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17 May 2017

John Pierce
Chairman
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

By email: www.aemc.gov.au

Dear Mr Pierce

Submission on regulatory arrangements for embedded networks

Thank you for the opportunity to comment on the AEMC's review of regulatory arrangements for embedded networks. The AER has a particular interest in this issue, given our role in administering the networks and retail exemptions frameworks which regulate much of the energy supply and selling activity within embedded networks. Given the growth and interest in embedded networks we consider the review timely.

While we acknowledge embedded networks may bring benefits to consumers, particularly in terms of potential cost savings, our observation is that these benefits are not always realised and embedded network customers can experience significant detriment in terms of their energy supply. We question whether the proliferation of embedded networks, with their inherently monopolistic structure, is in the interests of consumers. This review provides an opportunity to consider whether the benefits of embedded networks outweigh the detriment.

Although we consider the regulation of embedded networks can be improved, without changes to address the structural impediments to competition, any changes will have a limited impact on improving market outcomes. In this submission we will identify both areas for improvement in the regulatory framework and the detriments we see arising from the structural limitations on competition in embedded networks.

This submission comments on points raised in your consultation paper, drawing on our experience in regulating exempt energy sellers under the National Energy Retail Law (Retail Law) and embedded network operators (ENOs) under the network exemption

framework.¹ In this submission we use the term 'ENO' to refer to both the seller and operator of an embedded network where we are not seeking to distinguish between the two functions. However where necessary, the discussion distinguishes between the selling and operating functions of the ENO by referring to the seller/selling (that is, the entity holding the retail exemption).

We draw attention to:

- limitations of the current regulatory framework;
- the need for competition in embedded networks;
- the need for appropriate (and tailored) consumer protections for customers within embedded networks; and
- the need for more appropriate compliance and enforcement options.

These matters are summarised below and addressed in more detail in **Attachment A**, which includes responses to the questions posed in the consultation paper.

Limitations of the current regulatory framework

The binary market entry (authorisations/exemptions) framework established in the Retail Law was designed to regulate a relatively homogenous and simple energy retail market. Historically, the sale of energy in embedded networks was regarded as an incidental aspect of the relationship between a landlord or body corporate and the occupants of a site. While the exempt selling framework was developed to manage this arrangement, we have seen an increasing number of landlords and bodies corporate on-selling for profit² and the emergence of businesses that specialise in operating in embedded networks. The development of new embedded networks is steadily continuing and existing sites with multiple occupants are increasingly looking to convert to embedded networks, commonly known as retrofitting. On-selling through embedded networks has therefore become a core function for many ENOs rather than being incidental to their broader activities, with many behaving more like retailers than exempt sellers. It is therefore no longer appropriate to distinguish retailers as those whose core business is the sale of energy, and exempt sellers as those for whom energy selling is incidental.

For these reasons we suggest the distinction between authorisation and exemption under the current regulatory framework is no longer fit for purpose as it is unable to deal with the diversity and complexity of exempt selling arrangements, including selling in embedded networks.

The need for competition in embedded networks

Although in theory embedded customers have access to competition in most jurisdictions, in practice they do not because of the inherently monopolistic design of embedded networks. In embedded networks customers' access to retail competition is restricted or prohibited (depending on the jurisdiction), for a variety of reasons. While the AEMC's embedded networks rule change³ (effective from 1 December 2017) will assist customers to receive

¹ You can find our retail and network exemption guidelines on our website: *AER (Retail) Exempt Selling Guideline*: <https://www.aer.gov.au/retail-markets/retail-guidelines/retail-exempt-selling-guideline-march-2016>; *AER Electricity Network Service Provider (NSP) Registration Exemption Guideline*: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-december-2016>

² Body corporate legislation in Queensland prevents bodies corporate from making a profit on the sale of energy.

³ AEMC *National Electricity Amendment (Embedded Networks) Rule 2015 No. 15*: www.aemc.gov.au/Rule-Changes/Embedded-Networks

supply from a retailer of choice, this change alone will not resolve the issue of access to competition. Few retailers offer energy only contracts as there is little competitive pressure on retailers to offer them and no other incentive to do so. In addition, wiring individual customers out of the embedded network, to allow them to access generally available retail offers, is usually cost prohibitive for customers.

Competitively priced energy in embedded networks would require access to competition and potentially, at the network level, individual pricing determinations. Network price determinations are impractical given the thousands of embedded networks in operation and the excessive administrative cost on the ENOs and regulators/AER. In place of this, the current approach is to:

- cap network charges at the price allowed by the local distribution network service provider (local distributor) for an equivalent customer
- cap retail charges to the standing offer contract of the local area retailer—a contract that would be available to the customer if they had a direct connection to the local distributor.

In our experience, without competitive pressure on pricing in embedded networks, embedded network customers often pay close to the maximum price allowable, suggesting price caps cannot substitute for the benefits of a competitive market. We therefore suggest that true competition in embedded networks is the missing element that would offer the greatest benefit to customers.

In the short term, enhanced competition in embedded networks could be achieved by greater availability of competitively priced energy only offers to provide customers greater choice of retailers and contracts. In the longer term, improving access to competition may involve solutions outside the Retail Law framework, for example alterations to planning legislation to facilitate direct access for embedded network customers to the national grid. This review provides a forum in which to recognise and highlight such changes for future consideration.

The need for appropriate (and tailored) consumer protections for customers within embedded networks

We consider the exemptions framework is failing customers in that it seeks to regulate embedded networks as if ENOs were authorised retailers operating in a competitive environment, rather than a diverse group of individuals and businesses with different levels of 'retail' capabilities and drivers operating in monopolistic environments.

Conditions attached to retail exemptions have been designed largely to mirror the consumer protections provided to customers of authorised retailers, as required by the Retail Law. However, given other Retail Law requirements, including our consideration of exempt seller factors, it is not always appropriate or practical to require ENOs to provide the same or similar consumer protections as retailers under the exempt selling framework.

Unlike retailers, ENOs are a diverse collection of individuals or businesses that have markedly different resources, expertise and motivations making it impracticable for them to provide the same level of consumer protections as retailers in many instances. In our view it is inappropriate to treat these distinct sellers as if they were retailers. Added to this, ENOs often have more complex relationships with their customers than retailers do, as they can also be landlords and provide other services. Such relationships are governed by other legislation (e.g. tenancies legislation, body corporate legislation, and caravan park legislation), which place further—sometimes conflicting—obligations on ENOs in relation to energy sales that diverge from those on retailers.

