA providers must become licensed
Option 3 – AES framework and tailored obligations	• OPSA providers are registered under AES and comply with tailored AES Code obligations
Option 4 – AES framework & NETCC	• OPSA providers are registered under AES and signatory to the NETCC

Option 1 – Status Quo has already been deemed unsuitable during the comprehensive 2019 review of the electricity licencing and exemptions framework.

Option 2 – Licensing: Over the past four years licensing has been the only option available to new SPPA providers wanting to enter the market. That no SPPA provider has chosen to become licensed over this time strongly suggests that the costs and regulatory obligations associated with an electricity retail licence are too onerous to be feasible for this business model.

Option 3 – AES registration framework with tailored code obligations: Under this option an OPS service provider would be required to register and meet relevant tailored obligations for providing an OPS service under the AES Code that would extend minimum customer protections. The customer protection obligations will be less than that of a licensed retailer to reflect that the OPSA customer continues to have a primary electricity supply and is therefore not reliant on the OPS service provider for the supply of electricity as an essential service.

Option 4 – AES registration framework – leverage New Energy Technology Customer Code (NETCC): under the option, an OPS service provider would have to register but would not need to comply with a suite of OPSA-specific obligations under the AES Code. Instead, they would be required to become a signatory to the NETCC and to comply with the NETCC as a condition of registration.

Options 3 & 4 both require the OPS service to be prescribed as an alternative electricity service in regulations. The AES registration framework is designed with atypical business models like OPSA in mind, be flexible enough to cover a wide range of services and operate as a low-cost and light-handed mechanism to deliver protections relevant to customers of a particular service.

Under either option, an OPS service provider would be required to register with the ERA and become a member of the Electricity Ombudsman scheme.

The regulatory compliance costs and registration fees and charges payable to the ERA and Energy Ombudsman under the AES registration framework are anticipated to be less than those for licensees.

4. Collation of consultation responses

4.1 Overview of the consultation process

Energy Policy WA invited (via email) 1,838 stakeholders to provide feedback to the CRIS processes⁴ and held a public forum on 7 March 2024 on the regulation of OPSA. Fifty-three stakeholders attended the public forum and there were 103 subsequent visits to the forum page after it was published.

Energy Policy WA also sent each of the 19 SPPA provider exempt from the requirement to hold a licence, a short survey about the business model and customer demographics and a separate reminder to participate in the CRIS process with the offer of extension if needed.

The survey sought information from the SPPA providers on:

- What the type of customers they serve (i.e. residential or small business);
- What type of information customers are provided up front (i.e. a disclosure statement);
- How and on what basis customers are charged and whether they receive a bill; and
- What ancillary services are provided to customers.

The full survey is available in Appendix A.

Despite individual follow up emails, only one SPPA provider responded to the survey.

4.2 Consultation feedback in support of regulating OPS services under the AES registration framework

Four formal submissions were received in response to the CRIS, all in favour of regulating OPS service under the AES registration framework.

Of the four submissions, three were in support of Option 3 – AES registration framework with tailored obligations, specifically:

- Two were from consumer advocacy bodies – Energy Consumers Australia and WA Expert Consumer Panel;
- One was from the Property Council of WA.

One submission from Starling Energy Group who operates Plico was in support of Option 4 – AES registration framework leverage NETCC. Starling Energy group is a potential OPS service provider currently not regulated under either the exemption or licensing framework.

Two verbal submissions were provided:

1. A stakeholder sought to clarify whether their business operating model would be captured. Their operating model appears to not fall into the description of an OPSA as OPSA does not cover sites that are **not** connected to the grid. While the stakeholder did not provide a preference for the type of regulation for OPS services, they provided positive feedback on the consultation process and the documentation provided.
2. One SPPA provider called to provide verbal feedback on the consultation process and communicated a preference for Option 3 – AES registration framework with tailored code obligations.

⁴ This figure includes stakeholders consulted on the sale and supply of electricity in embedded networks and proposed general regulations for the AES registration framework as a combined invitation was sent.

4.2.1 Main themes from stakeholder feedback

All stakeholders accepted the need for reform of regulation of OPS services with a clear preference for the service to be regulated under the AES registration framework.

