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CEO  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

14 July 2017

Lodged online

Dear Ms Groves,

**RE: Exempt customer dispute resolution issues paper**

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of proposed advice on the necessary market mechanisms and policy for essential services including electricity. SACOSS would like to thank the Australian Energy Regulator (AER) for their issues paper on access to dispute resolution services for exempt customers and their broader consultation with SACOSS on these important issues.

SACOSS has enclosed with this letter a submission that addresses the key questions posed by the AER in its issues paper. In brief this submission outlines SACOSS' support for the principle that all consumers should, as far as is practical, have the same level of customer protection regardless of who supplies the electricity, including access to a free, independent and impartial dispute settlement mechanism such as an energy ombudsman scheme. SACOSS expresses broad in principle support for the AER's approach to considering exempt customer access to ombudsman schemes, noting that the AER must continue to have regard to the potential costs and benefits of implementation for different types of embedded networks and customers, such as small embedded networks and vulnerable customers.

In considering expanding access to ombudsman type schemes to embedded network customers, SACOSS would like to highlight that this element alone will not be a silver bullet that will solve all issues for all small embedded network customers. As a first step, the schemes themselves must be tailored to meet the particular needs of small embedded networks and their customers, including fee and membership structures that reduce the regulatory burden and costs associated with joining, as well as a process that is focused on

conciliation rather than confrontation. However, even with these modifications, barriers are still likely to exist that may prevent many small embedded network customers from reaping in practice the full benefits that expanded access to ombudsman type schemes promises on paper. In this context SACOSS recommends that expanded access to ombudsman type schemes be complimented and supplemented by:

- strengthened compliance monitoring and enforcement by the AER of exempt NSPs/sellers, and
- improved information provision to exempt NSPs/sellers and their customers.

Together these reforms have the potential to significantly improve the lived experience for vulnerable customers of small embedded networks.

Further, the submission outlines findings from SACOSS' 2015 study into the experiences of residents of long stay caravan and residential parks that are relevant to the questions posed by the AER in its issues paper regarding the scale and nature of issues experienced by embedded network customers, and the efficacy of existing dispute resolution processes.

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

Yours sincerely,



Ross Womersley  
Chief Executive Officer

## SACOSS submission in response to AER issue paper

1. What should be our approach to considering exempt customer access to ombudsman schemes?
  - Do you agree with our approach to external dispute resolution? What are the barriers to pursuing this approach and how might these be overcome?
  - Noting the different approaches to dispute resolution in the Retail and Network Guidelines, what considerations should we be aware of if we align the two Guidelines?
  - Are there any issues specific to small scale operators to which we should have regard?
  - Are there any other considerations we should balance when forming a position on this issue?

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

Through its research and consultation with embedded network customers and consumer advocates, SACOSS has observed that the status quo is falling short of this principle. Currently most customers of embedded networks are denied access to free and independent external dispute resolution through ombudsman schemes. Instead, customers must either try to resolve their dispute directly with their Network Service Provider or Exempt Seller (who may or may not be the same entity) or take their dispute to an external state based tenancy or civil and administrative body. SACOSS' 2015 study (See SACOSS Report at Attachment A) into the experiences of embedded network customers residing in long stay caravan and residential parks found that internal dispute resolution processes were often confusing, inadequate or non-existent, and that the external processes available were too complex, costly or risky to pursue. Some customers were even unaware that these options were available to them. As such, customer complaints and disputes often went unresolved.

Given the inequity and inadequacy of the current dispute resolution processes available to embedded network customers, SACOSS supports in principle the AER's approach as expressed in its Issue Paper:

- a customer should not be denied access to an ombudsman scheme merely because they are supplied by an exempt seller rather than an authorised retailer, and
- an exempt customer should not have to navigate different approaches to dispute resolution depending on whether their dispute falls within the exempt seller or exempt Network Service Provider's (NSPs) remit.

In providing in principle support to the AER's approach, SACOSS also notes that recent submissions<sup>1</sup> to the AEMC's Review of Regulatory Arrangements for Embedded Networks (the AEMC Review) also revealed broad support among an array of different stakeholders for expanding access to ombudsman type schemes for embedded network customers. However, notwithstanding this widespread support, SACOSS acknowledges that the AER must continue to have regard to, and carefully balance the potential costs and

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<sup>1</sup> All stakeholder submissions can be viewed on the AEMC's webpage for its review of regulatory arrangements for embedded networks, <http://aemc.gov.au/Markets-Reviews-Advice/Review-of-regulatory-arrangements-for-embedded-net#> A summary of these submissions can also be found in SACOSS report 'Regulatory Arrangements for Embedded Networks: Snapshot of stakeholder positions', <https://www.sacoss.org.au/regulatory-arrangements-embedded-networks-snapshot-stakeholder-positions>

benefits of, implementation for different types of embedded networks and customers, such as small embedded networks and vulnerable customers.

As stated in our joint submission to the AEMC Review (See at Attachment B), SACOSS and its signatories believe strongly that where an embedded network has a customer base equivalent to a small retailer, it should be subject to the same obligations and consumer protection conditions as an authorised retailer, such as customer access to ombudsman schemes. An embedded network of this scale should have the capacity and resources to provide equivalent protections to their customers. It is when considering small embedded networks, like those that SACOSS examined in its 2015 study, that the picture becomes more complex. On the one hand small embedded networks are likely to have far more limited resources, knowledge and capacity to provide equivalent protections to their customers, yet on the other hand their customers include some of the most vulnerable electricity consumers in our community and for whom the need for consumer protection is greatest.

SACOSS suggests that this conundrum be tackled by a three pronged approach that includes, but is not limited to, developing an effective, low cost, low burden energy specific dispute settlement and complaint handling procedure for customers of small embedded networks. While this is an important element in ensuring all energy customers are receiving satisfactory and equal protection, external dispute resolution processes are not a silver bullet that will solve all problems for all small embedded network customers.

SACOSS has identified three barriers to small embedded network customers reaping in full the benefits of access to external dispute resolution. The barriers are:

- **Increased bills:** There is a risk that requiring all embedded networks to provide their customers with access to external dispute resolution may result in a “robbing peter to pay paul” scenario for low income and vulnerable customers. That is, while customers may benefit from the opportunity to pursue complaints and disputes more effectively, at the same time they may end up paying higher bills if the costs of this access are passed on to them by their exempt NSP/seller. For customers who may be struggling to pay their bills as is, the costs of this increased protection may outweigh the benefits, particularly if they are unlikely to have cause for complaint. However, SACOSS notes that it is a tricky balancing act given that for those customers that are experiencing significant issues (and there are many as we found in our 2015 study) the higher costs may be worth the opportunity to resolve their issues.
- **Fear of repercussions:** The power imbalance between the exempt NSP/seller and customers in small embedded networks may result in customers choosing not to pursue their disputes through an external process, even where it is made available to them at no cost. The SACOSS 2015 study found widespread fear among residents of long-stay caravan and residential parks that if they raise energy related issues with park management (who is usually also their exempt NSP, exempt seller and landlord) and pursue these complaints for “too long” that they risk being labelled “trouble makers” and may experience repercussions that impact their ongoing tenancy or their ability to live in peace. Given that residents of these types of embedded networks are often low income, asset poor and vulnerable, SACOSS found that they were extremely reluctant to take any action that may incur these risks. In fact the fear was so strong, that SACOSS had to meet with residents in secret locations and be very careful about not identifying in any way the parks referred to in our report. While there may be an opportunity to mitigate this risk through some form of anonymous complaint reporting

process, the small size of many embedded networks may make ensuing anonymity difficult, not to mention limit the ability to resolve some types of disputes that require more transparency.

- **Lack of compliance:** Exempt NSPs/sellers may not comply with requirements to provide information to customers about their rights to access the available external dispute resolution mechanism, and thus customers may be unaware that this option is even available to them. The SACOSS 2015 study found that customers reported that they were not provided with information about the complaints and dispute resolution processes available to them (as well as other aspects of their energy supply arrangements), and in some cases when they asked for more information they were effectively “brushed off”. As SACOSS did not speak with park managers in this study, it is unclear whether this lack of compliance is intentional or whether lack of awareness/understanding is more of a factor. However, putting aside the question around intention (this is addressed in more detail in SACOSS submission to the AER Review at Attachment B), a light touch regulatory approach means that there is currently little prompting or incentive for exempt NSPs/sellers to comply with their exemption conditions.

As a first step in addressing these barriers, SACOSS recommends consideration be given to tailoring any external dispute resolution process to meet the needs of small embedded networks and their customers. SACOSS notes work is already underway among ombudsman schemes looking into how the membership and fee structures of ombudsman schemes could be amended to reduce the regulatory costs and burden on smaller embedded networks if they were to be required to join by the AER. SACOSS believes this is very important work and if successful should go a long way towards reducing the cost barrier for small embedded networks and their customers. SACOSS also believes it’s important that the dispute resolution process itself is tailored to meet the needs of customers of small embedded networks, of whom many are vulnerable and may require extra assistance. This should include a greater focus on conciliation and other less confrontational/adversarial approaches that have the potential to reduce the fear and difficulty of customers taking their complaints and disputes to an external body.

However SACOSS wishes to highlight strongly that even if some of these barriers are reduced by the development of a model that can provide small embedded network customers with access to a external dispute resolution process that is tailored to meet their needs, these barriers are still unlikely to be completely eliminated. As such, SACOSS believes that two other regulatory elements are required to compliment and supplement access to an ombudsman type scheme for small embedded networks. They are:

- **Strengthen compliance monitoring and enforcement:** Ultimately while it would be preferable for exempt NSPs/sellers and consumers to resolve their disputes through low cost external dispute resolution, or for exempt NSPs/sellers to be incentivised to provide a high quality energy service through competition, these elements are unlikely alone to provide a comprehensive solution for some customers of small embedded networks (See above and the SACOSS joint submission to the AEMC Review at Attachment B). Given the high vulnerability of many of these customers, it is vital that this gap is not left unplugged. SACOSS recommends that the AER be provided with the authority and resources to develop and implement over time a cost efficient monitoring, reporting and enforcement regime to encourage compliance with the conditions of exemption, and ensure that vulnerable customers are not falling through the regulatory cracks.
- **Improved information provision to small embedded networks and their customers:** Noting that lack of compliance among small embedded networks may often be due to a lack of awareness or

capacity, rather than malicious intent, SACOSS recommends that the AER investigate ways in which it can improve its communication with both new and established exempt NSPs/sellers and their consumers so that all parties are clear about the AER's conditions of exemption, particularly if new external dispute resolution requirements are put in place. If all parties have greater clarity about their rights and responsibilities, then the intensity of the monitoring and enforcement regime may also be able to be lessened, although SACOSS reiterates that due to the strong power imbalances in play, and the vulnerability of small embedded network customers, it is likely to always be required to some extent.

While SACOSS acknowledges that this AER review process relates primarily to access to dispute resolution services for exempt customers, it is very important that any reform in this area is not considered in isolation and that the AER and other regulatory bodies have regard to potential complimentary reforms within the broader regulatory framework, such as those recommended by SACOSS above.

2. What is the scale of the problem?

- How many energy disputes do exempt entities encounter per year?
- What measures can assist in quantifying the scale of energy disputes concerning exempt customers?
- What weight should we place on being able to quantify the scale of the issue?

SACOSS concurs with the AER that it is difficult to get an accurate picture of the number of potential disputes among embedded network customers based on reported number of complaints and disputes, given the avenues for official complaint are confusing, complex, costly and risky (as outlined above). SACOSS believes it is likely that the regulatory authorities and Ombudsmen are currently aware of only the most egregious of non-compliance activity.

While the SACOSS 2015 study was a qualitative study (See Report at Attachment A) and as such numbers cannot be quantified based upon it, it did provide a strong indication of the types of complaints and disputes that exist. Given that complaints were only readily expressed once privacy was guaranteed, it also provides a sense that what is officially reported is likely to only be the tip of the iceberg.

The current lack of ability to quantify the number of complaints and disputes that exist among embedded network customers provides a strong rationale for embedded network customers being given access to ombudsman type schemes, which are well placed to quantify numbers and identify any systemic issues that may need to be addressed by regulators and/or government.

However as outlined above, the power balances and compliances issues in play mean that even an ombudsman type scheme may not identify all issues. As such, SACOSS reiterates the importance of the AER developing a monitoring and reporting framework that can provide transparency and consistency in future assessments of the number and nature of issues experienced by consumers. Without this ability, the AER is effectively flying blind and must rely on anecdotal and other indicative, but perhaps not quantifiable, research from stakeholders and other relevant parties to guide their decision making and regulatory effort. These status quo arrangements are less than ideal in comprehensively protecting the interest of consumers, particularly the most vulnerable.

3. What is the nature of energy disputes experienced by exempt customers?

- Do you agree with our characterisation of energy disputes experienced by exempt customers? Is bundling of complaints with other issues common?
- Is it possible to isolate and resolve energy-specific disputes where there are a number of issues raised by exempt customers?

The SACOSS 2015 study (See SACOSS Report at Attachment A) identified a range of issues experienced by embedded network customers within long stay caravan and residential parks. The most concerning issues from the perspective of the customers were:

- inadequate information on prices and charges and the reasons for changes to these prices and charges;
- high fixed charges for supply that appear to exceed the fixed charges in the standard offer of the local retailer;
- a view that while the park owner/manager had lower prices and/or lower energy costs (due to for instance, installation of PV on office buildings) these were not passed on to the consumers;
- the park owner/manager restricting and/or changing the payment options available to customers, e.g. mandating direct debit payment arrangements;
- the inability of the exempt consumers to negotiate on “equal terms” with the park owner/manager;
- the lack of access to cost-effective independent energy dispute settlement mechanisms;
- the poor state of the network infrastructure, particularly the accuracy of the customers’ meters, the connection from the meters to the customers’ premises and the lack of capacity on the connection; and,
- the lack of effective contact points over weekends and public holidays if there are issues with electricity supply.

Notably, the customers in the SACOSS study were less concerned about access to retail competition. A table containing a full outline of the types of issues SACOSS identified mapped against the network and retail exemption conditions for respective classes R4/NR4 is at Attachment C.

It was also clear from our 2015 study that the relationship between an exempt customer and their exempt NSP/seller is more complicated than the relationship between a standard customer and their authorised retailer. In long stay caravan and residential parks, the customer’s exempt NSP and exempt seller is usually one and the same in addition to being their landlord, facilities manager and any other hat that is required to operate the park. This multiple hats scenario is also present in other types of embedded networks such as apartments where a customer’s landlord may also be their exempt NSP and exempt seller through representation on their body corporate. In retirement villages and aged care facilities a care management role may also be added to the mix. As identified by the AER, in these circumstances the information provided to customers about their energy arrangements is usually subsumed within a larger body of information about their tenancy or occupancy of their home or business. Further as was observed in our 2015 study, when it comes to billing, energy charges are often also rolled into one tenancy bill, with little information provided to distinguish energy costs from other general tenancy costs. As such in practice, many customers have little awareness of their energy arrangements, particularly the nature of their costs as well as their rights and consumer protections. In turn this makes it challenging for them to know who to turn to in order to resolve billing disputes, beyond their embedded network operator.

One particular issue associated with bill bundling that our 2015 study found was that customers had very little awareness that their exempt seller had a number of obligations under the energy regulation with respect to offering more flexible payment terms for electricity supply and the restrictions on how and when disconnections can occur if they were experiencing financial difficulty paying their bills. While this sample of exempt consumers did not report payment difficulties for themselves, they did note that if a person did not pay their bills over a period of time, then they would be evicted from the park. Thus, there is a very strong incentive to pay the total invoice (including rent and electricity charges) to avoid this outcome. While this billing arrangement means in practice energy debt and disconnection are not big issues for embedded network customers as they tend to always pay their bill to avoid eviction, it does beg the question for vulnerable and low income consumers, what else is being cut to enable them to always pay the bundled tenancy bill on time? It may be that vulnerable embedded network customers are more likely to reduce spending on food or other essential items to cope, which would only compound their vulnerability and hardship and represent another inequity between them and standard energy customers.

In our 2015 study, SACOSS found a lot of suspicion among residents that park managers were not doing the right thing by them in terms of billing, but the lack of clear information provided to them about the energy component of their bills made it difficult to prove it either way. Embedded network bills are supposed to include a range of information including the current and previous meter reading or estimate, billing period, the amount of energy consumed in kWh (k) tariffs, fees & charges, the basis on which charges calculated and any amount deducted under a rebate (etc.) scheme. The SACOSS 2015 study indicated widespread non-compliance with these billing information requirements. Residents simply did not know whether their bills were accurate, but because of the power imbalances in play and risks to their tenancy, they simply had to pay the bills where fair or not. Access to an ombudsman scheme may not be the most appropriate body to resolve all billing disputes and other disputes where the jurisdictional boundaries are blurred, but it could, along with stronger regulatory oversight and information provision, improve the status quo for customers by at a minimum ensuring that exempt NSPs/sellers are complying with their information and other energy requirements. This in turn could at least ensure that customers had clearer information to determine if they had a firm basis on which to make a complaint, and who to take that complaint too.

4. Can existing external dispute resolution mechanisms, other than ombudsman schemes, effectively deal with energy disputes?
- What other external dispute resolution mechanisms exist to resolve energy disputes? Do they effectively deal with energy disputes?
  - How many energy disputes encountered by exempt entities are escalated beyond internal dispute resolution processes?

Under current arrangements embedded network customers can seek resolution of disputes through various state based tenancy and civil and administrative bodies, depending on the nature of their dispute and their relationship with their exempt NSP/seller. However, as pointed out by the AER in its Issues Paper the number of energy disputes taken to these bodies is currently low. SACOSS believes that this low number is unlikely to reflect the number of disputes out there; rather it more likely reflects the complex, costly and risky nature of taking disputes to these bodies.



As indicated above, SACOSS' 2015 study (See SACOSS Report at Attachment A) found that customers in embedded networks in long stay caravan and residential parks generally do not take their complaints any further than park management, despite many instances where the management's response has been unsatisfactory and the disputes remains unresolved. For some customers, they were not aware they could take it further, while for others they were reluctant because of the legalistic and costly nature of the process or because they feared repercussions from park management that may impact their ongoing tenancy.

It is clear that the current external dispute resolution processes are both underutilised and not fit for purpose for customers of small embedded networks, particularly vulnerable customers such as those with low income, lower literacy and limited alternative living arrangement options should conflict escalate. Access to a free, independent, user friendly dispute settlement mechanism such as an energy ombudsman scheme would be an improvement on the current situation.

# The Retail and Network Exemption Framework: Emerging Issues for Consumers

Report on the growing concern  
with consumer protection  
arrangements for exempt  
consumers

December 2015



**SACOSS**

*South Australian Council  
of Social Service*



**The Retail and Network Exemption Framework: Emerging Issues for Consumers**

Report on the growing concern with consumer protection arrangements for exempt consumers. December 2015

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# Executive Summary and Recommendations

## Overview

This report focusses on the retail and network exemption framework. On-sellers and embedded network operators (who are usually one and the same person) are granted an exemption by the Australian Energy Regulator (AER) from obtaining a retailer authorisation, and (separately) an exemption from registration with the Australian Energy Market Operator (AEMO) as a distribution business. Thus, there are three key participants in the exemption process:<sup>1</sup>

- the exempt consumer;
- the exempt seller; and,
- the exempt network service operator.

The origin of allowing exemption from authorisation as a retailer and/or a registered distribution business was to provide a more cost effective and flexible regulatory process for small-scale energy suppliers, particularly where the supply of energy was incidental to their primary business.

The main purpose of this SACOSS study is to develop a preliminary view on the efficacy of the customer protection mechanisms for one of the more vulnerable segments of exempt customers, the occupants of permanent caravan and residential parks. However, the findings of the study will have broader implications for other exempt small consumers such as consumers located in retirement villages, strata title apartments and small business consumers in shopping centres.

## Principles

SACOSS notes and generally endorses the principles that underpin the national exemption regime as set out in the National Energy Retail Law (NERL). The policy principles include:

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

However, we have a somewhat different perspective in assessing the current exemption regime. For example, SACOSS considers that the starting point for any

discussion on consumer protection is the fundamental principle that all consumers in our society have a right to **access a safe, reliable and affordable electricity supply**.

To wit, SACOSS also considers that all consumers should, as far as practical, have the same level of customer protection regardless of who supplies the electricity. However, given the characteristics of small consumers such as the ones included in this study, SACOSS places less importance on access to retail competition and more on the structure of the regulatory framework. Therefore we would add to the principles in the NERL as follows:

- all consumers should have access to a free, independent and impartial dispute settlement mechanism;
- the relevant regulators have an ongoing responsibility to monitor, report and enforce compliance with the regulatory requirements of registration with the AER (if applicable) and the conditions of exemption; and,
- the safety and security of supply to consumers in an embedded network must be a paramount feature of the AER's approval of exemption for an embedded network and should be clearly stated by the AER in its Network Exemption Guideline, including standards for metering and connection from the meter to the customers' premises.

## Regulation

The AER has recognised that small exempt consumers require a greater standard of oversight than larger exempt customers. For this reason exemptions relating to all retirement villages and all permanent caravan and residential parks selling metered energy are categorised as registrable ("R3" and "R4" respectively) in the AER's Exempt Selling Guideline and in the AER's Network Exemption Guideline ("NR3" and "NR4" respectively). These customers are provided with the full suite of customer protections set out in the AER's two Guidelines. Similarly, all residential sites with ten or more customers ("R2" and "NR2") are provided with the full suite of customer protections in the Guidelines.<sup>2</sup>

SACOSS acknowledges that the AER has undertaken considerable improvements to the Exempt Selling Guideline and the Exempt Network Guideline over the last few years. These improvements have clarified the obligations on the exempt seller and network operator in terms of registration requirements, information provision, and customer protection arrangements.

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<sup>1</sup> There are various names used for these categories. For convenience, this report will use the nominated terms.

<sup>2</sup> Residential sites with less than 10 customers are categorised as 'deemed', but should in principle be provided with the same protections.

SACOSS further notes that the AER has clearly indicated that the exempt customers in caravan and residential parks are entitled to a broad range of consumer protections that go some way to replicating the protections available to the customers of authorised retailers.

In theory, therefore, the exempt consumers in the SACOSS study should have access to a range of consumer protections including network supply security and rights to access a competitive market offer from an authorised retailer (except for the ACT, Queensland and Tasmania where jurisdictional law trumps the National Energy Customer Framework [NECF] and the policy intent therein).

However, this does not mean that in practice exempt suppliers comply with the range of exemption conditions set out in the Guidelines. Nor does it mean that these exemption conditions are adequate or the protections and service standards for exempt small customers are as substantive as the standards that apply to customers of authorised retailers.

To fully understand the adequacy of the existing customer protection framework in its totality, the study would need to have taken account of all the complex web of national and state regulations governing this sector. This is well beyond the scope of our current study and SACOSS notes the limits to the extent to which we can capture the overall consumer protections available to this sector.

Despite these limitations, we can have some confidence in the study findings and the generality of the recommendations given that the issues identified in this study and previous studies of the exemption regime in various jurisdictions are quite similar. Indeed, it is notable that many of the issues have not changed over the last five years despite the introduction of national retail regulation in the NECF and despite the efforts of regulators such as the AER to introduce greater consistency in the exemption definitions and processes.

## Findings

The overall impression arising from this research is that the exempt consumers in caravan and residential parks feel both frustrated and disempowered. These exempt customers may not be aware of the full suite of protections available to them under the AER's conditions of exemptions for R4 and NR4 category consumers. However, they make strong claims that they do not get adequate information from the park operator, that their concerns are not being addressed and, more generally, they are not being offered a "fair deal" in terms of their electricity supply.

Moreover, the exempt customers in the study do not know where, and to whom, they can safely turn in order to resolve their complaints in an effective and impartial manner. While some recognised they could approach the Tenants' Tribunal in their state (or equivalent state body), they were also very concerned about possible repercussions. It was not only their energy supply at stake, but also their accommodation security and risk of other repercussions.

The exempt customers in our study, however, did not look to retail competition as a way of improving the services and energy prices provided by their exempt seller. Instead, the exempt customers in our study looked to the various regulatory authorities to provide this pressure on the suppliers.

It is important to highlight that these are preliminary observations and are based on the views of consumers rather than the exempt sellers or operators. Nevertheless, in summary, on the basis of this preliminary study, SACOSS is concerned that relative to the general retail market:

- consumers' comments to SACOSS suggest there may be some degree of non-compliance by the exempt sellers and exempt network operators with the AER's conditions of exemption;
- the AER has very little visibility of the actual compliance of the exempt sellers and network service operators with the conditions of their exemption;
- there was limited awareness by the exempt customers of the customer protection framework under the NECF and the National Electricity Law; and,
- the gaps in the consumer protection framework for exempt customers include areas that are of significant importance to the exempt consumers such as billing, complaint handling and metering accuracy.

This outcome is hardly surprising given the regulatory issues discussed above. However, it is a deeply unsatisfactory outcome that belies the fundamental principle of equal access to customer protection and a safe and reliable electricity supply for all electricity users.

## Conclusions

While we are cautious about overgeneralising the findings of this preliminary study, there is strong evidence of two broad areas in the exemption framework that need to be addressed by the AER and other regulatory and government bodies. They are:

- There appears to be a gap between the AER's requirements for registration and the conditions of exemption and the actual practice of exempt sellers and network operators (as reported by exempt consumers). The reasons for this cannot be discerned from the current study but may reflect the complexity



of the overall governance of the sector, a lack of relevant information by all stakeholders or the absence of an effective monitoring, reporting and enforcement regime by the AER.

- The level of consumer protections is lower for exempt customers despite the higher levels on average of social and economic vulnerability in this sector. The gaps in the level of consumer protection between the exempt customers and the customers of authorised areas include areas that are clearly important to exempt consumers and this should be considered in the 'cost benefit analysis' of the optimal level of regulation.

We draw these conclusions while conscious of the fact that small exempt consumers represent a very diverse and divergent sector of the market and one that is subject to an overlay of jurisdictional energy and tenancy regulations.

Nevertheless, we are dealing with a particularly vulnerable sector of the community and SACOSS considers this warrants additional regulatory commitment to the principles of equity for all electricity users whether serviced by authorised retailer and distributors or by exempt sellers and embedded network operators.

Without an independent complaints handling mechanism and an effective monitoring, reporting and enforcement regime for the exempt customer sector, reforms to the consumer protection conditions in the AER's Guidelines may not lead to much improvement in the lived experience of exempt customers. Nor will it adequately align outcomes with the policy objectives set out in the NERL.



## RECOMMENDATIONS

The following provides a consolidated list of recommendations contained in this report.

### Chapter 1: Consumer Protection in the National Electricity Market

#### 1.1

The COAG Energy Council, the AER and the regulatory bodies in each state renew efforts to introduce greater consistency and clarity in the regulation of exempt sellers and embedded network operators. A simpler, fairer and less costly process will better serve the interests of exempt suppliers and, more particularly, provide a more cohesive consumer protection framework for small customers<sup>3</sup> of on-sellers and embedded network operators.

### Chapter 2: Major Issues for Residents in Caravan and Residential Parks

#### 2.1

The AER's conditions of exemption should clarify the conditions associated with pricing and, in particular, the constraints on the fixed supply charge. There seems to be some ambiguity over whether a fixed charge is constrained by the pricing rule and what is included in the fixed charge.

#### 2.2

The AER and the AEMC investigate if there are viable options to enforce some sharing of savings obtained by the exempt seller through lower market offer prices, and government supported efficiency schemes or solar PV generation.

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<sup>3</sup> Small consumers are defined as consumers using less than 100 MWh per annum (ACT, Queensland and Victoria) and 160 MWh per annum in South Australia.

### 2.3

The AER and jurisdictional governments or regulators further investigate options for a low cost independent dispute settlement mechanism that includes a range of services to exempt customers such as conciliation, investigation and legal capacity to give directions.

### 2.4

The AER investigate ways in which it can improve its communication with both the exempt suppliers and the exempt consumers so that both parties are clear about the AER's conditions of exemptions. The AER's communication must address both new and established on-sellers and embedded network operators, as exemption arrangements in the past were generally less prescriptive in their registration and consumer protection conditions.

### 2.5

The AER should collect additional data on typical fixed fees charged to small customers in embedded networks to assess what component of these fixed charges reflects energy supply fixed costs, what component reflects fixed costs of access to the embedded networks and if these fees are consistent with the NERR and the policy intent.

### 2.6

The AER is reviewing the conditions in its Exempt Selling Guideline relating to payment options. The feedback from customers in this study suggests that current practices are unacceptable and the Guideline needs to be more prescriptive about payment options, particularly access to Centrepay for customers in hardship.

### 2.7

In assessing the costs and benefits of consumer protection regulation for exempt consumers, the AER take more account of the relative vulnerability of many of these customers, particularly when retail competition is not generally a practical option.

### 2.8

The AER develop and implement over time a cost efficient monitoring, reporting and enforcement regime to support its statutory powers and to encourage compliance with the conditions of exemption. The AER should be provided with the resources to undertake regular 'sample' investigations of compliance with the registration process and the associated conditions of exemption.

### 2.9

The AER develop a more comprehensive and accessible data base of exemptions by category and class; the data base can be used to cross-check if all relevant on-sellers and embedded network operators have applied for exemption or are listed in the correct exemption category.

## Chapter 3: Other Policy Issues

### 3.1

The AER work with the relevant jurisdictional bodies to develop an effective, low cost, energy specific dispute settlement and complaint handling procedure for exempt small customers.

### 3.2

The conditions of exemption for exempt sellers to small customers should include a requirement that customers are advised in advance (i.e. at the time of signing a tenancy agreement) of the basis for any changes in prices and charges and the likely timing of such changes.

### 3.3

The AER develop a comprehensive atlas of the current national and jurisdictional regulatory instruments that govern the safety and reliability of the embedded network infrastructure, including requirements for small customer metering in exempt networks that was installed pre 1 January 2013.

