



Mr Chris Pattas
General Manager – Networks
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

10 January 2018

Lodged online

Dear Mr Pattas,

RE: Review of Electricity Network Service Provider Registration Exemption Guideline, 17 November 2017

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of advice on the necessary market mechanisms and policy for essential services, including electricity. SACOSS would like to thank the Australian Energy Regulator (AER) for their *Issues Paper – Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline, 17 November 2017* (the Issues Paper), the *Draft Electricity Network Service Provider Registration Guideline – Version 6 – November 2017* (the Draft Network Guideline) and their broader consultation with SACOSS.

Three of the proposed amendments to the Draft Network Guideline relate to the AEMC's Transmission Connection and Planning Arrangements final rule determination. The remaining amendments relate to:

- generator and battery connections
- further support for ENM rule change and some clarifications
- exempt customer dispute resolution and ombudsman scheme access
- consultation on the meaning of 'own operate and control'
- distribution systems configured as embedded networks.

SACOSS is confining this submission to the amendments relating to exempt customer dispute resolution and ombudsman scheme access, and will provide a brief comment on the meaning of 'own, operate and control' and the relaxation of restrictions to meter reads.

As previously submitted, SACOSS supports the principle that all consumers should, as far as is practical, have the same level of customer protection regardless of who supplies the electricity, including access to a free, independent and impartial dispute resolution mechanism such as an energy ombudsman scheme. SACOSS

therefore supports the AER's amendments to Condition 6 and the addition of Condition 13 to the Draft Network Guideline. The proposed changes to the Draft Network Guideline comprise an essential step on the path to improving residential exempt customers' dispute resolution options, bringing their consumer protections further into line with those afforded to customers of registered network service providers.

SACOSS has previously provided submissions to the AER on the amendments to the *AER's Draft Exempt (Retail) Selling Guideline Version 5* (SACOSS' Retail Guideline Submission)¹, and has also submitted on the AEMC's review of regulatory arrangements for embedded networks.² All of SACOSS' previous submissions regarding the regulation of embedded networks, have consistently supported improved access to internal and external dispute resolution options for customers of embedded networks. SACOSS' 2015 Report into the retail and exemption framework³ highlighted issues around the lack of external dispute resolution options for customers of embedded networks, stating there was 'widespread dissatisfaction with the way complaints were handled in practice'.⁴ The 2015 Report also supported a greater level of consistency between the Retail and Network Guidelines, acknowledging this would represent a step on the path to providing a more cohesive consumer protection framework for small customers of on-sellers and embedded networks.⁵

SACOSS welcomes the AER's changes to the Network Guideline which will harmonise the internal and external dispute resolution provisions in the Network Guideline with those proposed for exempt sellers under the *AER (Retail) Exempt Selling Guideline Version 5, November 2017* (Draft Retail Guideline), by:

- requiring exempt network service providers that supply energy to residential customers to be members of, or subject to, the relevant energy ombudsman scheme/s where they are able to be accommodated by the relevant ombudsman scheme (new Condition 13 of the Draft Network Guideline), and
- explicitly placing obligations on exempt network service providers to have in place appropriate complaints and dispute handling processes (Condition 6 of the Draft Network Guideline).

Condition 13 will apply to deemed classes ND2 and ND6.⁶ SACOSS refers the AER to our Draft Retail Guideline Submission⁷, within which we raised concerns about how the AER will reach the 'deemed' class, or how this class will be able to afford membership as required by the Condition.

The Ombudsman provision will also apply to the individual class of exemptions (NR1) and the Registrable classes of exemption (NR2, NR3 and NR4). Condition 13 does not apply to small business customers. SACOSS

¹ SACOSS, Submission to AER on the (Retail) Exempt Selling Guidelines Versions 5, https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/171213_Submission_AER%20Retail%20Exempt%20Selling%20Guideline_SACOSS.pdf

² SACOSS, Submission to the AEMC on the Review of Regulatory Arrangements for Embedded Networks, 17 October 2017

https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/171017_SACOSS_Joint_Submission%20to%20AEMC_Embedded%20Networks_final.pdf

³ SACOSS, The Retail and Exemption Framework: Emerging Issues for Consumers: a Report on the growing concern with consumer protection arrangements for exempt customers, 31 December 2015

⁴ Ibid, p. 33

⁵ Ibid, p. 28

⁶ ND2 class includes 'persons supplying metered or unmetered energy to fewer than 10 residential customers within the limits of a site they own, occupy or operate'. ND 6 class includes residential customers in Queensland who are supplied unmetered electricity, where premises are not separately metered and the relationship with the customer is covered by the *Residential Tenancies and Rooming Accommodation Act 2008*.