Of the four formal submissions, three were in favour of Option 3 – AES registration framework with tailored code obligations and one was in favour of Option 4 – AES registration framework – leverage the NETCC.

“Yes, where the [AES] framework creates obligations that are fit for purpose and not a duplication of other regulatory instruments a given business needs to comply with.”

Starling Energy Group

“The AES registration framework is a more appropriate framework to be implemented. We see this as the best option given the costs of licencing and the NETCC’s focus on the selling of new technology.”

Energy Consumers Australia

“The Property Council WA believes that Option 3 set out within the CRIS provides the best balance of regulation and benefit to customers. By requiring OPS service providers to register under the Economic Regulation Authority (ERA), become a member of the Electricity Ombudsman scheme, and meet relevant obligations under the AES Code, adequate protections will be established for the OPS customer.”

Property Council WA

Licensing option not supported

Of the four written submissions none supported licensing as a preferred option for regulating OPSA in the future. The WA Expert Consumer panel pointed to the fact that no new entrant has chosen to become licensed since applications for exemptions closed to SPPA providers in 2019.

“The current exemption and licensing system (Option 1 and Option 2) is evidently not conducive for OPSA as new services are not being introduced to the market. The Services described, such as Solar Power Purchase Agreements, are of strategic importance and support aims to decarbonise the grid while maintaining stability. The ECP considers Option 2 not a suitable framework for attracting these businesses to participate in the market.”

Other stakeholders also noted high cost of compliance as a barrier for this option being feasible.

Overall stakeholder feedback confirms Energy Policy WA’s preliminary view outlined in the CRIS – that the licensing framework is unsuitable for OPSA and that many of the regulatory obligations were not designed for smaller-scale applications. In addition, Energy Policy WA considers licensing an unsuitable option because:

- the manner in which some regulatory obligations are framed is inconsistent with the business model of an OPS service provider – for example, obligations regarding supply disconnection, reconnection, interruption and life support protections all assume the licensed retailer is the intermediary between the customer and the grid operator, however this is not the case for an OPSA service provider; and

- the licensing framework does not require up-front disclosure to customers on some matters that are relevant for OPSC customers, due to the nature of these contracts – for instance, what costs and obligations the customer may face if they terminate the contract early, and whether the OPS system is controllable by the OPS service provider.

Further, the licensing framework has limited scope for flexibility or customisation to, for example, apply only a portion of the compliance obligations to a particular licensee or subclass of licensee. This means that OPS service providers would need to comply with the full suite of obligations of a licensed retailer.

Feedback on Option 4 – AES registration framework leveraging NETCC

One stakeholder, Starling Energy Group, preferred Option 4 – AES registration framework – leverage the NETCC, referencing that the NETCC is nationally consistent and recognised by the ACCC.

“SEG (Starling Energy Group) favours nationally consistent regulations to promote productivity where possible.”

The NETCC is a voluntary code of practice administered by the Clean Energy Council and approved by the ACCC. It is intended to raise standards of consumer protections in the new energy tech sector and sets customer protection standards for the whole customer journey from marketing to signing the contract to system installation.

The NETCC includes obligations that:

- advertising needs to be honest, accurate, clear and fair;
- product offers are fit for purpose;
- quotes are comprehensive;
- contracts reflect the quote;
- providers offer clear payment options; and
- complaints will be dealt with promptly and fairly.

However, the NETCC is particularly targeted to the sale of new energy technology with only minimal guidance on how customers should be protected if there is an ongoing contractual arrangement with the customer. This means it is not tailored to the circumstances under an OPSC, where there is not a direct sale of technology but instead the system continues to be owned and/or controlled by a third party and customers are entitled to the use of the electricity produced.

Consumer advocacy bodies had concerns that the NETCC did not provide sufficient protections for customers of an ongoing service like OPSC.

“Tailored code obligations is the preferred option given the NETCC’s focus on the selling of new technology rather than the ongoing service provided once the technology is installed. We also see limitations in relying solely in an industry regulated and voluntary code.”

Energy Consumers Australia

“Option 4 (NETCC) offers solutions to most concerns outlined in the Problem Statement. This proposal presents a strategic approach that considers cost and benefits for consumers.

