

# **Review of the AER exemptions framework for embedded networks**

November 2023

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# **Review of the AER exemptions framework for embedded networks**

## **Request for submissions**

Interested parties are invited to make written submissions to the AER regarding this issues paper by the close of business, Monday 5 February 2024.

Submissions should be sent electronically to: [AERexemptions@aer.gov.au](mailto:AERexemptions@aer.gov.au)

Alternatively, you may mail submissions to:

Mark Feather,  
General Manager, Policy  
Australian Energy Regulator  
GPO Box 3130  
Canberra ACT 2601

## **Publishing of submissions**

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim; and
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on the AER's website at [www.aer.gov.au](http://www.aer.gov.au). For further information regarding the AER's use and disclosure of information provided to it, see the [ACCC/AER Information Policy](#) available on the AER's website.

Enquiries about this paper, or about lodging submissions, should be directed to the Compliance and Enforcement branch of the AER on 1300 585 165 or [AERexemptions@aer.gov.au](mailto:AERexemptions@aer.gov.au).

# 1 Executive summary

Embedded networks are private electricity networks that can serve multiple customers. The owner of the site, or another entity, may control or operate the network infrastructure. In most cases, owners buy energy from an energy retailer and on-sell it to the occupants of the site.

Residential embedded networks encompass small-scale networks and can serve a diversity of populations, from caravan parks to higher-density apartment complexes with hundreds of residents. Small business embedded networks can encompass shopping centres and business parks.

The AER regulates who can operate embedded networks and on-sell energy within them. We do this through a framework which exempts entities, who sell or supply energy within embedded networks, from aspects of the standard energy framework. We govern this exemptions framework through our *Network Exemptions Guideline*<sup>1</sup> (the **Network Guideline**) and *Retail Exempt Selling Guideline*<sup>2</sup> (the **Retail Guideline**).

The exemptions framework was originally designed to regulate a relatively homogenous and simple energy retail market, where the supply and 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 an embedded network site.

Many embedded networks existed before the commencement of the National Energy Customer Framework (**NECF**).<sup>3</sup> When the NECF was introduced, energy consumers under 'traditional' supply arrangements (i.e. their premises were directly connected to the grid) were afforded improved consumer rights and protections. Over time, these consumers protections have expanded and evolved.

The AER has sought to apply like-for-like consumer protection obligations on exempt entities by way of our Guidelines. However, there have been some limits on this arising from our consideration of legislative requirements and the potential costs incurred by exempt entities (who may have fewer resources than authorised retailers or network service providers).

Considerable growth in embedded networks, coupled with concern around customers facing worse price and consumer welfare outcomes has led to several jurisdictional reviews and inquiries. These inquiries have identified a range of potential harms for embedded network customers. These include barriers to accessing retail competition placing embedded network customers at risk of monopolistic pricing, and limited ability for the AER to monitor compliance or take enforcement action.

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<sup>1</sup> [Electricity Network Service Provider – Registration Exemption Guideline \(version 6\)](#).

<sup>2</sup> [Retail Exempt Selling Guideline \(version 6\)](#).

<sup>3</sup> The NECF commenced in the ACT and TAS on 1 July 2012, in SA on 1 February 2013, in NSW on 1 July 2013 and in QLD on 1 July 2015.

However, the inquiries also noted the potential for embedded networks to provide customer benefits, including lower energy prices, and access to consumer energy resources that may facilitate access to more affordable or lower emissions energy.

A summary of the inquiries is provided in [Appendix B](#).

The growth in embedded networks and the concerns raised in the inquiries have prompted the AER to explore the potential harms and benefits that embedded network customers may face and to reconsider the regulatory exemptions framework. We are seeking information and stakeholder views about these issues and whether there is a case for us to make changes to the framework.

The discretion afforded to us by the national energy laws<sup>4</sup> means there is scope for us to make changes to the Network and Retail Guidelines to address issues we identify. However, we are not making these changes in isolation and recognise that our actions need to complement any actions from jurisdictional governments.

Depending on the level of harm or risk we identify, and following further consultation, options could include:

- Requiring all current and future embedded network service providers to be registered on our public register of exemptions, and/or
- Requiring future embedded network service providers submit an application to the AER that demonstrates customer benefits, before being permitted to register a residential-related exemption, and/or
- Imposing new reporting obligations and strengthening conditions relating to consumer protections, and/or
- No longer granting exemptions for certain supply arrangements.

We also want to ensure any changes we introduce work well alongside jurisdictional action and seek stakeholder feedback on how to achieve this.

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<sup>4</sup> National Electricity Objective and the National Energy Retail Objective.

## 2 Approach to the review

We are seeking stakeholder feedback about the exemptions framework for embedded networks and consumer protection issues that are within the scope of our Network and Retail Guidelines.

The objectives of this review are to:

- Better understand the harms, or risk of harms, embedded network customers may be facing.
- Better understand the benefits of embedded networks, and the extent to which customers are receiving them.
- Determine whether action is needed to redress any imbalance in harms and benefits, including whether we should amend our Guidelines to restrict the growth of future residential embedded networks, strengthen protections for existing embedded network customers, and improve overall transparency.

### 2.1 Assessment approach

When setting the Network Guideline, and the factors we consider when granting network exemptions, we are guided by the National Electricity Objective (**NEO**).

This objective, as enshrined in the National Electricity Law, is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of energy consumers.

While we have broad discretion in setting the Retail Guideline, the National Energy Retail Law (the **Retail Law**) gives us guidance on the principles and factors we should consider in relation to granting retail exemptions.<sup>5</sup> We must consider the principles that:

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

The Retail Law also provides a list of factors we may consider:

- Whether the sale of energy is a core or incidental part of a business.
- Whether the energy seller's circumstances may warrant an exemption.
- Whether the energy seller is intending to profit from the arrangement
- Whether the amount of energy likely to be sold by the seller is significant in relation to national energy markets.

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<sup>5</sup> Section 114, Retail Law.

- The extent to which conditions on an exemption, or the requirements of other laws, would appropriately govern the energy seller's behaviour and provide exempt customers appropriate rights and protections.
- The characteristics of the exempt customers.
- The costs of obtaining a retailer authorisation compared to the benefits to customers.

The Retail Law allows us to weight these principles and factors as we see fit and to consider other factors.

The Retail Law recognises that limited regulatory divergence for embedded networks may be necessary. However, should we find that the harms to which customers are exposed by this divergence are too great, we must review the network and retail exemption frameworks holistically to take action. While the Retail Guideline provides opportunity to improve customer protections within our regulatory remit, the Networks Guideline provides the opportunity to curtail the growth of embedded networks, should we consider there is a case to do so.

We propose to adopt the following criteria to guide our assessment of whether a particular option better delivers upon the NEO:

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

As the NEO focusses on the long-term interests of energy customers in relation to price, quality, safety, reliability, security of supply, and emissions reduction, these factors will be the main focus of our assessment criteria.

However, given the ways in which embedded networks are integrated with housing arrangements, we will also consider the potential for unintended consequences outside of the energy system, such as impacts on housing development, and tenant-landlord relationships.

### **Stakeholder questions**

- 1) Do stakeholders consider one factor or principle should take precedence over another? If so, what weighting should we give the various principles or factors provided by the Retail Law and set out above, to support any case for change to the exemptions framework?
- 2) Is the AER's proposed approach to the exemption framework review the preferred approach? If not, what other factors or criteria should the AER consider?



## 2.2 Evidence base

We are aware of potential benefits and harms experienced by residential embedded network customers. However, given the lack of available data for existing embedded networks, it is unclear as to the prevalence and magnitude of either.

To gain a better understanding of the potential harms and benefits, we will draw on the insights from the inquiries conducted to date, and stakeholder submission insights from the early stages of our Network Guideline review in 2022 (put on hold so we could consider this issue more holistically). However, we are seeking evidence from our stakeholders, to determine the scale and severity of these potential harms and benefits. In addition to submissions received in response to this issues paper, we will explore ways to obtain data from residential embedded network customers. This will support us to better understand their lived experience.

We would particularly welcome detailed information and data to inform our understanding of issues, such as:

- Case studies or first-hand accounts of positive or negative embedded network customer experiences.
- Information about the prices customers are paying in embedded networks, including:
  - customer bills,
  - pricing information from sellers and service providers, such as usage rates and network charges, and fees for energy-related costs or infrastructure, and/or
  - case studies and information demonstrating price benefits, such as bulk energy purchasing discounts, on-site generation, and battery storage.
- Case studies and detailed information demonstrating non-price benefits experienced by embedded network customers.
- Case studies and detailed information to support submissions about the impacts of the proposed policy options, such as impacts on building cost and time, and administrative workload.

## 2.3 Residential customer focus

Given the concerns raised regarding this customer demographic in recent jurisdictional embedded network inquiries, our intention is to focus this review on:

- The supply of energy to higher-density residential embedded networks (this may include apartment complexes, duplexes or townhouses). Exemptions for these types of dwellings are where we have seen the largest growth. They capture the greatest number of customers, and have the greatest potential for future growth, and
- Improving compliance and performance monitoring, and family violence protections for all residential embedded network customers (including those residing in higher-density residential complexes, caravan parks and retirement villages).

At this stage, we do not propose to make changes to the exemption class activity categories that would affect existing embedded networks. However, we discuss options for improving consumer protections for existing embedded network customers as part of this paper.

