



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

SHARING THE POWER



Regulating the provision of on-site power supply services

Consultation Regulatory Impact
Statement (CRIS)

FEBRUARY 2024





An appropriate citation for this paper is: Regulating the provision on on-site power supply services – Consultation Regulatory Impact Statement (CRIS)

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Glossary and abbreviations

TERM	EXPLANATION
the Act	<i>Electricity Industry Act 2004</i>
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 proposed registration framework for alternative electricity services in Western Australia to be enabled under the Electricity Industry Amendment (Alternative Electricity Services) Bill 2023.
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.
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.
DEMIRS	Department of Energy, Mines, Industry, Regulation and Safety
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.
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.
Exemption Order	Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016 (www.gov.wa.au)
Grid	means the SWIS or NWIS, 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).



TERM	EXPLANATION
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: <ul style="list-style-type: none">(a) purchasing electricity on a cent per kilowatt hour basis; and/or(a) an entitlement to consume electricity through a subscription; and/or(b) 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: <ul style="list-style-type: none">• 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 SWIS or NWIS 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. <p>An OPS system does not include a system that is provided by a company on a finance or capital lease basis pursuant to an Australian Financial Services Licence or Australian Credit Licence.</p>
Prescribed AES	means an activity prescribed by regulations as an alternative electricity service once the AES registration framework is in place.
small-use electricity customers	A customer to whom electricity is sold for the purpose of consumption and who consumes not more than 160 MWh of electricity per year.
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.





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 holding a retail electricity licence as they tend to be smaller operators and they do not sell electricity as their core business.

There is, however, now a growing range of atypical electricity retail services that involve the selling and management of electricity under differing arrangements to those provided by ‘typical’ licensed electricity retailers.

These arrangements, referred to in this paper as alternative electricity services (AES), include services like on-site power supply (OPS) services, peer to peer trading, the sale and supply of electricity in embedded networks, 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 *Electricity Industry Act 2004* to give effect to the AES registration framework were introduced into Parliament on 15 August 2023, in the form of the [Electricity Industry Amendment \(Alternative Electricity Services\) Bill 2023](#).

This Bill does not prescribe services required to register as an AES as they will be prescribed in regulations and providers of that service will then need to register and meet any relevant obligations in the AES Code.

In this paper, Energy Policy WA is considering 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.

This Consultation Regulatory Impact Assessment (CRIS) compares four options:

- The status quo – where there are a small number of existing exempt solar power purchase providers, no new licence exemptions being granted for similar services (reflecting that the existing framework has been deemed unsuitable) and some other types of subscription-based OPS services falling outside the licensing and exemption framework entirely.
- Licensing – where solar power purchase agreement providers would be required to obtain an electricity licence rather than an exemption. The types of OPS service that fall outside the licensing and exemption framework would remain unregulated.
- AES registration with a requirement to comply with a tailored set of obligations under the AES Code, which would cover all types of OPS service, including:



- mandatory up-front information to customers through a standard Disclosure Statement;
 - a requirement for supply agreements to be in writing and include certain information such as details of tariffs, fees and charges and how they may be varied;
 - mandatory information that must be included on bills (or via an app or online platform), and other billing requirements;
 - support for residential customers experiencing financial hardship or family violence; and
 - robust dispute resolution procedures, including access to the Energy and Water Ombudsman (the Energy Ombudsman) to assist with disputes.
- AES registration with a requirement to be a signatory to and comply with the Clean Energy Council's New Energy Technology Consumer Code, rather than tailored obligations under the AES Code. This option would also cover all types of OPS service.

The policy objective is 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.

Energy Policy WA is seeking feedback on which of the above options is the most appropriate form of regulation for OPS services. Your feedback is vital in weighing up the costs and benefits of the options presented in the paper to assist in any recommendations to the Western Australian Government about how OPS services will be regulated in the future – specifically whether OPS service providers should be registered under the AES registration framework.





1. Introduction

1.1 Overview of this paper

This CRIS seeks feedback from stakeholders about the best option for future regulation of electricity supply via an on-site power supply arrangement (OPSA).

Section 1 sets out what an OPSA is, and how to provide feedback.

Section 2 provides an overview of the current regulatory framework for electricity licensing and exemptions and the new AES registration framework, and also includes information on Australian Consumer Law (ACL) protections.

Section 3 sets out the problem statement and the case for additional regulation.

Section 4 states the policy objective for future regulation of OPS services.

Section 5 explains the options being considered, and policy questions that Energy Policy WA is seeking specific stakeholder feedback on.

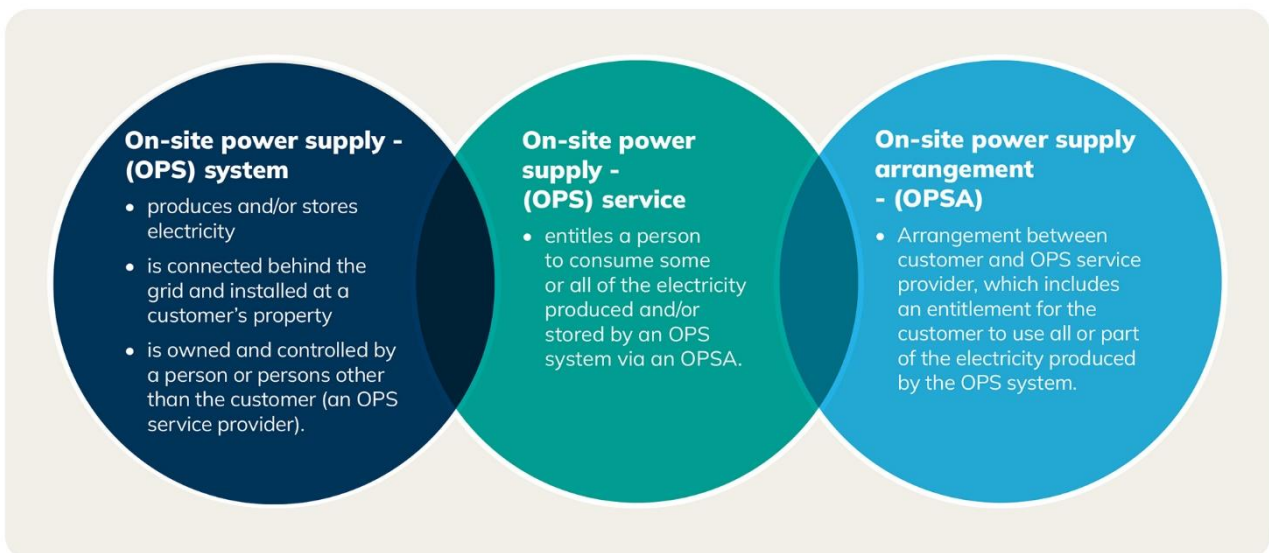
Section 6 compares the options against the policy objective.