### 3.4

The AER, together with jurisdictional regulators and technical/safety regulators (as the case may be) review these standards to establish a consistent set of minimum standards for embedded network operators and their customers.

These standards for existing and new infrastructure should be clearly set out in the AER's Network Exemption Guideline and some monitoring and enforcement procedures established.

### 3.5

The AER consider the inclusion of more specific conditions with respect to maintenance and testing of customer meters, and meter reading data recording exempt customers.

# Introduction

The background of the slide is a solid dark red color. Overlaid on this are several semi-transparent, lighter red and pink geometric shapes. These include a large circle in the upper left, a smaller circle below it, a large curved shape resembling a stylized 'C' or a partial circle, and a smaller curved shape below that. The shapes are layered, creating a sense of depth and movement.

## The purpose of the Study

### The growing concern with consumer protection arrangements for exempt consumers

Over the past decade, general consumer protection mechanisms for electricity and gas consumers have matured. However, there has been a growing concern with the situation facing customers of electricity on-sellers and embedded network operators and whether the governance of this sector has adequately adapted to the changing market conditions.

This change includes both rapid growths in the on-selling and embedded network market as a whole and significant expansion of the number and type of new energy products such as power purchase agreements (PPA) between a seller and a customer. As stated by the Energy & Water Ombudsman NSW (EWON):<sup>4</sup>

*Exempt Selling is a rapidly evolving in many new developments; it is becoming the norm rather than the exception and is therefore capturing increasing numbers of energy users. It is vitally important that regulation keeps pace with the emerging market and, given the time which it takes to achieve regulatory change, endeavours to foresee potential consumer detriment. A proactive rather than reactive regulatory approach needs to be taken to address the emergence of potential negative impacts of disruptive change.*

SACOSS strongly supports these comments by EWON.

A number of organisations have responded to the challenge by conducting studies of the adequacy of the regulatory framework and by identifying emerging issues with the regulation of re-selling and embedded network arrangements.

For example, the Consumer Utilities Advocacy Centre (CUAC) published a major report in 2012 that identified growing gaps in the consumer protection regime for customers of energy resellers.<sup>5</sup> In subsequent reports and submissions, CUAC has further reiterated the issues and recommendations identified in its initial 2012 report. CUAC concluded that the most significant issues for consumers subject to exempt selling arrangements are:<sup>6</sup>

- the practical barriers to exercising retailer choice;
- no access to non-price benefits of smart meters;
- no access to the Energy and Water Ombudsman (EWOV in Victoria);
- no requirement for hardship programs; and,
- high fees/charges.

CUAC's research reports have mainly focussed on the Victorian regulatory framework for on-sellers and embedded networks. The Victorian exemption framework is somewhat different to the national exemption framework that applies in all other jurisdictions in the National Energy Market (NEM). Nevertheless, SACOSS considers that the issues identified by CUAC are quite similar to the findings in our study and we conclude that CUAC's recommendations have general relevance to the customers of on-sellers and embedded network operators throughout the NEM.

The AEMC (Australian Energy Market Commission) has also recently completed its review of the National Electricity Rules (NER) with the objective of facilitating greater access to retail market offers for customers in embedded networks.<sup>7</sup> The review was driven at least in part by concerns about the price and quality of services provided to customers in embedded networks. It is expected that, faced with greater competition, exempt sellers will strive to improve their price and service offerings.

### Customer Protection for the Most Vulnerable Customers of On-sellers

The purpose of this current study by SACOSS is to further explore the issues facing consumers in embedded networks. Retail competition is not always a cost effective solution to the issues facing customers in embedded networks and SACOSS believes it is essential that there is continued focus on the specific customer protection framework of these customers.

This report's primary focus is on the effectiveness of the national regulation of on-sellers and embedded networks and the impact this has on the more vulnerable sectors of the on-selling/embedded network market. It is not within the scope of this report to examine in detail jurisdictional regulation of the on-seller/embedded network market. However, we recognise that

<sup>4</sup> Energy & Water Ombudsman NSW, *Submission to the AER re the Draft AER (Retail) Exempt Selling Guideline*, September 2015. <https://www.aer.gov.au/system/files/EWON%20submission%20to%20review%20of%20Retail%20Exempt%20Selling%20Guideline%202015%20-%2018%20November%202015.pdf>

<sup>5</sup> Consumer Utilities Advocacy Centre (2012), *Growing Gaps: Consumer Protections and Energy Resellers, A CUAC Research Report*, December 2012. <http://www.cuac.org.au/research/cuac-research>

<sup>6</sup> Consumer Utilities Advocacy Centre (2015), *CUAC Regulatory Review: A critical review of Key Consumer Protections in Victoria, A CUAC Research Report*, Volume 1, May 2015, p 24.

<sup>7</sup> AEMC 2015, *Embedded Networks, Rule Determination*, 17 December 2015. <http://www.aemc.gov.au/getattachment/3ec818f7-38ae-412e-8d7b-b404ee8d7858/Final-rule-determination.aspx>.

jurisdictional differences are also important in terms of the overall customer protection framework and highlight a number of these areas for further examination.

SACOSS is particularly concerned with the challenges facing electricity consumers in long-stay caravan and residential parks.<sup>8</sup> For these consumers, retail competition is most unlikely to be a practical or cost effective option, nor is it obvious that these consumers are looking to retail competition as a means to address their issues. As a result, there is minimal competitive price and service pressure on the on-seller and embedded network operators.

However, the consumers residing in caravan and residential parks include some of the most vulnerable electricity consumers in our community. In addition, there can be higher reliance on electricity for both heating and cooling given the relatively poor thermal insulation of the typical caravans and other residential dwellings in the parks. The recent period of steep increases in electricity prices across the NEM states further adds to the costs for these households.

As a consequence, these consumers face a greater risk of experiencing financial hardship than the population at large, but they do so too often without the same protections offered to the customers of authorised retailers.

Overall, SACOSS considers that effective and strong consumer protection regulation, rather than the ‘threat’ of competition, must remain the primary mechanism for ensuring a standard of consumer protection that will meet the policy principles of equity in access to an essential service.

This current study is, therefore, designed to provide a preliminary assessment of the effectiveness of the current electricity consumer protection framework for these particular consumers. However, SACOSS considers that the study findings will have more general import for residents of retirement villages and small residential and commercial customers in apartments or shopping centres.

## Fundamental Principles

SACOSS notes and generally endorses the principles that underpin the national exemption regime as set out in the NERL (see Overview).

However, we have a somewhat different perspective in assessing the current exemption regime. For example, SACOSS considers that the starting point for any discussion on consumer protection is the fundamental principle that all consumers in our society have a right to **access a safe, reliable and affordable electricity supply**.

To wit, SACOSS also considers that all consumers should, as far as practical, have the same level of customer protection regardless of who supplies the electricity. However, given the characteristics of small consumers such as the ones included in this study, SACOSS places less importance on access to retail competition and more on the structure of the regulatory framework. Therefore we would add to the principles in the NERL as follows:

- all consumers should have access to a free, independent and impartial dispute settlement mechanism;
- the relevant regulators have an ongoing responsibility to monitor, report and enforce compliance with the regulatory requirements of registration with the AER (if applicable) and the conditions of exemption; and,
- the safety and security of supply to consumers in an embedded network must be a paramount feature of the AER’s approval of exemption for an embedded network and should be clearly stated by the AER in its Network Exemption Guideline, including standards for metering and connection from the meter to the customers’ premises.

In making these recommendations, however, SACOSS recognises that this market has a number of special characteristics that will influence the ultimate decisions on how best to achieve an effective customer protection regime for this segment in line with the exemption principles set out above.

In particular, permanent caravan and residential park arrangements are both diverse and dispersed. For example, parks vary considerably in size, length of stay of the occupants, and access to infrastructure generally. Some parks include a mix of customers in premises with older electricity supply arrangements and customers in new freestanding premises – access to the retail market is very difficult in the first instance and relatively easy in the second.

Designing a cost effective consumer protection regime for such a diverse range of situations is not an easy task! Nor is providing an effective framework for retail competition. In many cases, the costs and benefits of contestability of supply are questionable. Certainly, we did not find any customers in our study that were actively seeking access to market offers.

What these customers did expect, however, was a ‘fair deal’. For example, they expected that the benefits to the exempt seller of lower retail market prices<sup>9</sup> compared to the standard offer price of the local retailers would be shared with the exempt customers in the embedded

<sup>8</sup> For the purposes of this paper a residential park is a defined as a site with multiple permanent dwellings where residents own the home but not the land.

<sup>9</sup> That is, market prices that are lower than the standard offer prices offered by the local area retailer. The standing offer price is the maximum that an exempt seller can charge an exempt consumer.

network. Similarly, they considered that the benefits of on-site solar generation should be shared. In some instances, the threat of competition will provide an incentive to the exempt seller to share price savings.

In other instances, such as caravan and residential parks, the threat of competition is minimal (in practice if not in law). Savings to the exempt seller, which may be significant (some 20%) compared to the standard prices, are not shared with the downstream customers in the embedded network.

As noted above, such diversity and geographic dispersion also makes the process of identifying and surveying customers more difficult and SACOSS is conscious of the need for care in extrapolating the findings of this study too broadly.

Nevertheless, we consider that the study highlights some important issues of practice and principle that should be further considered by the relevant regulators. The findings from the SACOSS study are summarised below.

## Research Methodology

The market sector of electricity consumers that includes customers of on-sellers and embedded network operators is a complex and diverse market. It can include large industrial consumers co-located on a common industrial site, shopping centre complexes with large and small commercial businesses and large residential apartment complexes. On the other hand, the sector can include single person households located in small retirement villages or permanent caravan and residential parks.

Given this complexity and diversity, it was decided to focus this initial study on the permanent residents of caravan and residential parks. As discussed previously, SACOSS considered this sector was a priority because of the overall financial and social vulnerability of many permanent residents in these parks. As we were seeking to examine the question of equity in the consumer protection framework between customers of authorised retailers and customers of on-sellers and embedded network operators, this seemed a good place to start.

Given this background, SACOSS has identified three key questions to be investigated in the report, namely:

1. What is the regulatory exemption process and what conditions are attached to these exemptions?
2. What is the customer experience in terms of the operator's compliance with these conditions?
3. Are the regulatory obligations for on-sellers and embedded network operators adequate for the task of protecting consumers in this vulnerable situation?

## Participants in the Study

Participants in this study were recruited by phone calls and using information from SACOSS' networks and data base. Consent to participate in the research was verbally gained from all participants (see Appendix D: Research Participant Consent Information).

It quickly became apparent that it was going to be quite difficult to obtain a comprehensive cross-section of individuals from this segment of the market who were willing to take part in this study, particularly given the time and resources available for recruitment to this preliminary study.

We understand that other regulators and organisations that have attempted to research various groups within the market of on-sellers and embedded networks have found similar difficulties in recruiting participants.<sup>10</sup> Moreover, those people who did agree to participate generally expressed high levels of concern around the confidentiality of their comments.

As noted above, the consumers in permanent caravan and residential parks feel particularly vulnerable to a charge by park management that they were "causing trouble" by participating in the research. They therefore required assurances from SACOSS that the names of participants, the site location and size of the park and other identifying material would not be revealed in the final study report.

For instance, SACOSS observed that consumers in this sector felt very vulnerable and were most concerned that they would be seen as 'causing trouble' by the operators of the caravan and residential parks. They also thought that this may create difficulties for their ongoing tenancy at the park. The NSW Energy Ombudsman reported a similar finding:<sup>11</sup>

*In EWON's experience, permanent residents of Residential Parks are among the most vulnerable in the community... Customers with genuine concerns about some aspect of their electricity supply are often reluctant to raise these with the park operator for fear of retaliation. Any ill-feeling between the park operator and a resident can have a profound effect on the day-to-day living conditions of the resident and this can act as a deterrent to pursuing genuine*

<sup>10</sup> For example, the Essential Services Commission of South Australia (ESCOSA) commenced a research program in 2009-10. ESCOSA indicated to SACOSS that obtaining an adequate sample for quantitative analysis was extremely difficult. (see also Appendix E herein).

<sup>11</sup> Energy & Water Ombudsman NSW, Letter to the AER dated 30 July 2010, in response to the AER's Issues Paper, *AER approach to retail exemptions*, June 2010, p 2. [http://www.ewon.com.au/ewon/assets/File/Submissions/2010/EWON\\_AER\\_RetailExemptions\\_July2010.pdf](http://www.ewon.com.au/ewon/assets/File/Submissions/2010/EWON_AER_RetailExemptions_July2010.pdf).



*complaints. As a result, when customers approach EWON, they often ask to remain anonymous.*

EWON made these observations to the AER in 2010 and our findings suggest that despite various changes in the regulations, this sense of vulnerability continues and was ultimately a major consideration by SACOSS in the final research design.

The final sample of participants in the study included residents of long-stay caravan and residential parks in South Eastern Australia and North Eastern Australia. These locations provided an opportunity to also consider some of the state specific issues.

## Research Stages

The research was conducted over the period August to November 2015. The methodology for this preliminary study included the following research stages:

- Desk top review of the current regulatory arrangements in the national regulatory framework (NECF) and in the various NEM jurisdictions;
- Face-to-face and phone interviews with representatives of key regulatory bodies and consumer organisations (see Appendix E);
- Detailed face-to-face interviews, telephone interviews and workshops were conducted with electricity users in permanent caravan and residential parks. These interviews were conducted in October 2015 using a semi-structured interview format and explanatory material (see Appendix B);
- Assessment of the issues raised by caravan and residential park users in the context of the conditions of exemption that are set out in the AER's Exempt Selling Guideline and the AER's Network Exemption Guideline; and,
- Assessment of the AER's two Guidelines in the context of the customer protection framework (including safe and reliable supply) set out in the National Electricity Retail Law and Rules (NERL and NERR).

We believe the research approach set out above enabled SACOSS to address the concerns of the study participants with the confidentiality of their responses. However, this has inevitably affected the level of detail that can be provided in some sections of this report and the qualitative nature of the research.

Throughout this report we are also careful to qualify our observations by the fact that the sample of participants who took part in the empirical sections of this report are not necessarily representative of the population of persons residing in caravan and residential parks.

For instance, it would be inappropriate to draw any quantitative conclusions based on this preliminary qualitative research. However, we are reassured that many of the issues identified in this report are consistent with the findings of other researchers and do provide some insight into the day to day challenges faced by this sector with respect to their electricity supply.

## Structure of the Report

Section 1 provides a more detailed description of the regulatory framework for on-sellers and embedded network operators. We considered it important to shed some light onto what is a confusing maze of overlapping consumer protection legislation. While our focus is on the national regulatory framework, we are cognisant of the importance of understanding this broader context.

Section 2 provides more detail analysis of the findings of the research with exempt customers and compares these findings with the AER's conditions of exemption for on-sellers and embedded network operators. In effect, this section identifies issues with the compliance of exempt sellers and network operators with the AER's conditions of exemptions for that class of customers.

Section 3 concludes the report by comparing the customer protection framework as set out in the AER's conditions of exemption and the customer protection available to customers of authorised retailers and network service providers. That is, the section considers whether the AER's conditions of exemption are sufficient to achieve the fundamental policy objective in the NECF that, as far as practicable, exempt customers should have comparable customer protections to those afforded to retail customers.

Appendix A to D includes the interview schedules and other material used in the research. Appendix E summarises the meetings between SACOSS and a number of the regulatory authorities and lead consumer organisations.

It is important to emphasise that this study does not address all the complex technical, regulatory and customer protection issues associated with the exemption processes for both on-selling and embedded network operations. Nor does it attempt to examine the detailed jurisdictional regulations that impact on overall consumer protections. For example, some consumer protections for residents of caravan and residential parks are contained in Tenancy, Fair Trading and similar legislation. We have not examined these issues other than to note its impact on consumers' access to dispute resolution processes.

# 1. Background to Consumer Protection in the National Electricity Market (NEM)



### 1.1 The national consumer protection framework for small consumers

Electricity is an essential service in our community and SACOSS is committed to the principle that households across Australia should have access to a reliable, safe, secure and affordable electricity supply, whatever their financial circumstances. One of the important factors underpinning this outcome is the implementation of an industry specific, robust and transparent consumer protection framework.

A major stage in the development of this consumer protection framework was the progressive introduction from 2013 of the National Energy Customer Framework (NECF) by most states in the National Electricity Market (NEM). The NECF provides the overarching regulatory framework that covers the supply of both electricity and natural gas. The NECF includes the following regulatory instruments:

- National Energy Retail Law (NERL);
- National Energy Retail Rules (NERR); and,
- National Energy Retail Regulations.

*Note: In this report a reference to the NECF includes a reference to the NERL, NERR and related national regulations.*

The NECF builds on the energy consumer protection frameworks developed by each of the NEM jurisdictions in the previous decades. Various parts of these original jurisdictional laws, regulations and codes continue to operate in parallel to the NECF to reflect the specific concerns of consumers in each state.

Victoria has not yet signed up to the NECF. However, the Victorian Government and the Victorian energy regulator, the Victorian Essential Services Commission (ESC), have progressively aligned much of its consumer protection framework in the Victorian Energy Retail Code with the NECF.<sup>12</sup>

The National Electricity Law (NEL) and the National Electricity Rules (NER) also regulate specific aspects of the electricity supply industry. Although all states in the NEM have signed up to the NEL and NER, different jurisdictions retain certain derogations from the NEL and NER and specify certain performance requirements

in their industry codes or regulations (such as state based Distribution Codes). The NER includes economic regulation and regulation of the more technical aspects of the electricity supply chain such as customer connection and metering policies and standards. These too, are relevant to the overall consumer protection framework.

*This report, however, will focus largely on the operation and effectiveness of the national regulatory instruments.*

Figure 1 overleaf illustrates the complex regulatory framework that underpins the overall consumer protection framework. While the NECF sits at the centre of the regulatory framework, it is complemented by various jurisdictionally specific laws and regulations as well as national consumer law.

However, not all aspects of the consumer protection framework for customers of on-sellers and embedded network operators are captured in the chart. These customers face the added complication that the on-sellers are exempt from holding a retail authorisation. Similarly, the embedded network operators are exempt from registration with the Australian Energy Market Operator (AEMO) and from certain obligations in the NER.

Instead, both the on-seller and the embedded network operator (who are usually the same person) must each be registered with the AER and are subject to the conditions of exemption set out by the AER in two separate guidelines.

Amongst other matters, this means that on-sellers and embedded network operators are not automatically members of a jurisdictional energy ombudsman scheme. The NERL only requires authorised retailers and distributors to be members of the scheme.<sup>13</sup> Nor does the energy ombudsman have any jurisdiction over the on-sellers and embedded network operators except for some limited jurisdiction in NSW.<sup>14</sup>

In addition, some aspects of the consumer protection framework for electricity supply to residents of caravan and residential parks are captured in various jurisdictional instruments that regulate the rights and obligations of tenants and landlords and park operators, rather than in the energy laws and regulations of the state. For instance, the NSW government has published minimum customer service standards for the supply of electricity to permanent residents by the owners of residential

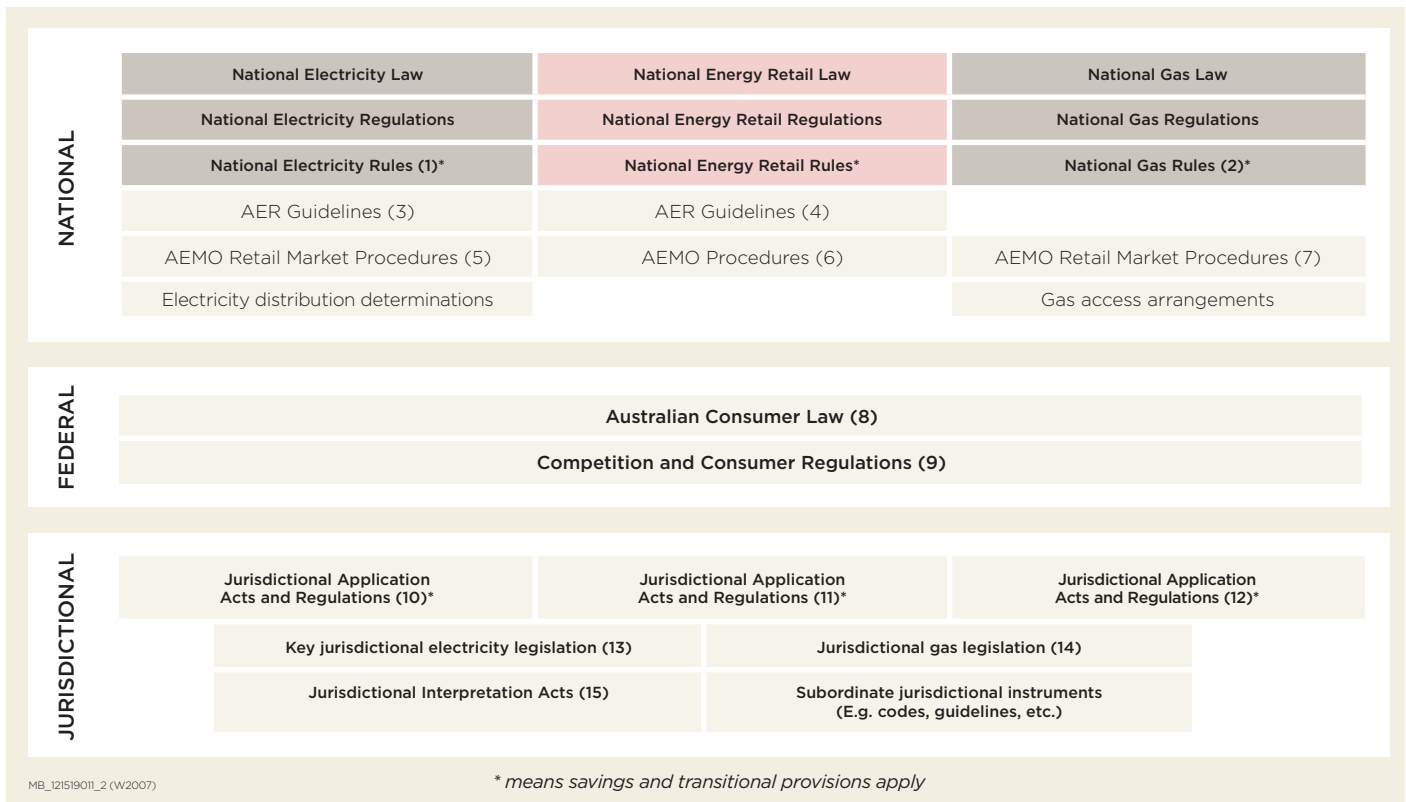
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<sup>12</sup> In October 2014, the ESC published Version 11 of the Victorian Energy Retail Code (updated in January 2015). An important objective of the revised Energy Retail Code was to: "harmonise the Energy Retail Code with the National Energy Consumer Framework to the extent possible". *Energy Retail Code Version 11*, page 2. <http://www.esc.vic.gov.au/getattachment/bd6bae17-f639-4c68-a5dc-a4de803a48ae/Energy-Retail-Code-Version-11-January-2015.pdf>

<sup>13</sup> NERL, section 86 (1) & (2) respectively.

<sup>14</sup> In NSW, exempt sellers are not members of the NSW Energy and Water Ombudsman (EWON) Scheme. However, EWON does have jurisdiction to hear complaints by customers of exempt retailers and to give directions to the exempt seller. This does not extend to the embedded network operator.

**Figure 1: Interaction between National Customer Framework and jurisdictional statutory instruments for ACT, NSW, Queensland, SA and Tasmania (as at 1 July 2015).**



Source: AEMC, Guide to the application of the NECF, Summary of interactions, July 2015. <http://www.aemc.gov.au/Energy-Rules/Retail-energy-rules/Guide-to-application-of-the-NECF/Summary-of-interaction>

parcs (Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks).<sup>15</sup>

Where this occurs, the jurisdictional tenancy regulation appears to have some primacy. For example, in the Exempt Selling Guideline the AER states:<sup>16</sup>

*We have also considered the requirements of state or territory tenancy and equivalent legislation in developing exemption classes and conditions ... Exemption conditions are intended to supplement jurisdictional legislation which on its own does not provide energy-specific protections for exempt customers.* [Emphasis added]

In addition, any dispute that a consumer has with the park management over their energy supply will generally need to be taken to a body such as a jurisdictional Tenancy Tribunal or a Civil and Administrative Tribunal (or equivalent) in each state for resolution rather than to a dedicated energy ombudsman.<sup>17</sup>

It is not within the scope of this report to examine the relevant tenancy regulation in each jurisdiction. Nevertheless, we will come back to the issue of dispute resolution in later sections of this report.

It is clear, however, that any consumer wishing to understand their rights with respect to energy supply will need to consider both national and jurisdictional regulation. In the case of customers of on-sellers, they will also need to consider the links between the national and jurisdictional regulation and the general regulation in each jurisdiction that relates to tenancy and landlord rights and responsibilities and/or the management of residential parks.

It is little wonder that most of these consumers find that the difficulties of seeking independent resolution of a dispute with the park management are too great, despite the significant grievances that can arise in some parks.

<sup>15</sup> NSW Government Fair Trading, *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*, August 2006, Revised July 2014. The document applies as prescribed in the Residential Parks Regulation 2006 as specified in section 37 (6)(b) of the NSW Residential Parks Act 1998. [http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/customer\\_service\\_standards\\_for\\_the\\_supply\\_of\\_electricity\\_to\\_permanent\\_residents\\_of\\_residential\\_parks\\_-\\_revised\\_july\\_2014.pdf](http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/customer_service_standards_for_the_supply_of_electricity_to_permanent_residents_of_residential_parks_-_revised_july_2014.pdf)

<sup>16</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, p 26. <https://www.aer.gov.au/retail-markets/retail-guidelines/retail-exempt-selling-guideline-april-2015>

<sup>17</sup> With the exception of NSW, see footnote 25.

### 1.2 The Exemption Framework (ACT, NSW, Qld, SA)

#### 1.2.1 Overview

The regulatory arrangements for the exemption of on-sellers and embedded network operators are complex and despite the developments in the national energy market generally, the market is subject to a confusing array of national and jurisdictional regulation as highlighted previously.

However, notwithstanding this complexity there are many common themes. While the focus of SACOSS' study is on the issues facing a sub-set of exempt supply customers (permanent residents in caravan parks and residential parks), it is clear that the many of the issues identified in this study are quite similar to those identified previously by, for instance, CUAC and the AEMC.

Nevertheless, there are also a number of unique issues facing residents of caravan and residential parks and these issues are exacerbated by the overriding sense of vulnerability that the residents in caravan and residential parks experience. Of particular concern to SACOSS are the apparent gaps in information provision (including pricing information), additional fixed charges, billing, access to dispute settlement and hardship programs and the state of the physical infrastructure including the customer metering. These gaps are discussed in more detail in Sections 2 and 3 of this report.

SACOSS is aware that progress has been made to address these gaps in the national regulation of on-sellers and embedded network operators, including the recently concluded review of the NER by the AEMC. However, this study confirms the views of CUAC and others that the consumer protection and supply security arrangements for these most vulnerable customers remain inadequate. Their very 'invisibility' to the regulator compounds the difficulty of ensuring that the regulatory protections are adequate – in practice – as well as on paper.

To understand these gaps the following sections will provide an overview of the current regulatory arrangements at the national level. There will also be a brief assessment of the Victorian arrangements as Victoria is not yet part of the national regulation under the NECF.

#### 1.2.2 Who are exempt sellers and exempt embedded network operators?

The exempt selling and exempt embedded network sectors cover a wide range of situations. An exempt seller or an embedded network operator may be supplying a number of large industrial premises co-located within a single large industrial site. Or they could be providing electricity to large and small tenants in a shopping complex or multi-story mixed usage (residential and small commercial) building. At the other end of the scale, the exempt seller/embedded network operator may be supplying electricity to a small retirement village or a permanent/long-stay caravan or residential park.

Together with the multi-layers of regulation, this large variation in the types of premises and types of customers significantly complicates the task of efficiently regulating and monitoring the exempt market. Yet the observed growth in the exempt customer market increases the need for some form of effective regulation to protect customers many of whom are unlikely to realistically have a choice of retailer.

A major issue is that in many cases the exempt seller/embedded network operator 'self-identifies'. That is, it is the on-seller or embedded network operator that nominates himself or herself as (for example) a registrable exempt seller. Therefore, the AER is unlikely to know about many of these places until and unless the relevant person 'puts up their hand', or there are complaints raised by customers directly to the AER. The lack of visibility of this market in turn vastly complicates the AER's regulatory task.

#### 1.2.3 Regulation of Exemptions

The NERL sets out an exemption framework for on-sellers. The NERL states that a person must not engage in the activity of selling energy (electricity or gas) to a person for premises unless:<sup>18</sup>

- The seller is the holder of a current retailer authorisation; or,
- The seller is an exempt seller.

Similarly, the National Electricity Law (NEL) and National Electricity Rules (NER) state that anyone who engages in an electricity distribution activity must either be:

- Registered with the Australian Energy Market Operator (AEMO) as an electricity network service provider (NSP)<sup>19</sup>; or,
- Must gain an exemption from the requirement to be a registered NSP with AEMO,<sup>20</sup> [i.e. become an exempt

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<sup>18</sup> NERL, section 88.

<sup>19</sup> NEL, section 11(2)(a) and NER, clause 2.5.1(a).

<sup>20</sup> NEL, section 11(2)(b) and NER, clause 2.5.1(d).

embedded network operator]. The exemption can also relieve the operator of requirements to comply with various sections of the NER.<sup>21</sup>

NSW, Queensland and South Australia have adopted the exempt selling framework in the NECF (i.e. the NERL/NERR, but with some jurisdictional derogations). Tasmania has adopted the NECF, however, Tasmania has excluded via derogation, the application of the NECF for on-sellers in embedded networks.<sup>22</sup> Victoria has not adopted the NECF and has its own exemption framework.

All states, including Victoria, are signatories to the NEL and therefore come under the NEL's requirements for registration with AEMO or exemption from registration with AEMO.

