Caravan & Camping INDUSTRY ASSOCIATION NSW

Manufactured Housing INDUSTRY ASSOCIATION NSW

Land Lease Living INDUSTRY ASSOCIATION NSW

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SUBMISSION ON ISSUES PAPER TO INITIATE THE REVIEW OF THE AER EXEMPTIONS FRAMEWORK FOR EMBEDDED NETWORKS

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) welcomes the opportunity to provide comment on the Australian Energy Regulator's (AER) Issues Paper to initiate the review of the AER exemptions framework for embedded networks (Review).

CCIA NSW is the state's peak industry body representing the interests of holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates), as well as manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufacturers of relocatable homes and service providers to these businesses.

The Association has over 720 members representing all aspects of the caravan and camping industry and residential land lease living industry. Of these, 487 members are holiday parks and residential land lease communities (RLLCs) located throughout New South Wales (NSW).

For reference, these members fall into the exemption classes of ND3, D3, NR4 and R4 under the AER's *Electricity Network Service Provider - Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) and *AER Retail Exempt Selling Guideline, Version 6, July 2022* (Retail Guideline):

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy to occupants of holiday accommodation on a short–term basis	Class **ND3** of the Network Guideline	Deemed classes of exemption. Do not need to register their details with the AER, however are required to comply with Conditions attached to their exemption
Persons selling metered energy to occupants of accommodation on a short-term basis	Class **D3** of the Retail Guideline	

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Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there	Class **NR4** of the Network Guideline	Registrable classes of exemption. Must register their details with the AER and comply with Conditions attached to their exemption
Persons selling metered energy in caravan parks, residential parks and manufactured home estates (also known as residential land lease communities) to residents who principally reside there	Class **R4** of the Retail Guideline	

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy to occupants of holiday accommodation on a short-term basis **AND** in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there (mixed parks)	Class **NR4** of the Network Guideline	Registrable classes of exemption. Must register their details with the AER and comply with Conditions attached to their exemption ***NOTE:*** *If a caravan park has only 1 resident, they are still required to register their details with the AER under Class **R4** of the Retail Guideline and Class **NR4** of the Network Guideline, and also hold deemed ND3 and D3 exemptions. This is required even if the majority of their customers are holiday makers.*
Persons selling metered energy to occupants of holiday accommodation on a short-term basis **AND** in caravan parks, residential parks and manufactured home estates (also known as residential land lease communities) to residents who principally reside there (mixed parks)	Class **R4** of the Retail Guideline	

For the purposes of this submission, wherever we refer to 'holiday parks' we are referring to caravan parks that only supply/sell energy via an embedded network (EN) to occupants of accommodation on a short-term basis.

Wherever we refer to 'RLLCs' we are referring to residential land lease communities (residential parks, including caravan parks and manufactured home estates) that supply/sell energy via an EN to residents who live there. This includes caravan parks that supply/sell energy to as few as 1-2 residents (mixed parks) right through to RLLCs that are exclusively residential.

As the peak industry body representing holiday parks and RLLCs in NSW with ENs, CCIA NSW has a keen interest in this Review, and remains committed to working constructively with the AER and service providers to support reform that improves the exemption framework for all, without inadvertently disadvantaging customers.

REVIEW OF THE AER EXEMPTIONS FRAMEWORK FOR EMBEDDED NETWORKS

Approach to the Review

Stakeholder Questions

1. Do stakeholders consider one factor or principle should take precedence over another? If so, what weighting should we give the various principles or factors provided by the Retail Law and set out above, to support any case for change to the exemptions framework?

2. Is the AER's proposed approach to the exemption framework review the preferred approach? If not, what other factors or criteria should the AER consider?

CCIA NSW notes the principles that the AER should consider under the National Energy Retail Law (the Retail Law) in relation to granting retail exemptions, being:

Principles
• *Regulatory arrangements should not unnecessarily diverge from those applying to retailers*
• *Exempt customers should, as far as practicable, have the same right to choose a retailer*
• *Exempt customer should not, as far as practicable, be denied customer protections afforded to other customers*

The Retail Law also provides a list of factors the AER may consider, including:

Factors
• *Whether the sale of energy is a core or incidental part of a business*
• *Whether the energy seller's circumstances may warrant an exemption*
• *Whether the energy seller is intending to profit from the arrangement*
• *Whether the amount of energy likely to be sold by the seller is significant in relation to national energy markets*
• *The extent to which conditions on an exemption, or the requirements of other laws, would appropriately govern the energy seller's behaviour and provide exempt customers appropriate rights and protections*
• *The characteristics of the exempt customers*
• *The costs of obtaining a retailer authorisation compared to the benefits to customers.*

Further, CCIA NSW acknowledges the AER proposes to adopt the following criteria to guide the assessment of whether a particular option better delivers on the National Electricity Objective (NEO) to *'promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of energy consumers:'*

- benefits to consumers,
- harms to consumers (and risk of harms),
- costs for exempt entities,
- administrative cost for the AER, and
- AER ability to monitor and enforce compliance.

Our view is all these principles, factors and criteria are important considerations and it would not be appropriate to assign a weighting to one over another in the context of ENs and this Review. Instead, a careful balancing act is required to ensure the Review and resulting framework delivers the best possible outcome for customers and operators (weighing any

competing rights and interests they may have against the NEO) and allows the AER to achieve its objectives without imposing unnecessary and costly regulation on exempt entities.

