



18 March 2019

Sherine Al Shallah
Project Leader
Australian Energy Market Commission
PO Box A2449
Sydney NSW 2000
Australia

Dear Ms Al Shallah

Reference: EMO0036 - Draft Report 'Updating regulatory arrangements for embedded networks'

1. Introduction

Lendlease Living Utilities (**Living Utilities**) welcomes the opportunity to participate in the Australian Energy Markets Commission's (**Commission's**) embedded networks regulatory framework review on behalf of the broader Lendlease business. As a provider of high-quality commercial, retail and residential precinct solutions, we support the intent of establishing fit-for-purpose regulatory arrangements that equally:

- addresses the problems presented by opportunistic and short-sighted participants, as well as
- encourages long-term owners seeking customer-centric and innovative solutions in the embedded network segment of the energy sector.

Importantly, we hope this revised framework can bring future regulatory stability to the sector to help:

- sustain confidence for investors in these innovative and customer-centric network and distributed energy solutions, and
- preserve consumer confidence in embedded network energy solutions.

Embedded networks have important roles to play in delivering on the long-term interests of energy consumers and property occupants more broadly. They can provide customers with the pricing benefits of scale, service reliability benefits of additional resilience through access to professionally designed and managed distributed energy resources (**DER**), highly cost efficient and more sustainable co-optimised multi-utility service offerings, and access to renewable DER for multi-tenant sites.

Our embedded networks are more than buildings sitting on top of electrical distribution infrastructure: they represent the convergence of the energy system and the built environment to create a new operating environment and improved business models. Embedded networks are platforms that enable us to improve the collective

value proposition for our customers, and enable broader innovation in pursuit of services that better reflect our customers' needs.

However, whilst energy is an increasingly important part of the broad range of services we provide for our customers, it is not the only service attribute our customers care about.

Lendlease's vision is to create the best places. We create places that generate better economic, social and environmental outcomes for all, now and for future generations. We constantly innovate within the built environment to create precincts that sustain the value of place over the longer term for occupants and owners alike. We compete for capital to invest in these precincts and we must keep the precincts attractive to our occupants to sustain an ongoing return on our investments.

Lendlease's approach to the value of place seeks to provide benefits beyond better amenity which includes improving on energy productivity (rather than consumption), environmental outcomes (e.g. NABERS and carbon neutrality), reliability (security and independence from local back-up systems, diversity and mix of energy sources) and customer experience through simplification and affordability.

We consider the Commission will do the sector and our customers a disservice if it considers energy in isolation from the other services we provide our customers. Yes, energy is an essential service. Yes, there are aspects of these reforms that we welcome because they will weed out rogue operators who are damaging customer experiences and perceptions of the service model. However, some of the proposed measures are too blunt and broadly applied with the potential for unintended consequences for all stakeholders, but ultimately our customers. These risk delivery of the cost effective and valued services we provide our customers, and duplicate many of the arrangements already available to and preferred by our customers.

In sum, while we welcome the intent and some aspects of this reform, we ask that the Commission to consider establishing a class of embedded network service provider (**ENSP**) registration for embedded networks that is more fit-for-purpose, allows for the dynamic adoption of innovation and an incremental regulatory response. This would apply for embedded networks where the ENSP has an ongoing commercial relationship with its customers that links its commercial success and capital returns to the level of ongoing occupancy of the precinct. This may be as a:

- single landlord/owner of a property;
- single property manager appointed by a single landlord/owner of that property; or
- a service provider delivering multiple utility services to customers under an arrangement with the single landlord/owner of that property,

where the landlord/owner has a commercial incentive to attract and retain occupants.

We refer to this as an 'occupancy-at-risk' ENSP.

This would recognise that:

- our incentives to ensure high quality and adaptable energy services are aligned with the interests of our current and prospective customers;
- our customers have countervailing power when negotiating their initial and any subsequent alterations to their occupancy (including electricity supply);
- our customers have existing recourse to contractual measures and dispute resolution processes;
- the market for commercial, retail and residential property leases is highly competitive; and
- occupancy within embedded networks is very common for our customers: they understand and are experienced in negotiating their occupancy within embedded networks.

Structure of this submission

In this submission, we provide:

- important principles for designing a regulatory framework for embedded networks in our circumstances;
- our understanding of, and concerns relating to, the workability of the Commission's proposal on roles and the registration process;
- our proposal for an 'occupancy-at-risk' class of registered ENSP; and
- our feedback on each of the Commission's proposed ENSP and authorised off-market retailer obligations.

We have also provided a confidential attachment that provides examples of the existing contractual rights of our customers that the Commission's reforms would unhelpfully duplicate if applied to an occupancy-at-risk ENSP class of registered ENSP.

2. We need a principled approach to embedded network regulation

As a provider of property and various utility services, we understand why agencies regulate us, and we always seek to comply where regulation does apply. Equally, because this gives us (and our customers) a broader view than just energy services, we find it helpful to reflect on the principles that govern all regulation in Australia. Box 1 below outlines the Council of Australian Governments' (COAG) principles of best practice regulation.

In the present case, these are instructive because we consider that for a subset of proposed new obligations:

- The justification for applying some of the proposed ENSP obligations to occupancy-at-risk ENSPs has not been adequately made.
- The contractual controls and customer remedies already available to our customers have not been adequately accounted for to determine any residual

problem and thus what incremental, rather than duplicative, regulatory solution is needed.

- The competitive effects of these reforms on the energy sector as a whole, have not be adequately considered. Embedded networks are part of the important competitive fringe that helps keep energy prices competitive and service levels responsive to the needs of our customers. We challenge incumbency in retail markets and monopoly network service provision. The Commission's reforms should not damage our ability to play these important roles, and where regulatory intervention is considered necessary, the community cost of strengthening energy incumbent's market power must be identified and considered.

COAG Principles of Best Practice Regulation

The Council of Australian Governments has agreed that all governments will ensure that regulatory processes in their jurisdiction are consistent with the following principles:

1. establishing a case for action before addressing a problem;
2. a range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs assessed;
3. adopting the option that generates the greatest net benefit for the community;
4. in accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that:
 - a. the benefits of the restrictions to the community as a whole outweigh the costs, and
 - b. the objectives of the regulation can only be achieved by restricting competition;
5. providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear;
6. ensuring that regulation remains relevant and effective over time;
7. consulting effectively with affected key stakeholders at all stages of the regulatory cycle; and
8. government action should be effective and proportional to the issue being addressed.

