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Lodged Online: <http://www.aemc.gov.au>

**Submission on Review of Regulatory Arrangements for Embedded Networks
Consultation Paper, April 2017**

Reference: RPR0006

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA) is the State's peak industry body representing the interests of holiday parks, residential land lease communities (residential parks, including caravan parks and manufactured home estates), manufacturers and retailers of caravans, RVs, motorhomes and camping equipment and manufacturers of relocatable homes.

We currently have as members 720 businesses representing all aspects of the caravan and camping industry. 456 of these members are holiday park and residential land lease community operators in various areas of New South Wales (NSW).

The geographical breakdown of these businesses is as follows:

Region	Number of Businesses
Far North Coast & Tweed	52
North Coast	70
New England	16
Manning/Forster	24
Newcastle, Hunter & Port Stephens	56
Central Coast	33
Sydney & Surrounds	24
Leisure Coast	48
South Coast	65
Central NSW	23
Murray & Riverina	27
Canberra & Snowy Mountains	13
Western NSW	4
Interstate	1

For the purpose of providing feedback to the State Government in August 2012 the Association conducted a survey of members operating residential land lease communities

within NSW. That survey revealed that in approximately 60% of responses, electricity is supplied to permanent residents by the operator via an embedded network (park supply).

Further, in 22% of surveyed cases electricity is supplied to permanent residents by the operator AND the electricity supplier, resulting in a ‘mixed supply’ via what could be termed a ‘partially’ embedded network.

A copy of the results of this survey is enclosed for your reference. We note this survey did not take into account the supply of electricity via embedded networks in holiday parks. Nevertheless, the Australian Energy Market Commission (AEMC) is aware that there are holiday parks within NSW where embedded networks are established and in operation.

Under the Australian Energy Regulator’s (AER) *Electricity Network Service Provider Registration Exemption Guideline Version 5* (Network Guideline) and *(Retail) Exempt Selling Guideline Version 4* (Retail Guideline) our holiday park and residential land lease community members are classified as follows:

Embedded Network Type	AER Exemption Classes
Operator selling metered energy to occupants of holiday accommodation on a short-term basis in a caravan/holiday park	<p>Class D3 of the Retail Guideline and Class ND3 of the Network Guideline</p> <p>Do not need to register their details with the AER, however are required to comply with Conditions attached to their exemption</p>
Operator selling metered energy to residents who principally reside in the caravan park/residential park or manufactured home estate	<p>Class R4 of the Retail Guideline and Class NR4 of the Network Guideline</p> <p>Must register their details with the AER and comply with Conditions attached to their exemption</p>
Operator selling metered energy to occupants of holiday accommodation on a short-term basis as well as residents who principally reside in the caravan/holiday park (mixed park)	<p>Class R4 of the Retail Guideline and Class NR4 of the Network Guideline</p> <p>Must register their details with the AER and comply with Conditions attached to their exemption</p> <p>NOTE: <i>we highlight this class because even if a caravan park has only 1 permanent resident, they are required to register their details with the AER under Class R4 of the Retail Guideline and Class NR4 of the Network Guideline, even though the majority of their customers are holiday makers.</i></p>

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to the AEMC’s Review of Regulatory Arrangements for Embedded Networks Consultation Paper (Consultation Paper). Accordingly, we welcome the opportunity to comment on the issues raised.

For the purpose of these submissions, wherever we refer to “holiday parks” we are referring to caravan parks that only supply energy via an embedded network to occupants of holiday accommodation on a short terms basis (i.e. there are no permanent residents in these

caravan parks). Wherever we refer to “residential land lease communities” we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who principally reside there. This includes caravan parks that supply energy to as little as 1-2 residents right through to residential land lease communities that are exclusively residential.

Consultation Question 1 – Is the regulatory framework for embedded networks fit for purpose?

The embedded networks sector and the interrelationship with other types of electricity supply is diverse. As such, the regulatory framework needs to adequately take into account differences in the market and respond with proportionate regulation. The two-tiered regulatory framework remains an appropriate model, as it allows the AER the flexibility and discretion to respond to developments in the embedded networks sector and the different types of embedded network customers as needed. However there are some improvements that can be made.

Before outlining our suggestions in relation to matters relevant to our industry we wish to highlight two issues identified in the Consultation Paper. First, while there may be growth in the embedded network sector generally, with landlords looking to energy on selling as a means of supplementing their rental income, there is no rapidly increasing development of holiday parks and residential land lease communities in NSW with dedicated embedded networks.

