SHOPPING CENTRE
COUNCIL OF AUSTRALIA

Australian Energy Market Commission
Consultation Paper
National Electricity Amendment (Embedded Networks) Rule 2015

A submission by the

Shopping Centre Council of Australia

July 2015

Executive Summary

The Shopping Centre Council of Australia (SCCA) welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) *Consultation Paper: National Electricity Amendment (ENs) Rule 2015*.

The Consultation Paper seeks feedback on the rule change request submitted by the Australian Energy Market Operator (AEMO) on 1 October 2014, under section 91 of the National Electricity Law, which seeks to 'establish a regulatory framework for embedded electricity networks so that consumers within these networks are able to access electricity retail market offers'.

For the purpose of transparency and reference, we advise that we are a member of AEMO's Multiple Trading Relationships and Embedded Networks (MTREN) working group that provided advice on the development of the rule change request to the AEMC. We are therefore familiar with the proposed rule change and its context. We acknowledge AEMO's overall considered and consultative approach on this important issue. It should be noted the SCCA's participation on the AEMO working group does not mean that we endorse the proposal.

In preparing this submission, we have also reviewed the relevant documents submitted to the AEMC by AEMO (available on the AEMC webpage for the subject (ERC0179) Rule Change) such as the proposed draft rule, detailed market design and Summary of stakeholder issues.

We respectfully request that our comments be into consideration and used as the basis for further discussion between the SCCA and AEMC. We believe further discussion is needed as we believe there is a misunderstanding of embedded networks (ENs), including legacy regulatory issues. The most glaring oversight is the fact that access to retailer if choice, without the need for rewiring, is already provided across many ENs under current regulatory arrangements with customer take-up rates of around 80%.

Our comments seek to enable the more effective and efficient operation of the proposed rule change, and also provide increased investment and operational certainty for Embedded Network Owners (ENOs).

General support for the rule change

Subject to the comments and recommendations in this submission, we broadly support the objective of the proposed rule change, along with the principal requirement for an ENO to appoint and fund an Embedded Network Manager (ENM); an appointment which will also become a condition of the Australian Energy Regulator's (AER) exemption framework.

Issues overlooked by an AEMO in the rule change

While the following section 1 of this submission provides an outline of concerns and recommendations we wish to highlight the following critical issues we believe have been overlooked by AEMO and which should be considered in the final rule change and associated material:

- **An ENO should not have capital costs imposed on them, and in any event, must have an ability to recover costs,** where the transfer of an off-market customer to an on-market customer would impose unreasonable costs on the network (e.g. upgrade of a parent meter or switchboard due to incompatibility). Legacy issues can be relevant in this respect not of the ENOs making. It should be noted that the current AER framework prevents capital costs from being recovered by ENOs from embedded network customers.

  This is also relevant where 'off-market' customers need (as acknowledged in AEMO's words) 'significant changes to the wiring within networks'.
- To ensure proper certainty and harmonisation, there should be a clear provision that Local Network Service Providers (LNSPs) or Distribution Network Service Providers (DNSPs) (or electricity retailers) **cannot impose on ENOs (either directly or indirectly) any additional EN requirements outside the final rule and AER framework** (e.g. as a condition of development consent, or purchase of electricity).
- While we note that the AEMO's submission addresses 'ENMs charging for services' – and a view that the AER has no jurisdiction over ENM charging – it should be expressly clarified that **ENOs can recover the cost of ENMs from relevant customers, including for items such as metering services and connections, maintenance and repairs** that are currently provided by LNSPs.

General issues and framework comments

Ahead of providing comments on the relevant sections of the Consultation Paper, we make the following general comments for the AEMC's consideration.

AEMC engagement with ENOs

We are disappointed with the general commentary about ENs in the Consultation Paper. The Paper expresses a fairly negative view in relation to the current regime as if no customer currently has access to a retailer of choice. The Consultation Paper also fails to acknowledge the benefits that ENs have delivered to customers. This negative outlook is also expressed with regards to the proposed regime in stating that all customers should transition to a NEM retailer.

We would welcome an opportunity to meet with the AEMC as part of its consideration on the proposed rule change to enable a better understanding of ENs as they currently exist and with regards to future regulation.

We have found a similar approach has been effective when engaging with the AER to ensure a better understanding of the market and practice (as it relates to shopping centres). We recall early discussions with the AER in 2011 which enabled differences to be acknowledged with shopping centre ENs compared with other asset classes (e.g. claims were made about ENOs turning off people's electricity due to their failure to pay bills – which was completely foreign in our sector but emerged as being relevant to parts of the residential sector).