Principles for embedded network regulatory design

In light of the above contextual factors, Living Utilities considers the following simple, but important, principles should inform the Commission's design of the updated regulatory frameworks for embedded networks:

1. avoid regulating where:
 - a. parties' interests are clearly aligned;
 - b. another instrument already affords protections to customers and recourse to dispute resolution; and
 - c. doing so would extend an ENSP's obligations beyond that which would apply to the owners and operators of a building wiring where all the internal meters are on market, even though the distribution network service provider's (**DNSP's**) connection finishes at the property boundary (with no boundary meter);
2. avoid regulatory solutions that:
 - a. restrict competition to retail incumbents and monopoly network service providers by extending the current market arrangements without recognising the emergence of operating models that are adjacent rather than an extension of those current market arrangements;
 - b. stifle DER and multi-service innovation by taking a narrow electricity (or energy) view;
 - c. undermine customers' ability to benefit from economies of scale in retail energy supply and DER resilience; and
 - d. mandate outcomes for legacy sites where no existing problem has been identified;
3. ensure regulatory solutions:
 - a. recognise that, for some customers, the most powerful negotiating position is at the time of negotiating their occupancy;
 - b. enable competent, informed and willing parties to agree alternative arrangements that provide better outcomes for customers, and reflect their specific needs and circumstances; and
 - c. allow service providers to coordinate commercially amongst themselves about how best to manage risk and meet customers' needs.

Living Utilities considers that a successful application of the above principles when designing the regulatory framework for new embedded networks will encourage legacy embedded networks to transition to the new framework by providing clarity and certainty for all parties.

In this submission, we have provided evidence to help the Commission apply these principles, and in some cases alternative regulatory solutions we consider better meet these principles.

3. Workable model for registration, roles and accountabilities

The Commission's draft report provides for the creation of several new roles, including an ENSP. An ENSP would be registered with the Australian Energy Market

Operator (**AEMO**) and be subject to many of the existing regulatory requirements placed on DNSPs.

We consider the Commission's registration for ENSPs must:

- recognise the complexities of the assets, ownership and control arrangements that apply to some embedded networks and have a workable registration process that is robust to complexity, but also capable of simple singular registration where the downstream parties can commercially agree arrangements for accountability and control to discharge the ENSP's obligations; and
- recognise that embedded networks whose interests align with their occupants warrant a dedicated class of ENSP registration that modifies the ENSP's regulatory obligations to a fit-for-purpose set that do not duplicate existing obligations and processes available to customers and recognises the alignment of incentives between landlord/owner and customer.

We consider these matters in the following sections.

3.1 Registration

Situations for embedded network areas and operations

An embedded network can involve:

- one or more parties owning, operating and controlling an asset that supplies customers through child metering arrangements within an embedded network;
- one or more sets of assets supplying a customer; and
- one or more ENSPs relating to each asset, or group of assets.

To deal with this, it is apparent that the Commission has introduced the concept of 'Intermediaries' discussed below.

Unworkable consequences of the intermediary proposal

The Commission's summary obligation in Table A.1 states:

Entities otherwise required to register as an ENSP can be granted an exemption from this requirement if they register an intermediary to act in their place

A person that owns, controls or operates an embedded network would be required to register as an ENSP. Any entity that performs the other functions that are not performed by the ENSP applies to AEMO for an exemption from the requirement to register, and registers as an intermediary. The intermediary will be the registered participant under the Rules, with the intermediary and the applicant being jointly and severally liable for acts, omissions, statements, representations and notices of the intermediary in its capacity as a registered participant under the Rules (emphasis added.)

We read this obligation as a requirement for any person who owns, controls or operates an embedded network (noting that these functions may be performed by different people) to be registered as an ENSP *as well as* (according to the underlined section) any parties performing any of the other embedded network service functions to also to seek AEMO exemption from registration as a DNSP and instead to register as an intermediary. We understand that this is partly to allow for the myriad of different business models in place for embedded networks. Nonetheless, we consider this to be problematic and unnecessary and we have offered a more workable solution below.

Complications

Creating multiples registrations of ENSPs could be problematic and counterproductive to the Commission's objectives because:

- Accountabilities would need to be split between multiple parties – this has consequences for:
 - customers' service experience
 - complexity in dispute resolution
 - monitoring and enforcement by regulatory authorities.
- Registrations (either as a DNSP or as an intermediary) could become more numerous than the value they deliver.

Living Utilities' preference is that there is provision to register a single ENSP for each area so that a customer only has one ENSP, regardless of whether:

- an asset is owned, operated and controlled by separate parties;
- services may be provided by that ENSP or another party; and
- the customer is supplied by one or more assets.

In effect, Living Utilities' preference is that the Commission does not mandate that every person associated in any way with an embedded network register in one form or another, but allow the various parties the option to agree that a single person may instead carry all of the regulatory responsibilities and accountabilities on behalf of the others, as discussed below.

Solutions

Living Utilities considers the arrangements allowing for a single ENSP for each area can be made to work, provided that:

1. the area of an ENSP's registration can be defined broadly enough as part of a registration to pick up multiple assets;
2. the Commission's intermediary arrangements can allow one ENSP, and single AEMO registration requirements, regardless of differences in ownership, operation and control of individual (or groups of) assets; and

3. the parties behind the registration are left to commercially agree necessary matters between them to make this workable¹:
 - a. the party taking on the registration should recognise that it is also taking on the associated risk associated with all of the ENSP's responsibilities, regardless of whether it is physically discharging them itself, and
 - b. parties should still be allowed to make multiple registrations if they cannot agree to having a single party to register for ENSP responsibility.

For the avoidance of doubt, our solution:

- in no way requires anyone to register as an intermediary – a single ENSP can elect to accept all risk (if it can accept/manage that risk commercially); and
- preserves single registration which will deliver better accountability and transparency, and easier monitoring and enforcement.

If the solution above conflicts with the Commission's intent, then this is a material issue. Living Utilities sees there to be significant complexity in implementing arrangements with multiple ENSPs servicing a single customer or asset (or group of assets). This may prevent the Commission achieving its desired outcomes and may require a dedicated consultation on this aspect of the proposal before its report can be finalised.

Further, this may prejudice each ENSP's ability to negotiate effective commercial agreements for accountability, control and remedy with the downstream parties. We are seriously concerned that the regulatory intervention of joint and several liability hanging over all downstream parties will impede our ability to negotiate workable agreements to discharge the accountabilities the Commission seeks to establish.

3.2 Off-market retailer role

The Commission has sought stakeholder views on whether:

- a class of off-market retailer should be included in the NERL and NERR, or
- given the limited proposed differences between the rights and obligations of NEM retailers and off-market retailers, off-market retailers in embedded networks should simply be required to obtain a NEM retailer authorisation.