Section 7 provides some information on implementation considerations.

Further information about the regulatory approach used in other jurisdictions and the detail of proposed code obligations if this service is regulated under the AES registration framework with a tailored set of obligations can be found in the appendices.

1.2 What is on-site power supply?

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.

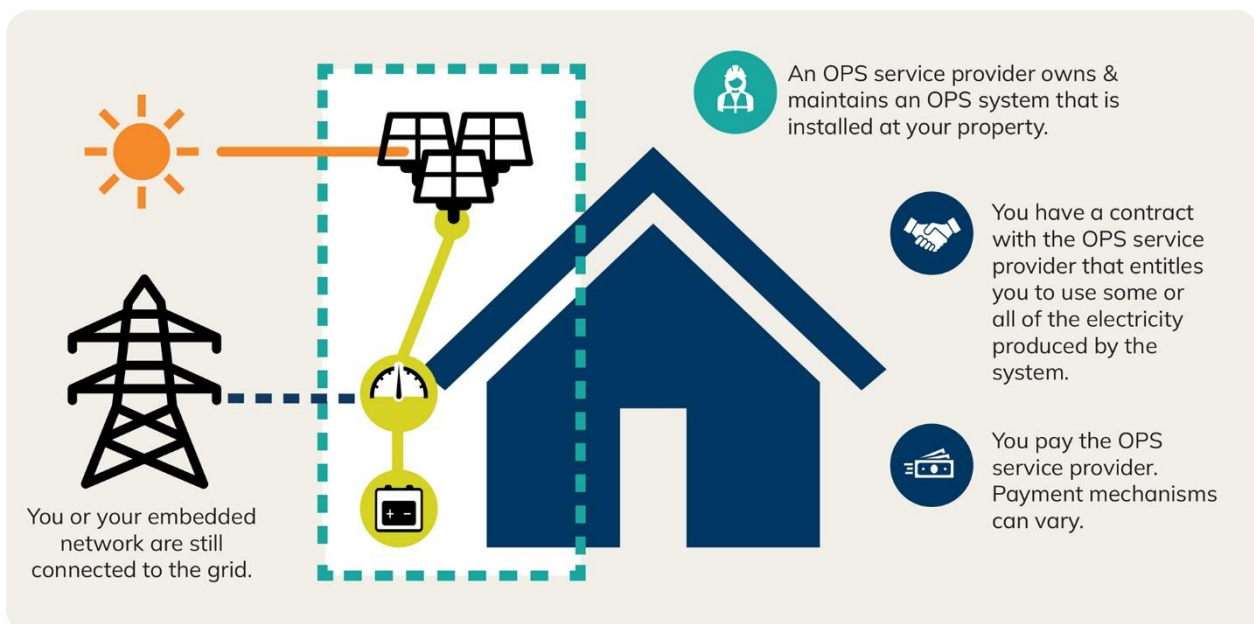
While solar and/or batteries are the most popular forms of OPS system, there may be other technologies in the future that will be provided to customers under similar arrangements.

An OPS system is not a system owned by the customer, or where the customer has a finance or capital lease arrangement with a bank or another party with an Australian Financial Services Licence or Australian Credit License to pay for the system outright.

In some cases, the OPSPA 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 OPSPA 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 OPSPA with an OPS service provider.

Figure 2: On-site power supply



1.2.1 Solar Power Purchase Agreements

A Solar Power Purchase Agreement (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 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.



There are currently 19 SPPA providers (10 active) that each have an individual exemption from holding a retail licence and 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.

However, there is no formal enforcement framework, for instance for the Coordinator of Energy to issue a notice of breach or impose penalties for non-compliance. Instead, if a company operating under the SPPA Exemption 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.

The current exemption framework provides no ability to implement a more responsive, robust, or proportionate compliance and enforcement regime to ensure adequacy of consumer protections.

The only current alternative to relying on exemptions is applying the existing licensing framework. This would ensure these small use customers would have access to the same customer protections as their counterparts that are supplied directly by a retailer. However, the licensing regime would impose onerous costs and regulatory burden disproportionate to the OPSA operating model, and some licensing obligations are not relevant or fit for purpose for this type of service.

1.2.2 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 1,000 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. Therefore, these customers only have general ACL related customer protections, and providers are not required to hold either a retail licence or exemption. For more information on the ACL please refer to section 2.1

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.





1.3 Scope of this consultation

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.

This consultation seeks 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 relates 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.

1.4 Out of Scope

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

- finance or capital leases;
- loans;
- aggregation services;
- demand side management;
- energy efficiency services;
- where a system like solar panels and/or a battery are provided as part of a rental agreement; or
- outright purchase of a system like solar panels or a battery.

1.5 Invitation for submissions

Energy Policy WA is seeking feedback on specific questions about the options for regulating the provision of OPS services. A consolidated list of questions is included below, for your convenience. You do not have to respond to all the questions or all the options. Please feel free to focus on the areas that are important and relevant to you.

There is no specified format for submissions or responses. You are welcome to write a letter or send us an email:

- outlining your views;
- telling us your own experience; and/or
- responding specifically to the questions included in the CRIS.

You are also welcome to suggest alternative options for addressing matters of concern to you. When providing your submission or response to questions, it would be helpful if you could include the reasons behind your suggestions, along with the potential costs and benefits of them. This will help the Government to better understand your viewpoint and will assist assessing the potential impact of the most suitable options for reform.

The issues outlined in this paper are complex. If there is anything you require clarification on please do not hesitate to contact EPWA-AES@DMIRS.wa.gov.au with the subject heading 'Request for clarification: Regulating OPS services'.

Written submissions or letters can also be emailed to EPWA-AES@DMIRS.wa.gov.au or posted in hard copy to Locked Bag 100, East Perth WA 6892.

Closing date

The closing date for providing comments on this CRIS is Friday 19 April 2024 at 5pm (WST).



Who are you?

When making your submission please let us know who you are and/or who you represent. For example, are you a household or business customer, OPS service provider or industry body.

How your input will be used?

Energy Policy WA will carefully consider all the information gathered through this consultation process in order to provide advice and recommendations to the Government.

