

27 May 2022

Mark Feather
General Manager, Strategic Energy Policy and Energy Systems Innovation
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Dear Mr Feather

SUBMISSION ON AUSTRALIAN ENERGY REGULATOR RETAILER AUTHORISATION AND EXEMPTION REVIEW ISSUES PAPER, APRIL 2022

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

Under the Australian Energy Regulator's (AER) (*Retail Exempt Selling Guideline, Version 5, March 2018* (Retail Guideline) and *Electricity Network Service Provider – Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) our holiday park and residential land lease community members fall within Exemption Classes D3 and ND3 and R4 and NR4 respectively.

In representing these businesses, the Association is an important stakeholder in relation to the retailer authorisation and exemption review and we welcome the opportunity to provide our feedback on the AER's *Retail Authorisation and Exemption Review Issues Paper, April 2022*.

For the purpose of this submission, wherever we refer to 'holiday parks' we are referring to caravan parks that sell energy via an embedded network to occupants of holiday accommodation on a short-term basis (i.e., in these caravan parks there are no permanent residents occupying the accommodation as their principal place of residence).

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

Please see below for our feedback on the Issues Paper as relevant to our industry.

A TRANSFORMING ENERGY SECTOR

Consultation Questions

- 1. Do you agree with the approach of using use cases/business models to identify the harms and risks of new energy services and products? Please explain why.**
- 2. Do you consider the use cases/business models appropriate to assess the harms and risk of new energy services and products? In particular:**
 - a. What, if any, changes should be made to the use cases/business models set out in this issues paper?**
 - b. Are there any other use cases/business models we should consider? Please provide examples.**

Using the use cases/business models to identify the harms and risks of new energy services and products will provide some assistance with the analysis of possible outcomes, but they will not provide the whole picture. One of our concerns with this review is that inaccurate assumptions could lead to inappropriate policy decisions for certain business models.

For example, Table 1 of the Issues Paper includes *'Embedded networks and microgrids'* as one of the business models for emerging and new energy products and services. However, the type of embedded network identified - an apartment complex that is an embedded network with Distributed Energy Resources (DER) assets on site and manages how they are used - is only one of the many types of embedded networks.

Embedded networks vary in terms of their business type, occupants, onsite infrastructure, ownership arrangements and regulations and these characteristics will have an impact on how and to what extent harms and risks of new energy services and products manifest.

For example, NSW holiday parks and residential land lease communities with embedded networks are highly regulated businesses with strict requirements regarding electricity supply and on-selling.

Several consumer protections are provided for embedded network customers in NSW holiday parks under the AER's Network Guideline and Retail Guideline, the *Australian Consumer Law (ACL)*, *Fair Trading Act 1987 (FT Act)*, the *Holiday Parks (Long-term Casual Occupation) Act 2002 (HP Act)*, and their occupation agreements.

The NSW Civil and Administrative Tribunal (NCAT) has jurisdiction to hear and determine disputes relating to a breach of an occupation agreement or to a disagreement that could form the basis of a breach of the occupation agreement (which includes utilities). These customers can also seek the assistance of NSW Fair Trading.¹

Meanwhile, an even higher level of consumer protections are provided to embedded network customers in NSW residential land lease communities under the AER's Network Guideline and Retail Guideline, the ACL, FT Act, the *Residential (Land Lease) Communities Act 2013 (RLLC Act)*, the *Residential (Land Lease) Communities Regulation 2015 (RLLC Regulation)* and their site agreements.

¹ NSW Fair Trading provides free information about consumer rights and options to resolve disputes with traders, including embedded network customers in holiday parks and residential land lease communities, and can contact the operator to negotiate a settlement.

The NCAT has jurisdiction to hear and determine disputes relating to a right or obligation under the RLLC Act and RLLC Regulation (which includes utilities) or a dispute arising from, or relating to, a site agreement or collateral agreement. These customers can also seek the assistance of the Energy and Water Ombudsman NSW and NSW Fair Trading,² as well as other organisations like the Affiliated Residential Park Residents Association and their own Residents Committees established under the RLLC Act.³

Holiday parks and residential land lease communities have strict responsibilities for electricity supply under the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* (LG Regulation).