Living Utilities firmly believes it is preferable to establish a new class of off-market retailer. This will enable current and on-going targeting of fit-for-purpose obligations and exclusions to retailers in embedded networks. Having observed wide-spread regulatory creep in our sector in recent years, we think it is critical to carve out this new class so that future changes in NEM retailer obligations are not applied to off-

¹ In our view, in a multiple-party registration scenario, the parties would still require an underlying commercial agreement to deal with the fact that the law holds each person 'jointly and severally' liable. The single-party registration solution does not change this requirement, but clarifies the party who is answerable to the Australian Energy Regulator.

market retailers as the default regulatory solution without due consideration of the unique costs and benefits of doing so in this segment of the market.

3.3 Establishing an ‘occupancy-at-risk’ class of registered ENSP

Overview of proposed solution

We propose the Commission establish an ‘occupancy-at-risk’ class of ENSP that:

- modifies the suite of ENSP obligations that attach to this type of ENSP by:
 - removing regulation of how the obligation to connect or augment applies and is priced, whilst retaining the obligation to do so;
 - removing any duplicative dispute resolution processes where dispute resolution processes already exist²; and
 - removing outage notification obligations where an ENSP’s defined area has reliability resilience infrastructure and processes;
- would be administered in the AEMO registration process through the evidence step already contemplated in the Commission’s draft report.

What measures should apply to all ENSPs

Living Utilities agrees that there are certain safety-net rights that grid-connected energy consumers should receive regardless of how they are supplied, given that it is an essential service. Establishing a new uniform minimum standard of supply for embedded network customers will support the future stability of this important segment of the energy market.

Of the Commission’s proposed regime, we support having non-negotiable obligations for:

- life support customers;
- nominated retailer of last resort arrangements;
- having an obligation to offer to connect or augment [on reasonable terms];
- de-energisation protections;
- publishing variations to off-market standing offers on the provider’s website;
- standardised NEM metering infrastructure, reading and testing requirements;
- obligations for market interface and NMI registrations;
- access to data; and
- clarity of treatment for churning child meters (e.g. for distribution loss factors and network tariff determination and recovery).

² and, for small customers, where free, independent dispute resolution is already available

What makes occupancy-at-risk ENSP's a unique class for regulatory purposes

While establishing safety net obligations is important, regulating how some of these are delivered may be unnecessary. This is especially so where customers have countervailing power, and incentives are therefore aligned between the ENSP and customer on an enduring basis. This will be the case where the ENSP is also the landlord/owner of the property in which all off-market customers are located, or where its commercial service agreements align its incentives with the occupants' interests.

We operate in a competitive landscape. As the creator of the best places, we work hard to ensure that we fill those places with the best occupants to sustain ongoing returns on our investments. Our customers judge us on a number of aspects, and use a range of reference points in their assessment. Customers can use for their assessments independent, audited, industry-standard rating tools, such as:

- Property Council of Australia, in their Guide to Office Building Quality 2012, classifies office buildings according to criteria which influence a building's ability to attract occupants and sustain rental performance, for example Premium or A-Grade.
- The Green Building Council of Australia provides a 'Green Star' rating assessed against nine impact categories including management, indoor environment quality, energy and water use, emissions and innovation.
- The National Australian Built Environment Rating System is used to measure a building's energy efficiency, carbon emissions as well as water consumed and waste produced of office buildings, shopping centres, apartment buildings and hotels.

Our incentives to ensure high quality and adaptable energy services are aligned with the interests of our current and prospective customers. The ENSP regulatory framework should recognise that where Lendlease, as an embedded network owner, has an ongoing commercial relationship (and thus dependence on its customers) there is countervailing customer power, such that Lendlease will continually seek to deliver customer value.

Fit-for-purpose regulation should recognise that Lendlease's long-term investment in each 'Place' means it wants to retain and grow its customers, and that it therefore has a strong interest and incentive to continually improve service outcomes.

Our customers have countervailing power when negotiating terms of their occupancy. The markets for leased commercial and retail spaces and retirement living are highly competitive. In all instances, our customers are sophisticated and informed buyers, and our retirement living tenants also have extended cooling off periods (e.g. 6 months) that reinforce their power. Our customers competently negotiate multi-faceted agreements that commonly include provisions that already address many of the obligations and processes the Commission has sought to introduce in its draft report.

Our occupants are informed and sophisticated buyers. They routinely engage specialist engineering, energy, sustainability and legal advisors to complete their due diligence on our negotiated occupancy agreements. This makes it unnecessary to mandate disclosure requirements at the time of the negotiation, and indeed it is unlikely that legalistic mandated disclosures would be too simplistic for this ENSP segment.³

Our customers have existing recourse to contractual measures. The terms our commercial customers negotiate with us commonly include, among other things, the arrangements for:

- rights to energy connection augmentations and cost recovery arrangements,
- dispute resolution,
- outage management and notifications, and
- rental abatement for failure to meet agreed service standards.

Confidential Appendix B provides the Commission with examples of these provisions. Our residential customers have existing recourse to dispute processes. In each state in which we operate, there are dedicated tenant dispute regimes that involve support services, mediation and escalation to the local civil and administrative tribunal. There are also dedicated dispute resolution arrangements in state retirement village legislation. Appendix B illustrates these.

Energy is often not the single point of negotiation and commercial transaction between these parties. Our customers, in assessing our properties, will consider the total cost of their occupancy. Rent, management and maintenance fees, and outgoings, will be of particular concern to them. In commercial towers, for example, apportionment of base building electricity costs will be significantly more important than their sub-metered electricity charges for their tenancy. Physical location, opening hours, availability of car parking or access to end-of-trip facilities may be more essential to their business and their employees. Likewise, the service level resilience and sustainability will also be valued and weighed up in the negotiations.

In considering the total cost of their occupancy, a customer will negotiate hard for those things that matter to their business and will be prepared to concede the provision of services that are not. The Commission should not force an occupancy-at-risk ENSP to provide services that a customer does not need or value and prevent them from being able to trade off those services for something that they value more.

What obligations should not apply to the registered occupancy-at-risk ENSP class

Connection regulations | Equivalent connection and augmentation rights, terms and processes (including for cost recovery) are already provided for in our agreements, and often in strata and bylaws. These should not be duplicated or superseded in any way by the Commission's changes.

³ It is quite common, given the prevalence of embedded networks, for our customers to have been occupants within embedded networks previously

As landlords/owners and managers of commercial, retail and residential property, we have strong incentives to ensure our customers are connected and can augment their supplies where needed as quickly as possible. For example, we regularly augment supply where a commercial tenant with a different type of business that is more energy intensive moves into an embedded network occupancy that was originally designed for a lower or standard energy use customer. However, this is usually done in the context of an entire tenancy fit out, where the power supply is an essential but marginal factor in the program of work to be completed.