Just as the AER is responsible for authorising energy retailers and distribution service providers, the AER is also responsible for granting exemptions from retail authorisation and from registration with AEMO as an NSP.

The AER publishes two guidelines that set out the exemption policy principles, the classes and subclasses of exemption and the "conditions" required for granting exemptions for each class and sub-class. The AER's two current exemption guidelines are:

- AER, (Retail) Exempt Selling Guideline, Version 3, April 2015 ["Exempt Selling Guideline"]; and,
- AER, Electricity Network Service Provider Registration Exemption Guideline, Version 3, 27 August 2013 ["Network Exemption Guideline"].

Underpinning the AER's exemption guidelines are a number of policy principles outlined in the NERL, namely:

- Regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers;<sup>23</sup>
- Exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retailer customers in the same jurisdiction have that right<sup>24</sup>; and,
- Exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules.<sup>25</sup>

Thus, the exemption framework provides more flexibility and lower costs, particularly for small-scale businesses where the sale and/or distribution of energy is not their primary business. However, the AER is seeking to apply the framework in a way that ensures customers of the exempt sellers and network operators have access to adequate protections and are not disadvantaged compared to other energy users.

SACOSS considers there is a gap between the AER's intent and the actual outcome (discussed in sections 2 and 3 of this report). Nevertheless, SACOSS supports these three important policy principles and has considered the findings of this study in the light of these principles. We also recognise, however, that the AER faces a difficult task to balance these principles with the practical issues of electricity supply in some embedded networks and the potential costs to consumers and exempt sellers of stricter regulation of the sector.

There have been a number of revisions to the AER's two Guidelines to improve consistency between the Guidelines and to better reflect these policy principles. The AER is currently reviewing the Exempt Selling Guideline and a draft of Version 4 is available on the AER's website.<sup>26</sup> The AER intends to further revise both Guidelines in 2016 in response to the recent decision by the AEMC to amend the NER in order to: "reduce the barriers to embedded network customers accessing retail market offers".<sup>27</sup> The AEMC's amended rules for embedded networks will come into effect in 1 December 2017.

## 1.2.4 Exempt Sellers

An exempt seller is a person or entity that sells electricity to consumers, however, the sale of electricity is secondary to the main purpose of the business. For example, a caravan park operator may on-sell electricity to caravan park residents, but this is secondary activity to the main purpose of the business. In these circumstances, the exempt seller should seek an exemption from the AER from the obligation to hold a retail authorisation (or a retail licence) under the NERL.

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<sup>21</sup> Specifically, the exemption for the embedded network operator includes exemption from the technical requirements in Chapter 5 of the NER and/or the obligation to provide other network suppliers and other registered participants in the NEM with access to its network and other obligations which exist under the NEM. AER, *Electricity Network Service Provider Registration Exemption Guideline*, Version 3, 27 August 2013. [https://www.aer.gov.au/system/files/AER%20electricity%20NSP%20registration%20exemption%20guideline%20-%202013%20August%202013\\_0.PDF](https://www.aer.gov.au/system/files/AER%20electricity%20NSP%20registration%20exemption%20guideline%20-%202013%20August%202013_0.PDF)

<sup>22</sup> *National Energy Retail Law (Tasmania) Act 2012*, section 17 which states that the SA Energy Retail Law only applies in Tasmania to the sale or supply of electricity to customers who premises are connected to the interconnected national electricity system (as defined in the NEL).

<sup>23</sup> NERL, section 114 (1)(a).

<sup>24</sup> NERL, section 114 (1)(b).

<sup>25</sup> NERL, section 114 (1)(c).

<sup>26</sup> AER 2015, *Review of Retail Exempt Selling Guideline*, <http://www.aer.gov.au/retail-markets/retail-guidelines/review-of-retail-exempt-selling-guideline-2015>.

<sup>27</sup> AEMC 2015, *Embedded Networks Rule Determination*, 17 December 2015. <http://www.aemc.gov.au/Rule-Changes/Embedded-Networks>

### Categories of exemption

The NERL prescribes that all exemptions from retail authorisation will be categorised into one of three categories, viz.:<sup>28</sup>

- Individual Exemption;
- Deemed Exemption; and,
- Registrable Exemption.

These three categories of exemptions are also adopted in the relevant sections of the NERR<sup>29</sup> and further defined in the AER's Exempt Selling Guideline. SACOSS' study is focused on the *registrable exemptions*. In brief:

- **Deemed exemption:** A deemed exemption applies automatically to certain classes of people. A person covered by a deemed exemption does not need to either apply or register with the AER. The deemed category generally applies to very small embedded network sites (less than 10 residential or business premises).<sup>30</sup>
- **Registrable exemption:** A registrable exemption must be registered with the AER. The exemption only applies to a particular individual or entity for a particular site, and is subject to specified conditions depending on the class of registration. The registrable category generally applies to sites where the AER considers "greater transparency and regulatory oversight is required"<sup>31</sup> either because the scale of activities is larger (e.g. 10 or more premises) or the impact on the market is greater. All caravan and residential parks and retirement villages are categorised as 'registrable', irrespective of their size, reflecting a recognition by the AER of the need for greater regulatory oversight.<sup>32</sup>
- **Individual exemption:** Individual exemptions are intended for more unusual or one-off arrangements that do not meet the criteria for deemed or registrable exemptions. The conditions set by the AER are tailored to the specific situation of the person or business seeking the exemptions and intended to balance the needs and rights of customers and the regulatory burden of meeting these requirements<sup>33</sup>.

The core of the obligations ("conditions") placed on exempt sellers is based on the retailer customer

protections established under the NERL. However, the details of these obligations will vary according to the specifics of an on-seller's operations. They include obligations with respect to:<sup>34</sup>

- obligation to supply;
- provision of key information;
- billing and payment arrangements;
- disconnection and reconnection; and,
- concessions and rebates.

### Exemption classes and conditions of exemption (deemed and registrable exemptions)

For deemed and registrable exemptions, the AER has defined a number of classes of exemption. For example, an on-seller of electricity to premises in a caravan or residential park is classified as registrable exemption "class R4". An on-seller to an apartment block with 10 or more premises is categorised as "class R2", an on-seller to premises in a retirement village is classified as registrable exemption class "R3".

Although the category of deemed exemptions includes various classes of exemption ("D1", "D2" etc), there is no obligation to register with the AER and the AER has little knowledge of the number and location of premises in this category or their compliance with the Guideline conditions of exemption for deemed exempt on-sellers.

In the case of registrable exemptions, including R4 class of exemptions, the on-seller does not have to apply to the AER for exemption but must complete a registration form and submit to the AER. Once registered with the AER, the registrable exempt seller will then need to abide by the AER's "conditions" for that registrable class (R3, R4 etc.) as set out by the AER in the Exempt Selling Guideline.

Each class has its own set of conditions that the exempt person must comply with. For example, registrable class R4 (exempt on-sellers to caravan and residential parks) has 19 conditions that must be met (out of 19 possible conditions attached to registrable exemptions) as a condition to on-selling. Registrable class R2 and R3 also have 19 conditions attached. However, registrable class R5 (persons selling metered energy to large customers) requires only 7 full, and 1 part, condition of exemption.<sup>35</sup>

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<sup>28</sup> NERL, section 110 (2).

<sup>29</sup> NERR, rule 149, 150 & 151.

<sup>30</sup> AER, (*Retail*) *Exempt Selling Guideline, Version 3*, April 2015, p 12.

<sup>31</sup> *Ibid*, p 13.

<sup>32</sup> *Ibid*.

<sup>33</sup> *Ibid*.

<sup>34</sup> Summarised from AER, *Draft (Retail) Exempt Selling Guideline, Version 4*, September 2015, p 6. <http://www.aer.gov.au/system/files/Draft%20AER%20%28Retail%29%20Exempt%20Selling%20Guideline%20%E2%80%93%20September%202015.PDF>

<sup>35</sup> AER, (*Retail*) *Exempt Selling Guideline - Version 3*, April 2015, Table 2, Appendix A-3, pp 51-52. In its draft Version 4, the AER is proposing to reduce the number of conditions of exemption even further for R5 exempt customers.



According to our interpretation of NERR rules 150-153, SACOSS believes that the AER may also amend, revoke or impose additional conditions of exemptions,<sup>36</sup> including amending these during the currency of the determination.<sup>37</sup>

This mechanism enables the AER to tailor the conditions of exemption to the circumstances of a specific class of on-sellers; an important feature given the diversity of the types of persons or parties applying for an exemption. However, SACOSS considers that the AER has very limited capacity and resources to monitor compliance of exempt sellers with the conditions defined in the Guideline for registrable exemptions.

For example, if erstwhile exempt sellers do not nominate themselves for registration, the AER has limited capacity to identify the relevant party, determine if it should be registered with the AER (or is a deemed exempt seller) and then monitor its compliance with the requirements of the Retail Exemption Guideline.

The situation for the participants in SACOSS study is also made more difficult as the arrangements with tenants in permanent caravan and residential parks are often long-standing arrangements put in place well before the AER's Exempt Selling Guideline came into place. This makes these sites even less visible to the AER and increases the costs and risks of compliance to both the park manager and the residents in the park, particularly if significant changes in the park policies and procedures are required in order to achieve compliance with the AER's conditions.

SACOSS is concerned that there may be a real gap in the process of transitioning from old jurisdictional arrangements (where many such sites were effectively "deemed" exempt), to the new arrangements where exempt sites such as caravan and residential parks should be registered with the AER.

A similar situation applies to the exemption of an embedded network operator as discussed below.

### 1.2.5 Exempt Embedded Network Operators (electricity)

Exempt embedded network operators (sometimes called 'private network operators' or 'exempt network operators') refers to the operators (owners or managers as the case may be) of physical assets that deliver electricity to another person or party. The assets include

privately owned wires, switches, meters, transformers or other electrical equipment owned, operated or controlled by the operator.<sup>38</sup>

Under the NEL and NER, the AER can grant an exemption from the requirement to be registered with AEMO as an electricity network service provider, subject to certain conditions set by the AER.<sup>39</sup> Registration with AEMO can be a complex and expensive process and the NEL recognises that it is appropriate to allow exemptions from the obligation to register with the AEMO subject to the person's agreement to the conditions of exemption set out by the AER in the AER's Network Exemption Guideline.

In addition, the exempt operator does not have to comply with the technical requirements in Chapter 5 of the NER (including various connection, metering and access requirements)<sup>40</sup> and the obligation to provide third party access to the embedded network. The exempt embedded network operator is also not subject to economic regulation by the AER under Chapter 6 of the NER.

The AER's NSP Exemption Guideline also sets out specific conditions for each network exemption class and category.

In some states an embedded network operator must also enable its customers to become customers of an authorised retailer. The AER's Guideline states that, where a jurisdiction allows retail competition for embedded network customers, then:<sup>41</sup>

*The right of a customer to access retail competition is absolute. A private network owner or their agent must not impede a customer who has chosen to exercise that right nor may they impose unfair or unreasonable conditions on the customer.*

Currently, this "right" to access a retail market offer is allowed under jurisdictional laws in NSW, SA and Victoria, but is not available to exempt consumers in the ACT, Queensland and Tasmania.

Figure 2 overleaf (from AEMO) illustrates the difference between "on-market customers" in an embedded network who have taken up a retail market offer and "off-market customers" in an embedded network. The off-market 'child' connection points are not recognised in the National Energy Market (NEM) systems. The on-market 'child' connection points are recognised in the NEM as a NEM retailer supplies them. Retail competition cannot be effective if there are barriers to recognition of the customer's meter in the NEM systems.

<sup>36</sup> See NERR, rules 150 – 153 for deemed and registrable categories of exemption. Rule 158 for individual exemptions.

<sup>37</sup> NERR, rule 153 (2)&(3).

<sup>38</sup> AER, *Electricity NSP Registration Exemption Guideline*, 27 August 2013, p 8.

<sup>39</sup> NEL, section 11(2)(b) and NER, clause 2.5.1(d).

<sup>40</sup> NER, Chapter 5, "Network Connection, Planning and Expansion"; Chapter 5A, "Electricity Connection for Retail Customers".

<sup>41</sup> AER, *Electricity NSP Registration Exemption Guideline*, 27 August 2013, p 32.

All the customers in SACOSS' study would be categorised as "off-market customers" as none had a direct relationship with a NEM retailer (authorised retailer).<sup>42</sup> They are not visible to AEMO or to the regulator.

**Categories of Exemption**

The AER uses the same categories of exemption, namely individual, deemed and registrable exemptions as set out in the AER's Exempt Selling Guideline (see page 20). As far as possible, the AER has also sought to align the classes for deemed and registrable exemptions with the Exempt Selling Guideline, although there are more classes for each exemption category.<sup>43</sup>

For example, registrable class "NR4" refers to operators of embedded networks in caravan and residential parks and corresponds to the R4 exempt seller class.

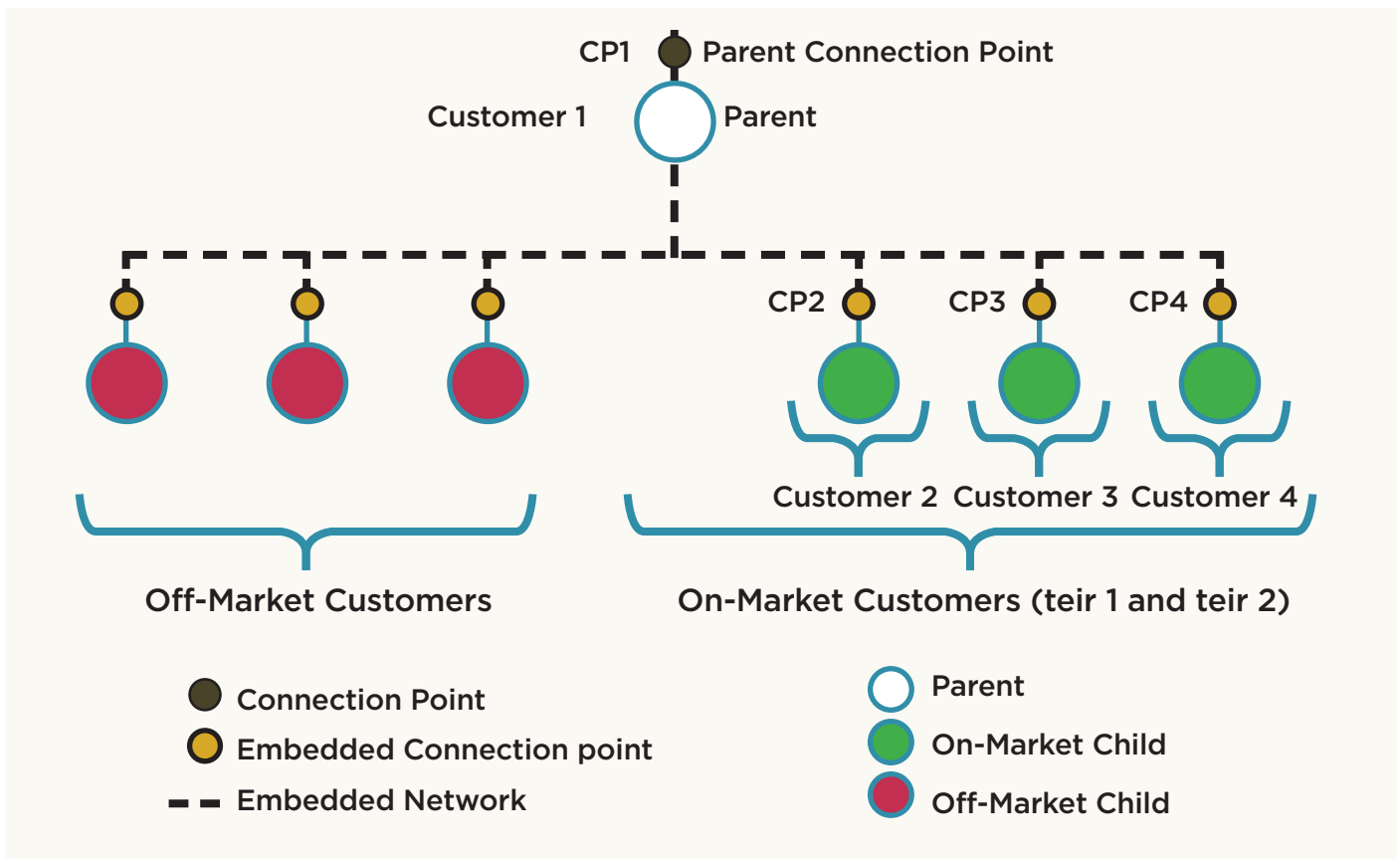
Similarly, an exempt embedded network supplying an apartment block with 10 or more premises is categorised as "NR2", and a network supplying to a retirement village is classified as "registrable exemption class "NR3".

**Exemption Classes and Conditions of Exemption (deemed and registrable exemptions)**

Each class of exemption has its own set of conditions and these are set out in the AER's NSP Registration Exemption Guideline. Registrable class NR4 has 12 conditions attached including four "basic requirements".

However, irrespective of the category and class of network exemption, the exempt network operator must meet the four basic requirements of an exempt network in addition to the specific conditions to be met for each exemption class. The basic conditions include:<sup>44</sup>

**Figure 2: Relationships in Embedded Networks**



Source: AEMO, National Electricity Rule Change Request – Embedded Networks, September 2014, p 6. <http://www.aemc.gov.au/getattachment/66945de4-6a2d-44be-8327-192963ad2e7a/Rule-change-request.aspx>

Note: Tier 1 and tier 2 refer to whether the embedded network customer has a market offer from the local area retailer (Tier 1 retailer) or from another retailer (Tier 2 retailer).

<sup>42</sup>. At least one participant in the study was a resident in a separate villa unit in the caravan and residential park and was able to choose an authorised retailer. We understand this resident had a direct connection to the local distribution company and was not in a "parent-child" relationship.

<sup>43</sup>. Ibid, p 8.

<sup>44</sup>. Ibid, p 9.

- Ensure that their network is safe;
- Have a dispute resolution mechanism;
- Ensure that network pricing is in accordance with strict controls<sup>45</sup>; and,
- Ensure that electricity meters comply with the National Measurement Act 1960 (Cth) requirements for electricity meters installed from 1 January 2013 and other applicable Australian standards.

That is, while an exempt embedded network operator may be relieved from certain technical requirements under the NER, the person is not relieved of the core safety requirements for a distribution business.<sup>46</sup>

Indeed, the obligations under the Guideline for each category of exemption are strong. The AER's NSP Exemption Guideline states:<sup>47</sup>

*All exempt private networks are subject to conditions. These conditions cover safety, dispute resolution, metering and pricing. Even if your network is in a 'deemed' category, if you fail to observe the relevant conditions your exemption will be invalid. This may expose you legally to a civil penalty (a fine) under the National Electricity Law or other relevant legislation. [emphasis added]*

Compliance with all the relevant conditions of exemption for that class is a mandatory requirement for a network exemption to be valid. Non-compliance may result in civil penalties.<sup>48</sup> This includes the mandatory requirement to allow exempt customers access to retail market offers (where allowed by jurisdictional law), as noted above.

The NEL and NER are the primary regulatory instruments for distribution networks, including embedded networks. However, all NSPs also face a range of jurisdictionally based regulation and codes that govern different aspects of the network such as technical, safety and reliability requirements. The various national regulatory instruments governing the operation of exempt sellers and embedded network operators are also under review, as discussed in section 1.4.

## 1.2.6 Access to Retail Competition

There is agreed national policy intent expressed in the NERL to promote access to retail competition for exempt customers in order for them to share the potential price and non-price service benefits of competition. The AEMC's proposed amendments to the NER are based largely on the implementation of this policy intent. For example, the AEMC states: "The draft rule determination seeks to make it easier for embedded network customers to choose who they purchase electricity from ... while remaining part of the embedded network."<sup>49</sup>

Notwithstanding the policy intent at the national level, jurisdictions have not consistently adopted this policy and removed restrictions on exempt customers. Only Victoria, New South Wales and South Australia allow exempt customers in private networks to exercise a right to choose their electricity retailer. Exempt customers in the ACT, Queensland and Tasmania will normally require a direct connection to the local distribution network to access retail competition.

In the three states that allow retail competition for embedded network customers, the private network operator must not obstruct access to retail competition and must take reasonable steps to facilitate access to an authorised retailer.<sup>50</sup> AEMO has established metrology procedures to facilitate retail competition. At the time an embedded network customer takes up a retail offer, the gate meter is registered as a 'parent' meter while the customer's meter is registered as a 'child' meter.<sup>51 & 52</sup>

Where retail competition for embedded network customers is prohibited, the customer will need to make a direct connection to the local distributor and install individual metering in the normal way. This is likely to also require changes to the wiring in the embedded network that will also be borne by the consumer. This is likely to come at a very high cost, and consumers in the ACT, Queensland and Tasmania face a number of other non-cost barriers to gaining access to retail competition.

<sup>45</sup> Ibid, pp 34-37. These regulated pricing controls include controls on the apportionment of external network charges, restricting any application of "internal network charges" and how customers are charged (e.g. a bundled energy tariff (which includes retail costs and is the most common form), actual costs, pro-rata charge, see pp 36-37).

<sup>46</sup> AER, *Electricity Network Service Provider Registration Exemption Guideline*, 27 August, 2013, p 3.

<sup>47</sup> Ibid, p 7.

<sup>48</sup> Ibid, p 9 & NEL, section 11.

<sup>49</sup> AEMC 2015, *Draft new arrangements for embedded networks*, Information Sheet, p1. <http://www.aemc.gov.au/getattachment/f01b69d1-de81-4c60-baae-8e1373078f6d/Information-sheet.aspx>

<sup>50</sup> AER, *Electricity NSP Registration Exemption Guideline*, 27 August 2013, p 32.

<sup>51</sup> AEMO, *Metrology Procedure Part A National Electricity Market*, Version 5.3, 15 May 2015, pp 36-37.

<sup>52</sup> The new retailer will probably have to arrange an upgrade the customer's meter (usually at a cost passed through to the customer) and will need to provide energy billing information to the private network operator so that the remainder of the site can be billed.



### 1.3 Summary of the National Exemption Framework

Table 1 sets out the principal national regulatory instruments that are relevant to governance of exempt sellers and embedded network operators.

As noted, however, the application of the national regulatory instruments is moderated by specific jurisdictional regulations such as barriers to retail competition for the exempt customers, as discussed previously.

On the other hand, Victoria permits contestability but has not adopted the NERL and NERR. Thus, Victorian exempt sellers are bound by Victorian legislation while Victorian embedded network operators are subject to the requirements in the NER. However, they must also take account of specific Victorian requirements for exemption and consumer protection. Section 1.5 provides more details on the Victorian situation.

**Table 1: Summary of regulatory instruments (excluding Victorian retail arrangements)**

Regulatory Instrument	“Owner”	Relevant requirements in the regulatory instrument
<b>National Energy Retail Law (NERL)</b>	Parliament of South Australia (on advice from COAG and COAG Energy Council)	<ul style="list-style-type: none"> <li>• Grants AER power to exempt an entity from requirement to hold a retailer authorisation (s 110 (1)) &amp; to revoke exemption (s 111)</li> <li>• Establishes 3 classes of exemptions (individual, deemed, registrable) (s 110 (2))</li> <li>• AER may impose conditions on exempt seller (s 112 (1)) &amp; impose civil penalties on breach of conditions. (s 112 (2))</li> <li>• AER must take account of policy principles (s 114 (1)(a)-(c):                             <ul style="list-style-type: none"> <li>- arrangements should not diverge unnecessarily from those applying to retailers</li> <li>- exempt customers should as far as possible be afforded the right to a choice of retailer in same way as other retail customers in the same jurisdictions</li> <li>- exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the NERL and NERR.</li> <li>- exempt seller related factors (s 115) &amp; customer related factors (s 116) that the AER may consider alongside the policy principles (above).</li> </ul> </li> <li>• AER must develop &amp; maintain a Retail Exempt Selling Guideline (s 118)</li> <li>• AER must maintain &amp; publish a Public Register of Exempt Sellers (s 119)</li> </ul>
<b>National Energy Retail Rules (NERR)</b>	AEMC in response to requests for rule change from stakeholders including AEMO and the AER.	<ul style="list-style-type: none"> <li>• Establishes an Exempt Selling Regime (Part 9) Division (2)                             <ul style="list-style-type: none"> <li>- provides details on each type of exemption (individual, deemed &amp; registrable) (r. 149 – 151)</li> <li>- AER’s right to impose conditions as part of exemption (r. 152)</li> <li>- sets condition on prices; the AER must ensure that these customers are charged no more than the standing offer price of the local retailer (r. 152(4)) – the “Pricing Rule”</li> <li>- includes conditions on installing, maintaining and reading meters of exempt customers (r. 152 (5))</li> </ul> </li> <li>• AER’s (Retail) Exempt Selling Guidelines (Division 3)</li> <li>• Provisions relating to individual exemptions (Division 4)</li> <li>• Public Register of Authorised Retailers &amp; Exempt Sellers (Division 5)</li> </ul>
<b>National Electricity Rules (NER)</b>	AEMC: in response to request for rule change from stakeholders including AEMO and the AER	<p>The NER in clause 2.5.1 (d) provides for the AER to be able to exempt any person or class of persons from the requirement to register as a network service provider, subject to the AER’s conditions and consistent with the national electricity objective.</p> <p>The AEMC’s final rule change determination (December 2015) allows for the appointment of an embedded network manager (ENM) and includes the right of the AER to exempt an embedded network operator from this requirement based on the AER’s assessment of the costs and benefits to the embedded network consumers of appointing an ERM. The rule change also provides for consequential amendments to other areas of the NER.</p> <p>The new rules will come into effect 1 December 2017.</p>
<b>Network Exemption Guideline</b>	AER	<p>The AER’s Network Exemption Guideline was updated in August 2013. It requires all previous holders of exemptions (apart from pre 1 January 2012 individual exemptions) to comply with the Guideline.</p> <p>The Guideline covers safety, dispute resolution, metering and pricing.</p> <p>The Guideline will be updated in 2016 to reflect the changes in the NER (above).</p>
<b>Exempt Selling Guideline</b>	AER	<p>The Exempt Selling Guideline Version 3 was published in April 2015. The AER has proposed to further amend the Guideline (Version 4) and is currently conducting a public consultation process on this.</p>

*Note: The comments in this table are based on Version 3 of the AER’s Network Exemption Guideline.*

## 1.4 Recent Developments in the National Exemption Framework

Given the growth in the exempt selling and embedded network markets it is perhaps not surprising that there have been various changes to the relevant rules and guidelines. The following sections highlight some of the more recent developments.

### 1.4.1 The AEMC rule change determination

As indicated above, the AEMC has recently made a final rule determination to amend the NER in order to clarify the regulatory arrangements for embedded networks and reduce the barriers to embedded network customers accessing retail market offers.<sup>53</sup>

The AEMC's rule determination will come into effect on 1 December 2017 and may lead to significant changes in the way embedded network operators currently operate.

The AEMC's rule determination was made in response to a rule change request from AEMO. AEMO had, in turn, been requested to propose a rule change to facilitate competition in the on-selling market by the Standing Council of Energy Ministers (now the Council of Australian Governments Energy Council (COAG Energy Council)).<sup>54</sup>

The AEMC's focus was to put in place a regulatory framework that maximised the opportunity for customers in exempt embedded networks to access retail competition. The AEMC found that the current regulatory arrangements for embedded networks were "unclear" and resulted in barriers to effective retail competition.<sup>55</sup> The AEMC stated that:<sup>56</sup>

- The NER did not allocate responsibility for performing market interface functions required to link embedded network customers to retailers in the NEM;
- The AER's exemption guidelines do not fully facilitate embedded network customers access to retail market offers;
- Jurisdictional regulations are inconsistent and some prevent embedded network customers accessing retail market offers; and,
- The NERR does not provide clear obligations and relationships between authorised retailers, embedded network operators and embedded network customers.

Table 2 below was prepared by the AEMC to illustrate the complexity, gaps and ambiguities in the roles and responsibilities in the current embedded network exemption framework. Again, these complexities create difficulties for embedded network operators, their customers and the regulators who must administer the regulatory framework.

**Table 2: Legal instruments and service providers of electricity services**

Service	Off-market embedded network customers		On-market embedded network customers		Customers outside of embedded networks	
	Who provides the service?	Under what instrument?	Who provides the service?	Under what instrument?	Who provides the service?	Under what instrument?
<b>Network</b>	Embedded network operator	AER network exemption guideline	Embedded network operator	AER network exemption guideline	DNISP	NER
<b>Metering</b>	Embedded network operator	AER network exemption guideline	Accredited providers	NER and NERR	Accredited providers	NER and NERR
<b>Market interface</b>	Not required	Not required	No party is responsible	No instrument allocates responsibility	DNISPs	NER and AEMO procedures
<b>Retail (sale of electricity)</b>	Embedded network operator	AER exempt selling (retail) guideline	Retailers	NERR	Retailers	NERR

Source: AEMC 2015, *Embedded Networks, Rule Determination*, 17 December 2015, Table 1, p ii.

Note: "Off-market embedded network customers" refers to customers who have not taken up a market offer from an authorised retailer. "On-market embedded network customers" refers to exempt customers who have a market contract with an authorised retailer.

<sup>53</sup> AEMC 2015, *Embedded Networks, Rule Determination*, 17 December 2015, p i. <http://www.aemc.gov.au/getattachment/3ec818f7-38ae-412e-8d7b-b404ee8d7858/Final-rule-determination.aspx>

<sup>54</sup> The COAG Energy Council was responding to recommendations from the AEMC in AEMC, *Energy Market Arrangements for Electric and Natural Gas Vehicles*, December 2012 and the AEMC, *Final Report, Power of Choice - Giving Consumers Options in the way they use Electricity*, November 2012.

<sup>55</sup> AEMC, *New rules for embedded networks* Information Fact Sheet, 17 December 2015, p 1. <http://www.aemc.gov.au/getattachment/04b21dd0-521c-48ca-b575-6f6e6b736a37/Information-sheet.aspx>

<sup>56</sup> Ibid, pp 1-2.

