

18 November 2020

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Lodged Online: <https://www.aemc.gov.au/contact-us/lodge-submission> and by email: samuel.martin@aemc.gov.au

Dear Mr Martin

SUBMISSION ON AEMC REVIEW OF THE RETAILER OF LAST RESORT SCHEME CONSULTATION PAPER, 22 OCTOBER 2020

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) 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, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

We currently have as members over 730 businesses representing all aspects of the caravan and camping and land lease living industry. Over 480 of these members are holiday park and residential land lease community operators throughout New South Wales (NSW). Many of these holiday parks and residential land lease communities have embedded electricity networks serving holiday and/or residential customers.

As such, we are an important stakeholder in relation to energy laws that impact embedded networks and we value the opportunity to provide our submission on the AEMC's *Review of the Retailer of Last Resort Scheme Consultation Paper, 22 October 2020* (Consultation Paper).

For the purpose of enhancing the financial market stability of the national electricity market (NEM) and improving the Retailer of Last Resort (RoLR) scheme outcomes for on-market small customers, we broadly support the AEMC's proposed solutions set out in points 1-5 below:

1. Amend the obligation for customers to be transferred to a designated RoLR's standard retail contract and allow RoLRs to submit, for the Australian Energy Regulator's (AER) approval, a market offer to be used for RoLR customers.
2. Cost recovery changes, as set out on page 11 of the Consultation Paper, to provide increased certainty for designated RoLRs and encourage more retailers to volunteer to become RoLRs.

3. Delaying RoLR designation by amending the National Energy Retail Law (NERL) to increase the time allowed for the AER to advise the Australian Energy Market Operator (AEMO) of the designated RoLRs up to 24 hours after the RoLR event and necessary changes to RoLR notices.
4. Changes to delay the increase in AEMO credit support arrangements, providing RoLRs with more time to meet AEMO credit support provisions in relation to RoLR customers.
5. Amending prescriptive elements of the RoLR plan provisions to provide the AER with more flexibility in developing, maintaining and publishing RoLR plans.

Retailers would be best placed to identify any procedural challenges and what further improvements may be needed, but overall, these proposals appear appropriate to address the risks in the market.

Regarding other issues related to the RoLR scheme that have been identified in the Consultation Paper for possible consideration in future processes, we submit the following:

Appointment of Administrator as a Trigger for a RoLR Event

We agree that the appointment of an administrator may not necessarily impinge on a retailer's ability to continue operating, and a retailer may be able to continue trading and meet financial obligations following the appointment of an administrator and return to solvency.

Generally, for companies experiencing financial difficulties entering voluntary administration can be a good alternative to winding up the company. If there is a chance that a business' finances can be restructured in a way that will allow it to continue trading in the future, then creditors, suppliers, employees and customers who are owed goods and/or services, can be better served by the company entering external administration, providing an opportunity for it to trade out of financial hardship.

This is particularly appropriate where financial difficulties are caused by external factors such as industry down-turns, disruptions to the supply chain or other environmental factors (e.g. COVID-19 pandemic). We therefore support a change that would deem the appointment of an administrator a trigger for a pre-RoLR monitoring process by the AER, enabling a RoLR event to be avoided where a retailer trades out of external administration.

To support this, administrators should be required to regularly report to the AER on the financial status of a retailer and its ability to continue meeting its obligations under its authorisation against criterion appropriate for the context of an external administration.

RoLR Arrangements for Embedded Networks

Page 20 of the Consultation Paper states:

“Embedded networks customers supplied by an exempt seller have no default or designated retailer assigned to their connection point if the exempt seller fails. The additional stress from the pandemic will test the already-limited consumer protection framework within embedded networks⁴⁹”

Footnote 49 further states:

“In many jurisdictions, embedded network customers do not have access to as many rebates and concessions as on market customers, and do not have access to certain national protections such as hardship policies.”

We reiterate our previous submissions to the AEMC that exempt customers in NSW residential land lease communities have access to significant consumer protections under national, as well as state-based legislation, and access to NSW energy rebates including the Low Income Household Rebate, Gas Rebate, Family Energy Rebate, Life Support Rebate and Medical Energy Rebate. The nuances of the sector need to be taken into account.

Establishing a modified set of RoLR arrangements for embedded networks could assist in ensuring continuity of supply to exempt customers in some embedded network types. However, a RoLR scheme would conflict with existing state-based protections for exempt customers in NSW residential land lease communities.¹

In most cases, the exempt seller and embedded network service provider is also the owner/operator of the residential land lease community and they rely on continued energy supply to the embedded network for their own operations. This creates an inherent motivation to maintain supply, aligning an operators’ interests with the interests of their exempt customers.

