



Review of the Australian Energy Regulator's exemptions framework for embedded networks

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COTA Australia
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About COTA Australia

COTA Australia is the peak body representing the almost nine million Australians over 50. For over 70 years our systemic advocacy has been improving the diverse lives of older people in policy areas such as health, retirement incomes, and more. Our broad agenda is focussed on tackling ageism, respecting diversity, and the empowerment of older people to live life to the full.

COTA Energy Advocates is a panel of consumers, consisting of representatives from each State and Territory authority in the National Energy Market. COTA Energy Advocates are supported by COTA Australia.

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Introduction

COTA's Energy Advocates together with COTA Australia welcome the opportunity to respond to the Australian Energy Regulator's (AER) request for feedback on issues raised in its Review of the AER exemptions framework for embedded networks and consumer protection issues within the scope of its Network and Retail Guidelines. As advocates for people aged 50 years and older, our response is focused on how the current exemptions framework can impact the lives of energy consumers living in an embedded network or considering moving into long-term accommodation with an embedded network.

This submission outlines a range of issues and outcomes that will align with the best interests of the more vulnerable energy consumer groups, particularly older people living in multiple resident premises such as retirement villages, flats, apartments and caravan parks. At present, for many of these energy consumers, embedded networks represent an unfair business model. A model which denies them choice of energy retailer and, in too many instances, access to important consumer protections and energy concessions/entitlements.

It is recommended that the **AER strengthen its current regulatory oversight of embedded networks**. Licences should only be provided to embedded network operators who demonstrate and publish how their embedded network will:

1. operate cost effectively and sustainably
2. deliver, at a minimum, equivalent consumer protections and benefits to those living in embedded networks as available to other residential energy consumers.

Critical actions for the AER

The fact people selling energy in embedded networks are not required to be authorised by the AER as energy retailers and are subject to lighter regulatory requirements raises important questions about consumer protections. The AER's exemptions framework needs to be refreshed, at a minimum, to ensure legislative measures are in place to:

- A. prohibit embedded network operators exploiting people receiving energy through this supply arrangement
- B. guarantee all residential energy consumers the same consumer protections including the right to complain and have their complaint investigated when things go wrong
- C. increase the stringency in providing exemptions to operate an embedded network
- D. warrant the AER has the legislative power to monitor an *exempt* energy retailer's compliance with and full enforcement action when they do not comply with consumer protections as set out in the National Energy Customer Framework and the Australian Consumer Law.

The current AER framework does not incentivise *exempt* energy retailers to provide the best deal for energy consumers living in embedded networks and this needs to be addressed. An energy consumer living in an embedded network needs to be able to:

1. ensure they are getting the best possible energy price
2. raise an energy-related complaint without fear of retribution from the embedded network operator
3. pass some costs back to the embedded network owner where the consumer has evidence that the energy product being provided is not the best offer available and no action is taken by the owner in the subsequent quarter to deliver a competitive energy (best offer) product

Potential consumer-related benefits of embedded networks

It is acknowledged that embedded networks can potentially benefit residential energy customers. Ideally this would occur through the procurement of favourable (bulk discount rate) energy plans inclusive of the integration of renewable energy sources, such as solar panels or wind turbines and the adoption of newer storage and distribution technology. The consumer would benefit by the embedded network operator on-selling energy at the discounted price. Such a process, complete with the full range of consumer energy protections, would impact positively on affected residential households delivering them more cost effective and efficient energy consumption.

Although this scenario is frequently promoted as a critical rationale underpinning the embedded network concept, the experience of people living in embedded networks highlights the promised benefits are not automatic.

Current consumer-related disadvantages of embedded networks

Currently, many residential-based embedded networks operate in ways that disadvantage their consumers. In terms of cost efficiency, this is particularly true of the more vulnerable embedded network households, especially if renting and living in properties not connected to innovative and less-expensive renewable energy sources.

It is unacceptable that in an energy market that promotes itself as competitive, embedded network residential consumers (both renters and owners) are locked into their respective site/property owner's preferred energy contractual arrangement with limited opportunity to switch to another energy retailer.

Unlike independent households, embedded network households have little autonomy when it comes to selecting and/or switching energy retailers as this prerogative is generally held by the embedded network owner. Even if in some instances changing retail providers is possible for individual embedded network households, it is a lengthy and often a costly process with consumers being required to cover the cost of changes – including the cost of updating meters. In addition to the cost, managing this change requires a reasonable degree of familiarity with the complexities inherent in energy market operations. From our discussions with energy consumers, it is clear that this can prove a disincentive for many, including older people easily fazed by technical language and/or are tentative about communicating online and/or from culturally and linguistically diverse communities and unfamiliar with the English language.

Another major downside of embedded networks is that they can result in households being denied key consumer protections (such as default market offers, family violence, life support and hardship protections) and access to energy concessions, adding to cost-of-living pressures. All energy consumers need to be equally empowered to call on the full range of rights and guarantees provided by the Australian Consumer Law and the National Energy Customer Framework.

The housing/rental market favours exempt energy retailers

At present Australia's housing market is volatile. Following the Pandemic, the market is experiencing massive growth and, according to the Australian Bureau of Statistics (ABS), has recorded some of the strongest annual growth rates since 2003. Concomitantly, the rental market is highly competitive and increasingly expensive. The December 2023 national vacancy rate remained at a record low, at 0.8%, with affordable options for low-and moderate-income households at crisis point – especially in metropolitan and large regional areas. Plus, around 90% of lease agreements are short-term being for 12 months or less. In an already unprecedented competitive rental market, potential renters at the lower end can easily find themselves pressured to accept the property's owner's energy arrangements in favour of acquiring a property.

