



**SACOSS' Submission to the
Economic and Finance Committee
Parliament of South Australia:
Inquiry into Embedded Networks in South Australia**

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SACOSS' Submission to the Economic and Finance Committee, Parliament of South Australia – Inquiry into Embedded Networks in South Australia

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Introduction

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' 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. With a strong history of community advocacy, SACOSS and its members aim to improve the quality of life for people disadvantaged by the inequalities of our society.

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

SACOSS would like to thank the Economic and Finance Committee for the opportunity to provide a submission to the Parliamentary Inquiry into Embedded Networks in South Australia.

Background

On 31 March 2021, the Economic and Finance Committee (EFC) resolved to inquire into, and report on *Embedded Networks in South Australia*.

The Terms of Reference of this Inquiry are:

- 1) Establish the current state of regulation of embedded networks in South Australia and interstate;
- 2) Establish the positive and negative experiences of those in embedded networks in South Australia;
- 3) Establish the steps being considered to reform embedded networks by COAG Energy Council, including consideration of the Australian Energy Market Commission's Updating the Regulatory Frameworks for Embedded Networks Review; and
- 4) Any other related matters.

The AER's Public Register of Retail Exemptions shows South Australia has 761 current registrations, 85 of which have been granted by the AER since June 2019¹, and 460 network exemptions, 48 of which have been granted since June 2019² (since the recommendations of the Australian Energy Market Commission were made to the Energy Ministers – see below). Customers of these embedded networks do not enjoy the full set of consumer protections under the National Energy Customer Framework³ (NECF).

Establish the current state of regulation of embedded networks in South Australia and interstate

This Inquiry must be placed in the context of the significant body of work that took place reviewing the regulation of embedded networks in the National Energy Market (NEM) between 2014 and 2019, specifically:

¹ See: the AER's [Public Register of Retail Exemptions](#)

² See: the AER's [Public register of network exemptions](#)

³ The National Energy Customer Framework (NECF) is a suite of legal instruments that regulate the sale and supply of electricity and gas to retail customers. The main NECF documents are the:

- the [National Energy Retail Law \(Retail Law\)](#)
- the [National Energy Retail Rules \(Retail Rules\)](#) and
- the [National Energy Retail Regulations](#) (Regulations)

- AEMC’s 2015 rule change to clarify the regulatory arrangements for embedded networks and reduce the barriers to embedded network customers accessing retail market offers.⁴
 - On 2 October 2014, AEMO submitted a rule change request to the AEMC proposing amendments to the regulation of embedded networks within the NEM.
 - On 17 December 2015, the AEMC made a final rule to reduce the barriers to embedded network customers accessing retail market offers.⁵
 - The changes to the National Electricity Rules set out in the final rule created a new accredited provider role – embedded network manager – to perform the market interface functions that link embedded network customers to the National Electricity Market systems.
 - The AEMC’s Final Rule Determination also recommended separate but supporting changes to state and territory legislation, the AER’s network exemption guideline and a review to the National Energy Retail Rules for embedded network customers.
- AEMC’s 2017 Review of the Regulatory Arrangements for Embedded Networks⁶
 - On 28 November 2017 the AEMC published a final report⁷ on its review of regulatory arrangements for embedded networks.
 - The final report found that the current regulatory arrangements for embedded networks are no longer fit for purpose, given the growth in the number of embedded networks and businesses providing services in this sector.
 - The AEMC made final recommendations that would provide embedded network customers with appropriate levels of access to retail competition and consumer protections.
 - A report from MinterEllison, *Review of regulatory arrangements for embedded networks - implementation of recommendations in Draft Report*⁸ provides further detail on how the AEMC’s recommended framework could be implemented.
- The AEMC’s 2019 Report on Updating the regulatory frameworks for embedded networks⁹

⁴ See: <https://www.aemc.gov.au/rule-changes/embedded-networks> and Information Sheet: <https://www.aemc.gov.au/sites/default/files/content/04b21dd0-521c-48ca-b575-6f6e6b736a37/Information-sheet.pdf>

⁵ AEMC, Rule Determination: [National Electricity Amendment \(Embedded Networks\) Rule 2015](#)

⁶ AEMC, [Review of regulatory arrangements for embedded networks](#), 2017

⁷ AEMC, [Final Report: Review of regulatory arrangements for embedded networks](#), 28 November 2017

⁸ Minter Ellison, [Review of Regulatory arrangements for embedded networks – Implementation of recommendations in Draft Report for the AEMC](#), 20 November 2017

⁹ AEMC, [Updating the regulatory frameworks for embedded networks](#) June 2019

- On 20 June 2019 AEMC published its Report on Updating the regulatory frameworks for embedded networks¹⁰
- The final report proposed *a package of law and rule changes*¹¹ to update the regulatory frameworks for embedded networks, to ensure better protections and access to more competitive retail offers for consumers in embedded networks.