In the event of an exempt seller failure (e.g. being placed into external administration or otherwise going out of business) exempt customers of residential land lease communities will be concerned with their tenancy, not just their energy supply. Therefore, the *Residential (Land Lease) Communities Act 2013* (RLLC Act) contains provisions regarding the appointment of administrators, receivers and managers to protect the well-being and financial security of the residents of the community:

Residential (Land Lease) Communities Act 2013 No 97

Part 13 Administration and enforcement

Division 2 Administrators, receivers and managers

164 Application for order appointing administrator

- (1) *The Supreme Court may, on application by the Commissioner in accordance with the rules of the Court, make an order appointing a specified person as an administrator of a community—*
- (a) to exercise all the functions of the operator of the community, or*
 - (b) to exercise specified functions of the operator, or*
 - (c) to exercise all the functions other than specified functions of the operator.*

¹ *Our submissions on RoLR arrangements for embedded networks are limited to applicability within residential land lease communities. RoLR arrangements should not apply to exempt customers in embedded networks within NSW holiday parks who are tourists or long-term casual occupants with occupation agreements governed by the Holiday Parks (Long-term Casual Occupation) Act 2002. All energy that is supplied/on-sold to such customers is for holiday purposes and should be excluded from any RoLR arrangements. We note the AEMC’s proposals for RoLR arrangements in its review ‘Updating the Regulatory Frameworks for Embedded Networks’ recommend changes to the NEERL to include default arrangements for a child connection point supplied by an off-market retailer. Holiday parks would not be required to register as off-market retailers.*

- (2) *The Commissioner may apply for an order under this section only if the Commissioner is of the opinion that—*
- (a) *the well-being or financial security of the residents of the community has been, or is likely to be, seriously affected by the continued operation of the community by the operator, or*
 - (b) *the operator of the community is wilfully and repeatedly acting in contravention of an order made by the Tribunal or a court in relation to the community or a direction given as disciplinary action by the Commissioner.*
- (3) *For the purpose of determining whether an application for an order under this section should be made, the Commissioner may appoint a person to inquire into, and report to the Commissioner on, the well-being and financial security of the residents of a community.*
- (4) *The Commissioner is not to apply for an order appointing a person as an administrator under this Division unless the person has consented in writing to the appointment.*
- (5) *More than one order may be made under this Division in respect of the same community.*

165 Terms and conditions of appointment

Without limiting the terms and conditions of the order of appointment of an administrator under this Division, the terms and conditions may exempt the administrator from the requirement to comply with such obligations of the owner or operator of the community as are specified or described in the order.

166 Effect of appointment

- (1) *The owner or operator of a community must not, while an order under this Division is in force in respect of the community, exercise any of the functions of the owner or operator that the administrator is authorised to exercise.*
- (2) *Subject to the terms of the appointment, a person appointed as an administrator of a community must comply with all the obligations of the operator in relation to the functions that the person is authorised to exercise and is, in the exercise of those functions, taken to be the operator.*

167 Expenses of administration

- (1) *The expenses incurred by an administrator appointed under this Division in exercising the functions of the operator of a community are payable from site fees and other money that would be available to the operator for such expenses if the administrator had not been appointed.*
- (2) *Neither the Crown, the Minister nor the Commissioner is liable for—*
- (a) *any expenses incurred by an administrator appointed under this Division to exercise the functions of the operator of a community, or*
 - (b) *any liability of an operator of a community in respect of which an administrator is appointed.*

168 Revocation of appointment

An order made under this Division may be revoked or varied by the Supreme Court (whether or not on the application of the Commissioner) and, unless sooner revoked, ceases to have effect at the end of the period specified in the order.

169 Receivers and managers

- (1) If a receiver, or a receiver and manager, is appointed in respect of a community, the person so appointed must (subject to the terms of the appointment) comply with the operator's obligations under this Act as if the person were the operator.*
- (2) This section does not apply to the extent that it is inconsistent with the [Corporations Act 2001](#) of the Commonwealth.*

170 No personal liability of administrators, receivers or managers

A matter or thing done or omitted to be done—

(a) by an administrator, a receiver or a receiver and manager, or

(b) by any person acting under the direction of the administrator, receiver or receiver and manager,

does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the administrator, receiver, receiver and manager or person so acting personally to any action, liability, claim or demand.

In requiring administrators, receivers and managers to exercise all the functions of the operator of a community, and comply with an operator's obligations under the Act as if the person were the operator, the RLLC Act already provides for the ongoing supply of energy to exempt customers in the event of an exempt seller failure.

