

14 February 2024
Ms. Clare Savage - Chair
Australian Energy Regulator
GPO Box 3131
Canberra, ACT, 2601

By email: [REDACTED]
CC: AERexemptions@aer.gov.au, [REDACTED]

Dear Ms. Savage,

Submission to the Australian Energy Regulator's (AER) review of the exemptions framework for embedded networks – Issues Paper

The Australian Energy Market Commission (AEMC) welcomes the opportunity to provide a submission to the AER's review of the exemptions framework for embedded networks Issues Paper. We have reviewed the Issues Paper and would like to outline some high-level views for your consideration.

We support the AER conducting this review

We support the AER conducting a review of the exemptions framework for embedded networks. We consider that the AER's review is timely, providing an opportunity to consider and build upon a range of recent work on embedded networks that has highlighted consumer experiences and recommended changes.

In 2017 the Commission finalised the [Review of the Regulatory Frameworks for Embedded Networks](#). This review found that the current regulatory arrangements for embedded electricity networks are no longer fit for purpose, resulting in some customers not being able to access competitive prices or important consumer protections. Following that review, the Commission released a [final report](#) in 2019 proposing a package of law and rule changes to update the regulatory framework. In 2021, the AEMC appeared before the South Australian Economic and Finance Committee to provide evidence for its inquiry into embedded networks. In 2018, the Victorian Government established an Expert Panel to conduct a review of embedded networks. In 2022, the [Government responded](#) intending to implement most recommendations in full. In 2022 the Legislative Assembly in each of NSW and the ACT conducted inquiries into embedded networks, both examining current legal frameworks, effects on consumers and policy solutions. Following the NSW Inquiry, IPART released its [draft report](#) on the future of embedded networks, recommending regulated prices for embedded networks.

We support the focus of the review being on new apartment complexes

We welcome a primary focus of the AER's review being on the creation of new apartment complexes as embedded networks. The number of embedded networks in the National Electricity Market has grown rapidly in recent years. Residential apartment complex embedded networks are the primary driver of this growth and in our 2017 review the Commission found significant issues with apartment complexes being run as embedded networks.¹

¹ AEMC, [Review of the regulatory arrangements for embedded networks](#), Final Report, November 2017, pp 43, 58-59.

Harm has been established, but the opacity of the framework makes quantifying it challenging

The AER has sought an evidence base of harm and benefits from apartment complexes being run as embedded networks as part of this review. In our 2017 review, the Commission found significant issues with residential embedded networks:

- Residential customers in embedded networks face unjustifiably higher energy costs than they otherwise would on a competitive offer.
- Consumer protection gaps exist in areas such as de-energisation and re-energisation obligations, payment difficulty obligations, obligations to provide connection services, life support arrangements, information provision and retailer of last resort arrangements.
- There are no reliability standards or guaranteed service level payments for outages that apply to customers in embedded networks, as well as gaps in safety obligations in some jurisdictions.
- There are no compliance and enforcement reporting requirements on exempt parties, therefore there is no visibility over compliance with exemption conditions.²

The Commission concluded that consumer protections should be driven by the needs of consumers, rather than the business model of the supplier. The Commission also concluded that the underlying monopoly nature of embedded network supply reduces pressure on suppliers to provide consumers with good prices and services.

While our review and similar inquiries from jurisdictions have found issues, we note the lack of transparency in the current framework makes it difficult to establish the magnitude of this harm. Similarly, where there are benefits from embedded networks, quantifying them is challenging.

In the absence of systematic evidence of benefits, best practice regulatory principles should be relied on

We support the AER's approach to establish an evidence base. However, we suspect the fundamental lack of transparency within embedded networks will inevitably require the AER to use its regulatory judgment regarding in what circumstances embedded networks should be allowed to be created in the future. We recommend that, the AER give consideration to two key principles:

1. Where jurisdictions have chosen to enable retail competition, this should not be overridden by exemptions that allow companies to become monopoly suppliers through the creation of embedded networks. The default should therefore be that embedded networks should not be allowed to be created, especially for the supply of large numbers of small consumers in apartment complexes.
2. Where exceptions to this are necessary, due to the ad hoc nature of the physical supply (e.g. caravan parks) or because a provider can demonstrate there are genuine benefits to consumers, the regulatory framework should be fit for purpose for a monopoly supply arrangement. For example, in NSW the Independent Pricing and Regulatory Tribunal (IPART) recommends setting prices in embedded networks below the Default Market Offer (DMO).³

We also note that there is a feedback loop that should be taken into account when determining whether to grant exemptions. That is, adequately regulating embedded network providers is inherently challenging once embedded networks are created. In considering whether to continue to grant exemptions we suggest the AER consider the costs of the regulation and the effectiveness of the exemption to provide adequate consumer protections. If the costs of regulation are too high or granting the exemption will leave

² AEMC, [Review of the regulatory arrangements for embedded networks](#), Final Report, November 2017, pp 46-49, 53-55.

³ IPART, [The future of embedded networks](#), Draft Report, December 2023, pp 28, 31.

vulnerable consumers in a monopoly supply arrangement without adequate protection, the exemption should not be granted.

We note that our position most closely aligns with Option 3 under the Network Guidelines as outlined in the Issues Paper.⁴

If you have any questions about our submission, please contact [REDACTED] at [REDACTED] or [REDACTED]

Yours sincerely,



Benn Barr
Chief Executive
Australian Energy Market Commission

⁴ AER, [Review of the AER exemptions framework for embedded networks](#), Issues Paper, November 2023, p 28.