



Regulatory Arrangements for Embedded Networks
Snapshot of stakeholder positions

SACOSS Report
June 2017

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About SACOSS

The South Australian Council of Social Service is the peak non-government representative body for health and community services in South Australia, and has a vision of Justice, Opportunity and Shared Wealth for all South Australians.

SACOSS does not accept poverty, inequity or injustice. Our mission is to be a powerful and representative voice that leads and supports our community to take actions that achieve our vision, and to hold to account governments, business, and communities for actions that disadvantage vulnerable South Australians.

SACOSS has a long-standing interest in the delivery of essential services. Our research shows that the cost of basic necessities like electricity impacts greatly and disproportionately on vulnerable and disadvantaged people.

SACOSS' purpose is to influence public policy in a way that promotes fair and just access to the goods and services required to live a decent life. We undertake policy and advocacy work in areas that specifically affect disadvantaged and low income consumers in South Australia.

SACOSS has a strong membership base of around 300 people and organisations from a broad cross-section of the social services arena. Members of our organisation span both small and large agencies, peak bodies, service providers, individuals, and some government departments.

SACOSS is part of a national network, consisting of ACOSS and other State and Territory Councils of Social Service.

Contents

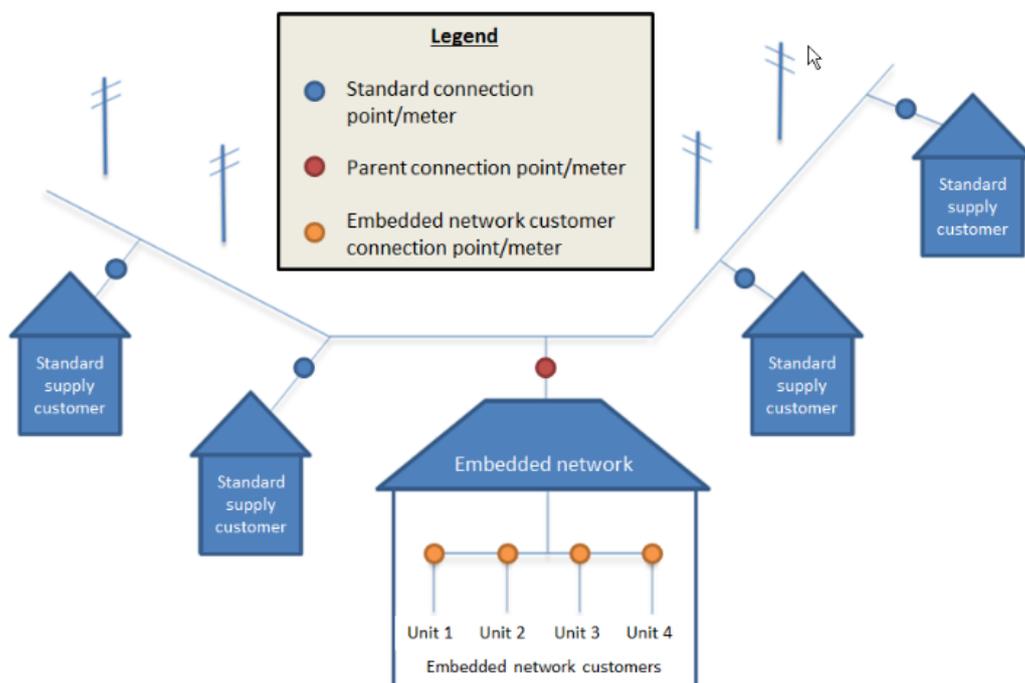
About SACOSS	3
Introduction	5
What is an embedded network?.....	5
Current regulatory arrangements.....	5
Opportunities for reform	9
Stakeholder positions	11
Institutions	11
Consumer advocates.....	14
Embedded network owners or operators	19
Retailers	22
Networks.....	26
Next steps	28
Bibliography	29

Introduction

What is an embedded network?

Embedded networks are privately owned electricity networks which serve multiple premises that are connected to the national grid through a parent connection point. The owner of a site with an embedded network usually buys energy at the parent connection point and then 'on-sells' the energy to the different customers at the site. In some situations, the energy sold by the owner may be generated on site. Common examples of embedded networks include shopping centres, retirement villages, caravan parks, apartment blocks and office buildings (AEMC, 2017).

Figure 1: Embedded network



Source: AEMC, 2017

An embedded network's connection to the national grid distinguishes it from other types of privately owned electricity networks such as microgrids and individual power systems, which are not connected to the national grid (AEMC, 2017).

Embedded networks may be established as part of a new development (greenfield) or where existing buildings are retrofitted with an embedded network (brownfield) (AEMC, 2017).

Current regulatory arrangements

Embedded networks within the National Energy Market (NEM) are regulated under various national energy laws and rules, namely:

- the National Energy Law (NEL) and the National Energy Rules (NER) in relation to the technical aspects of electricity supply arrangements including connections and metering, and
- the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR) in relation to the retail aspects of electricity supply arrangements including consumer protections and access to retail competition.

However, it's important to note that different jurisdictions within the NEM retain certain derogations from the above national legislation. Further, Victoria has not adopted the NERL and instead maintains its own regulatory framework under the Electricity Industry Act 2000 to regulate its embedded networks.

Exemptions framework

Under the above national laws and rules, embedded networks are regulated under an 'exemptions framework'. That is, for an embedded network to operate, the embedded network operator (ENO) must be granted an exemption from registering as a Network Service Provider (NSP) under the NEL, and then if it wishes to sell energy within the embedded network, must also be granted an exemption from registering as an authorised retailer under the NERL. ENO's must then comply with the terms and conditions of their exemption, rather than the terms and conditions that apply to NSPs and Authorised Retailers under standard energy supply arrangements.

In practice this means that different obligations apply to ENO operators providing network and retail services to embedded network customers, compared to those that apply to NSPs and Authorised Retailers supplying standard supply customers, including differences in consumer protections (see Table 1).