Support for cost-beneficial competition

We support competitive markets and competition principles, including those articulated in the *Harper Panel Competition Policy Report* released in March 2015.

Competition through access to retailer of choice already occurs across a range of ENs under current arrangements. It is unfortunate that this key point appears to have been overlooked in the Consultation Paper, as if to suggest that there is currently no access to retailer of choice. In such markets, the superior price and service that our members can offer embedded network customers can lead to take-up rates of around 80% across both small and large customers.

In this regard, we support (in-principle) the core principle of the proposal to facilitate competition for embedded network customers, through the provision of ENM services.

We also welcome the AEMC's intention to ensure that administrative and compliance costs of the proposal are minimised and "proportionate to the benefits it is seeking to be achieved".

For those reasons, we believe (as one example) ENMs should be able to be corporate entities across one EN portfolio rather than an individual ENM per asset.

The AEMC should be aware that the implementation of the proposal will likely increase costs EN operating costs, even with improved "consistency". This is particularly the case with 'off-market' arrangements where our members' operating costs are currently largely confined to billing arrangements.

As mentioned above, ENOS should not have capital costs imposed on them, and in any event, must have an ability to recover costs, where the transfer of an off-market customer to an on-market customer would impose unreasonable costs on the network. This could include the upgrade to parent meters or switchboards, or the installation of new meters due to the proposed 'unbundling' requirement to facilitate child transfers.

We also believe that the AEMC needs to be mindful that the *Jacobs SKM* report 'Benefits and Costs of Multiple Trading Arrangements and Embedded Networks – May 2014' does not adequately address the proposed rule change given it preceded the proposed framework, and did not comprehend or analyse the proposed ENM role let alone the cost of appointing an ENM for ENOs.

It appears that bulk of the 'net benefits' outlined in of the *Jacobs SKM* report are based on the *Multiple Trading Relationships* (MTR) reforms which do not form part of the proposed rule change request. The *Jacobs SKM* work also did not comprehend or analyse related issues such as AEMO's establishment of ENM service level procedures or changes to the AER exemption framework as a result of the rule change. Even a recent change in the AER framework has resulted in some of our members commissioning legal advice and amending their existing procedures. We also believe that the projected uptake of NEM participation in ENs could be overstated.

Ongoing AER changes require consultation

We have concerns with the proposed role of the AER for ongoing issues under its exemption framework. This includes the proposal that the threshold for the appointment of an ENM will be a matter for the AER.

There are current issues that we are working on with the AER in relation to the interpretation of a requirement for embedded network customers to make an informed choice and provide written consent with respect to 'brownfield' sites.

We also remain highly concerned that the proposed 'day one' requirements under the proposed rule change will increase over time. This is the case where the AER exemption framework has been the subject of changes over time which, in our view, weren't based on a clear or proven case that EN customers have been disadvantaged. In our view, the AEMC needs to 'hard code' that the AER undertakes proactive and detailed industry consultation on the implementation, monitoring and review of its exemption guidelines.

We would welcome the opportunity to discuss this submission with the AEMC and contribute further to this important reform. Our full membership and contact details appear at the end of this submission.

1. Outline of concerns and recommendations

Our main concerns and recommendations are as follows:

1. Issues overlooked by AEMO in the rule change

No capital costs imposed on ENOs

During the AEMO working group process in 2014, we submitted that the draft rule change should include a clear provision which enabling ENOs to refuse an EN customer transfer where that transfer would require the EN to spend substantial capital to upgrade their network.

While we understand AEMO supports that position, the Paper is silent on the issue. We believe it is best addressed through express clarification to provide clarity for ENOs.

We provided AEMO with an example of where such a situation could have occurred, which would have required the EN to spend around $1 million on upgrading their 'gate' meter.

This would be a highly unreasonable cost, and an EN in such situations should be able to refuse a customer transfer where it requires substantial capital upgrades that are unrecoverable (e.g. the installation of a parent meter or switchboard due to potential incompatibility with the child meter). It should be noted that the AER framework prevents capital costs from being recovered by ENOs from EN customers. Such costs should be met either by the child customer or new electricity retailer. Such costs should not be imposed on the ENO.

In addition, ENO approval should be required in circumstances where an on-market child has any impact on the ENO's network.

