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17 October 2017



Dear Ms Pearson,

RE: RPR0006 – AEMC Draft Report on the Review of Regulatory Arrangements for Embedded Networks

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of advice on the supply of essential services including electricity. SACOSS and the signatories thank the AEMC for the opportunity to make a submission on its Draft Report on the Review of Regulatory Arrangements for Embedded Networks, 12 September 2017 (the Draft Report). SACOSS and the signatories also thank the AEMC for the opportunity of extended consultation provided through the Public Forum which SACOSS attended, and also through meetings with AEMC staff.

SACOSS research shows that the cost and supply of basic necessities like electricity have significant and disproportionately greater impacts on vulnerable people. SACOSS' advocacy is informed by our members and direct consultations with consumers and other consumer organisations: organisations and individuals who witness and experience these impacts in our community.

This joint submission builds on SACOSS' joint submission to the AEMC on the Regulatory Review of Embedded Networks, dated 22 May 2017¹ (the Joint Submission), and SACOSS' 2015 Research Report, *The Retail and Network Exemption Framework: Emerging Issues for Consumers*² (the Research Report).

Overview

SACOSS and the signatories agree with the AEMC's view, expressed in the Draft Report, that the current exemption framework is no longer fit for purpose, and support a new regulatory approach.

Broadly, SACOSS and the signatories support the AEMC's intention to improve access to retail market competition and provide appropriate consumer protections for customers in embedded networks through the achievement of the three objectives outlined in the Draft Report³:

¹ SACOSS, St Vincent de Paul Society Victoria, Ethnic Communities' Council of NSW Inc. and Consumer Action Law Centre, Submission on the AEMC's review of regulatory arrangements for embedded networks, 22 May 2017
<https://www.sacoss.org.au/submission-australian-energy-market-commission-review-regulatory-arrangements-embedded-networks>

² <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

- Improving access to retail market competition in legacy embedded networks to the extent possible.
- Elevating embedded networks into the national regulatory and competitive market framework under the NER and NERR, reserving network service provider and selling exemptions for a narrow set of circumstances.
- Ensuring better consumer protections for new and legacy embedded networks, and making the NERL and the NERR effective for embedded network customers supplied by an authorised retailer.

SACOSS and the signatories are mindful of the scale and complexity of the legislative and other changes required to implement the proposed new framework,⁴ and estimate that this process will take (at the very least) two years. SACOSS and the signatories are also very conscious of the rapidly expanding number of embedded networks in the NEM⁵, and are concerned that there may be an incentive for entities to seek exemption in the lead up to the implementation of the new framework.⁶

Against this background, SACOSS and the signatories confirm that their primary focus is the direct protection of small customers, particularly vulnerable customers, and submit that it is important to consider what transitional measures can be taken to expeditiously enhance consumer protections and access to competition for customers of embedded networks in the interim period. SACOSS and the signatories support interim measures that will, to the greatest extent possible, replicate the AEMC's significant proposed reform of the existing two-tiered framework, and therefore smooth the pathway for the AER and embedded network operators and on-sellers to transition to a process of authorisation and registration.

SACOSS and the signatories' submission does not attempt to address all the possible legal complexities and other associated impacts⁷ of the AEMC's proposed framework; rather SACOSS and the signatories' submission focuses on more immediate actions which can be taken by the AEMC and the AER without the need for extensive law and rule changes.

Further, SACOSS and the signatories submit that the changes required to achieve the AEMC's third objective⁸ as outlined in Chapter 9 of the Draft Report, should be actioned by the AEMC separately to the more fundamental reforms elevating embedded networks and on-sellers into the authorisation and registration framework. The gaps in the existing framework affect all current embedded network customers (who would become legacy embedded network customers under the new framework) and will affect all new exempt embedded network customers as outlined in chapter 9 of the Draft Report. Some of these customers are amongst the most vulnerable in our community⁹ and ensuring they have access to equivalent consumer protections is of great importance. SACOSS and the signatories submit that these changes should be separately pursued by the AEMC and not linked to the success or otherwise of the approval and implementation of the broader reforms to the two-tiered regulatory framework.

³ AEMC, Draft Report, Review of Regulatory Arrangements for embedded networks, 12 September 2017 piii

⁴ Process will involve: AEMC Final Report, COAG Review, COAG recommendations to AEMC, Rule change consultation process for both NERL and NER, Law changes in SA Parliament, implementation plan (expected to be **at least** 6 months for establishing systems and processes).

⁵ AEMC, 2017 Retail Energy Competition Review, 25 July 2017, pp 160-161

⁶ Given that entities exempted prior to the implementation of the AEMC's proposed framework would attract legacy exempt embedded network status and would therefore not be subject to the regulatory obligations imposed under the authorisation and registration framework.

⁷ For example how the interplay between jurisdictional tenancy legislation in Queensland and requirements under the national authorisation and registration framework would be addressed.

⁸ To ensure better consumer protections for new and legacy embedded networks, and making the NERL and the NERR effective for embedded network customers supplied by an authorised retailer.

⁹ For example residents of caravan and residential parks as discussed in SACOSS' Report on The Retail and Network Exemption Framework: Emerging Issues for Consumers, December 2015

In summary, SACOSS and the signatories make submissions and recommendations on the following issues, noting that this is not an exhaustive list of the issues raised by the Draft Report:

- [Recommendations for implementing transitional arrangements prior to the introduction of the proposed framework](#)
- [Flexibility and the proposed authorisation and registration arrangements](#)
- [Authorised on-selling retailer versus site specific exemptions](#)
- [Authorisation and registration of third parties under the proposed framework](#)
 - [Case Study - Flow Systems Pty Ltd](#)
- [Brownfield conversions](#)
- [Minimum obligations under the NERL and NERR to be placed on authorised retailers under the new framework](#)
- [Protections for legacy and new embedded network customers](#)
- [Priority issues for residential and caravan park customers](#)
- [Demonstration of consumer benefits](#)
- [Metering and Embedded Network Managers](#)
- [Interaction with other legislation](#)
- [Proposed meeting](#)

Recommendations for transitional arrangements

Overview

SACOSS and the signatories note that the elevation of embedded network service providers and on-sellers into the registration and authorisation framework would ensure the protections afforded to customers of those entities will better align with standard supply customers. However, in light of the significant re-write of the NEL, NER, NERL and NERR required to enact the AEMC's proposals contained in the Draft Report, the interim period may be many years. SACOSS and the signatories submit the AEMC and the AER consider implementing transitional measures in the period prior to the introduction of the proposed new authorisation / registration framework for exempt networks and on-sellers. Specifically, SACOSS and the signatories submit the AEMC and the AER consider using the AER's current functions and powers to put in place the following interim measures to protect those customers:

- the establishment of a new interim registerable class of exemption for 'large scale exempt sellers and large scale exempt network operators'
- the development of an interim reporting framework to enable increased monitoring and compliance of embedded network service providers and exempt on-sellers
- investigation of the ongoing relevance of the 'deemed' category of exemption
- ensuring access to Ombudsmen Schemes for customers of embedded networks¹⁰
- ensuring entities applying for retail or network exemption in the interim period, be granted exemption on the condition that their exempt status is reviewed once the new regulatory framework is in place.

SACOSS and the signatories refer the AEMC to the previous Joint Submission made by SACOSS and other signatories in May 2017. In that Joint Submission, 22 Recommendations to the AEMC were made in response to the questions posed in the consultation paper.¹¹ Recommendations 1, 3 and 9 are repeated in the interim measures referred to above. In summary, Recommendation 1 in the Joint Submission proposed the AEMC and the AER investigate establishing a new category of exemption for 'large scale exempt sellers',

¹⁰ AER and Ombudsmen are currently working on this and SACOSS submits it should continue to be a priority focus for the AEMC, AER, State Governments and ANZEWON

¹¹ SACOSS, St Vincent de Paul Society Victoria, Ethnic Communities' Council of NSW Inc. and Consumer Action Law Centre, Submission on the AEMC's review of regulatory arrangements for embedded networks, 22 May 2017 <https://www.sacoss.org.au/submission-australian-energy-market-commission-review-regulatory-arrangements-embedded-networks>

Recommendation 3 proposed increased monitoring and compliance measures be implemented by the AER and Recommendation 9 suggested a review of the deemed category. Recommendations were also made in relation to brownfield conversions, which are dealt with separately in this submission (see the section on Brownfield Conversions, below).