In response to the work of the AEMC on embedded networks, the Australian Energy Regulator (AER) amended its Guidelines applying to exempt networks and exempt sellers:¹²

- On 28 February 2018, the AER released version 6 of the *Network Service Provider Registration Exemption Guideline*¹³
- On 16 March 2018, the AER released version 5 of the *Retail Exempt Selling Guideline*¹⁴

SACOSS has consistently sought to highlight the systemic inequities affecting customers of embedded networks. In December 2015, SACOSS prepared a Report on embedded networks titled '*The Retail and Network Exemption Framework: Emerging Issues for Consumers – Report on the growing concern with consumer protection arrangements for exempt consumers*'.¹⁵ This extensive Report outlined the exemption framework for ACT, NSW, QLD and South Australia in 2015, and made findings and recommendations around how to protect customers of embedded networks.

SACOSS was also heavily engaged throughout the review processes of both the AEMC and the AER, providing the following submissions:

- Submission to the AEMC on the Embedded Networks Rule Change Request Consultation, 23 June 2015¹⁶
- Submission to the AEMC on the Draft Determination on the Embedded Networks Rule Change Proposal, 20 October 2015¹⁷

¹⁰ AEMC, [Updating the regulatory frameworks for embedded networks](#), 20 June 2019

¹¹ AEMC, [Recommended revisions to the National Electricity Law, National Energy Retail Law, National Electricity Rules and National Energy Retail Rules](#), June 2019

¹² See: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-march-2018> and <https://www.aer.gov.au/retail-markets/guidelines-reviews/retail-exempt-selling-guideline-march-2018>

¹³ AER, [Electricity Network Service Provider – Registration Exemption Guideline Version 6](#), March 2018

¹⁴ AER, [Retail Exempt Selling Guideline Version 5](#), March 2018

¹⁵ SACOSS, [The Retail and Network Exemption Framework: Emerging Issues for Consumers – Report on the growing concern with consumer protection arrangements for exempt consumers](#), December 2015

¹⁶ SACOSS, [Submission to the AEMC on the Embedded Networks Rule Change Request Consultation](#), 23 June 2015

¹⁷ SACOSS, [Submission to the AEMC on the Draft Determination on the Embedded Networks Rule Change Proposal](#), 20 October 2015

- Joint submission to the AEMC on the Review of regulatory arrangements for embedded networks, 22 May 2017¹⁸
- Report on Regulatory arrangements for embedded networks – snapshot of stakeholder positions, June 2017¹⁹
- Submission to the AER on the exempt customer dispute resolution issues paper, 14 July 2017²⁰
- Joint submission to the Australian Energy Market Commission on the Draft Report on the Review of Regulatory Arrangements for Embedded Networks, 17 October 2017²¹
- Submission to the AER on the Draft Retail exempt selling guideline Version 5, 19 December 2017²²
- Submission to the AER on the Review of Electricity Network Service Provider Registration Exemption Guideline, 10 January 2018²³

All of SACOSS' submissions have consistently supported customers of embedded networks having access to competition and the consumer protections afforded to on-grid customers under the National Energy Customer Framework; including protection from disconnection, payment support, hardship supports and internal and external dispute resolution options. This is particularly important for these customers as they are often in vulnerable circumstances (elderly, renting, low-income), and are therefore at greater risk of experiencing payment difficulty and requiring support – to which they have no access.

SACOSS refers the Economic and Finance Committee to all of the reports, reviews and submissions outlined above which examine the current state of regulation of embedded networks in South Australia and interstate.

As outlined above, the AEMC's reviews found the current framework regulating embedded networks was not fit for purpose, and in June 2019 the AEMC recommended the Energy Ministers (then the COAG Energy Council) work to implement a comprehensive package of changes to laws, rules and regulations to protect embedded network consumers.

SACOSS understands the Energy Ministers have not progressed consideration of these changes.