### **Stakeholder questions**

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

## **2.4 Bulk hot and chilled water**

We will not be considering bulk hot water, and chilled water regulation. While we recognise there are a range of consumer protection risks relating to these services, the AER's regulatory remit under the exemptions framework is limited to situations where there is sale of energy – that is, 'electricity or gas or both'. Our view is that the sale of bulk hot or chilled water is unlikely to constitute the sale of energy for the purposes of Retail Law.<sup>6</sup>

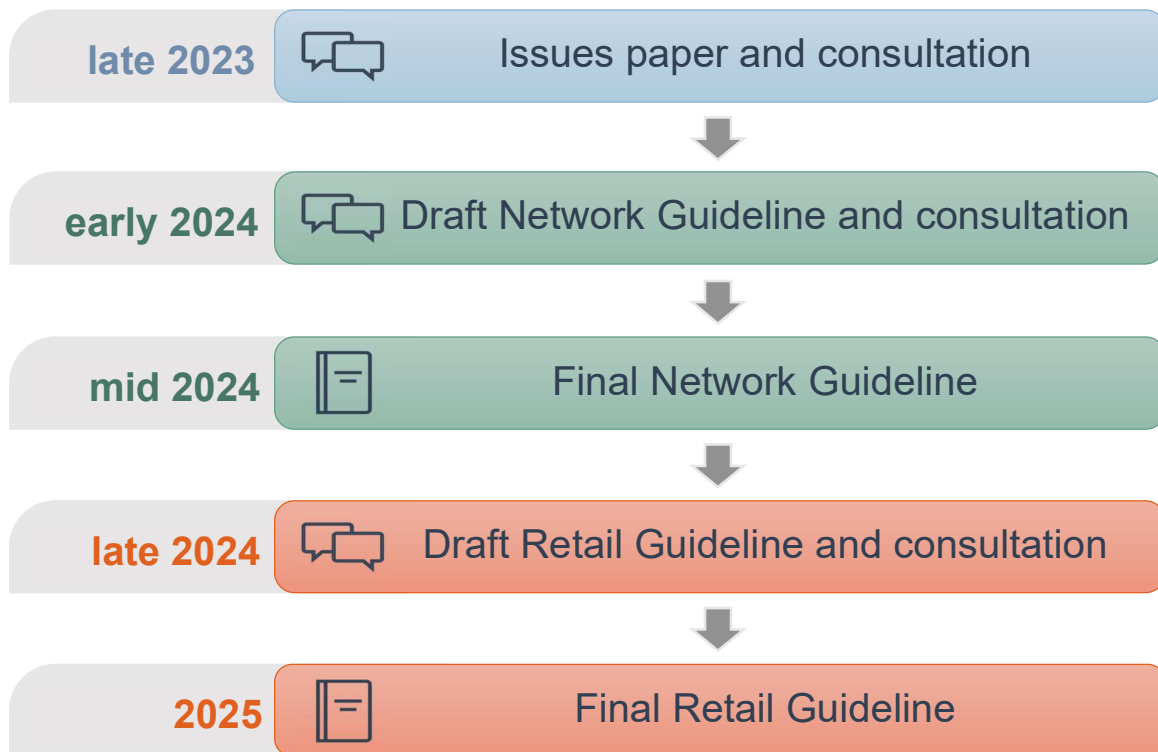
## **2.5 Process and next steps**

We propose a multiple-stage approach, as set out in Figure 1 below. These stages are in line with our consultation obligations under the energy laws, as set out in [Appendix D](#).

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<sup>6</sup> Section 88(1), Retail Law.

**Figure 1 – Review stages and timelines**



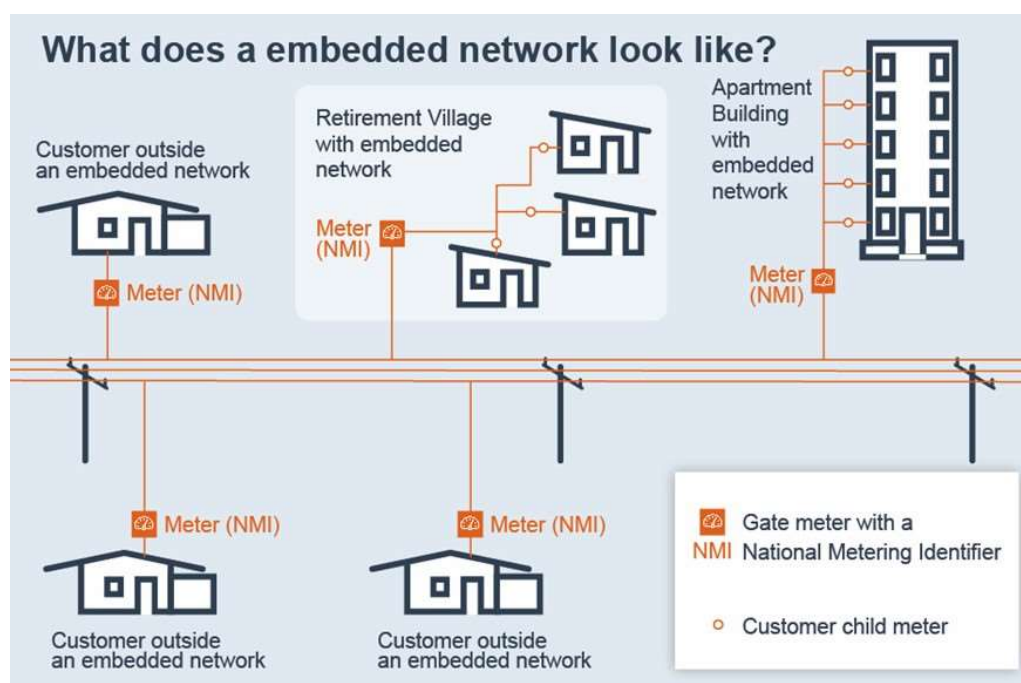
### 3 What is an embedded network?

In some sites (typically apartment blocks, retirement villages, caravan parks and shopping centres) the electrical wiring is configured in such a way as to enable the owner of the site to sell energy to all the tenants or residents based there. This is known as an embedded network.

A typical embedded network includes a parent meter at the entry of the embedded network (which is directly connected to the grid) and individual child meters behind the parent meter, which record metered energy for each premises. The gate meter has a National Meter Identifier (NMI), which makes it visible in Australian Energy Market Operator's (AEMO)'s market settlement system.

Most newly developed embedded networks include child meters that can be assigned NMIs, allowing customers to access competing retailer offers. However, this is not always the case. Figure 2 shows the typical metering configuration for a residential embedded network.

**Figure 2 – Typical embedded network configuration**



In a residential embedded network, energy is usually sold to customers in one of two ways:

- By bodies corporate<sup>7</sup> or site owners, who usually on-sell energy bought from an authorised retailer to their embedded network customers. These on-sellers are called *exempt sellers*.
- By retailers who already hold an AER authorisation to supply customers in the broader market.

<sup>7</sup> These may include owners, corporations, community title schemes and strata committees.

## 4 How the AER regulates embedded networks

The energy laws set the framework in which our current exemptions framework operates, and the parameters within which we implement this framework. There are currently two exemption frameworks – the *retail* exemption framework and the *network* exemptions framework. Both frameworks aim to give exempt embedded network customers protections comparable to those of customers who are supplied directly by an energy retailer ('on-market' customers).

The network exemptions framework and the retail exemptions framework are administered under different legislation—the National Electricity Law and the National Electricity Rules, and the Retail Law and the National Energy Retail Rules (**Retail Rules**) respectively. Although there are synergies between the two frameworks, they exist for different reasons and there are several key differences between the two. The AER administers both frameworks.

The AER regulates who can operate embedded networks and on-sell energy within them under our exemptions framework via our Network and Retail Guideline.

### 4.1 Network Guideline

Under the energy laws, the AER may exempt entities from registering with AEMO as a network service provider where this would be administratively burdensome and unnecessary. For example, in small private networks where supply of energy is not the exempt embedded network service provider's core business, including where the owner or embedded network service provider may also be the property owner, landlord, or body corporate.

Our Network Guideline sets out the processes for registering and applying for network exemptions. The AER places conditions on exempt embedded network service providers, to provide a range of consumer protections, based on the obligations that apply to network service providers. Network conditions include (but are not limited to) those relating to safety, access to retail competition and pricing restrictions.

### 4.2 Retail Guideline

Under the energy laws, the AER may exempt energy sellers from holding an authorisation in situations where the seller is selling energy incidentally (i.e. the sale is not the seller's core business), where the cost of having an authorisation outweighs the benefits to customers, and where an insignificant amount of energy is being sold.

The Retail Guideline sets out the processes for registering and applying for retail exemptions, including the exemption classes, eligibility criteria and the conditions the AER may impose.

The retail exemptions framework aims to give exempt embedded network customers protections equivalent to those of on-market retail customers. However, unlike authorised retailers, exempt sellers generally do not sell energy as their core business and may lack the

economies of scale and scope from which retailers benefit. Consequently, certain requirements under the Retail Law and Retail Rules may be more onerous or inappropriate for exempt sellers and a degree of regulatory divergence is unavoidable. The AER has aimed to balance its goal to mitigate potential customer harm, while keeping the conditions simple and manageable for exempt sellers so they can comply. Retail conditions support key customer protections including obligations to assist customers experiencing vulnerability, pricing restrictions and dispute resolution requirements.

## 4.3 Exemption classes

Both the Network and Retail Guidelines set out the three categories of exemptions. These are set out in Table 1.

**Table 1 – AER exemption classes**

Exemption classes	
<b>Deemed</b>	<ul style="list-style-type: none"> <li>Usually for small arrangements where the costs of registration would outweigh the benefits of increased regulation. For example, short-term accommodation in a caravan park, where fewer than 10 residential customers are being supplied, or businesses supplying energy to a related business.</li> <li>Does not need to be registered and applies automatically to certain entities, who must comply with the conditions of the exemption.</li> </ul>
<b>Registrable</b>	<ul style="list-style-type: none"> <li>Usually for energy supply activities that we consider need greater transparency and regulatory oversight. For example, the sale and supply of energy to permanent residents of an apartment complex.</li> <li>Requires registration through an online form on our website and is published on our public register of exemptions.</li> <li>Is granted with minimal assessment by the AER, except where they relate to sites undergoing a conversion (referred to as a 'retrofit').</li> <li>Examples of residential exemption classes include: <ul style="list-style-type: none"> <li>The selling of metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate (the <b>R2</b> registrable retail class exemption). There is no cap on the number of residents under this class, so it can apply to higher-density apartment complexes with hundreds of residents.</li> <li>The supply of metered or unmetered energy to ten or more residential customers within the limits of a site that they own, occupy or operate (the <b>NR2</b> registrable network class exemption).</li> </ul> </li> </ul>
<b>Individual</b>	<ul style="list-style-type: none"> <li>For unusual or unique energy supply or sale arrangements not covered by the class exemptions. These are relatively uncommon in comparison and allow us to tailor the conditions of the exemption to the specific situation.</li> <li>Required in circumstances where an applicant is unable to meet all the applicable conditions, or where there is no applicable class exemption.</li> <li>A person must apply to the AER to be granted an individual exemption and we assess each application. Individual exemptions are also recorded on the AER's public register. To date, the AER has granted 272 individual exemptions.</li> </ul>

Exemption classes	
	<ul style="list-style-type: none"> <li>• For individual <i>network</i> exemptions, applicants must demonstrate the proposed embedded network meets the NEO requirements.</li> <li>• For individual <i>retail</i> exemptions, our assessment of applications for exemptions, and the conditions that should be attached to them, are guided by the objective, and other factors set out in the Retail Law.<sup>8</sup></li> <li>• In practice, we consider all the circumstances of each individual application, and no single principle or factor is a defining consideration in all instances.</li> </ul>

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<sup>8</sup> Appendix E of the Retail Guideline sets out the factors that guide the AER when deciding to grant, or refuse, an individual retail exemption.