As part of this, the AER should consider the different types of ENs and the harms (or risk of harms) they present to customers based on evidence. For example, in the case of holiday parks (exemption classes ND3 and D3), the primary purpose of business is not the sale of electricity, but short-term accommodation. The supply/sale of electricity through an EN is an ancillary service provided to support the provision of short-term accommodation (e.g. cabins and sites) for guests and long-term casual occupants. These are transient arrangements and require less regulatory oversight.

Alternatively, RLLCs are in the business of providing a housing option to residents, but in the case of mixed parks the scale and make-up of their operations can vary greatly. Some RLLCs can have as little as one or two residents, with the majority of their customers being guests staying in cabins or guests staying in their own recreational vehicles on powered sites for holiday purposes. Other RLLCs can be exclusively residential, and there are many RLLCs that operate somewhere in between.

In all respects, residents in RLLCs are protected by a raft of provisions under NSW tenancy laws, fair trading laws and local government regulations, which extend to the operation of ENs within these communities. Some of these provisions provide them greater protections than other types of EN customers and 'on-market' customers.

One example is the 'Reckless method' (discussed in further detail in response to Stakeholder Questions 7-12) which gives customers some protection against operators charging inappropriately high energy prices.

During the course of the Review, the AER must consider these state-based regimes to avoid creating additional regulatory complexity or duplication. There is also the issue, primarily in relation to the proposal to introduce family violence protections, that applying policies under energy laws would only partly solve a problem that should be addressed more broadly with policies under tenancy laws. We expand on this below in our responses to Stakeholder Questions 30 to 32.

Other factors and criteria we believe the AER should consider are:

- **Impacts on cost of housing**. While the Issues Paper refers to consideration of potential *'unintended consequences outside of the energy system, such as impacts on housing development, and tenant-landlord relationships'* we note decisions that increase the compliance burden of ENs causes them to incur costs that are likely to be passed on to consumers at a time when many are experiencing cost of living pressures. RLLCs provide housing to many people, some of which are vulnerable members of the community. It is important to preserve the affordability of this form of housing.

- **The age of ENs and exemption status**. Most holiday parks and RLLCs are older developments (brownfield sites) that have evolved over time. They are one segment of the original intended recipients of the EN exemption framework, and the supply and on-selling of energy to sites within these properties remain ancillary services.

  These are not the types of developments that have contributed to the rapid growth of ENs across the State and they do not present the same level of risk as other ENs might to customers - see our response to Stakeholder Question 3 below.

- **Size, diversity and capabilities of ENs** – the Issues Paper identifies on page 14 that the AER *'has aimed to balance its goal to mitigate potential customer harm, while keeping the conditions simple and manageable for exempt sellers so they can comply.'* This should continue as a core guiding principle and supports our comments above in relation to considering the different types of ENs. There is little point imposing regulatory obligations on exempt entities if they will not have the resources or capabilities to comply without incurring excessive costs.

Stakeholder Question

3. Is our proposed review scope reasonable? If not, what other supply arrangements should be considered and why?

CCIA NSW's view is the scope of the Review is reasonable and should focus on:

a) the supply of energy to higher-density residential embedded networks like apartment complexes and others operating under exemption classes ND2 and NR2,
b) limiting any changes to these exemption classes to new ENs, and
c) improving compliance and performance monitoring and family violence protections for all residential embedded network customers.

As noted in the Issues Paper, exemptions for classes ND2 and NR2 are where the AER is seeing the largest growth, and these ENs contain the greatest number of customers. Taking a risk-based approached, it is appropriate for the AER to focus this Review accordingly.

CCIA NSW would not support extending Options 1 to 4, as discussed on pages 26 to 30 of the Issues Paper, being extended to exemption classes ND3 or NR4. Our reasons are set out in our responses to Stakeholder Questions 17 to 25.

The Growth in Embedded Networks

Stakeholder Questions

4. What factors are driving the increase in residential exemptions?

5. Which factors are having the biggest influence?

6. How common is it for new residential development to be built as embedded networks?

The AER has identified most of the factors driving the increase in residential embedded networks (exemption class NR2) on pages 17 to 18 of the Issues Paper. Urbanisation and population growth, together with an affordable housing crisis, are likely having the biggest influence on the growth of these types of residential developments and subsequent exemption registrations.

In relation to registrable network exemptions for RLLCs (the NR4 class) rising from 260 in 2017 to 513 in 2023 (97% increase)[1] we would contend that this increase is not primarily because of new developments, but increased awareness of the framework and operators' obligations to register and hold their exemptions.

[1] AER (2023) *Review of the AER exemptions framework for embedded networks*, p17.

As noted above, most holiday parks and RLLCs are older developments and, like the AER, CCIA NSW has continued to educate our members about their obligations, as have associations in other states.

In relation to new developments, the decision to build new RLLCs as ENs currently varies amongst operators. Some are building new ENs incorporating several price and non-price benefits for residents, while others are choosing to connect sites to the grid in accordance with their business model.

Ultimately, it comes down to a commercial decision for the individual operator and their appetite to take on the compliance burden of maintaining and operating the EN, given the more stringent state-based regulatory controls on NSW RLLCs.