Recommendation:

- *ENOs should not have capital costs imposed on them and, in any event, must have an ability to recover costs, where the transfer of an off-market customer to an on-market customer would impose unreasonable costs on the network (e.g. upgrade of a parent meter or switchboard to due incompatibility).*

  This is also relevant where 'off-market' customers need (as acknowledged in AEMO's words) 'significant changes to the wiring within networks'.

No additional EN requirements outside new framework

To enable proper consistency and harmonisation, there should be no additional requirements that can be imposed on ENOs outside of the proposed rule change – or the AER framework - including from LNSPs or DNSPs (or retailers) such as a through a condition of development consent for a shopping centre or, as a condition of purchase of electricity.

There has been a recent case where a DNSP sought to require a shopping centre to install parent meters on individual tenancies within a shopping centre through the development approval process. The finalised rule change – and AER framework – should be the only requirements and conditions that can be imposed in relation to ENs.

Recommendation:

- *LNSPs, DNSPs or electricity retailers should not be able to impose on ENOs (either directly or indirectly) any additional EN requirements outside the final rule and AER exemption framework (e.g. as a condition of development consent or purchase of electricity).*

Ability to charge and recover ENM costs

Like other roles and service providers in the NER, the cost of ENMs – which are being entirely borne by ENOs – must be able to be fully recovered. This includes charges similar to 'external services charges'. It would be highly unreasonable that the additional costs associated with the appointment and operation (e.g. compliance reviews, software requirements) of an ENM cannot be recovered.

Recommendation:

- *ENM costs should be recoverable by ENOs from relevant customers and LNSPs/DNSPs, including items such as metering services and connections and maintenance and repairs.*

2. Consultation Paper issues

Assessment Framework

- Facilitating competition should occur in a fair and cost-effective manner to ensure that ENOs don't disproportionately carry the regulatory cost burden, including having unreasonable capital costs imposed on them.
- There should be an efficient and competitive market for ENMs, including a corporate license approach to enable (for instance ENOs) to operate as ENM across their embedded network portfolio.
- There is a need to ensure that 'day one' requirements for ENMs don't significantly creep or increase over time in a manner which could reduce competition as well as clarity and predictability.

Consultation Issues

- The proposed changes to the AER guidelines to require **routine testing of off-market child meters** and **unbundled retail bills** – effectively enforcing in a potentially under-handed manner through the installation (despite jurisdictional requirements) of new digital meters – are unreasonable, potentially impose unique additional costs on ENs, and should not be introduced.
- The **ENM role should be created** to perform the proposed new functions.
- Existing parties such as **LNSPs could perform some of the ENM functions** so long as there was a regulated rate (in the case there was no competition) and **appropriate ring-fencing.**
- We support **registrable and individual ENs having to appoint an ENM**.
- The **AER should not have discretion to develop thresholds for appointing an ENM** – this should be made clear in the rule change.
- There should be **remedies available to ENOs** if an ENM is not appointed, rather than an immediate loss of the ENO's exemption.
- Clarification is needed on the **frequency of AEMO compliance reviews** to ensure these can be priced and funded. The proposed periodic reviews should be **funded by the AEMO rather than ENMs**.
- We broadly support that the **accreditation process will be based on a reduced version of Metering Provider accreditation checklist**, and primarily in the form of a training/test process to understand of the roles and obligations of the ENM and to demonstrate system access capability.
- The ENM service level procedures **should ensure minimum standards** in relation to insurance levels and software systems (such as being limited to a password protected spreadsheet).
- The obligation in relation to **electricity wiring information should be amended** to provide that only information in relation to the parent meter needs to be provided, **upon request from a retailer** whom an embedded network customer is proposing to transfer to.
- The obligation in relation to electricity wiring information should **expressly rule out the need to provide Single Line Diagrams**.
- **ENMs should be allowed to be corporate entities,** rather than individuals, to avoid the need for individuals ENMs for individual assets, **ensuring lower direct costs, compliance costs and more efficient operation.** This is the case for all accreditations and licences in the NEM and is particularly relevant in this case for landlords/ENOs with multiple properties.
- The **ring-fencing of DNSP and retailer activities** from the ENM role should be immediately investigated further to ensure appropriate separation
- Any **ring fencing requirements should be specified in the NER** and not the AER guidelines
- ENOs should have a **two-year period from the commencement** of the new rule to appoint an ENM.