## 5 The growth in embedded networks

We have observed exemptions growth in the jurisdictions that we regulate, particularly those relevant to residential customers.

The most significant growth in registrable network exemptions has been for entities that supply energy to ten or more residential customers. Under our Network Guideline, these are classed as 'NR2' exemptions. We note that there is no ceiling on the number of customers than can be supplied under a NR2 exemption, meaning that while this class covers small residential embedded networks, it also applies to higher-density apartment complexes with hundreds of residents.

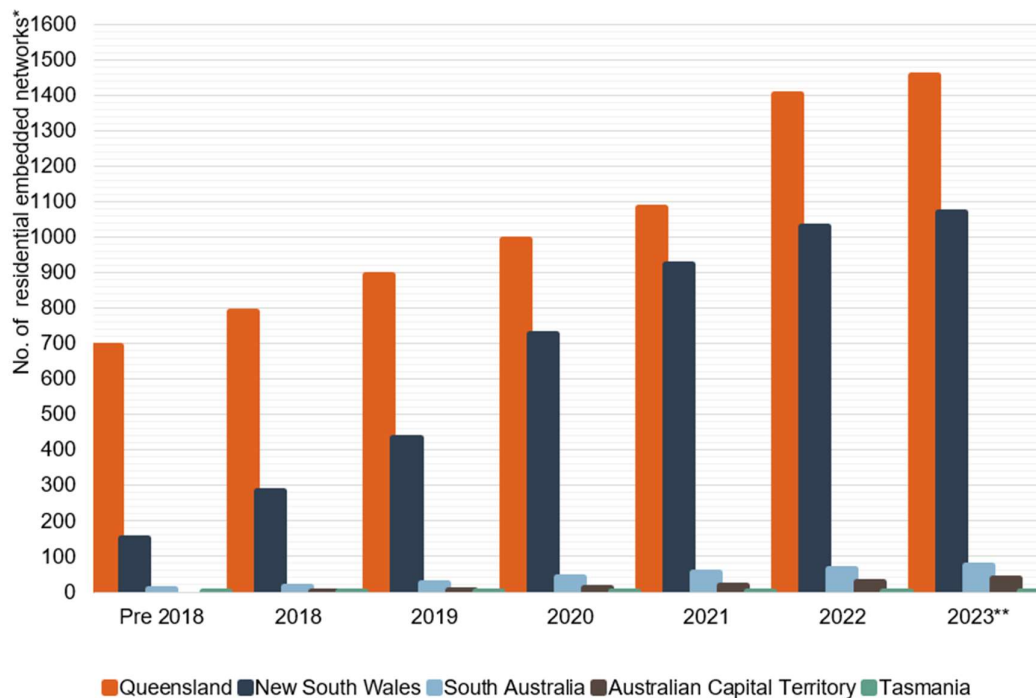
As of December 2017, the AER had registered 854 NR2 exemptions across New South Wales, Queensland, South Australia, Tasmania, and the Australian Capital Territory.

By November 2023, this number had grown to 2,639, representing an increase of 1,785 new exemptions over the 6-year period (a 209% increase).

Overwhelmingly, this growth occurred in New South Wales (with 919 new NR2 exemptions) and Queensland (761 new exemptions). Growth in the Australian Capital Territory and South Australia has been limited (37 and 67 new exemptions between 2018-November 2023, respectively). There have been a negligible number of exemptions in Tasmania.

More than half of all exemptions in this class are for premises in Queensland (55.2%) followed by NSW (40.5%).

**Figure 3 – Cumulative growth of active NR2 registrable network exemptions**

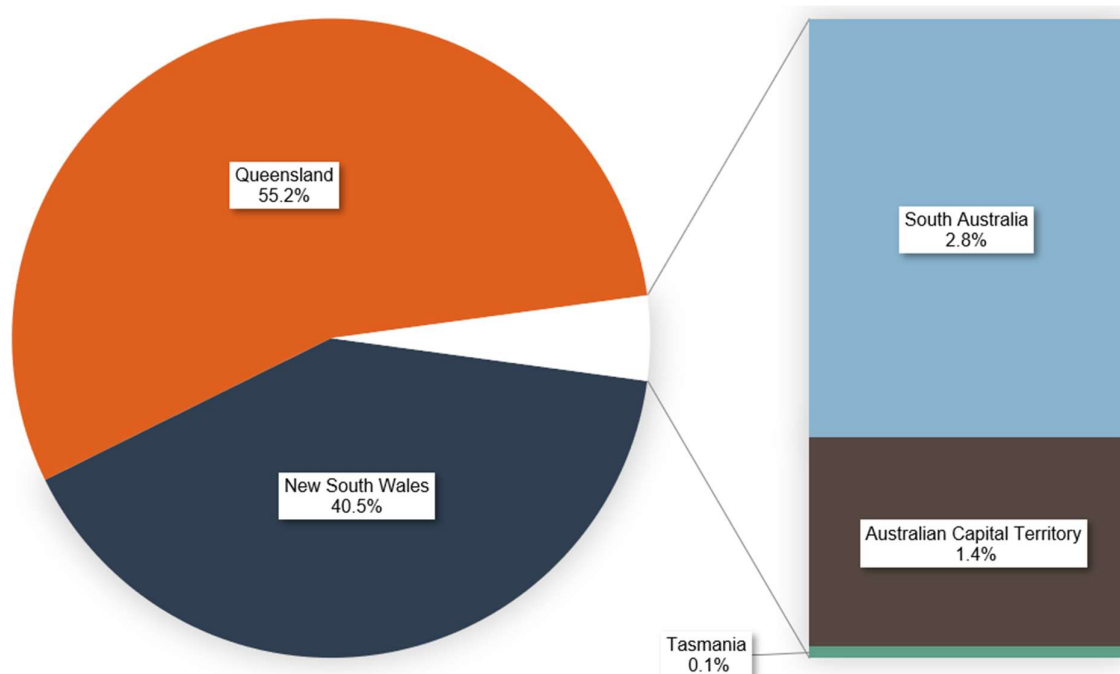


\*The chart is based on NR2 class exemptions registered on the AER's public register and does not capture other residential embedded networks operated under a deemed exemption.

\*\*The 2023 data is based on exemptions registered on the AER's public register of exemptions that are in effect as of 23/11/2023.



**Figure 4 – Proportion of NR2 residential embedded networks, by jurisdiction (NSW, QLD, SA, TAS, ACT)**



\*This data is based on NR2 class exemptions that are in effect as of 23 November 2023, and registered on the AER's public register of exemptions and does not capture other residential embedded networks operated under a deemed exemption.

The other residential-related network exemption classes also grew over this period, although to a lesser extent. Registrable exemptions for retirement villages (the NR3 network exemption class), rose from 94 in 2017 to 199 in 2023 (an increase of 112%) Registrable exemptions for caravan and holiday parks (the NR4 class), rose from 260 to 513 (a 97% increase).

Commercial network exemptions covering small and medium sized business, grew at a more moderate rate than residential exemptions. NR1 class exemptions, covering commercial networks with 10 or more customers, rose from 1,075 to 1,844 (an increase of 72%).

## 5.1 Potential factors driving growth

Given the absence of definitive data, it is unclear what exactly is driving the growth of residential embedded networks. However, factors may include:

- **Growth in higher-density apartment and townhouse living.** This may be due to:
  - urbanisation and population growth – population growth in capital cities has increased demand for housing in urban areas,
  - changing demographics – such as shift towards single-person households and ageing populations,
  - affordability – in the context of high house prices, apartments within higher-density apartment complexes offer a more affordable market entry point, and
  - government policies to promote higher density living.

- **Changing business models** – Developers that build higher-density apartment complexes as embedded networks can reduce their overhead costs. This is in part because the developer can outsource the wiring infrastructure to an embedded network service provider and there is no requirement to ensure each premises is wired to the local network service provider. It is also possible that the build can be completed within faster timeframes, as service connection times may be reduced. Further, we have observed an increased number of specialised embedded network service providers, including operators and third-party consultants promoting the benefits of embedded networks to developers (for greenfield sites) and bodies corporates (to convert their existing building's electrical wiring to an embedded network).
- **New services** – Developers may benefit from being able to promote themselves as innovative facilitators of renewable energy options. An embedded network may provide a way for residents to access options such as electric vehicle charging, renewable energy and batteries.
- **Development of specialist compliance business models** – We understand there has also been an increase in third-party consultants who specialise in embedded network compliance requirements. These factors may have encouraged entities of existing embedded networks to register the appropriate exemptions.
- **Network tariff arrangements** – Current network tariff structures mean embedded network service providers pay a single network tariff based on usage at the parent meter, regardless of how many residents they have or how large their network. This creates an opportunity for the embedded network service provider to earn a margin on the network tariff component at each child connection point, specifically on the residual/fixed component of the network tariff. It is unclear whether embedded networks are passing on some of the savings from the network tariff onto customers.
- **Increased service provider awareness of the framework** – The AER has continued to educate entities that supply and on-sell energy to embedded network customers, of their obligation to hold an exemption. This means the figures reported above are likely to reflect greater awareness amongst pre-existing embedded networks of the need to register with us, as well as an underlying growth in the number of embedded networks.

#### **Stakeholder questions**

- 4) What factors are driving the increase in residential exemptions?
- 5) Which factors are having the biggest influence?
- 6) How common is it for new residential developments to be built as embedded networks?

## 6 Benefits and harms of embedded networks

A key objective for this paper is to better understand:

- The scale and severity of any harms embedded network customers may be facing, including the risk of harm.
- The benefits of embedded networks, and the extent to which individual customers are receiving them.

Understanding the relative benefits and harms will be important to informing our position as to whether action is needed to restrict the growth of future residential embedded networks, strengthen protections for existing embedded network customers, and improve overall transparency.