Distinguishing factors and characteristics of embedded network types will also need to be considered when analysing the harms and risks to consumers of new energy services and products during policy development.

Consultation Questions

3. Do you consider any of the use cases/business models outlined to be essential in the same way as the traditional supply of energy arrangement is? If so, what is the appropriate level of consumer protections that should be applied to these products and services? Please explain.

4. How do you see new energy services and products interacting with the essential nature of the supply of energy?

a. Please specify which types of new energy services and products may substantially impact the supply of energy to a premises.

b. How do you think risks created by a new energy service or product on the supply of electricity should be addressed? Should they be treated the same as energy products and services considered essential? What factors should the AER take into account when considering what consumer measures are appropriate and proportionate?

In terms of interacting with the essential nature of the supply of energy, the new energy services and products identified by the Issues Paper appear to primarily impact how energy is used or modified rather than supplied or sold to a consumer. They also remain optional.

On this basis, any use case or business model providing a product or service that focuses on how energy is used or modified as opposed to supplying, with uptake remaining optional for a consumer, should not be considered essential in the same way as the traditional supply of energy.

DER are certainly growing in popularity, but not all energy consumers will choose or be able to take up DER and this is a key factor to consider. Additional regulation or requirements in any sector usually increases the costs of compliance, which can create barriers to innovation.

Like other products and services that consumers choose to acquire, it appears more appropriate that providers of new energy services and products comply with the ACL with

² *Ibid.*

³ *Under Part 9 of the RLLC Act residents of a community may by resolution establish a residents committee. Their functions include representing the interests of the residents in connection with the day-to-day running of the community and any complaint about the operation of the community.*

appropriate reforms for risks created by a new energy service or product that are not already addressed.

Consultation Question

5. Do you agree with the proposal to take into account the need to encourage the uptake of DER-based energy services and products when considering what measures are appropriate to address or mitigate potential harms and risks? Please explain why?

Taking into account the need to encourage the uptake of DER-based products and services when considering what measures are appropriate to address or mitigate potential harms and risks is also an important factor to consider. This is because large scale uptake of DER-based products and services is important for maximising the benefits of DER for all stakeholders in the electricity system.

We note the Energy Security Board's (ESB) advice that the review should strike *'the right balance between consumer protections and encouraging innovation in the market'*.⁴ In our view the right balance should encourage confidence and enthusiasm in all parties, not just consumers.

CURRENT AND EMERGING CHALLENGES

Consultation Question

7. Are the current authorisation and exemption frameworks fit for purpose?
a. What risks do you see with the current frameworks?
b. What consumer protections do you think are missing from the frameworks?

For the supply and on-sale of electricity within embedded networks in NSW holiday parks and residential land lease communities, we consider the exemption framework can remain fit for purpose.

While the Australian Energy Market Commission (AEMC) found the framework for embedded networks to be *'no longer fit for purpose'* in 2017⁵ and proposed a series of changes to update the regulatory frameworks in 2019⁶, these proposals were ultimately rejected by state energy ministers following a cost impact assessment undertaken by KPMG.

We were involved in the stakeholder consultations regarding this work and reiterate our concern that the AEMC's proposals would impose on operators of NSW holiday parks and residential land lease communities a costly, resource-intensive and time-consuming regulatory framework - initially and on-going. We do not support a resurrection of these proposals.

The nature of holiday parks and residential land lease communities and the state-based legislation that governs them warrants separate consideration of the regulatory approach to these embedded networks, including in the context of new energy products and services. To

⁴ AER, *Retailer Authorisation and Exemption Review Issues Paper*, April 2022, p 4.

⁵ AEMC, *Review of Regulatory Arrangements for Embedded Networks, Final Report*, 28 November 2017.

⁶ AEMC, *Updating the Regulatory Frameworks for Embedded Networks, Final Report*, 20 June 2019.

ignore these issues would be a disservice to the operators of these businesses and their customers.

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

As set out on page 16 of the Issues Paper, *'the retail exemption framework was developed to manage the practice of on selling'* and *'the main relationship the on seller has with their customer is not the sale of energy.'*

Holiday parks are tourism businesses, so the primary relationship between an embedded network customer and an embedded network operator in a holiday park is an arrangement for holiday accommodation. The supply of energy is incidental and on a temporary basis.