- The **transition period should be established within the NER** as opposed to the AER's framework, particularly given the AER role in also determining individual exemptions for embedded networks.
- The proposed **AEMO transitional provisions should proceed**, however the AEMO must consult with ENOs and potential ENMs on the proposed ENM service level procedures to seek to minimise unnecessary requirements and costs.
- **Potential synergies should be investigated** and communicated to relevant stakeholders to ensure proper preparation for the new framework.
- We support the proposed **six-month deeming of ENMs for existing retailers and LNSPs** (subject to appropriate **ring-fencing** guidelines and procedures) is supported. There should be an obligation for ongoing reporting and compliance administered by the AER.
- **Existing embedded network service providers** should also be deemed or fast-tracked as ENMs.
- **Any party that wants to become an ENM** should have an opportunity to become accredited before the commencement date of the rule.
- Further investigation should be undertaken to **assess the benefits of LNSPs becoming a default provider of ENM services** with some form of price regulation.
- The proposed consequential or corresponding changes should be further investigated but **should not unfairly reduce the rights or role of an ENO** (e.g. in relation to network charges). Any changes should also ensure that off market customer retail related regulations **are mandated through the AER guidelines and retail related regulations for on market customers are mandated through the NERR**. This will ensure consistency with the current approach.

2. Background

We thought it would be useful to provide a brief background on our members' ENs and our involvement with embedded network policy.

Why operate embedded networks?

Our members own and operate ENs and on-sell electricity to their retail (and non-retail) tenants across various jurisdictions in accordance with relevant laws and guidelines, including the AER's exemption guidelines.

Our members own and operate ENs for various reasons, including historical reasons such as requirements from government entities/network companies when developing shopping centres.

Our members are required to install electricity networks within their centres to ensure the safe and reliable provision of electricity to the 'common' areas and services (e.g. mall space, car parks, elevators, fire suppression systems) and individual tenancies. It goes without saying that electricity companies have traditionally not wanted to 'extend' their networks to within our members' private centres.

Our members on-sell to large electricity users (e.g. supermarkets, bottle shops, bakeries) and small electricity users (e.g. clothing, footwear, mobile phone stores). Our members' core business is real-estate, principally through the ownership, management, leasing and development of property assets. The operation of ENs is an incidental business but is still essential to the overall function of a shopping centre.

For this reason, our members that are listed companies are defined as Australian Real Estate Investment Trusts (or 'A-REITs') on the Australian Stock Exchange, as opposed to, for instance, the Energy and Utilities index which includes companies such as Origin Energy, AGL and ERM Energy.

Risks associated with embedded networks

We believe there is an overall misunderstanding about the risks associated with ENs. ENs reflect a private investment and like all private investment – and just like electricity company investments - it needs a return on that investment. For this reason, our members seek to operate their networks with a reasonable return on their capital and operational investment while complying with all relevant regulatory requirements.

ENs represent a substantial investment which operate with common investment risks such as regulatory, operational and commercial risks. As income producing assets within a shopping centre, their operation can also impact property valuation. Our members also experience standard market risks, including customers (tenants) that do not pay their electricity bills.

As an example, when the Queensland Competition Authority (QCA) introduced electricity tariff reforms in 1 July 2012, our members experienced considerable losses of income, including some ENs operating at a financial loss (particularly in the Ergon network area outside of South-East Queensland). This undermined the ability to undertake further capital investment and maintenance. Customers still benefited from price protections through regulated and benchmark tariffs, despite not having low-cost access to their electricity retailer of choice.

Aside from a miss-match between regulated tariffs for large and small customers, this experience in Queensland included a lack of alignment between the deregulation of pricing for large non-residential customers within the Energex network area and section 20J of the *Electricity Act 1994* (which relates to the maximum charge for metered supply on 'on-supply' arrangements).

Embedded networks deliver competition and customer benefits

As we noted in a previous section, it is frustrating that the Consultation Paper's commentary seems to overlook the fact that many ENs already deliver competition and customer benefits through providing an alternative electricity provider and superior pricing and services. This, in part, can be achieved through our members' purchasing power and contract arrangements, which we thought would have been more welcomed by the AEMC, particularly given the statement at page 13 of the Paper about competition being a driver of productivity and efficiency in markets.

Electricity price caps – and government requirements – have also generally meant that EN customers cannot be charged more than what they would be if they were outside the centre.