## 1. BACKGROUND TO CONSUMER PROTECTION IN THE NATIONAL ELECTRICITY MARKET (NEM)

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The central plank of the AEMC's rule change determination is to create a new accredited service provider role, the embedded network manager (ENM). The ENM will perform the market interface functions that link the embedded network customer to the NEM systems. The amendments will:<sup>57</sup>

- Set out the detailed functions, responsibilities and governance arrangements for the ENM; and,
- Specify which embedded network operators are required to appoint an ENM.

With respect to the appointment of the ENM, the new rules require an embedded network operator to appoint an ENM unless:<sup>58</sup>

- The embedded network customers are unable to gain access to a retail market offer in a relevant jurisdiction; or,
- If the **AER determines that the costs of appointing an ENM are likely to outweigh the benefits**. In these cases the AER must require an ENM to be appointed when a customer exercises its right to access a retail market offer. [emphasis added].

In other words, the AER will have the discretion to determine which embedded network operators are required to appoint an embedded network manager taking into account the *costs and benefits* of doing so and unless one or more customers seek access to a market offer.

While it is useful for the AEMC to address some of these gaps through the rule change process, it is also clear that a more holistic approach is required to fundamentally reform this market sector. In particular, improving access to retail competition through the appointment of an ENM will not necessarily address the concerns of (for instance) customers in established caravan and residential parks sector.

In its final determination, the AEMC also highlights the need for a more integrated approach to this difficult and disparate market sector. The AEMC has identified, for instance, that supporting changes will be required in state and territory legislation, the AER's Network Exemption Guideline and the NERR for embedded network customers, if the AEMC's determination is to have full effect on actual market outcomes.<sup>59</sup>

In this sector of small customers in an embedded network, retail competition remains problematic in practice because of the likely costs of appointing an ENM and the costs of installing market ready meters

to replace existing metering arrangements. A robust customer protection framework is also required to protect these customers when retail competition is unlikely to take root whether due to costs or other practical and social factors.

This limitation is acknowledged by the AER for instance in the discussion on their proposed amendments to the Guidelines (see below). The AER states its view that: "access to retail competition is the best way to empower electricity consumers..."<sup>60</sup> However, the AER also acknowledges that some customer groups: "do not have access to alternative solutions such as transferring to a cheaper offer from another provider".<sup>61</sup>

SACOSS would therefore go further than the AEMC's promotion of retail competition, important as that may be. We consider that there must be additional reforms that entrench basic customer protection rights for all exempt customers and remove the inconsistencies and overlaps in the current federal and state regulation. This is discussed further in sections 2 and 3.

The AER's proposed amendments to the Exempt Selling Guideline and the Network Exemption Guideline can contribute to this process. The AER's proposed amendments are summarised below.

### 1.4.2 The AER's amendments to the Guidelines

Over the last few years, the AER has sought to better align the exemption categories and sub-category definitions and conditions between the Network Exemption Guideline and the Exempt Selling Guideline. The Network Exemption Guideline was last updated in 2013 and the Exempt Selling Guideline was last updated in April 2015. These changes have resulted in significant improvements in the clarity and consistency of the Guidelines.

The AER intends to further update the Network Exemption Guideline in 2016 to reflect, inter alia, the AEMC's rule changes described above which will come into force on 1 December 2017.

The AER is currently in the process of amending its Exempt Selling Guideline, issuing a revised Draft for consultation in September 2015.<sup>62</sup> The AER expects that the amended Exempt Selling Guideline (version 4) will be published in the first quarter of 2016.

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<sup>57</sup> AEMC, *New rules for embedded networks* Information Fact Sheet, 17 December 2015, p 2.

<sup>58</sup> AEMC 2015, *Embedded Networks, Rule Determination*, 17 December 2015, p 49.

<sup>59</sup> Ibid.

<sup>60</sup> AER, *Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline*, September 2015, p 11. <https://www.aer.gov.au/system/files/Notice%20of%20draft%20instrument%20%E2%80%93%20Amendments%20to%20AER%20%28Retail%29%20Exempt%20Selling%20Guideline%20%E2%80%93%20September%202015.PDF>

<sup>61</sup> Ibid, p 14. The AER is referring in particular to customers who are eligible for government rebates, concessions or other forms of assistance. The exempt customers in R4 class are likely to include a high proportion of eligible consumers.

<sup>62</sup> See footnote 34.

The AER states that the amendments are designed to make the Guideline clearer, more flexible and to better reflect developments in “alternative energy selling”.<sup>63</sup> “Alternative energy selling” in this instance largely refers to Power Purchase Agreements (PPA) and is not within the scope of this study.

The AER’s draft (Retail) Exempt Selling Guideline, however, does propose some changes to a number of the conditions of exemption for supply that apply to the category and class of customers considered in this study (R4). For example, the AER proposes the following changes to the conditions:<sup>64</sup>

- New requirement on the exempt seller to offer at least two payment methods (add new clause 3(2));
- Delete condition that provides that any jurisdictional pricing requirements will act to exclude the pricing obligations in the Guideline (remove clauses 7(5) and 7(6));
- Delete condition that states that the requirements of condition 10 will not apply where jurisdictional tenancy legislation provides for disconnection of tenants. The AER states that, instead: “Standard legal principles will apply to any conflicting legislation.” (Clause 10);<sup>65</sup>
- Remove reference to reconnection “as soon as possible”. The AER is seeking views on whether a fixed period should apply in its stead. (Clause 11); and,
- Remove reference to exempt seller using “best endeavours” to claim a rebate or concession on behalf of customers where it can only be claimed by the exempt person. Replace with an absolute obligation on the exempt seller (Clause 12(2)).

Relevantly, the AER also proposes to clarify the definition of a long-term resident in a caravan or residential park to address the issue that some parks restrict the length of time residents can live there. The AER proposes to define customers as long-term residents if the person(s) live there most of the time and/or the person has no other place of residence.<sup>66</sup>

An important change proposed by the AER for revisions to the AER’s Exempt Selling Guidelines (version 4) relates to the introduction of an absolute condition of exemption for the seller to claim rebates or concessions when state legislation means that these concessions can only be claimed by the exempt person,

not the concession holder. This is a significant issue in Queensland, for instance where a rebate can only be claimed by a resident of a “home park” or “multi-unit residential premises” **if** the owner/proprietor of the premise can claim the rebate on behalf of the customer. The proprietors’ participation is voluntary under Queensland legislation.<sup>67</sup> However, the proposed conditions of the Network Exemption Guideline will make it mandatory.

The Queensland Council of Social Service (QCOSS) generally supported the AER’s proposed changes to the AER’s Exempt Selling Guideline. QCOSS also highlights the need for: “proactive and clear communication of the updated Guideline to exempt sellers and their customers”.<sup>68</sup> On the basis of our study, SACOSS supports this recommendation that the AER works closely with stakeholders to ensure the “message” is understood by both the sellers and customers alike.

## 1.5 Victoria: General Exemption Order (exempt sellers and embedded network operators)

The Essential Service Commission in Victoria is responsible for issuing both retail and distribution licences in Victoria.<sup>69</sup> However, exemption from the obligation to hold a retail or distribution licence (as the case may be) is managed by the Department of Economic Development, Jobs, Transport and Resources (DEDJTR).

More specifically, the Governor of Victoria, under an Order in Council and on the recommendation by DEDJTR, grants an exemption from holding a retail or a distribution licence. Exemptions may be given based on an individual (case-by-case) assessment or under a General Exemption Order (GEO). The GEO provides exemptions for a whole class of electricity service providers. For example, permanent caravan and residential parks, retirement villages and strata title buildings would generally come under the GEO process.

Exempt suppliers (retail and network) under a GEO are not required to register with either the ESC or DEDJTR. The process is one of self-selection and lacks visibility to any of the Victorian regulatory bodies. As DEDJTR

<sup>63</sup> AER, *Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline*, September 2015, p 3.

<sup>64</sup> *Ibid*, pp 18-21. The list provided herein is not exhaustive. References in brackets refer to changes relative to Version 3 of the Guideline.

<sup>65</sup> *Ibid*, p 20.

<sup>66</sup> *Ibid*, p 24.

<sup>67</sup> Queensland Government, *Electricity and reticulated natural gas rebates for residential home parks and multi-unit residential premises*, as at 26 February 2015. <https://www.qld.gov.au/community/cost-of-living-support/residential-homes-rebates/index.html>.

<sup>68</sup> QCOSS, *Letter to the AER re: 2015 Review of the Australian Energy Regulator (AER) Exempt Selling Guideline*. <http://www.aer.gov.au/system/files/Queensland%20Council%20of%20Social%20Service%20submission%20to%20review%20of%20Retail%20Exempt%20Selling%20Guideline%202015%20-%209%20November%202015.pdf>.

<sup>69</sup> *Electricity Industry Act*, s 18 & *Gas Industry Act*, s 25.

states: “Registration requirements are absent from the GEO, which means that there is very little information on the activities of embedded networks in Victoria”.<sup>70</sup>

However, exempt sellers under a GEO have a general obligation to comply with “applicable provisions of the Retail Code”.<sup>71</sup> Exempt sellers also have an obligation to advise their customers in writing that they may choose to obtain supply from a licenced retailer.

Similarly, exempt embedded network operators have an obligation to observe all “applicable provisions” of the Victorian Electricity Distribution Code. In this instance, the Distribution Code does define what those “applicable” obligations are.<sup>72</sup>

In addition to the GEO, exempt networks must comply with the AER’s electricity service provider registration exemption guideline.

DEDJTR has acknowledged a number of gaps in the current exemption process, particularly with respect to the exempt retailing arrangements. For instance, the GEO and the Energy Retail Code do not specify what consumer protections are “applicable” to customers of the seller in the embedded networks.<sup>73</sup> DEDJTR states that as a result consumers are “confused about their rights when trying to resolve disputes with their embedded network seller”.<sup>74</sup>

Given the growth in the market, DEDJTR commenced a review of the GEO. The review by DEDJTR is occurring in parallel to the review by the ESC of Victoria’s retail licencing arrangements. Both reviews seek to adapt the Victorian licencing and exemption frameworks to facilitate new technology and innovation, while maintaining consumer protection.

It is not within the scope of this current study to assess whether these reviews do indeed adequately address these issues particularly with respect to consumer protection mechanisms for the very vulnerable customers of exempt sellers and embedded network operators.

For further details of these two reviews please see:

- DEDJTR, *Review of the General Exemption Order Issues Paper*, 2015<sup>75</sup>; and,
- Essential Services Commission, 2015, *Modernising Victoria’s Energy Licence Framework – Issues Paper*, June 2015<sup>76</sup>.

## 1.6 Summary and Recommendations

The overall regulatory arrangements for on-sellers and embedded network operators remain complex and multilayered. This complexity is a significant barrier to the AER communicating the conditions of exemption with all stakeholders. Similarly, it is a barrier to both exempt sellers and exempt customers understanding their respective rights and obligations. Such complexity is particularly difficult for small customers such as the residents of caravan residential parks, retirement villages and residential apartments.

Notwithstanding the various jurisdictional derogations, SACOSS acknowledges that the NECF and associated NERL and NERR have improved the consistency in the regulation of exempt sellers. In addition, the AER has sought to amend its Exempt Selling Guideline and Exempt Network Guideline to provide greater clarity and better alignment across the two Guidelines in the definition of the exempt categories.

SACOSS welcomes these changes and anticipates that this greater level of consistency will facilitate the AER communicating the conditions of exemption to exempt sellers and exempt embedded network operators (who are usually the same person). However, it is only a start and customers of on-sellers and embedded network operators still need to weave their way through multi-layers of national and jurisdictional regulations in order to understand their rights.

### Recommendation 1.1

**The COAG Energy Council, the AER and the regulatory bodies in each state renew efforts to introduce greater consistency and clarity in the regulation of exempt sellers and embedded network operators. A simpler, fairer and less costly process will better serve the interests of exempt suppliers and, more particularly, provide a more cohesive consumer protection framework for small customers of on-sellers and embedded network operators.**

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<sup>70</sup> DEDJTR, *Review of the General Exemption Order Issues Paper*, 2015. <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/georeview>

<sup>71</sup> Ibid, p 5.

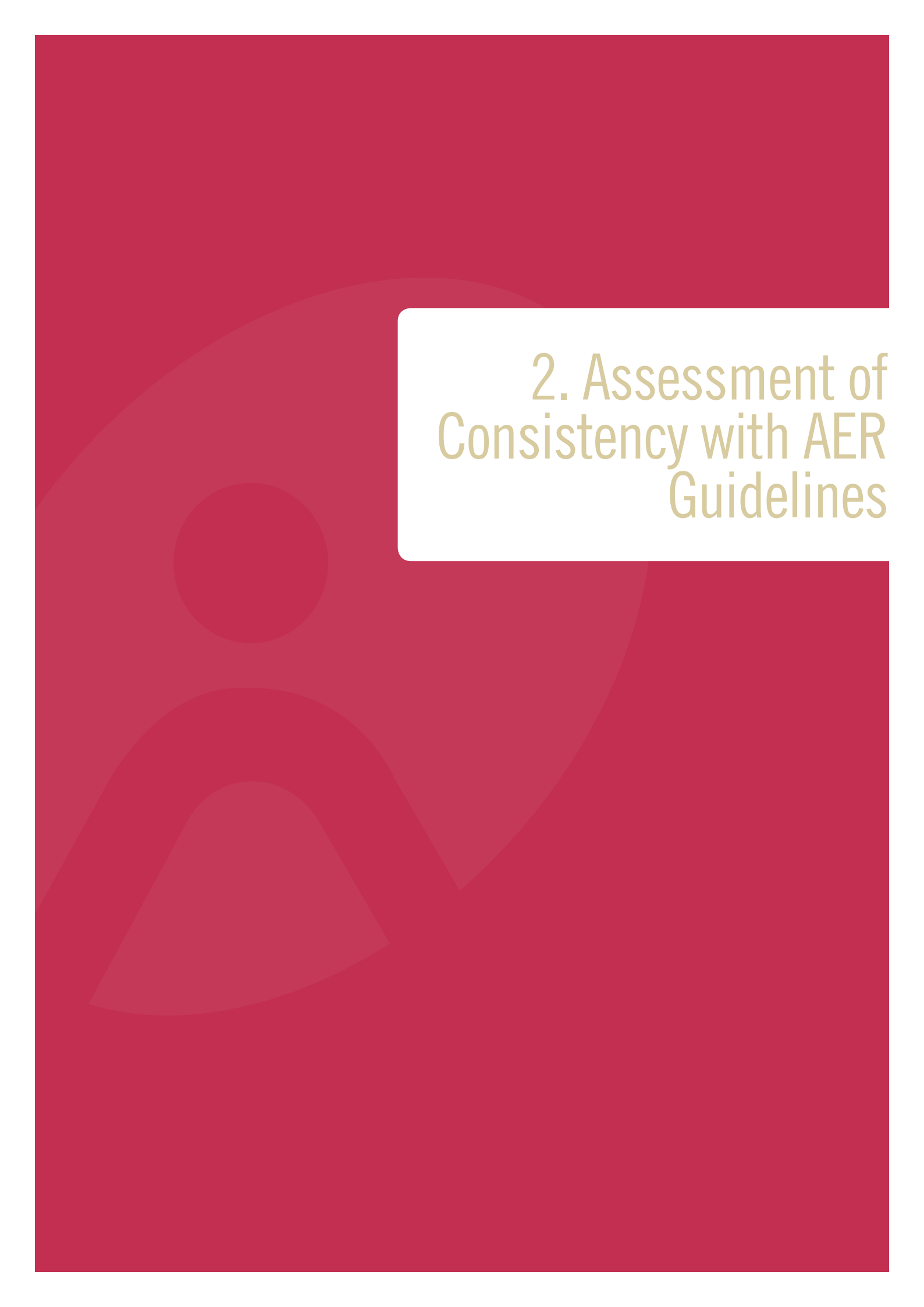
<sup>72</sup> ESC, *Electricity Distribution Code*, Version 7, May 2012, Clause 1.3.5. <http://www.esc.vic.gov.au/Energy/Distribution/Electricity-distribution-code>

<sup>73</sup> DEDJTR, *Review of the General Exemption Order Issues Paper*, July 2015, p 5.

<sup>74</sup> Ibid.

<sup>75</sup> <http://www.energyandresources.vic.gov.au/energy/about/legislation-and-regulation/georeview>

<sup>76</sup> <http://www.esc.vic.gov.au/Energy/Modernising-Victoria-s-Energy-Licence-Framework>

The background is a solid red color. Overlaid on this are several large, semi-transparent white shapes: a large circle on the left side, a large curved shape resembling a stylized 'C' or a partial circle, and a large triangular shape pointing downwards on the right side. These shapes are layered, with some appearing behind others.

## 2. Assessment of Consistency with AER Guidelines



The AER's Exempt Selling Guideline and Network Exemption Guideline provide a framework for a qualitative assessment of the "lived" experience of electricity consumers in permanent/long-stay caravan and residential parks.

The Guidelines require that operators of permanent/long-stay caravan and residential parks should be registered with the AER as an exempt seller and, separately, as an exempt embedded network operator even if they are the same person.

In terms of the AER's Guidelines, permanent/long stay caravan and residential parks are a specific category of registrable exempt retailers and/or exempt embedded network service providers. The AER's Guidelines categorises the permanent caravan and residential parks as follows:

- **Exempt Retailing Guideline:** 'R4' - applying to: "Persons selling metered energy in caravan parks, residential parks, and manufactured home estates to residents who principally reside there."<sup>77</sup>
- **Exempt Embedded Network Service Provider Guideline:** 'NR4' - applying to: "Persons selling metered energy in caravan parks, residential parks, and manufactured home estates to residents who principally reside there."<sup>78</sup>

The preliminary findings from the interviews with exempt customers suggest that there may be some important gaps between the AER's requirements and the practice of some owners/operators of long stay/permanent caravan and residential parks.

However, we would highlight that these are **preliminary findings**. The interviews provide qualitative rather than quantitative information and it would be inappropriate to draw conclusions about the whole sector based on this limited sample of exempt consumers. Nevertheless, the study does provide a strong pointer to the AER about potential issues in this sector, particularly with long-established parks whose 'modus operandi' was developed prior to the AER's consolidation of the exempt selling and embedded network Guidelines.

We also note that the findings of this study are relatively consistent with observations made in other studies. The distinctive feature of this study is the very strong sense of vulnerability and frustration that the consumers in the parks felt in their dealings with their embedded network operator.

It is not clear at this stage how much and how successful the AER has been in communicating the changes in the requirements for exempt sellers in particular since 2012. It is possible that prior to 2012, these park operators would have been self-classified as 'deemed' exempt sellers/network operators. As such, while considered to be exempt and subject to the prevailing conditions of exemption, they would not have needed to be registered with the AER.

The following section provides an overview of the main issues we have identified in this preliminary study, along with some examples. Appendix C includes a number of more detailed case studies. The remaining sections of this chapter provide a more detailed assessment of each of the AER's "conditions of exemption" for the exemption classes of R4 and NR4 as set out in the AER's Exempt Seller Guideline and the NSP Registration Exemption Guideline respectively.

Note, the focus of this section 2 is to assess how the AER's conditions of exemption for this class of consumers compare to the reported experiences of the exempt consumers in our study. In other words, Section 2 examines the level of compliance by exempt suppliers with the AER's conditions – as experienced by their exempt customers in this study.<sup>79</sup>

A second question then arises and that is whether the AER's exemption conditions for classes R4 and NR4 are appropriate and adequately align with the protections available to customers of authorised retailers, in line with the policy intent. This question will be addressed in Section 3 of this report.

### 2.1 Major issues for residents in caravan and residential parks

In this section, the report will focus on the major issues that were raised by the exempt consumers in our study. In some cases, the issues set out below reflect concerns that the consumers have already attempted to raise with the park management. The consumers believed that the management had not provided an adequate response or even an acknowledgement of the issue.

However, despite frustration with the outcome of their discussions with the park management, the exempt consumers felt too vulnerable to pursue these issues further. For instance, in principle the consumers could take their complaint to a Tenants Tribunal (or equivalent)

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<sup>77</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, Table 2, p 39.

<sup>78</sup> AER, *Electricity Network Service Provider Registration Exemption Guideline, Version 3*, August 2013, Table 3, p 20.

<sup>79</sup> Again, we emphasize that SACOSS does not claim that this study provides some quantitative assessment of compliance with the AER's conditions. That is not its purpose and the findings should not be read as such.

in the state. In practice, they were reluctant to take this step out of concerns with the costs and possible repercussions from the park management.

Note:

- In all instances, the exempt seller and the embedded network operator were one and the same person or entity.
- It is not clear if the exempt seller/network operators in the sample were always registered with the AER. The use of the term “exempt consumer” in this report should not therefore be taken to mean that the park owner has necessarily registered with the AER.

## 2.1.1 Electricity Pricing

The AER’s Exempt Selling Guideline specifies that electricity prices to R4 exempt customers should be no more than the standing offer price that would be charged by the relevant local areas retailer for new connections in area.<sup>80</sup>

The assessment of compliance by the exempt seller with this pricing condition was complicated by the fact that generally, the charge for electricity usage was just one component of the overall charges to the customer for rent, facilities and electricity; all encompassed on the one bill.

Nevertheless, SACOSS saw no evidence that the *variable charges* to the customer (c/kWh) were not compliant with the AER’s price constraint condition. The bigger issues for customers were:

- the lack of explanation when prices changed;
- the fixed energy charge (fortnightly or monthly) that ranged from \$10 per fortnight to approximately \$40 per month. There did not seem to be any reasonable basis for the amount charged, and the exempt seller was not open to explaining the charge (see 2.1.2);
- the view that the exempt seller was being charged lower, market based prices than the standard prices from the authorised electricity retailer at the ‘gate’ meter and this market benefit was not passed onto the exempt consumers; and,
- similarly, savings benefits from installation of solar PV on common park buildings were not passed on to the exempt consumers.

Consumers reported:

Unexplained variations on the amount payable on the bill, even when the resident believes their consumption patterns have not changed;

A lack of transparency on charges ... residents are not always notified when arrangements change and there is no transparency if formal reductions (i.e. abolition of the carbon tax) are being passed on to residents;

A strong concern over whether the park owner was profiting from the on selling of electricity to residents; and,

Concern over the site owner’s encouragement for residents to install solar panels on their homes. Residents were told it will save them money and they will not be charged for the installation. However residents have not seen any evidence of the implications or benefits of the solar installations on their electricity bills.

## 2.1.2 Information Provision

The AER’s Exempt Selling Guideline specifies that exempt customers must be advised (inter alia) of any rights to purchase electricity from an authorised retailer, the person’s rights in the event of a dispute, the conditions attached to the exemption, forms of assistance available, detail of tariffs and charges.<sup>81</sup> The information must be provided at the start of the tenancy and on request from the exempt customer or the AER.<sup>82</sup>

The exempt customers in our sample had generally been at the caravan or residential park for some time and were not able to recall details of the information provided at the start of their residency in the park. Even *relatively* recent arrivals at the park could not recall receiving the required information on their energy supply arrangements.

However, there was a strong feeling amongst most exempt consumers that they were not kept adequately informed about their rights and protections under the R4 exemption class. In particular, a number commented that requests to the park management for more information about their energy supply arrangements were effectively “brushed off”.

<sup>80</sup>. AER, (*Retail*) *Exempt Selling Guideline, Version 3*, April 2015, Condition 7.1, p 43.

<sup>81</sup>. Ibid, Condition 2 (1), p 41.

<sup>82</sup>. Ibid, Condition 2 (2), p 42.



## 2. ASSESSMENT OF CONSISTENCY WITH AER GUIDELINES

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As noted in section 2.1.1 above, the park tenants were particularly concerned about information relating to increases in the electricity prices including changes to the 'supply' charge. It was often not made clear to the exempt customers why prices had changed or the basis on which the supply charge was calculated.

Moreover, when park management were asked directly about the reasons for price changes and/or the supply charge, the responses from the park managers to the consumers were not seen to be helpful. The exempt customers suggested they were reluctant to "push" these questions too far.

However, the AER's Guidelines indicate that there is a positive obligation on both exempt sellers and exempt network operators to provide information on request to the customer. As noted above, for instance, the AER's Exempt Selling Guideline requires that the information set out in Condition 2(1): "must be provided by the exempt person at any time on request by the exempt customer or the AER."<sup>83</sup>

The AER's Network Exemption Guideline (Condition 6) requires that the dispute resolution procedures: "must allow a customer to request, and be provided with, written details of all charges applicable to that customer".<sup>84</sup>

This study suggests that the exempt suppliers and/or the exempt customers may not always be aware of the obligations set out in both the AER's Guidelines for R4 and NR4 classes to provide a range of information on the energy supply conditions at the time of taking residence and on request by the exempt consumers.

### Consumers reported:

They have asked the park owner who provides the power to the park however the park owner is not willing to disclose this information;

No formal information given to residents when they move in. A resident who moved in within the last five years wasn't given any formal information regarding energy and it was several years before the supply charge was explained;

No access to energy efficiency information from the park owner, this was provided by an unrelated 3rd party;

Concerns over the lack of information on electricity bills, residents are only provided with

the total kWh consumed and the total dollar amount due. Consumers expect that meter readings, dates and tariffs should also be provided; and,

Suspicion that meter readings are being estimated. Doubt over the accuracy of consumption and charges has arisen when a resident receives a bill for a period of time where they have been living off-site and the bill has not decreased.

### 2.1.3 Payment Options

The AER's Exempt Selling Guideline (version 3) does not require the exempt seller to offer a range of payment options. However, the exempt seller "must offer flexible payment options (in relation to the sale of energy) to an exempt customer who has identified themselves as being in financial difficulty".<sup>85</sup>

There is no specific obligation in the Guideline, however, that requires the park manager to offer the Centrepay payment option to customers in financial hardship.

However, there were instances where the exempt customers felt they were being pushed into changing their existing payment preferences and agreeing to a direct debit arrangement from their bank accounts for both their rental and energy charges.

These customers were quite resentful of the pressure placed on them to do this and while some ultimately agreed to the approach, others were adamant that they would continue to pay by cash or other existing payment arrangement.

#### Consumer Comment:

"I have always paid by cash and I am not going to change now. They will have to accept cash".

### 2.1.4 Complaints/disputes

The AER's Exempt Selling Guideline requires the exempt seller/network operator to establish a dispute handling procedure that meets the requirements of the AER. The Exempt Selling Guideline also requires the exempt seller to advise the customer about the dispute handling procedures at the commencement of the lease or on request.<sup>86</sup>

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<sup>83</sup> Ibid, pp 41-42. Condition 2(1) includes: "the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy" (Condition 2(1)(g)).

<sup>84</sup> AER, *Electricity NSP Registration Exemption Guideline, Version 3*, 27 August 2013, p 24.

<sup>85</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, Condition 3.2.

<sup>86</sup> Ibid, Condition 2.1 (c), p 41. Appendix C, p 56.

Similarly, the AER's Network Exemption Guideline requires the exempt embedded network operator to have in place a dispute resolution mechanism.<sup>87</sup> Exemption Condition 6 states:<sup>88</sup>

*A private network must have in place dispute resolution procedures which customers can access at no cost or on a fee for service basis ... These procedures must allow a customer to request, and be provided with, written details of all charges applicable to that customer.*

It is not clear if the exempt sellers/network operators at some point provided information on their dispute handling procedures to the exempt customers, although none of the customers could recall receiving such information. In any case, there was wide spread dissatisfaction with the way complaints were handled in practice:

- many exempt customers considered that the exempt seller/operator did not listen to their complaints;
- some exempt customers believed there would be adverse repercussions on them for pursuing a complaint too long;
- the exempt customers did not generally know who else they could approach to provide independent resolution of their issues;
- the difficulty is compounded by the fact that in all states except NSW, exempt consumers cannot forward their complaints to an independent Energy Ombudsman in their state, as the Ombudsman has no jurisdiction over the exempt seller market. Similarly, the AER is not generally in a position to handle complaints, nor is it resourced to do so.
- some customers were aware that complaints could be raised to the Tenancy Union or the Tenancy Tribunal (or equivalent) in their state. However, there was a view that the Tenancy Union was not particularly helpful and the Tribunal was high cost. Moreover, the vulnerability of these exempt consumers meant that taking a complaint to the Tribunal and facing cross-examination from the owner (or owner's solicitors) was not only too expensive but risked subsequent repercussions.

## 2.1.5 Electricity billing

### Consumer Comment:

"We raised the issue [regarding the prices and supply charge] with the Tenancy Union but they were not helpful in explaining the situation".

The AER's Exempt Selling Guideline sets out in some detail the information that must be included in the electricity bill to the exempt customer (Exemption Condition 3 (4) (a) – (o)). SACOSS's observations of a typical bill suggest that the bills contain only some of the important information required by Condition 3 (4).

Of particular concern was the fact that while the bill set out the kWh consumed in the relevant billing period (which may be a fortnight or month, depending on the rental arrangements), it did not provide the required meter readings to support the consumption figure. That is, the bill did not provide a start and finish meter reading for the period, nor did the bill indicate whether it was an actual or an estimated read. There was also no information on the unit prices.<sup>89</sup> Thus, there was no way for the customer to independently verify the kWh presented on the bill.

This finding was made more significant given that some of the exempt customers expressed their concern about the meter reading process itself (and the condition of the meter – see 2.1.6 below). For instance, some customers reported that "someone from the office" read the customers' meters. Some even commented that the person reading the customers' meters was seen recording a 'reading' in the book, but had hardly stopped to look at the meters. The bill did not indicate if the reading had been estimated or not. In some instances, the exempt customer could not readily read the meter because of the poor condition of the meter and difficulty in accessing the meter.<sup>90</sup>

Thus, without any way to verify the actual meter reading, the exempt consumers also doubted the accuracy of their bills and the reported levels of total consumption for the billing period. Some pointed to instances when they had been away but the bill stated that they had used electricity during that period. In other cases, the bill from one period to another was very similar even though the customer believed they had used very different amounts. The exempt customer had questioned the network operator about this but felt their complaints were dismissed.