Energy Policy WA will publish submissions received on the Energy Policy WA website shortly after the end of the consultation period. Energy Policy WA will also publish further information on the Government's final policy decision in due course.

Information provided may become public.

After the period for comment concludes, all responses received may be made publicly available on Energy Policy WA's website. Please note that as your feedback forms part of a public consultation process, the Government may quote from your comments in future publications. If you prefer your name to remain confidential, please indicate this in your submission. Please also clearly indicate if there is information or data in your submission that is confidential and should be redacted before publication.

Please also note that submissions made in response to this paper will be subject to freedom of information requests and will be treated in accordance with the *Freedom of Information Act 1992 (WA)*.

1.6 Consolidated list of questions for consultation

1. What types of information should be required to be disclosed to customers in their OPS contract, and what subset of this information should be set out in a clear disclosure statement given to customers before they sign a contract?
2. The draft obligations provide residential OPSA customers with hardship and/or family violence and some life support protections from their OPS service provider. Noting an OPS service is not the customer's only source of electricity, are these protections necessary? Why/why not?
3. Do you have any other comments on the proposed OPSA code obligations?
4. Is licensing a suitable option to address some of the issues raised in Section 3 – Problem statement, particularly given that it will only cover some OPSA business models?
5. Are the costs of licensing OPS service providers proportional to the benefits?
6. What transitional arrangements are appropriate to provide for exempt SPPA providers if licensing is the preferred option for the future regulation of OPS service providers?
7. Is the AES registration framework a suitable option to address some of the issues raised in Section 3 – Problem statement? (*relevant to Options 3 and 4*)
8. Are the costs of requiring OPS service provider to register under the AES registration framework proportional to the benefits? (*relevant to Options 3 and 4*)
9. Do you consider Option 3 (tailored code obligations) or Option 4 (leveraging the NETCC) to be more preferable for applying the AES registration framework to OPS services? Please provide justification for your position.
10. Do you support use of the 'fast track' route to assess OPS service provider registration applications? Why/why not?
11. What matters should be included on the ERA's public register about OPS service providers?





12. Should licensed electricity retailers be permitted to operate as an OPS service provider under authorisation of their licences (with additional licence conditions), or should they be required to also hold an AES registration as an OPS service provider? Please provide justification for your position.
13. What circumstances should be considered for transitional arrangements?
14. What types of obligations on OPS service providers should be subject to transitional arrangements?
15. Please provide your views on circumstances where OPSA interact with embedded network operations and whether additional regulation is required to ensure that consumers are informed about existing contracts with OPS service providers when they buy and/or rent a property.
16. What is the best means of accessing all relevant audiences for OPS service provider educational materials?
17. What materials and resources would be most suitable to help both OPS service providers and their customers to transition to the AES registration framework?

1.7 Previous consultation

In 2019, at the same time as putting new licence exemptions for SPPA providers on hold, the former Minister for Energy initiated a review of the retail [electricity licensing and exemptions framework](#).

The objective of the review was to identify a preferred regulatory framework that facilitates businesses providing OPS services (at the time referred to as behind-the-meter electricity services), while ensuring consumers of those services have adequate consumer protections.

In January 2020, Energy Policy WA released and invited public feedback on the [Directions Report, Creating a dynamic customer protection framework for behind-the-meter electricity services](#), proposing a new framework for 'alternative electricity services'.

In November 2020, Energy Policy WA released the Final Report, [Tailoring customer protections for alternative electricity services – a registration framework](#) which was the inception of the AES registration framework. The report recommended that OPS services be considered for registration under the new framework.

A [draft behind-the-meter Code](#) 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.





2. Regulatory overview

2.1 Australian Consumer Law

The ACL provides general protections related to consumer guarantees for the supply of goods and services, and liability of manufacturers for goods with safety defects. Under the ACL, the term 'goods' includes, among other things, electricity and gas supplies, unless otherwise specified in regulations.

The ACL includes:

- a national unfair contract terms law covering standard form consumer and small business contracts;
- a national law guaranteeing consumer rights when buying goods and services;
- a national product safety law and enforcement system;
- a national law for unsolicited consumer agreements covering door-to-door sales and telephone sales;
- simple national rules for lay-by agreements; and
- penalties, enforcement powers and consumer redress options.

The national regulator responsible for monitoring, investigating, enforcing and reporting on compliance with obligations under the ACL is the Australian Competition and Consumer Commission (ACCC). Each state and territory regulator is responsible for the same compliance functions, holding similar powers but at a jurisdictional level.

Western Australian customer complaints under the ACL are referred to the Department of Energy, Mines, Industry Regulation and Safety (Consumer Protection).

ACL regulators are not able to pursue every complaint received and instead must consider complaints carefully and exercise discretion, directing resources to matters that can result in industry-wide change or provide the greatest overall benefit for consumers.

There are certain matters that are less likely to be pursued by an ACL regulator, for instance matters that:

- are one-off, isolated events;
- are more appropriately resolved directly between the parties under an industry code (for example, by mediation or an industry dispute resolution body such as the Energy Ombudsman);
- involve issues more effectively dealt with by another agency; or
- are best dealt with between private parties.

As the ACL offers broad general protections, it does not offer the specificity of customer protections available to customers of licensed retailers under the Code of Conduct for the Supply of Electricity to Small Use Customers (the Small Use Code), many of which would be appropriate to extend to customers of OPS service providers in an adapted form.

For example, the ACL does not have specific requirements that would obligate an OPS service provider to:

- give minimum information up-front through a standard Disclosure Statement about matters such as whether the OPS system will be subject to any external controls;
- have minimum information that is to be provided in contracts such as the process by which the OPS service provider will facilitate connection of the OPS system;
- provide regular information to customers about electricity produced by their OPS system; and



- implement and follow processes to provide support for residential customers experiencing financial hardship or affected by family or domestic violence.

The ACL also does not provide for OPSA customers to have access to the Energy Ombudsman to assist with disputes.

2.2 Current licensing and exemptions framework

The electricity licensing and exemption framework has been in effect since 2004 and is set out in Part 2 of the *Electricity Industry Act 2004*.

Under the regulatory framework, electricity licences are issued, overseen and enforced by the Economic Regulation Authority (ERA). Exemptions are issued by the Governor on advice from the Minister for Energy.

Licences, with comprehensive customer protection obligations and stringent compliance requirements, have been applied to large operators, while licence exemptions have been used in some instances recognising that it was not practical for all energy supply arrangements to be licensed. Licence holders can be subjected to a range of disciplinary actions for non-compliance with licence conditions, ranging from warnings to financial penalties through to, in extreme cases, the revocation of a licence.