SACOSS and the signatories submit that recommendations 1, 3 and 9 from the Joint Submission (May 2017) can, to a large extent, be actioned by the AER within its current powers, and do not require substantive law or rule changes. SACOSS and the signatories' suggested interim measures are outlined in more detail below.

New interim registrable class of 'large scale exempt seller' and 'large scale exempt network operator' (Recommendation 1)

SACOSS and the signatories submit that prior to the implementation of the proposed reforms, the AEMC (together with the AER) establish a new interim 'large scale exempt seller and exempt network operator' registrable class 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, effectively mirroring the requirements under the proposed authorisation and registration framework. SACOSS and the signatories note that this group might also be categorised as a special sub-class of the individual exemptions category given that the three current categories are set out in the NERL and flow through to the NERR and the AER's Guidelines.¹²

This approach is in line with the AEMC's recommendation to elevate embedded networks and on-sellers into the registration and authorisation framework, thereby ensuring that they are subject to the same sub-set of obligations as an authorised retailer or registered network under the new framework. Importantly, the customers of embedded networks would then attract the same protections afforded to standard supply customers. The underlying principle is that the large scale exempt seller or exempt network operator 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 consumer protection conditions attached to this class (or sub-class) of embedded network on-seller or network operator can be more closely linked to the proposed requirements for the proposed retail authorisations or network registrations, albeit these requirements are still linked to a site rather than a specific provider. This new class (or sub-class) would provide mandatory conditions that replicate the supply contract minimum terms, customer protection and performance reporting obligations that apply to current authorised retailers,¹³ bringing large scale exempt sellers and large scale exempt network operators in line with the minimum set of proposed obligations embedded network operators and on-sellers would be subject to once registered and authorised under the new framework.

There would also be a requirement for ongoing transparency and accessibility of key compliance requirements, such as requiring the exempt sellers publish a hardship policy and dispute resolution process on their web-site (or equivalent publicly accessible place). The AER would still retain the authority to vary these conditions or add to them if individual circumstances warranted such a change.

The new interim registrable class of 'large scale exempt seller and large scale exempt network operator' could require:¹⁴

¹² NERL, section 110(2). The categories are not set out for the EN network operators under the NEL or NER, but are the basis of the AER's Embedded Network Guideline.

¹³ The NERL requires that retail exemptions are categorised into deemed, registrable and individual classes whereas the NEL does not set out classes of exemptions

¹⁴ SACOSS and the signatories recognise that some of the market contract and standard contract terms would not be relevant, however, the detailed assessment of this is not possible within the current timeframes.

- a market retail contract be provided to exempt customers with terms that are modelled on the minimum requirements for a market retail contract under the NERL and NERR¹⁵
- a standard term contract equivalent could be provided in jurisdictions which explicitly restrict access to retail competition
- the relevant exempt sellers be given an explicit obligation to develop, publish and communicate to all existing and incoming participants a hardship plan that is approved by the AER - this obligation cannot be outsourced to a third party
- the establishment of a performance and compliance monitoring and reporting system across all sites with an obligation for the large scale exempt sellers to provide a publically available report annually (or as determined by the AER) in a format similar to that required by authorised retailers
- large scale exempt sellers to have an obligation to provide further information on request by the AER on compliance with conditions and provide for audits conducted by the AER, similar to the obligations in the NERL for authorised retailers
- large scale exempt sellers to publish formal dispute resolution procedures equivalent to that required by an authorised retailer – this obligation cannot be outsourced to a third party¹⁶
- the disconnection (de-energisation) procedures in Part 6, Division 2 of the NERR to generally apply to exempt sellers and small customers, including disconnection warning notices, protected periods, reminder notices and the like¹⁷
- where allowed, exempt sellers to become members of the jurisdictional ombudsman scheme, this is likely to require a special membership category under the various ombudsman schemes.

Monitoring and Compliance (Recommendation 3)

SACOSS and the signatories submit the AER consider developing an interim reporting framework that provides both the AER and consumers with ongoing information on compliance with conditions by embedded network operators and exempt sellers, including ‘spot’ audits of compliance and public reporting of outcomes. This will also facilitate consumers becoming more aware of their rights and obligations. Associated with this, SACOSS and the signatories encourage the AER to make access to information more transparent on approved exemptions and the conditions attached to those approvals. SACOSS and the signatories do not accept that important policy documents such as hardship policies and dispute resolution processes should be treated as ‘commercial in confidence’ for this new class of embedded network seller or operator. As noted, they should be publicly accessible documents that can be readily viewed by consumers and consumer advocates.

SACOSS and the signatories agree with the AEMC’s recommendation that ‘to facilitate greater transparency of activities within embedded networks to exempt customers, the NERL should specify a role for the AER to monitor embedded network service provider exempt seller behaviour’.¹⁸ However, in the interim period (prior to any amendments to the NERL) the AER should use its current functions and powers to increase reporting and monitoring, in line with SACOSS and the signatories’ recommendation above. If a new class (or sub-class) is established, these reporting requirements can form part of the conditions of exemption.

In terms of the enforcement of conditions by the AER, SACOSS and the signatories agree with the AEMC and the AER that the penalty amounts for infringement should be reviewed. Currently, a breach of a condition

¹⁵ Specifically, NERL, Division 4 s.34 and the corresponding elements in the NERR (e.g. Divisions 2,4,6,7, 8 and 9).

¹⁶ As cited previously, SACOSS and the signatories have noted that in a recent application for exemption, the applicant states that the dispute resolution procedures are provided by the third party service providers. This procedure is not public and it is not clear how the EN consumer or consumer advocate would be aware of the availability, cost and other elements of the process.

¹⁷ The current conditions require only limited notice before disconnection (6 days). This may be appropriate in small EN settings given the cash flow implications of outstanding debt but where large scale embedded networks and sellers are seeking exemptions, then disconnection procedures that apply to authorised retailers are more appropriate.

¹⁸ AEMC, Draft Report, p105

under a retail exemption is a breach of the NERL and attracts a civil penalty.¹⁹ As noted in the Draft Report, the current penalty amount of \$20,000 applies regardless of the size or nature of the exempt seller.²⁰ Further, under the NEL a breach of a condition under a network exemption is not a civil penalty provision.²¹ SACOSS and the signatories support the alignment of enforcement options for network exemption breaches with the enforcement powers for breaches of retail exemption conditions. SACOSS and the signatories understand these amendments may not be possible without Law and Rule changes, but believe the AEMC should look to address this issue in the interim period.

SACOSS and the signatories are also concerned about the issues of safety around ageing infrastructure and connections within embedded networks. SACOSS and the signatories understand that the AEMC is of the view that jurisdictional governments are responsible for the safety of embedded networks, but believe it may be worth investigating whether safety issues together with monitoring and compliance issues could be integrated on some level by the AER and State Governments.

Continuation of the 'deemed' category of exemption (Recommendation 9)

The majority of exemptions provided by the AER fall into the deemed and registrable categories, which are not assessed or approved by the AER.²² SACOSS and the signatories agree with the AEMC that this self-assessment is arguably inconsistent with the NERO.²³ SACOSS and the signatories' previous Joint Submission suggested the AEMC investigate whether there was any benefit in continuing with the 'deemed' category of exemption given that the AER has no way of knowing if, where and how many sites fall within that category. It was submitted that the customer protection obligations may be more effectively captured in other regulatory instruments.

