ELECTRICITY INDUSTRY AMENDMENT (ALTERNATIVE ELECTRICITY SERVICES) BILL 2023

Second Reading

Resumed from an earlier stage of the sitting.

MR W.J. JOHNSTON (Cannington — Minister for Energy) [3.10 pm] — in reply: I am going to conclude the debate's second reading. I want to thank each of the members who participated in the debate. The Electricity Industry Amendment (Alternative Electricity Services) Bill 2023 is an important step forward. Like other legislation I have brought to this place, of itself it does not solve every problem. It solves only a few but they are quite important ones. It is an example of the thoroughgoing planning that is being done for the energy system here in Western Australia. I want to congratulate the staff of Energy Policy WA. The Office of Energy used to be the organisation that provided advice to the state government on energy matters but, as we all know, in the first term of the Barnett Liberal–National government, there was a dispute between the government and the Office of Energy over the question of advice received by the minister's office regarding the cut-off of the feed-in tariff. The Office of Energy was then abolished and was replaced by the Public Utilities Office.

At the time the Public Utilities Office came into creation, it was said by the then Liberal government that, at a later date, water and other utilities would be rolled into the responsibility of that Public Utilities Office. However, that never actually occurred. When we came to government in 2017, the word "energy" did not appear in any agency in Western Australia. We were the only state in the country without the word "energy" being included in the bureaucracy. It was because of a tantrum by former Premier Colin Barnett over the feed-in tariff matter. Evidence was withheld in an FOI request by my wife, Hon Kate Doust. It was accidentally given to me. The person who gave me the document did not realise that the document had not been released under FOI. They believed it had been released and that was the only reason we knew that Hon Peter Collier had withheld a document from an FOI request. It proved he knew that the feed-in tariff was being oversubscribed. Because of that temper tantrum, the word "energy" did not appear in the bureaucracy. After we came to government, we created Energy Policy WA. We could not use the old terminology "Office of Energy".

When the Public Utilities Office was created, it was part of the Department of Finance. When we came to government, that agency was moved to Treasury, so Energy Policy WA was created as part of the Department of Treasury. After I became minister, the Under Treasurer asked me whether I would agree to move the agency from Treasury to the Department of Mines, Industry Regulation and Safety, which we did. It was then what is called a sub-department, but there are only two sub-departments in the Western Australian bureaucracy and it did not make sense to have a sub-department. In the last financial year, starting 1 July 2022, Energy Policy WA ceased to be a sub-department and became simply part of the Department of Mines, Industry Regulation and Safety. The staff at the EPWA pointed out to me that we no longer had the word "energy" appearing in any agency in Western Australia. Of course, that is why we changed the name from PUO to EPWA. They pointed out that we were the only state without "energy" in any of the government agency names.

We have a Department of Health that looks after health. We have a Department of Finance that looks after finance. We have a department of culture and the arts et cetera that looks after all those issues, but we did not have any agency that said "energy". That was a perfectly reasonable request. I discussed that with the director general and the Premier. I took a cabinet submission forward and it was agreed that we would include the word "energy" in the Department of Mines, Industry Regulation and Safety to make it the Department of Energy, Mines, Industry Regulation and Safety. There is no direct cost to government for that. It could be done without any cost at all. However, the director general asked me whether it would be all right if he used up to $300 000 of the budget he has already been allocated for a refresh of the branding. He is taking advantage of the fact that we have changed the name of the department, so he wants to refresh the branding. That is why he asked for up to $300 000 of his existing budget to be made available.

When I was asked a question yesterday from the upper house, I could have fudged the answer to say it was not about the change in the name but about the rebranding, but if that had been my answer, I would have been accused of not being transparent. That is why we are spending up to $300 000 to change the name. Otherwise, it could have been accommodated without any additional cost. As the Premier pointed out today, because he was asked the question not me, no money has been spent on the change of the name. It is only intended to change the branding on the letterhead et cetera when the letterhead is printed at the next round of printing, which obviously is no additional cost. I think it is probably reflective of the Leader of the Opposition that he does not like Energy Policy WA and he is attacking that Western Australia is going to join the rest of the country in having the word "energy" in the department's name. I do not understand why he thinks that is a bad thing because, quite frankly, I think it is a good thing. Energy Policy WA has put together this legislation. When I was in opposition, there had been specific exemptions for alternative energy service providers. Every time, they would have to apply separately.