Table 1: Embedded Network Customer Protections Mapped Against the National Energy Consumer Framework

NECF	Summary of related provisions	Status for embedded network customer
Energy Marketing	Required information, communication of required information, pricing information, restrictions on marketing	Some related protections
Consent Requirements	Explicit informed consent: obtaining and informing	Some related protections
Standing contracts	Terms and conditions, variations and designated retailers	Some related protections
Market contracts	Provision of	No related protections
Billing	Estimations/actual, under and overcharging, collection cycles, late payment fees, information about Ombudsman access	Some related protections
Security deposits	Retailers process and procedures	No related protections

Hardship policy	Minimum requirements	Some related protections
Payment plans	Terms of offer	No related protections
Disconnection and reconnection	Permissibility, pathway	Some related protections
Disputes and complaints	Procedure and information provision	No related protections
Life support	Distributor and retailer roles	No related protections
Disruption of supply	Planned and unplanned interruptions notification	No related protections
Pre-payment meter systems	Information and conditions	No related protections
Pre-payment meter systems Information to be provided (other than minimum)	System operating procedures, consumption, information about credit, recovery of debt, recovery of undercharged amounts, system testing, over and undercharging, self-disconnection, payment difficulties, contract termination	No related protections

Source: (SACOSS, 2015)

The Australian Energy Regulator is responsible for granting the respective exemptions to ENOs in line with the following guidelines:

- Electricity Network Service Provider Registration Exemption Guideline (AER, 2016)
- Retail Exempt Selling Guideline (AER, 2016)

These guidelines outline the kinds of exemptions available to different types of embedded networks and the conditions for these exemptions.

The network exemption conditions relate to: metering requirements; access to retail competition; distribution loss factors; network pricing; appointment of embedded network managers; information provision; and conversion of existing sites (brownfield conversions).

The retail exemption conditions relate to five key areas: information requirements; dispute resolution; retail pricing; access to retail competition; and consumer protections.

Currently there are three categories for both network and retail exemptions:

- **Deemed exemption:** A deemed exemption applies automatically to certain classes of people. A person covered by a deemed exemption does not need to either apply or register with the AER. The deemed category generally applies to very small embedded network sites (less than 10 residential or business premises).
- **Registrable exemption:** A registrable exemption must be registered with the AER. The exemption only applies to a particular individual or entity for a particular site, and is subject to specified conditions depending on the class of registration. The registrable category generally applies to sites where the AER considers “greater transparency and regulatory oversight is required” either because the scale of activities is larger (e.g. 10 or more

premises) or the impact on the market is greater. All caravan and residential parks and retirement villages are categorised as 'registrable', irrespective of their size, reflecting recognition by the AER of the need for greater regulatory oversight.

- **Individual exemption:** Individual exemptions are intended for more unusual or one-off arrangements that do not meet the criteria for deemed or registrable exemptions. The conditions set by the AER are tailored to the specific situation of the person or business seeking the exemptions and intended to balance the needs and rights of customers and the regulatory burden of meeting these requirements.

Within these categories there are many classes of exemptions for different types of embedded networks, with specific conditions applying to each embedded network depending on the type of exemption required and the applicable class (AEMC, 2017). However, irrespective of the category and class of network exemption, the exempt network operator must at a minimum meet the four basic requirements of an exempt network, they are:

- ensure that their network is safe,
- have a dispute resolution mechanism,
- ensure that network pricing is in accordance with strict controls, and
- ensure that electricity meters comply with the National Measurement Act 1960 (Cth) requirements for electricity meters installed from 1 January 2013 and other applicable Australian standards.

ENOs that on-sell electricity must further meet a number of obligations in respect to:

- obligation to supply,
- provision of key information,
- billing and payment arrangements,
- disconnection and reconnection, and
- concessions and rebates.

While exemption places very specific conditions and obligations on ENOs to operate, the AER takes a light touch approach to monitoring compliance of ENOs with these conditions. For example the AER currently has very limited resources and capacity to identify the existence of ENs (if they do not self-nominate), determine whether an EN should be registered with the AER (or is deemed) and then monitor an ENs compliance with their exemption requirements.

Access to retail competition

The NERL sets out an agreed national policy intent to promote access to retail competition for exempt customers of embedded networks in order for them to share the potential price and non-price service of competition. However, again it's important to note that not all jurisdictions have consistently adopted this policy and removed restrictions on exempt customers. Currently only Victoria, New South Wales and South Australia allow exempt customers in private networks to exercise a right to choose their electricity retailer. In contrast, exempt customers in the ACT, Queensland and Tasmania normally require a direct connection to the local distribution network to access retail competition.

In December 2015, the AEMC made a rule change to make it easier for embedded network customers to choose their retailer while still remaining within the embedded network. To achieve this rule change, the AEMC created an accredited role of Embedded Network Manager (ENM) to link individual EN customers with the retailers of their choice. The new rule is due to come into effect in December 2017 (AEMC, 2015).

Opportunities for reform

Over the past decade the number of embedded networks has grown significantly. For example in 2016 the AER approved 1357 network exemption applications related to residential developments, up from 1018 at the end of 2015 and 487 at the end of 2014 (AEMC, 2017). The growth has been driven by a recent surge in the construction of apartment buildings (particularly on the east coast), as well as the development of a range of alternative selling models and technologies. These include:

- profit driven business models which could, for instance, be trying to increase the marketability of a development,
- profit driven business models with a technology focus including on-site generation,
- strata companies which use funds raised to make improvements to infrastructure or services for owners and tenants,
- not-for-profit enterprises seeking to minimise the costs for embedded network customers, and
- enterprises with a focus on renewable energy and optimising its use and utility within the network (AEMC, 2017).

As the AEMC (2017, p. i) has noted, “these developments bring both opportunities for innovation and potentially new risks for consumers”.

Also noting these changes in recent years, SACOSS (2015) and other consumer advocates (CUAC, 2015; QCOSS, 2017) have raised concerns with a raft of emerging issues facing customers of embedded networks, and questioned whether the regulation and governance frameworks for embedded networks are adequately adapting to the changing market conditions.

Reviews of regulatory arrangements for embedded networks

In the face of the embedded network market changes and the growing impact on consumers, a number of review processes are currently underway.