The AEMC's Draft Report considers that the proposed restriction of conditions will be sufficient to deal with any issues and therefore does not recommend any changes to the exemption categories.²⁴ Under the AEMC's proposed framework, exemptions will continue to be allowed for embedded network service providers where registration would be unnecessary or unduly costly (i.e. where consumer protections are unnecessary and only a low level of regulatory oversight is required).²⁵ Similarly, exemptions for exempt on-sellers will be allowed where the cost of authorisation would be high compared to the benefits for consumers and the need for regulatory oversight is low.²⁶

Whilst the AEMC does not recommend any changes to the categories of exemption, it is worth noting that the AEMC has also criticised the effectiveness of the deemed category which it states 'makes it very difficult to obtain accurate information about the number and location of embedded networks and assess whether the operators of those networks are complying with their obligations'.²⁷ The Draft Report further states that 'no information is available about embedded networks operating or selling energy under a deemed exemption, and this lack of information is a significant drawback of the current exemption system'.²⁸

SACOSS and the signatories submit that in the interim period, the AER should review the 'deemed' category of embedded networks, and consider pursuing measures requiring owners or operators of these embedded

¹⁹ NERL, s.112

²⁰ AEMC, Draft Report, p105

²¹ AEMC, Draft Report, p23 – it is worth noting that the AER have the power to revoke an network exemption if a condition is breached, and then s11(2) of the NEL makes it a civil penalty to operate a network that is neither registered nor exempt, so breaches can be captured in this way.

²² AEMC, Draft Report, p23

²³ Ibid, p97

²⁴ Ibid p99

²⁵ AEMC, Draft Report p89

²⁶ Ibid p98

²⁷ Ibid p37

²⁸ Ibid, p15

networks to notify the AER of the location and type of the embedded network, so at the very least, the AER is able to monitor how many deemed embedded networks there are and where they are operating. Alternatively, the deemed category could be removed altogether, and embedded networks that would previously have been deemed could require simple registration with the AER as an exempt entity.

Access to Ombudsman Schemes for embedded network customers

SACOSS and the signatories note that the Draft Report places the responsibility for ensuring access to Ombudsman Schemes with the AER, jurisdictional governments and the Ombudsmen. Whilst SACOSS and the signatories understand this issue is in the process of being addressed, SACOSS and the signatories are of the view that it should be dealt with as a matter of priority. Currently the AER, State Governments and the various Ombudsmen are working together to ensure these customers are able to access the schemes, but the allocation of costs are proving to be an issue. SACOSS and the signatories submit that a meeting should be held with the AEMC, the AER, the Ombudsmen, consumer organisations, representatives from state governments and industry to resolve all the outstanding issues and ensure access to schemes for vulnerable embedded network customers is secured.²⁹

Transitional conditions imposed on applicants for exemption in the interim period

SACOSS and the signatories are concerned that there may be a flood of exemption applications by entities seeking to attract legacy embedded network status, thereby avoiding stricter regulatory oversight. The AER could consider implementing transitional arrangements where applicants for exemption in the period leading up to the implementation of the new framework, are subject to a review of the exemption once the new framework is in place. Exempt network operators and on-sellers which fall into this category could then be fast-tracked into the new authorisation and registration framework, thereby avoiding the costs and burdens of an additional registration / authorisation application.

Flexibility and the Proposed Authorisation and Registration Arrangements

In the previous Joint Submission, SACOSS and the signatories recognised the benefits of flexibility in the exemption frameworks, particularly given the highly diverse nature of the embedded networks and on-selling arrangements. Recommendation 1 (discussed above) reflects our objective of maintaining flexibility while enhancing consumer protections to better align with protections available to consumers outside an embedded network, and in a manner consistent with the retail competition objectives. As discussed in Recommendation 1, we considered that this could be at least partly achieved within the overall existing regulatory framework by establishing a new class (or sub-class) with enhanced obligations to embedded network consumers.

Having carefully considered the AEMC's proposed changes and the time lapse that will occur between the AEMC's proposal and actual implementation of the required changes to the Law, Rules and Guidelines, SACOSS and the signatories continue to recommend this approach as a useful strategy that can be readily implemented while enhancing protections for consumers in the interim, as discussed above.

The tension identified by SACOSS and the signatory parties between improving protections while recognising the diversity in size, purpose and resources of different embedded network on-sellers is echoed in the AER's May 2017 submission to the AEMC. The AER submitted that the exempt selling conditions have been designed to largely mirror the consumer protections to customers of authorised retailers but also that this may not be realistic given the 'diverse collection of individuals or businesses that have markedly different resources and motivations'.³⁰

²⁹ See previous Joint Submission and the SACOSS Report which highlighted access to dispute resolution as a priority <https://www.sacoss.org.au/submission-australian-energy-market-commission-review-regulatory-arrangements-embedded-networks> and <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

³⁰ See AER submission on the consultation paper, May 2017, p 3. Also cited in the AEMC Draft Report, p 42,

In terms of the AEMC's current proposal, SACOSS and the signatories note that the proposed model requires the great majority of new embedded network on-sellers and embedded network operators to become authorised retailers or registered network operators (respectively). That is, the AEMC proposes 'elevating (new) embedded networks into the national regulatory framework'.³¹ However, the AEMC also recommends that an embedded network service provider would have a 'sub-set of [registration] requirements of a network service provider' and an embedded network on-seller would have a retail authorisation 'under a more flexible authorisation framework'.³²

That is, the AEMC is attempting to retain some of the flexibility available to embedded network operators and on-sellers under the current exemption frameworks that is not available under the current retail authorisation and network registration processes. As the AEMC states:³³

*The Commission therefore recommends that the retailer authorisation framework **requires additional flexibility** to accommodate on-selling in embedded networks while avoiding placing inappropriate obligations on energy on-sellers. The Commission considers that the **AER may require some discretion to exempt an authorised retailer which on-sells energy from obligations**, which are not applicable to the nature of the selling activities or where the compliance burden would outweigh the consumer benefits. [emphasis added]*

The AEMC proposes to minimise the regulatory burden on the new class(es) of authorisation and registration by the following measures:³⁴

- embedded network service providers would be subject to only a sub-set of obligations under the NEL/NER and NERL/NERR
- the retailer authorisation framework would provide the AER with increased ability to tailor authorisations for retailers that sell off-market to embedded network customers
- retaining the exemption framework where costs of authorisation or registration would be high compared to the benefits.

The AEMC has, therefore, set out several areas where it considers that the AER should have flexibility to amend the conditions of the retail authorisation and the network registration process for new embedded networks (following all the relevant law and rule changes). For example, the AEMC proposes that consumers of an authorised retailer on-selling to customers in a new embedded network will have a minimum set of protections under the NERR relating to dispute resolution, life support, disconnection and EIC. On the other hand, the AEMC recommends that 'the AER should have some flexibility in the authorisation of on-selling retailers to allow vulnerable customer arrangements to be appropriate for the embedded network supply situation'.³⁵ Similarly, the AEMC posits that the AER should have some flexibility to exempt some on-selling retailers from obligations to publish their prices³⁶ and exempt some network service providers and on-selling retailers from some reporting requirements.³⁷

In addition, the authorised retailer will not have to be registered in the wholesale market, nor must necessarily be the financially responsible market participant retailer (FRMP) for the particular premises.³⁸

³¹ See for instance, AEMC Draft Report, pp 50 – 51.

³² AEMC, Draft Report, pp 78-79.

³³ AEMC, Draft Report, p 94.

³⁴ AEMC, Draft Report, p 51.

³⁵ AEMC, Draft Report, p 110

³⁶ AEMC, Draft Report, p 111.

³⁷ AEMC, Draft Report, p 104.

³⁸ See for example, AEMC, Draft Report, p 94.