The need for more appropriate compliance and enforcement options

The Retail Law provides limited enforcement options for breaching energy selling requirements in embedded networks. For example, the fixed penalty of \$20,000 does not take into account the diversity in types of ENOs, which range from individuals running small businesses to sophisticated corporations. To take account of this it may be preferable, for example, to distinguish penalty amounts for individuals and corporations as the Australian Consumer Law does.

We are concerned about increasing numbers of owners and bodies corporate using outsourced parties (agents) to manage embedded networks on their behalf. The Retail Law requires parties engaged in the sale of energy to be authorised or exempted, but in these instances the customer sees the agent, for all intents and purposes, as their seller. We are limited in our ability to take direct compliance and enforcement action in relation to agents because they are not exemption holders (sellers). That said, we have the ability to act in relation to persons who are knowingly concerned in a breach of the Retail Law or aid or abet such a breach, although doing so is generally more complex than establishing a breach against an exemption holder. We see benefit in having such service providers subject to the requirements of the Retail Law in their own right, given their central role in managing energy sales and administering the customer relationship.

Enforcement of network exemptions provides a range of additional challenges. Section 13 of the National Electricity Law (NEL) contains a power for the AER to issue a civil penalty for failure to hold a network exemption but provides very limited means of enforcing breaches by ENOs of network exemption conditions. These conditions cover safety, price controls, metering, dispute resolution and access to competition, which are needed to ensure expected service standards are maintained. Currently, the only way to do so is for us to seek declaratory relief from the courts. We have not pursued this option because of the reluctance of customers to act as witnesses. Another option is to revoke the exemption, which would make energy sales in the embedded network unlawful and may leave occupants without supply. For both retail and network exemptions, we also recognise that our ability to take enforcement action is currently limited by the lack of transparency of ENO activities. Our main source of information about market activity is complaints that often highlight ENO failure to hold an exemption or non-compliance with conditions.

While we recognise the need for greater transparency of ENO activities, given the diversity of ENOs—their differing resources and energy literacy—we consider that it may be appropriate for the Retail Law to specify a monitoring role for us to examine exempt seller behaviour. To recognise the large numbers of sellers, their differing resources, energy knowledge and motivations, such a monitoring role would need to be flexible and enable us to examine particular conduct and sellers as required on an ad-hoc basis.

Conclusion

We consider the current regulatory arrangements for embedded networks are no longer fit for regulating the diverse array of embedded networks that have arisen in recent years and the different types of ENOs that sell in and operate them. In particular, the binary framework of exemption and authorisation and the associated assumption on which it is based presents significant challenges to the effective regulation of the changing nature of energy selling.

While we have some suggestions on how to improve the regulatory framework, we consider the improvement of consumer protections, service quality and pricing in embedded networks is best achieved through the introduction of effective competition in embedded networks, which would provide customers with alternative supply options and place competitive pressure on ENOs. In addition, to ensure better ENO compliance with Retail Law

obligations, we seek more flexible enforcement options and penalties for breaches of network exemption conditions.

We recognise these issues are complex and welcome the opportunity to collaborate with the AEMC and other stakeholders to identify and implement options for improvement. If you require any further information or assistance, we would welcome the opportunity to discuss these matters further. Please call Sarah Proudfoot on 03 9290 6965 if you have any queries about the submission.

Yours sincerely

Paula W. Conboy
Chair
Sent by email on: 17.05.2017

Attachment A – Responses to questions

Question 1: Does the two tiered framework of requiring either registration/authorisation or exemption remain fit for purpose?

In the context of the growing number, scale and diversity of exemptions:

(a) What issues does the two tiered regulatory framework of requiring either registration as an NSP/authorisation as a retailer, or exemption give rise to?

- **The authorisations/exemptions framework is no longer fit for purpose.**
- **It is no longer appropriate to distinguish the requirement for authorisation or exemption based on whether energy sales are incidental or not.**
- **The regulatory framework needs to be amended to provide a sufficiently flexible mechanism to deal with the increasingly diverse embedded network market which is occurring as part of a broader market transformation.**

The authorisations/exemptions framework established in the Retail Law was designed to regulate a relatively homogenous and simple energy retail market. Historically, the sale of energy in embedded networks was regarded as incidental to the relationship between a landlord or body corporate and the occupants of a site. The exempt selling framework was developed to manage this arrangement.

However, we are seeing an increasingly diverse embedded network market emerge as part of a broader market transformation. For example, an increasing number of landlords and bodies corporate are on-selling for profit⁴ and businesses that specialise in operating embedded networks are growing in number. This has led in turn to an increase in the development of new embedded networks. We are also seeing an increase in the number of conversions of existing sites into embedded networks (commonly known as retrofitting).

It is apparent from exemption applications and our discussions with embedded network customers and sellers, that on-selling energy within an embedded network is considered profitable, even when energy is on-sold to customers at 'discounted' rates⁵. This is in part because while an embedded network has one supply point and is charged one supply charge by the distribution network service provider (DNSP), the ENO then passes on this charge to every individual customer within the embedded network (of which there may be many). This, as well as the ability to bulk-buy electricity cheaply, allows the ENO to make the network profitable even where it discounts usage charges. Energy price rises as well as the potential to bundle energy with other services (i.e. water, air conditioning etc.) are also likely to increase the profitability of embedded networks.

For many businesses, on-selling through embedded networks has become a profitable core function with many ENOs looking more like retailers than exempt sellers. In our view, it is no longer appropriate to distinguish the requirement for authorisation or exemption based on whether energy sales are incidental or not. The profitability of on-selling has also encouraged retailers to enter this market by setting up subsidiaries to operate as agents in

⁴ Body corporate legislation in Queensland prevents bodies corporate from making a profit on the sale of energy. However, this does not always lead to customer savings as potential savings may be absorbed by charges paid to agents who undertake the day-to-day operation of the embedded network.

⁵ Some embedded network small customer consumption tariffs may be as low as 18c kWh (exc. GST) whereas on-market small customer tariffs may vary between 23-29c kWh (exc. GST)

embedded networks. They have significantly lower compliance costs as agents are not subject to retailer obligations or the conditions of exempt sellers.

The current framework does not allow us to adequately deal with specialist energy on-sellers acting as agents for ENOs. Agents market themselves as expert billing and customer service providers who manage energy sales in compliance with energy laws. They present themselves to the market as responsible for the customer's energy supply and manage customer relations, often with call centres established to respond to customer queries. They usually include their own branding on customer bills. Given their central role in managing energy sales and administering consumer protections, we suggest consideration be given to measures or amendments that could see these service providers specifically captured (see our response to **Question 1b**).