As customers in holiday parks make use of the embedded network only occasionally and for holiday purposes, they are unlikely to take up new energy products or services in the same way as the operator (as a business consumer) may wish to or a home owner in a residential land lease community. Therefore, the risk of consumer harm from DER-based products and services for embedded network customers in a holiday park is minimal, if any.

For embedded network customers who are home owners in residential land lease communities, we do not consider the *'existing harms consumers may face in embedded networks'* as outlined in Box 2 on page 31 of the Issues Paper to arise in the same way as they might in other types of embedded networks.

This is because state-based legislation also supplements the ACL and the AER's Retail and Network Guidelines to give home owners in residential land lease communities consumer protections beyond those provided to customers of other embedded network types and, in some respects, retailers.

Lack of retail competition & potentially higher prices

The Issues Paper notes that, in practice, consumers in an embedded network often have difficulty buying energy from a seller other than the exempt seller *'due to the way the network may have been wired or metered or because energy retailers may not want to sell to a consumer inside an embedded network.'*

For embedded network customers in residential land lease communities the likelihood of them even seeking to go on-market is low, should it happen at all. This was acknowledged by the AEMC in its final 'Rule Determination - National Electricity Amendment (Embedded Networks) Rule 2015' (Rule Determination).

On page 49 of its Rule Determination the AEMC made it clear that an advantage of providing the AER with flexibility and discretion regarding the appointment of an Embedded Network Manager (ENM) is so *'embedded network operators operating embedded networks where the likelihood of customers seeking to go on-market is low will not be required to bear the costs unless a customer seeks to go on-market.'*

We are not aware of any cases of customers of embedded networks in NSW residential land lease communities going on-market or seeking to go on market. Pricing limits imposed by NSW legislation and the AER guidelines on these businesses makes it unlikely that customers will seek retail competition, as there is no incentive to do so.

Under section 77(3) of the RLLC Act, residential land lease community operators cannot charge a home owner for the supply and use of electricity more than the operator has been charged for the electricity supplied to and used by the home owner.

This was confirmed on 4 September 2018 by the NSW Supreme Court's determination in the case of *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless* [2018] NSWSC 1343. The Court's decision was that the concept of a 'regulated offer retailer' no longer existed (following deregulation of the energy market in 2014) and under s 77(3) of the RLLC Act the plaintiff was not entitled to charge the defendant any more than the plaintiff had been charged for the supply or use of the electricity consumed by the defendant.

This case impacts all other residential land lease communities, and while there are some practical difficulties in calculating the tariff to apply (currently known as the 'Reckless' method) the outcome is that these types of embedded networks are limited to an energy usage cost pass through. They have no opportunity to profit on the sale of energy and no opportunity to cover operational, maintenance or replacement costs of the network through energy charges.

This means many home owners in residential land lease communities are currently paying very cheap commercial rates (some as low as 9c per kWh for usage) compared with customers in the National Electricity Market (NEM) supplied energy by a retailer.

Consequently, there is limited value in retail competition for these embedded network customers, as contracting directly with a retailer is unlikely to result in an energy cost saving. Strict price controls at the state-level have removed the risk of higher prices for these types of embedded networks.

Supply issues

In relation to supply interruptions most outages in NSW holiday parks and residential land lease communities are those planned or unplanned under the management of the local Distribution Network Service Provider (DNSP), because of climatic events or when an upgrade is required (e.g., powerhead replacement).

It is in operators' best interests to have supply running as much as possible as they cannot operate the common facilities and business activities without power.

In terms of the Issues Paper referencing individual customers waiting '*significant periods for reconnection following disconnections*' because of '*lack of dispute resolution processes or complaints management*' or '*embedded networks not taking responsibility to supply energy*',⁷ risks like these are most unlikely to occur in holiday parks or residential land lease communities because there are internal and external dispute resolution processes available.