Benefits and harms of embedded networks

Stakeholder Questions

7. How do embedded networks result in lower energy prices for residential customers? Please provide supporting information

8. How do infrastructure costs for new developments built as embedded networks compare to non-embedded networks?

9. How do higher-density complexes configured as embedded networks benefit residential buyers? Please provide supporting information

10. What kind of innovative and emissions reduction arrangements can embedded networks offer residential customers?

11. What other benefits are there for residential embedded network customers?

12. How should we consider any consequential benefits such as improved access to affordable housing in this review?

Customers in NSW RLLCs generally receive lower energy prices compared to other EN customers because of section 77(3) of the *Residential (Land Lease) Communities Act 2013* (RLLC Act).

Section 77(3) provides that *'an 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'*.

While there are some practical difficulties in calculating the tariff to apply (known as the 'Reckless method')[2] due to older metering infrastructure, the outcome is that these types of ENs offer customers some protections against operators charging inappropriately high energy prices. With many RLLCs purchasing energy for the EN at large customer rates, home owners on-sold energy through the EN pay cheaper prices (equivalent to commercial rates) compared with residential customers supplied energy by a retailer.

[2] *NSW Fair Trading, Residential Community Electricity FAQs, '4. How can an operator and home owner calculate how much a home owner can be charged for electricity', accessed 18 February 2024 at* https://www.fairtrading.nsw.gov.au/resource-library/housing-and-property/residential-community-electricity-faqs

Home owners in RLLCs also benefit from other consumer protections under NSW tenancy legislation that extend to energy services. Section 78 of the RLLC Act provides that a home owner's electricity supply cannot be disconnected without an order from the NSW Civil and Administrative Tribunal (NCAT), and RLLC operators are prohibited from applying site fee payments to unpaid utility charges. The NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making operator determined disconnection unavailable.

Home owners can also access the complaint handling services of the Energy and Water Ombudsman NSW (EWON) and NSW Fair Trading.

In relation to innovations and emissions reductions arrangements, there has been an increase in the use of solar, battery storage and energy sharing particularly in new communities, which is lowering the cost of energy consumption within RLLCs.

One great example is Gemlife's Virtual Power Plant (VPP) projects at its Palmwoods, Maroochy Quays and Bribie Island properties in Queensland. Gemlife has connected 700 homes to VPPs, at no cost to home owners, and will be installing the system in all new communities and all their existing communities by the end of 2024. The Palmwood pilot saw the average homeowner's power bill fall to less than $8 per month.[3]

We are keen to see RLLCs in NSW given the opportunity to make similar and other innovative investments. Currently, the RLLC Act does not consider solar, VPPs, and other arrangements. There is also a limitation on the 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 (see section 76).

Amendments to the RLLC Act would give operators greater clarity and flexibility to invest in more energy-saving and clean technology. This would be particularly beneficial for older properties where utility infrastructure is dated and would benefit from upgrades. Providing grants and incentives to assist with the adoption of cleaner, newer technologies is strongly supported by CCIA NSW.

In response to Stakeholder Question 8, infrastructure costs for new RLLCs are generally lower when built as ENs compared to non-ENs. Arranging direct connections for each site to the local Distribution Network Service Provider's (DNSP) network can add thousands of dollars and significant additional time for onsite coordination. This can be challenging for developers selling and building homes quickly.

Developers also face other challenges. We are informed that some DNSPs and retailers are not interested in delivering the infrastructure for the site, which compels the operator to build the EN. In other cases, arranging direct connections results in land loss due to setback requirements of DNSPs, which could otherwise be directed towards supplying more homes.

Given Australia is experiencing a severe housing shortage, there is great scope for RLLCs and manufactured housing to contribute to housing supply in regional and metropolitan areas. RLLCs provide an affordable housing option not only to retirees but also downsizers, smaller families, first home buyers, single-person households, seasonal workers, people in remote locations and disadvantaged persons/vulnerable members of the community.

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[3] *Gemlife, We've got the power! Gemlife is putting energy into sustainability, accessed 16 February 2024 at https://www.gemlife.com.au/news/weve-got-the-power/*

We want to see more investment in these developments, and if building them and other types of residential developments with ENs can contribute to the affordability of homes (either through reducing the sale price of homes or reducing rents) than that is something that should be considered by the AER in this Review and encouraged in the regulatory framework.

Stakeholder Questions

13. What is the evidence that supports the view that embedded network customers are paying higher energy prices compared to on-market retail customers?

14. What evidence is available to understand the scale, extent or risk of harms?

15. What other harms do embedded network customers face?

16. How can we maximise the extent to which any changes to our Guidelines complements jurisdictional action and minimize the risk of misalignment or duplication?

Given NSW RLLCs are bound by section 77(3) of the RLLC Act when charging for energy, CCIA NSW does not have direct evidence that supports the view EN customers are paying higher energy prices compared to 'on-market' retail customers. This and other evidence about the scale, extent or risk of harms may be available in the complaints data from EWON.

EWON's Annual Report 2022/2023 indicates of the 17,852 complaints received, 417 were from embedded network customers.[4]

In relation to NSW RLLCs, most of the potential harms to consumers of ENs identified by the AER on pages 20 to 24 of the Issues Paper do not present in the same way or are already addressed by existing legislation:

- **Lack of retail competition and high energy prices**

As outlined above, section 77(3) of the RLLC Act provides that *'an 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'.* This means home owners in RLLCs generally receiving lower energy prices than other types of EN customers.