### The Consumers say:

They [the meters] are just read by someone employed in the park office;

The [person] just opens the door [to the meter box] looks in and walks on. It doesn't look like they are recording the meter reading;

<sup>87</sup> AER, *Electricity NSP Registration Exemption Guideline, Version 3*, August 2013, p 9. The AER states that this is a 'basic condition' of exemption for an embedded network operator, and applies to all categories and classes of exemption.

<sup>88</sup> Ibid, Condition 6, p 24.

<sup>89</sup> However, the average unit price could be derived from the total variable cost and the kWh data. Condition 3 (k) of the AER's Exempt Selling Guideline requires that the bill include the tariffs, fees and charge and Condition 3 (i) requires information on the basis on which the tariffs, fees and charges are calculated.

<sup>90</sup> For example, a box holding a number of meters was typically locked and the meter could not be read externally.

There's no explanation of how the charges work. No explanation of the basis for the 'supply' charge; and, We don't know if he's profiting from the sale of power to us.

### 2.1.6 Payment Difficulties and Disconnection of Supply

The AER's Exempt Selling Guideline sets out a process that an exempt seller must follow in the event that a customer advises the seller that they are unable to pay the electricity bill due to financial difficulty (Condition 9).

These are in addition to the requirement in Condition 3.2 that an exempt seller must offer flexible payment options to the customer in financial difficulty and to advise the customer of the availability of government and non-government rebates, concessions and relief schemes and other forms of assistance (Condition 2.1 (e)-(f)).

There is also an explicit prohibition on disconnecting supply for specific circumstances, such as if the exempt customer requires life-support equipment, has sought support from government/non-government body or has made a complaint to a body as the Ombudsman (Condition 10).

The study sample did not include any person reporting that they had payment difficulties. The fact that the electricity bill was just one part of the overall rental payment arrangements makes it generally impractical for the consumer to separate the payment for electricity with the payment for rent.

While this sample of exempt consumers did not report payment difficulties for themselves, they did note that if a person didn't pay their bills over a period of time, then they would be evicted from the park. Thus, there is a very strong incentive to pay the total invoice (including rent and electricity charges). For this reason, issues around payments, evictions and disconnections are also addressed in state tenancy legislation.

Overall, it appeared from the discussions with exempt consumers that they had little awareness that the exempt seller has a number of obligations under the energy regulation with respect to offering more flexible payment terms for electricity supply and the restrictions on who and when disconnections can occur. (Conditions 3.2 and 10).

#### Consumer Comment:

"If you leave it [payment of electricity] long enough you'll get an 'eviction notice'."

### 2.1.7 Energy Metering and Network Infrastructure

The AER's Network Exemption Guideline requires that any meters used to measure billed electricity must comply with the requirements of the National Measurement Act 1960 (Cth) and regulations made under that Act for electricity meters and sub-meters and with the requirements set out in schedule 7.2 of the NER (Condition 1).

A number of study participants reported that the metering arrangements in their park were "totally dodgy". Some were in a cluster of 4 meters. All were relatively old and exempt customers could not recall any steps taken by the park management to replace the meters or check the meters for accuracy.<sup>91</sup>

### 2.1.8 Energy Infrastructure

The AER's Network Exemption Guideline requires that the network be kept safe, ensure a reliable supply and respond quickly to questions about the supply arrangements. For example, Condition 1 in the Guideline states:<sup>92</sup>

*All private networks must, at all times, be installed, operated and maintained in accordance with all applicable requirements (within the jurisdiction in which the network is located) for the safety of persons of property.*

The Guideline also states "there are no exception to these safety requirements".<sup>93</sup>

The exempt consumers in our study could not recall seeing the network operator undertaking any upgrading of the internal network or checking for safety of the network and connections to the premises. However, these same consumers did not appear overly concerned with the internal electricity supply network although some reported that the infrastructure (including the meters) appeared to be very old and not regularly maintained.

Generally, there were few complaints about the overall reliability of supply within the park as a whole. In one South Eastern Australia case, while supply was interrupted on a relatively frequent basis, the customer understood that had more to do with interruptions to supply from the local distributor (the park was located in a more remote rural area exposed to tree falls etc).

On the other hand, there was concern by some with the difficulty in contacting park management and having supply restored if there was an interruption to supply within the embedded network, particularly on the weekend when the 'office' was closed.

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<sup>91</sup> SACOSS emphasises that we are relying on the reports from customers and these claims have not been independently verified.

<sup>92</sup> AER, *Electricity NSP Registration Exemption Guideline, Version 3*, August 2013, Condition 3, p 23.

<sup>93</sup> Ibid.

The question arises therefore, whether the caravan and residential parks had 24/7 arrangements to ensure supply interruptions are recorded and supply is restored within the park at an acceptable time frame.

The AER's Exempt Selling Guideline requires that supply be restored "as soon as practicable" following disconnection of supply.<sup>94</sup>

The most frequently reported concerns related to the safety and quality of the electricity supply assets **beyond the meter**, that is, between the meter (which is located away from the premise) and the residence (whether it is a caravan or more fixed building).

These concerns touched on matters such as:

- Wires connecting the meter to the caravans were sometimes hung in dangerous positions. For instance, a customer commented that in their park, the "power leads are just strung up in trees"; and,
- The lack of capacity to the caravan to meet their requirements. For example, some customers reported that if they turned on the air conditioner or heater, they could not boil a kettle without tripping the fuses.

### Consumers reported:

They were unclear on the process of who to contact if supply is interrupted. Some thought the process had changed as the park office is now unattended after hours and on the weekends. This leads to delays in responding to loss of supply.

## 2.1.9 Access to Competition

A common concern of both regulators and community organisations is the difficulty that embedded network customers face in obtaining access to the benefits of the competitive retail market. The view is that in a competitive retail market, consumers will have access to lower priced products than the standard prices and more variety in the type of tariff or other benefits.

This concern is even greater when considering the outcomes for low-income households that typify long-term residents of caravan parks.

In particular, the Pricing Rule requires that embedded network operators charge their customers no more than the regulated or standard retail tariff in their network region.<sup>95</sup> However, there are now very significant price

differences between the standard/regulated retail price and market offers.

This means that customers of exempt sellers may face prices that are significantly higher than most customers of authorised retailers while having no capacity to negotiate better prices with their current provider (the exempt seller) or switch to another retail provider.

For example, the AER's Annual Performance Report 2014/15 summarises the differences between the median standard offer price and the median market price for each jurisdiction and network area for residential consumers.

Based on the average residential consumption in each region, the AER has identified savings of around \$300 per annum between the local standing offer price and the median market offer, with further savings possible in some regions. Even greater cost savings have been identified in some regions based on the 'cheapest market offer'.<sup>96</sup>

A separate study undertaken by Alvis Consulting and St Vincent de Paul Society confirmed the AER's findings of significant differences between the standing offer and the market offer. The study concluded that:<sup>97</sup>

*...the spread between standing offers and market offers has changed from July 2012 to July 2015 in Victoria, NSW and South Australia. In July 2012 standing offer bills were between 8-12% higher than market offer bills but just three years later this difference has increased to 22% in Victoria and 15% in NSW. In South Australia the current difference (12%) is the same as it was in July 2012 but we note that South Australia deregulated in February 2013 and the incumbent retailer, AGL, introduced a transitional offer that remained in place until 1 July 2015.*

It is particularly noteworthy that the three states with the greatest differences between the retail standing offers and market offers are the three states where the jurisdictional rules do not restrict exempt customers from accessing competitive retail market offers.

Therefore, the exempt customer in these regions is likely to receive the greatest benefit from access to retail competition. However, notwithstanding recent reforms and the AEMC's rule changes (December 2015), in practical terms it is still very difficult and relatively costly for small consumers to get access to a retailer.

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<sup>94</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, Condition 11.1, p 46.

<sup>95</sup> In jurisdictions where there is no longer a regulated retail electricity tariff, such as NSW, Victoria and South Australia, the "host" retailer is obliged to publish a "standard tariff" which is a default tariff available to any customer in the relevant distribution area.

<sup>96</sup> AER, *Annual Performance Report, 2014/15*, November 2015, Chapter 3 for a state-by-state breakdown of potential savings between standing offers and competitive market offers. The AER found significant differences between the standing price and median market offer, but also between the 'highest' and 'lowest' market offers. [https://www.aer.gov.au/system/files/AER%20Annual%20Report%20on%20the%20Performance%20of%20the%20Retail%20Energy%20Market%20201415\\_0.PDF](https://www.aer.gov.au/system/files/AER%20Annual%20Report%20on%20the%20Performance%20of%20the%20Retail%20Energy%20Market%20201415_0.PDF)

<sup>97</sup> St Vincent de Paul Society, Victoria & Alvis Consulting, *The NEM – still winging it, Observations from Vinnies' Tariff-Tracking Project*, September 2015, p 26. [https://www.vinnies.org.au/icms\\_docs/228265\\_National\\_Energy\\_Market\\_-\\_Still\\_Winging\\_It.pdf](https://www.vinnies.org.au/icms_docs/228265_National_Energy_Market_-_Still_Winging_It.pdf)

There has been some suggestion that the Pricing Rule be amended to include requirement to supply on the basis of the prevailing market offer price. However, this would be extremely difficult to implement given the spread in market offer prices and in the requirements associated with them.

Sections 2.2 and 2.3 below provide a more detailed comparison of the AER’s core conditions for R4 and NR4 exemptions and the experience of the exempt customers.

Note, that some core conditions for exempt sellers to the R4 class of consumers relate to factors like the exempt seller’s record keeping. This study did not include interviews with park owners and therefore did not obtain information on this type of condition.

In addition, the comments from exempt customers represent only one perspective on the issues. Therefore, throughout this report, we have cautioned against overgeneralising the findings. The findings of this study are pointers to important issues for exempt customers rather than definitive statements about this market segment.

However, SACOSS’s overall impression from the interviews with the exempt customers was their deep frustration with current arrangements for electricity supply matched by a real concern about the effectiveness and consequences of complaining to management or formally disputing the arrangements through, for instance, the Tenants Union, Tenants Tribunals or equivalent.

## 2.2 Registrable Retail Exemptions: Class R4 – Conditions of Exemption

Class R4: “Persons selling metered energy in caravan parks, residential parks, and manufactured home estates to residents who principally reside there.”

The table below sets out the AERs’ “core exemption conditions” that apply to registrable exempt sellers, including owners of permanent resident caravan parks. The conditions are specified in the Exempt Seller Guideline.<sup>98</sup> The table also includes our observations on whether these conditions have been identified in our research and further commentary on this as applicable.

**Table 3: Retail Exemption Conditions for Registrable Class R4.**

Core Condition	Obligation summary (full details are available in the AER’s Exempt Selling Guideline)	Commentary/findings
<b>(1) Obligation to Supply</b>	1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this class. 2. An exempt person cannot refuse to sell energy to a customer on the basis that the customer owes the exempt person outstanding amounts.	1. We did not observe any instance of refusal to supply. Customers’ greater concern was their general vulnerability as residents of a caravan park to the decisions of the owner/operator. 2. The energy bill formed part of the overall fortnightly or monthly rental payments so the issue was broader than just energy supply.
<b>(2) Information Provision</b>	1. An exempt person must advise in writing at the start of their residency agreement (a) any rights to purchase from an authorised retailer of their choice; (b) the exempt person is not subject to all the obligations of an authorised retailer & customer will not receive same protections; (c) persons rights in relation to dispute resolution (d) the conditions of the exemption (e) availability of rebates (f) forms of assistance available (g) the energy tariffs and associated fees and charges; (h) the flexible payment options available; (i) contact numbers in the event of a gas or electricity fault or emergency. 2. The information in (1) must also be provided on request.	1. Customers in the study expressed significant concerns with the lack of information provided to them about their energy supply. This included information about prices and charges and changes to these prices and charges. Customers were also concerned about the lack of information on arrangements and contacts in the event of failure of supply particularly on weekends and public holidays when the “office” was closed.

<sup>98</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*. April 2015, pp 41-48. Similar conditions are included in Draft Version 4 that was published by the AER in September 2015.



**Table 3: Retail Exemption Conditions for Registrable Class R4.**

Core Condition	Obligation summary (full details are available in the AER's Exempt Selling Guideline)	Commentary/findings
<b>(3) Billing &amp; Payment Arrangements</b>	<ol style="list-style-type: none"> <li>1. Issue at least once/three months.</li> <li>2. Must offer flexible payment options for those identified as in financial difficulties.</li> <li>3. Circumstances when (2) does not apply.</li> <li>4. Contents of the bill: (a) name; (b) address (c) date of issue (d) meter identifier (e) pay by date (f) date or meter reading or estimate (g) billing period (h) current meter reading or estimate (i) previous meter reading or estimate (which must be stated) (j) amount of energy consumed in kWh (k) tariffs, fees &amp; charges (l) basis on which charges calculated (m) any amount deducted under a rebate (etc) scheme, (n) details of available payment methods (o) contact number for account inquiries &amp; complaints.</li> </ol>	<p>(1) Issued fortnightly or monthly as part of the overall rental invoice.</p> <p>(2) No evidence of offering flexible payment terms if person is in financial difficulties.</p> <p>(3) Not applicable.</p> <p>(4) Energy bill is a just a line item on the overall rental invoice. The information is limited to a stated kWh amount, the price per kWh, a fixed charge and the total amount. There are no actual start and end meter readings on the account to validate the reported consumption.</p> <p>(5) Customers report very limited options regarding payment and these change at the discretion of the park owner/operator.</p>
<b>(4) Estimation as basis for bills</b>	<ol style="list-style-type: none"> <li>1. Best endeavours to ensure meter is read and used as basis for any bill.</li> <li>2. Cannot rely on an estimated meter read as starting bill for new tenant.</li> <li>3. Can rely on estimation if the bill cannot be reliably based on a meter reading.</li> <li>4. Where estimation is used, the estimation should be based on historical metering data or average comparable tenant usage (if historical information not available).</li> </ol>	<p>1 - 4. Meters are supposed to be "read" on regular basis but the customers are not always confident that this always occurs in practice or, if it is done, whether it is an accurate reading.</p> <p>The bills do not appear to indicate if the reading is estimated or actual (see 2.1.5).</p>
<b>(5) Pay-by-date</b>	<p>Pay by date for a bill must not be less than 13 business days from the issue date.</p>	<p>Not assessed.</p>
<b>(6) Receipts</b>	<ol style="list-style-type: none"> <li>1. Customer must be provided with receipt unless payment by direct debit or credit card over phone (require receipt number).</li> <li>2. Must provide a separate receipt if a payment for energy was made together with a rent payment &amp; not separately identified on rent receipt.</li> </ol>	<p>Not assessed.</p>
<b>(7) Pricing</b>	<ol style="list-style-type: none"> <li>1. Must not charge tariffs higher than standing offer price for new connections from local authorised retailer.</li> <li>2. Must provide notice to customer of any change in tariff as soon as practicable &amp; no later than next bill.</li> <li>3. Must not impose any charge that could not be charged by local retailer under standard retail contract.</li> <li>4. Charges for late payment must be limited to recovery of reasonable costs.</li> <li>5. Requirements 1 - 4 do not apply if alternative jurisdictional arrangements.</li> <li>6. Requirement 1 only applies to small commercial customers if choice of retailer is not available or not cost-reflective.</li> </ol>	<p>1. The energy rate (c/kWh) appears generally to be at or below the standing offer price (but is likely to be higher than the rate charged to the network operator at the gate meter by the authorised retailer).</p> <p>However, the fixed charges for supply appear to be very high and not consistent with the pricing obligation - consumers do not understand the basis of the fixed charge and the changes to this charge.</p> <p>2. Consumers were not satisfied that they were adequately informed about changes in prices and charges</p> <p>3. See (1.) above re: fixed charges.</p> <p>4. No information on the treatment of late payments - the assessment of this is complicated by having combined rental and energy bill.</p> <p>5 &amp; 6. Not applicable.</p>
<b>(8) Undercharging &amp; overcharging</b>	<ol style="list-style-type: none"> <li>1. If customer undercharged, operator can recover the amount subject to conditions (a) if not the customer's fault then recovery limited to 9 months prior (b) cannot charge interest on amount (c) must offer customer instalments &amp; time to pay the amount (up to 12 months).</li> <li>2. If customer overcharged, the customer must be informed within 10 BD of becoming aware of the overcharge &amp; repay (subject to conditions).</li> </ol>	<p>1 &amp; 2. No incidences reported.</p>

**Table 3: Retail Exemption Conditions for Registrable Class R4.**

Core Condition	Obligation summary (full details are available in the AER's Exempt Selling Guideline)	Commentary/findings
<b>(9) Payment difficulties and disconnection</b>	<p>1. If customer advises operator that they can't pay due to financial difficulties, the customer must be (a) directed to energy efficiency resources (b) informed of relevant Government rebates, relief schemes etc, (c) not charge a late payment fee, and (d) not charge the customer a security deposit.</p> <p>2. Must not proceed with disconnection or cessation of supply unless (a) customer requests; (b) unsafe to supply; (c) customer vacating premises (d) customer has not paid a bill by pay-by-date or not adhered to the terms of a payment plan and (i) operator has issued reminder notice, offered more flexible terms and restated forms of assistance available (ii) given a disconnection warning (iii) then used best endeavours to contact customer (iv) customer failed to take action by date on disconnection notice.</p> <p>3. Must use best endeavours to notify customer prior to disconnection.</p> <p>4. If state or territory tenancy legislation sets out requirements for disconnection then (1) - (3) does not apply.</p>	<p>1. Difficult to assess this as the customer was invoiced for both energy and rental on the same invoice. However, the long-stay residents appear to prioritise payment of their rental/energy agreement invoices and the situation of disconnection for debt does not appear to have arisen.</p> <p>2 &amp; 3. Not determined in this study.</p>
<b>(10) When disconnection or cessation of supply is prohibited</b>	<p>1. A customer must not be disconnected where (e) customer is on life support equipment; (f) customer has applied to Government or other 3rd party for assistance/relief payments; (g) customer has made a complaint to Ombudsman or other relevant dispute body &amp; complaint is not yet resolved (h) certain dates/times.</p> <p>2. Whether disconnection prohibited on a particular day due to extreme weather conditions.</p>	See above.
<b>(11) Reconnection of Supply</b>	1. A customer must be reconnected as soon as practicable if customer requests it and has rectified the situation including payment for reconnection.	See above.
<b>(12) Concessions &amp; Rebates</b>	<p>1. Where customer is eligible to receive a rebate or relief payment, operator must not hinder this process.</p> <p>2. Where operator must make the claim on behalf of customer(s), the operator must do so on best endeavours basis and provide the rebate to the relevant customers' bills.</p>	<p>1 &amp; 2. Rebates in South Eastern Australia were provided by the State Governments directly to customers on the basis of their bills, and only limited additional information was required from operator of the park (e.g. parent NMI). This does not therefore appear to be an issue for customers, at least in the South Eastern regions, other than the inconvenience of an annual payment.</p> <p>Further assessment is required for customers in North Eastern Australia because the exempt supplier must submit the rebate claims on behalf of the consumers. Anecdotally, this can be an issue and delay receipt of refunds.</p>
<b>(13) Choice of Retailer</b>	1. Where state legislation allows customer to purchase energy from retailer of their choice, the operator must not do anything to discourage or prevent the exercise of this choice.	1. Customers were aware that there were cheaper retail market prices available and would like to have access to these. However, they did not particularly want this via retail competition - the preference was for regulation by government to force owners to share savings.

**Table 3: Retail Exemption Conditions for Registrable Class R4.**

Core Condition	Obligation summary (full details are available in the AER's Exempt Selling Guideline)	Commentary/findings
<b>(14) Contact Details</b>	1. Operator must provide means of contact for account enquiries & complaints that is readily accessed.	1. Customers expressed concern about raising complaints to the park operator. However, they did not usually know who else they could contact. Some were aware that they could raise a complaint with the relevant tenancy tribunal or civil and administrative tribunal. However, they considered this would be a difficult, expensive and a confrontational process.
<b>(15) Complaints &amp; Dispute Resolution</b>	1. In event of a dispute & in absence of any determination by the relevant tenancy tribunal, the operator must (a) make reasonable endeavours to resolve the dispute, and (b) advise customer of any right that exempt customer has to access Ombudsman or other relevant dispute resolution body.	1. Customers do not consider they can get a fair hearing from the park operator in the event of a complaint or dispute. There was no evidence of a formal dispute mechanism.  Customers are very frustrated at the lack of independent and safe options for resolving disputes or addressing complaints.
<b>(16) Life support customers (LSC)</b>	1. If advised that customer is a life support customer, the operator must (a) advise the embedded network manager (if different) (b) advise the operator's retailer and local distribution network of LSC and (c) provide retailer and local distributor all relevant information.  2. Maintain records of any LSC.	Not assessed.
<b>(17) Continuity of supply</b>	1. Must notify customers and the AER immediately if they are or expect to be disconnected or any likelihood they will be unable to continue selling energy.	Not assessed.
<b>(18) Termination of energy supply agreement</b>	1. Obligations on park operator and customer to advise each other of agreed dates for termination. Customer to advise park operator if intending to receive supply from a market retailer.	Not assessed.
<b>(19) Maintaining records</b>	1. Must maintain records for each of exempt customers covering name, address, meter identifier, date account created, copies of any bills issued for previous 12 months, date of most recent meter read and basis of estimating consumption.	Not assessed.

## 2.3 Registrable embedded network: Class NR4 – Conditions of Exemption

Class NR4: “Persons selling metered energy in caravan parks, residential parks, and manufactured home estates to residents who principally reside there.”

In the AER’s electricity registration exemption guideline, the AER sets out the following general conditions that apply to operators of registrable embedded networks, including those operators defined in Class NR4. The conditions include the following conditions for a “private network” operator.<sup>99</sup>

<sup>99</sup> AER, *Electricity Network Service Provider Registration Exemption Guideline*, 27 August, 2013, pp 24-25.



**Table 4: Registrable Embedded Network Exemption Conditions for Registrable Class R4**

Core Condition	Obligation summary (full details are available in the AER's NSP Registration Exemption Guideline)	Commentary/findings
<b>1. Meter requirements</b>	Must comply with <i>National Measurements Act 1980 (Cth)</i> & associated regulations & with requirements in Schedule 7.2 of the NER.	The customers lacked confidence in the accuracy of the meters but had no way of checking these meters. The meters are unlikely to always meet these requirements given age and reported structure of the meters. While the conditions of exemption do not require the operator to upgrade meters (installed pre 2013), there should be some requirement to ensure meters are still operating correctly.
<b>2. Energy must be metered</b>	All <u>paid</u> energy consumption must be metered except where AER determines an unmetered supply is permitted (only in exceptional circumstances).	The usage was metered, but not necessarily by meters that satisfy technical requirements (as above). The age of some of the meters would suggest that they would not meet minimum standards.
<b>3. Safety of the network</b>	Embedded network must at all times be installed, operated and maintained in accordance with safety requirements (within the jurisdiction). This includes an industry Code or Guideline otherwise applicable to a network service provider providing similar services.	Some customers considered that there was an ongoing lack of maintenance of their embedded network. Customers also had safety concerns, particularly with respect to the electricity wiring from the meter to the customer's premise. There did not appear to be clear standards for this in some parks.
<b>4. Embedded generation conditions</b>	Any generation source within a NSP's private network must meet specified conditions (ability to shut down, or to isolate) to respond to loss of supply from the local DNSP's network. This condition applies to generation source of any kind located in the embedded network.	Not generally applicable. However, some parks had solar PV installed on common buildings. Greater clarity is required on how this condition applies to solar PV generation within an embedded network.
<b>5. Restrictions on who could sell electricity</b>	All selling in the private network must be by either an authorised market retailer or holder of valid exemption registered with the AER or if entitled to a deemed retail selling exemption, or in accordance with regulations in force in a jurisdiction where NERL does not apply.	At this stage only the park operator sells the electricity. It is not known if the operators all meet the requirements of being approved by the AER as exempt from registration with AEMO. Operators of permanent caravan and residential parks cannot be classified as a "deemed" retail exemption entity and must be registered with the AER in order for the operator to on-sell electricity. It is a civil offence for a park operator to on-sell electricity without the appropriate registration with the AER.
<b>6. Complaints &amp; Dispute Resolution Procedure</b>	Must have a dispute resolution procedure in place that customers can access at no cost or on a fee for service basis. If on-selling under the NERL, the operator may use the dispute resolution procedure available in the NERL. Otherwise, it must be specified in formal agreements between the network owner or its appointed agent and the customer.	Customers report that they are not aware of any formal dispute resolution process with the park operator. Nor do they recall if this issue was discussed with them at the time of entry to the park. However, most residents in our sample had been at the park for more than five years. Disputes seem to be addressed through informal contacts and customers do not always feel they are on an equal footing with the owner/operator in these disputes.
<b>7. Customers with adjoining or multiple exempt sites</b>	If suitable metering is installed, meter readings for that customer may be aggregated for corresponding time periods.	Not applicable.
<b>8. Timing of application for registration</b>	Application for registration must be made within 20 BD of acquiring a right to register.	Not applicable.

**Table 4: Registrable Embedded Network Exemption Conditions for Registrable Class R4**

Core Condition	Obligation summary (full details are available in the AER’s NSP Registration Exemption Guideline)	Commentary/findings
<b>9. AER right to revoke or vary conditions</b>	The AER may revoke or amend an exemption at any time or may vary the conditions from time to time.	Not applicable.
<b>10. Life support customers (LSC)</b>	When advised that a customer is a LSC, the operator must promptly notify the local DNSP of the existence of a LSC.	Not considered. But this is an important issue given the current focus on continuing to supply to LSC.
<b>11. Disconnection of LSC</b>	A private network operator must not disconnect supply to an LSC without making arrangements for the safety of the LSC	Not considered.
<b>12. Access to retail competition</b>	A private network operator must not impede a customer’s access to retail competition where it is available in a jurisdiction.  The operator must provide on request details of the NMI of the gate meter without undue delay.	There is no evidence that consumers were aware of this right to access competition. Most were only mildly interested but very concerned about whether the cost savings to the park operator of a retail market offer were fairly passed on to the exempt customers. Similarly, for parks that installed solar PV systems, consumers believed they should receive some benefits.

## 2.4 Summary and Recommendations

### Exempt customers are frustrated and disempowered

The overall impression arising from this research is that the exempt consumers in caravan and residential parks feel both frustrated and disempowered. These exempt customers may not be aware of the full suite of protections available to them under the AER’s conditions of exemptions for R4 and NR4 category consumers. However, they make strong claims that they do not get adequate information from the park operator, that their concerns are not being addressed and, more generally, they are not being offered a “fair deal” in terms of their electricity supply.

Moreover, the exempt customers in the study do not know where, and to whom, they can safely turn in order to resolve their complaints in an effective and impartial manner. While some recognised they could approach the Tenants’ Tribunal in their state (or equivalent state body), they were also very concerned about possible repercussions. It was not only their energy supply at stake, but also their accommodation security and risk of other repercussions.

The exempt customers in our study, however, did not look to retail competition as a way of improving the services and energy prices provided by their exempt seller. Instead, the exempt customers in our study looked to the various regulatory authorities to provide this pressure on the suppliers.

### Key issues from an exempt customer’s perspective

From the perspectives of the exempt consumers who participated in this study, the key issues are:

- inadequate information on prices and charges and the reasons for changes to these prices and charges;
- high fixed charges for supply that appear to exceed the fixed charges in the standard offer of the local retailer;
- a view that while the park owner/manager had lower prices and/or lower energy costs (due to for instance, installation of PV on office buildings) these were not passed on to the consumers;
- the park owner/manager restricting and/or changing the payment options available to customers, e.g. mandating direct debit payment arrangements;
- the inability of the exempt consumers to negotiate on “equal terms” with the park owner/manager;
- the lack of access to cost-effective independent energy dispute settlement mechanisms;
- the poor state of the network infrastructure, particularly the accuracy of the customers’ meters, the connection from the meters to the customers’ premises and the lack of capacity on the connection; and,
- the lack of effective contact points over weekends and public holidays if there are issues with electricity supply.

Notably, the customers in the SACOSS study were less concerned about access to retail competition.

SACOSS notes that in fact a number of the exempt customers' concerns are already addressed in the relevant AER Guidelines as part of the conditions of supply. Therefore, a substantial number of the customers' issues listed above arise from the gaps in the implementation by the exempt sellers and embedded network operators of the relevant conditions in the Guidelines. The invisibility of these customers to the AER, along with the resources available to the AER to enforce compliance, exacerbates the problem of ensuring exempt suppliers comply with the conditions of exemption. It is important to highlight, however, that these are preliminary observations and are based on the views of consumers rather than the exempt sellers or operators.

There is also a lack of clarity on how the "price cap" is to be applied in practice. The price cap means that the AER must ensure that exempt customers are charged no more than the standing offer price of the local area retailer.<sup>100</sup> Does this constraint include the fixed supply charge component of the standing offer price (which is a growing proportion of the offer price)? If it does, then there is a potential windfall profit for the on-seller.<sup>101</sup> If it does not, then the on-seller is free to charge a fixed fee at any level even if the variable charge is constrained.

The feedback from the customers in this study indicated a wide range of so called 'fixed charges' (fortnightly or monthly depending on when a customer is billed). The situation is further complicated because the energy charges including the fixed charges are usually just one line items in the overall rental invoice.

Exempt small customers were also concerned about arbitrary changes by the exempt seller to the available bill payment methods. A number of participants reported that they were being "forced" into direct debit arrangements, which do not always suit low-income households. In contrast, retailers are required to offer all small customers at least five payment methods that are set out in the NERR. Retailers must also provide an option to pay by Centrepay for customers in financial hardship.

### **Recommendation 2.1**

The AER's conditions of exemption should clarify the conditions associated with pricing and, in particular, the constraints on the fixed supply charge. There seems to be some ambiguity over whether a fixed charge is constrained by the pricing rule and what is included in the fixed charge.