### 6.1 Potential benefits

#### 6.1.1 Lower energy prices

Embedded networks have the potential for customers to receive lower energy prices:

- Operators may be able to shop around for a retailer of their choice, and purchase bulk energy for the embedded network at large customer prices, which can be lower than those available to small residential customers.
- Exempt sellers and exempt embedded network service providers have fewer compliance obligations than authorised retailers or distribution network service providers respectively. As such, they need less support and have fewer costs to manage their compliance obligations (for example, they need fewer staff and less sophisticated IT systems). Any cost savings incurred can be passed through to customers.
- As noted in section 5.1 above, current network tariff structures mean they may have the ability pass on lower network costs to individual customers than they would face if they were on-market.
- Profits from the operation of the network may also be used to subsidise the costs of supplying energy to other parts of the building. For example, lighting in common areas.

#### 6.1.2 Access to renewable energy and innovative energy services

Developers who build embedded networks may be able to install clean energy sources more easily, for example by putting solar panels on an apartment complex roof or installing batteries or electric vehicle charging facilities and other innovative technologies.

Such technologies may be more efficiently, and cheaply installed at the development stage, while the communal benefits can be more easily shared among customers who are within the same network. In contrast, price benefits of solar generation and battery storage may be more difficult, or not possible, in complexes where each site is connected to the distribution network where sharing communal resources is difficult to organise.

### 6.1.3 Potential impacts external to the energy system - housing development

Most of the benefits and harms we are considering are internal to the energy system, in line with our remit. However, we consider it important to understand any unintended benefits and harms that may come from embedded networks or changes we make to the regulatory framework.

Whilst not directly linked to energy-related benefits, constructing higher-density apartment complexes as embedded networks on greenfield sites may reduce the cost of the build and speed up construction. Developers may achieve cost savings if they can avoid the need to establish wires and other relevant infrastructure for the direct connection of each individual residence to the grid. In these circumstances, installation of metering costs may also be lower.

However, we do note that there is no guarantee these lower costs flow through to energy consumers in embedded networks, either through lower prices or more affordable housing or tenancies. We are keen to understand the extent to which our decisions could impact on housing development, and possibly flow through to energy consumers.

#### Stakeholder questions

- 7) How do embedded networks result in lower energy prices for residential customers? Please provide supporting information.
- 8) How do infrastructure costs for new developments built as embedded networks compare to non-embedded networks?
- 9) How do higher-density complexes configured as embedded networks benefit residential buyers? Please provide supporting information.
- 10) What kind of innovative and emissions reduction arrangements can embedded networks offer residential customers?
- 11) What other benefits are there for residential embedded network customers?
- 12) How should we consider any consequential benefits such as improved access to affordable housing in this review?

## 6.2 Potential harms

The legal and physical structures around embedded networks create unique regulatory risks and potential harms to consumers. These can be summarised as:

- lack of retail competition and high energy prices,
- limited consumer protections, and
- limited compliance framework.

## 6.2.1 Lack of access to retail competition and high energy prices

A key theme raised by stakeholders across the jurisdictional inquiries is the risk of high prices faced by customers due to their limited access to retail competition.

Customers in embedded networks can have trouble accessing energy offers from the entity positioned at the gate meter who has been appointed to supply the whole embedded network.

Under rule changes made in 2015, embedded network customers were provided the right to access retail competition, via the introduction of a new Embedded Network Manager role.<sup>9</sup> However, in practice, there are significant challenges for most customers in achieving this. For example, an embedded network customer's child meter may not have a NMI and is therefore invisible in AEMO's settlement system (which is necessary for retailers to be able to make offers). If customers are unable to access energy offers, they cannot switch to a retailer of their choice if they consider they are paying too much or are dissatisfied with the service they are receiving. Further, there is little incentive for suppliers to offer low prices or quality services. Changing such metering arrangements is usually impractical and may be prohibitively expensive, a cost usually borne by the customer.

Even if the metering arrangements allow for customers to access other retailers, many are unwilling to make 'energy only' offers (that is, retail contracts that exclude network charges) to consumers in embedded networks because it is not in their commercial interests to do so, or because their systems and processes cannot facilitate 'energy only' contracts.

The lack of competition creates a risk that exempt sellers can charge higher prices than those available to on-market customers. Exempt sellers who on-sell energy to customers in embedded networks are subject to the Retail Guideline which restricts them from being able to charge above the relevant standing offer price of the local area retailer.<sup>10</sup> However, given the standing offer is usually above the price of competitive market offers, it may mean a worse outcome than an on-market retail customer would experience.

We are also aware of industry practices that exploit customers' lack of retail access to lock in higher prices, such as property developers requiring the relevant owners' corporation to sign a long-term uncompetitive electricity contract, which prevent them acquiring lower priced electricity.<sup>11</sup>

While we can impose pricing conditions on exempt sellers, there are currently no price protections on the sale of energy for embedded network customers serviced by authorised retailers.<sup>12</sup> As authorised retailers expand their business to include sale and supply of energy to embedded network customers, this could increase the risk of unreasonable prices. Price cap requirements are set by governments, not the AER.<sup>13</sup> While the AER advocates for

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<sup>9</sup> AEMC Rule Determination *National Electricity Amendment (Embedded Networks) Rule 2015*.

<sup>10</sup> Condition 7, Retail Guideline.

<sup>11</sup> *Review of regulatory arrangements for embedded networks* (AEMC, 2017).

<sup>12</sup> Under the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019* the Default Market Offer (DMO) price cap does currently not apply to embedded networks customers served by authorised retailers.

<sup>13</sup> The DMO regulations are set out under Competition and Consumer Act, while state and territory price caps are regulated under jurisdictional-specific instruments.

the expansion of mechanisms such as the Default Market Offer (**DMO**) to all embedded networks customers, that is outside the scope of this review.

Other ways that embedded network customers may experience worse price outcomes than retail market customers include circumstances where embedded network service providers are not required to:

- Facilitate the application of customer rebates and concessions (that are available to retail market customers), due to jurisdictional arrangements.
- Pay their customers compensation for de-energisation and poor-quality energy supply, as Guaranteed Service Level safeguards do not extend to embedded network customers. These are paid to the network service provider's customer positioned at the gate meter (often the exempt seller).

## 6.2.2 Limited consumer protections

Exempt sellers are required to meet a range of consumer protection obligations, which we impose through conditions attached to their exemption. These protections are intended to be broadly equivalent to those received by on-market retail customers.

From time to time, we revise these conditions, as part of a review of our Retail Guideline, to ensure that embedded network customers' protections do not unnecessarily diverge from those of on-market retail customers. Our most recent revision of the Retail Guideline, in July 2022, increased protections in a range of areas, including the introduction of a new hardship policy condition. This condition ensures residential customers in embedded networks who experience payment difficulties due to hardship can access support from their exempt seller.

There are some areas where it is challenging to provide protections for embedded network customers to the same degree as those of on-market retail customers. These include:

- Guaranteed continuity of supply in the event of a seller's or supplier's failure. The Retailer of Last Resort (**RoLR**) framework<sup>14</sup> does not apply to off-market customers in embedded networks, and the AER has no power to direct another entity to take over the embedded network to ensure continuity of supply for its customers.
- Exempt entities may not have the administrative capacity to ensure:
  - customers in payment difficulties are afforded the required protections, and
  - life support customers receive the required protection from disconnection.

The AER faces both practical and legislative challenges in ensuring embedded network customers receive comparable consumer protections as those afforded to customers under traditional supply arrangements. If we obtain evidence through this review to indicate the harms to embedded network customers outweigh the benefits they receive, we may need to consider curtailment for future embedded networks.

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<sup>14</sup> The RoLR framework under the Retail Law, facilitates customers of failed retailers to be transferred to registered 'Retailers of Last resort', with no interruption to their supply.

### 6.2.3 Limited compliance framework

Unlike authorised retailers, the AER does not require exempt entities to report any periodic information and data on compliance to the AER. In the past, this has partly been due to the regulatory burden imposed on the AER if we had to enforce compliance with a reporting requirement imposed on thousands of exempt entities. The current retail exemptions framework requires exempt entities, operating under a registrable class exemption, to provide only 'point in time' information, when they commence their on-selling activities. Instead, we rely on intelligence gathered from ombudsman schemes, jurisdictional regulators, and embedded network customers to identify exempt entity non-compliance.

As the framework is designed to permit entities to be exempt from requiring an authorisation or registration with AEMO, the AER seeks to balance the objective of extending the same protections to exempt customers as those of authorised retailers, as well as ensuring the regulatory arrangements imposed do not outweigh the benefits to customers. We recognise that more visibility over the activities of exempt entities could assist the AER to better identify and act against non-compliant entities. As discussed further below, one option we could pursue is to impose reporting requirements on exempt entities.

The current framework provides the AER with limited options to take compliance action when issues are identified. Consumer protections for exempt customers straddle two pieces of legislation (the Retail Law and National Electricity Law) and the enforcement options available to the AER are significantly different under both laws. For example, under the Retail Law, a breach of a retail exemption condition is a civil penalty provision, whereas under the National Electricity Law, a comparable breach of a network exemption condition does not attract civil penalties. Expanding the AER's enforcement abilities under the current exemptions framework would require broader legislative changes and are beyond the scope of this review.

### 6.2.4 Other potential harms

Other issues raised by stakeholders include:

- Exempt embedded network service providers rejecting requests from customers seeking to install appliances, such as air conditioners on the grounds that the power consumption of the appliance is too high.<sup>15</sup>
- As embedded networks become more complex, there has been an increase in safety issues. For example, cases where high voltage embedded networks have led to serious injuries from electrical burns.<sup>16</sup>
- Insufficient, or absent, information for customers to be able to clearly understand the implications of being in an embedded network. The AEMC considers it is likely that most customers do not know that they are moving into an embedded network when they initially purchase or rent.<sup>17</sup>

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<sup>15</sup> *Review of regulatory arrangements for embedded networks* (AEMC, 2017).

<sup>16</sup> *NSW Parliamentary inquiry into embedded networks final report* (November 2022).

<sup>17</sup> *Review of regulatory arrangements for embedded networks* (AEMC, 2017).

- Some stakeholders have argued that the ability for embedded network service providers to earn a profit margin from existing network tariff structures and/or pass on lower network costs to customers within the embedded network, amounts to cross subsidisation of these lower costs by non-embedded network customers. It is also not clear the extent to which residents of embedded networks, rather than just the embedded network provider, are sharing in the benefit of this.<sup>18</sup>

## 6.3 Interaction with jurisdictional reviews

This review is not happening in isolation. Several jurisdictions have made findings about harms and benefits and are considering, or implementing, recommendations to address these through their own frameworks.

The next section talks about actions we could take, if the available evidence suggested there was a case for change.