As noted above, holiday parks and residential land lease communities have strict responsibilities for electricity supply under the LG Regulation 2021 and the NCAT has jurisdiction to hear and determine disputes relating to a right or obligation (which includes utilities) or a dispute arising from, or relating to, an occupation agreement, a site agreement or collateral agreement.

Disconnection is one area where embedded network customers in NSW residential land lease communities enjoy consumer protections that customers under standard NEM supply do not. Home owners are protected by section 78 of the RLLC Act, which provides that a home owner's electricity supply cannot be disconnected without an order from the NCAT.

⁷ AER, 2022, *Op. cit.*, p 31

Community operators are also prohibited from applying site fee payments to unpaid utility charges and the NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making operator determined disconnection unavailable. In our experience, the NCAT always seeks to preserve a site agreement, and this extends to utility supply.

These embedded network customers can also seek the assistance of EWON and NSW Fair Trading.

Protections for vulnerable customers

Social policy obligations are also addressed in the regulatory framework for embedded electricity networks within NSW residential land lease communities. This includes access to energy rebates, assistance for customers facing financial difficulties and protection for life support customers.

Residents of ‘*an on-supplied residential community*’ are currently eligible to apply for the Family Energy Rebate, NSW Gas Rebate, Low Income Household Rebate, Life Support Rebate and Medical Energy Rebate direct.⁸

Condition 13 of the AER’s Retail Guideline provides that where an energy rebate can only be claimed by the exempt person on behalf of the eligible exempt customer, the exempt person must make that claim and apply the rebate to the exempt customer’s bill.

Further, embedded network customers in NSW residential land lease communities have, for many years, had the benefit of a framework that provides payment assistance and support. We reiterate that home owners are protected by section 78 of the RLLC Act and the NCAT frequently makes orders for payment plans to enable home owners to catch up on arrears for site fees and utilities.

We recently raised these protections in our submission on the AER’s draft *Retail Exempt Selling Guideline, Version 6, March 2022*, which proposes to require all exempt sellers provide additional hardship supports. These will complement existing processes for NSW residential land lease communities.

We also noted that if a home owner living in a residential land lease community is behind on their utility bills they are usually also behind on their site fees, so the issue is much broader than providing additional support for non-payment of energy bills due to financial hardship. The NCAT, as opposed to an energy ombudsman scheme, is better equipped to deal with these sorts of situations where issues other than energy are difficult to decouple.

There are also obligations on embedded network operators to communicate with retailers and distributors about customers on life support equipment and for the same reasons outlined under ‘supply issues,’ life support customers are protected from disconnection in residential land lease communities.

In fact, because community operators work on site and some also live within the embedded network, they are in a good position to know who is a life support customer and needs help. In the recent floods that have impacted parts of NSW, park and community operators were on the ground assisting their guests and residents.

⁸ NSW Government, ‘Energy Saver,’ updated 12 August 2021, accessed 25 May 2022, <<https://www.energysaver.nsw.gov.au/browse-energy-offers/household-offers/find-energy-rebate>>

Information provision

In NSW residential land lease communities there is detailed information provision and disclosure about the embedded network to customers.

Condition 2 of the AER's Retail Guideline requires exempt sellers to provide extensive information to embedded network customers at the commencement of supply, and prospective home owners of residential land lease communities have rights to disclosure of information under Part 4, Division 1 of the RLLC Act in an approved form prior to entering into a written site agreement. They are also encouraged to seek legal and professional advice.

These mechanisms are in place for customers considering moving into an embedded network within a NSW residential land lease community to ensure they have the benefit of informed choice.

Retailer of Last Resort provisions

While there are difficulties with Retailer of Last Resort provisions and embedded networks, it is important to point out there are alternative state-based protections for customers in NSW residential land lease communities.⁹

In most cases, the embedded network operator is also the owner/operator of the residential land lease community and they rely on continued energy supply to the embedded network for their own operations and common facilities. This creates an inherent motivation to maintain supply, aligning an operators' interests with the interests of their customers.

In the event of an exempt seller/operator failure (e.g., being placed into external administration or otherwise going out of business) customers of residential land lease communities will be concerned with their security of tenure, not just their energy supply. Therefore, the RLLC Act contains provisions regarding the appointment of administrators, receivers and managers to protect the well-being and financial security of the residents of the community. These are set out in Part 13, Division 2, sections 164 – 170.