We have also observed an increasing number of specialist embedded network on-sellers seeking—and obtaining—retailer authorisations. While this provides embedded network customers with Retail Law consumer protections it creates its own challenges. As embedded networks are monopolies (see our response to **Question 2a**), whether the embedded network customer receives their energy from an authorised retailer or an exempt seller, they still have limited or no access to retail market offers. This results in minimal incentives or commercial pressure on an authorised retailer to offer competitive energy tariffs (see our response to **Question 2a**). As they are not exempt sellers, authorised retailers are not bound by Condition 7 of the Retail Exempt Selling Guideline (Retail Guideline), which imposes pricing restrictions on exempt sellers.

In addition, where an authorised retailer is engaged to retrofit an embedded network at a brownfield site, customers may have fewer protections in relation to the retrofit process. We have taken significant steps to strengthen customer safeguards for retrofitting under an exemption, as in most circumstances it significantly diminishes a resident's or tenant's ability to access retailer of choice. However, an authorised retailer is not subject to these retail exemption requirements and important protections do not apply, such as the requirement to obtain explicit informed consent to the retrofit. This removes an important set of safeguards for embedded network customers and may diminish consumer protections for those customers. We note, though, that the ENO is still required to comply with obligations under the Electricity Network Service Provider Registration Exemption Guideline (Network Guideline) when retrofitting.

We have previously noted the limitations of applying the same regulatory requirements to all energy sellers as, in our view, the 'one size fits all' authorisations framework provides significantly less flexibility and adaptability than the exemptions framework. A more tailored approach may be a better option and to date we have used the exemptions framework to regulate new, non-traditional selling.⁶ The regulatory framework may benefit from amendment to provide a sufficiently flexible mechanism to deal with the increasingly diverse embedded network market which is occurring as part of a broader market transformation.

⁶AER Statement of approach, Regulation of alternative energy sellers under the National Energy Retail Law: <https://www.aer.gov.au/system/files/AER%20-Alternate%20energy%20sellers%20-%20Final%20statement%20of%20approach%20-%20July%202014.PDF>

(b) Are there alternative regulatory arrangements, not based on a binary system of registration/authorisation or exemption, that would be more appropriate?

- **Agents should be specifically captured by the regulatory framework given their central role in managing energy sales and administering the customer relationship.**

As mentioned in our response to Question 1a, the energy market is transforming and part of that transformation encompasses the growing scale and diversity of embedded network selling and the rise of billing agents who sit outside the Retail Law definitions of energy selling. In particular, energy selling, or managing energy contracts, is often a core part of these businesses but they are not captured by the requirement to have an authorisation or exemption (see our response to **Question 2b**). In particular, the Retail Law requires those who sell energy to be authorised or exempt. However, the nature of the agency relationship means that while the agent's activities are an extension of the seller's, they are not a seller themselves and are not specifically captured by the Retail Law.

Under the Retail Law if an agent breaches an exemption we rely on indirect provisions for taking enforcement action against the agent for the breach, that is, being knowingly concerned or aiding and abetting a breach. Specifically, section 298 of the Retail Law allows the AER to apportion some responsibility to agents for breaches. It states:

A person must not—

- (a) aid, abet, counsel or procure a breach of a civil penalty provision or conduct provision by another person; or
- (b) be in any way directly or indirectly knowingly concerned in, or a party to, a breach of a civil penalty provision or conduct provision by another person.

Section 298 therefore enables us to take action against agents in as far as they have aided a breach by an exemption holder or are a party to the breach. However, in some cases it may be preferable to take direct action against an agent independent of a breach by the exemption holder. This may be for a number of reasons, including where there are difficulties in proving certain elements of the exempt seller's breach or where, due to particular circumstances, it is more appropriate to take action against the agent and not the exempt seller. For these reasons, we consider that agents should be specifically subject to the requirements in the Retail Law.

Question 2: Does the exemption framework remain fit for purpose?

- (a) Does the exemption framework promote efficient investment and allocation of risks and costs? Specifically, does the exemption framework:
 - (i) incentivise efficient investment in infrastructure and energy services within embedded networks?
 - (ii) appropriately allocate risks between exempt sellers and exempt network service providers and embedded network customers?

- **The lack of competition in embedded networks shifts risk disproportionately to customers, creating opportunities for monopoly pricing in embedded networks.**
- **We suggest that improving access to competition may also involve solutions outside the Retail Law framework.**

Embedded network infrastructure may be considered a natural monopoly in which efficient pricing would usually be achieved through individually administered pricing arrangements. Given the thousands of embedded networks in existence, undertaking this regulatory process would be impractical for reasons of the resources required and the costs involved both for the businesses and the AER. In place of this, the current approach is to cap network charges at the price allowed by the DNSP for an equivalent customer. This ensures customers pay no more than customers of the DNSP, recognising that capital costs for the embedded network were paid for through apartment values and rents.

In energy retail markets, contestability puts downward pressure on pricing and provides incentives to offer non-price benefits. In embedded networks, structural barriers limit customers' access to competition. We discuss the barriers to competition further in our response to **Question 4**. The lack of competition in embedded networks shifts risk disproportionately to customers, creating opportunities for monopoly pricing in embedded networks.

Recognising this, our current approach is to cap retail charges to the standing offer contract of the local area retailer. A standing offer contract is one that would be available to the customer if they had a direct connection to the local distributor. The standing offer price is not, however, an ideal benchmark because:

- (i) standing offer prices are often high in order to establish a base from which retailers calculate discounts for market offers
- (ii) each local area retailer has a standing offer and standing offer prices are highly variable between retailers
- (iii) it does not reflect the fact that in the retail market, most customers are on market offers which are usually cheaper than the standing offer.

We have observed that embedded network customers often pay close to the maximum price allowable, which suggests that such restrictions on price cannot substitute for the benefits of a competitive market. We therefore consider that competition in embedded networks is the missing element that would offer the greatest benefit to customers.

The AEMC's embedded networks rule change commencing 1 December 2017 will assist in removing a structural barrier to competition. However, it remains to be seen whether it will be effective in reducing retailers' costs to supply embedded network customers and so encourage retailers to offer more energy only offers for small embedded network customers.

We suggest that improving access to competition may also involve solutions outside the Retail Law framework. In the short term, these may include measures to encourage greater availability of competitively priced energy only offers to give customers greater choice of retailers and contracts. In the longer term, it may also include alterations to planning legislation to facilitate direct access for embedded network customers to the national grid. This review provides a forum in which to recognise and highlight such changes for future consideration.