However, we believe that pursuing Option 3, which creates a customised code that applies to all services provided by AES and all consumers, would result in better outcomes for consumers. Specifically, the limitations of NETCC in safeguarding customers involved in an OPSA where the hardware is not owned by the consumer do not address the existing issue effectively.”

WA Expert Consumer Panel

It should be noted that if the customer has a complaint about matters not covered by the NETCC or included in the OPSA itself, the Energy Ombudsman would not have jurisdiction over these matters and would not be able to assist with these disputes.

Although this option provides the ERA with access to a similar toolkit of enforcement options including enforceable undertakings, any action would require coordination with the Clean Energy Council that oversees and takes compliance action regarding breaches of the NETCC.

This overlap in responsibilities between the Clean Energy Council and the ERA would need to be carefully managed to ensure swift action can be taken in cases of non-compliance.

OPS service providers would incur similar registration costs as under Option 3: AES registration framework as these costs reflect the system and operational costs for the ERA and Ombudsman to administer the AES registration framework and oversee registered services, which are largely independent of the level of obligations that apply to individual services.

In addition to registration costs OPS service providers would incur annual fees for being a signatory of the NETCC, ranging from \$800 to \$10,000 depending on the income to the business.

This means Option 4 is more expensive for operators than Option 3.

Hardship and/or family violence and some life support protections

All of the four written submissions supported the AES Code obligations for OPS service providers to include provisions for financial hardship and family violence.

One submission raised concerns about the life support provisions in the draft code being impractical, with the requirement to keep records too onerous without addressing any concerns relating to life support. The submission also highlighted that most manufacturer guidelines state that solar equipment is not to be solely relied upon for providing power to life support equipment.

However, consumer advocacy bodies felt strongly about customer having access to a wide range of customer protections, including life support.

“Despite the non-essential energy supply, offering accommodations and protections to customers, particularly those experiencing hardship, family violence or who require life support equipment, can enhance financial stability and increase well-being, contributing to an ongoing and mutually beneficial relationship between customer and service provider.”

WA Expert Consumer Panel

Further the WA Expert Consumer Panel specifically outlined that customers may rely on OPS services for life support and that disclosure statements should disclose and detail if the OPS provides independent power in the event of a grid outage and include this information in FAQs.

Feedback on draft code obligations

Stakeholder feedback on the draft obligations highlighted a few key areas of concern:

- Duplication of existing obligations that are present in other areas of the energy supply chain;
- Excessive exit fees
- Arrangements between a property owner and an OPS service provider and how these affect tenants.

The WA Expert Consumer Panel specifically highlighted risks associated with customers being locked into long, sometimes in excess of 10 years, contracts with excessive exit fees.

The ECP suggests that it is appropriate to introduce a prohibition of excessive exit fees for all customers. We consider appropriate exit fees to be:

- **The cost of removing the hardware**
- **The reasonable administrative costs to arrange removal and close the account.**

We do not consider recovering income foregone by the customer no longer purchasing the service to be a reasonable exit fee.

WA Expert Consumer Panel

The Property Council WA highlighted how OPS services can affect tenants and that this should be considered in detail in how that would affect the draft code obligations.

The Property Council notes that OPS arrangements (OPSAs) are most often established between a property owner and a third-party business that installs and owns the system. In some circumstances, the end-consumer of the energy produced by the OPS will not be the party that has entered into the OPSA (e.g. a tenant of a landlord with an OPS service installed on their property).

In circumstances such as this, the tenant often has a secondary arrangement with the landlord to access the electricity produced by the OPS service. The Property Council believes that further consideration needs to be given as to how these arrangements will work, given they will fall out of the scope of the proposed regulatory requirements.

Property Council WA

Views on OPSA interaction with embedded network operators

In some embedded networks, particularly new greenfield developments offering sustainable building features, the embedded network infrastructure is paired with solar panels and batteries which can help reduce electricity costs. The installation and management of the OPS system (such as solar and/or batteries) may be subject to an agreement between the strata company and OPS service provider.