While licence exemptions can include high level conditions, there is no oversight of exempt parties and no enforcement mechanism to deal with exempt operators not meeting the required conditions.

If an exempt entity doesn't comply with one of the conditions that have been included in the licence exemption, then the exemption automatically ceases to apply until the issue is rectified. In this case the entity holding the exemption can no longer legally conduct its business and faces prosecution and fines of up to \$100,000 plus \$5,000 per day for operating without a licence or exemption. The regulatory framework provides no ability to implement a more robust or proportionate compliance and enforcement regime to ensure adequacy of consumer protections.

Table 1 provides a comparison of the types of customer protections under the licensing regime, current individual exemptions for SPPA providers and protections for OPSA business models that fall outside of the current electricity licensing and exemption framework.





Table 1: Comparison of licensing and exemption framework (small use customer protections)

	Licensed retailer	Exempt SPPA provider	OPS models outside the framework
Oversight by an energy-specific regulator	✓	X	X
Customer access to Energy Ombudsman / requirement for robust dispute resolution procedures	✓	X	X
Enforceable Code setting out standards of conduct	✓	X	X
Information disclosure <ul style="list-style-type: none"> - Up front - On bills 	✓	Limited* There is a requirement for SPPA providers to give customers a product disclosure statement up front	X
Visibility of suppliers operating in the market (for regulator, government and potential customers)	✓	✓	X
Obligation on service provider to offer support to residential customers experiencing financial hardship or family violence	✓	X	X
Requirements on service providers regarding supply disconnections, reconnections and interruptions	✓	X	X
Regular performance reporting requirements	✓	Limited* SPPA providers are required to submit an annual report about the number of contracts agreed during the year, capacity installed and complaints received	X

For information on the equivalent licensing and exemption frameworks in other jurisdictions, and how they apply to OPS services, please refer to Appendix A.





2.3 The new AES registration framework

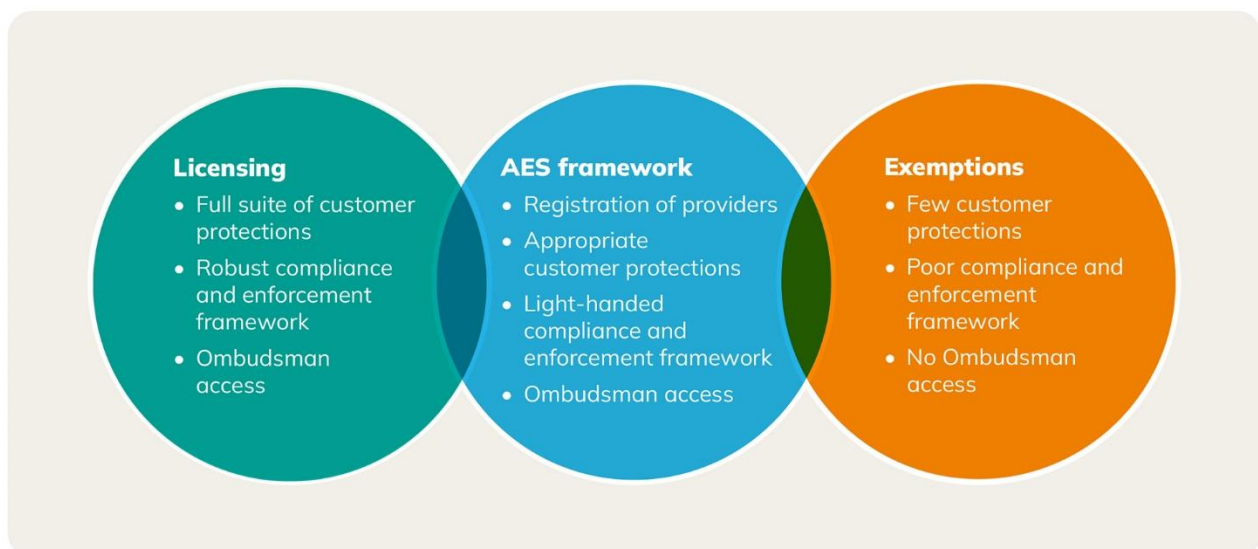
The AES registration framework will operate alongside the existing electricity licensing and exemption frameworks established under Part 2 of the Act. Legislative amendments to establish the AES registration framework are currently before Parliament.

The framework will require 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 will deliver 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 will be 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.

This CRIS is an example of this process and provides stakeholders an opportunity to provide feedback on whether the AES registration framework is the appropriate form of regulation for OPS services and whether the obligations outlined in Appendix B are suitable.





3. 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 1,000 residential customers.**

Both retailers and OPS service providers supply customers with electricity, but the nature of the service is different, as is the relationship between these energy sellers and their customers.

A key difference is that, because OPSA customers continue to have a separate primary source of electricity supplies, 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 their OPS service could have significant financial consequences for the 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 1,000 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.



4. Policy objective

Energy Policy WA considers that small use electricity customers who rely on the electricity supplied by an OPS system to manage energy affordability should have access to customer protections tailored to the OPSA business model.

Energy Policy WA also considers that the licensing regime would impose potential barriers to entry and/or force some existing suppliers to exit the market due to the associated costs and regulatory burden, which are disproportionate to the OPSA operating model. This is evidenced by the fact that no new market entrants have opted to become licensed since exemptions for SPPAs closed four years ago, despite interest from potential providers in the Western Australian SPPA market.

Therefore, 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.

4.1 Customer protections suitable for OPSA customers

Appendix B provides a set of draft obligations that are relevant to the OPSA business model and could apply to OPS service providers if the service were to be registered under the AES registration framework. For example:

- standardised and regulated marketing practices;
- minimum information that is to be provided in contracts, for example what the customer will pay and how charges will be varied over time;
- minimum information to customers up-front about the contract terms and whether the OPS system will be externally controlled through a standard Disclosure Statement;
- providing customers a bill or regular information in another form about the electricity production of their OPS system;
- support for residential customers experiencing financial hardship or affected by family or domestic violence; and
- robust dispute resolution procedures, including access to the Energy Ombudsman to assist with disputes.

OPSA customers continue to have access to electricity from the grid either by:

- being directly connected to the grid and having a contract with a licensed retailer for electricity supply; or
- if located in an embedded network, continuing to have access to electricity from their embedded network seller,

and often enter an OPSA to reduce or manage their electricity costs.

