

3 February 2023

Mark Feather
General Manager, Strategic Policy and Energy Systems Innovation
Australian Energy Regulator



By email: 

Dear Mr Feather

REVIEW OF CONSUMER PROTECTIONS FOR FUTURE ENERGY SERVICES – OPTIONS FOR REFORM OF THE NATIONAL ENERGY CUSTOMER FRAMEWORK, OCTOBER 2022

We write to you regarding the Options Paper published by the Australian Energy Regulator (AER) on 28 October 2022 as part of the 'Review of consumer protections for future energy services' (formerly known as the 'Retailer authorisation and exemption review').

Thank you to Isabel Durie and Tammie Ko at the AER for meeting with us on 24 January 2023 to discuss the Options Paper and allowing us an opportunity to forward a late submission.

BACKGROUND

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

We currently have as members over 700 businesses representing all aspects of the caravan and camping industry and residential land lease living industry. Of these, just over 480 members are holiday parks and residential land lease communities located throughout New South Wales (NSW).

Under the AER's current *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) our holiday park and residential land lease community members operate under Exemption Classes ND3 and NR4 of the Network Guideline and D3 and R4 of the Retail Guideline.

Persons supplying/selling 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) are required to register their details with the AER under Exemption Class NR4 of the Network Guideline and Exemption Class R4 of the Retail Guideline, even if the majority of their customers being holiday makers.

For the purpose of this submission, wherever we refer to ‘holiday parks’ we are referring to caravan parks that only supply/sell energy via an embedded network to occupants of holiday accommodation on a short-term basis (i.e., there are no permanent residents in these caravan parks).

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

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, we welcome the opportunity to provide our feedback on the Options Paper.

REFORM MODELS FOR CONSIDERATION

In our 27 May 2022 submission on the AER’s *Retailer Authorisation and Exemption Review Issues Paper, April 2022*, regarding expanding the scope of the National Energy Customer Framework (NECF) we noted there needed to be consideration of the essential nature of the supply of energy vs the optional take-up of many new energy services and products, and that principles-based regulation like the Australian Consumer Law would be preferable to prescriptive regulation.

Should the AER proceed with one of the three reform models proposed to update the energy consumer protection framework to ensure it will be fit for purpose for future energy services, our preference would be further development of Model 2 subject to some amendments and additional consultation with industry.

MODEL 1

As outlined in the Options Paper, while Model 1 is closest to the current regulatory structure and could therefore be less problematic, it is unlikely to adequately address emerging issues regarding new energy products and services. We are also concerned that the complexity of Model 1 will result in over regulation of embedded networks in NSW residential land lease communities.

The requirements associated with authorisation appear to reflect aspects of the Australian Energy Market Commission (AEMC) proposals to update the regulatory frameworks in 2019.¹ We were involved in the stakeholder consultations regarding the AEMC’s work and reiterate our concern that those proposals would impose on operators of NSW holiday parks and residential land lease communities a costly, resource-intensive and time-consuming regulatory framework - initially and on-going – with limited additional benefits for their customers.

We are concerned with how an authorisation framework could take proper account of mixed parks, given some can have only a few residential customers. Despite the proposal in Model 1 to allow derogations from certain obligations, it is still proposed that where a service provider’s activities fall within multiple tiers, the provider could be required to apply for the highest applicable tier.

¹ AEMC, *Updating the Regulatory Frameworks for Embedded Networks, Final Report, 20 June 2019*.

We note the Options Paper does propose an amendment to Model 1 to create an exemption class for 'smaller' residential embedded network sellers (like small caravan parks) to relieve them from some of the more burdensome and complex NECF obligations, and to allow selling in certain circumstances to continue much as it has done in the past.

However, using an arbitrary threshold like 'total annual sales less than a certain amount' to determine a 'small seller' is inevitably problematic. Questions arise like where does the AER 'draw the line,' when or how is that line reviewed and there are always impacts for those that fall just outside the threshold.

There is also the issue raised the Options Paper about whether capturing residential embedded network sellers as 'regulated entities' may conflict with some jurisdictional legislation, which would need to be addressed in coordination with state legislators. Legislation applying to residential land lease communities could be one area.

In our 24 January 2023 meeting with the AER we also asked if consideration has been given to the extension of the Consumer Data Right to the energy sector and what impacts that could have.

In relation to addressing the 'issue of agency in embedded networks,' we do not support the proposal in Model 1 that authorised sellers could be prohibited from outsourcing energy selling functions.

Operators of embedded networks where the sale of energy is not the core function of the business (such as holiday parks and residential land lease communities) should be free to contract externally if that is the most efficient operating model for the business and its customers.

If compliance by agents is lacking and enforcement powers are limited, they should be reviewed bearing in mind the relevant context and the need for proportionality. Prohibition should be the last resort in response to agents doing the wrong thing.