Some issues previously raised by consumers include:

- a lack of upfront disclosure as to an OPSA being in place (which may initially be between the developer of the building and OPS service provider, and then novated to the strata company);
- lack of knowledge of the contract terms, including length of the OPSA and the associated obligations and costs;
- lack of clarity as to the roles of the OPS service provider and embedded network seller, and other third parties such as the strata management company;
- differences between electricity tariffs charged by the embedded network seller and actual costs under the OPSA;
- where time of use electricity tariffs are used, price incentives being set that do not encourage use of electricity generated by solar panels (e.g. peak prices being charged in the middle of the day), and a lack of information to customers about the time of use prices;

- a lack of customer information about how electricity consumption behaviour will interact with or affect efficient use of electricity generated/provided by solar panels and batteries;
- a general lack of detail on bills or incorrect consumption data provided to the customer; and
- a lack of customer education on how to use third party portals/platforms and schemes such as peer-to-peer trading if they are in operation.

Consumer advocacy bodies highlighted that disclosure early on in the lease negotiations are important where the embedded network seller supplements tenant electricity supply with an OPSA.

The ECP recommends that:

- Information regarding embedded networks and OPSA should be disclosed either before or within the sales or lease contract. The details of the operator of the embedded network and/or OPSA should be provided, along with guidance on how to obtain a disclosure statement.
- If an embedded network prohibits residents from using OPSA services this should be disclosed.
- Regulation makes clear which party is responsible for disclosing the presence of an embedded network to a prospective builder, buyer or lessee. There have been reports to ECP members by individuals who have unknowingly moved into or purchased homes within an embedded network.
- Where both an embedded network and an OPSA operate, disclosure statements and contracts should clearly outline the responsibilities of each party involved, ensuring a clear distribution of duties and obligations.
- Where both an embedded network and an OPSA operate, bills should contain sufficient information so that customers can see that they are not being charged for duplicate services.

WA Expert Consumer Panel

Other matters

There were a number of other policy questions that received limited responses:

- **Transitional matters:** submissions highlighted the need for clear and transparent communication to both customers and OPS service providers as well as giving OPS service providers time to adapt to the change.
- **Fast-track option:** Consumer advocacy bodies did not support the fast-track option as it may lack sufficient scrutiny and may not provide optimal outcomes for consumers. A potential OPS service provider felt that it would create less barrier for smaller companies to come into the market and help with the energy transition.
- **ERA public register:** stakeholders highlighted that the register should include information about the legitimacy of the company to help build customer trust. One stakeholder asked for information not to be duplicated that is already available via other means (i.e. ASIC website).
- **Licensed retailers having to separately register:** Only three submissions provided comment and overall feedback was that if a licensed retailer had the same obligations as a provider registered as an AES it would be appropriate for them not to have to register separately.

5. Outcomes of cost benefit analysis of option preferred by most stakeholders – Option 3

One of the key economic benefits of this regulatory change is that it will enable new entrants into the OPS service market.

The former Minister for Energy announced a hold on SPPA exemptions in May 2019 to allow for a comprehensive review of the electricity licensing and exemptions framework. Energy Policy WA has been approached by several businesses that would like to provide SPPAs to customers but cannot do so without an exemption or bearing the costs of obtaining a licence.

A decision about how to regulate OPS services in the future is necessary to open this market up to new participants.

Further, as customers would be able to access transparent and regulated customer protections there would be less risk for them to enter an OPSA and therefore access the potential energy savings such an arrangement could provide.

The table below outlines the costs and benefits of the option preferred by most stakeholders – Option 3.

Table 1 - cost and benefits of option supported by most stakeholders - Option 3

Affected party	Impacts
Industry	
Costs (negative impacts)	- AES registration and Ombudsman fees and levies – best estimate for these costs is in the order of \$10 to \$37 per customer per year. - Costs to develop systems and processes to comply with registration obligations.
Benefits	- Enables new market entrants to participate and provide services. - Provides for industry standardisation, improving consumer trust in the sector. - Provides for regulatory certainty and allows for proportionate enforcement options in the event of minor non-compliance with obligations.
Government	
Costs (negative impacts)	- Establishment costs – best estimate for these costs is in the order of \$1 million to \$1.5 million for both system and resource costs (noting these establishment costs are a once-off cost associated with any and all services regulated under the AES registration framework – they are not duplicated if both OPS services and embedded network services are prescribed as AES). - Cost to the ERA to administer and enforce the AES registration framework for OPS service providers (noting these costs would be industry funded and do not duplicate the regulatory costs to industry listed above) - Cost to the Energy Ombudsman to manage complaints and disputes of OPSA customers (noting these would be industry funded after a transitional period and do not duplicate the regulatory costs to industry listed above)
Benefits	- Extends customer protections to all OPSA customers. - Flexible and tailorable regulatory obligations that can respond to change. - Meets policy objective. - Clear legislated responsibility for administration and enforcement.