As a result of this, the likelihood of home owners seeking to go 'on-market' and access retail competition 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.'*

Pricing limits imposed by the RLLC Act and the AER Guidelines on these businesses make it unlikely that customers will seek retail competition. There is limited value in retail competition

[4] *EWON, Annual Report 2022/2023, accessed 16 February 2024 at https://www.ewon.com.au/page/publications-and-submissions/annual-reports/annual-report-2022-2023*

for these EN customers, as contracting directly with a retailer is unlikely to result in an energy cost saving.

As to rebates and concessions, we note that EN customers in NSW can access a raft of rebates directly through Service NSW, including the Family Energy Rebate (on supply customers), Gas Rebate (on-supply and bottled gas customers), Low Income Household Rebate (on-supply customers), Life Support Energy Rebate (on-supply customers) and Medical Energy Rebate (on supply customers).[5] In addition, the NSW Department of Planning and Environment (DPIE) is reviewing the Energy Accounts Payment Assistance (EAPA) scheme, including ease of access for embedded network customers.

In relation to EN customers serviced by authorised retailers, which do not currently receive the pricing protection of Condition 7 of the AER Retail Guideline, we note the Australian Government, through the Department of Climate Change, Energy, the Environment and Water (DCCEEW), is consulting on the proposed implementation approaches from the 2022 Review of the Competition and *Consumer (Industry Code – Electricity Retail) Regulations 2019*.

The Government proposes to extend price cap protection provided by the DMO to customers in ENs by ensuring prices offered by retailers to customers in ENs do not exceed the local standing offer.[6]

- **Limited consumer protections**

Page 22 of the Issues Paper notes the Retailer of Last Resort (RoLR) framework does not apply to EN customers, and exempt entities may not have the administrative capacity to '*ensure customers in payment difficulties are afforded the required protections'* and '*life support customers receive the required protection from disconnection.'*

While there are difficulties with RoLR provisions and ENs, it is important to point out there are alternative state-based protections for customers in NSW RLLCs.[7]

In most cases, the EN operator is also the owner/operator of the RLLC and they rely on continued energy supply to the EN for their own operations and common facilities. This creates an inherent motivation to maintain supply, aligning an operators' interests with the interests of their customers.

In the event of an exempt seller/operator failure (e.g., being placed into external administration or otherwise going out of business) customers of RLLCs will be concerned with their security of tenure, not just their energy supply. Therefore, the 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. These are set out in Part 13, Division 2, sections 164 – 170 of the RLLC Act.

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[5] *Service NSW, Concessions, rebates and assistance, accessed 16 February 2024 at https://www.service.nsw.gov.au/services/concessions-rebates-and-assistance*

[6] *DCCEEW, Default Market Offer Post-review consultation, 2023, accessed 28 June 2023, https://storage.googleapis.com/files-au-climate/climate-au/p/prj25a21b4b6c55497cd333f/public_assets/Implementation%20of%20the%202022%20review%20outcomes%20of%20the%20Competition%20and%20Consumer%20(Industry%20Code%20%E2%80%93%20Electricity%20Retail)%20Regulations%202019.pdf*

[7] *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 short term accommodation purposes and should be excluded from any RoLR arrangements. We note the AEMC's proposals for RoLR arrangements in its 2019 review 'Updating the Regulatory Frameworks for Embedded Networks' recommend changes to the National Energy Retail Law 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.*

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 RLLC Act as if the person were the operator, the RLLC Act 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 Retail 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 RLLC with a RoLR scheme could add unnecessary complexity and disruption. In addition, the AEMC has noted that where an EN operator 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."*[8]

In relation to helping EN customers experiencing payment difficulties and protecting life support customers from disconnection, there is no evidence to suggest these issues are not sufficiently addressed in NSW RLLCs.

In addition to provisions to protect life support customers, the AER Retail Guideline now includes requirements for ENs to provide customers with the AER Factsheet, in compliance with Condition 2, and provide hardship support to customers experiencing payment difficulties due to hardship using the Exempt Seller Hardship Policy template in compliance with Condition 26. With NSW RLLCs taking up their new obligations proactively, this is providing additional assistance to customers that may experience difficulties paying their electricity bills.

As outlined above, disconnection is one area where home owners in RLLCs enjoy a higher level of protection given section 78 of the RLLC Act provides a home owner's electricity supply cannot be disconnected without an order from the NCAT.

Community operators are also prohibited from applying site fee payments to unpaid utility charges and the NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making operator determined disconnection unavailable. In our experience, the NCAT always seeks to preserve a site agreement, and this extends to utility supply.

- **Limited compliance framework**

While there are no current requirements for EN operators to report any periodic information and data on compliance to the AER, the Issues Paper rightly points out on page 23 the challenges with AER resources and the limited options to take compliance action when issues are identified.

The AER could impose reporting requirements on EN operators; however it is unclear from the information provided in the Issues Paper what would be done with the information collected and whether the time and costs that would be incurred by operators and the AER would be justified.

[8] *AEMC, 2019, Op. cit., p 101.*

In terms of ensuring customers know about moving into an EN, we note in NSW RLLCs there is detailed information provision and disclosure about the EN to customers at the outset of a tenancy arrangement.