While the AEMC has provided some guidance on which circumstances an entity will need to apply for a retail authorisation or network registration, SACOSS and the signatories remain concerned that much will still rest on the AER's judgement regarding which authorised retailers will obtain which exemptions for what activity. The AEMC's paper only contains limited high-level references to what principles the AER should apply in this important judgement. For instance, the AEMC refers to the AER weighing up the compliance burden against the consumer benefits. However, these burdens and benefits may be difficult to identify in any particular set of circumstances and (for instance) how does one assess the 'cost' of reduced access to competition.

In particular, SACOSS and the signatories are concerned that the current protections available to vulnerable customers that are supplied by an authorised retailer may be varied by the AER as a result of the flexibility and the cost benefit test. For example, if a retirement village, currently supplied by an authorised retailer is converted to an embedded network supplied by the new flexible condition authorised retailer, will they potentially lose benefits they now receive and that go beyond the 'minimum conditions' proposed by the AEMC.³⁹ If this is the case, then the new arrangements may have limited benefit over the existing arrangements for this segment of embedded network consumers – who also have very limited opportunities to access the competitive market.

SACOSS and the signatories also note that where the AER exercises a discretion in its decision making process, its decision is open to review. The more flexible the regime, the more the AER's decisions may be subjected to challenges via administrative review processes. Undertaking a balancing exercise in each application for registration or authorisation, where currently the majority of exemptions are not assessed by the AER, may also increase the AER's workload considerably and would require additional resourcing. Whilst SACOSS and the signatories accept the need for flexibility within the new framework, SACOSS and the signatories submit the AEMC should consider being as prescriptive as possible in its guidance to the AER, providing for the exercise of limited discretions only.

An important and related issue is that the AEMC's proposed framework will provide for authorisation of the entity under the NEL/NERL, but (at this stage) the authorisation is not site specific. In contrast, the exemption framework is site specific. Therefore, an entity might own for example a number of retirement embedded network villages and a range of other embedded network strata properties, shopping centres etc. The AER will be faced with the more complex task of determining how it will use its discretion over important consumer protections within the ambit of the general entity authorisation. This is discussed in the next section.

Authorised on-selling retailer versus site specific exemptions

One of the difficulties not currently addressed by the AEMC's Draft Report is the distinction between the site-specific nature of both the network and the on-selling exemptions compared to the more global nature of the retail authorisation and network registration processes. The site-specific exemptions allow the AER to tailor the requirements more closely to the particular circumstances of the embedded network site, the embedded network customers and the applicant.⁴⁰

SACOSS and the signatories have for instance, posed a situation where a hitherto embedded network on-seller has multiple sites with different characteristics and different locations. Currently, that entity would have to apply for site-specific exemptions. That same entity would be expected to become an authorised

³⁹ SACOSS and the signatories note that the current Retail Exemption Guideline provides an extensive suite of protections for retirement villages.

⁴⁰ For example, SACOSS and the signatories cited the example of a large entity supplying EN services and on-selling energy to a retirement village customers (with high protection needs), an up-market residential apartment and a commercial building. Currently, each site would have its own set of exemptions conditions. Under the new regime, they would be under the same set of conditions or the entity would need to apply for multiple retail authorisations (under the same or different legal names).

retailer under the AEMC's proposal for any new developments. However, the one embedded network retail authorisation or registration applies to all the entity's new embedded network sites rather than each specific site, irrespective of the different characteristics of these new sites.

It is not clear to SACOSS and the signatories how the proposed flexibility for the AER to impose different obligations would operate given the potential differences in the characteristics of the new embedded network sites that the entity operates. On the other hand, it would be highly impractical for the authorised retailer/registered network operator to apply for multiple embedded network retailer authorisations from the AER or for multiple registrations with AEMO.

Authorisation and Registration of Third Parties under the Proposed Framework

SACOSS and the signatories have raised the issue of the emergence of unregulated third parties into the embedded network market in their previous Joint Submission.⁴¹ Under the proposed framework, the AEMC expects that many of the existing third parties that currently operate as agents for the exempt embedded network operators will become authorised and registered.⁴² The Draft Report further considers it likely that most owners of embedded networks will establish relationships with third party registered network service providers and authorised retailers to provide services on commercially agreed terms. The nature of this relationship would be commercial and not regulated under the NER or NERR.⁴³ SACOSS and the signatories are concerned about how this relationship would work, and what the status of the embedded network entity (e.g. a Body Corporate) would have, assuming it is not required to be authorised or registered in addition to the third party it has engaged. In these circumstances, the embedded network entity would not be exempt, nor would it be registered or authorised.

SACOSS and the signatories question the relationship between the embedded network and the third party, which would be a **commercial relationship**, and as mentioned, not regulated under the NER of the NERR. What if this commercial relationship breaks down? SACOSS and the signatories are concerned that the AER would not have the power to intervene. The AEMC has indicated that in these circumstances, the embedded network would become the customer of an authorised retailer, but SACOSS and the signatories question whether this would address any network obligations, and once again limits the consumer protections of customers at the child meter (who wouldn't have a direct relationship with the authorised retailer). Further, the embedded network would not be subject to the conditions under the guidelines as it would have no status as an exempt entity.

While SACOSS and the signatories support the authorisation and registration of third parties, SACOSS and the signatories submit that the capacity of authorised and registered third parties to consistently and securely provide energy pursuant to a commercial contract requires further investigation by the AEMC and the AER. SACOSS and the signatories submit that the AEMC and the AER should consider whether the embedded network owner, controller, operator should still require authorisation / registration (although burdensome) even though an authorised and registered third party is engaged. SACOSS and the signatories submit that where the only connection between the embedded network owner / operator and the registration and authorisation framework is a commercial contract, then issues could potentially arise.

SACOSS and the signatories are also concerned about the extra level of costs which the addition of a third party would add to embedded network customer's bills. SACOSS and the signatories submit that the AER should investigate how these costs flow through to the customer (i.e. through energy bills / body corporate fees etc.). Also, as the new framework would not require authorised retailers to be participants in the wholesale market (and therefore subject to a ream of other obligations), then authorised embedded

⁴¹ SACOSS, St Vincent de Paul Society Victoria, Ethnic Communities' Council of NSW Inc. and Consumer Action Law Centre, Submission on the AEMC's review of regulatory arrangements for embedded networks, 22 May 2017, p7

⁴² AEMC, Draft Report p76

⁴³ AEMC, Draft Report p125

network retailers or authorised third party retailers would be required to purchase their electricity from a larger authorised retailer, potentially adding another level in the chain of sale and supply.

New on-selling authorised retailers and obligations to customers – Flow Systems Pty Ltd case study

An interesting precursor to the AEMC's proposed arrangements is the recent successful application by Flow Systems Pty Ltd (Flow Systems) for authorisation as an electricity retailer.⁴⁴ **Flow Systems intends to supply off-market small customers who access electricity from embedded networks.** These customers are predominantly residential customers and small commercial customers within strata communities and new residential housing estates.⁴⁵ Currently Flow Services is contracted to provide embedded network energy services to some 5,000 customers in NSW and Queensland⁴⁶ with additional commitments in the pipeline, and has acquired Meter2Cash Solutions which bills a further 25,000 private connections across approximately 400 buildings.⁴⁷

In its application for retailer authorisation, Flow Energy also states that it will not be a Market Participant or a FRMP for any NMI meter including the parent meter that it is the account holder for. Rather, it will purchase electricity from an authorised retailer at the parent meter. Therefore it will not require direct relationships with the local network service provider or incur the prudential and other credit requirements of being a Market Participant. However, Flow Energy is a member of the NSW Energy and Water Ombudsman Scheme (EWON) as a result of its existing water licences and has also applied to the Queensland Energy and Water Ombudsman Scheme for membership.

SACOSS and the signatories note, however, that while Flow Energy reports that it has a Compliance Management Policy and Procedure, a Complaint & Dispute Resolution Procedure and a Hardship Policy,⁴⁸ it is not clear from the AER's previous statements (cited above) that these policies and procedures reflect the requirements set out in the NERL and NERR for authorised retailers, or the retail exemption conditions, or neither, given that Flow Systems is providing electricity and energy services to EN customers **behind** the parent meter.