¹⁸ SACOSS, [Joint submission to the AEMC on the Review of regulatory arrangements for embedded networks](#), 22 May 2017

¹⁹ SACOSS, [Report on Regulatory arrangements for embedded networks – snapshot of stakeholder positions](#), June 2017

²⁰ SACOSS, [Submission to the AER on the exempt customer dispute resolution issues paper](#), 14 July 2014

²¹ SACOSS, [Joint submission to the Australian Energy Market Commission on the Draft Report on the Review of Regulatory Arrangements for Embedded Networks](#), 17 October 2017

²² SACOSS, [Submission to the AER on the Draft Retail exempt selling guideline Version 5](#), 19 December 2017

²³ SACOSS, [Submission to the AER on the Review of Electricity Network Service Provider Registration Exemption Guideline](#), 10 January 2018

In June 2020, the AEMC published its *2020 Retail Energy Competition Final Report*²⁴ which included ten recommendations for governments and market bodies in response to the impacts of the COVID-19 pandemic. In **Recommendation 6: Protecting Consumers in Embedded Networks**, the AEMC reinforced the need to address the issues facing embedded network customers:

RECOMMENDATION 6: PROTECTING CONSUMERS IN EMBEDDED NETWORKS

*The Commission recommends that the COAG Energy Council, market bodies and jurisdictional government and regulatory bodies implement the comprehensive package of changes to laws, rules and regulations to protect consumers and improve choice in embedded networks, as recommended in the embedded networks review completed in 2019*²⁵:

- *COAG Energy Council agrees changes to electricity and energy retail laws*
- *South Australian Parliament makes law changes; South Australian Minister makes rule*
- *changes AER and AEMO update guidelines, systems and procedures to reflect changes to the laws and rules*
- *State governments, regulators and ombudsmen enact required changes to jurisdictional regulations.*

It is worth noting that in 2019 the AEMC also undertook a review of the regulatory framework for stand-alone power systems (as directed by COAG),²⁶ which considered a number of issues related to embedded network customers, particularly with regard to consumer protections. The *2020 Retail Competition Review* contains reflections on the AEMC's recommendations around how the NECF should apply to Stand-Alone Power Systems and Embedded Networks,²⁷ and SACOSS refers the Economic and Finance Committee to those considerations.

Notably, unlike the recommendations relating to embedded networks, the Energy Ministers have progressed the recommended changes for Stand-Alone Power Systems. On 15 March 2021, the Energy Ministers called for submissions on a final rule change package that will go to the Energy Ministers for approval in mid-2021.²⁸

²⁴ Australian Energy Market Commission, [2020 Retail energy competition review Final Report](#) 30 June 2020, p. viii, p.168

²⁵ AEMC, [Updating the frameworks for embedded networks](#)

²⁶ AEMC, [review of the regulatory framework for stand-alone power systems](#), 31 October 2019

²⁷ AEMC, [Retail energy competition review Final Report 2020](#), pp248 -252

²⁸ Energy Ministers, Stand-Alone Power Systems Legislative Amendments – Consultation on Revised National Electricity Rules and National Energy Retail Rules see: <https://energyministers.gov.au/publications/stand-alone-power-systems-legislative-amendments-%E2%80%93-consultation-revised-national>

In terms of the regulation of embedded networks in the South Australian context, SACOSS is seeking the Economic and Finance Committee further examine the implications of the *Electricity Act 1996*,²⁹ and the *Electricity (General) Regulations 2012*³⁰ for embedded network customers.

Part 6A of the *Electricity Act* contains a section on requirements for NERL retailers, including:

- Complying with certain provisions of the *Essential Services Commission Act 2002* (Section 63 AB)
- Participation in an ombudsman scheme (section 63AC)
- Complying with customer concessions schemes and performance of community service obligations (section 63AD)
- Paying the Essential Services Commission of South Australia an annual administration fee (section 63AE)

With associated penalties for non-compliance of up to \$1,000,000.

Section 4 of the *Electricity Act 1996*, defines ‘NERL retailer’ to mean:

NERL retailer means—

(a) a person who is the holder of a retailer authorisation under the *National Energy Retail Law (South Australia)*; or

(b) **an exempt seller within the meaning of the *National Energy Retail Law (South Australia)***;

‘Exempt seller’ is not defined in the *National Energy Retail Law*³¹ (NERL). The Transitional Provisions in Part 7 of the NERL, provide a definition of ‘exempt entity’ which is taken to be an exempt seller in certain circumstances:

exempt entity means a relevant entity that, on the relevant day, is taken to be an exempt seller;

NERL entity means an entity that, on the relevant day, becomes a regulated entity under the *National Energy Retail Law (South Australia)*;

relevant day means the day fixed by the Governor by proclamation under section 4 as the day on which the *National Energy Retail Law* applies in this jurisdiction;

relevant entity means an entity—

(a) that, immediately before the relevant day—

²⁹ [Electricity Act 1996](#)

³⁰ [Electricity \(General\) Regulations 2012](#)

³¹ [National Energy Retail Law 2011](#)

(i) held a licence under Part 3 of the Electricity Act 1996 or held an exemption from the requirement to hold such a licence under that Act; or

(ii) held a licence under Part 3 of the Gas Act 1997 or held an exemption from the requirement to hold such a licence under that Act; and

(b) that, on the relevant day, is taken to be—

(i) the holder of a retailer authorisation; or

(ii) an exempt seller, by virtue of the operation of the National Regulations.