Condition 2 of the AER's Retail Guideline requires exempt sellers to provide extensive information to embedded network customers at the commencement of supply and on request. This includes:

- the name and contact details of the exempt seller,
- the customer's right to retail competition,
- that the exempt seller is not subject to all the obligations of an authorised retailer and the customer will not receive the same protections as when purchasing from an authorised retailer,
- complaints and dispute resolution processes, including accessing free EWON services,
- the conditions applicable to the embedded network,
- available government or non-government energy rebates, concessions and relief schemes,
- assistance and process if the customer is unable to pay energy bills due to financial difficulty,
- details of the energy tariffs and all associated fees and charges that apply,
- flexible payment options,
- contact numbers in the event of a gas or electricity fault or emergency.

Prospective home owners in RLLCs also have rights to disclosure of information under Part 4, Division 1 of the RLLC Act in a detailed, approved Disclosure Statement prior to entering into a written site agreement. They are also encouraged to seek legal and professional advice.

These mechanisms are in place for customers considering moving into an EN within a NSW RLLC to ensure they have the benefit of informed choice.

Holiday parks are also required to provide information at the start of an agreement under Condition 2 of the AER's Retail Guideline, including the name and contact details of the exempt seller, details of the energy tariffs and all associated fees and charges that apply as well as contact numbers in the event of a gas or electricity fault or emergency.

The *Holiday Parks (Long-term Casual Occupation) Act 2002* also requires operators to provide written information to prospective occupants as set out in section 9, which includes whether the occupant has to pay any additional or extraordinary charges (other than occupation fees) and for what purposes and how any disputes about the occupation agreement or other disagreements will be sorted out.

Where instances have arisen involving residents seeking to connect additional appliances, such as air conditioners, and being denied, the majority of these issues arise due to low amperage of older developments where upgrades would be expensive. In communities established many years ago, the levels of amperage supplied to sites were determined by planning and supply authority laws at the time, and the provision of lower amperage to sites was normal development.

In 2021 the Association undertook a survey of members with ENs in RLLCs. Responses to the survey produced a sample size of 2492 residential sites. Of those,

- 168 sites (7%) have more than 60 amps
- 1225 sites (49%) have 31 – 60 amps

- 656 sites (26%) have 21 – 30 amps
- 443 sites (18%) have less than 20 amps

Extrapolating these figures across the estimate of all residential sites in NSW, the vast majority of sites do not have very low amperage (i.e., lower than 20 amps), however the majority do have less than 60 amps. This issue is largely being addressed in new developments.

In response to Stakeholder Question 16, the AER could maximise the extent to which any changes to the Guidelines complements jurisdictional action and minimizes the risk of misalignment or duplication by continuing to engage with industry stakeholders, Ombudsman, and consumer protection agencies like NSW Fair Trading. This would ensure a robust evidence base is gathered to better understand the true scale and severity of issues.

Ascertaining and analysing this data, and liaising with relevant state and territory departments on proposed changes to avoid duplication, is paramount prior to making any decisions on changes to the exemptions framework.

Our preference is for energy regulation to be applied nationally and consistently wherever possible. We have reiterated this feedback in our response to IPART's *Embedded Networks Draft Report, December 2023*.[9]

Stakeholder Questions

17. What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?

18. How should we measure the benefits to consumers of registration?

We note the focus of potential options under the Network Guideline is on improving visibility of residential customers captured by deemed arrangements, however on page 25 of the Issues Paper the AER has identified EN service providers supplying *'metered or unmetered energy to occupants of holiday accommodation on a short-term basis (ND3 deemed network class exemption).'* This would include NSW holiday parks.

CCIA NSW requests that the AER correct this error, as there are no residential customers in NSW holiday parks. We have raised this issue several times with the AER during reviews of the Network and Retail Guidelines. Customers of holiday parks operating in this class are not residents, they are tourists or long-term casual occupants with a different set of rights and obligations.

Incorrectly categorising these ENs and their customers as residential arrangements contributes to the misconception that these customers have the same rights and obligations as residential customers. **We ask the AER to please issue a correction in the next stage of the Review.**

In relation to deemed exemption class ND2 and registrable exemption class NR2, which the Issues Paper identifies as the most relevant to the AER's consideration in this Review, we

[9] *IPART, Embedded Networks Draft Report December 2023, accessed 18 February 2024 at https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Draft-Report-Embedded-Networks-December-2023.PDF*

support improving visibility of ENs in class ND2 if the requirement for mixed caravan parks with only a few residential customers to register under class NR4 is to continue.

Currently, there is a discrepancy in the Network and Retail Guidelines between ENs operating under classes ND2 and D2 (small apartment complexes) and mixed caravan parks. If a caravan park has just one resident, even though the majority of their customers are holiday makers, they are still required to register their details with the AER under exemption class NR4 of the Network Guideline and class R4 of the Retail Guideline, and also hold deemed ND3 and D3 exemptions.

However, an apartment complex operating under exemption classes ND2 and D2 do not have to register with the AER, even though the apartment can have up to 9 residential customers.

This is unfair for caravan parks with less than 10 residential customers and should be remedied, either by:

a) closing the ND2 and D2 deemed exemption classes for new ENs and revising the NR2 and R2 registrable classes criteria to capture ENs supplying/on-selling metered or unmetered energy to any residential customers within the limits of a site they own, operator or control (Option 1 of the Issues Paper), or

b) if the AER determines in this Review that ENs with fewer than 10 residential customers should remain deemed to be exempt, then the AER should make changes to the Network Guideline and Retail Guideline to allow caravan parks with fewer than 10 residential customers to operate under deemed exemption classes ND3 and D3.