Dispute resolution | In commercial tenancies, our lease agreements already include sophisticated and often highly bespoke dispute resolution arrangement agreed between informed, and consenting parties reflecting industry standards. It is unnecessary to impose dedicated energy dispute resolution arrangements on top of, or as an alternative, to these.

All our residential tenants have access to dispute resolution through state-based legislation and some of our customers may also have access to ombudsman schemes that apply to other aspects of our relationship.

Planned outage notification | Providing more reliable energy solutions than traditional direct grid-connection is our core businesses. We install back-up supplies for our precincts and for certain tenants that operate automatically for planned or unplanned outages. This makes notification of planned outages redundant, and potentially confusing.

How registration could work

Establishing an occupancy-at-risk ENSP class of registered ENSP will provide the benefits of:

- ensuring obligations remain fit-for-purpose and adhere to the principles we identify above
- making it easier to achieve a workable transition for legacy embedded networks to this new regime.

The AEMC has recommended that:

A Network Service Provider wishing to classify a distribution system as an embedded network must apply to do so [...] by submitting a notice to AEMO in the form prescribed for this purpose by AEMO. The Network Service Provider must in its application:

- 1. provide sufficient evidence to satisfy AEMO that the distribution system is appropriately classified as an embedded network;*
- 2. include a description of the embedded network area for the embedded network, including information reasonably required by AEMO for this purpose; and*
- 3. nominate a retailer to be the local embedded network retailer for the embedded network for the purposes of the NERL and include evidence satisfactory to AEMO that the retailer has consented to the nomination.*

We propose the notice and evidence could provide for the registering ENSP to:



- nominate the class of ENSP as either standard or occupancy-at-risk, and
- provide evidence of how it qualifies for this class.

This registration process should remain administrative and evidence-based, with the ability for AEMO to specify the form it wants the evidence in to keep the process simple to administer and comply with, and predictable for registering parties.

Other than applicable state-based instruments that provide for dispute resolution, much of this evidence rests in confidential contracts. Accordingly, we have provided certain illustrative extracts in confidential Appendix B. We would be happy to meet with the Commission to further discuss the evidence requirement to ensure the regulatory burden of administering registration remains low and the outcome for applicants remains predictable.

Living Utilities would be more than willing to discuss the matters raised with the AEMC at your convenience. Please contact Frazer Hill on 0402 088 880 or frazer.hill@lendlease.com for further details.

Yours sincerely,


 **Scott Taylor**
Head of Living Utilities
Lendlease

Appendix A. Feedback on each of the Commission's proposed ENSP and authorised off-market retailer obligations

In the table below, Living Utilities sets out:

- which obligations and regulatory processes we consider require modification to apply
- which obligations and regulatory processes have sufficient flexibility in how the AEMC is proposing to apply them, and our understanding of this flexibility, and
- which obligations should be varied for the occupancy-at-risk class of registered ENSP.

Issue	LU response	Nature of obligation	Rationale
Registration and exemption			
Roles and responsibilities	Accept	Non-negotiable	Subject to below, we recognise the ENSP role and responsibilities as fundamental part of new regulatory framework for embedded networks
Network registration and exemption	Accept, subject to: <ul style="list-style-type: none">• single registration clarifications• occupancy-at-risk ENSP class being established	Single registration effectively achieves workable exemption for some parties Class of ENSP achieves fit-for-purpose obligations	Needed to give effect to obligations we agree are helpful to customer experience Enable registration of single entity for ENSP function within an embedded network area, despite asset configuration or ownership, operation and control of assets Living Utilities supports this registration reform subject to the occupancy-at-risk class of ENSP registration being established with fit-for-purpose obligations.
Retail authorisation and exemption	Accept	Non-negotiable	Needed to give effect to obligations we agree are helpful to customer experience

Issue	LU response	Nature of obligation	Rationale
Market and system integration			
Metering - churn	Accept obligation Modify rules to recognise embedded network devices	Churn is commercially negotiable (e.g. off market through 'churn agreements') EN devices may be retained	ENSP can negotiate retention of existing meters when customer churns. Rules should require new meters to continue to be able to provide existing capability and functionality to support service provision, or require retention of embedded network devices where the meters are needed to support other embedded network services.
Metering – other ch 7 obligations	Accept	Non-negotiable	Improves embedded network customer service outcomes to universally adopt NEM metering roles and reading, testing and inspection standards.
Market interface – new ENs	Accept	ENSP can still subcontract functions (whilst retaining accountability)	ENSP is picking up DNSP equivalent market interface functions
Market interface – legacy and new exempt ENs	Accept	Non-negotiable	Embedded network manager (ENM) retains role in providing market interface functions
Access to data	Accept	Non-negotiable	While data access is important, the rules must clarify that NMI standing data should be available to both the ENSP and the off-market retailer

Issue	LU response	Nature of obligation	Rationale
B2B framework	Accept	Non-negotiable	Avoids retailers mandating alternative methods for communication that are not aligned with the standard proposed, resulting in ENSPs incurring the cost. Should always apply AEMO standard
Distribution loss factors (DLFs)	Accept	Non-negotiable	Implement AER's current standard DLFs as default. Applicable network tariff will already have an applicable DLF calculated by the network. This serves the purposes of settlement at the parent meter. Subsequent on-market child meters should then have the DNSP assigned DLF applicable to their tariff class.
Network billing			
Credit support	Modify	Non-negotiable to bear risk that DNSPs wouldn't	A DNSP doesn't accept that risk, and may drive perverse behaviour by retailers. AEMC should consult on cost effective ways to implement credit support (e.g. a pooled support fund that NEM retailers finance, or AEMO intermediary, or right for ENSP's to insist on it from NEM retailers).
New ENs	Modify	Provide ability to nominate alternative billing party to recover charges from retailers directly Ability for ENSP to assign network tariff	Subject to credit support point, market can solve intermediaries if needed e.g. ENSPs already source billing solutions. If multiple tariffs are available in a given tariff class by an DNSP, the ENSP able to choose which tariff and for this tariff to be the basis of the transaction between the ENSP and the retailer. This is to allow an ENSP to elect a tariff: <ul style="list-style-type: none"> • an ENSP may not be able to bill a time-of-use tariff • more importantly, an ENSP may want to provide a price signal to customers through a time-of-use tariff that preserves the underlying value proposition for the remaining off-market customers
Legacy ENs	Modify	As above	No need to differentiate for new or legacy ENs on this matter.