Even in markets where there is access to cost-effective competition in ENs (i.e. a customer can switch to an external customer as minimal cost such as a meter-read cost), our members have take-up and retention rates of around 80%. This is due to the superior pricing offering, and also the service being provided for – and any issues being handled – by the shopping centre management and their service providers (e.g. those that provide billing services).

Experience with embedded network policy

We have had previous involvement with EN policy frameworks, most notably the initial development and ongoing refinement of the AER exemption guidelines for electricity onselling and network service provision. We have also supported this roll-out through the adoption by state governments (e.g. Queensland) of the National Energy Customer Framework (NECF).

Generally, our members (where the AER framework has been adopted) have been captured by either Deemed or Registrable Exemptions as follows:

- *Retail and Network class R1* – Metered energy onselling by commercial/retail landlords or lessors to small customers;
- *Retail and Network class D7* – Landlords or lessors passing on common area energy costs to premises in commercial development; and/or
- *Retail and Network class R5* – Metered energy onselling to large customers.

As a result, our members have been required to comply with various AER conditions which relate to issues such as:

- The right of customers to access electricity provider of choice;
- Metering arrangements;
- Dispute resolution; and
- General customer protections.

More recently, our members have been required to apply to the AER for Individual Exemptions, which has proven problematic (mostly for brownfield sites) due to the different interpretation and application of certain regulatory requirements. We are currently working on these matters with the AER.

3. Response to Issues

We are pleased to respond to the *Assessment Framework* and *Issues for Consultation* outlined in the Consultation Paper.

Assessment Framework

We support the three factors proposed to assess the rule change request, however we believe that the application of each factor should be more comprehensive.

1. Facilitating Competition

We support the above principle, however the AEMC should acknowledge that competition is already facilitated in certain ENs without the additional costs which would be incurred under the proposed rule change.

The AEMC's assessment should also consider the need to facilitating competition in a cost-effective manner to ensure that ENOs are not required to pay unreasonable capital costs as a result of a customer transfer, as noted above. These costs should be met by the EN customer and/or their new electricity retailer.

We agree that there should be a competitive market for ENMs and that it should operate efficiently. This should not just apply to 'day one' requirements for ENMs, so as to avoid creep over time. We are most concerned that as a 'regulated' service provider, ENMs will become increasingly captured by market participants who will then want to erect barriers to entry and operation. We have experienced this issue with real estate licensing whereby there are vested interests that try and maintain the need for licences and ongoing 'Continuing Professional Development' programs from which they themselves benefit financially.

2. Clarity, transparency and predictability

We support clarity, transparency and predictability in relation to the legal and regulatory frameworks for embedded networks. We have some concerns in relation to 'key arrangements' that are not being changed by the proposed rule change but could be changed at a later date, such as metering standards or accuracy, network charges, distribution loss factors, retailer of last resort procedures or obligations to supply (as outlined at page 16). These issues will continue to be governed by the AER's exemption framework. The AER's exemption framework has been the subject of change since its initial commencement which has reduced the certainty and predictability of the regulatory framework for our members, most recently in relation the transition to individual exemptions and the application of certain requirements.

3. Proportionality and regulatory burden

We agree that changes to the NER should not create unnecessary compliance and administrative burdens for stakeholders. We have some concerns in this regard with the proposed rule change.

It is for this reason, for instance, that we believe that ENMs should be able to be corporate entities that operate across that entities' assets, which would avoid the need for individual ENMs for individual assets. This would also encourage ENOs to invest in providing ENM services in a competitive market.

In addition, while much of the proposed rule change appears 'contained' in terms of what appears in the Consultation Paper, there are other issues yet to be developed such as AEMO's ENM service level procedures (which could, for instance, impose higher insurance and software costs) as well as proposed and ongoing changes to the AER framework. We can cite a recent example whereby the AER framework has been difficult for our members to understand, with a different interpretation by the AER, which has required engagement with the AER, the provision of external (and costly) legal advice, and the uncertainty associated with further ENs.

In supporting the desire for 'NEM wide consistent regulations' as a means to reduce administrative and compliance costs, it is for this reason that we have raised the issue above that there should be no additional embedded network requirements imposed on shopping centre owners outside the proposed rule and AER framework (e.g. through conditions of development consent).

Consultation Issues

We are pleased to provide comment on the 10 consultation issues outlined in the Paper.

1. Requirements to facilitate competition

We do not believe that there are any additional changes required to the National Electricity Rules (NER) or AER's network exemption guideline to allow EN customers access to their retailer of choice.