- (b) Does an exemption framework continue to be necessary for some categories of embedded networks? If so:
- (i) what should the objectives of a network and retail exemption framework be?
 - (ii) what types of embedded networks and on-selling arrangements should be eligible for exemption?
 - (iii) Do the three categories of deemed, registrable and individual exemptions remain appropriate? If not, what changes should be made to the exemption framework?

- **We consider the exemptions framework, the categories of exemption, and types of embedded networks eligible for exemptions established in the NEL, NER and the Retail Law, remain valid.**
- **It is important that the framework remains flexible and recognises that businesses requiring exemptions are distinct from retailers.**
- **The regulatory framework needs to be amended to accommodate new types of energy sellers, including agents and ENOs for whom energy selling is a central part of their business.**

We consider the exemptions framework, the categories of exemption, and types of embedded networks eligible for exemptions established in the NEL, NER and the Retail Law, remain valid. We have confirmed this in consultation on recent Retail and Network Guideline revisions.⁷ Stakeholder feedback received in response to the recent Network Guideline consultation suggested fine-tuning of the categories by including further registration classes for industry and telecommunications. These amendments were adopted.

However, while we support the principle that energy customers should receive the same protections whether from a retailer or exempt seller, we also recognise it is unworkable for many ENOs to comply with the full suite of consumer protections and obligations of authorised retailers. In particular, ENO relationships with customers are more complex than a traditional retailer/customer relationship, as ENOs often provide other services and may also be landlords. ENOs also operate in a monopolistic environment, unlike retailers. As such, it is important that the framework remains flexible and recognises that businesses requiring exemptions are distinct from retailers.

Currently, if a person or business is selling energy and does not meet the criteria for authorisation, the only other regulatory option available is an exemption. The exemptions framework is therefore being applied as a catch-all for sellers that are outside the authorisations framework. This may be true of some ENOs for whom energy selling is a central rather than incidental function. It may also be true of agents who manage energy sales on behalf of bodies corporate, producing customer bills and managing customer relationships. We suggest the regulatory framework could be amended to accommodate these types of energy sellers (see our response to **Question 1b**).

⁷ Consultation for the Retail Guideline revision was conducted in late 2015 and the final version of the guideline (version 4) was published in March 2016. Consultation on the Network Guideline revision was conducted in late 2016, and the final version of the guideline (version 5) was published in December 2016.

- (c) Has the AER been provided the appropriate powers and functions in relation to exemptions under the NEL and the NERL?
- (d) Are the current reporting, compliance and enforcement arrangements under the exemption framework appropriate? If not, what changes should be made to the current compliance framework for exemption?

- **Penalty amounts for infringement notices need to be reviewed.**
- **Enforcement options for network exemption breaches, including breaches of conditions, should be more closely aligned with the enforcement powers for retail exemption breaches.**
- **To facilitate greater transparency of ENO activities, the Retail Law should specify a role for us to monitor exempt seller behaviour. Such a role should include flexibility so that we can examine the conduct of particular sellers as required.**

Our current powers and functions largely assist us in administering and enforcing the exemptions framework. However, we consider powers that would allow us to regulate an agent operating as though under an exemption but without holding the exemption (and therefore not subject to the conditions of exemption) would be particularly effective in addressing problematic conduct we are seeing in this area (see our response **Question 1b**). We also consider the penalty regime for breaches of the Retail Law and exemption conditions should reflect the fact that ENOs are diverse entities, which range from individuals running small businesses to sophisticated corporations, and should enable us to apply appropriate and proportionate penalties. The current penalty amount is \$20,000 for a breach regardless of the size or nature of the ENO. One model that could provide guidance is the Australian Consumer Law which distinguishes penalty amounts for individuals and corporations.

The enforcement of network exemptions presents a range of separate challenges. Under section 13 of the NEL we can issue a civil penalty for failure to hold a network exemption. There are, however, very limited means of enforcing breaches by ENOs of network exemption conditions. These conditions cover safety, price controls, metering, dispute resolution and access to competition, which are needed to ensure expected service standards are maintained.

Currently, the only way of dealing with breaches of network exemption conditions is for us to seek declaratory relief from the courts. We have not done so to date given the reluctance of customers to act as witnesses. Customer witnesses are essential to us being able to successfully bring an action against an ENO for failing to comply with a condition. Another option is to revoke the exemption, which is not preferred as it would make energy sales in the embedded network unlawful, and may leave occupants without supply. We think the enforcement of network exemptions should be more closely aligned with the enforcement powers for retail exemptions and the associated conditions.

For retail and network exemptions, we also recognise our ability to take enforcement action is currently limited by the lack of transparency of ENO activities. Complaints are our main source of information about market activity and these often highlight ENO failure to hold an exemption, or non-compliance with exemption conditions. This is, however, an imperfect market intelligence gathering tool because most complaints are not likely to reach us.

While we recognise the need for greater transparency of ENO activities, given the diversity of ENOs—their differing resources and energy literacy—we consider that it may be appropriate for the Retail Law to specify a monitoring role for us to examine exempt seller behaviour. To recognise the large numbers of sellers, their differing resources, energy knowledge and motivations, such a monitoring role would need to be flexible and enable us to examine particular conduct and sellers as required on an ad hoc basis.

Question 3: How do jurisdictional legal instruments affect the regulatory framework for embedded networks?

(a) Are there any relevant jurisdictional legal instruments or policy positions that affect the regulatory framework for embedded networks that were not identified in the *Embedded networks final rule determination*?

- **Jurisdictional legislation adds complexity to energy selling in embedded networks, and can detract from the consumer protection framework governing embedded networks provided under the Retail Law.**

We note and agree with the AEMC's recommendations in the embedded networks final rule determination for changes to jurisdictional regulations in Queensland, Tasmania and the ACT to remove the barriers to embedded network customers accessing retail market offers. We also note and agree with recommended changes to jurisdictional regulations in South Australia, Victoria and New South Wales to align the jurisdictional regulations that allow embedded network customers to access retail market offers.

If implemented, we agree the AEMC's recommendations will at least remove significant jurisdictional impediments to embedded network customers accessing retail market offers.