Subject to the customer being fully aware of the total costs of signing up to an OPS service, this means that OPS services must be priced competitively against the customer's current electricity costs for customers to choose to supplement their grid supplied electricity with an OPS system. Therefore, the proposed obligations do not include any price controls, meaning OPS service providers would have no benchmark pricing to be adhered to. Instead, many of the obligations focus on disclosure of information to customers.

Energy Policy WA is seeking feedback from stakeholders about what kind of protections OPSA customers would most benefit from and whether the protections outlined in the draft Code obligations in Appendix B are appropriate. In reviewing the draft Code obligations for suitability please consider the below questions, noting that the obligations reflect Energy Policy WA's proposed policy position regarding the types of protections to be extended to OPSA customers and not a final position.





1. What types of information should be required to be disclosed to customers in their OPS contract, and what subset of this information should be set out in a clear disclosure statement given to customers before they sign a contract?
2. The draft obligations provide residential OPSCA customers with hardship and/or family violence and some life support protections from their OPS service provider. Noting an OPS service is not the customer's only source of electricity, are these protections necessary? Why/why not?
3. Do you have any other comments on the proposed OPSCA code obligations?





5. Options to address the problem

5.1 Option 1: Status quo

The status quo fails to provide regulatory oversight and tailorable customer protections to customers of two known types of OPS service:

- An OPS service under which around 1,000 residential customers are currently entitled to use electricity produced by an OPS system under a subscription model, with these customer numbers continuing to increase. This is because this OPSA business model is entirely outside of the scope of the existing electricity licensing and exemption regime; and
- Another type of OPS service, SPPAs, is limited to providers that have an existing licence exemption, with no new exemptions being granted until a decision is made about how OPS services will be regulated in the future.
 - As mentioned in Section 1.2.1, 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.
 - There are currently 19 SPPA providers that each have an individual exemption from holding a retail licence with total installations of 183 systems to date. Energy Policy WA has also been approached by several businesses that would like to provide SPPAs to customers but cannot do so without an exemption.

Existing OPSA customers often rely heavily on the electricity produced by the OPS system to manage their electricity costs but under the status quo do not have access to an independent dispute resolution pathway or service-specific customer protections.

Although licence exemptions can include high level conditions, like providing information up front, there is no oversight of exempt parties and no enforcement mechanism to deal with exempt operators not meeting the required conditions.

If an exempt entity does not comply with one of the conditions that have been included in the licence exemption, then the exemption automatically ceases to apply until the issue is rectified. In this case the entity holding the exemption can no longer legally conduct its business and faces prosecution and fines of up to \$100,000 plus \$5,000 per day for operating without a licence or exemption. The regulatory framework provides no ability to implement a more robust, or proportionate, compliance and enforcement regime to ensure adequacy of consumer protections.

The status quo has previously been determined as not fit for purpose in the 2019 review of the retail licensing regime and is not considered further in the options analysis.

5.2 Option 2: Licensing

As no new SPPA licence exemption applications are being considered, the only alternative under the current framework is for SPPA providers that would like to enter the market to obtain an electricity retail licence.

If licensing were to be the preferred option for regulating OPS services in the future, then SPPA providers currently operating under an exemption would have to be transitioned to becoming licensed retailers. This would ensure an even playing field between competing SPPA providers and ensure all OPS service customers have access to the same customer protections.

Over the past four years no SPPA provider has chosen to become licensed, which strongly suggests that the costs and regulatory obligations associated with an electricity retail licence are too onerous to be feasible for this business model.



It should also be noted that other OPSPA business models, namely the subscription model outlined in section 1.2.2, fall outside of the current licensing and exemption framework. This means that this option would not extend electricity-specific customer protections (including access to the Energy Ombudsman) to customers of these OPSPA business models (estimated to serve at least a 1,000 residential customers).

As a licensed entity the OPS service provider (of a SPPA service) would be required to meet associated legislative obligations under the Act and subsidiary instruments to which electricity retail licensees must adhere. Together the Act and these subsidiary instruments constitute a customer protection regime for the retailing of electricity.

The design of the licensing framework for a traditional electricity system is reflected in the licence types (generation, transmission, distribution, retail and integrated regional) and the scale of compliance obligations including (but not limited to):

- Comprehensive application process subject to a public interest test.
- Stringent financial and technical assessments.
- Independent performance audits against licence obligations at least every 24 months (or longer period allowed by the regulator – the typical period is three years).
- Detailed annual performance reporting.

Some of the relevant subsidiary instruments that retail licensees need to comply with are the:

- Electricity Industry (Customer Contracts) Regulations 2005;
- Electricity Industry (Licence Conditions) Regulations 2005, and
- Code of Conduct for the Supply of Electricity to Small Use Customers.

Collectively these instruments ensure that customers of licensed electricity retailers have access to protections commensurate with the provision of an essential service. Among other things, these instruments specify:

- the types of information that must be contained in an electricity customer contract; and
- the standards of conduct retailers must adhere to in the supply of electricity to small use customers.

Under the licensing framework, an OPS service provider would also need to become a member of the Electricity Ombudsman scheme in order to supply small use customers.

The licensing framework does not contemplate atypical business models like OPSPA. Many of the above regulatory obligations were not designed for smaller-scale applications. In addition:

- 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 OPSPA service provider; and
- the licensing framework does not require up-front disclosure to customers on some matters that are relevant for OPSPA 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.

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.



The table below outlines the types of annual fees licensed retailers must currently pay every year. While application fees are excluded from the table as they are dependent on the size and complexity of operations of the retailer, applicants for a retail licence can expect to pay application fees in the thousands of dollars.

Table 2: Indicative electricity retailer licence costs

Type of licencing fee	Indicative electricity licensing costs under the current framework	Cost per customer – based on licensee with 150 small use customers
ERA annual retail licence fee	\$3,416 ¹	~\$23
Indicative audit costs for a retail licence – annualised (audits occur at minimum every three years)	~\$7,000 ²	~\$47
Combined ERA standing charge for retail licence	Depends on customer numbers	Materially less than \$1 ³
Ombudsman annual levy	\$1,000 to \$90,000 ⁴	~\$1
Ombudsman dispute resolution costs	Depends on number of complaints	Depends on number of complaints

¹ [Economic Regulation Authority \(Licensing Funding\) Regulations 2014 - \[00-a0-03\].pdf \(legislation.wa.gov.au\)](#), page 5.