Any actions we take will need to work in conjunction with the measures the jurisdictions are taking. We welcome stakeholder feedback on whether our options complement any independent jurisdictional action or risk creating unintended regulatory problems.

### Stakeholder questions

- 13) What is the evidence that supports the view that embedded network customers are paying higher energy prices compared to on-market retail customers?
- 14) What evidence is available to understand the scale, extent or risk of harms?
- 15) What other harms do embedded network customers face?
- 16) How can we maximise the extent to which any changes to our Guidelines complements jurisdictional actions and minimise the risk of misalignment or duplication?

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<sup>18</sup> *Submission no. 18 – Embedded Networks in NSW*, p. 18 (Ausgrid, Endeavour Energy, Essential Energy 2018).



# 7 Potential options under the Network Guideline

The Networks Guideline is the key regulatory tool through which we set the eligibility criteria for who can be granted an exemption to own, operate or control an embedded network.

The options detailed below are designed to help readers understand what actions the AER could take. The AER has not yet formed a view on its preferred approach and seeks comment on the relative merits and costs of different options, as well as any other options we should consider.

## 7.1 Increasing transparency

There is currently no way to identify how many residential customers are captured by deemed arrangements. This prevents the AER and others understanding how many customers are catered for under particular arrangements, and the extent to which they may be experiencing the harms or benefits set out in this paper. Some stakeholders, including the AEMC, have advocated for greater visibility of deemed embedded networks.<sup>19</sup>

There are only a small number of deemed class exemption classes that capture residential customers. These cover situations such as embedded network service providers supplying:

- Persons supplying metered or unmetered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate. Not applicable if an Embedded Network Manager is appointed (**ND2** deemed network class exemption)
- Metered or unmetered energy to occupants of holiday accommodation on a short-term basis (**ND3** deemed network class exemption)
- Unmetered electricity to residential customers in Queensland where premises are not separately metered and the relationship with the customer is covered under jurisdictional legislation (**ND6** deemed network class exemption).

The most relevant to our consideration in this review is the ND2 deemed network class, which applies to residential networks with fewer than 10 customers.

We understand the ND2 deemed network class usually applies to individuals that make up the bodies corporate or strata committees, who play the role of both exempt seller *and* exempt customer (at their individual premises). We recognise there may be steps we could take to ensure the AER has improved visibility of these embedded networks, including requiring exemption classes, currently deemed to be exempt, to be registered on our public register of exemptions.

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<sup>19</sup> *Updating the regulatory frameworks for embedded networks* (AEMC, 2019).

### 7.1.1 Option 1 – close the ND2 deemed network exemption class and revise the activity class criteria for NR2 registrable network class

If we determined that greater visibility of the number of low-risk networks better served the long-term interests of consumers, an option open to us would be to:

- close the ND2 deemed network class for future network exemptions, and
- revise the NR2 registrable network class criteria to capture persons supplying metered or unmetered energy to *any* residential customers within the limits of a site they own, operate or control.

The key impact of this would be that the affected embedded network service providers would be required to submit information to the AER via a registrable exemption form. This includes providing site addresses, contact details and information relating to customer type and customer numbers.

This approach would ensure all residential embedded networks will be recorded on our public register of exemptions. This would potentially provide the AER with a better picture of the total number of residential embedded networks. However, considerations for this approach may include:

- The capacity of smaller embedded network service providers to comply with their requirement to register.
- The limitations of the AER's enforcement toolkit – penalties for supplying electricity within an embedded network, without holding the appropriate network exemption are significant (up to \$10M for a body corporate). Given that many exempt embedded network service providers are individuals or small businesses, we are mindful of the risk that these penalties, if imposed on smaller/less sophisticated entities (for example, a small body corporate) could be passed through to vulnerable customers via increased fees or levies, lead to non-payment of penalties, or could force the embedded network service provider into insolvency. Vulnerable customers could face continuity of supply issues if the embedded network service provider becomes insolvent.

#### Stakeholder questions

- 17) What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?
- 18) How should we measure the benefits to consumers of registration?

## 7.2 Confirming benefits and limiting harms

To provide greater transparency over the benefits an embedded network is providing to consumers, and to ensure that harms are limited, we could require additional information from exempt entities. We have considered two main options for this – where an entity self-assesses, or where the AER completes a more detailed assessment prior to accepting a registration.

### 7.2.1 Option 2 – Revise NR2 registrable network exemption class criteria

We could retain the current, largely automated registered exemption framework approach (where parties register through our website), while placing firmer obligations on embedded network service providers to self-assess and confirm that their networks are beneficial to customers.

One option that may achieve this outcome would be to revise the NR2 registrable network class criteria, to place stricter criteria to own, operate or control any newly developed embedded networks.

As this would remain an automated process, the Network Guideline may need to prescribe a benchmark list of benefits for embedded networks providers to self-assess against. We do not currently have a firm view on what these criteria should be and would welcome stakeholders' views. We note that the Victorian Government has implemented a mandatory renewable energy target for embedded networks – that 100% of energy requirements should come from renewable sources – which may be an example of a clear benefit.

Key benefits of this option would include greater assurance that new residential embedded networks are designed to be beneficial for customers, while not placing undue administrative burden on the embedded network service provider or the AER.

While the penalties under the *Criminal Code Act 1995* (Cth)<sup>20</sup>, for providing false or misleading information to a government agency should provide strong incentives for embedded network service providers to submit accurate information in their exemption registration, we note:

- The AER would have little assurance that exempt embedded network service providers are submitting accurate information, and
- Without additional compliance obligations, the AER would have limited visibility of embedded network service providers' compliance with meeting the class activity criteria.

Under this and other options, we would consider the extent to which grandfathering would be necessary and appropriate.

#### Stakeholder questions

- 19) What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we revised the NR2 registrable network class exemption activity criteria to include prescribed customer benefits that must be met by NR2 registrable network class exemption holders? How could the risks be mitigated?
- 20) If we were to prescribe a list of specific embedded network customer benefits, what could be included?
- 21) What other regulatory approaches would enable the AER to ensure future embedded networks are beneficial to customers?

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<sup>20</sup> Sections 136.1, 137.1, *Criminal Code Act 1995* (Cth).

## 7.2.2 Option 3 – AER assessment of all NR2 registrable network class exemptions

If we consider that the benefits for embedded network customers are significant enough that they outweigh the risks of consumer harm, an option may be to permit this scale of residential embedded networks only where there are tangible benefits to customers, for example, through the supply of green power, solar generation, or shared electric vehicle charging facilities.

One approach that may be capable of achieving this outcome would be to require an AER assessment of every NR2 registrable network class exemption via an application process as opposed to the current ‘automatic’ registration process. This option differs from Option 2 in that it would enable us to apply our judgement to technical and subjective elements of proposed embedded networks, weigh up the costs and benefits, and consider the technical and financial capacity of applicants. Under this option, the AER would have improved visibility of embedded network proposals but there would be an increased administrative cost to the AER.

We do not currently assess NR2 registrable network class exemptions in the same way we do for *individual* network exemptions due to the burden this would impose upon embedded network service providers and the AER. Under this option we could introduce a modified assessment process, which removes some of the formal consultation requirements applying to the individual network exemption assessment process.<sup>21</sup> A modified assessment process would require less time and resourcing and would enable the AER to consider a larger number of applications.

This process would be prescribed in the Network Guideline and would be like our current process in relation to proposed network conversions (retrofits).<sup>22</sup> The AER would only grant permission to register an NR2 network class exemption if the embedded network service provider demonstrates that the embedded network is consistent with the NEO and provides some additional benefit to customers. If warranted, we would refuse permission to register.

The AER would need to provide some guidance about what type of benefits would meet the criteria for approval, to provide clarity and certainty for applicants. However, these could be potentially principles based, given the AER would consider the applicant’s individual proposal.

Benefits of this approach over the current arrangements could include:

- Ensuring exemptions are only granted in instances where residential customer benefits can be demonstrated.
- The ability for us to proactively deny any registrations that we do not consider are in the long-term interest of consumers.

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<sup>21</sup> This includes our assessment obligations to consult with jurisdictions and publishing individual network applications for public consultation.

<sup>22</sup> In these instances the embedded network service provider must seek prior permission from the AER to register the relevant network class exemption and in doing so, must demonstrate that certain eligibility criteria have been met.

- Improved transparency and compliance assurance processes at the time of exemptions being granted, which would increase the likelihood of embedded network service providers complying with their obligations.

Key considerations for this option include:

- AER capacity and workload – this option would require us to scale-up our resources to assess hundreds of NR2 network class registration applications each year.
- Ongoing compliance – a registration assessment will not guarantee ongoing compliance as it would be a ‘point in time’ assessment.
- Costs incurred by applicants to administer the application process and demonstrate they meet any new eligibility criteria.
- Cost for developers, embedded network service providers and prospective buyers if we do not approve the NR2 registration application.

### **Stakeholder questions**

- 22) What are the risks to embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we introduced a requirement to apply to the AER to register an NR2 network class exemption?
- 23) What are the implications of requiring embedded network service providers to demonstrate customer benefits before being permitted to register an NR2 network class exemption?

## **7.3 Limiting future exemptions**

If the available information indicates that the development of higher-density housing configured as embedded networks is not in the interests of consumers, a key option open to us would be to restrict or cease the granting of exemptions for these arrangements. This option represents the most significant intervention we could take and would likely restrict growth of new embedded networks and prevent future consumer harms.

It will be important for us to understand how any proposed changes to our Guidelines would impact existing and future development proposals, and for us to engage with jurisdictions, developers, customers and other key stakeholders as we progress with our review.

In this section, we discuss potential approaches to restrict or discontinue the granting of new exemptions.

### **7.3.1 Option 4 – Close the NR2 registrable network exemption class to future registrations**

The NR2 registrable network class, covering residential embedded networks with more than 10 customers, is the most common network class exemption registered by embedded network service providers, enabling them to supply higher-density residential complexes configured as embedded networks.

If we formed the view that, even with other changes canvassed here, the harms to customers in these networks were greater than any potential benefits, it is open to us to close the NR2

registrable network exemption class to any new registrants. Developers of higher-density residential apartment complexes would instead need to engage with the relevant local network service provider to ensure customers are directly connected to the electricity grid.

We acknowledge that there would be implications for developments currently in the planning stage, where contracts or approval have been sought or granted. We encourage stakeholders to provide their views on what transitional arrangements should be put in place to provide clarity and certainty for developers, purchasers and other stakeholders in these circumstances.