Our preference would be our option b) above, as we do not support imposing an administrative task to register on operators without it being clear how registration mitigates consumer harm or improves customer protections. ENs operating under exemption classes ND3 and D3 present limited risk to customers and should remain open and continue as deemed exemptions.

If the AER were to require new small apartment complexes to register their details under class NR2 and R2, there is a risk they may not be aware of their obligations without an extensive awareness and education campaign from the AER or jurisdictional Ombudsman.

Noting the limitations of the AER's enforcement powers and substantial fines that exist for not registering an exemption, this could put significant financial strain on smaller operators. The Issues Paper rightly identifies on page 26 that *'vulnerable customers could face continuity of supply issues if the embedded network service provider becomes insolvent.'*

As such, the benefits to consumers of registration should be measured against whether registration would deliver upon the NEO, being the promotion of efficient investment in, and efficient operation and use of, electricity services for the *'long term interests of consumers of electricity with respect to price, quality, safety, reliability, security of supply, and emissions reduction.'*

Registration alone is unlikely to deliver on any of these factors, so what the AER proposes to do with registration data moving forward will be the key for determining any tangible and intangible consumer benefits.

Potential options under the Network Guideline

Stakeholder Questions

19. What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we revised the NR2 registerable network class exemption activity criteria to include prescribed customer benefits that must be met by NR2 registrable network class exemption holders? How could the risks be mitigated?

20. If we were to prescribe a list of specific embedded network customer benefits, what could be included?

21. What other regulatory approaches would enable the AER to ensure future embedded networks are beneficial to customers?

Changes to the NR2 registrable exemption class criteria to prescribe a benchmark list of benefits for EN providers to self-assess against would not impact members of CCIA NSW.

Therefore, we only wish to reiterate that increasing transparency of ENs should be limited to exemption classes that pose the greatest risk to residential customers. Any revisions to class NR2 (and R2) should be limited to those classes and not extended to other classes, such NR4 or R4.

NSW RLLCs are highly regulated in comparison to other ENs, with a raft of consumer protections in place under the AER's Network and Retail Guidelines, state-based tenancy legislation and local government regulations. While holiday parks are not required to register with the AER, RLLCs are visible through their registrable exemptions.

If Option 2, set out on page 27 of the Issues Paper, was to be adopted for the NR2 exemption class, a self-assessment process would be preferable to limit the time and cost to applicants and the AER.

Developers and other stakeholders with more technical knowledge, would be better placed to advise what benchmark list of benefits to self-assess against should be prescribed, however they could include whether the EN will offer 100% renewable energy, whether solar/batteries exist on site, whether electric vehicle charging is available, and/or whether group buying discounts are available.

While the AER would have little assurance that exempt EN providers will be submitting accurate information, this could be mitigated with minimal time and cost by the AER undertaking random reviews or audits of EN applications. The complaints processes of jurisdictional Ombudsman would also help identify instances of non-compliance.

The fair and reasonable policy approach would be to limit this requirement to new ENs only, thereby grandfathering existing ENs based upon when they were built (rather than when they were registered with the AER). That way, developers will know upfront what the requirements for new ENs under activity class NR2 and R2 are, and they will be able to plan and finance accordingly.

In relation to what other regulatory approaches would enable the AER to ensure future ENs are beneficial to customers, CCIA NSW supports incentive-based regulation where the intention is to regulate behaviour less, and reward outcomes more. This could include tax

breaks, subsidies, tradable permits or even reduced compliance requirements where benefits to customers are clear and tangible. When built and operated well, ENs can provide excellent benefits to customers and developers are more likely to offer more benefits if they are incentivised do so.

Stakeholder Questions

22. What are the risks to embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we introduced a requirement to apply to the AER to register an NR2 network class exemption?

23. What are the implications of requiring embedded network service providers to demonstrate customer benefits before being permitted to register an NR2 network class exemption?

Although this proposal does not impact CCIA NSW members, the Association does not support Option 3, which would impose a requirement to apply to the AER to register an NR2 network class exemption.

We do not believe this is necessary given the time and costs that would be incurred by applicants and the AER. As discussed above, if exemption class NR2 was to be revised, our view is a self-assessment process against defined criteria, coupled with random reviews/audits undertaken by the AER and the various Ombudsman complaints processes, should sufficiently mitigate risks of non-compliance.

There are also potential flow-on effects additional assessment criteria is likely to present to the design and construction of new residential developments, if the requirements become overly burdensome or complex.

Developers will want certainty of their compliance and reporting obligations prior to commencing the build of new infrastructure, to understand the cost implications on their business case, and potentially redesign their network connection if required. The AER would need to consider what its likely review and assessment timeframes would be, as this will impact the development process for investors.

It is also unclear what administrative review process would be available if an applicant disagreed with an AER decision to refuse permission to register and what additional resources that review process would require.

We note the AER has not indicated revising other registrable exemption classes under this Option, which is appropriate. We would not support extending any of the proposals under Option 3 to exemption class NR4.

Stakeholder Questions

24. What support is there to stop the expansion of residential embedded networks by closing the NR2 registrable network exemption class?

25. What would be the impacts on customers, embedded network service providers, exempt sellers, embedded network managers, and other parties if we ceased granting exemptions for embedded networks with more than 10 residential customers? Please provide information to support your views.