### **Recommendation 2.2**

The AER and the AEMC investigate if there are viable options to enforce some sharing of savings obtained by the exempt seller through lower market offer prices, and government supported efficiency schemes or solar PV generation.

### **Recommendation 2.3**

The AER and jurisdictional governments or regulators further investigate options for a low cost independent dispute settlement mechanism that includes a range of services to exempt customers such as conciliation, investigation and legal capacity to give directions.

### **Recommendation 2.4**

The AER investigate ways in which it can improve its communication with both the exempt suppliers and the exempt consumers so that both parties are clear about the AER's conditions of exemptions. The AER's communication must address both new and established on-sellers and embedded network operators, as exemption arrangements in the past were generally less prescriptive in their registration and consumer protection conditions.

### **Recommendation 2.5**

The AER should collect additional data on typical fixed fees charged to small customers in embedded networks to assess what component of these fixed charges reflects energy supply fixed costs, what component reflects fixed costs of access to the embedded networks and if these fees are consistent with the NERR and the policy intent.

### **Recommendation 2.6**

The AER is reviewing the conditions in its Exempt Selling Guideline relating to payment options. The feedback from customers in this study suggests that current practices are unacceptable and the Guideline needs to be more prescriptive about payment options, particularly access to Centrepay for customers in hardship.

### **Balancing costs and benefits for vulnerable customers**

This study also provides an opportunity to critically assess the current national exemption framework and whether, taken as a whole, it delivers on the policy objective expressed in the NERL, namely "exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules."<sup>102</sup>

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<sup>100</sup> NERR, Rule 152 (4).

<sup>101</sup> That is, the on-seller will pay a certain fixed fee to the retailer for supply to the park. If the standard offer fixed fee is then recovered from each of the on-sellers' customers, the total fixed amount recovered is likely to exceed the on-sellers fixed supply charge.

<sup>102</sup> NERL, section 114(1)(c).

In developing the guidelines, the AER must seek a careful balance between the policy intent and the reality that in many instances the costs of a full suite of customer protection measures will be relatively high compared to the benefits. Ultimately, if regulation is costly to implement, it will lead to higher prices or lower quality services for consumers.

The AER recognises this issue in its Exempt Selling Guideline. The AER concludes that “exempt sellers differ from authorised retailers ... Consequently certain requirements under the Retail Law [NERL] and Retail Rules [NERR] may be more onerous or inappropriate.”<sup>103</sup>

SACOSS, however, considers that in making this trade-off, the AER should put more weight on factors such as the greater vulnerability of these customers and the practical reality that retail competition is unlikely to emerge in this sector. In these circumstances, a significant imbalance in ‘negotiating power’ arises. There is a role for enhancing the consumer protection regulation to achieve more balanced outcomes for consumers in the ‘real world’ of small customers in caravan and residential parks et al.

#### **Recommendation 2.7**

In assessing the costs and benefits of consumer protection regulation for exempt consumers, the AER take more account of the relative vulnerability of many of these customers, particularly when retail competition is not generally a practical option.

#### **Inadequate compliance enforcement mechanisms**

The AER’s Guidelines explain the consequences of failure to register (for a registrable class of exemption) and failure to comply with the conditions of exemption. Failure to register with the AER may result in civil penalties. Failure by an exempt embedded network operator to comply with the conditions of exemption also carries the risk of “sizeable civil penalties”.<sup>104</sup> Failure by an exempt seller to comply with the conditions of exemption may lead to the AER revoking the exemption.

In practice, however, SACOSS did not observe any robust mechanisms for monitoring, reporting and enforcing the conditions of exemption for sellers and for network operators. Without this, the AER is effectively blind to breaches of the registration requirement and the exemption conditions – the penalties exist on paper, but hardly in practice.

SACOSS considers this is an important gap in the customer protection framework for exempt customers, particularly when compared to the performance monitoring and reporting of authorised retailers and distribution businesses.

We acknowledge that it is a significant task to developing procedures for monitoring, reporting and enforcement in this market given the special features of this market. However, this is a sector that is rapidly expanding and it is better to put such mechanisms in place earlier rather than later. It is also a task that can be progressively developed over time.

#### **Recommendation 2.8**

The AER develop and implement over time a cost efficient monitoring, reporting and enforcement regime to support its statutory powers and to encourage compliance with the conditions of exemption. The AER should be provided with the resources to undertake regular ‘sample’ investigations of compliance with the registration process and the associated conditions of exemption.

#### **Recommendation 2.9**

The AER develop a more comprehensive and accessible data base of exemptions by category and class; the data base can be used to cross-check if all relevant on-sellers and embedded network operators have applied for exemption or are listed in the correct exemption category.

<sup>103</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, p 23.

<sup>104</sup> NER, clause 2.5.1(d). Cited in AER, *NSP Registration Exemption Guideline, Version 3*, August 2013, p 18.

## 3. Other Policy Issues

## 3.1 Access to Comparable Consumer Protections

Section 2 of this report compared the AER's consumer protection related 'conditions' for granting exemptions under the exemption class R4 and NR4. SACOSS observed some important gaps between the regulatory requirements for an R4 and NR4 exemption and the actual outcome as reported by our sample of exempt consumers.

It is apparent from these reports that at least some park operators are either not aware of their obligations or have concluded that compliance is not necessary. This extends to registration with the AER (all caravan and residential parks (R4) must be registered) as well as gaps in the implementation of the customer protection and safe supply requirements.

SACOSS has therefore recommended a renewed effort by the AER (or the ESC in Victoria) to remind these operators of their obligations to register and to comply with the relevant exemption requirements. SACOSS also recommends that the AER enhance its monitoring and enforcement program to ensure the exempt customers receive the level of services set out in the AER's Exempt Selling Guideline.

However, there is a further question to be examined and that is whether the AER's Exempt Selling Guideline adequately captures the policy intent of providing comparable consumer protections for this segment?

As noted previously in this report, SACOSS recognises that there are some important differences between customers of authorised retailers and customers of exempt sellers. For example, the exempt seller is providing a broader service than just electricity supply and the customer's electricity supply 'contract' is only one part of an overall contract between the park operator and each resident of the park.

It is also important to carefully consider the costs and benefits of any protection and compliance regime. The requirements must also be considered in the context of other protections such as protections under tenancy (or equivalent) laws. For example, the AER states in its Exempt Selling Guideline (Version 3) that:<sup>105</sup>

*Most residential and small business customers have some protections under their respective tenancy or equivalent legislation or agreements. These protections, when complemented by exemption conditions [as per the Exempt Selling Guideline], will go some way to matching the customer protections provided by the Retail Law.* [emphasis added]

As indicated by the quotation above, the AER emphasises that its conditions of exemption apply only to the extent that they are not overtaken by jurisdictional energy and tenancy regulation. The AER's position is understandable, however, it is most unfortunate. It vastly complicates the task facing an exempt seller in understanding their obligations and an exempt consumer in understanding their rights.

Nevertheless, the following gaps exist between an authorised retailer's obligations to their customers and the obligations on an exempt supplier for customers categorised as R4 and NR4 as set out in the AER's two Guidelines.

These gaps also exist for other categories such as residential exempt sellers and retirement village (Class R2 and R3 respectively)<sup>106</sup> as the AER's exemption conditions for these classes of customers are very similar to the caravan and residential parks class (R4). Relevant conditions also apply to the small commercial/retail on-selling sites (R1).<sup>107</sup>

Therefore, the issues identified in this following sections, while applying specifically to the R4 class of exempt sellers and customers, are in large part relevant to the R1, R2 and R3 classes.

### 3.1.1 Complaints and Dispute Resolution Procedures

There is a very significant gap between the requirements on authorised retailers and distributors under the NERL and NERR regarding complaint and dispute resolution and the conditions placed on exempt sellers and exempt network operators.

SACOSS has highlighted above the frustration that the consumers in our study felt in terms of the lack of any satisfactory resolution of their complaints and disputes. In part this reflects the gap between the requirements in the Guidelines and the observed practice by exempt suppliers as noted in Section 2.

However, as discussed below, perhaps a more significant source of the exempt customers' dissatisfaction is a result of the much lower level of requirements on the exempt seller in the AER's Exempt Seller Guideline and of the structural issues around access to a specific industry dispute settlement bodies (such as the energy ombudsman). Confusingly, perhaps, the stronger obligation for a formal dispute settlement procedure is contained in the AER's Network Exemption Guideline rather than in the Exempt Selling Guideline.

<sup>105</sup> AER, (Retail) Exempt Selling Guideline, Version 3, April 2015, p 28.

<sup>106</sup> Where there is less than 10 premises at a single site, the supplier is categorized as a deemed supplier (D1 and D2). While the deemed exempt seller does not have to register, they have the same obligations to the exempt consumers.

<sup>107</sup> See for instance, AER, (Retail) Exempt Selling Guideline, Version 3, April 2015, Appendix A-3, Table 2.



### 3. OTHER POLICY ISSUES

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The NERL sets out a comprehensive and systematic obligation on retailers concerning the management of ‘small customer’ complaints. This reflects the policy importance that is attached to the effective resolution of disputes by the policy makers as does the fact that the complaints can be made without cost to the consumer.

The NERL, for instance, requires each authorised retailer and registered distributor to: “develop, make and publish on its website a set of procedures detailing the retailer’s or distributor’s procedures for handling small customer complaints and disputes...”.<sup>108</sup> These procedures must be regularly reviewed and substantially consistent with the Australian Standard AS ISO 10002-2006.<sup>109</sup>

The NERL also specifies that a small customer of an authorised retailer may make a complaint about any relevant matter, the complaint must be dealt with in accordance with the relevant dispute handling procedures, the customer must be advised of the outcome and the reasons for this and the retailer or distributor must inform the customer that, if not satisfied, they may take the complaint or dispute to the energy ombudsman in their jurisdiction.<sup>110</sup>

These obligations on the authorised retailers set out in the NERL are mirrored in the NERR with respect to both standard and market retail contracts.<sup>111 & 112</sup> The NERR also requires both the retailer and the distributor to publish their dispute resolution procedures and contact details for the energy ombudsman on their websites<sup>113</sup> and to provide copies of these details on request by a customer, without charge.<sup>114</sup>

In contrast to this relatively detailed and prescriptive approach to the complaint and dispute resolution process in the NERL and NERR, the AER’s Exempt Selling Guideline places a more high-level “reasonable endeavours” obligation on the exempt seller. For instance, Condition 2 (‘Information Provision’), requires the exempt seller to advise the customer, in writing, of procedures for handling disputes and complaints.<sup>115</sup>

However, the Exempt Selling Guideline does not specify the content of that process, nor does it require the process to be consistent with AS ISO 10002-2006. Condition 15 (“Dispute Resolution”) appears to give

primacy to the jurisdictional tenancy tribunal (or equivalent).<sup>116</sup> In the absence of a determination by a tenancy tribunal, the exempt seller must:<sup>117</sup>

- a. make reasonable endeavours to resolve the dispute, and
- b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or other relevant external dispute body in the state or territory in which the exempt customer is located, if applicable.

The exempt consumers in our study are in a situation where they believe that the tenancy tribunal processes can be legalistic and costly, and have an uncertain outcome. It would also appear that not all exempt suppliers have made a “reasonable endeavour” to resolve disputes with their customers. In addition, these customers cannot take their dispute to the energy ombudsman in most states – NSW is the exception, not the rule.

However, the AER’s Network Exemption Guideline contains a somewhat stronger obligation than the Exempt Seller Guideline. Condition 6 of the Network Exemption Guideline states:<sup>118</sup>

*A private network must have in place dispute resolution procedures which customers can access at no cost or on a fee for service basis. Where retail on-selling is occurring under the Retail Law and a dispute resolution mechanism is available under that Law, the same arrangement may apply for the resolution of disputes. In all other circumstances a suitable dispute resolution mechanism must be specified in the formal agreements between the network owner or its appointed agent and the end-use customer. These procedures must allow a customer to request, and be provided with, written details of all charges applicable to that customer.*  
[emphasis added]

The differences between the AER’s two Guidelines make any assessment of the overall compliance of an exempt supplier (seller/network operator) excessively complex. Moreover, it is not at all clear in the wording of Condition 6 (cited above) whether an exempt customer has a right to a ‘no cost’ dispute settlement mechanism as they would have if supplied by an authorised retailer and by a registered network service provider.

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<sup>108</sup> NERL, Section 81 (1).

<sup>109</sup> NERL, Section 81 (2) & (3). Note: AS ISO 10002-2006: - *Customer satisfaction – Guidelines for complaints handling in organizations*.

<sup>110</sup> NERL, Section 82 (1)-(5).

<sup>111</sup> NERR, Rule 29 (Billing disputes for standard retail contracts and market retail contracts).

<sup>112</sup> NERR, Rule 50 (General small customer complaints and dispute resolution information for market retail contracts).

<sup>113</sup> NERR, Rule 56 (1) & Rule 80 (1) (h) (respectively).

<sup>114</sup> NERR, Rule 56 (3) & (4) & Rule 80 (3) & (4) (respectively).

<sup>115</sup> AER, (*Retail Exempt Selling Guideline, Version 3*, April 2015, Condition 2 (c), p 41.

<sup>116</sup> *Ibid*, Condition 15, p 46.

<sup>117</sup> *Ibid*, pp 46-47.

<sup>118</sup> AER, (*Electricity Network Service Provider Registration Exemption Guideline, Version 3*, 27 August 2013, Condition 6, p 24.



Small wonder the exempt customers in our study are so confused and frustrated with this process and do not know where or whom to turn to assist them in resolving disputes. Above all, therefore, the findings of this study suggest there is a real need for all jurisdictions to consider how these consumers can have better access to a no cost complaint and dispute resolution process. Until this is done, the goal of a common and effective customer protection framework for these electricity users will remain elusive.

In stating this, SACOSS acknowledges there are complexities of providing access to an energy ombudsman (or equivalent) including the funding arrangements for such a service. We also note the issue raised by EWON in its recent submission to the AER. EWON notes that it is the only jurisdictional ombudsman to have jurisdiction to receive complaints from customer of exempt sellers. However, EWON also states:<sup>119</sup>

*While EWON has jurisdiction to take complaints from customers about exempt sellers, in practice most exempt sellers are not members of EWON and therefore are not bound by a decision of EWON. Hence exempt customers who bring a disconnection complaint to EWON will not have the same safety net as retail customers who bring a disconnection complaint to EWON under the same circumstances.*

However, notwithstanding these very real difficulties, SACOSS considers it is unsatisfactory to deny such a fundamental protection as a free and independent dispute settlement mechanism for these most vulnerable customers.

### 3.1.2 Explicit Informed Consent (EIC)

EIC is required when a customer transfers to a new retailer or obtains a new market contract from an existing retailer. Obtaining EIC from customers prior to transfer or a new contract is a core element of the transfer and contractual processes in the competitive electricity retail market and is recognised in both the NERL and NERR.

The assessment of EIC for exempt selling to R4 class customers is somewhat more complicated than EIC in the retail market. These complications are discussed below. In summary, the complications arise because:

- The agreement to electricity supply conditions is (generally) subsumed into the overall rental agreement; there is no specific and separate document highlighting the electricity supply arrangements;
- The AER's Exempt Selling Guideline does not specifically require EIC as part of the conditions of granting exemption to the prospective on-seller;
- The information provision condition set out in the Guideline is not as comprehensive as the information required from an authorised retailer as part of obtaining EIC; and,
- There is little clarity around the specific requirements for EIC in situations where a customer transfers from the on-seller to an authorised retailer for the supply of electricity.

### EIC requirements of the NERL and NERR

The NERL states that EIC requires the retailer to: "clearly, fully and adequately disclose all matters relevant to the consent of the customer including each specific purpose or use of the consent".<sup>120</sup> In addition, the customer must give their consent to the transaction in writing, or verbally (if recorded) or by electronic communication.<sup>121</sup>

The NERR provides further information on the operation of EIC. The NERR states that consent to a transfer or a new market contract requires, inter alia, that the customer is advised of, and consents to "any term or condition in the market retail contract that provides for the variation of tariffs, charges or benefits to the customer under that contract".<sup>122</sup> The NERR also requires that a small customer must give EIC if the customer enters a bill smoothing<sup>123</sup> or a direct debit arrangement with the retailer.<sup>124</sup>

### EIC and the AER's Exempt Selling Guideline

In contrast to the clear obligations on authorised retailers under the NERL/NERR to obtain EIC, the AER's Exempt Selling Guideline does not explicitly mention EIC as part of the conditions of exemption for on-selling to the R4/NRR class of customers.<sup>125</sup>

Presumably, therefore, the AER has attempted to replicate the EIC requirements by including in the Guideline a condition that the exempt seller must be provided, in writing and at the start of their residency at

<sup>119</sup> Energy & Water Ombudsman NSW, Submission on the AER's Draft (Retail) Exempt Selling Guideline, September 2015, p 3.

<sup>120</sup> NERL, Section 39 (1) (a).

<sup>121</sup> See NERL, Section 39 (2)(a)-(c).

<sup>122</sup> NERR, Rule 46A (2).

<sup>123</sup> NERR, Rule 23 (2).

<sup>124</sup> NERR, Rule 32 (3) (b).

<sup>125</sup> The Guideline suggests, in the section on policy principles, that the AER would not approve an exemption application for exemption that did not demonstrate evidence of EIC. However, this appears to be limited to specific instances such as where energy is being sold under a contract negotiated on behalf of a group of customers or to 'brownfield sites', that is, sites that were originally serviced by an authorised retailer(s) but later the owner seeks to retrofit as an embedded network. See for instance, AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, p 27-28.

the park or on request by the customer, a prescribed list of information on the electricity supply arrangements and the customers rights to information (see Condition 2, “Information Requirements”).

SACOSS considers that the information requirements set out in Condition 2 replicate many of the pricing and non-pricing requirements in the NERL/NERR. That is, it includes an obligation to advise customers of their right to choose a retailer, flexible payment options, and contact numbers for payment assistance and emergencies as well as tariffs and other charges.

Nevertheless, SACOSS does not consider this is sufficient to satisfy the requirements of genuine EIC particularly when considered against the requirements for EIC set out in the NERL and NERR (as listed above).

#### **EIC as part of the overall rental agreement**

As noted above, the NERL requires the exempt seller to provide: “clear, full and adequate” information to the customer. The NERL also requires the exempt seller to obtain the customer’s written (or equivalent) agreement to the contract.

In Section 2, we noted that the R4 customers in our study reported that they did not receive adequate information on their electricity supply conditions at the time they signed the rental agreement. Certainly the evidence put to SACOSS suggests that the information provided to the customers was not consistent with Condition 2 of the AER’s Exempt Selling Guideline.

In addition to this, however, what limited information is provided to the R4 customer will typically be subsumed into a much larger overall rental agreement and the customer will be signing this overall agreement rather than signing a specific electricity supply agreement.

Although there is an implied acceptance of all the terms of the larger rental agreement, including the conditions of electricity supply, SACOSS would argue that this is not the equivalent of the ‘stand-alone’ EIC arrangements for customers of authorised retailers.

That is, even if the rental agreement with the R4 customers included all the electricity supply information requirements in Condition 2 (which it generally appears not to do), the inclusion of this information into a much larger rental agreement signed by the customer mitigates against the conclusion that the customer has provided EIC to the specific terms of their electricity supply.

Moreover, the content of the overall rental agreement with R4 customers, including electricity supply, is generally regulated under the relevant jurisdictional

laws. These laws do not necessarily specify provision of detailed information on electricity supply nor state that such detailed information be provided to the customer on request by the customer.

#### **Adequacy of the information provision condition in the AER’s Exempt Selling Guideline**

As noted above, Condition 2 of the AER’s Exempt Selling Guideline requires the exempt seller to provide information on matters such as payment options, contacts for payment assistance and emergencies and tariffs and charges.

However, Condition 2 does not require the level of information that an authorised retailer must provide to its customers as part of the requirement to obtain EIC from its customers. For instance, Condition 2 does not require information on the term of the contract, the cooling-off period and restriction on marketing activities.

Some of this type of information may not be applicable to the R4 customer-exempt seller relationship, particularly given that electricity supply is generally just one component of the overall leasing agreement.

A more significant gap between the standard consumer protections under the NERL/NERR and the consumer protections under the AER’s Exempt Seller Guidelines relates to the provision of information on electricity pricing and metering arrangements.

For example, the NECF requires a great degree of transparency about the prices/offers available to consumers, including the accessible presentation of standing and market offer prices on the retailers website, and to produce an ‘Energy Price Fact Sheet’ for each offer that includes unit price of energy, daily supply charge, and any other applicable charges, discounts and rebates.<sup>126</sup>

The AER’s Exempt Seller Guideline does not require the R4 exempt seller to supply this detailed pricing information. Nor does it require the exempt seller to provide information about the basis of the prices and other charges and how these prices and charges might vary over time.

This lack of transparency about the actual pricing arrangements in various exempt selling situations clearly creates a difficulty for regulators in assessing the fairness of the exempt supply contracts.

However, it also creates a difficulty for the prospective customer of an exempt seller. Given the contract is open-ended and retail competition restricted in practice (if not by law), it is essential for EIC that exempt consumers are provided not only with adequate details on the

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<sup>126</sup> AER, *Retail Pricing Information Guidelines*, August 2015, Version 4.0, section 3 <http://www.aer.gov.au/system/files/AER%20Retail%20Pricing%20Information%20Guidelines%20-%20August%202015.PDF>

current electricity prices and charges but also include a statement from the exempt seller on how and when their energy prices and charges might change over time.

As noted in section 2 above, the lack of information on the reasons for changes to the electricity prices and charges was a source of frustration and concern for the exempt customers in the SACOSS study.

Moreover, this information on current and future prices and charges will become particularly important if and when retail competition becomes a practical possibility.

For instance, an exempt customer will need to have information on the basis for changes to prices and charges in the future in order to compare their current exempt seller pricing arrangements with an alternative retail market offer. As an example, the lease agreement could state that electricity prices and charges will be changed at a maximum of 'x' times per year, with 'y' days notice and/or that changes in prices and charges will be limited to changes in the prices and charges in the standing offer price of the relevant local area retailer.<sup>127</sup>

It is noted that a number of these requirements for effective EIC may be set out in jurisdictional legislation. SACOSS also notes the AER's comments in the Exempt Selling Guideline that: "Exemption conditions are intended to supplement jurisdictional legislation..."<sup>128</sup> However, we consider that there is value in replicating key requirements, such as information requirements relevant to effective EIC, in the AER's Exempt Seller Guideline. Inclusion of such important matters in the Guideline conditions of exemption will remove the need for both exempt sellers and exempt customers to gain familiarity with both national and jurisdictional requirements in order to understand the rights and protections available.

That is, overall there is likely to be less confusion and improved compliance and compliance reporting, if important conditions relating to EIC, such as pricing plans and the basis for pricing changes, are included in the AER's Guideline.

Similarly, the customer will need explicit information on any **additional charges** that the exempt seller/network operator might pursue in the event the customer takes up a retail market offer, such as a charge for the use of the internal network or for changes to the internal network.

The fact that most exempt consumers will face some up-front costs to take up an alternative offer lends further weight to the requirement for an on-seller to reveal details of both current and future prices and charges.

### **EIC requirements for transfer of the exempt customer to an authorised retailer**

The AER's Exempt Selling Guideline requires the exempt seller to advise the customer in writing of the customer's right, under state or territory laws, to elect to purchase electricity from a retailer of their choice and to provide on options for metering that would allow that choice.<sup>129</sup>

However, in order to be effective in practice, the current EIC requirements applying to an authorised retailer will also need to be adapted to meet this new situation.

The NERL and NERR require retailers to obtain EIC to transfer a customer and EIC requires full disclosure of all relevant matters (see above). However, there is no specific requirement that ensures the exempt customer contemplating a transfer to an authorised retailer will receive all the relevant information regarding the costs that will be incurred such as the costs of upgrading metering and the risk of additional charges from the park management for recovery of the cost of the embedded network facilities.

In particular, it is not clear who has responsibility to advise the customer about these possible additional costs and charges – is it the new retailer or the existing network operator?

The AER has noted a further trend towards owners of multi-premise sites seeking to convert sites where the individual premises are already serviced directly by an authorised retailer with appropriate standard of metering. These owners plan to convert the site to an exempt selling/embedded network (a 'brownfield' site). The AER's Exempt Selling Guideline states that it expects any person applying for an exemption on this basis should demonstrate that: "customers have given explicit informed consent to taking supply from an exempt seller rather than a retailer".<sup>130</sup>

While SACOSS is not aware that this situation has arisen in relation to caravan and residential parks it is important that this policy requirement explicitly includes the R4 (and R1, R2 and 3) class of customers.

<sup>127</sup> For instance, see NSW Government Fair Trading, *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*, August 2006 (Revised July 2014), pp 3-4. [http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/customer\\_service\\_standards\\_for\\_the\\_supply\\_of\\_electricity\\_to\\_permanent\\_residents\\_of\\_residential\\_parks\\_-\\_revised\\_july\\_2014.pdf](http://www.ipart.nsw.gov.au/files/sharedassets/website/trimholdingbay/customer_service_standards_for_the_supply_of_electricity_to_permanent_residents_of_residential_parks_-_revised_july_2014.pdf)

<sup>128</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, p 26.

<sup>129</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015. Condition 2 (1)(a).

<sup>130</sup> The AER's Guideline does not set this as a specific condition of exemption, nor does it require EIC from all customers. However, the AER does indicate that it will "closely scrutinize" any exemption applications for brownfield sites (p 28), for (inter alia) evidence of EIC from customers and the protections available to the customer. From 1 January 2015, the exempt seller will need to apply for an individual exemption.

For instance, SACOSS is aware that some parks have a mix of premises supplied by an authorised retailer and exempt customer premises. It is possible at some point in time that the park owner may seek to convert all properties to an embedded network. The extension of the EIC principle to ensure that this only occurs if all affected park occupants agree and are fully informed of such is, therefore, quite appropriate.

#### 3.1.3 Hardship policies, including repayment plans

The progressive development by regulators of energy hardship regulation and hardship program indicators<sup>131</sup> and reporting, along with the associated improvement in the quality of retailers' hardship policies, has been a central feature of the energy consumer protection framework under the NECF and Victorian regulation.

The regulatory approach to hardship recognises the overriding principles that the supply of energy is an essential service for residential customers and that de-energisation of premises due to inability to pay energy bills should be a 'last resort' option. Because they involve access to an essential service, hardship policies should be transparent, consistent and customers should have equitable access. These principles are set out in the NERL and are intended to underpin the more detailed hardship policies prepared by retailers for approval by the AER.<sup>132</sup>

The following sections will therefore consider how these principles are reflected in the NECF (including both the NERL and NERR) in terms of the obligations on retailers and access by their customers to their hardship programs.

We will also review whether the current obligations on exempt sellers and how access by their customers to hardship programs compares to the NECF requirements. The focus will be on the principles and conditions set out in the AER's Exempt Selling Guideline. However, we note that some aspects of consumer protection for exempt customers are captured in jurisdictional legislation for tenants in general and tenants in caravan and residential parks in particular.

As this jurisdictional legislation varies from state to state, SACOSS considers that the AER's Exempt Selling Guideline should not place reliance on jurisdictional legislation to 'fill the gap'.

#### Authorised Retailers and Hardship Policies

All authorised retailers are required as a condition of their authorisation to have in place and publish a hardship policy that sets out how they will manage customers experiencing financial payment difficulties.<sup>133</sup>

The hardship policy must include how the retailer and the customer will manage both current payment difficulties and repayment of historical debts. The hardship policy, and any variations to the plan, must be approved by the AER<sup>134</sup> (or the ESC in the case of Victoria) and meet certain minimal requirements. These minimum requirements are set out in the NERL,<sup>135</sup> and include:

- Flexible payment options (including a payment plan and Centrepay);
- Process to identify and notify the hardship customer of appropriate government concession programs and financial counselling services;
- An outline of a range of programs that the retailer may use to assist hardship customers; and,
- Processes or programs to assist customers with strategies to improve their energy efficiency (if required by a jurisdictional regulation).

An identified hardship customer cannot be disconnected unless the retailer has offered two payment plans in the previous 12 months and the customer has agreed to one or other of them.<sup>136</sup> If a hardship customer continues to adhere to the terms of a payment plan agreed with the retailer then a retailer cannot commence proceedings for the recovery of debt.<sup>137</sup> Similarly, if a retailer does not comply with its hardship policy or the NERL and NERR requirements for hardship customers, then the retailer cannot commence proceedings for the recovery of debt.<sup>138</sup>

Nor can a retailer require a security deposit from an identified hardship customer.<sup>139</sup> Civil penalties apply if the retailer does not comply with this requirement; an indication of the policy importance attached to the management of hardship customers.

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<sup>131</sup> NERL, Section 287: "The AER must determine and publish hardship program indicators in accordance with the Rules.". NERR, Rule 75: The hardship indicators must cover entry into hardship programs, participation in hardship programs and assistance available to, and assistance provided to customers under the hardship policy.

<sup>132</sup> See NERL, Section 45 (3) which sets out the principles that the AER just have regard to in approving a retailer's customer hardship policy

<sup>133</sup> NERL, Sections 44 - 49.

<sup>134</sup> NERL, Section 43 (2)(a)(i).

<sup>135</sup> NERL, Section 44 (a) - (i).

<sup>136</sup> NERR, Rule 111 (2). Rule 111 also specifies when a retailer can arrange de-energisation.

<sup>137</sup> NERL, Section 51 (a).

<sup>138</sup> NERL, Section 51 (b).

<sup>139</sup> NERR, Rule 40 (3) (a).