Secondly, we do not agree that the AER has no visibility of embedded networks within NSW holiday parks operating under deemed exemptions and limited visibility of embedded networks within NSW residential land lease communities operating under registrable exemptions. Visibility is easily obtained via consultation with peak industry bodies and there is a register of NSW residential land lease communities maintained by NSW Fair Trading.

While the two-tiered regulatory framework may result in different obligations for embedded network operators in relation to the provision of network and retail services, consumer protections and compliance obligations, this is appropriate particularly in relation to embedded networks where the on selling of energy is not a core component of business. The exemption framework continues to be necessary for these types of embedded networks.

However, embedded networks within NSW holiday parks and residential land lease communities now face a complex, overlapping web of legislation for an activity that is incidental to their core business and is generally not a source of profit when all costs are taken into account. They are subject to a number of legal instruments – including the National Energy Customer Framework, the Australian Consumer Law, the AER Network Guideline and Retail Guideline, the NSW Fair Trading Act 1987, the NSW Electricity Supply Act 1995, the NSW Residential (Land Lease) Communities Act 2013 (RLLCA), the Residential (Land Lease) Communities Regulation 2015 (RLLCR), the NSW Civil and Administrative Tribunal Act and the Holiday Parks (Long-term Casual Occupation) Act 2002 and the Holiday Parks (Long-term Casual Occupation) Regulation 2009.

Embedded networks that are run by small to medium enterprises, have fewer resources to understand and implement compliance with such a complex regulatory system and less ability to absorb compliance costs. We therefore strongly oppose any amendments to the current regulatory framework, or the adoption of alternative regulatory arrangements, that would increase the regulatory burden and costs for these businesses.

Embedded networks within NSW holiday parks and residential land lease communities should continue to be eligible for exemption, but we ask that consideration be given to simplification and consolidation of existing regulation.

Land lease communities are, first and foremost, important providers of alternative and affordable housing. Their growth and viability must be encouraged and consequently the regulatory framework of these types of embedded networks needs to be streamlined.

Both the AER Network Guideline and Retail Guideline attempt to regulate the broad scope of embedded networks. This is causing inefficiencies. For example, arrangements which may be appropriate for some types of embedded networks offer little assistance for NSW residential land lease communities (i.e. cost recovery processes in eligible communities).

There are also overlapping requirements within the AER's Network and Retail Guidelines and other legislative instruments, which cause duplication and confusion. These include pricing, billing, receipts, dispute resolution and information requirements. Unnecessary layers of regulation should be repealed and regulatory instruments should be consolidated wherever possible.

Each guideline is a complex and lengthy document and is difficult for a less sophisticated exempt embedded network operator to understand and implement. Consideration needs to be given to restructuring these guidelines or to the development of guidelines for each of the classes of activity.

Overall, the review of the regulatory arrangement for embedded networks needs to take better account of the less sophisticated embedded network operator, and ways to assist them to meet their obligations through a range of options (not just regulatory), as part of assessing issues affecting embedded network customers.

Consultation Question 2 – Can access to retail market offers be improved?

The likelihood of customers in NSW holiday parks and residential land lease communities seeking to go on-market is low, should it happen at all. This was acknowledged by the AEMC in its final 'Rule Determination - National Electricity Amendment (Embedded Networks) Rule 2015' (Rule Determination). On page 49 of its Rule Determination the AEMC made it clear that an advantage of providing the AER with flexibility and discretion regarding the appointment of an Embedded Network Manager (ENM) is so "embedded network operators operating embedded networks where the likelihood of customers seeking to go on-market is low will not be required to bear the costs unless a customer seeks to go on-market."

We are not aware of any cases of customers of embedded networks in NSW holiday parks or residential land lease communities going on-market or seeking to go on market. In its report 'The retail and network exemption framework: emerging issues for consumers, December 2015,' the South Australian Council of Social Service (SACOSS) acknowledges that exempt customers in caravan and residential parks "did not look to retail competition as a way of improving the services and energy prices provided by their exempt seller. Instead, the exempt customers in our study looked to the various regulatory authorities to provide this pressure on the suppliers."¹

Pricing limits imposed by NSW legislation and the AER guidelines on these businesses makes it unlikely that customers will seek retail competition, as the incentive to do so is limited. For

¹ p7, SACOSS, *The retail and network exemption framework: emerging issues for consumers, December 2015*

example, in residential land lease communities, operators are limited in what they can charge for electricity usage and service availability:

Residential (Land Lease) Communities Act 2013:

Part 7 Utility and other charges

76 Limit on amounts payable by home owner

- (1) *The only fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community, are as follows:*
 - (a) *site fees, including site fees payable in advance as permitted under section 57,*
 - (b) *the cost of registering or recording the site agreement under the Real Property Act 1900 if any fixed term period exceeds 3 years,*
 - (c) *a refundable deposit for a key or any other opening device to access the community, not exceeding \$25 or another amount prescribed by the regulations,*
 - (d) *other fees, charges and deposits required or permitted by this Act or the regulations.*
- (2) *The regulations may require or permit payment of fees, charges and deposits that are specified or of a kind specified by the regulations and, in particular, may (but need not) provide that they are not payable by a home owner unless required by the site agreement to be paid by the home owner.*
- (3) *An operator of a community must not require or permit the payment of any fee, charge or deposit from a home owner in contravention of this section.*

Maximum penalty: 20 penalty units.

77 Utility charges payable to operator by home owner

- (1) *This section applies if, under a site agreement, the home owner is required to pay utility charges to the operator for the use by the home owner of a utility at the residential site.*
- (2) *The home owner cannot be required to pay for the use unless:*
 - (a) *the use is separately measured or metered, and*
 - (b) *the operator gives the home owner an itemised account and allows at least 21 days for the payment to be made.*
- (3) *The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.*

Maximum penalty: 20 penalty units.

- (4) *The regulations may:*
 - (a) *provide for a maximum utility charge payable by home owners to the operator, and*
 - (b) *create an offence for an operator to request or receive more than that maximum charge (if any).*
- (5) *The regulations may provide that a service availability charge for electricity payable by home owners to the operator of a community is to be discounted in accordance with the regulations where less than 60 amps are being supplied.*

Residential (Land Lease) Communities Regulation 2015:

13 Maximum service availability charge—electricity

- (1) *The maximum service availability charge payable, in respect of any period, by a home owner to the operator for the supply of electricity at a residential site is the amount that would have been payable for the period if the electricity had been supplied to a small customer under a standard retail contract of the applicable local area retailer at standing offer prices.*
- (2) *Despite subclause (1), the service availability charge payable by a home owner to an operator of a community for supply at a residential site of less than 60 amps of electricity is to be discounted in accordance with subclause (3).*
- (3) *The maximum service availability charge payable by a home owner to an operator for supply at a residential site of less than 60 amps of electricity is:*
 - (a) *if less than 20 amps of electricity is supplied to the residential site—20 per cent of the service availability charge that would apply if the home owner were a small customer under a standard retail contract of the applicable local area retailer, or*
 - (b) *if 20 amps or more but less than 30 amps of electricity is supplied to the residential site—50 per cent of that service availability charge, or*
 - (c) *if 30 amps or more but less than 60 amps of electricity is supplied to the residential site—70 per cent of that service availability charge.*
- (4) *In this clause, **local area retailer, small customer, standard retail contract and standing offer prices** have the same meanings as in the National Energy Retail Law (NSW).*

In the event that customers of embedded networks in NSW holiday parks and residential land lease communities do seek to access retail competition, the changes to the National Electricity Rules set out in the AEMC's final Rule Determination, creating a new ENM to perform the market interface functions that link embedded network customers to the National Electricity Market systems, aim to facilitate this.

Retailers also have a part to play in improving access to retail competition, as they also benefit from embedded network customers going 'on market.' We have previously suggested that the retailer who wins the embedded network customer's business should cover the costs of the ENM. The retailer may then choose to absorb the cost as part of its marketing effort to win new customers or may pass the cost on to the new customer.

Retailers should also be required to establish a relationship with embedded network operators and bill the customer for network and energy services, rather than a customer having to pay two separate bills (one to the embedded network operator for network services and one to the retailer for energy services). Under the AER's Network Guideline embedded network operators are already tasked with a responsibility to provide unbundled details of the network tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy on request.

We note that some amendments are required to be made to the National Energy Retail Law (NERL) and the National Energy Retail Rules (NERR) to address issues regarding embedded networks that arise because of the tripartite relationship between a customer, retailer and local network service provider. Embedded network customers who choose their own retailer should have full access to the consumer protection framework of the authorised retailer. Retailers will need to inform much of this process and we look forward to receiving further information and providing input.