Issue	LU response	Nature of obligation	Rationale
Connection services			
Obligation to connect	Accept	Non-negotiable	Although not commercially necessary we appreciate this may be sought as a key safety net Obligation should be limited to specific location in ENSP's registration.
Connection policy	Modify	Exemption where already available and can be demonstrated as such during the occupancy-at-risk ENSP registration	Equivalent connection policy terms already provided for in lease and occupancy agreements, strata and bylaws, or other matters on title.
Connection charge	Modify	Exemption where already available and can be demonstrated as such during the occupancy-at-risk ENSP registration	Equivalent connection policy terms already provided for in lease agreements, strata and bylaws, or other matters on title
Dispute resolution	Modify	Exemption where dispute resolution is already available and can be demonstrated as such during the occupancy-at-risk	Don't create duplication, confusion or forum shopping for dispute resolution (tenancies tribunal, V/N/QCAT), or to trump bylaws of a property In land-lord tenant model (e.g. in shopping centres or retirement villages), the countervailing power of tenants, including those seeking modification is sufficient to provide incentive for reasonable resolution in processes already contractually available and supported by existing residential tenant dispute resolution bodies.

Issue	LU response	Nature of obligation	Rationale
		class of ENSP registration	
NUoS charging – external network charges – off-market	Accept	Retains currently flexibility	No stipulation of how off-market retailers should pass on external network charges to off-market retailer customers in embedded network is appropriate
NUoS charging – external network charges – on-market	Accept	Non-negotiable	Charge shadow network tariff that a customer would have been charged by DNSP if customer had been directly connected to the DNSP's network
NUoS charging – internal network charge	Accept	LU can negotiate	Not recoverable through additional network charge as of right, but can negotiate to recovery by agreement
Consumer protections in the NERL and NERR			
NERL and NERR amendments (designated retailers, shared customers, tripartite relationship)	Accept		These are essentially just facilitating amendments to be able to give effect to the items below. In which case Living Utilities supports them, subject to the occupancy-at-risk class of ENSP registration being established with fit-for-purpose obligations.

Issue	LU response	Nature of obligation	Rationale
Planned interruptions	Modify	Provision for demonstrated exemption if ENSP areas has resilience infrastructure or services	<p>Many of our sites have back-up infrastructure which operates automatically in a planned or unplanned outage. This means there will be no need to bother the ENSP's customers at all, so a hard requirement to provide notice within 24 hours becomes unnecessary (and unhelpful).</p> <p>If this obligation is retained, the notification requirements on the DNSP to the ENSP must be fit for purpose (e.g. a card drop at the ENSP's address is not sufficient).</p>
Life support	Accept	Non-negotiable	Amendment would align life support rules for customers in embedded network with those for standard supply customers
RoLR	Modify to credible alternative	Non-negotiable once rule is modified	<p>The way ROLR is applied should do nothing that limits an ENSP's/OMR's ability to access the whole retail market for supply at the parent connection point. Currently, this could inadvertently limit this to only NEM retailers who can service small customers.</p> <p>An alternative needs to be thought through. For example, ability to nominate the ROLR retailer as a party other than the NEM retailer at the parent meter. This could include ability for that to be another off-market retailer.</p>
De-energisation	Accept	Non-negotiable	Not likely to be necessary as not likely ever to eventuate, and adequately dealt with in the lease agreements.
Pre-paid meters	Accept	Non-negotiable	Accept pre-paid meters are not appropriate.
Variations to standing offer prices	Accept	Non-negotiable	Requiring OMR to publish variations to standing offer prices on website (but not in newspaper) is reasonable.

Appendix B. Confidential contractual provisions

The following sets out examples of:

- relevant instruments that already provide a number of our customers certain rights for matters contemplated by the Commission
- contractual provisions that provide our customers existing recourse to contractual measures for matters contemplated by the Commission
- contractual provisions that show the remedies available to our occupants if we fail in our service commitments.

Where possible, we have provided examples as they relate to commercial, retail and retirement living residential. These are organised to correspond to the obligations we propose be exempt under the occupancy-at-risk ENSP class.

We would be pleased to provide further examples of these provisions to the Commission; however, a purpose of this annexure is to highlight that the relationship between landlord/owner and occupant is much more extensive than merely energy seller and energy buyer.

Commercial

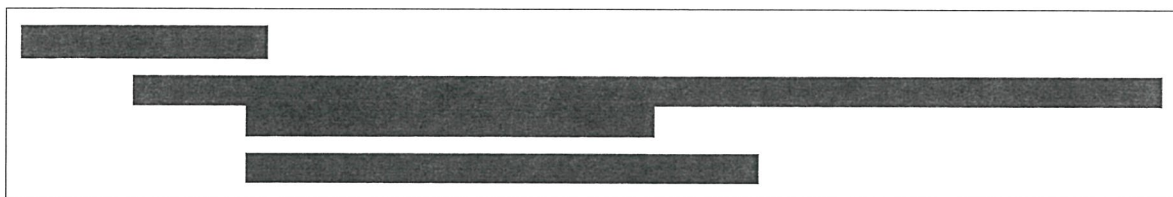
To illustrate the countervailing power of our customers, many leases include 'Incentives' negotiated by and paid to the customer in order to secure their occupancy. See, for example, the definition of Incentive in a typical lease:

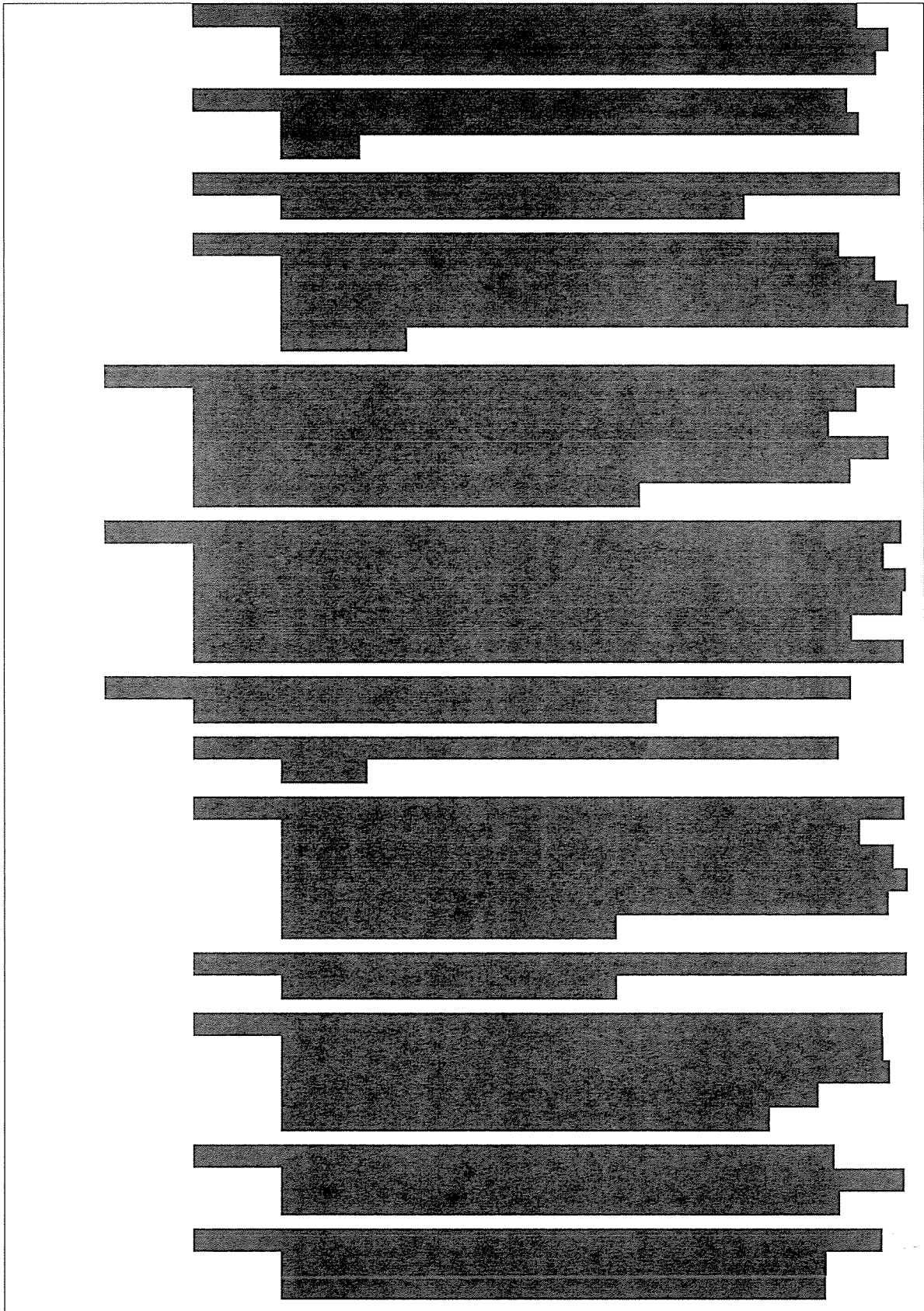
Incentive

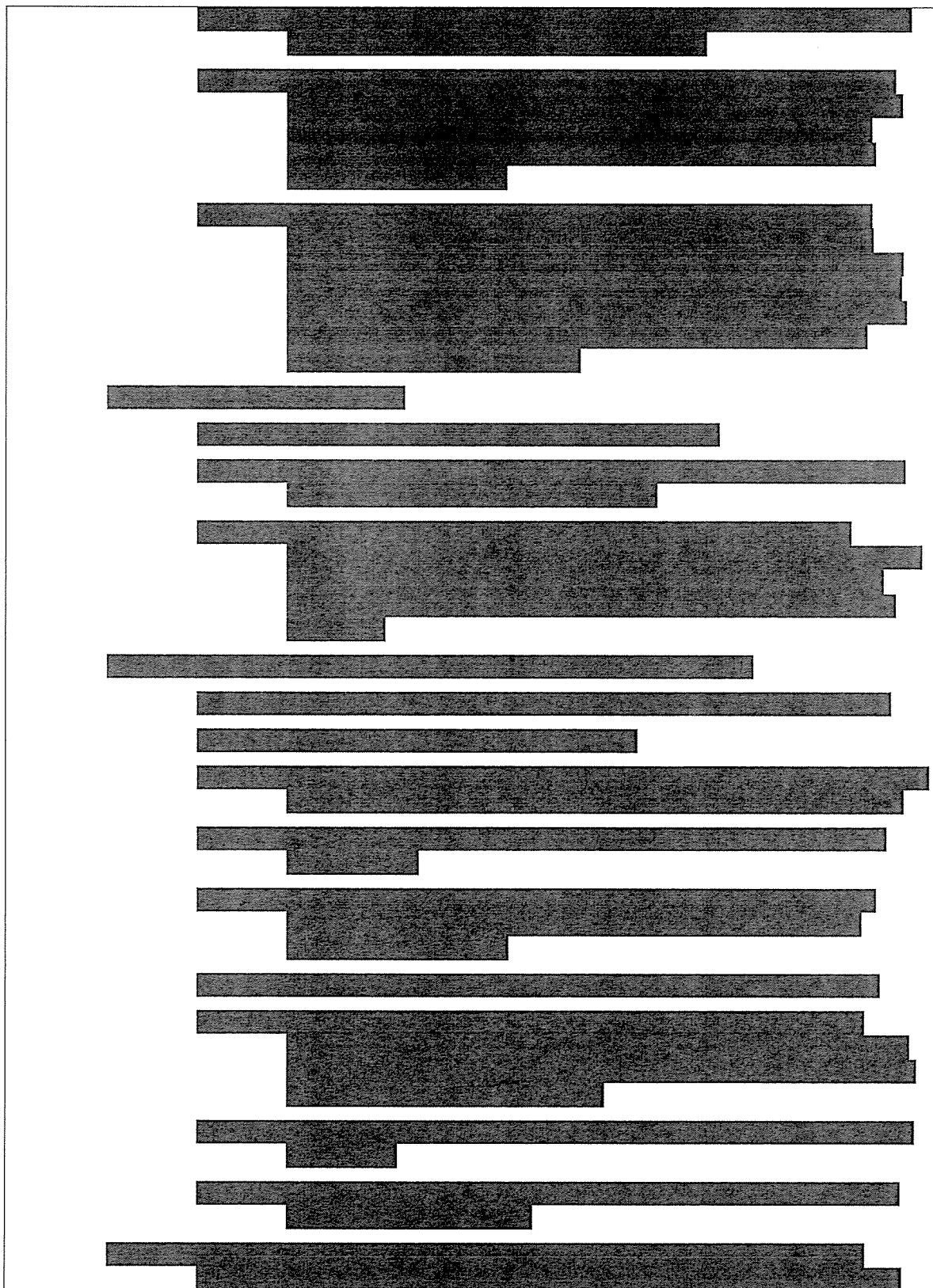


[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

Rights for energy connection, augmentation and cost recovery arrangements |