Impacts of this option may include:

- The impact on developers and the financial viability of their proposed developments if they become ineligible to configure them as embedded networks.
- This may result in existing businesses acting as intermediaries leaving the industry and reduced numbers entering. This could mean less competition, loss of industry expertise, innovation, and lower service levels available to the sector.
- Prospective embedded network service providers pivot to submitting *individual* exemption applications as their proposed supply activities would no longer be eligible for a class exemption. This would undermine the policy intention of closing the NR2 registrable network class and place an administrative burden on the AER. We consider it would be necessary to further restrict the eligibility criteria for individual exemptions to avoid this outcome.

At this stage, we are not considering restricting or closing other registrable exemption classes as part of this review. However, we invite our stakeholders to submit their views and any evidence that would support our understanding of the revision, maintenance or closure of class exemptions capturing other supply activities.

### **Stakeholder questions**

- 24) What support is there to stop the expansion of residential embedded networks by closing the NR2 registrable network exemption class?
- 25) What would be the impacts on customers, embedded network service providers, exempt sellers, embedded network managers, and other parties if we ceased granting exemptions for embedded networks with more than 10 residential customers? Please provide information to support your views.

## 8 Potential options under the Retail Guideline

The retail exemptions framework aims to give exempt embedded network customers protections equivalent to those of retail customers.<sup>23</sup>

In developing the Retail Guideline, including which conditions should apply to class exemptions, the AER has aimed to balance its goal to mitigate potential customer harm, while keeping the conditions simple and manageable for exempt sellers so they can comply.

In this section, we discuss options that could improve outcomes for existing embedded network customers and seek stakeholders' views on the likely costs for exempt sellers to comply and the customer benefits that could be achieved.

### 8.1 Increasing visibility of compliance and performance

Exempt sellers are not required to report any periodic information and data on performance or compliance to the AER.<sup>24</sup> This contrasts with authorised retailers and distributors who are required to report on their compliance with the Retail Law, National Energy Retail Rules and Retail Regulations.<sup>13</sup>

The AER works closely with the energy and water ombudsman schemes to gather intelligence around alleged exempt seller non-compliance. However, as there is currently no requirement for exempt sellers to report compliance breaches directly to the AER, we have reduced visibility to proactively identify non-compliant conduct or consistently identify trends of consumer harm.

Authorised retailer performance data plays a valuable role in providing the AER with visibility over the retail energy market. Extending these requirements to exempt sellers could provide the AER with a more holistic overview of the market.

#### 8.1.1 Option 5 – Introduce mandatory compliance and performance reporting

##### Compliance reporting

Authorised retailers must report quarterly, half-yearly or on an annual basis, depending on nature of the breach and its potential to harm customers. Failure to comply with the requirements of the guideline can attract civil penalties.

Placing similar obligations on exempt sellers to report compliance breaches would significantly improve the AER's ability to monitor compliance and take enforcement action where warranted. We could require exempt sellers to report breaches of some, or all, exemption conditions within a set timeframe after being made aware of the breach.

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<sup>23</sup> These requirements are set out in Division 11 of Part 2 of the Retail Law.

<sup>24</sup> Under the *AER Compliance Procedures and Guidelines*.

However, we are mindful that imposing compliance reporting requirements may have impacts on exempt sellers, such as:

- Increased administrative costs for exempt entities may ultimately be passed onto customers, possibly through increased levies or rent.
- Greater likelihood that smaller ‘time-poor’ exempt entities (for example, bodies corporate), outsource the on-selling of energy to authorised retailers, who have better systems, policies, and processes in place to manage compliance reporting requirements.

## **Performance reporting**

The AER also has the scope to impose performance reporting obligations on exempt sellers although to date, this has only been imposed on a small number of individual retail exemption holders.

We could require exempt sellers who on-sell energy to residential customers to routinely report performance data based on indicators. For example, a small subset of our usual performance metrics could be chosen to help assess the outcomes for embedded networks customers:

- number of customers by type (residential, small business and large customers),
- number of life support customers,
- number of residential customers who have accessed payment plans, and
- number of residential customers who have been disconnected due to non-payment.<sup>25</sup>

We could identify trends based on the indicators above and could monitor the degree of divergence in protections and outcomes relative to authorised retailers. This could inform future decisions about our Guidelines, including about curtailment.

A factor we would need to consider with this option would be the capacity of smaller entities to manage their reporting obligations. If lack of administrative capacity led to failure to report, or inaccurate reporting, we would not achieve the policy objective of greater market transparency.

We are keen to hear from our stakeholders about the likely costs and impacts this would have for exempt sellers, as well as the benefits.

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<sup>25</sup> These indicators are consistent with data required to be submitted to the AER relation by authorised retailers under the *AER Performance reporting procedures and guidelines (Retail Law)*.



### Stakeholder questions

- 26) What compliance breaches should exempt sellers be required to submit to the AER, if they on-sell to residential customers?
- 27) What performance reporting indicators would best support the AER to identify consumer trends and inform regulatory reform for embedded networks.
- 28) What would be the benefits, costs and risks to exempt sellers, and other stakeholders, if the AER were to impose compliance and/or performance reporting obligations on exempt sellers, who on-sell to residential customers?
- 29) Should we extend any compliance reporting obligations to exempt embedded network service providers, via the Network Guideline?

## 8.2 Extending family violence obligations

On 1 May 2023, the Retail Rules were amended to include new obligations on energy retailers designed to improve energy retailers' response to, and support of, customers experiencing family violence across NECF jurisdictions.<sup>26</sup> The new obligations apply to residential and small business customers.

The family violence protections are not designed to tackle the underlying cause of family violence but instead support a principles-based framework, to ensure retailers do not inadvertently contribute to the suffering of family violence survivors. We support the AEMC's intention to recommend three overarching provisions in the final rule Tier 1 civil penalties:

1. Retailers to have regard to customer safety,
2. Retailers to develop, implement and comply with a family violence policy, and
3. No disclosure of affected customer information.

We support improving protections for customers experiencing family violence. We were not able to consider family violence as part of our 2021-22 Retail Guideline review as the family violence rules had not yet come into force for authorised retailers. However, the AER has committed to explore how family violence protections could be applied to exempt embedded network customers, as part of our *Towards Energy Equity* strategy.<sup>27</sup>

### 8.2.1 Option 6 – Introduce family violence protections

To ensure exempt residential and small business embedded network customers receive similar protections, the AER would need to prescribe the obligations (to apply to exempt sellers who on-sell under the relevant residential class exemptions) via conditions set out in the Retail Guideline. Failure to adhere to any condition of the Retail Guideline is a breach of the Retail Law<sup>28</sup> and is a Tier 1 civil penalty provision. To meet our obligation under the Retail Law (ensuring regulatory arrangements for exempt sellers do not unnecessarily

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<sup>26</sup> AEMC Final Rule Determination *Protecting customers affected by family violence* (September 2022).

<sup>27</sup> <https://www.aer.gov.au/retail-markets/guidelines-reviews/towards-energy-equity-a-strategy-for-an-inclusive-energy-market>.

<sup>28</sup> Section 112(2), Retail Law.

diverge from those applying to retailers)<sup>29</sup>, we propose to focus on the three overarching obligations set out above.

These overarching obligations require a degree of administrative sophistication (in terms of policy, system and process implementation that is expected of authorised retailers, to manage their compliance obligations). However, this degree of sophistication may not be so easily achievable by exempt sellers. For example, small-scale exempt sellers may not have the resources to invest in the required training. Retailers have a straightforward commercial relationship with their customers and there is a degree of separation between their call centre staff and the customer who is experiencing family violence. In contrast to this, exempt sellers usually have a multi-faceted relationship with their customer. There will be instances where the exempt seller is personally familiar with both the customer experiencing family violence and the perpetrator. Failure to ensure exempt sellers are sufficiently trained to manage family violence obligations could impact the safety of the family violence victim, and the exempt seller themselves.

We must determine that any condition we place on exempt sellers is reasonable and compliance is feasible. A summary of the current retailer obligations in respect to family violence is at [Appendix C](#).

We seek stakeholder views as to which of these obligations, if any, could reasonably be managed by exempt sellers on-selling to residential embedded network and small business customers.

### **Stakeholder questions**

- 30) Should family violence obligations be extended to exempt sellers who on-sell to residential and small business customers?
- 31) What obligations would, and would not be feasible, to implement?
- 32) Could some obligations be tailored to the specific circumstances of an exempt selling scenario? How, and what support might enable sellers to meet their obligations effectively? What additional obligations should the core exemption conditions include?

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<sup>29</sup> Section 114(1)(a), Retail Law.

# Glossary

Term	Definition
Body corporate	A controlling body of a scheme constituted under state or territory strata titles legislation, the members of which are lot owners (or their representatives) and includes an owners' corporation but is not a body corporate for the purposes of the Corporations Act 2001 (Cth).
Business customer	Means a customer who purchases energy principally for business use at industrial, commercial or retail premises.
Embedded network	Has the meaning specified in chapter 10 of the NER. A type of exempt network. A distribution system, connected at a parent connection point to either a distribution system or transmission system that forms part of the national grid, and which is owned, controlled or operated by a person who is not a Network Service Provider.
Embedded Network Manager	A person: a. who meets the requirements listed in schedule 7.7 and has been accredited and registered by AEMO as an Embedded Network Manager, and b. who has not been deregistered by AEMO as an Embedded Network Manager under clause 7.4.4(d).
Energy	Means electricity or gas.
Exempt embedded network service provider	A person who engages in the activity of owning, controlling or operating an embedded network under an exemption granted or deemed to be granted by the AER under section 13 of the NEL and clause 2.5.1(d).
Exempt seller	A person who is exempt by the AER under a deemed, registrable or individual exemption from the requirement to hold a retailer authorisation.
Meter	A device complying with Australian Standards which measures and records the production or consumption of electrical energy
Network Service Provider	A person who engages in the activity of owning, controlling or operating a transmission system or distribution system and who is registered by AEMO as a Network Service Provider under Chapter 2.
On-selling	An arrangement where a person acquires electricity from another person, and they, or a person acting on their behalf, sells electricity for use within the limits of a site.
Residential customer	Means a customer who purchases energy principally for personal, household or domestic use at premises.
Retail customer	Means a person who is a customer of a retailer as defined by the Retail Rules.
Retailer	Means a person who is the holder of a retailer authorisation for the purposes of section 88 of the Retail Law.
Retrofit	Conversion of an existing network distribution system into an embedded network.
Supply	Means the delivery of electricity

# Appendix A – Questions for our stakeholders

We seek stakeholder views on several issues. To assist stakeholders, we have included questions throughout this paper, which are summarised in the table below.