In principle, we support amendments that will provide clarity for all parties in the relationship between the embedded network operator, the authorised retailer and the embedded network customer who has gone 'on-market.' However, we do not support any amendments that would increase the costs or compliance burden for NSW holiday parks and residential land lease communities.

We also do not support any amendments to the regulatory framework that would force embedded network operators to pass on savings incurred at the parent connection to embedded network customers. Page 25 of the Consultation Paper raises ‘implications of limited access to retail market offers’ in ‘Scenario 1’:

“Scenario 1 - off-market embedded network customer of exempt-seller

Embedded network operators source electricity from the retail market at the parent connection point and then on-sell it to embedded network customers. Embedded network operators may be able to negotiate a lower price with an authorised retailer at the parent connection point than each individual embedded network customer is able to negotiate due to the increased total load giving them additional bargaining power.

Where barriers to embedded network customers accessing retail market offers exist, some embedded network operators face limited incentive or obligation to pass those savings on to customers. This is because the customers cannot source energy from an alternative provider and the embedded network operator is able to charge a price up to the standing offer price for small customers and any price for large customers.

This may result in an outcome where embedded network operators have an incentive to bargain with a retailer to obtain the best price at the parent connection point, but they do not face a strong incentive to pass on any savings at the parent connection point to embedded network customers.”

This observation has also been raised by SACOSS. It has highlighted that an issue for customers is that exempt sellers are being charged lower, market based prices than the standard prices from the authorised electricity retailer at the ‘gate’ meter and this market benefit is not passed onto exempt consumers.

We reiterate that the supply of energy to customers in embedded networks in NSW holiday parks and residential land lease communities is generally not a source of profit. Energy on-selling is ancillary to their core business, there are limits imposed on charges by state legislation and any savings which are made are more likely used to cover ongoing costs of running the business.

Where an exempt seller can leverage its additional bargaining power to negotiate a lower price with an authorised retailer at the parent connection point they should be free to do so and retain the benefits of these efforts. Requiring that they pass on all savings to exempt customers, as a means of improving access to retail market offers, is guaranteed to fail. Removing their incentive to bargain and saddling them with yet another administrative burden will not incentivise exempt sellers to seek and pass on market offers to exempt customers.

Even if a sharing arrangement were to be considered, as requested by SACOSS,² it is unlikely to be successful. Challenging administrative, monitoring and enforcement issues arise and there will inevitably be disputes between exempt sellers and exempt customers about the correct market offer obtained, the amount to be shared, the amount that is shared, etc. Disclosure of commercial or potentially sensitive information is also an unfair risk to exempt sellers.

² *Ibid.*, p8.

Consultation Question 3 – What consumer protections should apply to embedded network customers.

Existing consumer protections applying to embedded network customers in NSW holiday parks and residential land lease communities are appropriate. All important issues are being addressed by the current regulatory framework including:

-) Network safety
-) Network charging
-) Metering
-) Access to retail competition
-) Retail pricing and caps on charges
-) Billing and payment
-) Access to rebates and concessions
-) Dispute resolution (including internal dispute resolution and independent, third party dispute resolution)
-) Information requirements
-) Obligation to supply
-) Flexible payment options and payment plans
-) Requirements for life support customers, etc.

The primary relationship between embedded network customers and embedded network operators in NSW holiday parks is an arrangement for holiday accommodation. The primary relationship between embedded network customers and embedded network operators in NSW residential land lease communities is one of tenancy. What this means is that these customers have multi layered protections under other legislation and their agreements.

For example, embedded network customers in NSW holiday parks enjoy a number of consumer protections under the AER's Network Guideline and Retail Guideline, the Australian Consumer Law, the Holiday Parks (Long-term Casual Occupation) Act 2002, the Holiday Parks (Long-term Casual Occupation) Regulation 2009 and their occupation agreements. The NSW Civil and Administrative Tribunal (NCAT) has jurisdiction to hear and determine disputes relating to a breach of an occupation agreement or to a disagreement that could form the basis of a breach of the occupation agreement (which includes utilities). These customers can also seek the assistance of the NSW Energy and Water Ombudsman (EWON) and NSW Fair Trading.