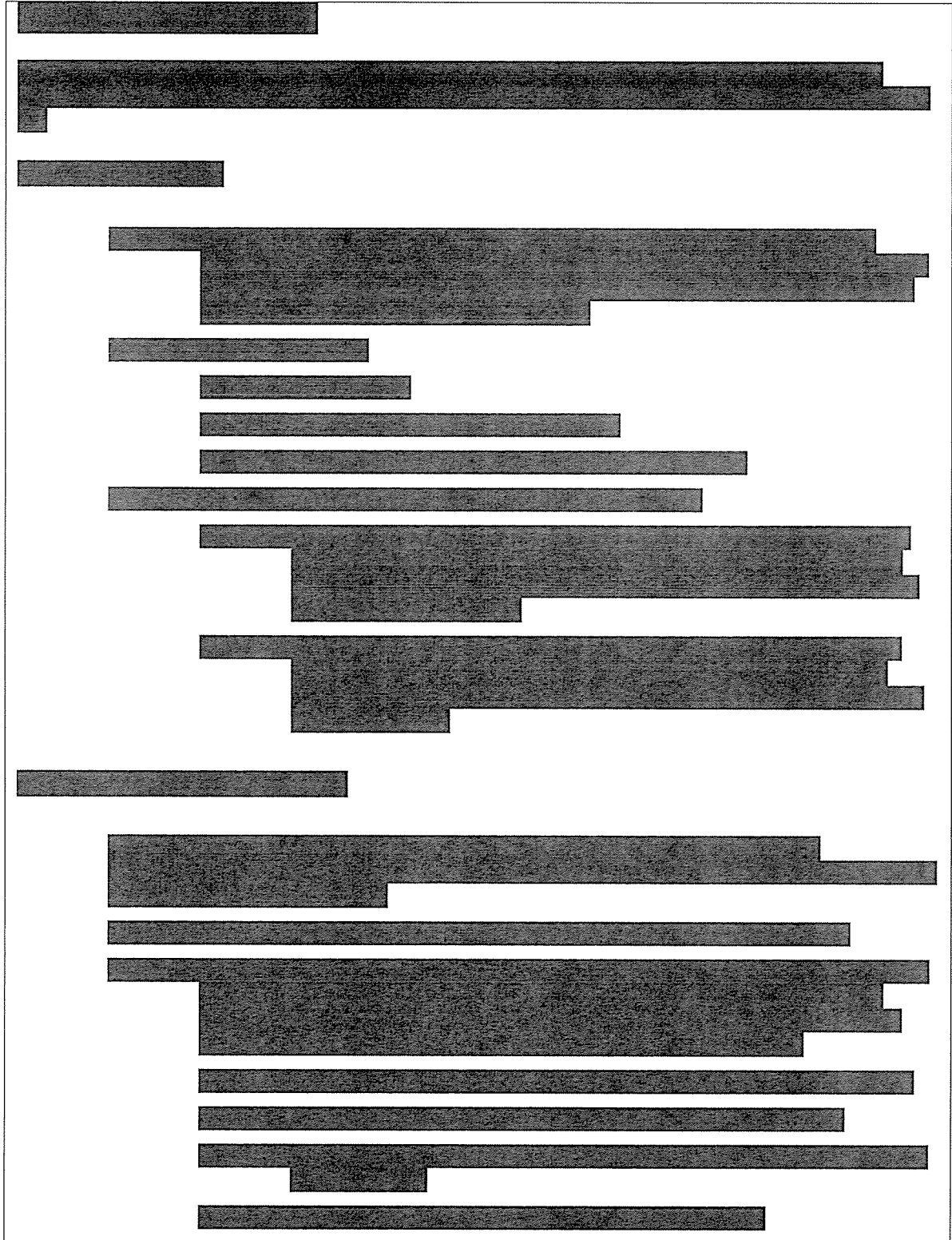






[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

Access to dispute resolution |



[REDACTED]

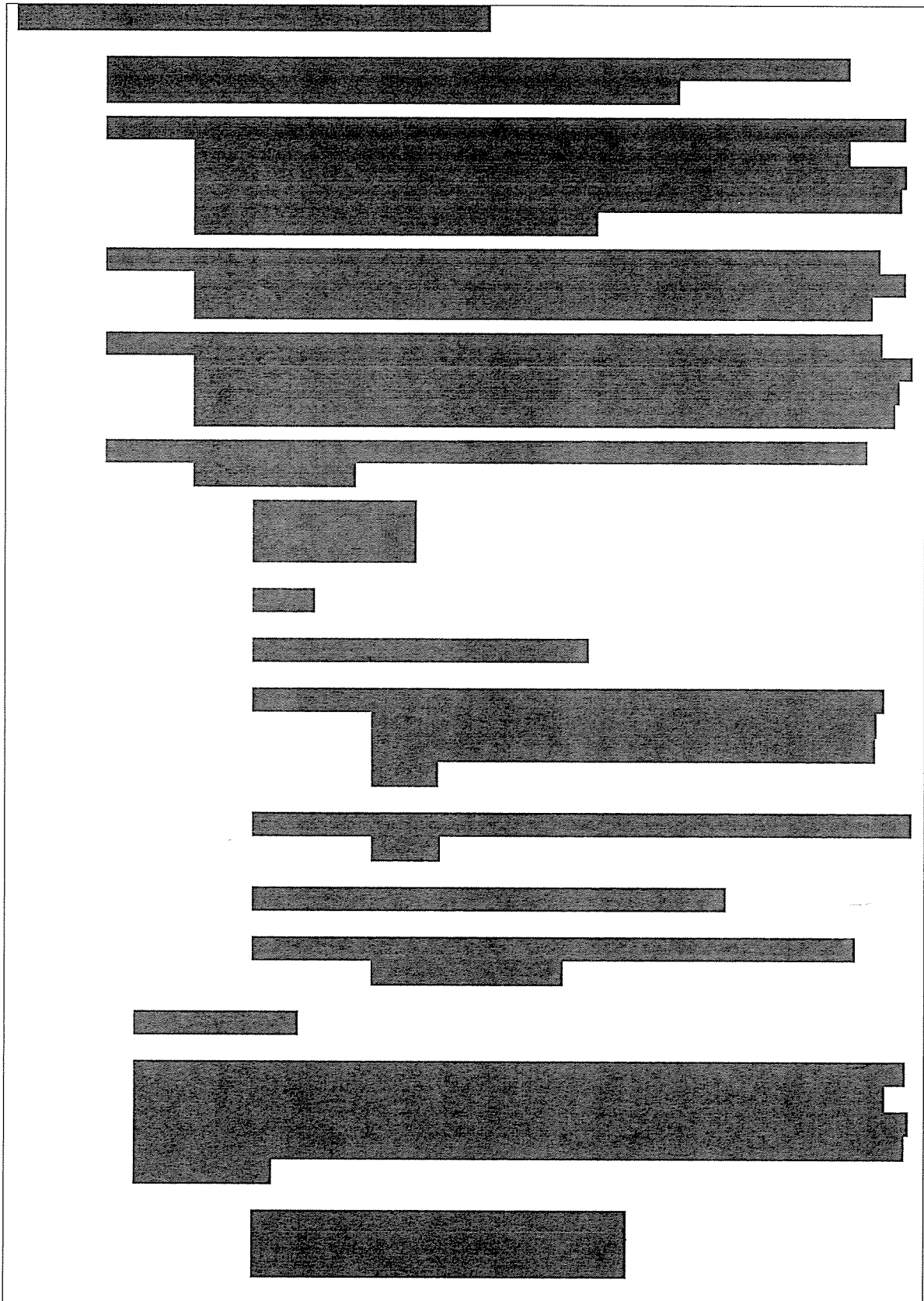
[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