In requiring administrators, receivers and managers to exercise all the functions of the operator of a community, and comply with an operator's obligations under the RLLC Act as if the person were the operator, the RLLC Act provides for the ongoing supply of energy to exempt customers in the event of an exempt seller failure.

The RLLC Act also requires operators to notify the Commissioner when a place ceases to be a community, and Condition 21 of the AER's Retail Guideline requires an exempt seller to notify its customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

Attempting to overlay the existing state-based regime for residential land lease communities with a RoLR scheme could add unnecessary complexity and disruption for these exempt customers. In addition, the AEMC has noted that where an embedded network operator becomes insolvent standard insolvency laws will apply:

⁹ *RoLR arrangements should not apply to exempt customers in embedded networks within NSW holiday parks who are tourists or long-term casual occupants with occupation agreements governed by the Holiday Parks (Long-term Casual Occupation) Act 2002. All energy that is supplied/on-sold to such customers is for holiday purposes and should be excluded from any RoLR arrangements. We note the AEMC's proposals for RoLR arrangements in its 2019 review 'Updating the Regulatory Frameworks for Embedded Networks' recommend changes to the National Energy Retail Law to include default arrangements for a child connection point supplied by an off-market retailer. Holiday parks would not be required to register as off-market retailers.*

“Ultimately, electricity will only be one of a number of services that the embedded network owner – typically a body corporate or shopping centre – will no longer be providing to the customers in the relevant apartment or shopping centre. In this instance, the Commission considers that it is appropriate for standard insolvency processes to apply and a RoLR equivalent is not required.”¹⁰

Given the differences in ‘risks and harms that consumers located in embedded networks may face’ compared with NSW holiday parks and residential land lease communities, our position is these embedded networks should continue to be eligible for retail and network exemptions.

In the context of the changing energy market, we request the AER work with other regulators and government agencies to explore how the exemption framework can remain fit for purpose for these businesses with other improvements made at the federal and state level to allow DER to be better integrated in a way that benefits all parties.

Consultation Questions

9. How can we limit the risk of consumer harm when retailers or exempt sellers significantly expand/change business activities and capabilities after authorisation or exemption?

10. How can the AER better address serious misconduct of authorised retailers and exempt sellers?

If the AER’s compliance and enforcement powers are insufficient to address serious misconduct of authorised retailers and exempt sellers then they should be reviewed, bearing in mind the need for proportionality and other legislative frameworks that are relevant.

For example, under the FT Act, the HP Act and the RLLC Act, NSW Fair Trading has good visibility and a broad range of powers to ensure holiday parks and residential land lease communities comply with their obligations, including those related to energy.

Regarding oversight of exempt sellers, a reporting process coupled with re-application and reassessment by AER may help to limit the risk of consumer harm when retailers or exempt sellers significantly expand/change business activities and capabilities after authorisation or exemption.

However, if retailers and exempt sellers expand their service offering to include new products or services that are not within the scope of the NECF (because they are not essential in the same way as the traditional supply of energy) what then is the role for the AER?

As noted by one stakeholder in the recent online Public Forum for this review on 5 May 2022, the AER is responsible for regulating the supply and sale of energy, not how people interact with and use energy.

Consultation Question

11. Do you agree with our proposed approach to identifying the risks and harms that new energy products and services may pose to consumers? Please explain why.

¹⁰ AEMC, 2019, *Op. cit.*, p 101.

Using the consumer risk assessment tool developed by the ESB to explicitly consider consumer benefits and risks should help to provide some consistency in policy development, as the AER and other market bodies test whether the customer protections in place remain fit for purpose. We support the use of the tool.

However, in relation to embedded networks we submit that the circumstances of an operator also need to be considered and what assistance they will need to better integrate DER-based products and services.

As outlined above, the nature of NSW holiday parks and residential land lease communities and the state-based legislation that governs them warrants separate consideration of the regulatory approach to these embedded networks, including in the context of a changing energy market.

Consultation Question

12. Do you agree with the identified risks and harms to consumers? Please explain why. Are there other key risks and harms we should consider?

