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Mark Feather
General Manager, Policy
Australian Energy Regulator
By email: Mark.Feather@aer.gov.au

REVIEW OF THE EXEMPTIONS FRAMEWORK FOR EMBEDDED NETWORKS

Dear Mark

Energy Consumers Australia welcomes the opportunity to provide comment on the Australian Energy Regulator's (AER) *Review of the exemptions framework for embedded networks*.

As the national voice for residential and small business energy users, Energy Consumers Australia advocates for a future Australian energy system that works for, and benefits, the households and small businesses who use it. This includes the diverse range of consumers who find themselves living and working within embedded networks. People living in apartment blocks, retirement villages, caravan parks, social housing, small businesses operating in shopping centres, and office blocks are just some of the consumer types that receive their energy under embedded network arrangements. The AER's review will play an important role in ensuring these consumers have access to protections that are equivalent to consumers in the competitive retail energy market.

Our submission makes five key points in response to the questions raised in the consultation paper:

1. Any discussion of embedded networks must consider small businesses operating under this arrangement.
2. All residential and small business embedded networks must be recorded on the AER public register of exemptions.
3. An effective compliance and monitoring framework must be developed and implemented.
4. Future registrations need to provide clear evidence of ongoing consumer benefit and be approved or denied by the AER through an application process.
5. Consumers supplied via embedded networks must receive protections equivalent to on-market customers.

Any discussion of embedded networks must consider small businesses operating under this arrangement.

We recommend that the scope of the review is expanded to explicitly consider the circumstances of small businesses operating within embedded networks.

While small businesses often experience similar disadvantages that households face under embedded networks arrangements, it is important to recognise they have less access and agency over their energy needs, they may also need longer timelines to make decisions about equipment changes and adapt to energy efficiency measures. They also have different energy needs when compared to households, and thus need to be considered as a unique consumer type.

Our recently released Power over their Power research revealed being part of an embedded network such as in shopping centres or at the base of residential blocks can restrict small business's ability to make modification to energy access, install energy efficient equipment or change providers. This limits

their ability to effectively adapt to the changing energy landscape. Many small businesses are also unaware of these limitations and restrictions when entering into an embedded network arrangement and are largely unsupported in their fight when trying to extract themselves.¹

Additionally, small business embedded network customers can also be, in some instances, worse off than residential embedded network customers in terms of specific consumer protections around access to external dispute resolution schemes. This is because the requirement for embedded network operators to join the ombudsman, for instance, does not apply to those who supply small business customers. This means that in embedded networks with mixed residential and commercial properties, the residential customers have higher levels of consumer protections (although not to the same standard as on-market customers) than the small business operating on the ground floor.²

Considering the challenges faced by many small businesses, both similar to households particularly around lack of access to retail competition and lack of information, but also unique to their circumstances in terms of protections and energy service needs, we recommended small business's experiences of operating under embedded network supply arrangements are used to inform final recommendations of this review.

All residential and small business embedded networks must be recorded on the AER public register of exemptions.

We strongly support the proposal for all residential and small business embedded networks being recorded on the AER public register. Greater transparency and visibility on the location, customer type and customer numbers of embedded networks is essential to fully understand the scale and geographical reach of this arrangement.

While we acknowledge the additional administrative requirements this places on smaller embedded network operators such as caravan parks, there is clear benefit in having an up to date and well informed register to ensure embedded network customers are protected over the long term. Having a better, more informed insight into the total number of embedded networks and other related data, is not only best practice, but also fundamental in understanding the problem and what resources or reforms are needed to address it. ECA feels strongly that the lack of reliable data regarding a supply arrangement that services hundreds of thousands of residential and small business consumers across the country is highly problematic and in itself contributes to the significant power, cost and information asymmetries that continue to exist.

An effective compliance and monitoring framework must be developed and implemented.

While outside the scope of this review, it is worth acknowledging the importance of a more robust monitoring and compliance framework. Robust and effective monitoring is critical to ensure industry compliance and thus ensure consumers are being given the protections that they are entitled to. Without this mechanism, it will remain unclear to what extent embedded network operators are meeting their consumer protection obligations outlined in the exemptions guidelines.

Developing and implementing a more effective monitoring and compliance framework also aligns with the second recommendation from the legislative assembly inquiry into embedded networks which suggests 'the NSW government work with federal, state and territory governments and energy regulatory bodies to improve the compliance and monitoring regulatory framework for embedded networks.'³

¹ [Power over their Power Report](#)

² [Embedded networks - it's time for change - Energy & Water Ombudsman NSW \(ewon.com.au\)](#)

³ [NSW Government response - Inquiry into Embedded Networks.pdf](#)

Ensuring exempt network operators are meeting their obligations is essential to protect the rights and interests of consumers under this supply arrangement. If exempt network operators are not complying with their obligations, consumers will be directly affected. For example, if there is lack of clear information regarding fees and charges consumers may experience unexpected bills and fees contributing to financial stress and pressure. If they are unaware of their right to access external dispute resolution schemes they may face difficulties in getting assistance with disputes leading to frustration and dissatisfaction.