We also draw attention to the existence of other jurisdictional legislation that impacts and adds complexity to selling energy in embedded networks. Such relationships are often governed also by jurisdictional legislation including tenancies legislation, body corporate legislation and caravan park and manufactured homes legislation, depending on what kind of ENO is involved. As noted in the embedded networks draft rule determination, the AEMC is aware of regulations that impose specific terms and conditions on ENOs.⁸ The overlap of legislative instruments creates confusion about ENO obligations. It also creates confusion over the potential jurisdiction of dispute resolution bodies around certain areas. The interaction of jurisdictional and industry-specific obligations with the Retail Guideline also dilutes and, in some instances, distorts the application of the Retail Law.

As a specific example, we note that section 99A of the *Manufactured Homes (Residential Parks) Act 2003 (Qld)* prevents a residential park owner from charging a resident more for the supply of a utility than the actual cost charged to the park owner by their retailer. This legislation contrasts with condition 7 of the Retail Guideline, which provides that the exempt seller must not charge an exempt customer tariffs higher than the standing offer price charged by the relevant local area retailer.

Another example concerns the *Residential (Land Lease) Communities Act 2013 (NSW)*. Under this legislation, in order for a resident in a caravan park to claim an energy rebate, the park must be registered with NSW Fair Trading. A park may only be registered if they have residents that meet the definition of a 'permanent resident'—which is dependent on the number of days the resident occupies their site per year. This definition differs from the Retail Guideline, where we refer to residents having to 'principally reside' at the park under

⁸ AEMC, National Electricity Amendment (Embedded Networks) Rule 2015, Draft rule determination, 10 September 2015, page 90, <http://aemc.gov.au/getattachment/70764e53-e260-4b1c-b867-529cc3a68802/Draft-rule-determination.aspx>

the R4 exemption class.⁹ This leads to the park having to register for an R4 exemption where their residents principally reside there, but in some cases being unable to claim energy rebates if they don't have residents who meet the definition of a permanent resident under the Act.

We are aware of other instances of legislative overlap which have the effect of detracting from the consumer protection framework governing embedded networks provided under the Retail Law. While we acknowledge that it is outside the scope of this review to assess the patchwork of jurisdictional and industry-specific legislation affecting embedded networks, we consider it would be useful for the AEMC to acknowledge the impact these have on the regulatory framework.

(b) Have any of the jurisdictional legal instruments or policy positions been reviewed or amended since the *Embedded networks rule* was made in December 2015?

We consider the relevant jurisdictional bodies best-placed to provide this information.

Question 4: Can access to retail competition be improved?

(a) What barriers exist for small and large customers in embedded networks going on-market?

- **There are barriers to customers in embedded networks going on-market. They relate to the structural nature of embedded networks, the cost of wiring out of the network and retailer systems.**

We receive many queries and complaints from customers about accessing retail competition in embedded networks. The queries and complaints have come from customers in jurisdictions that allow embedded customers to access retail competition, as well as those that do not.

Based on our observations, we consider existing barriers for customers in embedded networks going on-market fall under three broad categories:

- (i) *barriers relating to the structural nature of the embedded network*: customers may be unable to go on-market due to network configuration or meter type, access and configuration. The structural configuration of the embedded network is usually determined when the building is constructed and may be difficult and expensive to later change.
- (ii) *barriers relating to the cost of meter replacement or 'wiring out' from the embedded network*: to go on-market often a customer will have to bear the cost of removing the embedded network meter and installing a meter that is visible in the NEM settlement process. We have heard varying accounts of the cost of meter replacement (generally hundreds, if not thousands, of dollars). Generally these costs deter customers from pursuing the option of going on-market.
- (iii) *barriers relating to the retailers' systems*: we understand that retailers' billing systems may affect their willingness and ability to offer energy only contracts. Retailers have well established automated systems to handle the billing of both network and energy

⁹ Class R4 of the Retail Guideline is defined as 'persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside their (ie long term residents).' The premises are the residents' principal place of residence, that is, it is where the person lives most of the time and/or the person has no other place of residence.

charges in a single transaction. In an embedded network, these billing systems do not apply. Manual intervention is required, which adds significantly to costs.

We understand few retailers offer energy only offers as there is little competitive pressure and an absence of other incentives for retailers to do so. Those that do are interested primarily in commercial and mostly large customers because the costs of servicing these customers are outweighed by the profit in selling at the higher volume.

As noted above, we do not yet know what impact the embedded networks rule change will have on opening up competition in embedded networks. Whether retailers will be encouraged to offer competitive energy only offers will depend on the incentives for retailers to do so. Given the various impediments we discussed previously, the rule change may not be enough to change retailers' or ENOs' behaviour.

- (b) Are retailers currently providing or planning to provide competitive market offers to embedded network customers? What barriers will remain to providing these offers after 1 December 2017 with the commencement of the *Embedded networks* rule?
- (c) Are there examples or cases of small and large embedded network customers going on-market? What were the circumstances that made going on-market desirable and possible for these customers?
- (d) What is the level of competition to provide electricity to embedded network operators at the parent meter?

We suggest the best source of information on these questions is the retailers themselves.

- (e) Is there an imbalance in negotiating power between embedded network customers and embedded network operators in negotiating terms and conditions, including price, due to barriers to accessing retail market offers?

- **There is an imbalance in negotiating power between embedded network customers and ENOs in negotiating terms and conditions, which is due to the monopolistic structure of embedded networks and the multi-faceted relationship of ENOs and their customers.**

In our view, there is an imbalance in negotiating power between embedded network customers and ENOs in negotiating terms and conditions. The majority of complaints we receive from embedded network customers relate to the prices charged by their ENOs for supply. However, it is unclear whether the imbalance can be specifically attributed to barriers preventing customers accessing retail market offers or to the broader structural nature of embedded networks, where customers are essentially captive and reliant on their supplier for other essential services (i.e. accommodation).

ENOs are individuals or businesses that have markedly different resources, expertise and motivations. They generally have more complex relationships with their customers than retailers do, as they can also be landlords and provide other services. This additional complicating factor can govern how embedded network customers choose to interact with their ENO. For example, we are aware of specific instances where we were unable to pursue potential breaches of Network Guideline and Retail Guideline conditions as the affected customers were unwilling to provide further details for fear of retribution from their landlord.

We consider that the combination of the structural nature of embedded networks and the multi-faceted relationship between the ENO and embedded network customer contributes to the imbalance in negotiating power between the two parties.

Question 5: Issues for embedded network customers that are on-market or wishing to go on-market

- (a) Are there any other issues in addition to those set out in Appendix B that we need to consider?