We believe however that the proposed approach has over-reached to the extent that it relates to the AER's exemption guidelines.

As outlined at page 16 of the Consultation Paper, it is proposed that the following two changes to the AER exemption conditions will be introduced that AEMO "considers are necessary to facilitate embedded network customer access to retail market offers".

- The same routine testing and inspection of off-market child meters as for those customers directly connected to a registered NSPs network;
- ENO's to unbundle retail bills of EN customers into network and energy charges so that customers can compare offers for energy charges from a registered retailer and the ENO.

We do not support these changes and believe it is an overreach.

We believe that these additional conditions would impose unnecessary costs and, to our understanding, result in an imbalance between ENs and those outside ENs. This is principally the case in relation to the unbundling of retail bills, which would effectively and indirectly force ENOs to replace existing meters at their cost. The unbundling of bills would also increase the complexity of offers and result in increased customer confusion and communications. It would also be inconsistent with market practices for these types of customers not in ENs who typically have unbundled bills.

In relation to network pricing, the AER's framework already regulates network pricing within ENs and there is no need for any further change.

Recommendation:

- *The proposed changes to the AER guidelines to require routine testing of off-market child meters and unbundled retail bills – effectively enforcing substantial costs through the installation (despite jurisdictional requirements) of new digital meters – are unreasonable, potentially impose unique additional costs on ENs, and should not be introduced.*

2. Who should perform these functions?

We support in principle the creation of the ENM role as a new accredited service provider to perform the functions proposed by the AEMO.

We express this support subject to further comments in this submission and also on the basis that we firmly believe the role will increase costs to ENOs (and EN customers). There would be some advantages to existing parties in particular LNSPs becoming default ENMs at least for the first three years as a contingency, with some form of regulation over the prices they charge for their services and appropriate ring fencing.

In addition, there would be merit in considering LNSPs performing some of the functions that an ENM would be envisaged to perform such as MSATs registrations (again provided there was a regulated rate and appropriate ring-fencing).

Recommendation:

- *The ENM role should be created to perform the proposed new functions.*

- *Existing parties such as LNSPs could perform some of the ENM functions so long as there was a regulated rate (in the case there was no competition) and appropriate ring-fencing.*

3. When is an ENM required?

We generally support in principle that an ENM should be appointed as an exemption condition under the AER's framework, subject to the proposed transitional provisions noted below.

Further, we support the proposal that this condition apply to registrable and individual exemptions as opposed to deemed exemptions.

However, we have concerns that the AER will have unfettered discretion in relation to the threshold for ENOs to appoint an ENM. Our concerns are heightened given the 'discretion' that the AER applies when assessing individual exemption applications. The NER should provide objective and clearly delineated factors for the AER to consider in their decisions regarding accreditation and compliance requirements for ENMs.

We also seek clarification given that a threshold already applies in relation to registrable and individual exemptions.

We also do not agree with the proposal (at page 18) that "failure to comply could be addressed by the AER as a breach of an exemption condition". This is particularly the case given that some triggers under the AER's framework could transfer a deemed exemption to being a registrable exemption automatically and the ENO may not have had time to appoint an ENM.

Given the ENM role will become a unique and new AER condition, there should be a remedy in place to ensure that an ENO has time to appoint an ENM (e.g. a one-month period). We note that in the event that AEMO identifies non-compliance with ENM compliance, the ENM would be required to take corrective action rather than being in automatic breach of its AER exemption conditions.

Recommendation:

- *We support registrable and individual ENs having to appoint an ENM*
- *The AER should not have discretion to develop thresholds for appointing an ENM – this should be made clear in the rule change.*
- *There should be a remedy for an ENO to appoint an ENM rather than be in breach of their AER exemption conditions and an immediate loss of their exemption if an ENM isn't appointed.*

4. Accreditation and governance of an ENM

We generally support the proposed requirements for the accreditation, however would like greater clarity on the accreditation process. We also generally support in principle the governance of ENMs to ensure ongoing compliance.

We are, however, concerned with the proposal for the AEMO to undertake "periodic reviews" (no more frequently than annually) to assess ENM compliance to be undertaken at the ENM's own cost. We submit that this should the proposed periodic reviews should be funded by AEMO.

These reviews will ultimately have to be priced – particularly for the charging of fees and the recovery of costs, so further clarification is required. One way of reducing costs would be to ensure that corporate entities can become ENMs for their embedded network portfolio, therefore reducing the potential number of ENMs that need to be monitored and reviewed by AEMO.