Most notably, in December 2016 the COAG Energy Council (CEC, 2016) requested the AEMC to commence a review of regulatory arrangements for embedded networks. This review stemmed from a recommendation from the 17 December 2015 AEMC rule change (AEMC, 2015) that a broad review of the regulatory framework under the NER, NEL, NERR and NERL was required to identify all issues impacting embedded network customers, and the appropriate solutions to these issues. The review released a consultation paper in April 2017 seeking submissions from stakeholders and will publish a draft report in September, ahead of a final report provided to CEC in December 2017 (AEMC, 2017).

Running concurrently with this review, the AER is working on a project with the Australia and New Zealand Energy and Water Ombudsman Network (ANZEON) regarding exempt customer access to dispute resolution services. The AER (2017) released in June 2017 an issues paper seeking submissions from stakeholders, with a view to publishing new draft retail and network guidelines for embedded networks in the third quarter of 2017.

In addition to these reviews, a number of other processes are underway that may result in changes to the regulatory arrangements for embedded networks. These include:

- AEMC's 2017 Retail competition review,
- AEMC's Electricity network economic regulatory framework review,
- AEMC's Alternatives to grid-supplied network services rule change,
- COAG Energy Council's Energy market transformation work program, and
- the Victorian Government's General Exemption Order Review (AEMC, 2017).

Key areas of the regulatory arrangements under review

The reviews underway are broadly focused on three key areas of the regulatory arrangements for embedded networks. They are:

- Whether the overarching 'exemptions' approach to regulating embedded networks is fit for purpose in the context of the changing embedded network market, and if and how the framework could be amended or replaced to improve outcomes for all parties involved.
- Whether embedded network customers have sufficient access to retail competition and whether it could/should be improved further.
- Whether the current set of consumer protections in place for embedded network customers are sufficient and whether they should be expanded, retracted and/or equalised with those available to customers under the standard energy supply arrangements.

The submission processes for the reviews underway give stakeholders an opportunity to provide comment on these areas. This report will outline the various positions of key stakeholders as articulated in submissions in response to the AEMC's Consultation Paper. This will provide an overview of the different perspectives in play, as well as an important insight into possible future reform directions.

Stakeholder positions

A range of stakeholders expressed their views on the regulatory arrangements for embedded networks in response to the AEMC's Consultation Paper released in April 2011 (AEMC, 2017). The stakeholders fell broadly into five groups:

- Institutions such as regulators, government agencies or ombudsman schemes
- Consumer advocates
- Embedded network owners or operators
- Retailers
- Networks

Within and across these groups a wide range of views were expressed regarding the overarching fitness for purpose of the existing regulatory framework, access to competitive retail markets for embedded network customers and the customer protections that should apply to customers of embedded networks. A snapshot of the views of the key stakeholders is outlined in the tables below. The full submissions can be found on the AEMC website:

<http://aemc.gov.au/Markets-Reviews-Advice/Review-of-regulatory-arrangements-for-embedded-net#>

Institutions

Regulatory framework	<p><u>Australian Energy Regulator</u></p> <ul style="list-style-type: none">• The regulatory framework for embedded networks are no longer fit for purpose for regulating the diverse array of embedded networks that have arisen in recent years and the different types of ENOs that sell in and operate them.• While the two-tiered framework of authorisation and exemption remains valid to recognise that there are businesses requiring exemptions which are distinct from retailers, it is no longer appropriate to distinguish the requirement for authorisation or exemption based on whether energy sales are incidental or not.• The regulatory framework needs to ensure that all new types of energy sellers for whom energy selling is a central part of their business are appropriately captured by the regulatory framework.• To ensure greater transparency of ENO activities and compliance with regulation, the AER should be given greater compliance monitoring and enforcement powers. <p><u>Department of Premier and Cabinet, South Australia</u></p> <ul style="list-style-type: none">• There should be a risk based approach to regulation. Some reporting for larger ENs may be warranted.
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Access to competitive retail markets	<p><u>Australian Energy Regulator</u></p> <ul style="list-style-type: none"> • The proliferation of embedded networks, with their inherently monopolistic structure and imbalance in negotiating power, may not be in the interests of consumers. While embedded networks may bring benefits to consumers, particularly in terms of potential cost savings through bulk purchasing arrangements, these benefits are not always realised and embedded network customers can experience significant detriment in terms of their energy supply. • A number of barriers continue to hinder EN customers accessing retail market offers. These relate to the: <ul style="list-style-type: none"> ○ structural/physical configuration of embedded networks, ○ cost of wiring out of the network, ○ retailer systems such as use of automated billing, ○ lack of awareness, availability and ability to compare energy only offers, and ○ other legislation outside the retail law framework, such as planning legislation. <p><u>Department of Premier and Cabinet, South Australia</u></p> <ul style="list-style-type: none"> • The current market retail contract framework is not sufficient to ensure small EN customers have visibility of retail energy offers. A low cost approach to address this would be to mandate authorised retailers to publish any offers made to small EN customers. This could be monitored through AEMC regular competition reporting, or the information could be required to be published on Energy Made Easy.
Consumer protections	<p><u>Australian Energy Regulator</u></p> <ul style="list-style-type: none"> • In general, consumer protections should be tailored for embedded networks to take account of the differences between selling in embedded networks and traditional retailer selling. However, some protections such as access to competition and access to a fair, effective and free dispute resolution service should be available to all energy customers. • Other consumer protections that should apply to ENs include: <ul style="list-style-type: none"> ○ explicit informed consent when entering into a contract, particularly relevant when an authorised retailer retrofits an embedded network into an existing building, ○ protections for vulnerable customers such as full hardship obligations, ○ life support requirements, ○ early communication of price changes, and ○ safe embedded network infrastructure. • Jurisdictional tenancy and Australian Consumer Law protections can be complementary and have an important role in ensuring flexible and non-duplicative regulation. <p><u>Energy and Water Ombudsman of South Australia</u></p>

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- The AEMC's December 2015 rule change creates uncertainty for EN operators, customers and ombudsman schemes about whether an embedded network must become a member of an ombudsman scheme, or not. Under the rule change, membership of an ombudsman scheme is only required if no other external dispute resolution mechanism is available to the customer, which is difficult to determine.
 - Instead, all embedded networks with 30 or more customers should be required to join an ombudsman scheme. If an embedded network with less than 30 customers has a complaint registered against them then they should also have to join.
 - Access to ombudsman schemes for embedded network customers could also be an opportunity to capture data around complaints and systemic issues that may be useful for the AER in any monitoring role.