Embedded network customers in NSW residential land lease communities enjoy an even higher level of consumer protections under the AER's Network Guideline and Retail Guideline, the Australian Consumer Law, the RLLCA, the RLLCR and their site agreements. The NCAT has jurisdiction to hear and determine disputes relating to a right or obligation under the RLLCA and RLLCR (which includes utilities) or a dispute arising from, or relating to, a site agreement or collateral agreement. These customers can also seek the assistance of EWON and NSW Fair Trading, as well as other organisations like the Affiliated Residential Park Residents Association and their own Residents Committee.³

In some respects, embedded network customers in NSW residential land lease communities enjoy consumer protections that customers under standard NEM supply do not. For example, under the RLLCA community operators are prohibited from applying site fee payments to

³ Under Part 9 of the RLLCA residents of a community may by resolution establish a residents committee. Their functions include representing the interests of the residents in connection with the day-to-day running of the community and any complaint about the operation of the community.

unpaid utility charges and the NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making disconnection unlikely.

As set out on page 31 of the Consultation Paper we note that consumer representatives, such as SACOSS and the Consumer Utilities Advocacy Centre (CUAC), have raised a number of concerns relating to the efficacy of the consumer protection mechanisms for off-market embedded network customers and that “changes to the compliance framework for exemptions are required.” We disagree.

The current regulatory framework is comprehensive and appropriate monitoring and enforcement mechanisms already exist in our industry.⁴ SACOSS has acknowledged that “the market is subject to a confusing array of national and jurisdictional regulation.”⁵ Gaps between the regulatory framework and outcomes on a practical level can be overcome by better guidance and education from the regulators.

The currently regulatory framework is still relatively new and should be given ample time for implementation. Before reviewing compliance and enforcement measures (which are reactionary) proper consideration should be given to a better program of education and development of resources, including options for digital solutions, templates, forms and checklists to make existing or new requirements easier for embedded network operators to meet.

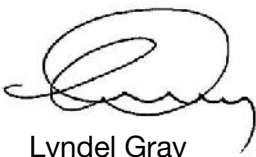
Conclusion

Thank you to the AEMC for considering our response to the Consultation Paper. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to the review of regulatory arrangements for embedded networks.

We are available to discuss this submission further and to workshop with the AEMC and our members regarding proposed solutions to the issues we have raised. As such, we look forward to our continued involvement in the consultation process.

Should you have any questions or require further information please contact us on (02) 9615 9999 or email admin@cciansw.com.au.

Yours sincerely,



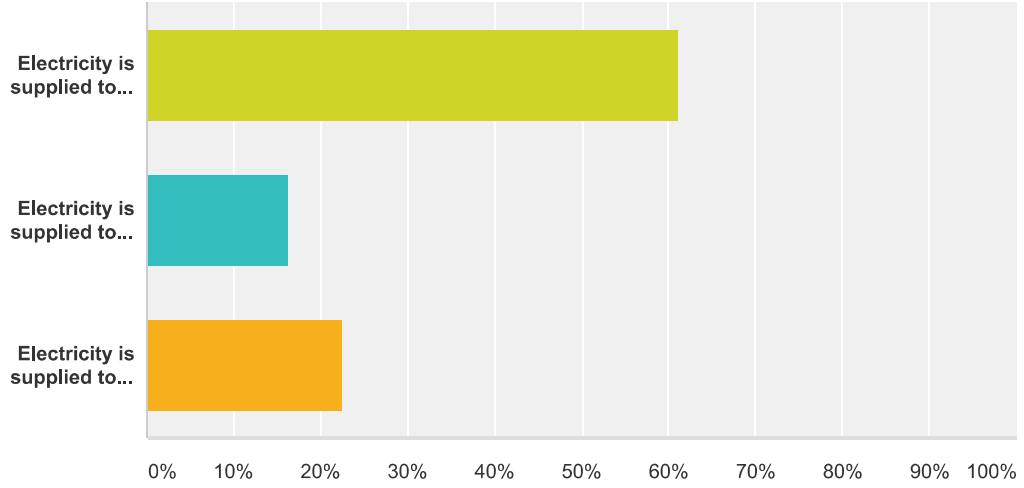
Lyndel Gray
Chief Executive Officer

⁴ Under the Fair Trading Act 1987 and the RLLCA, NSW Fair Trading have strong administration and enforcement powers.

⁵ *Op cit.*, SACOSS, p. 18.

Q1 How is electricity supplied to residents in your residential park?

Answered: 178 Skipped: 0



Answer Choices	Responses
Electricity is supplied to residents by the park owner (park supply)	61.24% 109
Electricity is supplied to residents by the electricity supplier (direct supply)	16.29% 29
Electricity is supplied to residents by the park owner AND the electricity supplier (mixed supply)	22.47% 40
Total Respondents: 178	