We believe that there should be a staged process regarding penalties for failure to have ENM services provided by an accredited ENM, for example, a warning system with a timeframe within which an ENO has an opportunity in which to ensure compliance. Only after this process should an ENM potentially be suspended or lose accreditation. For example, there may be circumstances where accreditation lapses because of an administrative error and the immediate imposition of a penalty would lead to an absurd result.

We have concerns with some of the 'requirements of ENM service level procedures' (section 7.16.3) of the Draft Rule to be developed in due course by AEMO and 'capabilities of ENMs' (section 7.7.2) which could add unnecessary cost such as uncertainty around insurance that must be taken out by or behalf of the ENM, along with the software and systems that are used by ENMs (we believe this should be limited to a password protected spreadsheet).

Our concerns also extend to the requirement for an ENM to "maintain information about electricity wiring and other infrastructure and equipment comprising the embedded network and to make that available to prospective retailers and their metering providers to the extent required to fulfil their obligations in the NEM" (Appendix A, No. 14).

This is a much broader requirement than what was proposed in a working version of the rule change. In our view, this requirement goes beyond the scope of the proposed rule to electricity retailers' broader obligations under the NEM. It goes well beyond what we believe are the minimum requirements a retailer needs to know about an EN – and also removes a previously proposed requirement for the retailer to make a request (and the ENM to respond to that request).

It should also expressly rule out that Single Line Diagrams (SLDs) are not needed. One of our members had to incur a cost of around $30,000 to prepare a SLD which we believe is unreasonable and unnecessary.

Recommendation:

- *Clarification is needed on the frequency of AEMO compliance reviews to ensure these can be priced and funded. The proposed periodic reviews should be funded by the AEMO rather than ENMs.*
- *Corporate entities should be able to become an ENM across a portfolio of ENs rather than individual ENMs being required for individual networks, to ensure lower direct costs, compliance costs and more efficient operation – this would reduce the potential number (and cost) of ENMs that need to monitored and reviewed.*
- *We broadly support that the accreditation process will be based on a reduced version of Metering Provider accreditation checklist, and primarily in the form of a training/test process to understand of the roles and obligations of the ENM and to demonstrate system access capability.*
- *The ENM service level procedures should ensure minimum standards in relation to insurance levels and software systems (such as being limited to a password protected spreadsheet).*
- *The obligation in relation to electricity wiring information should be amended to provide that only information in relation to the parent meter needs to be provided, upon request from a retailer whom an embedded network customer is proposing to transfer to.*
- *The obligation in relation to electricity wiring information should expressly rule out the need to provide Single Line Diagrams.*

5. Who can be an ENM?

To both ensure a competitive market of ENMs and that the ENM role operates efficiently, we believe that corporate entities should be able to be ENMs across their embedded network portfolio, so long as they have an appointed and responsible person to fulfil and meet all obligations. We note that all accreditations and licences in the NEM rest with corporate entities rather than individuals.

Requiring an individual ENM for each asset / embedded network would create unnecessary red-tape and compliance requirements.

We believe that the proposal to ring-fence DNSP activities from the ENM should be further investigated to ensure an appropriate separation of roles. We also believe a similar investigation should be undertaken regarding ring fencing retailer activities from the ENM.

Recommendation:

- *Corporate entities should be able to become an ENM across a portfolio of ENs rather than individual ENMs being required for individual networks, to ensure lower direct costs, compliance costs and more efficient operation. This is the case for all accreditations and licenses in the NEM and is particularly relevant in this case for landlords/ENOs with multiple properties.*

- *The ring-fencing of DNSP and retailer activities from the ENM role should be immediately investigated further to ensure appropriate separation*
- *Any ring fencing requirements should be specified in the NER and not the AER guidelines*

6. Grandfathering

We support the proposal that ENOs with registrable or individual exemptions be allowed two years from the commencement of the rule to appoint an ENM. We recommended a three year transition period to the AEMO during the working group process, however are willing to accept this as a compromised position.