We understand that developing and implementing an effective reporting, monitoring and compliance framework is time and resource intensive for the AER, particularly for deemed exemptions where there is no requirement for the embedded network to be registered with the AER and so the AER has no information on its existence. In the interim, we recommend the AER undertake a random compliance check of a sample of exempt sellers with registerable and individual exemptions while a long-term, fit-for-purpose compliance framework is established.

Future registrations need to provide clear evidence of ongoing consumer benefit and be approved or denied by the AER through an application process.

We feel strongly that we should be working towards an energy system where all household and small business consumers have agency and control, where they can choose their energy retailer with ease, irrespective of their energy supply arrangement. We are concerned that most, if not all, embedded networks do not provide this level of agency to their customers.

It is our view that prior to the establishment of a new embedded network its operators must be required to demonstrate to the AER's satisfaction that a compelling and ongoing consumer benefit arises from the arrangement. We strongly support the proposal requiring an AER assessment of every NR2 registerable network class exemption via an application process. In practice, this means the embedded network service provider must be able to demonstrate ongoing consumer benefit through empirical evidence, that is not presumptive but based in data, analysis and modelling. Additionally, introducing an application process for these registrations transfers the power from the embedded network service provider back to the regulator who can ensure that there is real and direct consumer benefit under these arrangements by either accepting or denying new registrations.

While we acknowledge and are sympathetic to the increased administrative burden this places on the AER, the absence of such a requirement (and therefore the ability to deny registrations that are not in the long-term interest of consumers), will mean we cannot guarantee that new supply arrangements will provide clear benefits to their consumers. The potential detriment that arises for consumers in such circumstances should not be acceptable.

We strongly oppose the proposal to retain the automated registered exemptions process through self-assessment. Self-assessment simply reinforces the preexisting power imbalance, particularly because there is currently no reliable mechanism to assess the validity or accuracy of claims in a self-assessment. Further, there is no accountability given that there is no underpinning compliance or monitoring regime. Our concern is there is a serious risk for these self-assessments to be no more than a formality in order to continue to operate this arrangement, and that unknown – and unknowable – consumer detriment could easily arise as a consequence.

Consumers supplied via embedded networks must receive protections equivalent to on-market customers.

In principle, all households and small businesses should be awarded the same consumer protections regardless of their energy supply arrangements. However, in practice, not all protections apply equally, for example small business's operating under embedded network supply arrangements do not have access to ombudsman services. We understand that applying equal protections is not always

practical or cost effective and the cost of requiring equal protections could result in additional costs being passed on. In this context, a comprehensive cost benefit analysis of current consumer protection regulation for consumers under embedded network arrangements is timely and required.

We recommend the AER undertake this analysis and clearly demonstrate in what instances the costs of implementing particular protections clearly outweigh the benefits from a consumer outcomes perspective. As part of this analysis, we also recommend the AER investigate whether a subset of protections can apply in instances when full protection unfortunately cannot.

In the interim, it is imperative that customers in embedded networks are aware of their supply arrangements. We are aware that many consumers, residential and small business, are not adequately informed of the limitations of their supply arrangements before signing a residential or commercial lease.

We also consider all small customers should be given access to ombudsman services and should receive clear, regular information around how to access such services. Due to the unique challenges and barriers consumers under embedded network arrangements face, we believe they should get proportionately greater information regarding external dispute resolution schemes (ombudsman) which should be communicated to all consumers in embedded networks every 6 months. They should also receive clear, regular information around access to concessions. This information should be clear and concise, separate to customer energy bills and communicated to all household and small business energy consumers living or operating within embedded networks. Increasing access to this information is necessary to ensure consumers are clearly informed and accessing the supports that are available to them, particularly as customers supplied by market or standard retail contracts are made aware of such details regularly via retail bills, websites, and other avenues.

In addition to the above recommendations, we strongly encourage the AER to utilise the Australian Energy Market Commission (AEMC) 2019 final report on updating the regulatory frameworks for embedded networks.⁴ The AER may find this report a useful resource for several reasons, to further understand the extent of the challenges embedded network customers face, but also recommendations for regulatory reform.

Thank you for the opportunity to provide our feedback. If you have any questions or comments about this submission, or require further detail, please contact Taneesha Amos-Hampson (Policy Officer) at taneesha.a@energyconsumersaustralia.com.au

Yours sincerely,



Jacqueline Crawshaw
Director, Energy Services and Markets

⁴ [Updating the regulatory frameworks for embedded networks | Australian Energy Market Commission \(AEMC\)](#)