Affected party	Impacts
Community/Customer	
Costs (negative impacts)	Registration and administration costs would ultimately be borne by customers. The actual financial impact is difficult to estimate at this time and depends on what OPS service providers pass on to customers and how much competition exists in the market.
Benefits	- Access to a wider range of market participants. - Access to Energy Ombudsman to assist with resolving complaints and disputes. - Access to customer protections including minimum information disclosure requirements prior entering into an OPSA. - Robust and proportionate compliance and enforcement regime to ensure customers have access to compliant operators.

5.1.1 Estimation of future costs

Energy Policy WA has undergone a process with input from the ERA and the Energy Ombudsman to develop estimates for both establishment costs (for example building new systems) and ongoing operational costs for the AES registration framework. These estimates are based on a high-level overview of the framework and are yet to be tested. The costs are based on high, medium and low:

- cost scenarios for ongoing system and resourcing costs, if both OPS services and embedded network services were to become registered AES; and
- customer numbers ranging from 30,000 to 100,000 customers (estimated customer numbers for OPS and embedded network services combined).

The indicative costs assume the estimated operating costs of the registration scheme are recovered through an annual fee. However, the legislation makes provision for application and annual fees. As it has not yet been determined what portion of the operating costs will be recovered from each fee, full recovery through an annual fee is assumed for simplicity.

Based on this process Energy Policy WA was able to estimate indicative annual costs per customer for ongoing operational costs of the AES registration framework under different scenarios, ranging from \$10 to \$37 per customer per year⁵ (combined annual costs for both Energy Ombudsman and ERA).

By comparison existing retail licensees would expect to pay around \$23 per customer in annual fees and around \$47 per customer for auditing requirements that must occur at least every three years (and is likely not to be required as regularly or at all for some small AES service providers).

It should be noted that the ongoing operational costs for the AES registration framework are all inclusive, meaning some of these costs may be recovered through application fees. In contrast, the licensing fees above do not include application fees, which can be several thousands of dollars in each instance, increasing the total regulatory cost per customer.

It is also noted that the ERA's licensing process is well established with knowledgeable service providers and an experienced regulator, so it is expected that licensing costs represent efficient

⁵ While this range represents Energy Policy WA's best estimate for the combined ongoing annual costs of the ERA and Ombudsman, it is based on high level assumptions and incomplete data. Final per customer costs may fall outside this range.

unit costs. It may take some years for the AES registration process to become established, with costs expected to become more efficient over time.

The proposed AES registration framework would have a simpler assessment process for OPSA applicants than the licensing framework.

Further, the AES registration framework would not require regular performance audits of OPSA providers. Compliance audits will be the exception, rather than the norm. Unlike audits of electricity licensees, the auditor will be appointed by the ERA, not the regulated entity, to avoid potential conflicts of interest and/or bias – this is consistent with the audit arrangements for water licensees under the Water Services Act 2012.

The ERA will have access to a similar toolkit of enforcement options as for that to address licensing contraventions, but with the important additional option of enforceable undertakings.

It should be noted that unlike the existing electricity licence and exemption framework, the AES registration framework is able to apply to all types of OPSA operating models, including the subscription model that currently applies to around 2,000 residential customers.

Ombudsman costs associated with dispute resolution payable by ENS members are not included in the above modelling and will be determined by the Ombudsman in due course in accordance with its governance procedures.

6. Decision

6.1 Statement of decision

Based on both stakeholder feedback and Energy Policy WA analysis, the best method for regulating OPS services in the future is Option 3 – AES registration framework – tailored customer protections.