For embedded networks in holiday parks and residential land lease communities, we do not completely agree with all the identified risks and harms set out on pages 40 – 41 for the same reasons set out in our response to consultation question 7.

There are distinctions between NSW holiday parks and residential land lease communities and other types of embedded networks in relation to the issues of switching providers, information provision, hardship, disconnection and dispute resolution.

In relation to accessing DER-based products and services, the Issues Paper notes embedded network occupants are generally not able to install solar PV systems or batteries at their individual premises *'because of wiring issues'* but the problem is a little more complex for our sector.

We have previously raised the issue of solar PV systems in residential land lease communities because there are gaps and barriers at the state and federal level.

We have received reports from some operators that home owners who are connected to the embedded network are installing solar panels on their moveable dwellings (either with or without consent from the operator) and operation of these solar panels is causing the child meters in the embedded network to run backwards.

This is just one issue related to infrastructure limitations. Operators are finding many aspects of solar RV systems challenging to manage, including how to deal with impacts on the embedded network (e.g., reverse flows, voltage), safety and compliance, billing and negative meter readings, refund/credit entitlements, ongoing maintenance, what rules and regulations apply to managing access and connections and the rights and responsibilities of home owners and operators.

There is also the issue of cost recovery in facilitating solar PV systems and other DER in residential land lease communities. Currently, the RLLC Act does not consider DER arrangements and there is a limitation on the fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community (see section 76).

The cost of solar PV systems is falling and the technology is constantly improving. Coupled with the pressure of rising energy costs, installation of solar PV systems within holiday parks and residential land lease communities is becoming more popular. This is a good thing because for operators, energy costs are usually second only to wages costs, and many residents of residential land lease communities are retirees on fixed incomes and seeking low-cost living. However, the issues noted above are creating a barrier apart from the upfront costs of installing solar PV systems.

In terms of other DER that may become common or appealing in residential land lease communities, we envisage demand will rise for battery storage and electric vehicles.

Whatever regulatory changes result from this review, they should incentivise and support operators that want to encourage new energy products and services within their embedded networks. As part of this, and in order to comply with their own responsibilities, where home owners are installing (or want to install) new energy technologies operators must be able to have a say over what energy technologies are being installed on individual sites.

There needs to be shared responsibility between customers, operators and suppliers of DER and the RLLC Act will need to be less obstructive, particularly in relation to fees and charges (including electricity usage and supply charges).

In addition, operators should not be left out of pocket. If costly infrastructure upgrades are going to be required then sufficient financial support from governments, such as grants, tax incentives and loan schemes need to be made available.

Consultation Question

13. Do you agree with the proposed approach to use the consumer archetypes developed by the ECA when assessing the identified risks? Please explain why. What other key consumer types should we consider?

We have no issues with the AER using the consumer archetypes developed by the ECA set out on page 35 of the Issues Paper, but they are limited like the use cases/business models. These consumer archetypes will provide some assistance with analysing possible outcomes, but they will not provide the whole picture.

As an example, some benefits and risks in embedded networks have been identified but the ECA consumer archetypes don't translate easily to all types of embedded networks.

For an embedded network in a NSW residential land lease community a more appropriate consumer archetype would be a home owner who owns their dwelling, rents a site from the operator and receives a fixed income (which includes the Age Pension and Commonwealth Rental Assistance). Home owners may also be self-funded retirees or first home buyers.

Like the use case/business models used, distinguishing factors of consumers in particular contexts will also need to be considered when analysing the harms and risks of new energy services and products.

Consultation Question

15. Have we adequately captured potential mitigants? Are there other mitigants we should consider?

Other mitigants that should be considered are state-based legislation and regulators and standard form agreements.

As outlined above, NSW holiday parks and residential land lease communities are subject to NSW legislation that also provide consumer protections regarding energy and NSW Fair Trading has a broad range of powers to ensure these businesses comply with their obligations. These includes orders for specific performance and payment of compensation by NCAT as well as prosecution for offences with significant financial penalties.