Additional issues we have identified for embedded network customers relate to:

- **awareness, availability and ability to compare energy only offers**
- **dispute resolution**
- **practical issues for on-market customers.**

We agree with the questions raised in Appendix B of the consultation paper and welcome the opportunity to collaborate with the AEMC and other stakeholders to work through potential solutions to the specific issues. It may also be helpful to consider in any discussions the broader context of whether it is appropriate to mirror Retail Law and Retail Rule provisions in the exemptions framework governing embedded networks.

Other issues we have identified for embedded network customers that are on-market or wishing to go on-market are:

- (i) *Awareness of, and ability to compare, energy only offers* – under section 62 of the Retail Law we have developed the Energy Made Easy price comparison website which compares all generally available offers available to small customers. We note that energy only offers specific to an embedded network are unlikely to be considered ‘generally available’. This raises the question of how and whether customers within an embedded network should be able to compare the energy only offers available to them. We note that this is unlikely to be a current issue given the lack of availability of energy only offers, but it may arise in future. We also note that exempt customers may have limited awareness of the existence of energy only offers even where they are available, given there is no obligation for ENOs to alert them to that, and they are not widely promoted by retailers.
- (ii) *Dispute resolution for on-market customers within embedded networks* – we note that, through section 86 of the Retail Law, a retailer selling to a small on-market customer must be a member of the relevant jurisdictional energy ombudsman scheme. We are aware, through our work on this issue in collaboration with the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWO) that some ombudsman schemes are unable to hear disputes from customers within the embedded network (even if receiving supply from an authorised retailer) due to legislation governing the ombudsman’s jurisdiction. These customers, along with off-market customers, are also unable to bring disputes regarding their ENO to an ombudsman scheme. We are currently looking at changes that can be made regarding exempt customer access to independent dispute resolution services as part of our work with ANZEWO.
- (iii) *Customers who are on-market wishing to switch or return to being off-market* – this relates to the issues identified for standing retailer offers and contracts in Appendix B. Currently customers in embedded networks can only go on-market via a market retail contract (MRC). If the customer no longer wishes to be supplied through the MRC, their retailer has no obligation to offer a standing retail contract (SRC). The only options are for the customer to seek another energy only offer or return to being supplied by their embedded network seller. While the Retail Guideline states that

exempt sellers have an obligation to supply within the embedded network, there may be practical issues relating to a customer returning to being off-market.

- (b) Where an on-market embedded network customer (being supplied by an authorised retailer under a market offer) has limited access to other retail market offers are there any additional consumer protections than those provided in the NERR that should apply?

Additional consumer protections for embedded network customers could include:

- **early communication of price changes corresponding to requirements in SRCs**
- **provision of particular information to customers prior joining an embedded network**
- **clarifying arrangements for customers receiving supply from authorised retailers**
- **ensuring the safety of embedded network infrastructure.**

We have identified the following additional consumer protections (besides those provided in the Retail Rules) that may be required for both on-market and off-market customers:

- (i) *Provision of information about price changes to on-market customers* – under a MRC, a retailer must give notice of any changes to tariffs no later than the customer's next bill.¹⁰ Where the customer has limited access to other retail market offers, notification of a price change after the change has taken effect may not be ideal. It could be considered whether changes to tariffs and charges should be communicated to such customers earlier, perhaps similar to the requirements for customers on SRCs.¹¹ We note the overarching issues identified regarding tariffs and changes in Appendix B.
- (ii) *Provision of information to customers prior joining an embedded network* – while not specifically related to on-market customers, we consider additional information requirements prior to a customer joining the embedded network may be appropriate. For example, a requirement to notify a customer that they will be supplied via an embedded network, and the implications of this (i.e. limited or no access to competition) may be useful prior to a customer buying a property or entering into a tenancy within an embedded network. Section 7.2.1 of the Retail Guideline requires exemption applicants to provide similar information to customers when seeking explicit informed consent to a retrofit of an embedded network.

The above may be particularly relevant when an authorised retailer retrofits an embedded network into an existing building. This is because we have limited visibility when an authorised retailer retrofits and, because they are authorised, they do not have to comply with the retrofitting requirements in the Retail Guideline. While the retailer must hold a network exemption and comply with the retrofitting requirements in the Network Guideline, we are aware of instances where they have not.

- (iii) *Provision of information to customers in embedded networks supplied by authorised retailers* – related to (i), we consider that there is a need to clarify supply arrangements to embedded network customers when they are supplied by authorised retailers. In

¹⁰ Section 46(4), Retail Rules

¹¹ Schedule 1, section 8.2, Retail Rules

particular, we are referring to the circumstance where the authorised retailer supplies to the gate meter and to the residents or tenants within the embedded network and not through energy only contracts. Although supplied by an authorised retailer, the customer is still within the embedded network and has the same limited access to the competitive market as a customer who is supplied by an exempt seller within that network. We are aware of instances where embedded network customers believe they have full access to the retail market because they are supplied by an authorised retailer. Information clarifying their arrangements may alleviate customer confusion in this circumstance.

- (iv) *Ensuring the safety of embedded network infrastructure* – the Network Guideline and jurisdictional arrangements provide the safety requirements that govern embedded networks. We are aware of concerns from some embedded network customers about the safety of the embedded network infrastructure. These concerns have been detailed in SACOSS’s report on emerging issues for exempt consumers.¹² We consider that, while dependent on the resources and expertise of the ENO, in practice there is limited incentive for the ENO to maintain network infrastructure due to limitations on what they can charge to cover the costs of maintaining the network. This is particularly relevant in jurisdictions where some ENOs are limited by local legislation and cannot make a profit from on-selling energy. We consider it would be helpful to review the extent of this issue and whether the safety requirements themselves or their implementation can be improved.

Question 6: What consumer protections, in relation to the sale of energy, are appropriate for off-market embedded network customers?

As a starting point we agree with the principle that exempt customers should receive the same consumer protections as those provided to customers of authorised retailers. However it is not always appropriate or practical to require ENOs to provide the same or similar consumer protections as retailers.

Unlike retailers, ENOs are individuals or businesses that have markedly different resources, expertise and motivations, making it difficult in many instances for them to provide the same level of consumer protections as retailers. In our view it will not always be appropriate to treat these sellers as if they were retailers. Added to this, the relationship between an embedded network customer and ENO is more complex than a sale of energy, as it can involve landlord/tenant relationships and include the provision of other services. Such relationships are often impacted by other legislation (e.g. tenancies legislation, body corporate legislation, and caravan park legislation), which place further—sometimes conflicting—obligations on ENOs in relation to energy sales that diverge from those on retailers.