Outage management and notification |

See the extract below [REDACTED]

[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

Rental abatement for failure to meet agreed service standards |



[Redacted text block]

[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

Retail

Most states have a ‘Retail Leases Act’ of some form. In New South Wales, it is the *Retail Leases Act 1994* (NSW). To illustrate the obligations and rights we suggest be exempt, the following are relevant:

- Section 7 provides that the Act “operates despite the provisions of a lease. A provision of a lease is void to the extent that the provision is inconsistent with a provision of this Act. A provision of any agreement or arrangement between the parties to a lease is void to the extent that the provision would be void if it were in the lease”
- Section 11 of Part 2 requires the Lessor to provide a disclosure statement
- Section 13 of Part 2 requires as follows:

RETAIL LEASES ACT 1994 - SECT 13

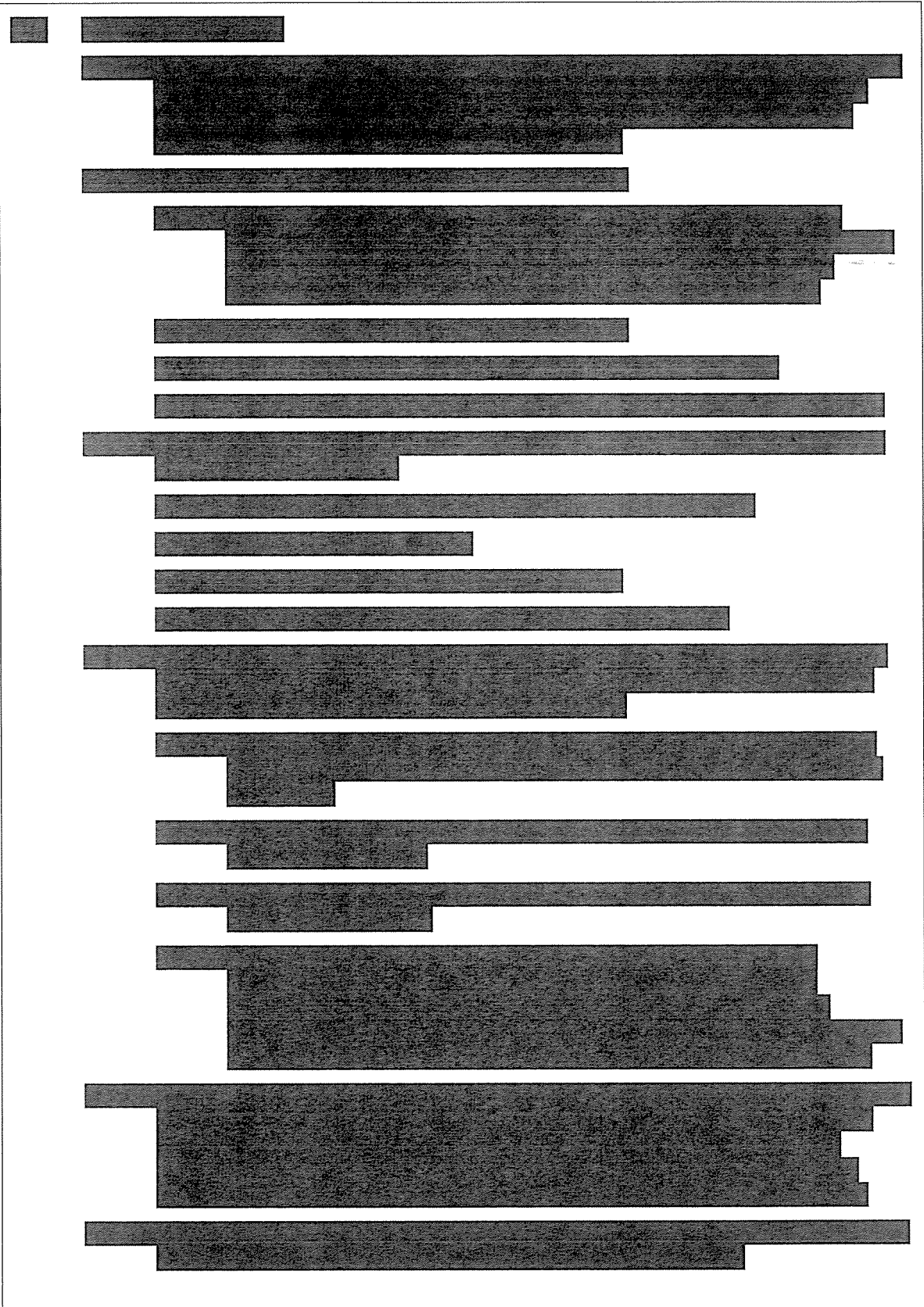
Costs before fit-out

13 COSTS BEFORE FIT-OUT

- (1) This section applies if a lessee of a retail shop is liable to pay an amount for, or associated with, any works carried out by or on behalf of the lessor (before or after the lease is entered into) to enable the proposed fit-out of the shop by the lessee.
- (2) The maximum amount of the costs of the works, or a basis or formula with respect to those costs, is to be agreed in writing by the lessor and lessee before the lease is entered into.
- (3) The lessee is not liable to pay an amount in respect of the works that is more than the agreed maximum amount.

- Part 8 deals with Dispute Resolution

Rights for energy connection, augmentation and cost recovery arrangements |



[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

Access to dispute resolution |

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Retail Legislation means the *Retail Leases Act 1994* (NSW).

Most states have a 'Retirement Villages Act' of some form. In Queensland, it is the *Retirement Villages Act 1999* (Qld). To illustrate the obligations and rights we suggest be exempt, the following are relevant:

- Division 3 of Part 5 relates to Capital Improvements and s90D(1) allows a resident to give the scheme operator a written request for a capital improvement and s90D(3) requires the scheme operator to then do certain things.
- Division 2 of Part 7 provides for the residents to make, change or revoke by-laws.
- Part 9 deals with Dispute Resolution
- the Act also requires a 14-day cooling off period.

[Confidential information has been omitted for the purposes of section 24 of the Australian Energy Market Commission Establishment Act 2004 (SA) and [sections 31 and 108 of the National Electricity Law/sections 71 and 319 of the National Gas Law/sections 223 and 268 of the National Energy Retail Law]]

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