In most community or privately owned multiple housing complexes, once housing/rental agreements are signed, individual households have little personal agency in relation to energy supply. Access to the benefits of the competitive energy market is dependent on the deal negotiated by the property owner. This can have significant financial repercussions for low- to-moderate-income families as the arrangement may preclude them from accessing the energy discounts and concessions they are entitled to. When desperate for accommodation people make or are forced to accept trade-offs. Unfortunately, access to energy discounts and concessions may well be one of these trade-offs.

Embedded network households experiencing energy hardship represent a group of individuals who, even if they saw benefits in applying for energy hardship relief, would be reluctant to signal having a monetary management issue. Maintaining security of tenure would be a priority for these households. In self-identifying as experiencing financial hardship, the household is likely to fear the property owner surmising their rental income is at risk. The prospect of this scenario occurring in jurisdictions where no fault eviction is available is high.

It is everyone's right to access the benefits and concessions they are entitled to receive. In addition, it should be an offence for an embedded network owner to limit or preclude a concession holder from accessing an energy benefit or concession they are permitted to accept. Belonging to an embedded network should not disadvantage an energy consumer.

Despite the hype about the sustainable and efficient energy consumption benefits to be realised through embedded networks, there is little visibility around the extent to which benefits are or are not realised. Also, except for personal stories, there is a scarcity of quantitative evidence to validate the level to which disadvantage is being experienced and, by whom. Belonging to an embedded network is financially rewarding for some energy consumers but burdensome for others. This latter group is more than likely to be low-to-moderate-income householders who live in multiple household complexes such as flats and retirement villages. This current lack of transparency needs to be addressed as a matter of urgency.

Respective embedded network operators must be open about the deals negotiated with energy suppliers. Further, as well as making this information fully and freely available to the people living in embedded networks, the onus must be on the operators to demonstrate the deal negotiated is the best available within the current energy market. Importantly, it must also guarantee access to any benefits or concessions available – this is especially applicable to low-to-moderate-income households. Individual households have a right to know the *operator's deal* is not financially disadvantaging them.

No individual or group should be denied coverage of the full suite of consumer protections and benefits they are entitled to receive.

Varying jurisdictional regulatory frameworks

The current issues around embedded networks are exacerbated by rules for exempt energy retailers varying from one state/territory to another. Although within the various jurisdictions there has been a raft of investigations and reviews, the shift to the harmonisation of regulatory frameworks across Australia is, at best, slow.

State/Territory based regulatory frameworks continue to vary in how they adapt to and accommodate embedded networks. Therefore, across Australia discrepancies exist in the legal and regulatory challenges embedded network present for consumers. From a consumer perspective, what is needed is greater confidence of good regulation and governance of the embedded networks.

The AER needs to provide strong leadership in this area. The AER's role should be to provide a clear overarching legislative framework that enshrines greater clarity around the regulation and governance of embedded networks. All energy consumers have the right to expect and be confident that their national energy regulator *works to ensure energy consumers have access to a reliable and secure market and that they pay no more than necessary for energy to their homes* and businesses and holds energy providers transparently accountable for delivering on this outcome.

Residential energy consumers' role

Residential consumers have a significant role to play at the local State/Territory level in supporting the AER. A consumer-oriented approach needs to be adopted. Transition to a fixed national position, risks the states and territories settling on an approach which would not maximise the benefits for residential consumers. In shifting to an inflexible, one size fits all position, there is a strong likelihood of various jurisdictionally based trade-offs. The stakeholders likely to reap the best outcomes are those with entrenched power in the current system - the energy retailers

The AER should develop a tight overarching legislative framework which empowers residential embedded network energy consumers to continually assess the relative merits of the various jurisdictional approaches. Residential consumers need to be able to demand their state or territory government implements the approach that guarantees the best consumer outcome. This will also be an effective way of driving energy industry innovation which advances strong consumer protection, as well as industry efficiency and sustainability. Residential energy consumers' voices must be strongly influential in shaping the operations of their respective local energy market. The move to all electric households means that protections and energy concessions will become more important, particularly for low-to-moderate-income households who rent.

Electric vehicles

The emergence of electric vehicle (EV) charging infrastructure poses yet another financial hurdle for embedded networks and highlights the need for more advanced technical solutions.

The increased electricity demand from EV chargers can lead to spikes in supply costs, potentially jeopardising energy supply. Many strata committees lack the necessary understanding, expertise and technology to effectively manage the load associated with EV chargers. In addition, without acute management, the investment required would inevitably exacerbate the financial costs for all those living in the affected embedded network regardless of whether they run an EV or not.

The AER needs to proactively legislate to fairly address what is now a rapidly emerging issue.

Conclusion

Embedded networks offer numerous potential benefits to all key stakeholders in terms of sustainability and cost savings especially if powered by renewable energy from solar power, with energy storage and associated systems being professionally managed. Plus, despite the position now adopted by the Victorian State Government, due to Australia's overall shift towards higher density living, coupled with the evolution of technology and practices associated with installing and operating embedded networks, embedded networks are likely to continue to be a large (if not, a growing) feature of the energy supply sector. Therefore, it is imperative the AER addresses the risks and challenges embedded networks pose for all energy consumers, especially residential consumers.