OPTIONS FOR REGULATORY REFORM

Consultation Questions

16. Do you agree with this review considering the need to expand the scope of the NECF where appropriate?

17. Do you consider the potential reform options outlined in section 6.2 will go some way to addressing current gaps in the frameworks in relation to future applications?

18. Would it be helpful to introduce limited authorisations and exemptions to apply to particular business models/business activities?

a. Are there any risks to this approach?

We refer to our earlier submissions in response to consultation questions 3 and 4.

As outlined in the Issues Paper, the NECF was enacted to supplement the ACL, the principal consumer protection and fair trading law in Australia, in recognition of the essentiality of energy. If new energy products and services are not essential in the same way as energy, then expanding the scope of the NECF may not be the appropriate option to pursue.

It may be more appropriate to draw on existing consumer protections under the ACL, with enhancements in relation to energy specific protections for issues not currently addressed or inadequately addressed.

In addition, the NECF is not applied consistently across Australia in participating states and the ACT, and it does not currently apply in WA or the NT.¹¹ On the contrary, the ACL is a national, generic law which applies in the same way to products and services in all sectors and in all Australian jurisdictions.

Consistency is important for integrating DER and flexible demand across jurisdictions, so it may be that reforms to the ACL warrant further consideration and analysis as opposed to expanding the scope of the NECF.

¹¹ Australian Energy Market Commission, 'National Energy Customer Framework,' accessed 24 May 2022 <<https://www.aemc.gov.au/regulation/energy-rules/national-energy-retail-rules/regulation>>

In relation to the exemption framework, some of the potential reform options outlined in section 6.2 could go some way to addressing current gaps, such as limiting the scope of the exemption framework (so long as holiday parks and residential land lease communities remain eligible for exemption) and ensuring the exemption framework is not used as an alternative form of regulation to authorisation.

However, we reiterate that we do not support a resurrection of the AEMC's proposals in this review. As outlined above, these proposals were ultimately rejected by state energy ministers following a cost impact assessment undertaken by KPMG.

If implemented, the AEMC's proposals would force all legacy NSW residential land lease communities to transition (partially or fully) to a new regulatory framework - a costly, resource-intensive and time-consuming exercise both initially and on an on-going basis, particularly for those residential land lease communities that only have a small number of residents. Depending on the size of a residential land lease community, the initial and ongoing costs of the AEMC's proposals could easily amount to hundreds of thousands of dollars.

As the majority of customers in residential land lease communities have chosen to move into these communities for lifestyle and affordability reasons, saddling these customers with such costs of transitioning to, and complying with, an overburdensome regulatory framework would not be effective regulation.

Given community operators are currently restricted from recovering any costs through electricity supply charges, and can only charge for energy usage what they have been charged by their provider, customers would likely face higher site fees as a result of the AEMC's proposals.

We note the Energy & Water Ombudsman NSW and the Public Interest Advocacy Centre were also mindful of cost issues for residential land lease communities.¹²

Consultation Questions

26. If there are changes to the framework that applies to new retailers or exempt sellers, what changes should be made to existing retailers or exempt sellers?

27. What are other possible solutions to ensure the authorisation and exemption frameworks remain effective within the context of new energy services?

28. How can we ensure the authorisation and exemption frameworks achieve effective regulation and balance the need for innovation and an appropriate level of protections for energy consumers?

a. How can we effectively regulate new business models?

29. If changes are made to the authorisation and exemption frameworks, what (if any) changes should be made to apply to existing retailers and exempt sellers/embedded networks? Should there be a trigger for changes to existing authorisations and exemptions and, if so, what should they be?

¹² Energy and Water Ombudsman NSW submission, 'AEMC reference EMO0036 – Updating the regulatory frameworks for embedded networks', 14 March 2019, and Public Interest Advocacy Centre, 'Submission to AEMC Draft Report Updating the Regulatory Framework for Embedded Networks', 27 March 2019, retrieved from <https://www.aemc.gov.au/market-reviews-advice/updating-regulatory-frameworks-embedded-networks>

We refer to our earlier submissions and reiterate that all existing holiday parks and residential land lease communities should remain eligible for retail and network exemptions.