Hon Dr Mike Nahan changed the system so that there was sort of a blanket and if they were acting in a specified group of activities, they could get an exemption. This ends that regime because, as has been highlighted in the

debate by a number of members, there are potentially quite high levels of disputation in alternative energy services. We have heard of problems in caravan parks and apartment towers and, of course, most famously in shopping centres. In fact, last year there was some debate about deregulation of the small business tariff. An ABC journalist—I will remember his name in a second—did an item and interviewed a small business proprietor who was complaining about the cost of his electricity. The irony was that they were on an embedded network. They were not a Synergy customer. It just emphasises the problem that we are highlighting through the alternative energy service reform.

We looked at whether we could take this matter further and require people on embedded networks to be able to opt back out of the embedded network and buy from Synergy or, if they were a large customer, from others. The problem is that the cost of that would be very high because if they are on an embedded network—whether it is an apartment in an apartment tower or a shop in a shopping centre—there is no physical infrastructure between the facility and the network outside the Western Power network. It would cost thousands and thousands of dollars to have those connections made. It would probably be hundreds of millions of dollars in costs to industry in Western Australia. That is why we have not done that, but this AES legislation is an important step forward in the regulation of these services. It will provide important additional rights to the embedded network user rather than the network company.

Interestingly, yesterday *The Sydney Morning Herald* ran an article complaining about the problems for residential tenants in apartment towers on embedded networks and some of the challenges. Just like every other element here in Western Australia, we have a detailed plan. When we talk about generation, the wholesale electricity market electricity statement of opportunities is produced by the Australian Energy Market Operator each year, which lays out the blueprint—the plan, the theory, what needs to be done next for generation in the state. The whole system plan is done every five years to deal with the transmission and distribution network. The distributed energy resources road map, which the alternative electricity services bill replies to, sets out how we can make changes to integrate distributed energy resources such as microgrids, embedded networks, electric vehicles, rooftop solar and behind-the-meter batteries, and how we can add value and get better outcomes there. The government is responding to every single issue here in Western Australia. A new market started on 1 October. Nobody outside the electricity system knew about it, but for those of us on the inside it was an exciting day. We are all really happy to see it go to five-minute settlements. Seeing these advances is the joy of being an energy nerd. This legislation is another step along the pathway for our solid plan to ensure that we have a properly managed electricity system.

I referred earlier to a journalist whose name I could not remember. It was Daniel Mercer. I apologise to Daniel. I do not know why his name dropped out of my mind. He is one of the few journalists in Western Australia who pays careful attention to the energy system and although I do not agree with every word he writes, his words are very thoughtful. He is competent and he does a great job down in Albany. I wish him well and I apologise for not remembering his name. I thank Amy Tait at the back of the chamber for sending me a message to ensure I remembered his name. I have just looked at my messages and I have a missed call from Dan, but that was not today.

Ms M.M. Quirk: Did you find it, minister?

Mr W.J. JOHNSTON: Yes, I did.

The member for Roe yesterday read out a quote from the budget papers. He would not tell us which page it was on. The bit he read out was —

> The distribution network is facing both reliability and safety challenges in the regions. To address these issues, Western Power is working to underground more of the metropolitan area network to increase network capacity and prepare for an electrified future for customers, including electric vehicles.

He then did not read the next bit, which states —

> In regional areas Western Power is installing stand-alone power systems and smaller microgrids in areas where it makes sense. This shift towards a modular grid will ultimately help deliver a more resilient electricity network for the community.

The member for Roe has to be careful. He absolutely misrepresented what the budget papers say. He absolutely—I do not know if he did it deliberately—misrepresented what Western Power was saying, and it is not to his credit. This is the same member who said that the government was spending a billion dollars on footpaths and bike paths. When he was asked to explain where that figure had come from, he would not tell anybody because it was made up. It was an invention; it was not true. The member for Roe is somebody who many people on this side of the chamber have some time for because he is a pleasant enough guy, but in debate he is doing this too often. I cannot say he does it deliberately because that would be unparliamentary—I am looking at the Clerk—but he misrepresents the truth, and that is not a credit to him. He has to be careful. We will not continue to respect him if he does not

improve this performance. He cannot do this. Every time he is challenged about something in debate he becomes defensive and he will not explain himself. Then when it is pointed out that what he said is incorrect, he will not correct the record. Yesterday I got up here and corrected the record on an answer I gave. You do that. It is not the first time I have had to correct the record and it will not be the last. Everybody makes mistakes at times, particularly in the fierce nature of debate in this chamber, but one's duty is to correct the record. I look forward to the member for Roe coming in here and apologising to the 3 500 employees of Western Power who make such a great effort to keep the lights on across this state.