Energy and Water Ombudsman of Victoria

- All energy customers should have access to free and independent dispute resolution. Other important consumer protections include:
 - minimum disconnection amounts,
 - mandatory content of hardship programs,
 - provision of energy efficiency information,
 - ensuring customers receive the government concessions and grants they may be entitled to, and
 - provision of comprehensive plain - English information to customers to enable them to make fully informed decisions.

Energy and Water Ombudsman of Queensland

- New business entities with bigger customer bases than second tiered authorised retailers are entering the embedded network market, however their customers have more limited consumer protections because they gain an exemption to operate as an embedded network rather than as an authorised retailer.
- Where embedded network customers are able to lodge a complaint with an external dispute resolution body, consideration should be given to including an offence provision in the regulations, applicable in circumstances where customers experience reprisals from their ENO for lodging a complaint.

Energy and Water Ombudsman of New South Wales

- A number of changes are required, including:
 - where an embedded network operator is billing a small customer directly for network charges, the embedded network operator should also be required to adhere to similar consumer protections as an exempt retailer,
 - clarity on who would be responsible for retailing to the customers of a failed retailer who is within an EN, and
 - consideration for placing timing and reporting requirements on embedded networks to re-connect customers.
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Consumer advocates

Regulatory framework	<p><u>South Australian Council of Social Service/ St Vincent de Paul Society/Ethnic Communities Council of NSW/Consumer Action Law Centre</u></p> <ul style="list-style-type: none">• There are two valid options for the reform of regulatory arrangements for embedded networks that could address the flaws in the current regulatory arrangements, and take into account the recent technological and market developments. They are:<ul style="list-style-type: none">○ retain the existing two-tiered framework enabling registration/authorisation or exemption, with some modifications; or○ replace the existing framework.• The existing framework has provided a high degree of flexibility and competition in products and services for embedded networks which has led to some valuable innovation and benefits to consumers – however, as the market has transformed the consumer protections are not currently balanced adequately with the competitive drivers.• If the existing framework is retained, a number of amendments should be considered: These include:<ul style="list-style-type: none">○ Establishing a new category of exemption that would apply to exempt on-sellers (and embedded network operators) that have a substantial number of customers and/or a substantial number of sites in total. The underlying principle here is that the exempt seller has a customer base equivalent to a small retailer and should therefore be subject to the same obligations and consumer protection conditions as a retailer.○ The AER developing and implementing a cost efficient monitoring, reporting and enforcement regime for both exempt sellers and EN operators to ensure consistent compliance with its exemption conditions and greater transparency for EN customers and their advocates.○ Possibly applying more stringent conditions to brownfield conversions.○ Additional rule changes to address the emerging gap where authorised retailers can sell to EN or ‘behind the meter’ customers, without the constraints imposed by the exemption framework on the maximum price charged.○ More formal registration requirements should be placed on third parties providing customer services on behalf of the registered exempt parties and, more generally, whether these third parties should be subject to civil penalties for non-compliance, or only the exempt seller or embedded network operator registered directly with the AER.○ Removing the ‘deemed’ category of exemption given that the AER has no way of knowing if, where and how many sites fall within that category.○ Requiring exempt sellers to provide customers with more detail information on pricing, including any future changes.○ Enforced sharing of savings obtained by the exempt seller through lower market offer prices, and government supported efficiency schemes or solar PV generation.• Consideration should also be given to whether it may be necessary to consider replacing the existing framework given the extensive
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transformation occurring in the energy market, rather than simply modifying it to address the issues identified. This may include moving from regulating the selling of energy to a person for premises, to instead regulating continuous supply of energy and/or reconsidering the definition of an embedded network to take account of models such as microgrids and peer to peer trading.

Queensland Council of Social Service

- The key issues under the current regulatory arrangements for consumers of embedded networks in Queensland include:
 - a high risk of non-compliance with the AER Guidelines by ENOs or third party agents,
 - limited regulatory monitoring and enforcement of regulatory requirements (for example in billing, access to payment plans or hardship requirements, or to concessions),
 - lack of access to effective and free dispute resolution for customers of embedded networks,
 - lack of practical access to alternative suppliers or market products, especially for renters,
 - lack of access to informed choice as residents do not receive any information about these types of arrangements when comparing properties or when entering into a lease, and
 - complexity and confusion emerging from the presence of multiple agencies with regulatory responsibility and additional legislation that applies to on-supply beyond the core framework of protections established under the NERL.
- Community housing providers and their tenants would benefit from a targeted information campaign to increase awareness of the regulatory framework to ensure they are managing their embedded network in a way that is beneficial to tenants.

Public Interest Advocacy Centre

- The current two-tiered exemption system is inflexible and not reflective of how embedded networks operate in the Australian energy system. A more nuanced exemption framework could be implemented for dealing with embedded networks in the contemporary Australian energy system.
- While it is impractical to expect some small embedded networks operators to comply with regulations similar to those placed on authorised market participants, it is understood that there are some large firms operating multiple embedded networks and supplying network, retail and metering services to a similar number of consumers as a small retailer in the NEM. Such firms could be required to comply with requirements for consumer information and protection that are equivalent to those placed on authorised providers.

Alternative Technology Association

- The two-tiered framework as it currently stands is not fit for purpose because it leads to two specific inequitable outcomes: customers of exempt sellers have fewer consumer protections than those of authorised retailers, and exempt sellers are subject to less regulatory oversight (in some cases, no oversight) than authorised retailers.
 - Two possible alternative options:
 - The exemptions framework could be revised to deliver uniform consumer protections as much as is practicable, by being predicated on a universal entitlement to the suite of consumer protections delivered by the NECF, with variations made only
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where a consumer protection is not applicable due to the nature of the exempt selling situation, or where it would cause compliance burdens that significantly outweigh the consumer benefits.