MODEL 2

In taking a principles-based approach to regulation, which includes allowing some flexibility in meeting those principles but maintaining prescriptive requirements for certain customer protections (such as disconnection, life support obligations and payment difficulties) Model 2 could be the most feasible way forward, offering a 'middle ground' on responding to emerging technologies and business models. This is subject to taking a nuanced approach for regulating the supply and on-sale of electricity within embedded networks in NSW holiday parks and residential land lease communities.

As previously submitted, most NSW holiday parks and residential land lease communities are older developments that have evolved over time. They are one of the original intended recipients of the exemption framework and such a framework should remain available for them.

Customer protection principles that these businesses must meet could still be set under Model 2, as well as expectations about the kinds of systems and processes required to meet those customer protection principles. The proposal for the AER to create guidelines to assist businesses in their interpretation of the principles is a positive one.

In terms of ensuring consumers in embedded networks can access new energy products and services, we reiterate our request that the AER work with other regulators and government

agencies to explore improvements that could be made at the federal and state level to allow Consumer Energy Resources (CER) to be better integrated into embedded networks in residential land lease communities for the benefit of all parties.

Reforms are needed to support operators to encourage new energy products and services within their embedded networks. To comply with their own responsibilities, where home owners are installing (or want to install) new energy technologies operators must be able to have a say over what energy technologies are being installed on individual sites and be involved in the process of connection to the embedded network.

As part of this, there needs to be shared responsibility between customers, suppliers of CER, operators and Distribution Network Service Providers (DNSPs). In addition, the *Residential (Land Lease) Communities Act 2013* requires amendment to be less obstructive, particularly in relation to fees and charges (including electricity usage and supply charges).

Solar PV installations by home owners in residential land lease communities mean operators are having to come to grips with managing a range of issues, including physical demands and impacts on the embedded network, safety and compliance, billing and negative meter readings, refund/credit entitlements, infrastructure upgrades and ongoing maintenance, what rules and regulations apply to managing access and connections and the rights and responsibilities of home owners and operators. The framework for these issues is complex and there are grey areas, and we envisage these issues will compound as demand rises for other energy products like battery storage and electric vehicles.

As one example, an issue has been brought to our attention concerning solar installations in several residential land lease communities (and other multi-tenanted sites) located in Ausgrid's distribution area.

We are aware that where home owners wish to install solar on their dwellings, for multi-tenanted sites with embedded networks like residential land lease communities, retirement villages, etc, Ausgrid must assess the site as a whole given it has one overall connection to the electricity grid. For connections greater than 30kW of solar and/or battery installations downstream there is a requirement for centralised protection to protect the assets in the embedded network as well as Ausgrid's assets.

The application process is problematic in that Ausgrid automatically approves some solar applications based on their size and the information provided on the connection application to minimise costs. Customers (or accredited solar installers acting on their behalf) who submit applications as part of multi-tenanted sites are required to confirm agreement by the property manager who is responsible for the connection to the Ausgrid network. In our sector, this would be the community operator.

Unfortunately, it appears this has not happened in several cases. Community operators were not made aware that home owners were seeking to install solar and the installations took place without the operator's knowledge or consent. Applications were submitted to Ausgrid with incorrect information regarding existing generation and being part of an embedded network, and these were not picked up by Ausgrid due to the nature of the application and connection process.

As a result, there have been solar installation applications approved after some residential land lease communities exceeded 30kW and now Ausgrid has issued defect notices to the community operators requiring them to rectify the defects (i.e., install grid protection relays at considerable expense) or remove the solar connections that brought about the defect notice.

This is not an ideal situation for the operators, home owners or Ausgrid, but we are advised that without changes to the current rules and Australian Standards there is little that can be done to fix the problem. We are looking to raise the matter with the Australian Standards Committee and the Clean Energy Council who accredits solar installers.

MODEL 3

Model 3 could provide the greatest level of flexibility to address the issues emerging from new energy products and services. However, for an operator of an embedded network in a NSW holiday park or residential land lease community, as the supply and sale of energy is not the core function of the business some level of prescribed process and procedure is needed to instil confidence and provide guidance on how best to deliver this service.

We agree with the observation on page 24 of the Options Paper that smaller service providers may struggle to interpret and implement an outcomes-based regulatory framework, forcing them to rely heavily on the AER or third parties for regulatory and compliance advice.

The requirement for a compliance plan to be developed by each service provider, and approved by the AER, could also prove problematic and resource intensive. The Options Paper is silent on any requirement to review and reapprove compliance plans.

NSW holiday parks and residential land lease communities already face complex rules and regulations for energy supply and on selling, an activity that is an ancillary service in their business. In many cases their time and resources to cope with compliance requirements are already stretched. We do not want to see compliance become more challenging because of uncertainty around interpretation and implementation.

CONCLUSION

Thank you for considering our feedback on the Options Paper. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, CCIA NSW is an important stakeholder in relation to the review of consumer protections for future energy services.

Should you wish to discuss the issues raised please contact Shannon Lakic, Policy, Training and Executive Services Manager, on [REDACTED] or email [REDACTED]

We look forward to our continued involvement in the consultation process.

Yours sincerely



Lyndel Gray
Chief Executive Officer