

CPSA submission to the Australian Energy Regulator (AER)

Issues paper - Review of the AER exemptions framework for embedded networks

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CPSA receives funding support from the New South Wales Government

Combined Pensioners and Superannuants Association of NSW

Combined Pensioners and Superannuants Association of NSW Inc (CPSA) is a non-profit, non-party-political membership association that promotes the rights and interests of pensioners of all ages and older people on low incomes. Founded in 1931, our aim is to improve the standard of living and well-being of CPSA's constituents.

Our services are free to all members of the public, regardless of association membership or affiliation. CPSA's core work is:

- Systemic advocacy on issues that impact our constituents, as identified through engagement and consultation.
- Providing information and referrals to the public through our information line and other communication channels.
- Publishing news, commentary and informational articles on our website that are circulated through a regular e-newsletter and monthly print publication, 'THE VOICE of Pensioners and Superannuants'.

CPSA's local branches provide members with the opportunity to have a say in their local community, as well as shaping the policy and advocacy work of the organisation. Many of our membership branches are in regional areas and CPSA is proud to be a voice for our constituents across NSW.

CPSA receives funding support from the NSW Department of Communities and Justice under the Ageing Peaks program.

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Table of Contents

Introduction	4
Responses to stakeholder questions	7
Question 1.....	7
Question 2.....	7
Question 3.....	8
Question 4.....	8
Question 12.....	9
Question 13.....	10
Question 15.....	10
Question 21.....	11
Additional comments	11

Introduction

Combined Pensioners and Superannuants Association (CPSA) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) issues paper for 'Review of the AER exemptions framework for embedded networks' (the issues paper). CPSA's advocacy work is focused on the rights and well-being of pensioners and older people on a low income. We have long held concern about the lack of adequate consumer protections for embedded network customers, as well as potential harm to consumers stemming from regulatory gaps and loopholes.

Our constituents face a range of challenges as embedded network customers, including barriers to accessing rebates and concessions; higher energy costs compared to on-market customers; difficulties making complaints and accessing support services; and barriers to relocating or leaving embedded networks. Whilst there is work underway that is aimed at relevant structural problems, CPSA is concerned that the existing issues have not been fully addressed. There is also potential for new issues to emerge unless there is a concerted effort to ensure that the current reform agenda centres the interests of consumers, with a particular focus on vulnerable consumers. To this end, it is important that all embedded network customers are considered as a priority, not just those living in large networks.

Whilst it is difficult to say how many older people and pensioners live in embedded networks, those who do are likely to experience other factors that may create sites of specific vulnerability (e.g. low income, living alone, frailty or age-related health conditions, less able to relocate) which can intersect to compound the risks and harms associated with living in an embedded network. Registrable exemptions for retirement villages more than doubled from 2017 to 2023. NR4 exemptions, which includes residential land lease communities, increased

by 97% in the same period. For these reasons, it is critical that this population have due consideration in any review of the relevant regulatory frameworks.

CPSA has reviewed the submission prepared by the Public Interest Advocacy Centre (PIAC) and the letter of endorsement provided by the Tenants' Union of New South Wales (TUNSW). We support PIAC's submission and TUNSW's additional comments and endorse their recommendations in full. Along with our support and endorsement of the above, this submission addresses some additional concerns that emerge from our reading of the issues paper. In raising these concerns, we are guided by our role as a representative of our constituents and by the principles of the National Electricity Objective (NEO).

Approach to the review

CPSA is concerned that the AER has not been appropriately guided by the NEO in their approach to this review. The NEO, as stated in the National Electricity Law, is “to promote efficient investment in, and efficient operation and use of, electricity services for the long-term interests of consumers of electricity”¹.

The review aims to benchmark new regulations to the existing regulatory framework that is in place for the broader energy market, an approach which is moderated by concern that regulatory interventions will limit the viability of existing and future embedded network arrangements. We argue that this is an improper approach for three reasons.

First, by seeking to benchmark new regulations to the existing framework of the broader energy market, the review overlooks the fact that the uncompetitive structure of

¹ AEMC, [National Energy Objectives | AEMC](#)

embedded networks will always prevent embedded network customers from accessing the same benefits as on-market customers (downward pressure on prices, deals for changing providers etc.).

Second, by seeking parity with the broader market, the review overlooks the very real harms faced by on-market customers (such as rising, unpredictable and unaffordable energy bills, market concentration and vertical integration of retailers and generators). In doing so, it misses the opportunity to act in the genuine long-term interests of customers, regardless of whether this goes beyond the current circumstances of most customers in the broader market.

Third, by allowing the viability of businesses operating existing and future embedded networks to limit the scope of regulatory interventions, the review sacrifices the long-term interests of electricity customers in favour of the short- and long-term interests of property developers, embedded network operators and electricity retailers. Here, CPSA wishes to reiterate PIAC's argument that "whether the energy seller's circumstances warrant an exemption is irrelevant, especially when the arrangement is yet to be approved"². If the AER is changing its approach to facilitate or protect arrangements that would otherwise not be feasible in a more carefully regulated environment, then this is plainly inconsistent with the NEO.

CPSA argues that, for this review to meaningfully meet the NEO, the long-term interests of electricity customers must be foregrounded throughout.

² PIAC submission to Review of the AER exemptions framework for embedded networks, p. 3.