- The authorisations framework could be revised to include new small-scale authorisations designed for exempt sellers, solar PPA businesses, and other energy services providers. Small-scale authorisations would be predicated on a universal entitlement to the suite of consumer protections delivered by the NECF, with variations made only where a consumer protection is not applicable due to the nature of the exempt selling situation, or where it would cause compliance burdens that significantly outweigh the consumer benefits. These variations would be stipulated in the Retail Authorisation Guideline
- With an expanded authorisation regime, there may still be some cause for an exemptions framework for certain types of embedded networks or on-selling situations where the customer protection issues are minimal or where energy sale is incidental and an embedded network management business is not involved, such as:
 - caravan parks, where a dedicated embedded network business is not contracted to operate the network, but it is operated by the caravan park as a part of their core business of providing accommodation (because this aligns with the original rationale for exemptions as an alternative to authorisations),
 - short-term holiday accommodation (because the customer protection issues are minimal), and
 - small-scale community energy projects, under a new, dedicated exemptions class (because the unique nature and consumer participation aspect of community energy projects).

Access to competitive retail markets

South Australian Council of Social Service / St Vincent de Paul Society/Ethnic Communities Council of NSW/Consumer Action Law Centre

- A number of barriers impede embedded network customers going on-market, including:
 - upfront costs, such as upgrading ageing infrastructure,
 - a lack of transparency about energy arrangements for EN customers which makes it difficult for them to assess whether they will benefit from going on-market, and
 - the power imbalance between EN owner/operators and their customers.
- The embedded network manager (ENM) rule change is unlikely to practically reduce barriers for embedded network customers going on-market because of the complexity of the process and the potential social and financial risks that many embedded network customers may face pursuing the appointment of an ENM and access to a retail offer, despite the possibility of better prices and customer protections under a retail offer.

Queensland Council of Social Service

- Tenants, particularly in apartment blocks, can be limited in their ability to choose to access a retail market offer. Even where tenants are required to be consulted, in practice owners may not take their wishes into account or may even threaten their tenancy to obtain compliance with the owner's preference.
- A lack of clear, transparent and comparable information about off and on market offers makes it difficult for customers to weigh up the pros and cons of any offers available to them. For example:
 - Customers of embedded networks are not able to compare an embedded network price offering with a standard retailer, like

customers of authorised retailers can do through Energy Made Easy under standard energy supply arrangements.

- Knowledge about the precise contract arrangements of offers are held by suppliers and not subject to any monitoring by the AER or another entity.
- Price fact sheets are not required for offers to customers in embedded networks, as prices are worked out on an individual basis. This makes it difficult to monitor price movements over time. If price discounts become less generous in subsequent contracts with consumers, this may go unnoticed by customers.

Public Interest Advocacy Centre

- Access to retail competition is likely to lead to lower prices for consumers in embedded networks; however there is anecdotal evidence that many retailers are not interested in providing services to customers in small embedded networks. Where this is the case, the AEMC should ensure that embedded network customers are not worse off compared to consumers with access to retail competition.

Alternative Technology Association

- Anecdotal reports suggest that very few customers access retail choice from within embedded networks, and given that enabling retail choice requires traditional retailers developing special offers and making special arrangements with embedded network managers, it seems unlikely that it will be widespread (though it may well occur in very large developments where it is worthwhile for a retailer to make custom arrangements to acquire a large group of customers). It seems unlikely that access to the retail market will provide sufficient competitive pressure to drive competitive prices.

Consumer protections South Australian Council of Social Service / St Vincent de Paul Society/Ethnic Communities Council of NSW/Consumer Action Law Centre

- The objective of providing comparable consumer protections to exempt customers and customers of authorised retailers is not being achieved in practice under current arrangements. The most important gaps include:
 - Lack of an effective low cost energy specific and independent dispute handling mechanism equivalent to the Ombudsman services available to the customers of authorised retailers.
 - Limited information available to EN customers from either the regulators or the exempt sellers and EN operators on the EN customer's rights, and the exemption conditions that apply to their particular site.
 - Lack of any clear and standardised contractual relationships between the exempt seller or EN operator and the EN customer that provides at least the minimum standards and ongoing price certainty available to customers of authorised retailers.
 - The absence of an obligation on exempt sellers (or their agents) to provide access to Centrepay.
 - Limited access to payment plans as there is no equivalent to the AER's Hardship Policy requirements that apply to authorised retailers.
 - Lack of clarity on the ongoing responsibilities of EN operators to maintain a safe and secure network and accurate metering along with emergency arrangements in the event of loss of supply.
 - No monitoring or enforcement capacity to ensure third parties are providing adequate and compliant services.
- The guiding principles for consumer protections should include:
 - the regulatory arrangements for exempt sellers should not necessarily diverge from those applying to authorised retailers,

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- exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right,
 - exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the Law and Rules,
 - all EN consumers should have access to a free, independent and impartial dispute settlement mechanism,
 - the relevant regulators have an ongoing responsibility to monitor, report and enforce compliance with the requirements of the AER, including the conditions of exemption, and
 - the safety and security of supply to consumers in an EN must be a paramount consideration of the AER in granting an exemption.
 - Beneath these principles, a minimum level of consumer protections should apply to all small customers. These include:
 - Explicit informed consent
 - Access to concessions and payment difficulties measures
 - Appropriate marketing rules and restrictions
 - Availability of relevant and accessible communication
 - Protection from harmful products.

Queensland Council of Social Service

- Limited access to appropriate dispute resolution mechanisms, makes it difficult for customers to resolve disputes, but also limits the transparency around common complaints for embedded network customers which may assist in identifying systemic issues.