² Licensees are usually subject to a retail licence audit every three years and it is estimated that a licensee may face costs of approximately \$25,000 for an audit (based on industry knowledge).

³ Energy Policy WA estimate based on <https://www.erawa.com.au/cproot/21589/2/Operation-of-the-electricity-licensing-scheme-and-licensee-compliance---Annual-Report-201920---Final-clean-.PDF>

⁴ Ombudsman annual levy depends on the number of customers. Smaller licensees with up to 1,000 customers incur an annual levy of \$1,000.





Table 3: Indicative licensing cost and impact analysis

Affected party	Impacts
Industry	
Costs (negative impacts)	<ul style="list-style-type: none"> • Annual fees and compliance costs associated with a retail licence, which under the current structure would be over \$11,000 - refer Table 2: Indicative electricity retailer licence costs⁵. • Costs to develop systems and processes to comply with licence obligations. • Some obligations are not fit for purpose or relevant, for instance being required to adhere to disconnection procedures that assume provider is the intermediary between the customer and grid operator. • Inflexible and limited ability to tailor obligations to the specific characteristics of OPSA operations. • Compliance and regulatory oversight regime not flexible and regulatory burden is disproportionate to scale of OPSA operations.
Benefits	<ul style="list-style-type: none"> • 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/ Regulator	
Costs (negative impacts)	<ul style="list-style-type: none"> • Legislative framework is not fit for purpose due to inflexibility to be tailored to the specific characteristics and scale of the business model. • Does not extend customer protections to all business models.
Benefits	<ul style="list-style-type: none"> • Ability to extend customer protections obligations to SPPA service providers (but not other OSP business models). • Clear legislated responsibility for the administration or enforcement of the licensing framework.
Community/Customer	
Costs (negative impacts)	<ul style="list-style-type: none"> • Licensing and administration costs would ultimately be borne by customers. • Customers of some OPS business models would still lack electricity-specific customer protections or access to the Energy Ombudsman.
Benefits	<ul style="list-style-type: none"> • Access to customer protections for SPPA customers • Access to Energy Ombudsman to assist with resolving complaints and disputes for SPPA customers. • Robust and proportionate compliance and enforcement regime to ensure SPPA customers have access to compliant operators.

⁵ Fees and charges may need to be amended to reflect an increase in licensees.





4. Is licensing a suitable option to address some of the issues raised in Section 3 – Problem statement, particularly given that it will only cover some OPSA business models?
5. Are the costs of licensing OPS service providers proportional to the benefits?
6. What transitional arrangements are appropriate to provide for exempt SPPA providers if licensing is the preferred option for the future regulation of OPS service providers?

5.3 Option 3: AES registration framework with tailored code obligations

Unlike licensing 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 this option, each OPS service provider would be required to register with the ERA, become a member of the Electricity Ombudsman scheme, and meet relevant obligations under the AES Code that would extend minimum customer protections (modified as necessary from obligations on retail licensees to reflect the characteristics of the business model).

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.

Further, 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.

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 year⁶ (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 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 OPSPA applicants than the licensing framework.

Further, the AES registration framework would not require regular performance audits of OPSPA 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 OPSPA operating models, including the subscription model that currently applies to around 1,000 residential customers.

5.3.1 Proposed obligations under the AES Code

The proposed obligations on OPSPA providers under a tailored AES Code are outlined in Appendix B, and include:

- standardised and regulated marketing practices;
- minimum information that is to be provided in contracts, for example what the customer will pay and how charges will be varied over time;
- minimum information provided to customer up-front through a standard Disclosure Statement about the contract terms or whether the OPS system will be externally controlled;
- provision of a bill or regular information to each customer (via an app or online platform) about their OPS system electricity production or use;
- support for residential customers experiencing financial hardship or affected by family or domestic violence; and
- robust dispute resolution procedures, including access to the Energy Ombudsman to assist with disputes.

⁶ 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.



These obligations are subject to stakeholder feedback through this CRIS (see section 4.1).

Table 4: AES framework with tailored code obligations – indicative impact

Affected party	Impacts
Industry	
Costs (negative impacts)	<ul style="list-style-type: none"> • 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	<ul style="list-style-type: none"> • 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)	<ul style="list-style-type: none"> • 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 OPSPA customers (noting these would be industry funded after a transitional period and do not duplicate the regulatory costs to industry listed above)
Benefits	<ul style="list-style-type: none"> • Extends customer protections to all OPSPA customers. • Flexible and tailorable regulatory obligations that can respond to change. • Meets policy objective. • Clear legislated responsibility for administration and enforcement.
Community/Customer	
Costs (negative impacts)	<ul style="list-style-type: none"> • Registration and administration costs would ultimately be borne by customers.
Benefits	<ul style="list-style-type: none"> • Access to Energy Ombudsman to assist with resolving complaints and disputes. • Access to customer protections including minimum information disclosure requirements prior entering into an OPSPA. • Robust and proportionate compliance and enforcement regime to ensure customers have access to compliant operators.





5.4 Option 4: AES framework – leverage New Energy Technology Customer Code

Under this option each OPS service provider would be required to register with the ERA and become a member of the Electricity Ombudsman scheme just like under Option 3.

However, instead of having to comply with a suite of OPISA-specific obligations the OPS service provider would be required to become a signatory to the New Energy Technology Consumer Code (NETCC) and to comply with the NETCC as a condition of registration.

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.

The NETCC is a very practical and customer-centric set of guidelines for businesses that sell new energy technology. The Clean Energy Council monitors compliance against the NETCC and acts swiftly when problems occur. The Clean Energy Council encourages customers to select only NETCC approved sellers and publishes instances where sellers of new energy technology have been shown to be in breach of the NETCC to inform customers of potential problems.

Under this option, the OPS service provider would also be registered under the AES registration framework and therefore customers would have access to the Energy Ombudsman for disputes.

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 OPISA, where there is not a direct sale of technology but instead the system continues to be owned by a third party and customers are entitled to the use of the electricity produced by the technology.

As a consequence, the NETCC does not cover matters like:

- minimum information up-front about the contract terms that include whether the OPS system will be externally controlled by the OPS service provider;
- support for residential customers experiencing financial hardship or affected by family or domestic violence; or
- a requirement for customers to be provided a bill or regular information (via an app or online platform) about the production and/or storage of electricity by their OPS system.

Therefore, if the customer has a complaint about matters not covered by the NETCC or included in the OPISA 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.