Part 9A of the South Australian *Electricity (General) Regulations 2012* deals with the Regulation of NERL retailers.

Regulation 44D— covers participation in ombudsman schemes, and provides that for the purposes of section 63AC(1) of the *Electricity Act* (referred to above), the prescribed level is 750 MW.h.

Regulation 44B in Part 9A deals with Inset networks, and provides

*(1) For the purposes of section 63AB(1)(c) of the Act, an exempt seller within the meaning of the National Energy Retail Law (South Australia) may only carry on operations as an inset network operator or inset network retailer if the exempt seller ensures that an inset customer **has an effective right of access to a NERL retailer of the customer's choice.***

Regulation 15(8) provides definitions relating to inset customers, networks, retailers and operators:

***inset customer**, in relation to an inset network, means a person (other than the inset network operator or the inset network retailer) who has or seeks a supply of electricity from the inset network;*

***inset network** means a transmission or distribution network that serves only a group of premises in the same ownership or community or strata title premises;*

***inset network operator** means a person who operates an inset network;*

***inset network retailer** means a person (other than an electricity entity) who retails electricity supplied through an inset network;*

It is unclear what the impact of these provisions are on embedded network providers and customers in South Australia, noting the timing of the transitional provisions in the NERL. SACOSS has only briefly touched on some relevant provisions, and would be interested in the EFC inquiring further into the scope and impact of the local laws and regulations on embedded network customers.

Establish the positive and negative experiences of those in embedded networks in South Australia

SACOSS refers the EFC to SACOSS' Report on *The Retail and Exemption Framework: Emerging Issues for Consumers*, in particular the section on 'Major Issues for residents in caravan and residential parks',³² for examples of the experiences of customers in embedded networks.

A more recent experience was recounted to SACOSS at a meeting of our Essential Services Group last year:

A regional representative (who is a financial counsellor) recounted the story of one client who was currently living in a caravan park and had his electricity cut off after receiving extremely high energy bills (approx. \$100p/w), which were associated with inadequate sources of heating within the caravan. He was heating his caravan by using the electric hotplate. The individual was receiving the Disability Pension and therefore was not able to access the additional \$500 being provided by the state government, or increased income supports. His energy provider had also significantly overcharged the customer, as a result of an 'error'. The financial counsellor was able to support this client to get reconnected, review his energy bill and payment arrangements (there was evidence the client was paying his bill through Centrepay) get a square of carpet, source more efficient heating and survive the winter.

SACOSS also refers the EFC to the AEMC's *2020 Retail Energy Competition Review*, which highlights the vulnerabilities of customers of embedded networks, with particular reference to the impacts of COVID-19, stating:

'Common examples of embedded networks include shopping centres, retirement villages, apartment complexes and caravan parks. Customers within these networks are likely to be particularly vulnerable to the economic and health effects of the pandemic because they disproportionately consist of small business customers (shopping centres), the elderly (retirement villages), renters (apartment complexes) and low-income customers (caravan parks).'

Establish the steps being considered to reform embedded networks by COAG Energy Council, including consideration of the Australian Energy Market Commission's Updating the Regulatory Frameworks for Embedded Networks Review

As outlined above, SACOSS understands the Energy Ministers have not progressed consideration of the reforms to the regulatory framework recommended by the AEMC in June 2019, and recommended again in June 2020.

³² SACOSS' [Report on The Retail and Exemption Framework: Emerging Issues for Consumers](#), pp 30-35

The COAG Energy Council has provided the following (undated) response to the AEMC's Review and recommendations (published on the Energy Ministers website), stating:³³

'The Council notes the Australian Energy Market Commission's recommendations from its Updating the Regulatory Frameworks for Embedded Networks final report.

The Council will further consider the recommendations from the report during 2020, including further assessment of the likely benefits and costs.'