Public Interest Advocacy Centre

- Embedded network operators have significantly fewer consumer information and protection obligations than authorised market participants. While this would not be of concern if there were only a small number of embedded networks servicing a small number of customers, this is not the case. Specific issues include:
 - Access to standing-offer-equivalent pricing for consumers in embedded networks is not sufficient price protection for consumers in embedded networks. Where consumers are unable to access retail competition, they should be able to access prices no higher than the competitive market offer rates available to retail consumers in their area.
 - Specific requirements regarding explicit informed consent, equivalent to those for licensed retailers, should be imposed on retailers operating embedded networks. Further explicit informed consent regarding energy arrangements should be obtained from consumers at the time of rental and sale of properties where there is an embedded network.
 - Embedded network operators and/or exempt retailers in embedded networks should be required to be ombudsman members. It may be appropriate to have a limited number of exemptions such as for very small operators where compliance would be impractical.
 - Hardship provisions be extended to electricity consumers in embedded networks. It may be appropriate to have a limited number of exemptions such as for very small operators where compliance would be impractical.
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- Embedded network customers should, wherever practical, be provided with equivalent billing and usage information as customers of licenced retailers.

Alternative Technology Association

- Customers in embedded networks should have the same consumer protections as customers in the conventional retail market as much as is practicable. This can only be achieved by predicating the exemption guidelines on delivery of the full suite of consumer protections, with explicit variations only where a specific protection is irrelevant or places an undue burden on the exempt seller that significantly outweighs the consumer benefit.
 - Areas where customers of exempt sellers are significantly less well served than customers of authorised retailers include external dispute resolution, payment difficulties and financial hardship, access to concessions, choice of payment methods, and information about historic usage.
 - Tenancy legislation in most states gives no more than elementary protection to tenants for tenancy matters, and in many states is silent on energy supply.
 - Exempt sellers should be required to inform customers of the existence of concessions, proactively request them to advise of eligibility and assist them to claim.
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Embedded network owners or operators

Regulatory framework

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW

- The two-tiered regulatory framework remains an appropriate model, as it allows the AER the flexibility and discretion to respond to developments in the EN sector and the different types of EN customers. However there are some improvements that can be made.
- ENs are run by small to medium enterprises, have fewer resources to understand and implement compliance with such a complex regulatory system and less ability to absorb compliance costs. Therefore, there should not be any any amendments that increase the regulatory burden and costs for these businesses to address issues affecting EN customers. Rather there should be better guidance and education from the regulators to assist ENOs to meet their obligations through a range of options (not just regulatory).

Shopping Centre Council of Australia

- The current two-tiered regulatory framework is fit-for-purpose, adaptive, and should continue. There is no evidence of an existing structural or inherent failure. There should, however, be a refreshed risk-based approach to ‘exemption’ regulation, which prioritises and resources directed to higher-risk vulnerable customers and operators.
- Individual AER exemptions should be transitioned back to registrable exemptions. The shopping centre sector has a strong compliance culture, and presents lower regulatory and market risk, which justifies ‘lighter touch’ regulation and oversight.

Energy Network Services

- The current arrangements are fit for purpose. The concept of having a different “village electricity system” is often valued by residents
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and whether that community pride can still exist in another framework would be interesting.

- Whilst we may like to see better enforcement provisions we consider that it is too soon to pass judgement at this time in the evolution of the sector.

Active Utilities

- The current arrangements are in the main fit for purpose. However the exemption process should be simplified. The activity on the site is less relevant, rather the parties that conduct the on selling should be the focus, perhaps through a similar accreditation process like that of the ENM role.

TradeCoast Central

- The most important and successful aspect of the current regulatory framework is that it provides a balance between simplicity and complexity whilst minimising prohibitive implementation costs where possible.
- Regulations need to remain flexible to address the diverse scope of ENs. AER discretion should be maintained.
- Any amendments to the regulatory framework should not create additional regulatory burden and provide a barrier for customers to take advantage of the many benefits of being in joint purchasing arrangements.

Utilities Living - Lendlease

- The current two-tiered framework is generally fit for purpose as it recognises that, given the small size of many embedded networks, the costs associated with registration and/or authorisation does not lead to equivalent benefits. Individual exemptions provide the regulator with sufficient opportunities to capture any additional requirements given the circumstances surrounding the proposed embedded network on a case-by-case basis.
- However, in some instances, there are unhelpful restrictions on some forms of ENs, for example the implied restrictions on tariffs and customer charges that do not enable a network to be able to set tariffs that reflect cost drivers, enable value-added services or respond to customer preferences.

Access to competitive retail markets

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW

- The likelihood of customers in NSW holiday parks and residential land lease communities seeking to go on-market is very low. We are not aware of any cases of customers of embedded networks in NSW holiday parks or residential land lease communities going on-market or seeking to go on market.

Shopping Centre Council of Australia

- The EN rule change will address some existing competition barriers, by providing a market interface function. With the exception of Queensland and South Australia, due to jurisdictional policy positions, there are no major technological (e.g. meter type) or other (e.g. exit costs) obstacles to enable customers to access retail competition.

Energy Network Services

- The new ENM role can resolve most of the issues raised.

Active Utilities

- Under the Power of Choice reform the AER has addressed a number of the barriers to entry for an off market participant wishing to go on market.

Utilities Living – Lendlease

- ENs are best placed to provide innovative, bespoke and efficient outcomes for customers.
- It is likely that a customer in an embedded network choosing to go on-market has quite a strong negotiating position when their jurisdictional laws permit access to competition. An embedded network will have an incentive to retain the customers to ensure that it has the ability to provide innovative, customer-focused products and differentiated services.

Consumer protections The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW

- Existing consumer protections applying to embedded network customers in NSW holiday parks and residential land lease communities are appropriate. These customers have multi layered protections under other legislation and their agreements.
- Retailers should be required to establish a relationship with ENO and bill the customer for network and energy services, rather than a customer having to pay two separate bills.
- We do not support any amendments that would force embedded network operators to pass on savings incurred at the parent connection to embedded network customers. We reiterate that the supply of energy to customers in embedded networks in NSW holiday parks and residential land lease communities is generally not a source of profit. Energy on-selling is ancillary to their core business and any savings which are made are more likely used to cover ongoing costs of running the business. Even if a sharing arrangement were to be considered it is unlikely to be successful due to challenging administrative, monitoring and enforcement issues.