Question	Chapter 2 – Approach to the review
1	Do stakeholders consider one factor or principle should take precedence over another? If so, what weighting should we give the various principles or factors provided by the Retail Law and set out above, to support any case for change to the exemptions framework?
2	Is the AER's proposed approach to the exemption framework review the preferred approach? If no, what other factors or criteria should the AER consider?
3	Is our proposed review scope reasonable? If not, what other supply arrangements should be considered and why?
	<b>Chapter 5 – The growth in embedded networks</b>
4	What factors are driving the increase in residential exemptions?
5	Which factors are having the biggest influence?
6	How common is it for new residential developments to be built as embedded networks?
	<b>Chapter 6 – Benefits and harms of embedded networks</b>
7	How do embedded networks result in lower energy prices for residential customers? Please provide supporting information.
8	How do infrastructure costs for new developments built as embedded networks compare to non-embedded networks?
9	How do higher-density complexes configured as embedded networks benefit residential buyers? Please provide supporting information.
10	What kind of innovative and emissions reduction arrangements can embedded networks offer residential customers?
11	What other benefits are there for residential embedded network customers?
12	How should we consider any consequential benefits such as improved access to affordable housing in this review?
13	What is the evidence that supports the view that embedded network customers are paying higher energy prices compared to on-market retail customers?
14	What evidence is available to understand the scale, extent or risk of harms?
15	What other harms do embedded network customers face?
	<b>Chapter 7 – Potential options under the Network Guideline</b>
16	How can we maximise the extent to which any changes to our Guidelines complements jurisdictional actions and minimise the risk of misalignment or duplication?

17	What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?
18	How should we measure the benefits to consumers of registration?
19	What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we revised the NR2 registrable network class exemption activity criteria to include prescribed customer benefits that must be met by NR2 registrable network class exemption holders? How could the risks be mitigated?
20	If we were to prescribe a list of specific embedded network customer benefits, what could be included?
21	What other regulatory approaches would enable the AER to ensure future embedded networks are beneficial to customers?
22	What are the risks to embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we introduced a requirement to apply to the AER to register an NR2 network class exemption?
23	What are the implications of requiring embedded network service providers to demonstrate customer benefits before being permitted to register an NR2 network class exemption?
24	What support is there to stop the expansion of residential embedded networks by closing the NR2 registrable network exemption class?
25	What would be the impacts on customers, embedded network service providers, exempt sellers, embedded network managers, and other parties if we ceased granting exemptions for embedded networks with more than 10 residential customers? Please provide information to support your views.
<b>Chapter 8 – Potential options under the Retail Guideline</b>	
26	What compliance breaches should exempt sellers be required to submit to the AER, if they on-sell to residential customers?
27	What performance reporting indicators would best support the AER to identify consumer trends and inform regulatory reform for embedded networks.
28	What would be the benefits, costs and risks to exempt sellers, and other stakeholders, if the AER were to impose compliance and/or performance reporting obligations on exempt sellers, who on-sell to residential customers?
29	Should we extend any compliance reporting obligations to exempt embedded network service providers, via the Network Guideline?
30	Should family violence obligations be extended to exempt sellers who on-sell to residential and small business customers?
31	What obligations would, and would not be feasible, to implement?
32	Could some obligations be tailored to the specific circumstances of an exempt selling scenario? How, and what support might enable sellers to meet their obligations effectively? What additional obligations should the core exemption conditions include?

# Appendix B – Recent inquiries and reviews that have considered the exemptions framework

Concerns about outcomes for embedded network customers have been the focus of reviews and inquiries undertaken by various jurisdictions and agencies in recent years. We discuss the key points of these below.

## Regulatory framework reviews

### AEMC

In 2017, the Australian Energy Market Commission (**AEMC**) commenced a review of the regulatory framework for embedded networks.<sup>30</sup> The review sought to understand issues in embedded networks, in response to the significant growth in embedded networks and concerns about poor customer experiences. The review concluded that the existing arrangements for embedded networks were not fit for purpose, and a new framework was required to improve access to retail competition, and better consumer outcomes. The recommendations included:

- Requiring energy on-sellers to hold an off-market retail authorisation.
- Requiring the AER approve network exemptions only in instances whereby it could be demonstrated that customers would benefit.
- Creating an enhanced framework for consumer protections.

Based on these recommendations, the AEMC commenced an additional review in 2018. This review consulted stakeholders on the detailed design of a new framework. The AEMC's 2019 final report<sup>31</sup> proposed legislative changes to create new roles: embedded network service providers who would be required to register with AEMO, and off-market retailers, who would be required to seek authorisation from the AER. These entities would be subject to similar regulations as network service providers and authorised retailers. Customers under these arrangements would be granted enhanced consumer protections.

The AEMC's recommendations were provided to National Energy Ministers however the recommendations were not progressed further nor adopted.

### AER Review of future consumer protections

In April 2022, the AER commenced its *Review of consumer protections for future energy services* (originally titled the *Retailer authorisation and exemption review*).<sup>32</sup> This review

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<sup>30</sup> *Review of regulatory arrangements for embedded networks* (AEMC, 2017).

<sup>31</sup> *Updating the regulatory frameworks for embedded networks* (AEMC, 2019).

<sup>32</sup> <https://www.aer.gov.au/retail-markets/guidelines-reviews/review-of-consumer-protections-for-future-energy-services>.

assessed the existing frameworks for consumer protections, and whether additional protections are needed as new energy services enter the market.

Most recently, it has proposed several reform models to stakeholders, which could be employed to ensure consumers are protected in their access to energy, an essential service.

The review has considered the AER's experience and lessons learnt in regulating embedded network to help inform potential options for reform of the NECF. However, it has considered changes to the current framework for embedded networks.

The AER intends to release its final advice to Energy Ministers in late 2023.

## **Jurisdictional inquiries and reviews**

As noted, a range of jurisdictions have considered elements of the embedded networks framework, and additionally made a range of findings and recommendations for change.

Many of the recommendations had themes of facilitating access to retail competition, and increasing the standard of consumer protection. We have considered these in setting out our discussion of harms and benefits, as well as our initial policy options discussion.

We note that some of the recommendations are outside the scope of what the AER can address through its guidelines.

### **Victoria**

In October 2018, the Victorian Government announced an election commitment to ban embedded networks in new higher-density residential complexes, with appropriate exemptions for buildings that use renewable energy to deliver low-cost renewable energy to residents. The Government's election commitment was made in response to ongoing concerns that customers currently living in embedded networks pay higher prices and do not have access to the same level of consumer protections as other Victorians.

In January 2021, the Government's expert panel commenced review aimed at implementing the commitment. The panel released its final report in January 2022.<sup>33</sup>

The panel found that the residential electricity embedded network market in Victoria is not working in the best interests of customers and that intervention was required to ensure better consumer outcomes while supporting renewable energy uptake. It recommended that exemptions should be granted to embedded network service providers only if they can demonstrate that 50% or more of a site's electricity consumption is met by on-site and low-cost renewable energy.

The Victorian Government ultimately legislated that exemptions can be granted if 5% of electricity is generated on site, and 100% energy from renewable sources. These changes took effect from 1 January 2023.

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<sup>33</sup> <https://engage.vic.gov.au/embedded-networks-review>.

## South Australia

In September 2021, the South Australian Economic and Finance Committee (of the South Australian Parliament) conducted an inquiry into embedded networks in South Australia. The Committee concluded that embedded network reform is required and made several recommendations, including:

- Making changes to state legislation to ensure documentation provided prior to purchase or lease informs consumers they are part of an embedded network and the pros and cons of being part of an embedded network, and reviewing all State Government electricity concession programs.
- Encouraging the AER to expand its role to take reports from consumers ineligible to lodge disputes through the Energy and Water Ombudsman Scheme SA.
- Writing to the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting to endorse the AEMC's framework for embedded networks and re-establish it as an agenda item.<sup>34</sup>

## New South Wales

### NSW Committee of Law and Safety inquiry into embedded networks

In October 2022, the NSW Committee of Law and Safety conducted an inquiry into embedded networks in NSW.<sup>35</sup> The inquiry included engagement with consumer peak bodies, embedded network service providers, distributors, and government agencies.

While the Committee acknowledged there may be some benefits for embedded network customers, it made several recommendations to address the regulatory gaps and issues that came to light during the inquiry. These included recommending the NSW Government urgently collaborate with the federal, state and territory governments and regulatory bodies to improve consumer protections for these customers.

On 17 February 2023, the NSW Government tabled its response to the inquiry, which supported most of the recommendations made.<sup>36</sup>

### Embedded Network Action Plan

In 2023, the NSW Office of Energy and Climate Change (**OECC**) commenced consultation on the *NSW Embedded Network Action Plan*.<sup>37</sup>

The Plan aims to set a maximum price for energy in embedded networks, and to provide bulk hot and chilled water customers with protections equivalent to those for electricity.

The Plan intends to improve support for energy customers in need of financial assistance, and to ensure that prospective embedded network customers are made aware that their

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<sup>34</sup> [An Inquiry into Embedded Networks - Second Report of the Economic and Finance Committee](#) (September 2022)

<sup>35</sup> <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2873>.

<sup>36</sup> <https://www.parliament.nsw.gov.au/ladocs/inquiries/2873/NSW%20Government%20response%20-%20Inquiry%20into%20Embedded%20Networks.pdf>.

<sup>37</sup> [https://www.energy.nsw.gov.au/sites/default/files/2023-02/NSW\\_Embedded\\_Network\\_Action\\_Plan.pdf](https://www.energy.nsw.gov.au/sites/default/files/2023-02/NSW_Embedded_Network_Action_Plan.pdf).



premises is part of embedded network. The Plan also recommended that the Independent Pricing and Review Tribunal NSW (**IPART**) commence a review of the future of embedded networks in NSW.

### **IPART review of the future of embedded networks**

Following the NSW Committee of Law and Safety's inquiry and the OECC's Plan, IPART has commenced a review of the future of embedded networks in NSW. The review has sought feedback on options to ensure better customer outcomes, including:

- Setting a maximum price for customers of embedded networks, including electricity, gas and bulk hot and chilled water, and
- Whether new bulk hot and chilled water embedded networks should be banned.

The review sought submissions from consumers and industry regarding how maximum prices should be set and the prices currently being charged in embedded networks. IPART is currently considering stakeholder submissions.