The RLLC Act also requires operators to notify the Commissioner when a place ceases to be a community, and Condition 21 of the AER's Retail Exemption Guideline requires an exempt seller to notify its customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

Attempting to overlay the existing state-based regime for residential land lease communities with a RoLR scheme could add unnecessary complexity and disruption for these exempt customers. In addition, the AEMC has stated in its *Updating the Regulatory Frameworks for Embedded Networks, Final Report, 20 June 2019*, where an embedded network owner becomes insolvent, standard insolvency laws will apply:

“Ultimately, electricity will only be one of a number of services that the embedded network owner – typically a body corporate or shopping centre – will no longer be providing to the customers in the relevant apartment or shopping centre. In this instance, the Commission considers that it is appropriate for standard insolvency processes to apply and a RoLR equivalent is not required.”

Other issues that require consideration in applying a RoLR scheme to embedded networks include:

- **Definition of RoLR Event**

The NERL defines a number of triggers of a “RoLR event.” In relation to a retailer, it means any of the following events or circumstances:

- (a) the revocation of the retailer's retailer authorisation;*
- (b) in the case of electricity—*
 - (i) the right of the retailer to acquire electricity from the wholesale exchange is suspended; or*
 - (ii) the retailer ceases to be a Registered participant in relation to the purchase of electricity directly through the wholesale exchange, as required by section 11(4) of the NEL;*
- (c) in the case of gas—*
 - (i) the right of the retailer to acquire gas either in the declared wholesale gas market or in the short term trading market is suspended; or*
 - (ii) the retailer's registration as a Registered participant, in relation to the declared wholesale gas market or a short term trading market, is revoked; or*
 - (iii) where there is no declared wholesale gas market or short term trading market, the retailer's registration as a Registered participant in a retail gas market is revoked;*
- (d) an insolvency official is appointed in respect of the retailer or any property of the retailer;*
- (e) an order is made for the winding up of the retailer or a resolution is passed for the winding up of the retailer;*
- (f) the cessation of the sale of energy by the retailer to customers, otherwise than by—*
 - (i) transfer of its retailer authorisation in accordance with Division 3 of Part 5; or*
 - (ii) surrender of its retailer authorisation in accordance with Division 4 of Part 5; or*
 - (iii) transfer of all or some of its customers to another retailer; or*
 - (iv) selling or otherwise disposing in whole or in part its business of the sale of energy (being the activity to which the retailer's authorisation relates) to another retailer;*
- (g) any other event or circumstance prescribed by the National Regulations;*

The definition of a RoLR event would need to be carefully drafted to ensure the transfer of a residential land lease community by way of sale or lease of land and/or sale as a going concern to another party does not trigger a RoLR event.

- **Assigning a RoLR**

In submissions to the AEMC’s review *Updating the Regulatory Frameworks for Embedded Networks, Draft Report, 31 January 2018*, stakeholders identified that the AER assigning a default RoLR in the event an off-market retailer failure could result in a retailer being required to serve customers that they are potentially not equipped to serve.

Simply Energy noted that parent meters are ‘large’ or aggregated loads and retailers manage these sites via bespoke commercial and industrial contracts, whereas loads at child connection points are usually small customers. This can complicate matters where the retailer at a parent connection point does not service small customers.²

² AEMC, *Updating the regulatory frameworks for embedded networks, Final report, 20 June 2019, p 91.*

In response, the AEMC proposed in the event that an off-market retailer fails, *“the RoLR will be the financially responsible market participant at the parent connect point unless (1) that retailer is the failed retailer or (2) the retailer has previously obtained a waiver from the AER from being the RoLR at the parent connection point by demonstrating that it does not supply small customers and the retailer continues to demonstrate this on a quarterly basis, in which case the RoLR will be the default RoLR for the parent connection point.”*³

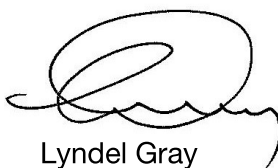
This is preferable to the alternative proposal in the Consultation Paper that the AER’s Retail Exemption Guideline be updated to require exempt sellers to make arrangements with an authorised retailer or exempt seller to be the default RoLR for their network in the event of a failure. If implemented, this could result in thousands of different embedded networks making various arrangements in the market, likely causing compliance and administrative headaches for participants as well as the AER.

Nevertheless, if RoLR arrangements are to apply to exempt customers, they should only apply where the continuity of energy supply in a particular embedded network type is not already assured (directly or indirectly) via existing national or state-based legislation.

Thank you for taking into consideration the issues we have raised.

Should you have any questions for require further information please contact Shannon Lacic, Policy, Training and Executive Services Manager on (02) 9615 9940 or email shannon.lacic@cciansw.com.au.

Yours sincerely



Lyndel Gray
Chief Executive Officer

³ *Ibid*, p 94.