Shopping Centre Council of Australia

- An identified ‘gap’ in relation to customer protections is the issue of customer access to ombudsman schemes. While we support this ‘in-principle’, there should not be a ‘rush’ to Ombudsman schemes as a default ahead of issues being properly considered. There are a range of critical and practical issues to resolve, including cost and membership issues.
- We support the need for ‘core’ consumer protections for customers of embedded networks and that these should be clear and cohesive.
- In relation to issues for on-market embedded network customers, we support the continuation of an embedded network operator being able to recover network costs on a ‘shadow-pricing’ basis.

Energy Network Services

- Current protections for off-market embedded network customers are only effective if non-complying ENO are brought to account. Imposing further requirements may simply diminish benefits of being in an embedded network for consumers when what is really required is a system that can bring unsuitable ENOs to account.
- The intent of the price-match requirement may be good however there should be provision so that it does not undermine a much more beneficial arrangement for the entire EN community.

Active Utilities

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- The biggest gap under the exemption framework is lack of, or ease of, access to concessions and ombudsman schemes for consumers.
 - The current guiding principles are satisfactory and the current protections (excluding the lack of Ombudsman access) should remain under the exemption conditions.

Utilities Living – Lendlease

- The current framework, applied properly by embedded networks, offers significantly aligned protections to those of on-market customers. Ability to access ombudsman schemes would also be beneficial, however the cost of this should be taken into consideration when considering the size of the embedded networks.
 - For small customers, the customer’s understanding of their offer is complicated by retailers not un-bundling their products to clearly articulate the components of a bill, and as such, no clarity exists on how to compare an off-market offer to an on-market offer. This issue could be resolved if retailers would accept invoices from embedded networks for their network charges, creating the same environment for the customer as the standard network.
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Retailers

Regulatory framework

Energy Australia

- The current regulatory model is becoming a reactive patchwork of exemption categories with varying levels of regulation. This can distort investment decisions and favour specific business models or technologies where they are subject to less regulation.
- A nationally consistent and competitive neutral approach will avoid imposing further unnecessary regulations that can stifle innovation and competition, including more transparent regulatory reporting requirements for exempt sellers.

Momentum Energy

- A single tier regulatory framework which focusses on ensuring that all customers have access to an appropriate level of protection is a more appropriate model.

Origin

- The exemption framework remains a flexible manner for regulating a range of differing embedded networks. Neither of the alternatives to a two-tiered regulatory framework are suitable, for example:
 - Having no tiers, regulating each activity in the same manner would create an excessive regulatory burden on ENs whose sale of energy is genuinely incidental to their primary business.
 - Adding new tiers to differentiate between different ENs is unnecessary because different exemption categories already exist which allows specific regulatory obligations to apply to depending on the nature of the EN.
 - The requirement that organisations that sell energy as a core part of their business, and make a profit, should operate under an energy retail licence should be more tightly enforced. Where an ENO is not primarily in the business of selling energy, or deriving a profit, then lower regulatory standards may be preferable where customers are genuinely benefiting from the bulk purchase of energy.
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- A class exemption ought to exist for network service provider exemption activities in strata developments.

AGL

- The increasing divergence of business models, the complexity of the exemptions categories, and the limited visibility and enforcement powers of the AER, may be contributing to an increased risk to EN customers.
- The following core principles should be applied to promote greater alignment between each regulatory framework, while also promoting innovation and customer choice of service:
 - Flexibility and customer choice
 - Contestability and competitive neutrality
 - Right to Supply
 - Participation
 - Avoiding duplication
 - National consistency

Red and Lumo Energy

- Regulatory arrangements need to change to make ENs more competitive. This would require a shift from regulating the provider of a service, to regulating the type of service being provided.

Australian Energy Council

- A minimum standards framework should be introduced. This would reduce the need for a multiple tiered regulatory framework. Tiered frameworks create regulatory arbitrage leading to distorted incentives and price signals, hurt confidence in regulation, can lead to over regulation of some tiers and reduce opportunities for growth, investment and job creation.
- If tiers exist, the product rather than the supplier should be the focus.

ERM Power

- Technology is accelerating the diversity of solutions, and the regulatory regime is no longer capable of describing many common energy supply arrangements.
- Greater consistency in regulatory arrangements for both NEM and EN customers would support more businesses to service both markets, offering greater choice to meet customers' needs.

Access to competitive retail markets

Energy Australia

- There needs to be national consistency for retailers to ensure effective competition and appropriate protections for consumers, including:
 - consistency in the type of information provided to consumers
 - mandating that all electricity meters should be market-compliant, communications-enabled meters.
- However prescriptive regulation or product and price features can restrict innovative solutions.

Momentum Energy

- The ENM rule change gives customers within embedded networks appropriate access to retail competition and no significant barriers will prevent them accepting a market offer. It is our expectation however, that this access will not trigger a vast number of EN customer going on market, as ENOs will respond to incentives to ensure that they retain their customers.

Origin

- The recent ENM rule change has gone a long way to removing barriers to going on-market for all EN customers.
- Origin will make market offers to EN customers. One issue they anticipate is customers could end up receiving two bills—one for the network charges and one for the energy. More guidance is required on the interaction between exempt sellers and child retailers so the end user does not receive two bills.

AGL

- Many barriers exist which prevent off-market customers taking up a retail offer. While the ENM rule change addressed the issues associated with market interfacing, other changes are required to the NERR and/or the AER's guidelines to obligate market parties to undertake specific functions for on-market customers.
- Without certainty over operational sections of the regulatory framework, such as published network tariffs, use of system charges, data requirements and billing information, the process of providing EN customers with retail services could be very difficult and costly. Similarly, unless EN operators are required to unbundle network charges from energy supply charges, it will continue to be difficult for a retailer to provide retail offers to EN customers.

ERM Power

- While the new ENM role is expected to address some operational issues, remaining issues include:
 - Uncertain metering quality
 - Greater site complexity
 - Risks associated with inability to physically disconnect
 - Greater need for manual processes
- In order to compare rates from an exempt seller and an authorised retailer, the network and retail components must be unbundled. There is currently no requirement on exempt sellers to provide pricing information in this form, even where requested by the customer.