CCIA NSW does not support closing exemption class NR2, nor any other exemptions classes and particularly not classes ND3 (holiday parks) or NR4 (RLLCs). As outlined above, NSW holiday parks and RLLCs are highly regulated in comparison to other ENs, with a raft of consumer protections in place under the AER's Network and Retail Guidelines, state-based tenancy legislation and local government regulations. There is no evidence that they pose a level of risk to customers so severe that discontinuing new exemptions is justified.

Such a drastic step for any exemption class should only be considered by the AER if there is clear and extensive evidence that EN operators within a particular class pose unacceptable risks customers, and there are no other options to address or mitigate those risks.

In addition to negative impacts already identified by the AER on page 30 of the Issues Paper, we reiterate our points above regarding impacts on cost of housing, as well as incentive-based regulation where the intention is to regulate behaviour less, and reward outcomes more.

At a time when Australia is dealing with a housing crisis, making regulatory changes that limit the types of residential developments that can be built will only further exacerbate the costs and challenges that developers face. This in turn will reduce housing choice for purchasers and tenants. Governments at all levels should be examining how more residential developments, whether they are built as ENs or non-ENs, can be encouraged rather than curtailed.

Potential options under the Retail Guideline

Stakeholder Questions

26. What compliance breaches should exempt sellers be required to submit to the AER, if they on-sell to residential customers?

27. What performance reporting indicators would best support the AER to identify consumer trends and inform regulatory reform for embedded networks.

28. What would be the benefits, costs and risks to exempt sellers, and other stakeholders, if the AER were to impose compliance and/or performance reporting obligations on exempt sellers, who on-sell to residential customers?

29. Should we extend any compliance reporting obligations to exempt embedded network service providers, via the Network Guideline?

Without a more detailed understanding of exactly how the AER will implement and use compliance breach and performance reporting to achieve the policy objective of *'greater market transparency,'* CCIA NSW is reluctant to lend our support to changes that would increase compliance costs for exempt sellers, particularly those exempt sellers where the sale of energy is an incidental part of the business, such as NSW RLLCs.

As outlined above, RLLCs provide housing to many people, some of which are vulnerable members of the community and it is important to preserve the affordability of this form of housing.

The Issues Paper rightly identifies on page 32 that *'increased administrative costs for exempt entities may ultimately be passed onto customers, possibly through increased levies or rent.'*

Even the smallest change in reporting requirements will have implications for resourcing and staffing within a business, with costs in turn being passed on to consumers.

Therefore, to meet the AER's other objective to *'mitigate potential customer harm, while keeping the conditions simple and manageable for exempt sellers so they can comply'* there would need to be clear justification for introducing reporting obligations for exempt sellers, where the benefits outweigh the costs.

If designed well, a reporting framework could offer the following benefits for exempt sellers, customers and the AER:

- helping exempt sellers identify and act on the most serious breaches and giving them greater confidence they are doing the right thing.
- benefiting consumers by allowing the AER to better identify and swiftly address systemic problems.
- helping the AER better understand the size and customer base of ENs.
- creating greater transparency for all stakeholders if the AER were to publish reporting data.[10]

Compliance breaches can occur for lots of reasons, such as human error, misunderstanding, technical issues, etc, and not all breaches are serious. To minimise costs, any compliance breach reporting if implemented for exempt sellers should be limited to only the most serious matters.

In relation to what performance reporting obligations would best support the AER to identify consumer trends and inform regulatory reform for ENs, more clarity is needed on what consumer trends the AER is seeking to understand and whether this data is already available via other channels, such as jurisdictional Ombudsman complaint processes.

In order to provide more constructive feedback for our sector, we would like to understand in more detail:

- the specifics of proposed performance reporting obligations for exempt sellers and whether they will be limited to the four metrics outlined on page 32 of the Issues Paper,
- the actual process of how exempt sellers will report their data, if they will need certain software, prescribed forms, etc,
- how often exempt sellers will be required to report (quarterly, half-yearly, annually),
- how the AER intends to store, use, respond to and publish reporting data,
- the consequences, including any penalties, of failures to report or inaccurate reporting,
- what training, education and/or guidance will be provided by the AER to assist exempt sellers to meet their reporting obligations.

We look forward to consulting further with the AER on the details of proposed reporting obligations so we can provide more insights for our sector and likely impacts.

Subject to these outstanding issues being resolved, and provided there is no duplication, we see no issues with extending compliance reporting obligations to exempt embedded network service providers via the Network Guideline for the purpose of consistency. Most, if not all, RLLCs in NSW that hold a retail exemption would also hold a network exemption.

[10] *We expect this would be anonymised.*

Stakeholder Questions

30. Should family violence obligations be extended to exempt sellers who on-sell to residential and small business customers?

31. What obligations would, and would not be feasible, to implement?

32. Could some obligations be tailored to the specific circumstances of an exempt selling scenario? How, and what support might enable sellers to meet their obligations effectively? What additional obligations should the core exemption conditions include?

CCIA NSW is not opposed, in principle, to extending family violence obligations to exempt sellers to support customers experiencing family violence, as helping to end family violence is a whole-of-society, whole-of-government responsibility.

In July 2022 the AER Retail Guideline introduced a new hardship policy condition and policy template for exempt sellers to ensure residential customers in ENs who experience payment difficulties due to hardship can have access to adequate support to better manage their energy bills. Operators of NSW RLLCs were very proactive in implementing their new responsibilities.