⁷ SACOSS, Submission to the AER re: Draft (Retail) Exempt Selling Guideline Version 5, 19 December 2017, p. 3

notes that the AER has indicated it may revisit access to energy ombudsman schemes for small businesses in the future⁸, and in line with our Retail Guideline Submission, SACOSS encourages the AER to do so.

In SACOSS' Retail Guideline Submission, we supported the provision of Ombudsmen dispute resolution services for residential exempt customers, but noted that the changes to both the Retail and Network Guideline represent the first phase in the process of securing that access. Further work is required by the AER and ANZEWO to ensure the various Ombudsman schemes in each jurisdiction can accommodate membership of exempt entities, and to also ensure adequate information and education is provided to customers so they are equipped to access those rights.

Consultation on the meaning of 'own, operate and control'

As part of the Draft Network Guideline, the AER is consulting on the definition of 'own, operate or control' within the meaning of section 11(2) of the NEL. Section 11 deals with electricity market activities in the NEM, with section 11(2) providing that:

*'A person must not engage in the activity of owning, controlling or **operating**, in this jurisdiction, a transmission system or **distribution system** that forms part of the interconnected national electricity system unless—*

(a) the person is a Registered participant in relation to that activity; or

(b) the person is the subject of a derogation that exempts the person, or is otherwise exempted by the AER, from the requirement to be a Registered participant in relation to that activity under this Law and the Rules.'

The AER has indicated that the concepts of 'owning' and 'controlling' are clear, but the definition of 'operating' is not. By way of example, the AER has indicated that the activity of reading a meter by a Meter Data Provider does **not** fall within the definition of operate, but reading the meter on a continual basis does as the 'professionalisation and specialisation of this role may indicate it is central to the operation of the network'.⁹

SACOSS notes the AER has questioned whether the activity of 'facilitating sales to customers within an exempt network as billing agent' comes within the definition of 'operating...a distribution system'. If this activity could be said to be part of the 'operation' of transmission or distribution systems, third party network billing agents would require either registration or exemption under the NEL, and would be regulated by either AEMO or the AER under the exemptions framework.

SACOSS submits that the meaning of operate / operating needs to be looked at in the context of the wording of sub-section 11(2). This necessarily involves an examination of the meaning of 'distribution or transmission systems' and 'electricity network service'.

'**Distribution system**' is defined under section 2 to mean '*the apparatus, electric lines, equipment, plant and buildings used to convey or control the conveyance of electricity that the Rules specify as, or as forming part of, a distribution system*'. An **embedded network** is defined under the NEL to mean a '**distribution system**, connected at a parent connection point to either a distribution system or transmission system that forms

⁸ AER, Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5, November 2017 p.24

⁹ AER, Issues Paper: Draft Amendments to the Electricity Network Service Provider Registration Exemption Guideline, 17 November 2017 pp. 10-11

part of the national grid, and which is owned, controlled or operated by a person who is not a Network Service Provider’.

SACOSS submits it is arguable that facilitating sales to customers within an embedded network would **not** fall within the meaning of ‘operating...a distribution system’ for the purposes of section 11(2), given this activity does not directly relate to the physical infrastructure of the ‘distribution system’ as defined under the Act.