Consumer protections

Energy Australia

- If EN customers have access to alternative dispute resolution then it will be important to ensure that all participants are providing for the ongoing costs of these services.
- There should be consistency in ensuring EN customers are informed of government rebates and payment assistance programs available to them as customers of traditional retailers are.

Momentum Energy

- There should be an appropriate minimum standard of customer protections regardless of whether customers take supply from within an EN or not.

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- Once competition becomes a reality for EN customers, the full range of protections enjoyed by the majority of NEM customers should apply to ensure that the customer is not making a trade-off.

Origin

- The gap in protections between customers on strata title developments and licensed customers should be closed as many of these customers will require equivalent protections for some issues that arise.
- It is unnecessary to oblige retailers to extend standing offers to EN customers.
- Where a child customer has moved from the EN to the competitive retail market, and the customer then moves out, the new customer should revert to the EN.
- The NERR will need to be amended to oblige ENOs to de-energise and re-energise a premise in accordance with the Rules.
- The retailer for the child meter should be responsible for life support registration and notification to other parties.
- In the absence of an obligation to jointly bill with ENOs, market offers should be presented on the basis of an 'energy-only' offer. Retailers should not have to publish these on their general website as they are specific offers to a class of customers and are not generally available.
- Explicit informed consent should be obtained prior to a customer entering into an on-market contract.

AGL

- Designated retailer obligations for standing retail offers should not apply to an EN customer. Certain minimum requirements will not be relevant to EN customers, for example some bill content requirements and disclosure of all tariffs and charges.
- Move in/carry-over customers should apply to EN customers who have been supplied by a retailer, to ensure continuity of supply.
- To manage de-energisation and re-energisation services, the same rules provided under the NERR for Distribution Network businesses should apply to EN operators.
- ROLR scheme should not apply to EN customers, because of the complexity of applying this scheme. In the event that an authorised retailer fails, responsibility for electricity supply should revert back to the ENO and the customer's status should return back to "off-market".
- In most cases existing EIC requirements should be flexible enough to accommodate EN customers.

Red and Lumo Energy

- To determine appropriate protections a number of principles need to be considered:
 - the nature and risk of any potential harm to an applicable consumer, compared to the ability of that consumer to mitigate risk of harm through competitive markets and the availability of choice,
 - a minimum expectation must remain that consumers should be able to maintain access to energy as an essential service, and
 - energy specific protections must not provide duplicate protections to those provided for in other complementary frameworks, such as the ACL.

Australian Energy Council

- Minimum retail standards applicable to all ENs should be established and based on:
 - Standards in the NERL
 - Technical and quality of supply standards
 - Safety standards
- Any gaps between the minimum standards for authorised retailers and embedded networks compromise the interests of customers. One significant gap is complaint and dispute resolution services.

ERM Power

- There should be a broader review of NEM customer protections, to consider what level of sector-specific regulation is justified for customers today and in the future.

Networks

Regulatory framework

Energy Networks Australia

- Consideration should be given to whether any EN related services could be considered distribution services, and whether there are any circumstances in which DNSPs could provide some aspects of EN related services.
- There should be clear allocation of the responsibility for establishing connection agreements to either the customers within ENs or the ENO.
- For network planning purposes distributors need to understand all available embedded generation (solar, wind, electric vehicle batteries, battery storage etc.) which affects network forecasts and localised network asset management and planning.

Energy Queensland

- The existing two-tiered approach to regulation of embedded networks should continue with some amendments.
- A key concern with the current regulatory framework is the ability for DNSPs to confidently comply with their regulatory obligations, particularly those relating to planned outage notifications and reliability standards. DNSPs often have no visibility of life support customers or solar photovoltaic installations within the EN, which have the potential to impact the DNSP's obligations. ENOs should be required to provide a range of information to the DNSP.
- The current exemption framework would benefit from further oversight from the AER and greater powers to approve and monitor ENOs. All ENOs should be required to register for exemption and be regularly audited.

SA Power Networks

- Any party including network business should be able to offer energy infrastructure services to ENO/ENMs where this might lead to efficient outcomes for customers.

Access to competitive

Energy Networks Australia

- There are two ways that EN customers can access retail services by authorised retailers:

retail markets	<ul style="list-style-type: none"> ○ The retailer comes to an agreement with the ENO to bill the retailer for network services and the retailer then bills the customer for network and energy services. ○ The customer pays two separate bills, one to the ENO for network services and one to the retailer for energy services. ● Either method requires that the ENO must inform either the retailer or the customer of the unbundled prices. This additional complexity of providing retail services may pose a commercial barrier to retailers developing products and services for small customers.
Consumer protections	<p><u>Energy Networks Australia</u></p> <ul style="list-style-type: none"> ● EN customers should have access to jurisdictional ombudsman schemes. In addition there should be: <ul style="list-style-type: none"> ○ appropriate arrangements to address ENO failure, ○ additional conditions or requirements in the network exemption guideline to support greater transparency for consumers within embedded networks on matters such as planned outages, and ○ strengthened AER visibility of non-compliance with exemption conditions. <p><u>Energy Queensland</u></p> <ul style="list-style-type: none"> ● Consumer protections should ensure that: <ul style="list-style-type: none"> ○ the existence of life support customers are identified with the DNSP so that outages can be planned appropriately, ○ electrical safety is assured, ○ concessions are applied to the appropriate customers; and ○ prices to end users are equivalent to other customers on the broader network. <p><u>SA Power Networks</u></p> <ul style="list-style-type: none"> ● Consideration should be given to whether ENs should reflect essential service expectations, regarding infrastructure performance standards and consumer protections. ● ENs should have access to service providers of last resort and network business could take on this role. ● Distribution businesses should be allowed to charge different prices based on customer location rather than average price across all customers.

Next steps

Over the coming months the AEMC and the AER will put forward their recommended changes, if any, to the regulatory arrangements for embedded networks. Stakeholders are likely to continue to engage in the process, in terms of influencing the take up of the recommendations and their implementation, as well as ongoing monitoring of the impact they have on embedded network customers, owners/operators and the wider functioning of the energy market. SACOSS will continue to monitor any changes as they progress, as well as the positions of key stakeholders in the process.

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