Where changes are proposed for existing embedded networks, we request the AER work with other regulators and government agencies to explore how the exemption framework can remain fit for purpose for these businesses with other improvements made at the federal and state level to allow DER to be better integrated in a way that benefits all parties.

Compliance costs relating to regulation of embedded networks, particularly in NSW residential land lease communities, have been escalating over the last 10 years and they will continue to do so if further reforms do not take proper account of the circumstances of these businesses.

Some infrastructure in NSW holiday parks and residential land lease communities is fairly new, but much of it is older and has been extended or added-to over time. Wiring and meters would have been compliant at the time of installation, but may not be fully compliant with current standards. Meters used in the past for sub-metering were not required to meet the more stringent testing standards of other energy meters. Amperage to individual sites is also limited in many cases.

Members of our Association have said that given the opportunity they would opt to transfer their embedded networks and connect all sites to the local electricity grid. However, this would require cooperation from DNSPs which, based on our enquiries, is unlikely to happen. Significant funding would also be required.

Given their situation, it is important to minimise the regulatory burden as much as possible now and in the energy transition because the viable operation of a residential land lease community is fundamental to the livelihood of its residents. Like any business, residential land lease communities need to cover their costs and any additional costs they will face as a result of this review will eventually flow through to their customers, which include low-income residents, seniors and retirees.

We therefore call on the AER to carefully consider the nuances of embedded networks in holiday parks and residential land lease communities and impacts as the review progresses.

Consultation Questions

30. Are the existing protections under the NECF adequate to protect consumers from the potential risks posed by the transformation of the energy market and emergence of new energy products and services?

31. Should energy products and services not currently captured by the NECF be regulated and how?

32. Do we need new specific protections added to the NECF to protect against emerging harms, including harms that may be particular to emerging business models?

Please refer to our earlier submissions in response to consultation questions 3, 4 and 16.

Consultation Questions

33. Are there potential reforms to the ACL that we should consider as part of our review?

34. Are there merits in implementing principles-based or outcomes-based regulation to support the energy sector's transition? What are the potential risks in taking this kind of approach to regulation?

35. Is there a role that additional industry codes could play in supporting consumers through the energy transition?

36. Are there other approaches that should be considered?

For embedded networks, there may be scope for reforms to the ACL that provide a clear set of rights and obligations for customers, operators and suppliers of DER that are not already accounted for, although there is a raft of business obligations and consumer protections already available under the *Competition and Consumer Act 2010* and ACL.

These include obligations regarding advertising, direct marketing, unconscionable conduct, misleading and deceptive conduct, false representations, collusion, anti-competitive agreements, consumer guarantees for goods and services, pricing, unfair contract terms, warranties, product safety and recalls.

The ACL is also a national law and can provide robust oversight of new energy products and services with the regulators being the ACCC and the state and territory consumer protection agencies.

Principles-based regulation like the ACL for new energy services and products would be preferable to prescriptive regulation, allowing more flexibility in responding to emerging technologies and business models as the take up of DER progresses.

There may also be a role for industry codes, which can be great for providing minimum standards for industry, promoting best practice and consumer confidence. While they are often voluntary, they can also be prescribed under the *Competition and Consumer Act 2010* and regulated by the ACCC. We note the AER's position on industry codes set out on page 52 of the Issues Paper, however we believe the option still warrants further consideration.

We agree that outcomes-based regulation like the Australian Securities and Investments Commission's product design and distribution obligations and product intervention power could create a barrier for new entrants, innovators and smaller energy providers.

Such regulatory obligations may be appropriate for the financial services sector, but not the current landscape of new energy products and services, particularly if the goal of the review is to strike *'the right balance between consumer protections and encouraging innovation in the market.'*¹³

In short, changes to the ACL, the introduction of industry codes and/or principles-based regulation, all warrant further consideration. Referring to our submissions in response to

¹³ AER, 2022, *Op. cit.*, p 4.

consultation question 13, a review of obstructive state-based legislation should also be considered.

CONCLUSION

Thank you for considering our responses to the Issues Paper. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, CCIA NSW is an important stakeholder in relation to the retailer authorisation and exemption review.

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

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

Yours sincerely

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Lyndel Gray /
Chief Executive Officer