In our view, the exemptions framework is letting customers down as the structural limitations of embedded networks make access to competition or even access to energy only offers difficult (see our response to **Question 2a**). It also does not account effectively for the diversity of those selling energy in embedded networks (see our response to **Question 1a**).

¹² SACOSS, The retail and network exemption framework: emerging issues for consumers, December 2015, pp 57-58.

- (a) Is the objective of providing comparable consumer protections to exempt customers and customers of authorised retailers being achieved in practice?
- (i) What gaps or issues exist?
- (ii) Do stakeholders consider the ACL and tenancy legislation to provide suitable complementary protection for embedded network customers alongside the energy specific consumer protections included in the exemption conditions?

- **Any consumer protection framework should be appropriate to address consumer harm while not imposing unnecessary compliance costs or stifling innovation.**
- **Consumer protections for embedded network customers should be tailored to account for the differences between selling in embedded networks and traditional retailer selling.**

Any consumer protection framework should be appropriate to address consumer harm while not imposing unnecessary compliance costs or stifling innovation. In theory, we consider that in a well-functioning market competition should drive appropriate outcomes for consumers.

There are currently significant differences in the consumer protections afforded to customers of ENOs compared to those provided to customers of authorised retailers. Some of these differences reflect the different nature of the type of selling involved. For example, while a retailer is required to have a hardship policy and offer payment plans to customers in hardship the obligation on an ENO is more limited because they do not generally have the resources of a traditional retailer. In addition, while ENOs must offer at least two payment methods to embedded network customers, they are not required to offer Centrepay (as is required under the Retail Law hardship policy obligations), given the administrative requirements around that. This is an example of where we consider the obligation balanced the needs of customers to have more than one option to make payments but did not overburden the seller who may not have been able to meet the obligation. There are also fewer obligations on ENOs in relation to contract terms and conditions than those on a retailer under the Retail Law and Rules.

As identified in our response to **Question 5**, there are some consumer protections that embedded network customers do not have at all if they are off-market. These include the obligations on the network operator to provide enhanced protections to life support customers, and the ability to access ombudsman dispute resolution services. Our preliminary observation from our work with ANZEWO is that embedded network customers will often experience varied levels of effective dispute resolution as compared to the level of service and expertise provided by an energy and water ombudsman scheme. Some sectors have relatively developed and accessible industry based dispute resolution services. However many embedded network customers have to rely on raising a complaint with their seller which is complicated by the multilayered relationship or seeking to resolve it through a tribunal such as the residential tenancy tribunals or civil and administrative tribunals.

When regulating embedded networks and other forms of selling such as new and emerging products and services we have sought to balance consumer protections with ensuring the regulatory framework does not create barriers to innovation for suppliers. We have also tried to ensure that regulation is fit for purpose, flexible and does not duplicate existing legislation. Our submission to the COAG Energy Council on stand-alone systems noted the importance

of these aims.¹³ We acknowledge the complexity of regulatory and legislative instruments impacting the operation of an embedded network. While we consider consumer protections should be tailored to account for the differences between selling in embedded networks and traditional retailer selling, some protections such as access to competition and access to a fair, effective and free dispute resolution service should be available to all energy customers. Jurisdictional tenancy and Australian Consumer Law protections can be complementary and certainly have an important role in ensuring flexible and non-duplicative regulation. However, this legislation can be inconsistent with some of the consumer protections. For example, in Queensland, small embedded network customers are unable to access competition under current state arrangements.

- (b) Are there changes required to the consumer protection framework for off-market embedded network customers?
- (i) What should the guiding principles for consumer protections for embedded customers be?
- (ii) What risks should be addressed by consumer protections for embedded network customers?
- (iii) Should consumer protections continue to be contained in the retailer exemption conditions or should they be elevated into another legal instrument, e.g. the NERR?

A consumer protection framework for embedded network customers should at least provide:

- **access to ombudsman dispute resolution services**
- **explicit informed consent when entering into a contract**
- **protections for vulnerable customers such as full hardship obligations**
- **life support requirements.**

The Retail Law policy principles that guide the regulation of exempt sellers offer a good starting point for considering what consumer protections should apply. The Retail Law prescribes that we must, in performing or exercising our exempt selling regulatory function or power, take into account a number of policy principles, for example:

- regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers
- exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right and
- exempt customers should, as far as practicable, not be denied consumer protections afforded to retail customers under the Retail Law and Retail Rules.

A consumer protection framework for embedded network customers needs to account for the risks associated with the complex nature of the relationship between the customer and ENO. This is a level of complexity that a traditional retailer/customer relationship does not have to accommodate. How this is dealt with will be difficult and will need to be sufficiently flexible to accommodate the other legislation that may govern or impact the relationship.

¹³ <https://www.aer.gov.au/publications/submissions/coag-energy-council-stand-alone-energy-systems-in-the-electricity-market-consultation-paper>

We recognise the current binary distinction between authorisation and exemption frameworks may not be best suited to effectively regulating new and emerging ways of selling energy (see our response to **Question 1a**). Embedded networks and the rise of specialist agents and on-sellers are an example of how the current framework is insufficiently flexible to allow us to effectively regulate these activities (see our response to **Question 1b**). If the current framework is amended to provide this additional flexibility we consider protections such as the following should be ensured:

- access to ombudsman dispute resolution services
- explicit informed consent when entering into a contract
- protections for vulnerable customers such as full hardship obligations
- life support requirements.

(c) What energy-specific consumer protections should apply to off-market embedded network customers in the context of market and technological changes and changing risks?

See our response to **Question 5b**.

We also note that there can be, in practice, limited opportunities for off-market customers to take advantage of new products and services arising from the installation of smart meters.

(d) How do the current arrangements for consumer protection impact on vulnerable embedded network customers? How can access to concessions and rebates be improved?

- **It is for jurisdictional bodies to determine how to improve access to their concession regimes, noting the levels of vulnerability of many of the customers eligible for concessions.**

A customer's degree of vulnerability varies over time, depending on their financial, social and personal circumstances. The types of customers within embedded networks are diverse with some very vulnerable customers and others who are very resilient.

We recognise vulnerable customers may be particularly affected by having fewer consumer protections than vulnerable customers of authorised retailers. They may be significantly impacted by low energy literacy regarding the protections available to them and the limits of embedded network supply. Moreover as other stakeholders have noted, the multilayered relationship between the seller and these customers may prevent them from accessing available protections.