### **Australian Capital Territory**

In May 2023, the Environment, Planning and Sustainable Development Directorate of the ACT Government released its final *Review of Embedded Networks in the ACT*.<sup>38</sup>

The Directorate consulted a variety of stakeholders, including embedded network service providers, energy distributors and retailers, a property developer, dispute resolution bodies and customers.

The review concluded that embedded networks could provide customer benefits, including lower energy costs and improved usage of onsite solar. However, the review noted several consumer protection risks, including the lack of retail competition, and prospective embedded network customers receiving insufficient information about energy supply arrangements upon commencement of their tenancy agreement.

Recommendations included:

- Regulating embedded network service providers under a new ACT-specific exemptions framework.
- Establishing a reference energy price that limits what embedded network customers can be charged for energy.
- Applying minimum on-site rooftop solar targets and regulations that encourage storage solutions and results in direct benefits for customers in new embedded networks.

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<sup>38</sup> *Review of Embedded Networks in the ACT - Final Report* (Environment, Planning and Sustainable Development Directorate, May 2023)

# Appendix C – Family violence obligations for authorised retailers

The table below sets out the obligations of authorised retailers in relation to situations of family violence.

Energy retailer obligations	Role summary
Prioritisation of safety	<p>In all dealings with an affected customer, authorised retailers must:</p> <ul style="list-style-type: none"> <li>– have regard to the affected customer’s safety,<sup>39</sup> and</li> <li>– take into account the particular circumstances of an affected customer.<sup>40</sup></li> </ul>
Family violence policy	<p>Authorised retailers must have a family violence policy that sets out how they will identify and assist affected customers, including how the energy retailer will afford them the protections outlined in the Retail Rules.<sup>41</sup> Authorised retailers are required to implement, maintain, and comply with their family violence policy.<sup>42</sup></p> <p>The family violence policy must be:</p> <ul style="list-style-type: none"> <li>– published in an easily accessible place on an authorised retailer’s website<sup>43</sup></li> <li>– reviewed and updated from time to time to reflect changes in circumstance and ensure consistency with leading practice.<sup>44</sup></li> </ul> <p>To the extent of any inconsistency, an authorised retailer’s family violence policy will take precedence over the terms and conditions of an affected customer’s market retail contract.<sup>45</sup></p>
Protection of affected customer information	<p>Authorised retailers must not disclose or provide access to information about an affected customer to any other person (including a current or former joint account holder), without the affected customer’s consent.<sup>46</sup></p> <p>This obligation extends to information that may be used to identify, communicate with, or locate an affected customer, including information about their whereabouts, contact details, or financial or personal circumstances.<sup>47</sup> Such information would include date of birth, maiden name, phone numbers, email addresses, PO boxes, and residential addresses.</p>

<sup>39</sup> subrule 76D(a), Retail Rules

<sup>40</sup> subrule 76D(b), Retail Rules

<sup>41</sup> subrule 76A(a), Retail Rules

<sup>42</sup> subrule 76A(c), Retail Rules

<sup>43</sup> subrule 76A(b), Retail Rules

<sup>44</sup> subrule 76A(d), Retail Rules

<sup>45</sup> subrule 76L(1), Retail Rules

<sup>46</sup> subrule 76G(1), Retail Rules

<sup>47</sup> subrule 76G(3), Retail Rules

Energy retailer obligations	Role summary
	<p>Authorised retailers must ensure that their contactors, subcontractors, and agents do not disclose or provide access to affected customer information without the consent of the affected customer.<sup>48</sup></p> <p>Authorised retailers can share affected customer information to the extent required by law.<sup>49</sup></p>
Skills requirement	<p>Authorised retailers need to make sure their staff are able, on an ongoing basis, to:</p> <ul style="list-style-type: none"> <li>– understand the nature and consequences of family violence,</li> <li>– identify and engage appropriately and effectively with customers affected by family violence, and</li> <li>– assist customers affected by family violence in accordance with the Retail Rules and the authorised retailer's family violence policy.<sup>50</sup></li> </ul> <p>This requirement extends to any person with authority or capacity to act on behalf of the authorised retailer, who engages with affected customers. This includes energy retailer employees, contractors, and agents (including call centre and marketing staff), as well as their managers.<sup>51</sup></p> <p>This obligation also applies to those responsible for systems and processes that guide interactions with small customers.<sup>52</sup></p>
Customer identification	<p>Authorised retailers must implement a secure process that:</p> <ul style="list-style-type: none"> <li>– provides a method to readily assess if a small customer is affected by family violence,</li> <li>– provides a method to readily identify the account of a small customer who has been identified as being affected by family violence,</li> <li>– avoids the need for the affected customer to repeatedly disclose or refer to their experience of family violence, and</li> <li>– provides for effective ongoing engagement with an affected customer.<sup>53</sup></li> </ul>
Financial impacts of family violence	<p>Before taking action to recover debt from an affected customer or transferring the affected customer debt to a third-party debt collector, energy retailers must consider:</p> <ul style="list-style-type: none"> <li>– the potential impact of debt recovery action at that time on an affected customer, and</li> <li>– whether someone else is jointly or severally responsible for the energy usage resulting in the debt.<sup>54</sup></li> </ul> <p>Energy retailers must also:</p> <ul style="list-style-type: none"> <li>– waive late payment fees for affected customers,<sup>55</sup> and</li> </ul>

<sup>48</sup> subrule 76G(1). This does not include a contractor, subcontractor or agent of the retailer that requires access to the affected customer information to perform services for the retailer (subrule 76(3), Retail Rules).

<sup>49</sup> subrule 76G(2), Retail Rules

<sup>50</sup> subrule 76B(1)(a)-(c), Retail Rules

<sup>51</sup> subrule 76B(2)(a)-(b), Retail Rules

<sup>52</sup> subrule 76B(2)(c), Retail Rules

<sup>53</sup> subrule 76C(a)-(d), Retail Rules

<sup>54</sup> subrule 76F(1), Retail Rules

<sup>55</sup> subrule 76F(3), Retail Rules

Energy retailer obligations	Role summary
	<ul style="list-style-type: none"> <li>– allow payment using Centrepay.<sup>56</sup></li> </ul>
Hardship and payment plans	<p>An authorised retailer must recognise family violence as a likely cause of a residential customer being a hardship customer or a small customer experiencing payment difficulties.<sup>57</sup></p> <p>Authorised retailers need to offer affected customers further payment plans, even if they have had two cancelled due to non-payment in the previous 12 months or have been convicted of an offence involving illegal energy use in the last two years, where someone else may have been jointly or severally responsible for these actions.<sup>58</sup></p>
De-energisation for not paying a bill	<p>An authorised retailer must not arrange for the de-energisation of an affected customer's premises unless the energy retailer has considered:</p> <ul style="list-style-type: none"> <li>– the potential impact of de-energisation on the affected customer at that time, and</li> <li>– whether other persons are jointly or severally responsible for the relevant non-payment or action.<sup>59</sup></li> </ul>
Communication	<p>Authorised retailers need to identify, record, and use an affected customer's preferred method of communication. The affected customer may use this method in their communications with the energy retailer. If an affected customer's preferred method is not practicable, energy retailers need to offer alternative methods.</p> <p>An affected customer's preferred method of communication takes precedence over any other customer communication requirement in the Retail Rules.</p>
Documentary evidence	<p>Authorised retailers must not require affected customers or third parties acting on their behalf to provide any documentary evidence of family violence as a precondition for receiving family violence protections.<sup>60</sup></p>
Information about external support services	<p>Authorised retailers must provide affected customers with information about the availability of one or more external family violence support services — at a time and in a manner that is safe, respectful, and appropriate given the affected customer's circumstances.<sup>61</sup></p> <p>Authorised retailers must also keep a current list of one or more external support services on their website.<sup>62</sup></p>
No breach of contract	<p>The final rule contains override provisions to give retailers regulatory certainty and confidence when helping customers affected by family violence.</p>

<sup>56</sup> subrule 76F(4), Retail Rules

<sup>57</sup> subrule 76E, Retail Rules

<sup>58</sup> subrule 33(2), Retail Rules

<sup>59</sup> subrule 111(2A), Retail Rules

<sup>60</sup> subrule 76I, Retail Rules

<sup>61</sup> subrule 76J(1), Retail Rules

<sup>62</sup> subrule 76J(2), Retail Rules

Energy retailer obligations	Role summary
	<p>An authorised retailers will not be in breach of its contract if it is unable to fulfil an obligation under its retail contract as a result of complying with the family violence rules.<sup>63</sup></p> <p>If an affected customer is unable to fulfil an obligation under their retail contract by using their preferred method of communication with the retailer, the customer will not be in breach of their contract.<sup>64</sup></p>
Model terms and conditions	The model terms and conditions for standard retail contracts have been amended to reflect, where appropriate, the new family violence provisions. <sup>65</sup>

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<sup>63</sup> subrule 76K(1), Retail Rules

<sup>64</sup> subrule 76K(2), Retail Rules

<sup>65</sup> Schedule 1, Retail Rules

# Appendix D – Relevant consultation procedures

## National Electricity Rules Consultation Procedures

The consultation process for the Network Guideline review is prescribed under rule 8.9 of the National Electricity Rules. It requires us to:

- Publish and invite submissions on a consultation paper that gives particulars of the matter under consultation. This issues paper constitutes this step.
- Provide at least 25 business days for stakeholders to make submissions.
- Consider submissions within 20 days and hold meetings regarding submissions, within a further 25 business days if desired.
- Publish a draft guideline including the reasons for our conclusions, the procedure we followed in considering the matter, summaries of the material issues and an invitation to make further submissions.
- Provide at least 10 business days for stakeholders to make submissions.
- Consider those submissions within 30 days.
- Publish a final guideline, including the reasons for our conclusions, the procedure we followed in considering the matter, summaries of the material issues.

## National Energy Retail Rules Retail Consultation Procedure

The consultation process for the Retail Guideline is prescribed under the rule 173 of the National Energy Retail Rules. It requires us to:

- Publish a draft instrument together with a notice that states why the instrument is required, provides context around some of the issues involved and the possible effects of the instrument, and invites submissions. The AER is required to:
- Publish the draft guideline together with a notice that gives particulars of the matter under consultation and invite submissions.
- Provide at least 20 business days for stakeholders to make submissions.
- Consider those submissions.
- Prepare a written notice stating the reasons for making the guideline in its final form.
- Publish the final instrument and the written notice.