Responses to stakeholder questions

As previously stated, CPSA wholly endorses and supports PIAC's arguments and recommendations in their submission. In this section, we address only those questions for which we have additional comments or concerns.

Question 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?

In accordance with the NEO, the long-term benefits of electricity customers should be given greatest weight in considering exemptions and changes to the exemptions framework. In addition, the AER should give greater weight to the characteristics of exempt customers, per the Retail Law, to recognise the additional challenges that may be faced by some customers in comparing or switching providers and moving on-market.

Question 2.

Is the AER's proposed approach to the exemption framework review the preferred approach? If no, what other factors or criteria should the AER consider?

The AER should critically consider the validity of creating an embedded network in the first instance. If an embedded network has been created to try to operate with an exemption or has been built to lock customers into a higher fixed price for energy, then the AER should consider whether granting an exemption will encourage this activity. CPSA is pleased to see

that the review's approach reflects some of these issues, however we argue that there are major considerations that have not been included in this approach. In particular, we argue that this review should consider pricing conditions placed on exempt sellers. Whilst we note that there is a review underway by the Independent Pricing and Regulatory Tribunal that addresses these matters, this review will only effect customers in NSW, and there is no guarantee that it will lead to better prices for embedded network customers. We therefore argue that the AER should amend its retail guidelines to ensure that exempt sellers are unable to charge higher than the lowest available market offer (updated 6-monthly) or at operating costs, whichever is higher. We note that, by the AER's own recognition, the sale of electricity is incidental for exempt sellers. As such, the AER should not concern itself with the profitability of these sellers in considering any option.

Question 3.

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

CPSA wishes to reiterate PIAC's arguments and recommendations in response to this question. We strongly argue that this review should include registrable exemptions for retirement villages (NR3) and residential land lease communities (NR4) in its scope.

Question 4.

What factors are driving the increase in residential exemptions?

Whilst more evidence needs to be gathered on this subject, it seems likely that developers are seeking to reduce building costs by building apartment complexes as embedded networks. Given the lack of transparency over embedded networks for renters and

home buyers, this is cause for concern. In addition, any claims from developers that regulating or banning new embedded networks will depress the growth of the housing supply should be taken with a grain of salt. Such concerns are beyond the scope of AER's purview and should not factor into any decision-making around improving protections and outcomes for embedded network customers.

Question 12.

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

Additional benefits should be considered with a degree of scepticism. As the issues paper notes, "there is no guarantee these lower costs flow through to energy consumers in embedded networks, either through lower prices or more affordable housing or tenancies"³. Given the rapid and continuing rise in prices for both free-standing houses and apartments, it is fair to assume that housing prices have been largely unaffected by reduced building costs from embedded network builds. Instead, housing prices and the lack of housing affordability are overwhelmingly dictated by a largely unregulated housing market.

The AER should also have some misgivings regarding the potential for embedded networks to deliver lower energy prices for consumers. The market structure of Australia's energy network is premised on the idea that businesses will offer better services and lower prices to gain customers and win market share. This is already an optimistic outlook for the broader market, but because of the structure of embedded networks, embedded network

³ AER Issues paper, P. 20.

operators are unable to gain new customers, and therefore have no market incentive to offer a higher quality service or pass savings on to their customers. This anti-competitive structure should therefore encourage the AER to seek to achieve better outcomes for customers through regulation.

Question 13.

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

Whilst CPSA recognises the need for more data on embedded networks, and the experiences of embedded network customers specifically, we wish to reiterate PIAC's argument that "[no] further evidence of consumer detriment needs to be demonstrated in this case, given a string of reviews... have consistently documented this issue"⁴. In addition, CPSA argues that the framing of question 13 in the issues paper, compared to questions 10 and 11, demonstrates an approach that is inconsistent with the NEO. Rather than exploring *potential* benefits and *evidence* of harm, the review should be guided by demonstrable *evidence* of benefits and the *potential* for harm.

Question 15.

What other harms do embedded network customers face?

In addition to those harms mentioned by PIAC in their submission, CPSA is concerned that the continued increase in NR2 exemptions could have a flow on effect to higher strata and body corporate fees (whether from maintenance or recouping initial infrastructure costs).

⁴ PIAC submission, p. 9.

Given that there are currently no strata or body corporate fee rebates or concessions available to low-income residents or pensioners, increases in these costs can have a severe impact on the budgets of our constituents. Anecdotally, we are already hearing from constituents that are struggling with these costs due to increased costs of living. In addition, if these costs are recouped through strata or body corporate fees then these costs could continue to affect residents even if they transfer to a standard on-market arrangement.

Question 21.

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

Following the Victorian Government's decision to ban all new embedded networks that do not meet strict renewable energy requirements, the AER could implement similar bans on embedded networks that do not have a clear and demonstrable benefit to customers (as assessed by the AER rather than self-assessed by the embedded network operators). This aligns with the NEO and would create a unified framework across the NEM. In addition, this approach would provide some protection to vulnerable customers who may be unable to easily withdraw from an embedded network and move to an on-market offer.

Additional comments

Like PIAC, TUNSW and many other bodies that have raised serious concerns with embedded networks, CPSA represents the consumers whose interests are at the heart of the NEO. We urge the AER to hear these concerns, and to treat the responses from industry bodies who have a vested interest in the continuation of business as usual with a measure of scepticism.

Further engagement

CPSA is available to engage further on these issues and would welcome the opportunity to discuss them further with the AER and other stakeholders.