6.2 Discussion

The policy objective of the reform was to find the best and most practical way to extend protections to OPSA customers, including an adequate dispute resolution pathway and relevant customer protections supported by a suitable compliance and enforcement mechanism, without imposing unnecessary regulatory burden on OPS service providers.

Realistically, only the two options involving OPS service providers to register under AES registration framework meet the objective of balancing regulatory burden with the provision of benefits to customers.

Only Option 3: AES registration framework with tailored code obligations would extend protections to customers that are specific and relevant to the OPSA business model, without imposing higher than necessary regulatory burden on OPS service providers.

Option 4: AES framework – leverage NETCC is not tailored to an OPSA because the NETCC is targeted to the sale of new energy technology with minimal guidance on how customers should be protected if there is an ongoing contractual arrangement with the customer. NETCC does not focus on operating models where the OPS system continues to be owned by a third party and customers are entitled to the use of the electricity produced by the technology.

Only one stakeholder preferred Option 4, while the other three written and two verbal submissions preferred Option 3.

6.3 Key recommendations

After considering feedback from stakeholders and the analysis of costs and benefits, Energy Policy WA makes the following recommendations regarding the regulation of OPS services and the policy considerations raised in the CRIS:

- OPS services should be regulated under the new AES registration framework with tailored customer protections. This is the best option to address the issues raised in the problem statement (above).
- Regulations should be made pursuant to section 59C of the Act to prescribe the provision of OPS services as an “activity”.
- The costs of requiring the OPS service provider to register under the AES registration framework are proportional to the benefits.
- The ERA should undertake a public interest test and public consultation when assessing applications from OPS service providers, because a public interest test would increase customer trust and ensure OPS service providers are comprehensively assessed before being able to provide the services.
- Licensed electricity retailers should be able to provide OPS services under the authorisation of their retail licence with additional conditions for consistency with the AES Code. Further work, in consultation with the ERA, should be done to determine what conditions are required.
- That feedback on specific code provisions (e.g. life support, hardship, financial and domestic violence assistance, disclosure requirements where an OPS service is provided in an embedded network) will be used to inform development of the initial mandatory AES Code as it relates to OPS service providers.

6.4 Potential unintended consequences of the regulations

One of the unintended consequences of regulation could be that OPS service providers change their business model to avoid regulation. This would leave customers without the intended customer protections.

Another unintended consequence may be that the registration costs or AES Code obligations present barriers to less sophisticated OPS service providers.

It is in the best interest of consumers that existing service providers do not exit the market or face suspension due to difficulties in meeting the registration requirements.

The one formal submission from a potential OPS service provider highlighted a need to avoid unnecessary duplication of obligations in other areas of the energy supply chain. The submission also highlighted that the upper end of the estimated cost per customer could be prohibitive.

Energy Policy WA will consider this feedback in revising the AES draft obligations for OPS service providers. Regarding costs, Energy Policy WA acknowledges that OPS service providers could be sensitive to registration costs.

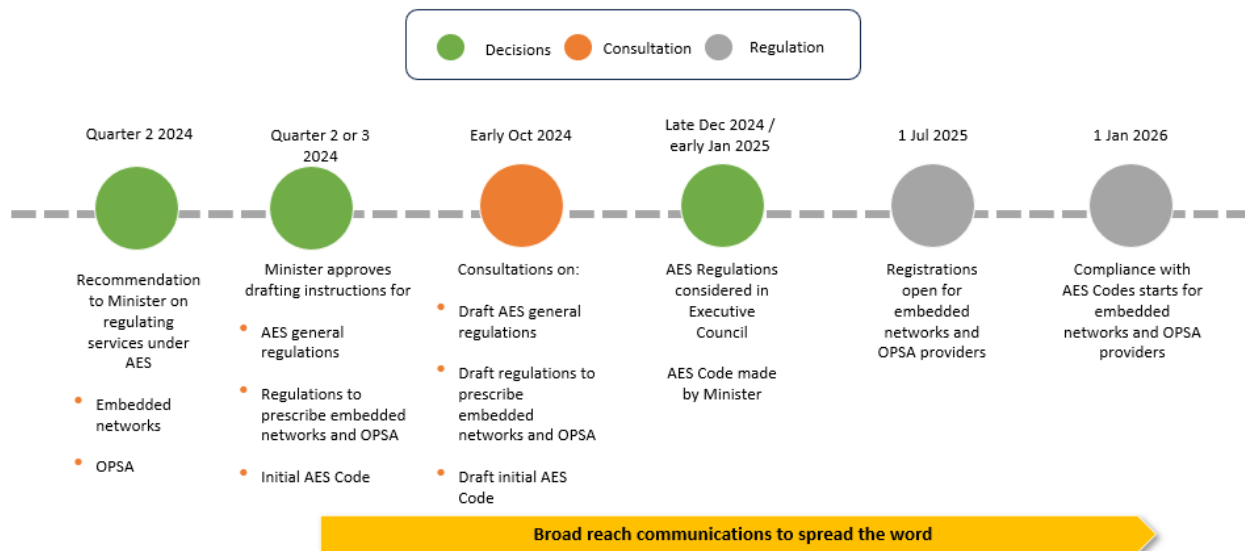
The indicative costs assume the estimated operating costs of the registration scheme are recovered through an annual fee. However, the legislation makes provision for application and annual fees. As it has not yet been determined what portion of the operating costs will be recovered from each fee, full recovery through an annual fee is assumed for simplicity.

