



17 October 2017

Ms Anne Pearson  
Chief Executive  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

Dear Anne

**AEMC Reference RPR0006 – Review of regulatory arrangements for embedded networks**

Thank you for the opportunity to comment on the Australian Energy Market Commission's Draft Report: Review of regulatory arrangements for embedded networks.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers within embedded networks. Our comments are informed by these complaints and also from our community outreach and stakeholder engagement activities.

## The roles of third parties (agents) in embedded networks

The Draft Report notes stakeholder concerns with the growth in the role of agents who are contracted to perform retail and network services within embedded networks. It is appropriate and entirely understandable that, for example a strata organisation, would outsource an unfamiliar electricity billing function and customer complaint service to a specialist third party. However we recognise many of the concerns expressed in stakeholder submissions, particularly in relation to the fact that on-selling energy appears to be the core business of many of these agents, they tend to provide all the energy retail services to groups of customers, and these businesses may hold neither a retail authorisation nor a retail exemption.

We note that the Commission considers the proposed framework to be the most effective way of addressing concerns raised by stakeholders regarding third parties and agents, as many of the existing third parties that currently operate in the sector will become authorised and registered. On this basis, the Commission believes it likely that most owner's corporations will establish relationships with third party registered network service providers and authorised retailers to provide services on commercially agreed terms.

EWON believes that the most critical aspect of any new framework will be an increase in transparency for embedded network consumers regarding which entity is providing their energy services, and who is responsible for ensuring their consumer rights under the national framework. A complaint to EWON will always be treated as a complaint against an authorised or exempt entity, regardless of outsourcing arrangements, but it is often not apparent to the customer or EWON who that entity is.

It is clear from the complaints we receive, that many embedded network customers are confused about who is actually providing their energy services, and who is responsible for setting the energy rates and network charges they are asked to pay. In the following case study, the retail exemption was in the name of the developer of a residential greenfield site. However, the supply of electricity to the residents of the building was being exclusively managed by an agent and all correspondence, including billing, was in that agent's name.

## Case Study

### The complaints

A number of customers living within a single residential embedded network contacted EWON during May 2017. Most of the customers moved into the building in December 2016, and were provided information by their real estate agent that ABC Energy<sup>1</sup> was the electricity retailer for the site. Each customer complained to EWON that they had not received an electricity bill for six months.

One resident noted she had contacted ABC Energy on five occasions since moving in to their apartment to obtain a bill, and each time she was advised by ABC Energy that the bill would be issued 'next week'. The customer had provided her personal details to ABC Energy to establish an account but she had not received any confirmation that an account has been established, or been provided with an account number. The customer was concerned that she would receive a large catch up bill which may not be affordable.

### The retail and network exemptions

EWON found that the retail (R2), and network (NR2), exemptions for the residential building were held by XYZ Constructions Pty Ltd, which appears to be the developer of the site. The XYZ Constructions website does contain contact details, but does not provide any energy specific information for consumers about energy services.

The contract and welcome packs provided to customers indicated that ABC Energy was contracted to provide all energy retail services at the building by the owner's corporation.

### The outcome to the complaints to EWON

EWON contacted ABC Energy to obtain more information about the complaint. ABC Energy questioned EWON's jurisdiction, but did assist with our general requests for information. ABC Energy advised that there had been a recent upgrade to their billing platform and that there were delays affecting the residents of this particular building.

ABC Energy noted that the issue was being resolved and that customers would receive the electricity bills in July 2017. ABC Energy also advised that customers would be billed from 27 January 2017, and any consumption charges prior to this date would be written off.

We passed this information on to each customer and provided them with consumer protection information relating to living in an embedded network. EWON understands that some customers began to receive their first electricity bill in June 2017.

### The outcome to the complaints to EWON

ABC Energy's website does have a link to consumer information about the rights of customers of exempt sellers. The information is specific to the individual exemption issued by the Australian Energy Regulator (AER) for another site, and not the retail exemption which covers the customers who complained to EWON.

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<sup>1</sup> All organisation names have been de-identified

In relation to another complaint, EWON has obtained a copy of a bill issued by ABC Energy to a customer. The bill is issued in the name of ABC Energy, has ABC Energy's Australian Company Number on it and makes no reference to the exempt entity that ABC Energy is acting as agent for. From that customer's point of view, ABC Energy is their retailer.