Table 5: AES framework (leverage NETCC) – indicative impact

Affected party	Impacts
Industry	
Costs (negative impacts)	<ul style="list-style-type: none"> • AES registration and Energy Ombudsman fees and levies – best estimate for these costs is in the order of \$10 to \$37 per customer per year. • NETCC signatory costs of \$800 to \$10,000 per year depending on annual income of the business. • Costs to develop systems and processes to comply with registration obligations.
Benefits	<ul style="list-style-type: none"> • Increases industry standardisation and consistency across Australia.
Government	
Costs (negative impacts)	<ul style="list-style-type: none"> • Establishment costs – best estimate 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 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 OPSCA customers (noting these would be industry funded after a transitional period and do not duplicate the regulatory costs to industry listed above) • Lack of direct control over the NETCC obligations • Uncertain legislated responsibility for administration and enforcement as responsibilities are diluted between the Clean Energy Council and ERA and control of obligations sits outside of the Western Australian Government.
Benefits	<ul style="list-style-type: none"> • Extends some customer protections to all OPSCA customers • Consistency across Australian jurisdictions.
Community/Customer	
Costs (negative impacts)	<ul style="list-style-type: none"> • Registration and administration costs would ultimately be borne by customers. • Access to Energy Ombudsman limited to matters in the NETCC and customer contracts. • Limited customer protections around the ongoing management of the OPS system and the electricity produced, along with billing and hardship matters.
Benefits	<ul style="list-style-type: none"> • Good protections against unfair marketing practices and sound information disclosure requirements. • Access to Energy Ombudsman to assist with disputes (albeit a more limited scope than under Option 3)





7. Is the AES registration framework a suitable option to address some of the issues raised in Section 3 – Problem statement? *(relevant to Options 3 and 4)*
8. Are the costs of requiring OPS service provider to register under the AES registration framework proportional to the benefits? *(relevant to Options 3 and 4)*
9. Do you consider Option 3 (tailored code obligations) or Option 4 (leveraging the NETCC) to be more preferable for applying the AES registration framework to OPS services? Please provide justification for your position.





6. Policy questions under the AES registration framework

Public interest test and public consultation

The AES registration framework requires the ERA to undertake a public interest test and public consultation when assessing an AES registration application.

However, the heads of powers for the AES registration framework allow regulations prescribing an AES to specify that, for that service:

- the ERA is not required to take the public interest into consideration when assessing an application for that type of AES (see new s.59F(3) inserted by the AES Bill); and/or
- the ERA is not required to consult publicly on an application for that type of AES (see new s.59L(2) inserted by the AES Bill).

Under this 'fast track' route, approval of applications would still be conditional on the applicant meeting a narrower set of criteria. Such criteria could include, but not be limited to:

- the satisfactory completion of a registration form available on the ERA website;
- payment of an appropriate fee; and/or
- a registrant's commitment to join the Electricity Ombudsman Scheme before providing services to small use customers.

In relation to registering OPS service providers, public consultation and consideration of the public interest may help the ERA to determine any risks or reputation issues of the applicants and take these into consideration when assessing an application from a prospective OPS service provider. Energy Policy WA seeks stakeholder feedback on whether a 'fast track' route would be appropriate for OPS service providers.



10. Do you support use of the 'fast track' route to assess OPS service provider registration applications? Why/why not?

ERA public register

If OPS services were to be covered by the AES registration framework, then the ERA would maintain a public register (published on the ERA website) about OPS service providers. This register can help potential OPSA customers identify whether they are dealing with an OPS service provider that is registered under the AES registration framework.

The public register would include standard business identification information like address and name, details of any OPS service providers whose registration was revoked or suspended, and information on any rejected applicants (for registration).

For each service there is an option for inclusion of additional matters included in the public register. As an example, for OPS service providers the following matters could also be included in the public register:

- number of customers supplied by the OPS service provider;
- number of OPS systems controlled by the service provide; and
- the basis under which the OPSA is provided (e.g. similar to an SPPA, subscription or via another service).



The above information could be required to reflect the most recent financial year.



11. What matters should be included on the ERA's public register about OPS service providers?

Requirement for retail licensees to register

Where a licensed electricity retailer is an OPS service provider there are two options for registration:

- to require the retailer to separately register as an OPS service provider with the ERA; or
- allowing the retailer to be an OPS service provider under the authorisation of their retail licence with additional conditions for consistency with the AES Code. For example, requiring the retailer to provide details on the number of OPSA customers and total generation and/or storage capacity of OPS systems.

Additional conditions may also be required to apply relevant provisions of the AES Code (such as those related to disclosure requirements, metering and disconnections, reconnections and supply interruptions).



12. Should licensed electricity retailers be permitted to operate as an OPS service provider under authorisation of their licences (with additional licence conditions), or should they be required to also hold an AES registration as an OPS service provider? Please provide justification for your position.

Transitional arrangements

Energy Policy WA understands that there will be a need for transitional arrangements if OPS service providers were to be covered by the AES registration framework, including but not limited to allowing time for existing providers to adapt to the new regulatory framework and for existing contracts to be honoured and/or amended.



13. What circumstances should be considered for transitional arrangements?

14. What types of obligations on OPS service providers should be subject to transitional arrangements?

Interactions between OPSA and embedded networks

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.

Energy Policy WA is interested to hear stakeholder views about how these OPSA interact with embedded network operations and whether regulation is required to ensure end-use consumers



are informed about existing contracts with OPS service providers and what benefits they receive from the OPS system when they buy or rent a property.

Some issues previously raised by consumers include:

- a lack of upfront disclosure as to an OPSPA 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 OPSPA 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 OPSPA;
- 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.

Energy Policy WA encourages stakeholders to provide feedback on the issues raised above, or any other issues associated with OPSPA and their interaction with embedded networks.



15. Please provide your views on circumstances where OPSPA interact with embedded network operations and whether additional regulation is required to ensure that consumers are informed about existing contracts with OPS service providers when they buy and/or rent a property.





7. Comparative analysis

The table below provides a consolidated summary of the individual indicative impact assessment undertaken for each option in Section 5, other than the status quo which has already been demonstrated to not be fit for purpose.

Option 2: Licensing would not capture any OPS service models that are based on customer subscriptions or memberships. Licensing imposes the highest costs (auditing, application and annual regulatory costs), as well as imposing inflexible obligations on OPS service providers, including some that are not relevant to the OPSA business model. For example, obligations regarding disconnection, reconnection, interruption and life support protections are less relevant to OPSA customers because these customers have access to a primary electricity supply.

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.