Provided the proposed family violence obligations are similar to the hardship requirements – i.e. they will be 'scaled-back' versions of retailer responsibilities – corporate responsibility is they should be supported. However, we have three primary concerns with Option 6 to introduce family violence protections for RLLCs.

Firstly, the landlord/tenant relationship between operators and residents in a RLLC is very different to the commercial relationship between an authorised retailer and their customer. Often, the operator or manager of an RLLC lives on site and is known to all residents.

In a situation where a retailer's customer is experiencing family violence, the retailer has a degree of separation through its call centre. However, an RLLC operator or manager may be known to both the family violence victim and the perpetrator and in direct physical contact.

We agree with the AER's statement on page 34 of the Issues Paper that *'failure to ensure exempt sellers are sufficiently trained to manage family violence obligations could impact the safety of the family violence victim, and the exempt seller themselves.'* As such, CCIA NSW does not support imposing any obligations on RLLCs that could potentially jeopardise the safety of staff attempting to comply with their responsibilities.

This must be a primary consideration as the AER continues to explore how family violence protections could be applied to exempt EN customers as part of the *Towards Energy Equity* strategy.[11]

Secondly, given the relationship between operators and residents in RLLCs is governed by tenancy laws, the AER should consider whether the issue of family violence in these types of ENs is best dealt under tenancy law. Rather than limiting obligations to assist customers experiencing family violence to energy services, it would likely be more helpful for residents to receive wholistic support from operators, including in relation to other utilities, rent and any obligations the resident has under their lease that may be impacted by the family violence.

[11] *AER, Towards energy equity strategy, October 2022, accessed 18 February 2024 at https://www.aer.gov.au/documents/aer-towards-energy-equity-strategy-october-2022*

Lastly, in order to minimise any increase in compliance costs for exempt sellers that new family violence obligations will bring, they would need to be 'scaled back' as much as possible from those obligations imposed on authorised retailers and revised to take account of the limited resources and capabilities of many exempt sellers.

We have reviewed Appendix C of the Issues Paper and identified those obligations that could potentially be implemented but scaled back/revised so they could be reasonably managed by RLLCs. These are all predicated on the assumption that exempt sellers will be given adequate guidance, training and support from the AER, including a family violence policy template:

Energy retailer obligation	Precursory Industry Response	Comments
Prioritisation of safety	Feasible	Subject to adequate training.
Family violence policy	Revision needed	AER should revise requirements in accordance with reduced capabilities of exempt sellers and provide a family violence policy template for exempt sellers to use.
Protection of affected customer information	Revision needed	AER should revise requirements to take account of landlord/tenant relationship and principle of maintaining customer and staff safety.
Skills requirement	Revision required	Responsibility should not fall to all exempt seller staff. AER should revise requirements so they are limited to key personnel only.
Customer identification	Revision required	AER should revise requirements in accordance with reduced capabilities of exempt sellers and provide guidance/criteria for undertaking assessments. In addition, exempt sellers should not be required to proactively identify customers, but rather respond if customers identify themselves as experiencing family violence.
Financial impacts of family violence	Revision required	AER should revise requirements in accordance with reduced capabilities of exempt sellers and provide guidance/criteria for undertaking assessments. RLLC operators require orders from NCAT to recover energy arrears.
Hardship and payment plans	Revision required	AER should revise requirements in accordance with reduced capabilities of exempt sellers and provide guidance/criteria for undertaking assessments. Additional allowances for customers experiencing family violence should be commensurate and not duplicate or conflict with existing arrangements.
De-energisation for not paying a bill	Not applicable	RLLC operators require an order from NCAT to de-energise/disconnect.
Communication	Feasible	Subject to whether exempt sellers have system capability to flag and action an effected customer's preferred method of communication.

Energy retailer obligation	Precursory Industry Response	Comments
Documentary evidence	Revision required	AER should consider allowing exempt sellers to request documentary evidence of family violence (such as a copy of an Apprehended Violence Order, statutory declaration, etc) as a precondition for receiving family violence protections given their reduced capabilities in comparison to authorised retailers and limited resources to carry customer debt. Family violence protections should be reserved for those genuinely needing assistance.
Information about external support services	Revision required	AER should revise requirements in accordance with reduced capabilities of exempt sellers. Sale of energy is an incidental part of RLLCs. This obligation should fall to more appropriate bodies or information included by AER in family violence policy template.
No breach of contract	Revision required	For RLLCs this requirement may be limited by provisions of the RLLC Act. Further investigation required.
Model terms and conditions	Not applicable	Energy on-selling in RLLCs governed by RLLC Act and provisions of site agreements.

We trust this table provides useful feedback to the Issues Paper and we look forward to consulting further with the AER on the details of any new family violence obligations, to determine conditions that would be reasonable and where compliance is feasible.

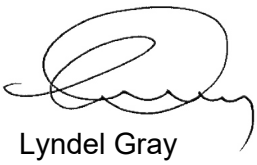
CONCLUSION

CCIA NSW appreciates the opportunity to provide feedback on the AER's Issues Paper to initiate the review of the AER exemptions framework for embedded networks.

Should you wish to discuss the issues raised in this submission please contact [redacted], Policy, Training and Executive Services Manager, on [redacted] or email [redacted]

We look forward to our continued engagement with the AER in the consultation process throughout the review stages.

Yours sincerely



Lyndel Gray
Chief Executive Officer