In the Draft Report, the Commission acknowledges that developers may enter into arrangements with third parties prior to an owner's corporation being established, and that the existing trend of embedded network operators outsourcing network and retail activities will continue under the proposed framework. EWON strongly believes that the new framework must result in greater transparency from the customer's point of view about their rights as an embedded network customer and about which entity is responsible for services at their connection point. We expand on this issue in the next section.

## The retailer authorisation and exemption framework

EWON recognises that under the proposed framework, a 'one size fits all' approach for retail authorisations will no longer be appropriate, and supports moving some of the flexibility that exists in the current retail exemption framework to the retailer authorisation process.

### What elements should be flexible in the authorisation process?

To provide greater flexibility, the clear distinction between on-market retailers and retailers that on-sell to embedded network customers would be the financial resources criterion, particularly where the retailer does not intend to participate in the wholesale market.

EWON also recognises that retailers that on-sell to embedded network customers may not also be required to satisfy the same organisational and technical capacity that is required for a current retailer authorisation. For example, a new on-selling retailer, servicing a small number of residential customers, may not have substantial previous experience as an energy retailer or energy market experience.

The Commission notes in the Draft Report that the existing trend of embedded network operators outsourcing network and retail activities will continue under the proposed framework. This means that the information provided by small on-selling retailers about what retail functions were to be outsourced, and what third parties will be providing the staff and resources to meet these functions, will become an even more critical aspect of the flexible authorisation process.

The current retailer authorisation process requires applicants to show organisational and technical capacity, including providing information on:

- All functions and activities the retailer proposes to outsource.
- A summary of the third party's experience in, and knowledge of, the relevant area.
- Evidence of controls in place to ensure the third party's compliance with the Retail Law and Retail Rules.

EWON believes that the integrity of the proposed retailer authorisation framework will hinge on whether or not there is transparency for embedded network customers about who is providing their retail services, and who is responsible for ensuring their consumer rights. Therefore, EWON recommends that the requirement to provide information on outsourced functions, and the agents carrying out these activities, remain a core part of the authorisation process. We also believe that an

authorisation to on-sell to residential customers should be conditional on the retailer reporting to the AER on any changes to their outsourcing arrangements.

## What should be the minimum obligations applied to authorised retailers supplying embedded network customers?

EWON notes that the current authorisation framework requires retailers to comply with the Retail Law and Retail Rules, as well as any relevant provisions of the National Electricity Law and Rules, National Gas Law and Rules, and jurisdictional energy legislation.

The Commission proposes that under a new framework, the AER would have limited discretion to offer retailers that on-sell electricity in embedded networks exemption from specific conditions under the National Energy Retail Rules where the cost of meeting the obligation is disproportionate to the benefit, and does not impede access to retail market competition.

The Commission also proposes a minimum of four obligations that would apply to all authorised retailers including:

- Providing access to independent dispute resolution through Ombudsman schemes.
- Explicit informed consent when entering into a contract.
- Life support requirements.
- Disconnection requirements.

EWON supports the four minimum conditions proposed by the Commission. However, EWON also believes that the following three obligations should be applied to all authorised retailers under the new framework:

### Customer hardship policies

The National Energy Retail Law (NERL) requires retailers to develop, publish, maintain and implement a customer hardship policy approved by the AER within three months of being granted an authorisation. The hardship policy is intended to help retailers identify residential customers experiencing payment difficulties due to hardship and to assist those customers to better manage their energy bills on an ongoing basis.

Energy affordability and financial hardship continues to be one of the biggest challenges many consumers experience. Over 21% of all complaints EWON received in 2016/2017 involved customers with credit issues, including payment difficulties, debt collection or disconnection issues.

We believe that, as a minimum obligation, all authorised retailers under the proposed framework should be required to develop, publish, maintain and implement a customer hardship policy approved by the AER. For the authorisation process to become more flexible, it may be necessary for the AER to have the power to determine whether any of the minimum requirements for a customer hardship policy, as outlined in the NERL, may not be practical for a retailer on-selling to a small number of embedded network customers. For example, it may be appropriate that hardship program minimum requirements for very small off market entities only include payment plan options, fortnightly/monthly payment options and energy consumption advice.