	Option 2: Licensing	Option 3: AES registration framework – tailored obligations	Option 4: AES registration framework – leverage NETCC
Meets Government policy objective	X	✓	*does not provide tailorable customer protections relevant to the OPS service
Tailorable and flexible to respond to changing landscape of business model	X	✓	*tailorable but not within control of WA decision-maker
Clear legislated responsibility for the administration or enforcement (Regulator)	✓	✓	X *overlap of responsibilities
Ombudsman / robust dispute resolution procedures	✓	✓	*only on matters that are contained in the contract or NETCC
Enforceable Code	*would not apply to OPS services based on subscription or memberships	✓	*requires coordination between the Clean Energy Council and the ERA





8. Implementation

Subject to the passage of the AES Bill and subsidiary instruments, registration of OPS service providers under the AES registration framework could commence in 2025. Due to the anticipated volumes of registration applications at the commencement of the 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.

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

- review the current SPPA Exemption Order to assess if any residual exemptions are required if OPS services are prescribed as an AES;
- 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.



16. What is the best means of accessing all relevant audiences for OPS service provider educational materials?

17. What materials and resources would be most suitable to help both OPS service providers and their customers to transition to the AES registration framework?





Appendices

Appendix A. Approach to regulating OPS services in other jurisdictions

A.1 National Electricity Market framework

The Australian Energy Regulator (AER) is the regulating body for the authorisation and exemption framework in all jurisdictions where the National Energy Retail Rules (NERR) apply. This includes Queensland, New South Wales, Australian Capital Territory, South Australia and Tasmania.

Under the National Retail Law, a person selling electricity or gas to small customers⁷ must hold a retail authorisation. However, a person engaging in certain activities may be eligible for a retail exemption. The Australian Energy Regulator (**AER**) administers retail authorisations and exemptions from the requirement to hold a retail authorisation. The *Retail Exempt Selling Guideline* sets out the AER's approach to retail exemptions.⁸

The criteria for granting a retail exemption are similar to the criteria applied in Western Australia, such as where the sale of electricity is not the seller's core business, where the cost of having a retailer authorisation outweighs the benefits to customers, or where an insignificant amount of energy is being sold.

There are three different types of retail exemptions:

1. Deemed exemptions - Deemed exemptions apply automatically to certain classes of energy sellers and usually for small-scale arrangements that require little to no regulatory oversight. Deemed exemptions are similar to some clauses in Western Australia's Exemption Orders in that they apply to particular activities, such as the on-supply of electricity to caravan park residents.
2. Registrable exemptions - Due to the scale of the on-selling activities and the nature of the customers involved, these classes require greater transparency and regulatory oversight through registration with the AER.
3. Individual exemptions - Individual exemptions normally apply to the sale of energy at a particular site and/or to a particular customer/s, with conditions attached that are intended to balance the needs and rights of customers and the regulatory requirements that the exemption holder has in meeting those conditions.

Providers of SPPA arrangements, which is classified as supplementary supply, fall under a registrable exemption. The exemption is valid for commercial customers and residential customers only where the duration of the SPPA is less than 10 years and the customer is able to terminate the agreement early. Providers operating under this exemption are required to:

- provide the customer in writing a plain English notice explaining that the power purchase agreement is covered by Australian consumer protection laws and is separate to the customer's contract with their retailer and distributor which are covered under the National Energy Retail Law;
- refrain from registering in the wholesale market for the purposes of purchasing energy; and

⁷ Small customers are defined by jurisdictional legislation and mostly refers to customers who consume less than 1TJ of gas and 100MWh of electricity per annum.

⁸ AER *Retail Exempt Selling Guideline*, July 2022, available at <https://www.aer.gov.au/documents/aer-retail-exempt-selling-guideline-version-6-july-2022>.



- not be the financially responsible retailer for the premises (rather, this must be an authorised retailer).

A.2 Victorian exemption framework

The Essential Services Commission, which is the equivalent to ERA in Western Australia, administers the licensing and exemption regime.

Under the Victorian *Electricity Industry Act 2000*, anyone supplying, selling or generating electricity in Victoria must hold an electricity licence or be exempt from the requirement to hold a licence. The *General Exemption Order 2017* prescribes the regulatory framework for electricity licensing exemptions.

In 2018, Victoria implemented changes to its Exemption Order to ensure that customers supplied with electricity by exempt entities would receive customer protections appropriate to the supply arrangement. Most exempt sellers, including solar power purchase providers, now have to comply with specific customer protection provisions from the *Energy Retail Code (Vic)*.

These provisions broadly relate to explicit informed consent, billing requirements, assistance with payment difficulties, a prohibition on security deposits for residential customers, obligations to provide disconnection notifications and life support equipment requirements. Exempt retailers are now also required to be a member of an approved ombudsman scheme.⁹

The Victorian provisions reflect as closely as possible those in place in other jurisdictions as set out in the AER's *Retail Exempt Selling Guideline*.

Earlier reforms were implemented in 2017 that amended the categories of licence exemptions. The categories of exemption now include the following:

1. Deemed exemption - for certain retail (selling) and network (on-supplying) related activities.
2. Registerable exemption - for certain retail (selling) and network (on-supplying) activities.
3. Generation exemption - for electricity generators with facilities with a capacity less than 30 MW.
4. Multiple activity exemptions - tailored for specific situations, such as SPPAs and community energy projects. Under this arrangement, a SPPA provider must register with the Essential Services Commission, has a number of conditions to which it must adhere, including that:
 - a. the price, or range of prices, at which electricity (and services related to the provision of electricity) may be sold or supplied under the exemption must not exceed a maximum price formulated and published by the Essential Services Commission;
 - b. the generating capacity of the generator or generators installed at the relevant premises is less than 5 MW;
 - c. it is not the financially responsible market participant for the relevant premises and the financially responsible market participant for the relevant premises is a licensed retailer;
 - d. it is not registered in the wholesale electricity market for the purposes of purchasing electricity;

⁹ General Exemption Order (Vic), clause 11.



- e. it must provide the customer with written notice at the time of entering into the agreement for the supply and sale of electricity that the agreement is covered by the Australian Consumer Law (ACL) and separate from the customer's contracts with their licensed retailer and licensed distribution company. The notice must be in plain English and include a summary of the relevant rights of the customer under the ACL; and
- f. it must provide to the Minister or the Essential Services Commission any information requested by the Minister or Commission, that the Minister or Commission may reasonably require for the administration of the exemption.





Appendix B. Draft OSPA Code Obligations



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