Retail and network exemptions conditions provide vulnerable embedded network customers with many similar protections to customers of authorised retailers. However, these are balanced to reflect the nature of the exempt selling and customer needs. Hardship assistance and ongoing support in relation to financial difficulty, as well as reporting on these measures, are examples of the differences in protections for vulnerable embedded network customers compared to customers of authorised retailers. Another is the obligation on retailers to obtain explicit informed consent of customers when entering into a contract. The obligations on ENOs are more limited under the exemption conditions.

Our most recent amendments to the Retail Guideline sought to increase the level of protections for customers eligible for concessions in jurisdictions that do not allow them to directly claim government rebates and concessions. We amended the Retail Guideline to mandate the claiming of government rebates on behalf of exempt customers. This provides

certainty for exempt sellers and their customers and goes some way to addressing some of the situational challenges embedded customers can face.

We acknowledge customers are not always aware of their entitlements, but consider this is a matter for the relevant government departments to address. We recognise the work being done by many of the state jurisdictions in relation to reviewing concession regimes, including energy concession eligibility. We consider it is a matter for state jurisdictional bodies to determine how to improve access to their concession regimes, bearing in mind the levels of vulnerability of many of the customers eligible for concessions.

(e) An exempt seller may be providing a broader service than just electricity to embedded network customers. For example, the exempt seller may also be the embedded network customer's landlord, provider of strata services or water services. Does the different relationship between embedded network customers and the exempt seller as compared to the relationship between a retail customer and an authorised retailer have implications for consumer protections?

- **Energy is often purchased as a bundled service in embedded networks. This adds complexity when, for example, a debt owing on one service impacts the provision of another.**
- **A lack of competitive pressure in embedded networks makes it less likely an ENO will compete on price or service offering to customers in embedded networks, leading to poorer outcomes for off-market customers compared to on-market customers.**

In our view, the nature of the relationship between embedded network customers, the ENO and seller impacts the level of consumer protections (see our response to **Question 4e**). We understand bundling of services often occurs in embedded networks for services unrelated to energy. For example, many bodies corporate, particularly in Queensland, use specialist body corporate management services which take responsibility for the day to day operation of multiple services, such as water, energy, air-conditioning, bulk hot water, internet and pay TV. This can lead to problems such as circumstances where a debt owed in relation to one service can impact on the provision of another service. This adds to the complexity of the embedded network relationship and is in contrast to an on-market customer who may buy energy from a retailer but can deal with different businesses for their water, internet, telecommunications and other supplies, as well as housing.

Embedded network customers' consumer protections are also impacted by the monopolistic structure of embedded networks. Embedded network customers generally have more limited, if any, ability to access a retailer of choice or energy ombudsman dispute resolution services. Even if a customer can access an energy only offer, as noted above, there is little incentive or competition to ensure retailers offer truly competitive plans to customers in embedded networks. The lack of competitive pressure also makes it less likely an ENO will compete on price or service offering to customers in an embedded network leading to poorer outcomes and services than are available to on-market customers. Many retailers are not interested in providing energy only offers. In addition, customers may have to deal with the issue of double network billing where the network operator charges for gate meter supply costs and the retailer also imposes a supply charge.

(f) What examples or case studies can stakeholders provide which demonstrate differences in the consumer protections provided to exempt customers and to customers of authorised retailers? Do the experiences of embedded network customers indicate poorer outcomes due to differences in consumer protections?

There are some noteworthy differences in the level of consumer protections afforded to embedded network customers as compared to customers of authorised retailers. However we acknowledge there are circumstances in which this difference is appropriate and necessary when selling to embedded network customers.

Below is a list of examples of consumer protections that differ for embedded network customers, additional to instances included in Table B.1 of the consultation paper.

Example 1 – dispute resolution

We are aware of the limited options for dispute resolution for embedded network customers. In all jurisdictions, ENOs are not eligible to become members of ombudsman schemes, limiting customer access to ombudsman services. This is true in all jurisdictions except NSW, where the energy ombudsman is able to assist with customer complaints. However, because ENOs are not members of the scheme, ombudsman decisions are not binding on them. Available assistance for dispute resolution varies according to the type of embedded network, and includes civil and administrative tribunals and peak bodies offering assistance to members.

Example 2 – hardship

The Retail Law does not require ENOs to have AER approved hardship policies. Instead, condition 9 in the Retail Guideline replicates key requirements of this hardship policies including that ENOs must not:

- disconnect customers complying with payment plans
- charge customers late payment fees
- charge customers a security deposit.

We are aware that these provisions are variously applied by ENOs according to their differing energy knowledge and resources. Despite this, given the resourcing requirements for both ENOs and AER, we consider it would be impractical to require ENOs to have AER approved hardship policies.

Example 3 – minimum disconnection provisions

While condition 10 of the Retail Guideline replicates the disconnection requirements in the Retail Rules, this does not include the requirement placed on authorised retailers that they not disconnect customers for debts of less than a certain amount. This is known as the minimum disconnection amount and is approved by the AER. This leaves customers at risk of being disconnected for small amounts owing.

Example 4 – concessions

In Queensland retailers must claim concessions on behalf of eligible customers and apply these to customer bills. The Retail Guideline extends this obligation to ENOs. However, we have received complaints indicating that some ENOs are not passing on concessions to customers. In addition, we are aware of a practical difficulty for ENOs to claim concessions on behalf of customers in some circumstances.

This difficulty arises where an embedded network sits within a larger embedded network complex, and the ENO of the larger embedded network complex on-sells energy to the ENO of the smaller embedded network housing the customers. ENOs can only claim concessions from a retailer, not an ENO. Therefore, in a situation where the ENO of an embedded network is supplied by the ENO of the larger embedded network complex, the ENO of the single embedded network cannot claim concessions on behalf of its customers.

Another instance presenting practical difficulties for claiming concessions is in New South Wales. While customers are able to claim concessions directly from the state government, we have received complaints indicating that customers in some residential parks are unable to claim concessions. In particular, if a park is not registered as a residential park under jurisdictional legislation, despite the fact that the park may be the customer's primary address, they are not able to claim energy concessions (see our response to **Question 3a**).

Question 7: Are current regulatory arrangements for gas embedded networks appropriate?

- (a) What are the jurisdictional arrangements that apply to gas embedded network service providers?
- (b) How do gas embedded networks currently operate? What metering and charging arrangements exist?
- (c) What would the advantages and disadvantages of moving to a national regulatory framework for gas embedded networks? If desirable, what form of national framework would be appropriate?

We are not aware of any specific issues around the regulation of gas embedded networks.