## An obligation to supply off-market and on-market embedded network customers

Condition 1 of the AER's (Retail) Exempt Selling Guideline imposes an obligation on exempt retailers to supply energy to customers within their own embedded networks. This means the retailer cannot refuse to sell energy to their customers, except in accordance with relevant disconnection provisions.

This obligation to supply small customers is also imposed on retailers under the current authorisation process and the NERL. Retailers must make at least a standing offer to provide customer retail services to small customers for whom it is the designated retailer, at the standing offer prices, and under the retailer's form of standard retail contract. This is a fundamental consumer protection for energy consumers, particularly those who have previously experienced difficulties paying their energy accounts.

As providers of an essential service, EWON believes that the obligation to supply small customers must remain one of the minimum obligations of all energy retailers.

## Access to rebates and emergency payment assistance schemes

Currently, customers of exempt sellers can apply directly to the NSW Department of Planning and Environment, to receive the Low Income Household Rebate. However, in EWON's experience, it is often the case that customers who are eligible for rebates and concessions are unaware of their right to this kind of assistance. This was also the view of the NSW Auditor General in its September 2017 review of energy rebates:

*"Some low-income groups, such as those with poor English language skills, do not find out about energy rebates."<sup>2</sup>*

As there is no independent monitoring of the services provided by exempt sellers, it is unclear whether adequate information is provided to their customers about the available rebates and concessions.

The NSW Government's Energy Accounts Payment Assistance (EAPA) Scheme is designed to help customers who are experiencing a financial crisis or emergency to pay their home electricity and/or natural gas bills. EAPA is delivered by providing digital vouchers to customers. Currently each voucher has a face value of \$50. However, to be eligible for EAPA, the customer must hold an energy account with an authorised energy retailer. This means that customers of exempt sellers, some of whom are particularly vulnerable, do not have access to this vital emergency assistance.

We note, and agree with, the Commission's position that it must be the jurisdictions that should consider options for improving awareness of entitlements and access for embedded network customers. However without the energy seller also having an obligation to facilitate awareness / access to rebates and payment assistance, vulnerable consumer access will be minimised.

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<sup>2</sup> <https://www.audit.nsw.gov.au/publications/latest-reports/energy-rebates>

# The embedded network registration and exemption framework

## Demonstrating consumer benefits when establishing an embedded network

EWON does not have a view on the need for entities to demonstrate consumer benefit. Conversely, EWON's view is that the proposed framework for retail authorisations and exemptions, and embedded network registration and exemption, with improved consumer protections, monitoring and enforcement, be designed to ensure that embedded networks are designed and operated to avoid consumer detriment.

## Would a flexible authorisation process be able to have similar benefits and regulatory burdens as the exemption process?

EWON notes the Commission proposes that under the new framework retailers on-selling electricity in embedded networks would be required to comply with a minimum set of conditions (under the National Energy Retail Rules (NERR), including providing access to independent dispute resolution through Ombudsman schemes.

EWON's governance and funding structures are currently under review to ensure they are sufficiently flexible to accommodate a wide range of retail and network members. We are committed to ensuring that scheme membership is not a barrier to any organisation or individual currently operating as an on-seller or embedded network service provider now and in the future.

## What types of embedded networks should continue to be able to obtain exemptions?

EWON supports the Commission's proposal to limit embedded network service provider exemptions to circumstances where the embedded network only supplies:

- infrastructure;
- related parties such as subsidiary companies; or
- the owners of short duration accommodation with simple network arrangements.

EWON also notes that the Commission considers that there may be merit in allowing exemptions for small embedded networks such as caravan parks with a small number of permanent residents.

EWON believes that the benefits to consumers of elevating embedded networks such as caravan parks with a small number of permanent residents into the national framework should outweigh the costs associated with this process. As noted above, we are committed to ensuring that EWON membership is not a financial barrier for small embedded networks being brought into the national framework and we are paying particular attention to the needs of residential park owners and residents.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in blue ink that reads "Janine Young". The signature is written in a cursive, flowing style.

**Janine Young**  
**Ombudsman**  
**Energy & Water Ombudsman NSW**