Further, it is not anticipated that the upper end of the estimated cost per customer, or approximately \$37 per customer, is likely final cost for OPS service providers as the AES Code obligations for this service will be less comprehensive than services that are a primary electricity source for its customers.

7. Implementation issues

7.1 Implementation timeframe

Figure 5: Indicative implementation timeframe for AES registration framework and prescription of initial services



Due to the anticipated volumes of registration applications at the commencement of the AES framework, which could also include embedded network sellers, there would likely be a transition period of around six months between registrations opening and compliance obligations taking effect.

- There are currently 19 SPPA providers who would need to transition from an exemption to an AES registration.

The six-month lead time is in addition to the 18-month lead time between the socialisation of the draft obligations and the opening of registrations.

Leading up to the commencement and operation of the AES registration framework, Energy Policy WA will:

- review the current SPPA Exemption Order to assess if any residual exemptions are required if OPS services are prescribed as an AES;
- review the current *Electricity Industry Exemption Order 2005* and assess whether this order, particularly section 4A could potentially apply to the operation of OPS services for non-residential customers;
- conduct awareness raising activities and education campaigns from at least six months prior to the OPS service provider registration commencing; and
- conduct further consultation on any other implementation issues not raised in the CRIS and the final form of the AES regulations and AES Code as they would apply to OPS service providers.

Stakeholders provided some considered feedback regarding the most suitable resources and materials to help both OPS service providers and their customers transition to the AES registration framework.

Stakeholders raised the importance of clear and transparent communication with both the OPS and consumers receiving energy under this supply service as key for positive transitional arrangements.

Stakeholders suggested providing information packs in plain language and webinars or workshops with OPS service providers and customers, including:

- Easy to understand information about the minimum details that must be disclosed on bills.
- A fact sheet on the registration framework and the Energy and Water Ombudsman.

Energy Policy WA will consider this feedback when developing awareness raising activities and education campaigns.

7.2 Transitional provisions

Stakeholders provided limited feedback on transitional provisions, but consumer advocacy bodies highlighted the need for a smooth and prompt transition to the new regulatory framework to provide both customers and OPS service providers regulatory certainty.

As discussed in the section above leading up to the commencement and operation of the AES registration framework, Energy Policy WA will review the Exemption Order and *Electricity Industry Exemption Order 2005* to assess if any residual exemptions are required once OPS services are prescribed as an AES.

The review of electricity retail licence exemptions that currently apply to OPS service providers is a separate body of work that will consider any transitional provisions necessary as exemptions are phased out or pared back.

7.3 Evaluation after implementation

The AES Code is flexible and is intended to be modified if obligations are found to be a barrier to the operating model, result in unintended outcomes or need to be strengthened to achieve better customer outcomes.

Particularly OPS service obligations around hardship, family violence and billing may need to be refined following the registration of OPS service providers.

Energy Policy WA will work closely with the ERA and the Ombudsman during the first year of implementation to ensure the AES Code remains responsive to the OPS service business model.