The AER's web-site includes guidance on the content of customer hardship policies<sup>140</sup> and copies of the approved hardship policies of retailers in all NEM jurisdictions except Victoria,<sup>141</sup> in addition, retailers are required to publish their hardship policy on their own web-sites<sup>142</sup> and are obliged to communicate its customer hardship policy as soon as practicable to a hardship customer.<sup>143</sup>

In addition, the AER's reporting on the performance of retailers in implementing their hardship policies has expanded.<sup>144</sup> The AER produces regular quarterly reports that allow consumers to assess the performance of their retailers in terms of the number of customers on hardship programs, the amount of debt on entry and exit of a repayment plan, the average duration of the repayment plans etc.<sup>145</sup>

Overall, the retailers' hardship plans are expected to be innovative, equitable, transparent and proactive in the implementation of their policies. For example, the NERL sets out a number of principles the AER should apply when considering a retailer's customer hardship policy. These principles include retailers actively assisting customers to avoid disconnection solely due to an inability to pay energy bills.<sup>146</sup> The NERL also states that:<sup>147</sup>

*Residential customers should have equitable access to hardship policies, and that those policies should be transparent and applied consistently.*

### Exempt Sellers and Hardship Policies

Despite the importance given to the development and monitoring of the hardship policies and plans of authorised retailers, the conditions applying to exempt sellers in the AER's Exempt Seller Guideline are comparatively limited. It is not at all clear that the conditions set out in the AER's Exempt Selling Guideline are consistent with the policy objective that the hardship plans are "innovative, equitable, transparent and proactive".

In this instance, the AER's approach is prescriptive. That is, the AER's Exempt Selling Guideline sets out the specific conditions for the exempt seller to manage

customers who report they have financial difficulties rather than the AER leaving the exempt seller to develop its own hardship policy, which the AER will approve if it meets the criteria.

For example, Condition 9 of the Exempt Seller Guideline sets out the AER's requirements for exempt sellers when: "the exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty".<sup>148</sup> Condition 10 prescribes when disconnection or cessation of supply is prohibited.<sup>149</sup> These two conditions of exemption include (inter alia):<sup>150</sup>

- Directing the customer to the Australian government energy efficiency website or other similar information source;
- Ensuring that the customer is aware of relevant government or non-government energy rebates, concessions and relief schemes;
- Not charging the exempt customer a late payment fee or a security deposit;
- Offering the customer more flexible payment terms; and,
- Not proceeding with disconnection of supply (subject to certain conditions and following a disconnection warning notice).

On the other hand, the AER's Exempt Selling Guideline does not require the exempt seller to actively identify customers who may be in hardship. Nor does it require the exempt seller to have in place and publish an approved Hardship Policy or to report on its compliance with the hardship policy and/or the relevant exemption conditions (Conditions 9 and 10 in particular).

This gap between the NECF arrangements for authorised retailers and the obligations on exempt sellers as set out in the AER's Exempt Selling Guideline is particularly concerning in the context of exempt customers in caravan and residential parks. Residents in these parks include some of the most vulnerable low-income electricity consumers who may not have the resources to assess the exempt seller's compliance with the AER's conditions of exemption, particularly when the relevant

<sup>140</sup> AER, *Final Guidance on AER approval of customer hardship policies*, May 2011. <https://www.aer.gov.au/system/files/Final%20Guidance%20on%20AER%20approval%20of%20customer%20hardship%20policies%20-%20May%202011.pdf>

<sup>141</sup> AER n.d. AER approved hardship policies, <http://www.aer.gov.au/retail-markets/energy-retailers-customer-hardship-policies/aer-approved-hardship-policies>

<sup>142</sup> NERL, Section 43 (2)(b).

<sup>143</sup> NERR, Rule 71.

<sup>144</sup> See for instance, NERL, Part 12 (Compliance and Performance), Division 1 Section 275 & Division 2, Sections 285-287 that set out the requirements for compliance and performance reporting.

<sup>145</sup> AER, Retail energy market quarterly performance updates at <http://www.aer.gov.au/retail-markets/performance-reporting>.

<sup>146</sup> NERL, Section 45 (3)(b).

<sup>147</sup> NERL, Section 45 (3)(d).

<sup>148</sup> AER, *(Retail) Exempt Selling Guideline, Version 3*, April 2015, Condition 9, (1), p 44. Although this is the same as the definition of a hardship customer in the NERL, the Guideline does not refer to these customers as 'hardship' customers.

<sup>149</sup> Ibid, p 45.

<sup>150</sup> Ibid, pp 44-45.



conditions may not be published in any readily accessible and up-to date form by the exempt seller.<sup>151</sup>

However, SACOSS acknowledges that replicating all the requirements in the NECF and in the AER's guidance on approved customer hardship policies, may be problematic, particularly for relatively small-scale exempt sellers. For instance, the cash flow impacts of extended payment options might be significant. Moreover, as the payment for electricity is generally part of the overall charges for the lease of the site (albeit an explicit line item in the fortnightly or monthly invoice), it significantly complicates the process of having special repayment plans for electricity.

It is likely therefore that the R4 class of exempt consumers will need to rely more on emergency payments through Government or other agencies than an exempt sellers hardship program and payment options. What is essential therefore is that the exempt customer is provided with comprehensive information on the assistance available from the Government and other agencies.

**Of course, if a hitherto exempt customer takes up a market offer, they should have full access to the authorised retailer's hardship and disconnection programs (see below).**

#### 3.1.4 Disconnection of Customers for Non-payment and Reconnection

As noted in Section 3.1.3, the NECF incorporates the principle that electricity is an essential service and, therefore, a retailer should only disconnect supply as a 'last resort'.

To wit, the NERR sets out a series of requirements that an authorised retailer must follow before it can disconnect a customer from electricity supply for non-payment of a bill. Similarly, the AER's Exempt Seller Guideline sets out a number of requirements before an exempt seller can disconnect a customer from electricity supply for non-payment of a bill. The similarities and differences are discussed below.

#### Authorised Retailers and Disconnection/Reconnection Requirements

The NERR details the process that an authorised retailer must follow before it can disconnect a customer for non-payment of a bill. The retailer can only disconnect a customer if a customer has not paid a bill or has not adhered to an agreed payment plan<sup>152</sup>, and the retailer has taken the following steps:<sup>153</sup>

- The retailer has given the customer a reminder notice;
- The retailer has given the customer a disconnection warning notice after the period referred to in the reminder notice has expired;
- After giving the customer a disconnection warning notice, the retailer has used its "best endeavours" to contact the customer in person, by telephone, by fax or electronic means; and,
- The customer has refused or failed to take any reasonable action towards settling the debt.

The NERR is not specific about the timing of each of these steps in the disconnection process.<sup>154</sup> If, however, a customer has either paid the bill or has agreed to a repayment plan, and has paid any charge for re-energisation within 10 business days of de-energisation, the retailer must request the distributor to re-energise the premises.<sup>155</sup>

The NERR does not specify a time period for re-energisation. However, the timing requirements for re-energisation are generally set out in various jurisdictional instruments (regulations or codes). For instance, the *Electricity Supply (General) Regulation 2014* (NSW) requires a distributor to re-energise a premise within one business day of the request from a retailer.<sup>156</sup>

If the customer is identified as a hardship customer, or is a residential customer who has informed the retailer that they are experiencing payment difficulties, the retailer must not arrange disconnection unless the retailer has offered at least two payment plans in the previous 12 months and the customer has not agreed to either of them or the customer has failed to pay in accordance with the plan.<sup>157</sup>

A retailer must not arrange disconnection if, inter alia, the premises are registered as having life support equipment,

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<sup>151</sup> SACOSS notes that Condition 2 (f) in the AER's Exempt Seller Guideline requires the exempt seller to provide information on: "the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty". However, this does not clearly specify that the exempt seller must provide these forms of assistance. That is, the customer may or may not receive information in writing on the assistance available from the exempt seller (such as payment options) if the customer is in hardship, nor are they likely to know that the AER publishes these conditions on its web-site.

<sup>152</sup> NERR, Rule 111 (1) (a) - (b). NERR, Rule 111 (3) sets out similar requirement for a customer on a shortened payment cycle.

<sup>153</sup> NERR, Rule 111 (1) (c) - (f).

<sup>154</sup> There may be requirements in local regulations, codes and guidelines.

<sup>155</sup> NERR, Rule 121.

<sup>156</sup> *Electricity Supply (General) Regulation 2014* (NSW), Clause 7(2). The requirement to re-energise within one business day applies to requests made before 3pm. If the request is made after 3pm, the requirement is to re-energise by the end of the second business day after the request.

<sup>157</sup> NERR, Rule 111 (2) (a) - (c).

where there is an unresolved complaint to the retailer or the energy ombudsman, where the customer has applied for but is not yet receiving assistance and where a customer has failed to pay an amount on a bill that relates to goods and services other than the sale of energy.<sup>158</sup>

The NERR also prescribes the minimum content of the reminder notice and the disconnection warning notice.<sup>159</sup> In particular, the disconnection warning notice must include information on the applicable re-energisation procedures and any associated charges and the existence and operation of the energy ombudsman.<sup>160</sup>

### Exempt Sellers and Disconnection/Reconnection Requirements

The AER's Exempt Selling Guideline sets a process (in Condition 9 (d)) for disconnection of a customer in the event that the exempt customer has not paid a bill by the pay-by-date. This condition applies to Class R4 exempt customers unless state or territory tenancy legislation sets out the process and requirements for the disconnection of supply by the exempt person.<sup>161</sup>

An important difference between Condition 9 and the process set out in the NERR (Rule 111) is that Condition 9 provides a more specific time frame for each step in the process, namely:<sup>162</sup>

- Following non-payment by the pay-by-date, the exempt person issues a reminder notice requesting payment by a date **at least 6 business days** from the date of issue of the reminder notice; the customer must also be offered more flexible payment terms and advised of forms of assistance available if the non-payment is due to financial difficulty;
- Following non-payment by the date specified in the reminder notice (or establishment of more flexible payment terms), the exempt person issues a disconnection warning notice stating that disconnection may occur if payment is not made by a date **at least 6 business days** from the date of issue of the disconnection warning notice;
- After issuing the disconnection warning notice, the exempt person has used its best endeavours to contact the exempt customer in person or by telephone; and,

- The exempt customer has, by the specific date in the disconnection warning notice, refused or failed to take reasonable actions towards settling the debt.

The exempt person must arrange for reconnection of the premises "as soon as practicable" following satisfactory payment of the debt or agreed payment terms.<sup>163</sup>

Overall, therefore, the exempt person can initiate a disconnection from supply at a minimum of 12 business days after the initial pay-by-date (providing the other criteria are met) but does not have a specific time requirement for reconnection other than "as soon as practicable".

The timeframe for the exempt persons' disconnection process is likely to be significantly shorter than the timeframe for an authorised retailer under the NERR. On the other hand, there is no specific time frame imposed on the exempt seller to arrange reconnection of the customer on repayment of the debt (i.e. the Guideline simply states "as soon as practicable").

SACOSS considers that it is reasonable for a small exempt seller to have the opportunity to recover an outstanding debt in a shorter time-frame than most retailers would require from a cash flow perspective.<sup>164</sup> SACOSS also notes that in its current review of Version 3 of the Exempt Selling Guideline, the AER has raised the question of whether the obligation for reconnection should be "time limited" and if so, "what limits should be applied".<sup>165</sup> While a time limit would be desirable, SACOSS is aware that different jurisdictions have different requirements for reconnection and that in some cases tenancy legislation will also set out requirements.

Notwithstanding these difficulties, SACOSS highlights that the R4 class of exempt customers is likely to include customers who will have real difficulty paying the electricity bill component of their rental charges (particularly in summer and winter when electricity use is likely to be greater than in the milder months). This highlights the importance of early intervention, for example:

- The exempt customer being provided with the earliest possible information on the exempt seller's payment options;

<sup>158</sup> NERR, Rule 116 (1) (a) – (i). The NERR also states that a distributor may not de-energise a premise of a life support customer or a customer who has made a complaint to the distributor or the ombudsman and the complaint is not yet resolved. See NERR, Rule 120 (1).

<sup>159</sup> NERR, Rule 109 & Rule 110 respectively.

<sup>160</sup> NERR, Rule 110 (e) and Rule 110 (f) respectively.

<sup>161</sup> AER, (*Retail*) *Exempt Selling Guideline, Version 3*, Condition 9 (4).

<sup>162</sup> *Ibid*, Condition 9 (2)(d).

<sup>163</sup> *Ibid*, Condition 9 (3).

<sup>164</sup> Particularly as this debt would continue to accumulate in the interim, if the exempt customer continues to use electricity.

<sup>165</sup> AER, Notice of *Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline*, September 2015. p 6, Question 3. The current draft Guideline (Version 4) removes the reference to "as soon as practicable" but does not put any time limit in its place.



- Similarly, the exempt customer should be provided at the earliest possible date with information on any relevant government and non-government energy rebates, concessions and relief schemes; and,
- The processes associated with applications for government or non-government financial assistance should be readily accessible, transparent and efficient.

Condition 9 addresses the first two points to some degree although Condition 9 does not sufficiently emphasise the need for early intervention.<sup>166</sup>

However, with respect to the third point, it is important that the relevant external agencies are aware of the relative short time between the original due date for payment and the point of disconnection. Delays in making decisions create further pressures on both the exempt seller and the exempt customer as the debt accumulates.

The Exempt Selling Guide also outlines circumstances when an exempt person *must not disconnect energy supply to the exempt customer's premises*. In particular:

- An exempt customer cannot be disconnected during the period between the application for assistance and the decision by the relevant agency to provide such assistance<sup>167</sup>; and,
- An exempt customer cannot be disconnected when an exempt customer has raised a complaint directly related to the reason for disconnection, to the exempt person, the energy Ombudsman or other external dispute resolution body, and the complaint has not been resolved.<sup>168</sup>

However, the Exempt Selling Guideline does not specifically address the issue of the disconnection of a 'hardship customer', perhaps because it does not specifically identify such customers. While all customers (including but not only hardship customers) who do not pay on the due date must be offered more "more flexible payment terms",<sup>169</sup> the obligation to specifically accommodate these hardship customers appears to be lesser than in the NERR.

#### Life Support Customers

The NERL and the Exempt Selling Guideline provide similar protections for persons who qualify as life support customers and who have notified the retailer or the exempt seller of their status as a life support customer.

In particular, an exempt seller (like an authorised retailer) is stopped from disconnecting supply to a life support customers.<sup>170</sup>

Both authorised retailers and exempt sellers are required to maintain records of any customers who notify them that they qualify as a life support customer.<sup>171</sup> Both retailers and exempt sellers are also required to advise the local distributor if any customer or exempt customer (respectively) requires life support arrangements. The exempt seller must also advise its authorised retailer that the exempt seller/embedded network operator is supplying a life support customer.<sup>172</sup>

SACOSS is aware that the AER has issued infringement notices and financial penalties to some distributors that have illegally disconnected electricity supply to the premises of a life support customer without proper notification. Maintaining accurate records of life support customers is clearly, therefore, a broader issue than covered by the SACOSS study. However, it is essential that some monitoring of compliance under the Guideline is undertaken, particularly as neither the authorised retailers (including the local retailer) nor the local network service provider have any direct visibility of the status of these customers unless explicitly informed by the exempt supplier.

#### 3.1.5 Customer Bills and Payment Methods

Transparency in the bill electricity bills is another important consumer protection. It is important that a small customer can easily verify that the price and charges in the bill conform to the actual contract a customer has with a retailer or exempt supplier. The bill should also contain other non-price but important information such as payment method options, contact details etc.

For this reason, both the NERR and the AER's Exempt Selling Guideline are quite prescriptive about the content of a small customer's bill as discussed below.

SACOSS has highlighted in Section 2 our view that the exempt customers are not always receiving all the billing and non-billing information set out in the Exempt Seller Guideline on their bills. In this section, SACOSS finds some important gaps between the Exempt Seller Guideline and the information provided to customers of authorised retailers under the NERR.

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<sup>166</sup> For example, as Condition 9 is now written, if the exempt seller provides a reminder with 6 business days notice, it is possible that the customer receives offer of a more flexible payment terms only on day 5.

<sup>167</sup> AER, (*Retail Exempt Selling Guideline*, Version 3, April 2015, Condition 10 (1)(f).

<sup>168</sup> Ibid, Condition 10 (1)(g).

<sup>169</sup> Ibid, Condition 9 (d)(i).

<sup>170</sup> Ibid, Condition 10 (1)(e).

<sup>171</sup> Ibid, Condition 16 (2).

<sup>172</sup> Ibid, Condition 16 (1) (a) - (c).

## Authorised retailer and small customer bills

The NERR specifies the minimum content on the bill for a small customer, irrespective of whether that customer is on a standard retail contract or market retail contract.<sup>173</sup>

### Billing data:

The prescribed content includes all information necessary for the customer to verify the bill, such as the meter identifier, billing period, values of the meter readings at the start and end of the billing period, the total consumption, the tariffs and charges applicable to the customer and the basis of these tariffs and charges, the value of any rebates or concessions, and the total amount payable. The bill must also include details of the available payment methods.<sup>174</sup>

### Non-billing data:

If the bill is based on an estimated meter reading rather than an actual meter reading, this must be disclosed on the bill.<sup>175</sup> The NERR sets out the basis for estimation of the bill for a small customer, including the customer's reading of the meter, actual historical metering data or average usage of energy by a comparable customer over the corresponding period (if there is no historical information available for that customer at that premise).<sup>176</sup>

Non-billing information is also required to be placed on the bill including information on average daily usage, energy consumption benchmarks, availability of government funded rebates, concessions or relief schemes, and telephone numbers for accounts, complaints and emergencies.

### Provision of historical billing data:

In addition to the information that must be provided on the bill, the NERR states that a retailer must promptly provide a small customer with historical billing data for the customer for the previous two years on request.<sup>177</sup> This data must be provided without charge (subject to conditions).<sup>178</sup>

### Payment terms and conditions:

Under the NERR an authorised retailer must offer a range of payment options in its standard contracts, including payment in person, by telephone, mail, direct debit and electronic funds transfer.<sup>179</sup> Retailers must also allow a hardship customer to use Centrepay as a payment option.<sup>180</sup>

## Exempt sellers and small customer bills

The AER's Exempt Selling Guideline also provides an extensive list of information requirements to be provided on the exempt customer's electricity bill.<sup>181</sup>

The requirements are broadly similar to the NERR for R4 class customers (and class R2 and R3), although sometimes expressed differently, and there are also some important gaps.

### Billing data:

For example, Condition 3, which applies to R4 class customers, includes all the information necessary for the customer to verify the bill including the meter identifier, billing period, values at start and end of period, details of consumption, the tariffs and charges applicable to the customer and the basis of these tariffs and charges, the value of any rebates or concessions and details of available payment methods.

Condition 4 requires that the exempt person must use "best endeavours" to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.<sup>182</sup> If a bill is based on an estimation, this must be clearly stated on the bill.<sup>183</sup> Condition 4 also outlines the basis for estimation of the bill, which is similar to the basis for estimation of a bill by an authorised retailer (see above).<sup>184</sup>

### Non-billing data:

However, the availability of non-billing information on the bill is more limited than for an authorised retailer. For example, the exempt seller does not have to provide information on average daily usage or energy consumption benchmarks.

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<sup>173</sup> NERR, Rule 25 (a) – (x).

<sup>174</sup> NERR, Rule 25 (r).

<sup>175</sup> NERR, Rule 21 (3).

<sup>176</sup> NERR, Rule 21 (2).

<sup>177</sup> NERR, Rule 28 (1).

<sup>178</sup> NERR, Rule 28 (2).

<sup>179</sup> NERR, Rule 32 (1). Retailers may offer more limited payment options for specific market products (e.g. direct debit), providing these conditions are explicitly set out in the market contract.

<sup>180</sup> NERR, Rule 74 (2) and (3). Note, it is mandatory that a retailer allow Centrepay as a payment option on a standard retail contract (Rule 74 (2)). Some market contracts may not include Centrepay as a payment option, in which case the retailer must provide an alternative market contract where Centrepay is an option.

<sup>181</sup> AER, (*Retail Exempt Selling Guideline, Version 3*, April 2015, Condition 3 (4)(a)-(c)).

<sup>182</sup> AER, (*Retail Exempt Selling Guideline, Version 3*, April 2015, Condition 4 (1)).

<sup>183</sup> Ibid, Condition 4 (5).

<sup>184</sup> Ibid, Condition 4 (4).

More significantly, the exempt seller does not have to provide any reference on the bill to the availability of government funded energy charge rebates, concessions or relief schemes.<sup>185</sup> Given SACOSS's views above that the customer needs early information about where they can go for assistance, we consider that this is an important gap.

Nor does the exempt seller need to provide a 24-hour telephone number for fault inquiries and emergencies. In Section 2 above, we identified that lack of information on whom to contact regarding electricity supply issues over weekends was a problem for the exempt consumers in the study. Having this information on the exempt customers' bills would address this issue.

#### **Provision of historical billing data:**

Unlike the NERR, the AER's Exempt Selling Guideline does not require an exempt seller to provide up to two years historical billing information on request by the customer. In Section 2 above, SACOSS noted that exempt customers were not always satisfied that their bills were based on accurate meter readings. Access to historical billing data is important, particularly if the exempt customer wishes to raise a dispute about the bills with the exempt seller or submit a complaint to a third party (such as the Tenants Tribunal).

#### **Payment terms and conditions:**

The AER's current Exempt Selling Guideline does not specify what types of payment methods an exempt seller should offer customers.<sup>186</sup> However, the AER's proposed revision to the Exempt Selling Guideline does state that the exempt seller should offer a small customer a minimum of two payments methods. The AER states that:<sup>187</sup>

*The current guideline does not specify what types of payment methods an exempt seller should offer customers. We understand some exempt sellers are not giving customers any choice and are requiring them to pay only by direct debit. Direct debit is not the preferred method of payment for many customers. We note the Retail Rules require retailers to provide small customers with five bill payment options (six, if you include Centrepay)(rule 32 (1) of the Retail Rules).*

*A new clause 3 (2) has therefore been inserted which requires an exempt person to offer a customer at least two payment methods.*

While these draft changes to the Exempt Selling Guideline are an improvement to the current version, the Guideline does not mandate what type of payment methods must be offered. In particular, it does not mandate that a hardship customer (as defined in the Guideline<sup>188</sup>) may request to use Centrepay and the exempt seller must allow this.

SACOSS considers that there are considerable benefits to both the exempt seller and the exempt customer in aligning the AER's Exempt Selling Guideline with the NERR by mandating a right for a hardship customer to use Centrepay at that customer's request.

### 3.2 Other Exempt Customers

This study has focussed on a particular segment of electricity consumers, namely, consumers residing in a permanent caravan or residential park. We have noted above that the AER's Guidelines provide very similar protections to this class of exempt consumers and exempt residential customers in other situations, such as in large-scale apartment complexes.

The 'gaps' that SACOSS identifies in this report between exempt R4/NR4 customers are pertinent also to other exempt residential categories. Indeed, the differences are largely ones of scale and the overall level of financial and social vulnerability.

However, there is another important class of small consumers that frequently operate within an embedded network and receive their electricity from an on-seller. SACOSS recognises that small businesses have a particular exposure to the issues of being an exempt customer with limited negotiating power with the owner.

In this sense, the position of the small business in an embedded network is not dissimilar from the exempt customers in caravan and residential parks. That is, it is difficult to negotiate a better arrangement and the small business is relatively vulnerable to the decisions on supply by that operator.

On the other hand, many small businesses may be in a better position to take up a competitive retail offer and the amendments to the NER will facilitate that process. In addition, it would appear that owners of shopping centres (for instance) are generally large corporate

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<sup>185</sup> This information must be provided at the start of the tenancy agreement (Condition 2), but is not required on the customer's regular bill, unlike the requirements on the authorized retailer. Given these are long-term residents it is unlikely that they have access to this information from the original agreements.

<sup>186</sup> Version 3 of the Exempt Selling Guideline requires the exempt seller to provide the exempt customer with details of the available payment methods (Condition 3 (4)(n)) but is silent on what those methods must include.

<sup>187</sup> AER, *Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline*, September 2015, p 19.

<sup>188</sup> As noted, the AER's Exempt Selling Guideline does not use the term "hardship" customer. However, the Guideline does refer to special conditions that apply to an exempt customers "that is unable to pay energy bills due to financial difficulty" (see for instance Condition 9 (1)).

bodies who are well aware of their obligations under the exemption process, more visible to the regulator and more likely to avoid the risk of non-compliance.

Similarly, the small business owner will be more familiar with the implications of the energy supply terms in their contracts and will generally have access to legal advice before signing a contract.

In addition, an important reform is the clarification and amendment to the Rules with respect to property owners who wish to convert sites that are individually metered (and therefore where the small business can select its own retailer) to an embedded network arrangement. The amendments clarify that the owner must obtain the explicit informed consent of the small business.

### 3.3 Safety and Reliability of the Embedded Network Infrastructure

The embedded network includes the entire infrastructure from the 'gate' meter to and including the exempt customers' meters. The NEL, NER and jurisdictional distribution codes and regulations all set out strict requirements on the local distributor with respect to consumer protection and with respect to the safety, reliability and security of the network infrastructure.

In addition, the AEMO provides detailed technical requirements for metering standards (Metrology Procedures etc).

The AER's Network Exemption Guideline sets out a very similar range of consumer protection conditions including conditions relating to who is eligible to sell in an exempt network,<sup>189</sup> requirements to have a dispute resolution procedure in place,<sup>190</sup> aggregation of meter readings under certain circumstances<sup>191</sup> and obligations regarding supply to life support customers.<sup>192</sup> In addition, an exempt network operator must not impede a customer's access to retail competition where it is available in a jurisdiction.<sup>193</sup>

As discussed in Section 2.1.8, the Network Exemption Guideline also sets out some general conditions with respect to the standards for electricity meters and sub-meters. The customers' meters must comply with the requirements of the National Measurement Act 1960 (Cth) and associated regulations for meters and sub-meters and with the requirements in schedule 7.2 of the NER.<sup>194</sup>

The Guideline links the safety standards of the embedded networks to the safety requirements imposed on distribution businesses. Condition 3 states:<sup>195</sup>

*All private networks must, at all times, be installed, operated and maintained in accordance with all applicable requirements (within the jurisdiction in which the network is located) for the safety of persons and property. This includes where relevant, an industry Code or Guideline otherwise applicable to a network service provider providing similar services.*

However, we have already highlighted that, SACOSS has strong concerns about whether these conditions in the Guideline to maintain a safe, secure and reliable internal network are sufficient to ensure this outcome is consistently achieved in practice. The consumers in our study report that there has been little or no activity by the network operator to upgrade or replace the existing infrastructure and in many cases the infrastructure is quite old and/or providing low capacity services to customers.

Similarly, the quality and reliability of metering arrangements appear to be out of line with metrology requirements for checking and replacing meters to ensure accurate reading. Finally, there did not appear to be any specific requirements on the operator to ensure that the supply from the meter to the premises was safe. This was a priority issue for some customers and their concern is understandable given the potential for fire to spread in a caravan or residential park.

The customers in the exempt network were also concerned about the adequacy of the capacity of their supply. The capacity of the network was seen as too restrictive and inadequate for the reasonable needs of permanent residents. For example, the customers report that they could not use a kettle while the air conditioner was on.

Overall, it is not immediately clear if these real concerns of residents with the overall safety and performance of the embedded network reflect gaps in the regulations of the exempt network or a gap in the implementation of the regulations. However, we consider there is a serious need for the AER to examine ways in which the safety, reliability and quality of supply for permanent residents of caravan and residential parks can be improved.

It is interesting to see, for instance, that the NSW Fair Trading regulation of customer service standards for electricity supply in residential parks regulates the fixed

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<sup>189</sup>. AER, *NSP Registration Exemption Guideline, Version 3*, August 2013, Condition 5, p 24.

<sup>190</sup>. Ibid, Condition 6, p 24.

<sup>191</sup>. Ibid, Condition 7, p 24.

<sup>192</sup>. Ibid, Condition 10, p 25.

<sup>193</sup>. Ibid, Condition 12, p 25.

<sup>194</sup>. Ibid, Condition 2, p 23.

<sup>195</sup>. Ibid, Condition 3, p 23.

“service availability charge” (SAC) for electricity supply to be no more than that charged by the relevant local area retailer, except where electricity is supplied to the park resident’s site at a rate of less than 60 amps. If it is less than 60 amps, then the standards set a maximum level that is from 70% (for 35-59 amps) down to 20% (for less than 20 amps) of the SAC of the local area retailer.<sup>196</sup>

The park owner is also required to advise the permanent resident of the level of power available to the site at or before the commencement of the tenancy agreement.<sup>197</sup>

It would be worth considering how such a constraint on the fixed charge could be incorporated into the national guideline to provide an incentive to embedded network operators to upgrade their supply to permanent residents. At the very least, the AER’s information provision condition(s) should include a requirement to advise residents in advance of the level of power to the site.

## 3.4 Summary and Recommendations

### Dispute resolution and complaint management

The exempt customers in our study were particularly badly served in terms of access to independent and low or no cost dispute settlement mechanism.

Such a mechanism is fundamental to addressing the power imbalance between a supplier and their customers. To wit, each state has established its own independent energy and water industry ombudsman scheme to provide specialist services to address complaints and resolve disputes between retailers and distributors on the one hand and customers on the other (particularly small customers).

However, the customers in the SACOSS study, who represent some of the more vulnerable customers in the overall energy market, have no such access (with the exception of NSW). Instead they must rely on the Tenancy Tribunal, Civil and Administrative Tribunals (or equivalent) in each state. Hearings in these Tribunals are potentially an expensive and legalistic judicial process, despite efforts to include conciliation. Little wonder, small customers are unwilling to submit to this process.

The lack of access to an independent industry mediator is most inequitable and effectively denies an important right to a small customer of an independent, free and industry specific dispute resolution process.

### Recommendation 3.1

The AER work with the relevant jurisdictional bodies to develop an effective, low cost, energy specific dispute settlement and complaint handling procedure for exempt small customers.

### Changing prices and charges

The AER’s Exempt Selling Guideline is not specific about when and on what basis an exempt seller can change prices and charges whereas there are limits to how many times a retailer can change their standard offer prices in a 12 month period.<sup>198</sup> Details on the expected price changes are also required to be included in a retailer’s market contract but there is no such specific obligation on exempt sellers.