Flow Systems' application does not appear to indicate how, as an authorised retailer on-selling to embedded network customers, it will address the pricing cap constraint issue or how Flow Systems will manage customers in a strata development or new residential estates who are seeking to become on-market customers.

SACOSS and the signatories are therefore quite concerned about how the existing customer protection frameworks (including EIC, disconnection rules, pricing and information provision requirements and the AER's penalty regime (et al)) will operate within this relatively new hybrid model of an authorised retailer providing what are effectively embedded network services behind the parent meter.

We would further note that with respect to Flow Systems' water licence to operate in NSW, the licence itself sets out a number of conditions that are set out in the Licensee's Code of Conduct and approved by the

⁴⁴ See:

<https://www.aer.gov.au/system/files/Flow%20Systems%20Pty%20Ltd%20application%20for%20a%20retailer%20authorisation%20-%20public%20version%20-%2009%20June%202017.pdf> and

<https://www.aer.gov.au/system/files/Flow%20Systems%20-%20letter%20of%20authorisation.pdf>

⁴⁵ Flow Systems, Application for Energy Retailer Authorisation, Version 1.0, 5 June 2017, p8.

⁴⁶ Ibid, p10.

⁴⁷ Ibid, p7.

⁴⁸ See Ibid, Attachment E, F and G. The content of the attachments is not provided on the AER's web-site so there is limited transparency on the content of each of these processes and procedures.

Minister following advice from IPART and that the licence conditions are linked to specific schemes and defined areas.⁴⁹

We would appreciate clarification by the AER and the AEMC of this emerging business model in which an applicant to supply embedded network services applies for a retail authorisation rather than a retail exemption. If this business model is adopted more widely during the interim period then it will significantly complicate the situation already facing the AER in managing authorised retailers who are currently providing embedded network services.⁵⁰

It may also mean that there is another class of authorised retailers whose conditions of authorisation may need to be grandfathered, following the implementation of the AEMC's proposal.

Brownfield conversions

Noting the evidence of significant marketing activities by third parties and the corresponding expansion of the of brownfield conversions market, SACOSS and its signatories raised the following questions for the AEMC's consideration in their previous Joint Submission:⁵¹

- to what extent has there been explicit and informed consent to the conversion, and whether this process is/can be adequately monitored by the AER?
- what happens to customers who choose not to be part of a newly created embedded network; will they face additional charges from the owners/body corporates?
- how are the interests of tenants protected when they have no capacity to participate in the decision-making?
- how will promises made at the time of conversion be enforced subsequently, e.g. promises about savings on energy costs (to compensate for the costs of conversion)?
- to what extent will the likely expansion of the brownfield market impact on overall competition policy objectives?
- will the expansion of brownfield conversions impact on the viability of specialist or new entrant authorised retailers?

The AEMC has acknowledged a number of these issues, noting in its Draft Report that:⁵²

Clear information around the costs, benefits and risks which apply when being supplied within an embedded network, may also assist consumers when making a decision to convert existing arrangements to an embedded network.

In our view, however, the AEMC's Draft Report, does not adequately explore this important and growing market, particularly given the significant issues that were identified by SACOSS and the signatories in the Joint Submission (summarised above) and in the AER's submission in May to the AEMC (see below for

⁴⁹ See for instance, https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/wica-water-licensing-licence-holder-variation-flow-systems-discovery-point-retail-supplier-correspondence/granted_licence_-_variation_-_retail_supplier_licence_-_flow_systems_pty_ltd_-_27_august_2015.pdf

⁵⁰ That is, currently the authorised retailers providing EN services tend to be the existing large retailers who have extensive compliance and billing systems already in place for managing all their retail customers. The entry of new authorised retailers over the next few years who are dedicated exclusively to on-selling to embedded network customers raises new compliance and reporting issues. For instance, will the AER include these retailers in their performance reporting program.

⁵¹ See AEMC, Draft Report, pp 8-9.

⁵² AEMC, Draft Report, p 115.

details). The AEMC's conclusions in the Draft Report are limited to the following observations regarding brownfield conversions:

- the network exemption guidelines could be modified to address gaps that may result
- under the proposed framework, a brownfield conversion would in most cases require an embedded network service provider to register with AEMO and an authorised retailer to provide retail services
- specific provisions may be required in the laws or rules to enable appropriate scrutiny of brownfield conversions.

Overall, SACOSS and the signatories are concerned with this limitation in the AEMC's Draft Report and would welcome further and more specific assessment of brownfield conversion issues in its Final Report. Moreover, since our submission in May 2017, SACOSS and the signatories have become aware of further issues with the current brownfield conversion process.

For example, in its submission to the AEMC in May 2017,⁵³ the AER noted that it had recently taken steps to strengthen the safeguards for retrofitting a site under the exemption process. The AER's submission also highlighted that if the embedded network on-seller is an **authorised retailer** under the current arrangements, they are not subject to the same exemption conditions as on-sellers granted an exemption under the Exempt Selling Guideline. In particular, where an authorised retailer is party to a brownfield conversion, it is not subject to the price cap (Condition 7 of the Exempt Selling Guideline) or to other important consumer protection conditions such as explicit informed consent (EIC), billing and disconnection arrangements, information provisions and hardship programs.

The AER summarises its concerns in its May submission, as follows:⁵⁴

*In addition, where an authorised retailer is engaged to retrofit an embedded network at a brownfield site, **customers may have fewer protections** in relation to the retrofit process. We have taken significant steps to strengthen customer safeguards for retrofitting under an exemption, as in most circumstances it significantly diminishes a resident's or tenant's ability to access retailer of choice. However, **an authorised retailer is not subject to these retail exemption requirements and important protections do not apply, such as the requirement to obtain explicit informed consent to the retrofit.** [emphasis added]*

SACOSS and the signatories share these concerns and would go further. We consider that during the transitional period, the AEMC and the AER should further develop its customer protection framework using the existing exemption framework. In addition, however, and with specific reference to brownfield conversions, SACOSS and the signatories strongly recommend that further protection arrangements are required with respect to:

- the current processes for obtaining EIC, including information provision and clear explanation of the risks and the costs and benefits relating to the conversion process itself
- enhanced reporting, enforcement and penalty regimes for failure to comply with EIC and other relevant consumer protections commensurate with the extent of potential detriment to consumers from the effective loss of access to retail competition
- the application of the exemption Guideline conditions relating to brownfield conversions to an existing authorised retailer who initiates a brownfield conversion.⁵⁵

⁵³ AER, "Submission on regulatory arrangements for embedded networks", 17 May 2017.

⁵⁴ Ibid, p 7 The AER's comments relate to authorised retailers providing services to all embedded network sites including brownfield conversion sites.

⁵⁵ SACOSS and the signatories recognise that the AER can impose penalties for failure to comply with the conditions of exemption for an on-seller. However, further clarity is required on whether this power applies to the process of

In particular, SACOSS and the signatories raise the last issue above in the context of the AER's concerns with the application of customer protection conditions generally to authorised retailers. We also note that there have been a number of recent applications for a retail authorisation from entities planning to exclusively provide on-selling and network operation services to off-market embedded network customers, including to customers in brownfield conversion sites (see for example, the discussion above on Flow Systems Pty Ltd, a recent and successful applicant for retail authorisation).

SACOSS and the signatories are not in a position to suggest more specifically how all these matters can be addressed within the transition period, although some matters are clearly within the AER's current powers to implement through the current retail and network exemption Guidelines and exemption approval processes. However, we consider it to be a matter of such importance, that the AEMC should address all these issues under both the transitional period and under the proposed regulatory framework. SACOSS and the signatories further consider that our concerns are reinforced by the comments of the Federal Court in 2015 when it imposed a penalty of \$500,000 on EnergyAustralia, and further penalties on its agent, Bright Choice for failing to obtain explicit informed consent of customers in South Australia and the ACT as required by the NERL (s 38(b)). The Federal Court stated that explicit informed consent: ⁵⁶

... goes to the very core of stability and transparency of the energy market when considered from the perspective of consumer confidence. All participants in the industry must understand the central importance of the need to obtain the explicit informed consent of consumers but ensure that they have procedures in place which ensure that this is achieved.