Following the cessation of COAG in May 2020, SACOSS understands the Energy National Cabinet Reform Committee (ENCRC) and the Energy Ministers' Meeting (EMM) are the new Ministerial forums for the Commonwealth, States and Territories and New Zealand, to work together in the pursuit of national energy reforms. The former COAG Energy Council will be replaced by the EMM, and will focus on priorities that are not covered by the ENRC. The ENRC's listed priorities are:³⁴

- immediate measures to ensure reliability and security of the electricity grid ahead of the 2020-21 summer
- the redesign of the National Electricity Market to take effect after 2025
- a package reforms to unlock new gas supply, improve competition in the market and better regulate pipelines

Given the implementation of the package of law and rule changes to elevate embedded network customers into the regulatory framework does not fall within the ENRC's listed priorities, we understand they will be considered by the EMM, and SACOSS strongly urges the EFC to do what it can to support the progress of these reforms.

Any other related matters

Legacy embedded network customers and small businesses

SACOSS is concerned that even after the AEMC's recommended law and rule changes are made, legacy embedded network customers and small businesses will continue to be excluded from the regulatory framework, and consequently will not have access to important consumer protections. SACOSS encourages the EFC to examine this issue.

Access to EEPS and increase in water concession for residents of residential parks

SACOSS has recently provided submissions³⁵ to the Department for Human Services on its reviews of the *Residential Parks Concession Scheme* and the *Emergency Electricity Payment Scheme*, seeking that access to EEPS be expanded to include embedded network customers, and that this be noted in the Residential Parks Concession Scheme. We also asked for the

³³ See: <https://energyministers.gov.au/coag-energy-council-response-aemc-review-regulatory-frameworks>

³⁴ See: <https://energyministers.gov.au/about-us/our-role>

³⁵ See: SACOSS, [Submission to DHS on the Emergency Electricity Payment Scheme](#), 5 May 2021 and SACOSS, [Submission to DHS on the Residential Parks Concession Scheme](#), 5 May 2021

amount of the water concession to be increased for residents of residential parks to align with payments under the *SA Water and Sewerage Concession Scheme*.

Introduction of Time of Use Tariffs for smart meter customers on 1 July 2021

On 1 July 2021 all customers with a smart meter in South Australia (about 20%, or 1 in 5 customers) will be automatically switched to a TOU Tariff. This means electricity should be cheaper during the day for these customers (between 10am and 3pm) but will be more expensive before 10am and after 3pm. Customers who may struggle to shift their energy consumption patterns (for example people with older appliances, people with disability who require ongoing high energy use to manage their health, larger families with increased energy needs after school and work) may see larger energy bills. It is likely these increased energy costs will flow onto embedded network customers where there is a smart meter at the parent connection point, or separate smart meters at the child connection points. This may have a significant impact on customers who are already in vulnerable circumstances; including low-income residents of apartment blocks, residents of retirement villages or disability accommodation. SACOSS is extremely concerned about the general lack of consumer knowledge around these changes and associated impacts. SACOSS is seeking the CFC examine this issue further, and consider recommending a state-wide government-led education campaign as a matter of urgency.

AER's Final Statement of Expectations for energy businesses will end on 1 July 2021

At the start of the pandemic, the AER issued a Statement of Expectations for Energy Businesses³⁶ which aimed to ensure customers (including customers of embedded networks) were protected from disconnection and supported by their retailer during COVID-19. The AER expressly stipulated that 'For the purposes of the Statement, retailers includes exempt sellers'. The AER have renewed the SOE three times, with the fourth and final Statement coming to an end on 30 June 2021.³⁷

The impacts of COVID-19 on energy customers in South Australia has been significant. Residential energy debt has increased in South Australia to record levels over the past 12 months. The average amount of energy debt for residential customers who are not in a hardship program has increased by 27% (up from \$991 to \$1,266).³⁸ The average debt for a hardship customer is now the highest in the NEM at \$2,246 (an increase of \$465 or 26% in 12 months). Concerningly, in SA there has actually been a decrease in hardship customer numbers from the same time last year (down from 17,222 customers (2.2%) in December 2019 to 14,253 (1.8%) in December 2020). There has also been a decrease in the number of customers on payment plans in SA during the last year, down from 13,220 to 13,055.

³⁶ AER, [Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19](#), 9 April 2020

³⁷ AER, [Statement of Expectations of energy businesses: Protecting consumers and the market during COVID-19](#), April 2021

³⁸ AER, Retail Energy market performance update for Quarter 2, 2020-21, Schedule 3, 6 April 2021

SACOSS is concerned about the increase in debt, coupled with the cessation of federal government and state government supports, as well as the ending of the AER's expectations of exempt sellers and the introduction of the TOU tariffs all combining to have negative impact on customers of embedded networks. Particularly in circumstances where those customers have no access to the consumer protections and supports afforded to on-grid customers. SACOSS urges the CFC to inquire into the possible impacts and options to support these customers, and once again urges the Energy Ministers to progress the recommended reforms to bring these customers into the regulatory framework.