It should be noted that the Act provides for five yearly reviews of the AES Code. Energy Policy WA will conduct the first review on behalf of the Minister for Energy.

However, Energy Policy WA is intending to seek to register new services well in advance of the first five yearly review. As part of developing obligations for these services, Energy Policy WA plans to review existing AES Code provisions that will also apply to new services to ensure the AES Code remains a relevant and cohesive set of obligations.

Appendices

Appendix A. SPPA survey

Questionnaire – Solar Power Purchase Agreement providers

This questionnaire was emailed to every company currently holding a licence exemption for providing Solar Power Purchase Agreements (SPPAs) to customers. Your responses will provide us important information about the business model including customer demographics and help inform current policy development – how to regulate On-site Power Supply Arrangements, a term which encapsulates SPPAs, in the future. For more information visit [Sharing the Power](#).

1. Name of your organisation – [Click or tap here to enter text.](#)

2. What type of customers do you provide SPPAs to? (choose all that apply)
 - ☐ Residential (not strata titled) ☐ Commercial/industrial or office strata
 - ☐ Residential or mixed use strata (e.g. apartment building with café/shops) ☐ Schools
 - ☐ Commercial/industrial or office buildings (not strata titled) ☐ Other (please specify) [Click or tap here to enter text.](#)

3. On what basis do you charge customers? (choose all that apply)
 - ☐ Cents per unit ☐ Subscription
 - ☐ Take or pay (pay for a certain amount of kilowatt hours no matter what) ☐ Other (please specify) [Click or tap here to enter text.](#)

4. How would you describe the benefits your customers get from having an SPPA with your organisation? [Click or tap here to enter text.](#)

5. Do you provide any of the following ancillary services to your SPPA customers (choose all that apply):
 - ☐ Aggregation or VPP ☐ Demand side management
 - ☐ Demand optimisation or energy efficiency programs ☐ Other (please specify) [Click or tap here to enter text.](#)

6. Which of the following information do you provide before customers sign the SPPA (choose all that apply):

- | | |
|--|--|
| ☐ The duration of the contract | ☐ What the customer can do if they have a complaint |
| ☐ How any quoted savings were calculated | ☐ Pay out figure if the customer wants to discontinue the arrangement. Please state if this is not applicable. Click or tap here to enter text. |
| ☐ How fees and charges will be varied over time | |

7. How do you determine the cost a customer pays for the SPPA?

- | | |
|--|--|
| ☐ Discount on regulated rate (i.e. A1 tariff) | ☐ Other (please specify) Click or tap here to enter text. |
| ☐ Cost of the system and retail costs over life of contract | |

8. Do your customers get regular bills or statements of usage?

- ☐ Yes
- ☐ No

9. If yes, which of the following does the bill or statement include?

- | | |
|---|---|
| ☐ Start and end of supply period | ☐ Payment methods |
| ☐ Customer details like address and account number | ☐ Number of units electricity produced and/or stored by the system |

10. Do you have a financial hardship policy?

- ☐ Yes
- ☐ No

11. Do your customers have a separate meter for the SPPA?

- ☐ Yes

☐ No

12. If yes, does the meter measure:

- | | |
|--|----------------------------------|
| ☐ On-site production of electricity | ☐ Neither |
| ☐ On-site consumption | ☐ Both |

13. How did you determine what kind of support and protections (i.e financial hardship or up-front disclosure statement) to your customers?

- | | |
|--|--|
| ☐ Best practice/industry standard | ☐ Looked at guidance from the Clean Energy Council (CEC) |
| ☐ Looked at what licensed retailers are doing | ☐ Looked at the New Energy Tech Consumer Code (NETCC) |
| ☐ Looked at Australian Consumer Law (ACL) | ☐ Other (please specify) Click or tap here to enter text. |

14. Which, if any, of the following do you typically contract out to a third-party service provider?

- | | |
|--|--|
| ☐ Marketing | ☐ Ongoing billing |
| ☐ Design or system | ☐ Ongoing Maintenance |
| ☐ Installation | ☐ Other (please specify) Click or tap here to enter text. |
| ☐ Complaints handling | ☐ None of the above |

15. Anything else you would like us to know? [Click or tap here to enter text.](#)

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