As I say, this AES bill is another important step forward. It is not the end of the reform. It is not the most important reform. There will be many things we do in our continuing plan, but the thing the community can be sure of is that yes, there is always more to be done in managing the energy system in Western Australia, but we have a plan to manage that energy system, and that plan is working.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Section 3 amended —

Dr D.J. HONEY: I refer to the definition of small use customer who consumes not more than 160 megawatt hours of electricity per annum. It seems like a significant amount of energy going into the system compared with the average house. What is the logic behind that? I think there was a reference that it referred to a previous definition. How does that relate to, for example, a standard shopping centre such as Booragoon shopping centre? Would that fall under that category, or otherwise how is that figure lighted upon?

Mr W.J. JOHNSTON: The definition of small use customer is a new definition in clause 3 that refers to a customer, which is also defined, who consumes not more than 160 megawatt hours of electricity. The definition of customer in clause 3 applies to any person to whom electricity is sold for the purpose of consumption; however, previously the definition of customer was limited in parts 3, 6 and 7 of the act to customers who consumed not more than 160 megawatt hours of electricity per annum. This created confusion. The new definition of small use customer is now used in parts 3, 3A, 6 and 7 of the act. The definition of customer in section 3 remains unchanged.

Dr D.J. HONEY: I appreciate the reference to the other definition. Perhaps I am asking a question that the minister cannot answer easily. How would that relate to a shopping centre or the like? I assume that it is intended that this provision applies to that sort of establishment. Would we expect that the majority of shopping centres in Perth, for example, would fall inside this definition, or would they fall outside the definition?

Mr W.J. JOHNSTON: I am indebted to the staff for reminding me that that the 160 megawatt hour per annum threshold is not new; it is just changing where the definition is in the legislation. A small-use customer for Synergy, above that deregulated 50 megawatt hours, would be a corner deli, whereas 160 megawatt hours might be a small supermarket. As I say, it is not changing the definition; it is just relocating it to a more convenient spot in the legislation.

Clause put and passed.

Clauses 5 to 13 put and passed.

Clause 14: Part 3A inserted —

Dr D.J. HONEY: I refer to part 4. I was going to ask about the alternative electricity service, but that is well defined.

Proposed section 59C(4) states —

> The regulations may regulate the eligibility of a person or a class of persons to be granted a registration for an alternative electricity service or a class of alternative electricity service.

What factors go into considering the eligibility of a person for that?

Mr W.J. JOHNSTON: There are different sizes of operation. On one hand, there is solar leasing; on the other hand, it might be someone operating in an embedded network. It is also to make sure that each embedded network is recognised separately. It is just to take account of the different complexities there might be. We do not want to have the same set of rules for solar leasing that we would apply to someone on an embedded network, and that there is only one operator on each embedded network.

Dr D.J. HONEY: I turn to page 11 and proposed section 59C(7), which states—

> The regulations may provide that a class of activity is not an alternative electricity service for the purposes of this Act.

Is that simply a catch-all for the sake of completeness? If not, what is it referring to?

Mr W.J. JOHNSTON: Again, because we are creating a set of procedures to deal with something, in the same way that an exemption is provided under the current arrangements, there may be aspects that we want to provide an exemption for under the future arrangement, so it simply allows the current practice to continue. Having said that, the aim of the AES reform is to require a more standardised response to issues.

Dr D.J. HONEY: I refer to page 14 and proposed section 59J(1), "Transfer of registration". It states —

> A registration cannot be transferred except with the approval of the Authority.

I partly understand that but could there also be circumstances in which it is really just like-for-like and everything is exactly the same and only the owner is changing. Could there be a simpler mechanism for that?

Mr W.J. JOHNSTON: Imagine there is a business operating under this regime and the current owner sells the shares to someone else. That is still the same person, because the legal person is the entity that is regulated, not the owner. However, if a regulated entity were to sell its assets to another entity, we would want the new entity to go through an approval process so the transfer can occur and the ERA can be satisfied that the new entity is already registered under the scheme. The ERA could easily approve that, but if they have not been registered under the scheme, they would have to do that before the transfer occurs.

Dr D.J. HONEY: I refer to page 15 and public consultation under proposed section 59L. Can the minister outline the form that consultation will take?