While the Court's judgement related to the retailer's agent obtaining EIC to the transfer of customers to new energy plans, SACOSS and the signatories would argue that the Court's concerns are equally relevant to all third parties, including existing authorised retailers seeking to obtain consent to a brownfield conversion. We would argue this on the basis of the potential detriment to the energy consumer and the establishment of a new relationship between the relevant entity and the consumer for the supply of energy services.

It is also worth noting that in addition to receiving substantial fines, the principal (EnergyAustralia) received a range of compliance orders including compliance programs consistent with the Australian Standard for Compliance Programs (AS3806) and regular training for directors, representatives and agents of Energy Australia on compliance with s 38 of the NERL.

SACOSS and the signatories suggest similar penalty provisions that go beyond the existing fines for non-compliance by on-sellers with respect to EIC for brownfield conversions should be considered as part of the overall reform of the embedded network regime both now and under the proposed embedded network framework. It is an open question as to whether similar non-financial 'penalties' could be applied by the AER (particularly in the transition period) to embedded network operators who do not comply with requirements in both the brownfield conversion process and with the network exemption conditions more generally.

collecting customer 'signatures' for agreement to the conversion process itself, particularly if an authorised retailer or its agent conducts this process.

⁵⁶ Cited by AER at <https://www.aer.gov.au/news-release/energyaustralia-ordered-to-pay-penalties-of-500-000-for-failing-to-obtain-explicit-informed-consent>. The Court also imposed penalties of \$1,000,000 on EnergyAustralia, and fines on its agent, Bright Choice, finding that they had made false and misleading representations to customers. The judgment also raises potential questions with respect to rights of individual occupants and their consent or otherwise to the conversion. See also Federal Court, *Australian Energy Regulator v EnergyAustralia Pty Ltd* at <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2015/2015fca0274>

As a final point on this difficult question of brownfield conversions, SACOSS and the signatories again raise questions regarding the extent to which the embedded network on-seller, embedded network operator or third party (including an authorised retailer who is acting as an on-seller) is bound by the representations they make to the consumers at the time of the conversion.

In particular, where the consumers are presented with a cost-benefit case by the proponents of a conversion, based on cost estimates and claimed pricing benefits, to what extent does this representation establish a formal and enforceable contract? And for what time period does this contract/arrangement apply? For example, for what period are the claimed price savings 'locked in'. Moreover, it is not clear if the AER has the power to enforce these 'promises', or to impose penalties if such 'promises' are breached over a period of time. Are these embedded network customers now reliant on the ability of the owners or the body corporate to take action under the Australian Consumer Law for misleading and deceptive conduct?

These questions pertain to both current exemption arrangements for brownfield conversions and in the AEMC's proposed new framework. In the latter instance, if the body corporate/occupants agree to the conversion on the basis of certain representations of costs and benefits will this type of agreement be covered under the existing NERL, NEL, NERR, or authorised retail licence conditions.

Minimum obligations under the NERL and the NERR placed on authorised retailers

The Draft Report proposes that the AER be provided with a **limited discretion** to exempt authorised retailers that on-sell electricity in embedded networks from specific conditions under the NERR where:

- the cost of meeting that obligation is disproportionate to the benefit, and
- the exemption does not impede access to retail market competition.

The AEMC is proposing to identify a set of **minimum conditions**, which the AER would be required to apply to the authorised retailer, including:

- providing access to independent dispute resolution through Ombudsman Schemes
- explicit informed consent when entering a contract
- life support requirements
- disconnection requirements.

The Draft Report seeks specific feedback on the question of the 'minimum obligations' under the NERL and the NERR that should be placed on authorised retailers supplying embedded network customers under the new framework.

SACOSS and the signatories have attached a Table (Attachment A) that lists most of the current obligations imposed on authorised retailers under the NERL and the NERR, and have indicated on that Table the consumer protections we submit should apply as a **minimum** to authorised retailers supplying embedded network customers. This is not to say that that the AER should not consider applying further consumer protections to those authorised retailers supplying embedded networks, where appropriate on a case by case basis. For example, SACOSS and the signatories have noted above the particular circumstances of a brownfield conversion.

Where SACOSS and the signatories have indicated 'no' to variations in standing offer prices publication, we clarify this by submitting that we would still require owners and occupants to be notified in writing and in advance of price changes or other terms. Further, SACOSS and the signatories submit that a limit should be placed on the number of price changes, for example limiting the price changes to two at the maximum (with that restriction applying to both standing and market contracts).

Also, it is worth noting that in the recent application for authorisation by Flow Systems mentioned earlier in the case study in this submission, the proposed hardship program was not published (in fact, none of the

Appendices were published) making it impossible for consumers or their advocates to comment on the adequacy of these measures. Consumers and their advocates are then placed in the position of relying on the AER to ensure that the proposed policies and programs comply with authorisation requirements. SACOSS and the signatories are seeking that in the future, customers of embedded network authorised retailers are provided with access to information on these hardship programs and that they are publicly available on websites or equivalent.

Protections for legacy and new embedded network customers (chapter 9 of the Report)

Even though the proposed framework will elevate new embedded networks and on-sellers into the authorisation and registration framework, the existing exemptions framework will be retained and new embedded networks will be created (albeit in narrow circumstances).⁵⁷ Also, existing embedded networks will be 'grandfathered' under the existing exemptions framework, attracting legacy exemption status. Therefore, the gaps in the existing exemptions framework will still need to be addressed as 'new exempt customers' and 'legacy exempt customers' will not be adequately protected without substantial amendments to the NER and the NERR.

Addressing these gaps is increasingly important given the focus of the AEMC on ensuring access for embedded network customers to competition and authorised retail offers. Some important protections are key features of the tripartite relationship, and, as the AEMC states, arguably fundamental in the embedded network context.⁵⁸ Currently, embedded network customer accessing retail market offers are not afforded those protections, and without the changes outlined in chapter 9 of the Draft Report being implemented, will not be afforded those protections under the proposed framework.

SACOSS and the signatories submit that the amendments outlined in chapter 9 of the Draft Report, should be actioned by the AEMC separately to the broader changes to the regulatory framework. These amendments will ensure the group of embedded network customers which exist now, exist into the future, and who will not be affected by the alteration to the authorisation and registration framework, will be afforded adequate protections under the law.

Priority issues for residential and caravan park customers

Building on SACOSS and the signatories' previous submissions and reports, SACOSS and the signatories submit that the most pressing issues for residents of caravan and residential parks are the following:

- access to Ombudsmen Schemes
- access to concessions
- price regulation (access to competition)
- enhanced monitoring and enforcement by AER
- safety issues.

Access to Ombudsman Schemes

SACOSS and the signatories accept that access to Ombudsman Schemes requires amendments to the AER's Guidelines and also to State laws and regulations. This process has already commenced and SACOSS will be attending a meeting with ANZEWO to discuss progressing the matter further. The AEMC has suggested that the responsibility for ensuring access for embedded network customers to Ombudsman Schemes lies with the AER, the Ombudsman and jurisdictional governments. SACOSS and the signatories agree, but also believe that the AEMC could play a role in bringing all the interested parties together to ensure a

⁵⁷ See pages 89-91 of the AEMC's Draft Report for a summary of the limited circumstances to apply to network service provider exemptions under the new framework. SACOSS supports the AEMC's consideration that more guidance should be provided in the NER to the AER on the criteria for exemptions.