Deferred commencement of the rule is required to enable our members to address issues such as:

- The need to review existing service provider contracts relating to ENs (including whether they can be amended or terminated).
- The accreditation and registration of an appropriate pool of ENMs.
- The need to tender for and ultimately appoint an ENM.
- The factoring in of ENM costs into annual budgets (which will not be fully known until ENMs are appointed).
- The factoring in of other requirements into four-year (typical) shopping centre asset management plans.
- Training of relevant staff (shopping centre managers and leasing executives) of new overall obligations.
- The ability for an ENO to become an registered ENM, and potentially reduce the cost burden associated with the appointment.
- The need for new entrants to the ENM market to become established, enabling a competitive market.

Recommendation:

- *ENOs should have a two-year period from the commencement of the new rule to appoint an ENM.*
- *The transition period should be established within the NER as opposed to the AER's framework, particularly given the AER role in also determining individual exemptions for embedded networks.*

7. Transitional provisions

We support the proposed transitional provisions to enable AEMO to amend its existing procedures and systems. As we have raised previously, AEMO's proposed ENM service level obligations have, in our view, the ability to increase costs and the compliance burden for the new framework. There is a clear need for industry consultation with ENOs and potential ENMs.

Recommendation:

- *The proposed AEMO transitional provisions should proceed, however the AEMO must consult with ENOs and potential ENMs on the proposed ENM service level procedures to seek to minimise unnecessary requirements and costs.*

8. Implementation timing

We note the potential synergies in the timing of the proposed changes with other rule changes such as the *Expanding Competition in Metering and Related Services* and the *Meter Replacement Processes.* Synergies should be investigated and communicated to relevant stakeholders.

Recommendation:

- *Potential synergies should be investigated and communicated to relevant stakeholders to ensure proper preparation for the new framework.*

9. Competition in the ENM market

We understand that some of our members will investigate becoming ENMs in order to reduce overall costs but also align with and complement other aspects of shopping centre management.

While we support the proposed deeming of LNSPs to be ENMs, we also believe that existing embedded network service providers that have long-standing experience in the market should also be deemed (or at least fast-tracked) to become ENMs. In addition, anyone who wants to become an ENM should have an opportunity to do so before the commencement date of the rule.

We have previously discussed the possibility of LNSPs becoming a default ENM provider with some form of price regulation for their services. We believe this should be investigated further as it may address the risk of lack of competition in the ENM market.

Recommendation:

- *We support the proposed six-month deeming of ENMs for existing retailers and LNSPs (subject to appropriate ring-fencing guidelines and procedures) is supported. There should be an obligation for ongoing reporting and compliance administered by the AER.*
- *Existing embedded network service providers should also be deemed or fast-tracked as ENMs.*
- *Any party that wants to become an ENM should have an opportunity to become accredited before the commencement date of the rule.*
- *Further investigation should be undertaken to assess the benefits of LNSPs becoming a default provider of ENM services with some form of price regulation.*

10. Consequential or corresponding changes to the NERR

We note the corresponding issues in relation to standing offers to small customers, explicit informed consent, content of bills and re-energisation.

We appreciate the need to consider and address these issues, including the need to properly recognise the role of the ENO in these processes and to ensure the efficient and fair operation of the proposed new rule.

We would be concerned if addressing these issues sought to reduce an ENO's rights or role (e.g. in relation to network charges – or a need for an ENO to obtain explicit informed consent whereas a retailer does not).

Recommendation:

- *The proposed consequential or corresponding changes should be further investigated but should not unfairly reduce the rights or role of an ENO (e.g. in relation to network charges). Any changes should also ensure that off market customer retail related regulations are mandated through the AER guidelines and retail related regulations for on market customers are mandated through the NERR. This will ensure consistency with the current approach.*

4. Membership and contact details

The Shopping Centre Council of Australia (SCCA) represents Australia's major owners, managers and developers of shopping centres. Our members include family businesses, private companies, industry superannuation funds and Australian Real Estate Investments Trusts (A-REITS) listed on the Australian Stock Exchange (ASX).

Our members are AMP Capital Investors, Blackstone Group (Australia), Brookfield Office Properties, Charter Hall Retail REIT, DEXUS Property Group, Eureka Funds Management, Federation Centres, GPT Group, ISPT, Ipoh Management Services, Jen Retail Properties, Jones Lang LaSalle, Lancini Group, Lend Lease Retail, McConaghy Group, McConaghy Properties, Mirvac, Novion Property Group, Perron Group, Precision Group, QIC, Savills, SCA Property Group, Scentre Group and Stockland.

The SCCA has an embedded network working group which includes representatives from a range of its members.

Contacts

The SCCA would be happy to discuss any aspect of this submission. Please do not hesitate to contact:

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