Mr W.J. JOHNSTON: The ERA currently has procedures and I am sure it will continue to apply those procedures. There is a regulation-making power under the legislation so that the Minister for Energy can set regulations for the process. But in the end, it will still be for the ERA to determine its own procedures. I do not imagine the regulations will be so specific as to determine every issue; it would be for the independent Economic Regulation Authority to determine its own procedures within the guidelines that are set by government.

Dr D.J. HONEY: In situations in which a number of sub-customers are being serviced by that, would there be a requirement that all potential customers within that embedded network be informed that this is occurring?

Mr W.J. JOHNSTON: We would respect the ERA's capability to make those types of decisions, but it will have to provide some form of natural justice and procedural fairness to both the regulated entity and the people who the regulated entity is serving. It will be up to the ERA. Again, there will be regulations, but I do not think the regulations will be so specific as to set every single step the ERA takes. At the moment we have a strict regulatory framework with exemptions. The problem with exemptions is that we end up with no rules at all, so we have to have a scheme that provides the protections that the consumers need, but it cannot be so complex that no-one can use it. We have to have some level of flexibility. The current arrangements do not work, because it is either completely regulated or completely unregulated. We are trying to get a blended scheme in the middle where the regulations depend on the complexity of the business, for example, lower levels of regulation for rooftop solar leasing and potentially more complex and interventionist regulation for large microgrids.

Dr D.J. HONEY: I refer to page 17 and proposed section 59P. It states —

> The Authority may grant or renew a registration for any period not exceeding 15 years …

Is there any particular science behind that period of time or is it just a reasonable estimate?

Mr W.J. JOHNSTON: That is the maximum length of a retail licence and reflects the current arrangements. Many retail licences are issued for shorter periods, but if it is a business that is regularly compliant, we would imagine that the ERA would start stretching out the length of the registration.

Dr D.J. HONEY: I refer to proposed section 59R(1), "Surrender of registration", which states —

> (1) A registration holder must not surrender a registration unless the Authority on the application of the registration holder has approved the surrender.

Perhaps I am jumping ahead a little on that. What happens if a registration holder wants to deregister and the application is refused? How will that work in a practical sense?

Mr W.J. JOHNSTON: I thank the member for the question. Recently, we had to transfer all the customers from the gas network in Esperance over to electricity, and it cost us many millions of dollars. That was because Infrastructure Capital Group walked away from its licence, and there was no provision for that, because nobody had ever contemplated the idea that a regulated entity would hand back its licence. Having learnt our lesson from that, we had to protect ourselves from the same situation. If a company is providing a service, it cannot abandon its customers, because then the customers are left in a mess. Alternative energy services in the electricity system are becoming more common; therefore, we do not want to have a situation whereby a provider can just walk away from its customers and leave them with no pathway. This allows us to take actions to get somebody else to take it over.

If a business were determined to walk away from its customers, we would have to deal with that at the time. Remember that the focus of the AES reform is customers. It is to provide the opportunity for investors and businesses to create alternative energy services. We want the alternative energy services, but we have to protect customers. This is clearly a customer protection element.

Dr D.J. HONEY: I thank the minister. I vividly remember the minister explaining that in the chamber at the time and his upset at that situation. The minister alluded that it would be dealt with at the time, but what would be the mechanisms of enforcement if a provider were trying to do that?

Mr W.J. JOHNSTON: A company cannot walk away from its obligations, so I imagine that a business would then seek somebody else to take on the business—another AES provider. The existing AES provider could go to somebody else who is also in the same sector and say, "I've got this bunch of customers, why don't you take them on", because it cannot walk away. If the business went into receivership or whatever, we would have to deal with that situation. But the expectation is that an AES provider that is part of the framework would hand its customers over to another AES provider and not just walk away and leave them.

Again, the ICG situation in Esperance is a good example. ICG did not go broke. It had plenty of capital. It just decided, for commercial reasons and to cause the government trouble, to walk away. Generally speaking, I would not expect the same circumstance to arise again, but there would be an expectation that the outgoing AES provider would engage with a new AES provider.

Dr D.J. HONEY: Ultimately, could the government or the relevant agency take that provider to court to enforce that decision?

Mr W.J. JOHNSTON: The AES provider would have to comply with its registered obligations, and that includes not walking away. It would be in breach of the act.

Dr D.J. HONEY: I refer to proposed section 59V on page 20. Sorry, if I can just go a bit above that first; I have just realised the question I have written here.