⁵⁸ See for example the discussion around the shared customer concept in the AEMC's Draft Report, p108

coordinated approach is maintained, and access is secured. SACOSS and the signatories acknowledge the AEMC has identified access to Ombudsman Schemes as a focus for the AER and Ombudsmen, and has highlighted a role for jurisdictional governments in improving state regulations that affect access to dispute resolution and access to concessions.⁵⁹

Access to Concessions

It can be challenging for exempt customers to access concessions, and this was acknowledged in the Draft Report.⁶⁰ The AMEC did note that the AER's Retail Exemption Guideline mandates claiming concessions, and that it is up to State Governments to improve access to concessions. SACOSS and the signatories believe State Governments should be further encouraged to promote awareness and ensure access to concession schemes for exempt customers.

Price Regulation

The NERR specifies that where the AER determines a price condition is appropriate, then the AER must ensure that exempt customers are charged no more than the standing offer price of the local retailer.⁶¹ The AMEC considered submissions in relation to lowering the price cap in the Draft Report. The AEMC noted that the NERR provides the AER with the discretion to lower the cap through the retail exemption guideline, but determined that it is better to improve access to competition than extend price regulation.⁶²

In these circumstances, SACOSS and the signatories submit that the protections for legacy and new embedded network customers, as outlined in chapter 9 of the Draft Report should be pursued by the AEMC as a suite of changes to ensure customers of embedded networks accessing retail offers are adequately protected.

Enhanced monitoring and enforcement/ Safety issues

SACOSS and the signatories have outlined their support for ensuring transitional arrangements are in place during the extended period prior to the implementation of the proposed framework. SACOSS and the signatories submit the implementation of enhanced monitoring and enforcement should form part of those transitional arrangements. We accept the AEMC's view that safety issues in embedded networks are the responsibility of state government regulation, but would support further coordination between the AER, embedded network operators and the state governments to ensure the safety of these sites.

Demonstration of consumer benefits

Whilst the energy objectives have at their heart the promotion of the long-term interests of consumers,⁶³ SACOSS and the signatories submit it may still be necessary to impose a specific obligation on applicants to prove consumers will benefit from the establishment of an embedded network. SACOSS refers the AEMC to the earlier discussion in this submission regarding the issues raised by Brownfield conversions and also potential issues arising as a result of the proposed flexibility under the new authorisation framework. In relation to flexibility, SACOSS has raised concerns about how the AER will assess the consumer benefits against the costs of applying different conditions above the minimum set by the AEMC. SACOSS and the signatories submit that the AEMC further investigate the balancing exercise that will be undertaken by the AER in its decision making in this regard, and consider whether placing the **onus on the applicant** to prove benefits to consumers may assist the AER's decision making process, and help to ensure the benefits to consumers attracts the greatest weight.

⁵⁹ AEMC, Draft Report p52

⁶⁰ Ibid p103

⁶¹ NERR, rule 152(4)

⁶² AEMC, Draft Report, p103

⁶³ AEMC, Draft Report p8

Metering and Embedded Network Manager

The new ENM rules in the NER are due to commence on 1 December 2017, SACOSS and the signatories encourage the AEMC to ensure the monitoring of this process by the AER and its impact on competition.

What other legislation will this proposal interact with or be constrained by

The proposed new framework may also raise issues around the interplay between state laws imposing various obligations on embedded network entities⁶⁴ and the obligations that will be imposed on those entities under the new framework. SACOSS and the signatories submit there may be many different jurisdictional and energy law intersections which will need to be investigated further by the AEMC, prior to the implementation of the framework. Will the state legislators agree to, or require certain additional derogations that cut across the overall framework and add further complexity to the process?

It is not clear either what aspects of AEMO's metering, network safety and other registration requirements will apply to different retail authorisations and network registrations, although we recognise that many of these requirements will be met via the registration of the relevant ENM rather than the embedded network operator.

Proposed Meeting

SACOSS and the signatories suggest the AEMC host a meeting dealing with issues requiring regulatory reform with the AER, State Governments, industry representatives, consumer organisations and Ombudsmen. The meeting could also cover the issues of access to Ombudsman Schemes, safety, access to concessions, and the interplay between relevant state legislation and the energy laws and rules.

Summary of Submissions

Implementing transitional arrangements prior to the introduction of the proposed framework

- SACOSS and the signatories recommend:
 - the establishment of a new interim registerable class of exemption for 'large scale exempt sellers and large scale exempt network operators'
 - the development of an interim reporting framework to enable increased monitoring and compliance of embedded network service providers and exempt on-sellers
 - investigation of the ongoing relevance of the 'deemed' category of exemption
 - ensuring access to Ombudsmen Schemes for customers of embedded networks⁶⁵
 - ensuring entities applying for retail or network exemption in the interim period, be granted exemption on the condition that their exempt status is reviewed once the new regulatory framework is in place.

Flexibility and the proposed authorisation and registration arrangements

- SACOSS and the signatories submit that the AEMC further investigate the implications of providing the AER with greater flexibility under the authorisation and registration framework, noting that at this stage, the AEMC's Draft Report only contains limited high-level references to what principles the AER should apply in exercising its proposed discretions. In light of resourcing and possible reviews, we submit the AEMC consider being as prescriptive as possible in its guidance to the AER, providing for the exercise of limited discretions only.

⁶⁴ See for example QCOSS Submission to the AEMC Review of Regulatory arrangements for embedded networks, 15 May 2017, p6 for details of specific provisions under QLD tenancy legislation. Different states will have different legislation further complicating the issue, while for some areas such as permanent caravan parks, local legislation may also apply, particularly with respect to the embedded network characteristics.

<http://www.aemc.gov.au/getattachment/8d4b0b38-2c59-459f-abd6-73df10369088/QCOSS.aspx>

⁶⁵ AER and Ombudsmen are currently working on this and SACOSS submits it should continue to be a priority focus for the AEMC, AER, State Governments and ANZEWON

Authorised on-selling retailer versus site specific exemptions

- SACOSS and the signatories submit that the AEMC provide clarification on the distinction between the site-specific nature of both the network and the on-selling exemptions compared to the more global nature of the retail authorisation and network registration processes. Including around how the proposed flexibility for the AER to impose different obligations would operate given the potential differences in the characteristics of the new embedded network sites it operates.

Authorisation and registration of third parties under the proposed framework

- SACOSS and the signatories submit that the capacity of authorised and registered third parties to consistently and securely provide energy to embedded network customers pursuant to a commercial contract requires further investigation by the AEMC and the AER.

Brownfield conversions

- SACOSS and the signatories submit that brownfield conversions are not sufficiently addressed in the AEMC's Draft Report and would welcome further and more specific assessment of brownfield conversion issues in its Final Report.
- SACOSS and the signatories consider that during the transitional period, the AEMC and the AER should further develop the customer protection framework using the existing exemption framework. In addition, we strongly recommend that further protection arrangements are required with respect to:
 - the current processes for obtaining EIC, including information provision and clear explanation of the risks and the costs and benefits relating to the conversion process itself
 - enhanced reporting, enforcement and penalty regimes for failure to comply with EIC and other relevant consumer protections commensurate with the extent of potential detriment to consumers from the effective loss of access to retail competition
 - the application of the exemption Guideline conditions relating to brownfield conversions to an existing authorised retailer who initiates a brownfield conversion.

Minimum obligations under the NERL and NERR to be placed on authorised retailers under the new framework

- SACOSS and the signatories refer to the Table (Attachment A) outlining the consumer protections we submit should apply as a **minimum** to authorised retailers supplying embedded network customers.

Protections for legacy and new embedded network customers

- SACOSS and the signatories submit that the amendments outlined in chapter 9 of the Draft Report, should be actioned by the AEMC separately to the broader changes to the regulatory framework.

Priority issues for residential and caravan park customers

- SACOSS and the signatories submit that the most pressing issues for residents of caravan and residential parks are:
 - access to Ombudsmen Schemes
 - access to concessions
 - price regulation (access to competition)
 - enhanced monitoring and enforcement by AER
 - safety issues.