Further, the Macquarie dictionary defines ‘operate’ to mean (inter alia): ‘to keep (a machine, apparatus, factory, industrial system, etc.) working or in operation’. If this is the ordinary meaning contemplated by section 11(2) of the NEL, the definition of ‘operate’ or ‘operating’ would apply to activities directly related to the infrastructure, and not to the associated network billing activities. SACOSS submits billing activities could possibly fall within the definition of ‘electricity network service’, as it is a service provided **in connection with** the distribution system; this relies on a broad interpretation of ‘in connection with’.¹⁰

SACOSS submits the NEL and the NER allow for an entity to provide an ‘electricity network service’ or a ‘distribution service’, without being a ‘Network Service Provider’ (and therefore requiring registration) within the meaning of the Act.¹¹ The definition of ‘network service provider’ under the NEL does not incorporate the definition of ‘electricity network service’. The network service provider definition effectively incorporates the provisions of section 11(2), thereby requiring a network service provider to be registered with AEMO.¹²

Whilst facilitating sales to customers within an exempt network as a billing agent, could be categorised as an electricity network service or distribution service, it is arguably not an activity which falls within the definition of ‘operating a distribution system’. Consequently, billing agents will not require registration or exemption and may be unregulated. Therefore, SACOSS submits the AEMC and the AER will need to consider how best to regulate this billing activity, and other embedded network services, to ensure the interests of consumers are protected.

In addition, there is a risk that broadening the meaning of operation would flow on to the existing authorised retailers who contract out some of their services, including billing. SACOSS submits the key issue is the chain of accountability, which also applies to existing authorised retailers. Where an existing authorised retailer contracts out billing or marketing services, the authorised retailer remains responsible and subject to penalties issued by the regulator. The same is true for distributors.

¹⁰ ‘**Electricity network service**’ is defined under section 2 of the NEL to mean ‘*a service provided by means of, or in connection with, a transmission system or distribution system*’. Chapter 10 of the NER defines a ‘distribution service’ to mean ‘*a service provided by means of, or in connection with, a distribution system*’. A distribution system is defined under the NER to mean ‘*a distribution network, together with the connection assets associated with the distribution network, which is connected to another transmission or distribution system. Connection assets on their own do not constitute a distribution system*’. A distribution network means a ‘network which is not a transmission network’.

¹¹ Section 2 of the NEL defines a ‘**network service provider**’ to mean ‘*a Registered participant registered for the purposes of section 11(2) that owns, controls or operates a transmission system or distribution system that forms part of the interconnected national electricity system*’.

¹² Chapter 10 of the NER defines Network Service Provider to mean ‘*a person who engages in the activity of owning, controlling or operating a transmission or distribution system and who is registered by AEMO as a Network Service Provider under Chapter 2*’.

In terms of the current review of regulatory arrangements for embedded networks by the AEMC, SACOSS considers the following issues need to be considered:

- will the new category of authorised retailers and registered network operators be subject to the same accountability for the actions of their agents / service providers, and
- will any remaining embedded network operators / exempt retailers also be held accountable for the actions of their agents / service providers.

For example, if a body corporate contracts to 'X' firm to install and operate the network, then that body corporate entity retains the accountability for the performance or non-compliance of its agent / service providers. This means the body corporate will have to arrange its own 'penalties' through contracts with the service providers.

Relaxation of restriction on frequency of meter reading

The AER is considering whether the restriction of one meter read per month for embedded network customers should be relaxed to allow for flexible payment arrangements and weekly billing. SACOSS supports the removal of restrictions on reading meters, on the condition that overcharging for meter reading is addressed. Flexibility and weekly billing options are necessary to avoid the situation where permanent residents of caravan parks (on limited fixed incomes) experience bill shock associated with less frequent and larger electricity bills.

SACOSS further supports the AER investigating whether limits should be placed on meter reading charges. SACOSS does not want to see the situation where customers are charged a weekly fixed charge for meter reading and billing. SACOSS understands these activities are actually fixed costs to the operator irrespective of the frequency, and therefore consideration should be given as to whether there should be no fees for meter reading, potentially one annual capped fee, or perhaps relate the fee to the annualised fixed charge of the standard authorised retail price (network price).

It is important to strike a balance between protections for permanent residents of caravan parks and regulatory burdens on caravan park owners. The AER needs to ensure the caravan park owners receive the necessary support to meet their compliance obligations, and that those obligations are not so onerous that caravan park owners decide to exclude permanent residents from affordable long term accommodation, focussing on short-term or holiday accommodation only.

We thank you in advance for consideration of our comments. If you have any questions relating to the submission, please contact Jo De Silva via jo@sacoss.org.au or 08 8305 4211.

Yours sincerely,



Ross Womersley
Chief Executive Officer