I refer to just under the table, proposed section 59U(2), which states —

> An affected person who is aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

How will they know that? I do not mean that in a trite way. Will there be some information provided to customers who fall under this new arrangement that they have those appeal rights? I can just imagine a situation in which a small shop owner who is very focused on surviving day-to-day is upset by what the provider is doing but they do not know where to go. How will they know that they have this new right?

Mr W.J. JOHNSTON: If the Economic Regulation Authority has made a decision and the AES provider is not satisfied with the ERA's decision, they can take the matter to the SAT. The customers are dealt with through the code of practice that is required under the AES framework. The AES provider will know, because it will have had the decision issued against it by the ERA.

Dr D.J. HONEY: Yes, I should have looked at that more carefully; I thank the minister. Under proposed section 59V, in a situation whereby the authority is publishing a register and there has been an application and the like, again, it is the customers, if you like, of that distributed network. How will they be aware that is occurring so that they can have input?

Mr W.J. JOHNSTON: Obviously, this is an issue raised by some of the members in their comments, because people sometimes do not even know that they are on an embedded network. Of course, that is the truth now. In the future, there will be an ERA website on which they will publish the register, so for the first time ever, customers will be able to view the details of the registration, and all that information will be publicly available on the ERA's website. Some customers might not know that, but they probably do not know it at the moment, either. This is a significant improvement. Do not forget that there will also be the code of practice; we will have education material; we will do whatever we can to engage with the community on these issues, to the extent that people notice energy policy matters. This is an important part of the new framework.

Dr D.J. HONEY: On page 22, talking topically of the code of practice, what will be the mechanism of enforcing that code of practice? How will we make sure that that code of practice is complied with?

Mr W.J. JOHNSTON: The enforcement mechanism will be through the ERA. If a company breaches its obligations, the ERA has a suite of enforcement undertakings, and, of course, it could issue an order. If it issued an order and there was noncompliance, there could be enforcement through the civil courts, as well, but the principal mechanism is through the ERA.

Dr D.J. HONEY: Thank you. I have a further question; it may be the last question. I refer to the bottom of page 27, proposed section 59ZG, "Compliance audit". Could a third party trigger a compliance audit? If there was a concern by someone within a network, or someone who is knowledgeable, could a complaint, in effect, trigger that compliance audit?

Mr W.J. JOHNSTON: That is a very good question. Part of the whole purpose here is to provide simpler procedures for customers in embedded networks. At the moment, if a customer has a dispute with their embedded network operator, they have to go to consumer protection, which can review the customer's rights under their contract and go to the civil courts. The whole idea is to have the ERA as a simple procedure.

Of course, the ERA might be informed by a complaint. A customer of the alternative electricity services provider will be able to go to the ERA and say that their AES provider is not doing the right thing. We will also give access through the code of practice to the Energy and Water Ombudsman so they could also take the matter to it. That is, of course, a very simple and no-cost jurisdiction in which people can have their rights looked at; and, if not completely resolved, dealt with.

Clause put and passed.

Clauses 15 to 25 put and passed.

Title put and passed.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR W.J. JOHNSTON (Cannington — Minister for Energy) [3.51 pm]: I move —

That the bill be now read a third time.

DR D.J. HONEY (Cottesloe) [3.51 pm]: Thank you very much to the minister and his officers for the way that they presented this bill. As I pointed out before, I recognise that this is an important bill. As the minister said, although it is not something that will hit the headlines, it is an important part of the transition that we are going through at the moment. I recognise, as I have said on many occasions, that the minister takes this area very seriously and he is moving through this in a considered manner. I will not enter into a broader debate on other issues, but I am sure we will have other opportunities to do that. As I said, I want to thank the minister and his officers for the way they have presented this bill to us and their conduct through the consideration in detail stage.

MR W.J. JOHNSTON (Cannington — Minister for Energy) [3.51 pm] — in reply: I thank the opposition for its support of the bill. I thank all the staff at Energy Policy WA for the great work they are doing in this transformation of the energy system. We are not at the start of the transition; we are well into it now, and this is an important step along that pathway. This is a relatively minor thing, but if someone is on an embedded network, it is important to them. We heard from a number of members about the types of people who are in residential properties with embedded networks, like caravan parks, retirement villages, apartments and the like. This is the sort of stuff I got involved in the Labor Party for, so I am very pleased to see the legislation passed here and I look forward it becoming law after consideration by the Council.

Question put and passed.

Bill read a third time and transmitted to the Council.