Demonstration of consumer benefits

- SACOSS and the signatories submit that the AEMC further investigate whether consumer benefits should be demonstrated by the applicant as a requirement to establishing an embedded network, noting that placing the onus on the applicant to prove benefits may assist the AER with the balancing exercise in its decision making process.

Metering and Embedded Network Managers

- SACOSS and the signatories encourage the AEMC to ensure the monitoring of metering standards and the embedded network manager (ENM) requirements by the AER and / or AEMO, including their impact on competition.

Interaction with other legislation

- SACOSS and the signatories submit there may be many different jurisdictional and energy law intersections which will need to be investigated further by the AEMC, prior to the implementation of the framework. This will include legislation concerning Ombudsmen Schemes and state based retail licensing arrangements. In some instances, local government by-laws will also require review.

Proposed meeting

- SACOSS and the signatories suggest the AEMC host a meeting dealing with issues requiring regulatory reform with the AER, State Governments, industry representatives, consumer organisations and Ombudsmen.

We thank you in advance for consideration of our comments. If you have any questions in relation to this submission, please contact Jo De Silva on jo@sacoss.org.au or 08 8305 4211.

Yours sincerely,



Ross Womersley
Chief Executive Officer



Mark Henley
Manager Advocacy and Communications
Uniting Communities

Attachment A

Consumer Protections under the NERL and the NERR – which should be included in the list of minimum obligations that would apply to authorised retailers supplying embedded network customers under the proposed framework?

Consumer Protection	Specific requirement	Description	Should this apply to Authorised Embedded Network Retailers (and Registered EN Service Providers where applicable) as a minimum requirement?
Energy Marketing	Required information	Retail marketing must provide customer with: <ul style="list-style-type: none"> • Duration of the contract • Availability of concessions / rates • Electronic transaction details • Right to complain to retailer and right to complain to Ombudsman 	Yes
	How and when required information is communicated	Before the contract, info can be verbal, electronic or writing. After the contract, information must be in writing	Yes
	Pricing information	Must present standing and market offers in accordance with Retail Pricing Information Guidelines (AER) requiring publication of Energy Price Fact Sheets	No
	Restrictions on marketing	Retailers must maintain a 'no contact' list, must keep records of marketing activity and is responsible for the compliance of its marketers	Yes
Consent Requirements		Retailer needs Explicit Informed Consent (EIC) to transfer a customer, enter customer into a market retail contract or pre-payment meter	Yes

Attachment A

Consumer Protections under the NERL and the NERR – which should be included in the list of minimum obligations that would apply to authorised retailers supplying embedded network customers under the proposed framework?

Consumer Protection	Specific requirement	Description	Should this apply to Authorised Embedded Network Retailers (and Registered EN Service Providers where applicable) as a minimum requirement?
		contract	
Standing contracts and market retail contracts	Requirement to develop and publish standing contract	Must have a standing contract complying with Schedule 1 of the Rules. Standing contract, standing offer prices and market offer prices must be published on website	No
	Variation of standing offers	Variations to standing offers must be published on website, in newspaper and each customer informed in next bill and AER informed	No (see clarification in body of submission)
	Obligation to offer standing contract	Designated retailer obligations to offer standing contract	Yes
	Duty of distributors	Distributor must inform customer of designated retailer	No
	Market Retail contracts	Retailers must be willing to offer a market retail contract that has no early termination fee	Yes
Billing	Actual reading vs estimation	If bill is based on an estimation, this must be stated in the bill	Yes
	Undercharging	Limited to amount undercharged in the last 9 months, no interest, offer time to pay	Yes
	Overcharging	Must notify within 10 working days if over \$50	Yes
	Frequency of bills	Once every three months (at least)	Yes

Attachment A

Consumer Protections under the NERL and the NERR – which should be included in the list of minimum obligations that would apply to authorised retailers supplying embedded network customers under the proposed framework?

Consumer Protection	Specific requirement	Description	Should this apply to Authorised Embedded Network Retailers (and Registered EN Service Providers where applicable) as a minimum requirement?
	Information on bills	Bills must contain certain information see Rule 24 of the NERR	No
	Time to pay	At least 13 days from date of the bill	Yes
	Requests for billing information	Customer right to request historical billing information	Yes
	Late payment fees	Limited, hardship customers not to get charged late payment fees	Yes
	Disputes about bills	Customer request for review of bill must be handled in accordance with the retailer's complaints and dispute handling process	Yes
	Method of payment	Customer must be given a choice of payment	Yes
	Shortened collection cycles	Customer may be placed on shortened collection cycle only after it has followed certain processes	Yes
Security Deposits		The NERL places a number of restrictions on the requirements to provide a security deposit in its use to offset an amount owed by a customer	Yes
Customer Hardship	Development of customer hardship policy	Retailer must develop and implement a customer hardship policy, approved by the AER and published on the retailer's website	Yes
	Information to be provided	Retailer must inform a customer of its customer hardship program where it appears that non-payment of the bill is due to hardship. Information about rebates, concessions or relief schemes must also be	Yes

Attachment A

Consumer Protections under the NERL and the NERR – which should be included in the list of minimum obligations that would apply to authorised retailers supplying embedded network customers under the proposed framework?

Consumer Protection	Specific requirement	Description	Should this apply to Authorised Embedded Network Retailers (and Registered EN Service Providers where applicable) as a minimum requirement?
		provided to hardship customers	
	Payment Plans	Retailers must offer payment plans to hardship customers and other customers experiencing payment difficulties	Yes
	Late Fees	Hardship customers must not be charged late fees	Yes
	Payments by Centrepay	Retailers must permit hardship customers to pay via Centrepay (standard retail contract and market contract where it is an option)	Yes
Disconnections and Reconnections (retailers and distributors)	When retailers / distributors may disconnect	Retailer / distributor may only disconnect in certain limited circumstances	Distributor and Retailer Yes
	Required steps before disconnection	Retailer must take certain required steps prior to disconnection (steps required to be taken depend on the circumstances of failure to pay the bill)	Yes
	Rules relating to disconnection warning notices	Warning notice must state the reason for the disconnection	Yes
	When premises must not be disconnected	Retailers are prohibited from disconnecting in certain circumstances	Yes

Attachment A

Consumer Protections under the NERL and the NERR – which should be included in the list of minimum obligations that would apply to authorised retailers supplying embedded network customers under the proposed framework?

Consumer Protection	Specific requirement	Description	Should this apply to Authorised Embedded Network Retailers (and Registered EN Service Providers where applicable) as a minimum requirement?
	Reconnection	Rules around the timeframes in which a retailer or distributor must reconnect customer's premises	Yes
Disputes and Complaints (Retailer and Distributor)	Dispute resolution procedures	Retailers and distributors must have a standard complaint and dispute resolution procedures – contacting retailer or distributor is the customers first point of call	Retailer and Distributor Yes
	Participation in ombudsman schemes	All retailers who sell energy to small customers are required to participate in an approved Ombudsman Scheme	Yes
	Protections for customers who complain	If a complaint is lodged with the Ombudsman, customer cannot be charged late fees	Yes
Life Support equipment (Retailer and Distributor)		Customer must provide retailer with information about life support equipment being in use. Retailer must not disconnect the premises other than during planned or unplanned interruption. 4 days' written notice required of a planned interruption. Both retailer and distributor required to provide emergency contact details of the distributor.	Distributor and Retailer Yes
Planned and Unplanned interruptions (Retailer and Distributor)	Planned interruptions	Notify customer at least 4 business days prior	Distributor and Retailer Yes

Attachment A

Consumer Protections under the NERL and the NERR – which should be included in the list of minimum obligations that would apply to authorised retailers supplying embedded network customers under the proposed framework?

Consumer Protection	Specific requirement	Description	Should this apply to Authorised Embedded Network Retailers (and Registered EN Service Providers where applicable) as a minimum requirement?
	Unplanned interruptions	Distributor must make available a 24 hour phone service within 30 minutes of being advised of an unplanned interruption	Yes