### Recommendation 3.2

The conditions of exemption for exempt sellers to small customers should include a requirement that customers are advised in advance (i.e. at the time of signing a tenancy agreement) of the basis for any changes in prices and charges and the likely timing of such changes.

### A safe and reliable embedded network infrastructure

All electricity consumers, including exempt consumers, have the right to a safe and reliable electricity network including metering infrastructure. This right is captured in the AER’s Network Exemption Guideline by reference to four “basic” requirements for exempt networks (in addition to a number of class specific conditions). The Guideline states that an exempt person must:<sup>199</sup>

- ensure that the network is safe;
- have a dispute resolution mechanism;
- ensure that network pricing is in accordance with strict controls; and,
- ensure that electricity meters comply with National Measurement Act 1960 (Cth) requirements for electricity meters installed from 1 January 2013 and other applicable standards.

Notwithstanding that these basic requirements have the force of law, at least some consumers in our study reported very different outcomes. They reported that the electricity network was old and not maintained on a regular basis. There were many complaints about the age and reliability of the meters. They did not appear to have confidence in the way disputes were handled or in obtaining 24/7 access to reporting failures in the embedded network. Some exempt customers also noted

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<sup>196</sup> NSW Government Fair Trading, Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks, August 2006 (Revised July 2014), p 4.

<sup>197</sup> Ibid.

<sup>198</sup> NERR, “Model Terms and Conditions for Standard Retail Contracts”, Schedule 1, Clause 8.2 (b).

<sup>199</sup> AER, *Electricity NSP Registration Exemption Guideline, Version 3*, August 2015, p 9.



connections from the meter to the premise were not always safe (“the line is hanging from trees” and similar such comments). There were many complaints about the voltage stability and the lack of capacity of the embedded network supply to the customers’ premises.

SACOSS recognises that many caravan and residential parks were established some decades ago. However, we do not regard this as a reason to ignore aging, unsafe and inadequate electricity infrastructure. Some reports suggest that existing small customer meters can be over 30 years old and no one has seen them being maintained or tested.

We have found it difficult to obtain a comprehensive picture of the regulatory instruments that govern the safety and reliability of the existing embedded network infrastructure and the accuracy of the metering technology.

However, the NERR provides for the AER to impose conditions on exempt sellers with respect to “installing, maintaining and reading of meters of exempt customers...”.<sup>200</sup> Setting such conditions explicitly in the Network Exemption Guideline would be a welcome step but may not be sufficient to address issues with existing metering arrangements. Nor is it appropriate to wait for retail contestability to force meter upgrades – this may be a long wait for these small customers!

### **Recommendation 3.3**

The AER develop a comprehensive atlas of the current national and jurisdictional regulatory instruments that govern the safety and reliability of the embedded network infrastructure, including requirements for small customer metering in exempt networks that was installed pre 1 January 2013.

### **Recommendation 3.4**

The AER, together with jurisdictional regulators and technical/safety regulators (as the case may be) review these standards to establish a consistent set of minimum standards for embedded network operators and their customers.

These standards for existing and new infrastructure should be clearly set out in the AER’s Network Exemption Guideline and some monitoring and enforcement procedures established.

### **Recommendation 3.5**

The AER consider the inclusion of more specific conditions with respect to maintenance and testing of customer meters, and meter reading data recording exempt customers.

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<sup>200</sup> NERR, Rule 152 (5).

## 4. Appendices





# Appendix A: Interview Proforma

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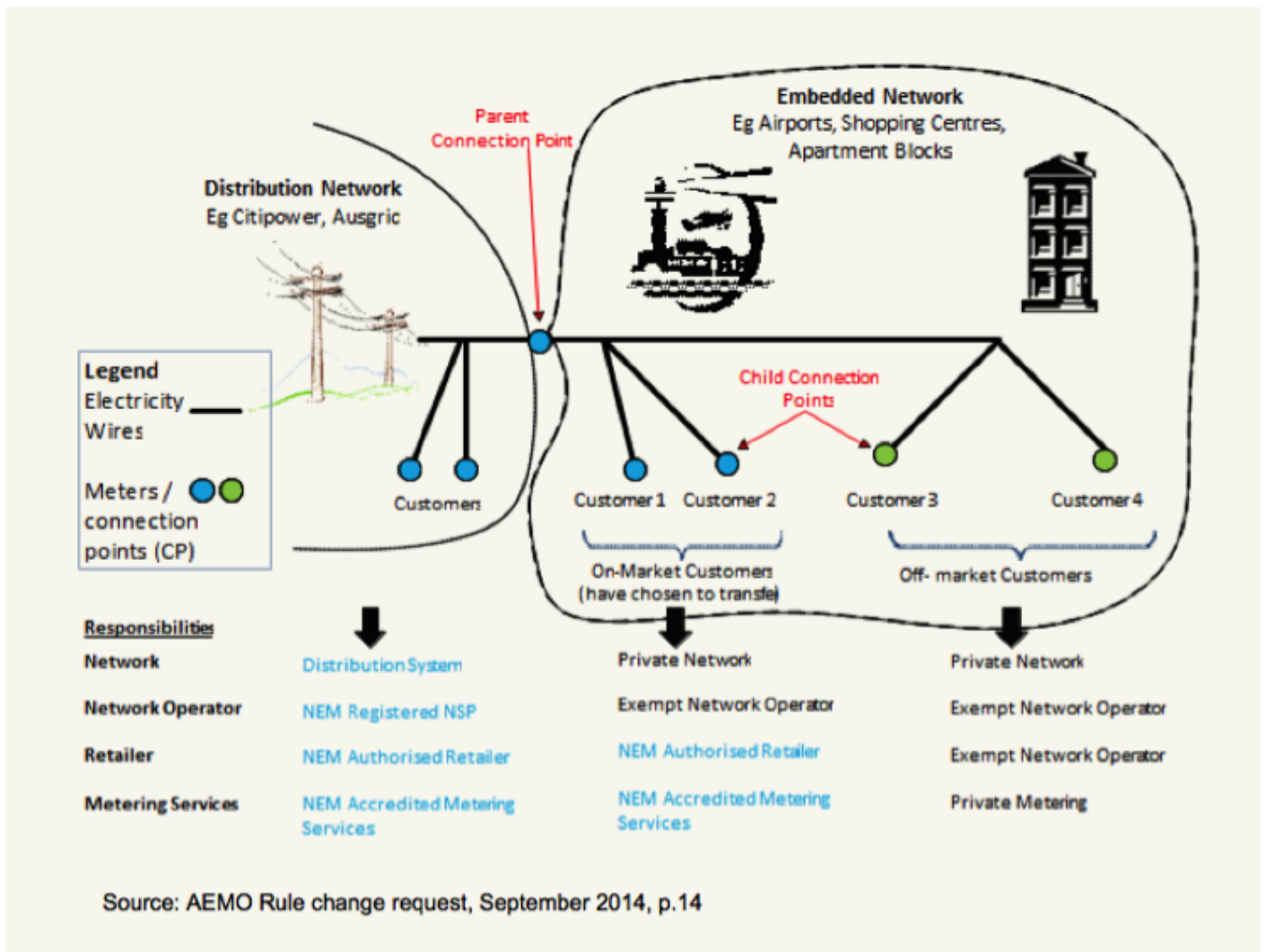
## **The basics**

1. Who owns the embedded network?
2. Who operates it?
3. Who provides the retail services (i.e. sells you the electricity)?
4. Do you have your own meter at your place. If so, is it a 'child meter' or the usual electricity meter you see on houses/flats?
5. Do you have concerns about the accuracy of the meter used to bill you?
6. Do you have access to a retailer such as AGL, Origin, Energy Australia, Lumo if you wanted to?
7. How are you billed (part of your rent, separately, monthly, quarterly etc )?
8. Have you had many issues with reliability of electricity supply (e.g. supply fails, or quality of supply varies your TV dips up and down, computer blinks etc)?
9. When you moved here, were you made aware of the arrangements for your electricity supply?

## **The consumer issues:**

1. Have you had any problems with the way your bill is provided (timeliness, accuracy, clarity)?
2. If you have, who might you take your complaint to and what was the result - how is the complaint resolved?
3. Have you ever been to the AER, or the Energy Ombudsman to assist you in resolving this complaint?
4. What happens when people get behind in their electricity bill payments?
5. Do you know if people have been disconnected from electricity supply by the network/on-seller, (including yourself) - if so, how was that resolved; did the owner offer some sort of assistance (e.g. deferral of payments, payment plans) - and did that person get access to any community services to assist in this?
6. If you are eligible for a concession on your electricity bill have you been able to readily get access to that concession rebate through your embedded network owner/reseller?

# Appendix B: Embedded Networks Structure for Customer Interviews



# Appendix C: Case studies: Consumers connected to embedded networks

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As part of SACOSS' Embedded Networks project we have interviewed 20 consumers around Australia who receive their electricity supply via an embedded network. The research has focused on investigating the experiences and concerns consumers have with embedded network arrangements. The following case studies illustrate some of the consumer narratives SACOSS has encountered. In order to protect the privacy of research participants we have not disclosed full details of consumers interviewed, including where these consumers reside.

## Case study 1:

This case study documents consumer views for a residential site located in South Eastern Australia. This site contains multiple (more than 10) permanent dwellings with some long-term residents.

Residential connection to the electricity supply at this site is via a network comprising of a main connection point/meter that delivers electricity to the site from a local supplier. Residential dwellings are connected to the site supply via a hub configuration. The hub houses four separate meters that are connected to four individual residential dwellings. Residents must purchase their electricity from the site owner.

Residents with hub meters are billed for their electricity supply by site management and meter readings are conducted every fortnight by site staff. Residents are charged for the amount of electricity they consume and pay a fee to have their meter read. Charges are issued to residents every fortnight.

Some concerns regarding the billing information provided to residents were raised. This includes the omission on the bill of the kWh charges and dates of the meter read and the billing period, however the actual meter reading is provided. Variations in bills from fortnight to fortnight was also raised with a concern that meter estimating may be occurring. This was also supported by a lack of confidence in site management to conduct proper meter readings with observations of site management not actually checking the meter expressed.

Methods of bill payment were discussed and pressure for residents to agree to a direct debit arrangement has been experienced. Concern over the direct debit amount being

taken from the resident's bank account one day earlier than agreed and access to bank accounts was voiced.

There is residential concern regarding the flow of information from site management with residents wanting more transparency on several issues. These include information on who provides electricity to the site, details of the embedded network setup for new residents (billing, supply, outages and complaint resolution processes) and access to accurate energy efficiency advice.

Uncertainty over the process of who to contact if supply is interrupted was also voiced. This is viewed as a potential issue for hub connected meters as running several appliances at once can often trip the system and a fuse reset needs to be done. Resident knowledge of routine processes for maintaining and inspecting the onsite electricity infrastructure is not apparent. Any upgrades to infrastructure are to be funded by the resident.

Frustration was clearly voiced over the lack of complaint resolution avenues for consumers utilising embedded networks, including the incapacity of the Energy and Water Ombudsman to assist embedded network customers. A concern over the perceived risk to their residential tenancy has also prevented complaints from being lodged with the relevant jurisdictional authority.

Residents at this site are able to access the relevant energy concessions once a year via the Department of Human Services.

No evidence of disconnection to supply for incapacity to pay electricity charges was indicated.

## Case study 2:

This case study documents consumer views for a caravan park located in South Eastern Australia. The park has over 30 permanent residents with some residing there for many years.

Residential connection to the electricity supply at this site is via a network comprising of a main connection point/meter that delivers electricity to the site from a local electricity distributor. Caravans are connected to the site supply via a hub configuration. The hub houses four separate meters that are connected to

four individual caravans. Connection from the hub to the caravan is via an overhead cable. Residents must purchase their electricity from the site owner.

Residents are billed monthly for their electricity and can pay by cash or card. The distribution business supplying electricity to the park is known and long-term and permanent residents can negotiate with the park owner to pay the full supply charge. An example provided of a weekly supply charge indicated a significantly higher amount than those reported by residents living in other locations. Concern over whether the park owner was profiting from the on selling of electricity to residents was strongly voiced. It was noted that until recently charges have been below the acceptable rate.

Concerns were also voiced about the lack of information on electricity bills. Residents are only provided with the total kWh consumed and the total dollar amount due. There is a consumer expectation that meter readings, dates and tariffs should also be provided.

There was some suspicion that meter readings are being estimated. Doubt over the accuracy of consumption and charges has arisen when a resident receives a bill for a period of time where they have been living off-site and the bill has not decreased. Unexplained variations on the amount payable on the bill have also occurred, even when the resident believes their consumption patterns have not changed.

Communication from the park owner is perceived as problematic for residents. There is a lack of transparency on charges, including the supply charges the park owner is paying; residents are not always notified when arrangements change and there is no transparency if formal reductions (i.e. abolition of the carbon tax) are being passed on to residents. There is also no consumer knowledge of any information/formal processes for new residents moving into the park.

Concern over infrastructure arrangements was expressed. In some cases the electricity cable that connects the caravan to the hub meter is routed through trees. If a resident wishes to underground the cable this is done at the residents' expense.

Dissatisfaction with complaint resolution avenues was also expressed, as the Ombudsman cannot help and the jurisdictional authority was not helpful.

Residents at this site are able to access the relevant energy concessions once a year via the Department of Human Services.

No evidence of disconnection to supply for incapacity to pay electricity charges was indicated.

### Case study 3:

This case study documents consumer views for a residential site located in South Eastern Australia. The site has over 100 permanent residents.

Residential connection to the electricity supply at this site is via an embedded network. The network is comprised of a main connection point/meter that delivers electricity to the site from a local distributor. Residential dwellings are connected to the site supply via individual meters and must purchase their electricity from the site owner.

Residents are billed quarterly by site management. Billing information provided to residents includes the meter reading, unit price (kWh), amount of electricity consumed and the total consumption and supply charges. Concern was raised that residents cannot verify billing information. Payment of bills is usually via direct debit and to date this has not created any problems.

Concern was raised over the site owner's encouragement for residents to install solar panels on their homes. Residents were told it will save them money and they will not be charged for the installation. However residents have not seen any evidence of the implications or benefits of the solar installations on their electricity bills.

Communication from the site management was deemed to be generally good. For example advance notice of a planned supply interruption is given where possible, changes to electricity charges are communicated in writing and site management is available 24/7 in the event of a supply failure. However there appears to be a lack of information given to residents regarding the power arrangements for this site during the moving in stage.

Whilst the site manager was described as approachable and extremely good, the resident recognised the lack of appropriate external complaint resolution avenues.

Residents at this site are able to access the relevant energy concessions once a year via the Department of Human Services.

No evidence of disconnection to supply for incapacity to pay electricity charges was indicated.

### Case study 4:

This case study documents consumer views for a residential site located in North Eastern Australia. The site has hundreds of permanent residents.

Residential connection to the electricity supply at this site is via a network comprising of a number of electricity meters that deliver power to the site from a local distributor. Residential dwellings are connected to

the site supply via individual meters and must purchase their electricity from the site owner. The network infrastructure is owned by the site owner.

Meters are read monthly by site management. Residents are charged for consumption only. Previously a monthly supply charge was added to electricity bills however this component was deemed to be contrary to jurisdictional legislation and has subsequently been removed.

Commentary regarding solar arrangements at this site was voiced. In the past residents were allowed to install solar panels on their dwellings. However approval for installation was removed by the site owner once a certain number of installations had occurred. The reasoning behind this, as explained to residents by the site owner, was that the park system could not accept any more generated electricity.

Communication from site management is generally good. Residents are normally notified of planned interruptions to supply and there are good procedures to deal with unexpected supply failures. However this site does not display electricity charges within the site, as is expected from recent jurisdictional determinations. There is also a lack of information on electricity arrangements for new residents moving into the site.

Residents at this site are able to access the relevant energy concessions via their electricity bill.

No evidence of disconnection to supply for incapacity to pay electricity charges was indicated.

## Summary observations

Consensus across the four case studies highlights consumers are not being provided with enough information. SACOSS believes consumers have indicated a strong desire to be fully informed on all aspects of their electricity supply and billing arrangements. This issue in conjunction with the distinct lack of appropriate complaint resolution processes appears to be disempowering for consumers. This is further exacerbated for consumers who cannot choose their energy retailer, thus excluding them accessing retail market competition.

SACOSS notes the diversity of experiences and concerns for consumers connected to embedded networks. This point alone illustrates the need for consumer protections that cater for all energy participants and not just those who are protected by the National Energy Customer Framework.

# Appendix D: Research Participant Consent Information

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## All phone and face-to-face interviews with research participants were preceded with the following information:

An introduction to SACOSS, the names and roles of each interviewer, the purpose of the research and a description of how the research will be conducted.

Verbal consent to participate in the research was gained by all research participants following verbal provision of the following statement:

*“As part of our research approach we want to ensure that you are all comfortable with participating today. Please note: Your participation in this meeting is confidential.*

*You can withdraw from the meeting at any time and you do not have to answer any questions that you don't want to.*

*A final report for this project will be produced.*

*You will not be named in this report and no-one will be able to identify you in the report.*

*If you change your mind and decide not to take part in this research, SACOSS will not use anything you have said in this research.*

*Does anyone have any questions at this point?”.*

# Appendix E: Discussions with Regulatory Bodies and Community Advocates

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As part of defining the parameters of the study, SACOSS undertook more detailed discussions with representatives of the key national regulatory bodies. We also sought to obtain additional insights into this market from a jurisdictional regulator, the Essential Services Commission of South Australia (ESCoSA) and from a community organisation, the Consumer Utilities Advocacy Centre (CUAC) based in Victoria.

*Note: In our discussions with staff in the various regulatory bodies, the staff emphasised that the discussions were informal and while based on their experience, the comments did not necessarily represent the formal policy position of the relevant regulatory body. We thank the staff for their insights and acknowledge the qualifications to their comments.*

*Therefore, any reference to a regulator body in this section (e.g. to the “AER”), should be taken to mean the relevant staff of the AER and does not necessarily represent the policy position of that regulatory body.*

SACOSS has also conducted ‘desk top research’ reflecting the relatively long history of regulatory and community concerns with the on-seller and embedded network market sectors. This includes reviewing submissions to the various regulatory inquiries over the last five years.

## AER Staff - Management of the exemption process under the NECF and NEL/NER

The AER is responsible for the development of the relevant Exempt Selling and NSP Embedded Network Guidelines as well as administering the national exemption frameworks under the NERL/NERR and the NEL/NER for both retail and network exemptions (respectively).

The AER has noted a steady rise in exemption registrations as more sellers become aware of their NECF obligations. The AER has also received a larger number of applications for individual exemption than expected and attributes this to the growth in new business models, for example, the sale of electricity through solar power purchase agreements.

The AER intends that its Guidelines and general approach provide a level of protection for small customers of exempt sellers in embedded networks that

is, to the extent practicable, equivalent to the protections offered to small customers of authorised retailers. In particular, the AER’s Exempt Selling Guideline sets out a framework of consumer protections that the AER considers reflects the key customer protections in the NERR and associated regulations.

The AER also notes recent improvements to the registration process through a streamlined on-line registration form and better alignment of the Retail Exemption Guideline and the NSP Exempt Registration Guideline, and development of a public register of registerable and individual exemption applications/ approvals including the category of exemption.

The AER undertakes targeted compliance and monitoring activities and generally addresses consumers’ issues when it receives a complaint (for example, through its 1300 line or AER Inquiry email service), and is in the process of undertaking broader activities in the market.

Other key issues identified by the AER with respect to the application of the Guidelines include:

- **Deemed exemptions:** Deemed exemptions are not recorded and so the AER does not know how many of these types of exemption exist. The AER considers this reflects the intent of the Retail Law and Rules (which provide for the creation of deemed exemption classes) and notes the challenges and resource intensiveness of identifying and recording such exempt sellers significantly outweighs any potential consumer benefits that might arise from registering such activity, given the nature of these selling activities (for example, an entity selling energy in a holiday unit or other short-stay accommodation).
- **Compliance reporting & monitoring:** Exempt sellers are not subject to the same formal reporting requirements as authorised retailers. However, the AER can take compliance action in relation to breaches of exemption conditions (ranging from administrative resolution of matters to litigation) and is currently considering ways to promote compliance in this area.
- **Complaint handling:** The AER does not have a role in the resolution of individual disputes, but does attempt to assist customers to resolve specific issues. The AER also keeps a record of complaints which inform its compliance functions, including helping identify systemic issues.



The issue of dispute resolution for exempt customers is complicated by the fact that, other than in NSW, exempt consumers cannot access the jurisdictional energy ombudsman.

- **Communications:** The exemption guidelines have changed in recent years and will continue to evolve as awareness of exempt selling issues grows and the market evolves further. The AER follows a legislatively mandated process for revising the exempt selling guidelines which involves public consultation and the consideration of public submissions. However, the diverse nature of exempt sellers and customers means that it can be challenging to ensure that all customers and sellers are aware of their current regulatory rights and obligations. The AER continues to refine its communications approach with a view to broadening its audience and ensuring exempt sellers and customers are aware of their rights and obligations.
- **Information Provision:** the AER has identified that the exempt sellers' bill to the customer may not always contain all the required information—similarly, the information exempt sellers must provide customers about their rights. The AER is working with on-sellers to address this situation.
- **Retail Competition:** Some jurisdictions do not allow retail competition for exempt customers. The AER also notes that the “retrofitting” of embedded networks into buildings in which customers previously had a direct connection to the network is becoming more common. Such retrofits make it more difficult for customers to access retail competition and an individual exemption must now be sought before retrofitting occurs. Entities looking to obtain an individual exemption for retrofitting activities must provide detail of how they propose to address the potential consumer detriment arising from the change as part of their application. The AER is also undertaking significant compliance work in relation to this area.
- **Access to rebates/benefits:** In some states (e.g. Queensland), customers have to apply for rebates through their exempt supplier, who in turn arranges the rebate with their authorised retailer. This process can cause challenges for both sellers and customers.

The AER also notes that while they have received complaints about billing, exempt sellers generally appear to be complying with the law. Complaints usually stem from a lack of understanding by customers as to what they can be charged for. Only one instance of disconnection of an exempt customer has been reported to the AER.

## AER Staff – Changes to the AER’s Guidelines and the NER

### General Comments

The AER identified that one of the difficulties of the national exemption process was that network and retail exemptions are covered by two different sets of legislation, the NEL/NER and the NERL/NERR (respectively). To address this, the AER has revised the relevant exemption guidelines so that there is better alignment between the classes and categories in the network exemption guideline and the retail exemption guideline (see discussion in section above).

In addition, there are differences in the operation of the exemptions as a result of the overlay of state legislation. Victoria, for instance, has not signed up to the NECF/NERR and is developing its own framework for on-selling arrangements but is subject to the NEL/NER and the AER’s Network Exemption Guideline.

Even in the states / territories that have implemented the NECF (South Australia, New South Wales, Australian Capital Territory and Queensland), there are differences in the application of the NERR and these differences have impacts on the exemption processes and outcomes.

It is stated policy in Queensland and Tasmania customers in an embedded network cannot access retail market offers through ‘parent-child’ metering arrangements. The effect of this is that any customer seeking a retail market offer must arrange to be directly connected to the NEM. This will usually be impractical for the customer.

### Proposed changes to the NER

The AER has been closely involved in the AEMC’s current process to amend the NER to facilitate embedded network customers’ access to competitive retail offers. These changes involve significant amendments to Chapter 7 of the Rules (Metering). The draft changes envisage the appointment of an Embedded Network Manager (ENM) for all registered and individual classes of network exemptions and potentially for deemed exemptions if requested by any one customer of the network<sup>201</sup>.

However, while the AER supports the principle, there is real concern that the potential costs of the changes and, in particular, the cost of appointing an Embedded Network Manager (ENM) is not well understood. For smaller embedded networks the costs may outweigh the benefits. Mandating such an appointment may discourage the use of embedded networks when the arrangements have overall, potential benefits – for

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<sup>201</sup> The draft rules state that if any one customer of an embedded network deemed as exempt seeks a retail offer, then the manager/owner of the embedded network must appoint an ENM.

instance, an embedded network may significantly reduce costs to the building overall and thereby result in lower costs for tenants.

The AEMC has recognised this issue and the draft rules provide for the AER to exercise its discretion to exempt an embedded network operator from the requirement to appoint an ENM until/unless a customer requests access to a retail market offer.

As noted, however, access to a competitive offer will require the installation of a market-ready meter and increasingly, this will require installation of a market meter capable of reading half hourly interval consumption data. This will add costs and is likely to further increase the barrier to embedded network consumers accessing the competitive retail electricity supply market.

A further question for the AER is the question of pricing for the embedded network services. In particular, it is not clear how the embedded network operator might recover the costs of the internal network from that customer if a customer in an embedded network takes up a retail market offer. The AER is concerned that it would find itself having to make a decision on network pricing for thousands of embedded networks if the embedded network operators decides to charge for access to the internal network.

At this stage, this would require a pricing determination from the AER under Chapter 6 of the NER and this is an expensive and impractical outcome. The AER staff consider that the best solution is for the total charge to be no more than the standing network tariff for small customers. However, the AER's staff consider that large embedded network customers are in a position to negotiate a fair outcome with the operator of the network and regulatory intervention is not required beyond ensuring that the charging regime is explicitly set out in a commercial agreement between the parties.

Therefore, the AER is concerned not only with the cost/benefit trade off of the requirements to appoint an ENM but also with the consequential changes required in other regulatory instruments and effective coordination with the implementation of the AEMC's recent amendments to the NER and NERR to provide for competition in the provision of metering services to retailers for their small customers.<sup>202</sup>

## AEMC and the regulation of embedded networks

The discussion with the AEMC centred on the AEMC's Draft Rule Determination that was initially proposed by AEMO in response to request by the COAG Energy Council as part of the "Power of Choice" program.

The overall objectives of the Rule Determination are to enhance access to competitive retail market offers for small consumers in embedded networks and to improve the clarity, transparency and predictability of the transfer process for embedded network consumers. The AEMC also seeks to achieve a balance between the costs and potential benefits of the proposed rule changes.

The final rule establishes the position of an embedded network manager (ENM) tasked with facilitating the process of accessing a competitive retail market offer. All embedded network operators must appoint an accredited ENM unless specifically exempted by the AER. Exemptions will only apply when a customer is unable to gain access to an authorised retailer (e.g. due to regulatory barriers such as in Queensland, Tasmania and ACT) or the costs of appointing an ENM outweigh the potential benefits to the customer. Until ENM's exist, there will be a lack of clarity on what an ENM would cost for a given embedded network configuration. The AER will assess this trade off on a case-by-case basis.

From a policy perspective, the AEMC strongly supports the principle of equitable access to retail competition. However, the AEMC notes that its regulatory scope only extends to considering changes to the NER (because the rule change request was in reference to the NER only and did not include the NERR). A more optimal solution for the consumers in this market is to make parallel adjustments to the NERR, the AER Guidelines and to legislation in a number of jurisdictions. The AEMC does not have the power to initiate these changes.<sup>203</sup> However, the AEMC has identified and recommended a number of changes that can be considered by these other bodies and could be included in a NERR rule change request.

Other concerns highlighted by the AEMC to SACOSS include:

- The many unique arrangements of embedded networks makes it difficult to ensure that the NER and NERR adequately cover all the concerns for all the relevant consumers;
- The NERR is designed around a triangular relationship of the consumer, retailer and network. It should be amended to include the role of the ENM;

<sup>202</sup> The AEMC made its final rule determination on competition in the provision of metering services on 25 November 2015. See AEMC, Expanding competition in metering and related services, Rule Determination, 26 November 2015, Sydney. <http://www.aemc.gov.au/getattachment/ed88c96e-da1f-42c7-9f2a-51a411e83574/Final-determination.aspx>

<sup>203</sup> In particular, the AEMC cannot initiate a rule change request. In this case the proposed amendments to the NER arise because of an application to amend the NER by AEMO. The AEMC requires a third party to propose changes to the NERR.

- Current provisions regarding Explicit Informed Consent (EIC) may also be an issue. Currently EIC moves between the authorised retailer and the customer. However, the position of a customer in an embedded network seeking to transfer from the embedded network operator to an authorised retailer is less clear; and,
- The AEMC considers that the embedded network customers would only be able to access a market offer (by construct of the general framework, these customers do not have access to a standing offer) and therefore cannot choose to have all the protections provided under the standing offer.

## Essential Services Commission of South Australia (ESCOSA)

The Electricity Act 1996 (SA) prohibits any person carrying on operations within the SA electricity supply industry unless they hold the appropriate licence. ESCOSA administered the SA retail licencing regime until 2013 when SA signed up to the NECF and associated legislative instruments.

Until 2013, the electricity regulations (Electricity (General) Regulations 1997, R 6) provided for three statutory exemptions from the requirement to be licenced,<sup>204</sup> including a statutory exemption for persons carrying out operations as an 'insert network operator' or 'insert network retailer'.<sup>205</sup> An exemption could not be allowed unless all the requirements under the regulation were met including maximum charges, information provision and effective right of access to a licenced retailer of the inset customer's choice, and an approved dispute resolution process.<sup>206</sup>

ESCOSA highlighted a number of issues that impacted on the effectiveness of the exemption process for inset networks prior to 2013:

- Lack of data on the number and nature of inset networks in South Australia;
- The apparent low level of awareness and understanding of the regulatory framework by the inset network operators and customers;
- The extent to which inset customers are receiving an effective right of access to an electricity retailer of their choice;

- Uncertainty about the costs of providing inset customers with an effective right of access;
- The lack of information on the level of compliance with the regulatory regime; and,
- ESCOSA's future role in price monitoring and price protection.

SACOSS's study suggests that these issues are still relevant to the assessment of the overall regulatory regime under the AER's authorisation and exemption process. The lack of visibility of these vulnerable customers in caravan and residential parks is a constant challenge to assessing the most cost effective approach to customer protection.

## Consumer Utilities Advocacy Centre (Victoria) (CUAC)

CUAC has undertaken important studies in Victoria drawing attention to the issues faced by customers of resellers located in embedded networks.<sup>207</sup> CUAC has also provided a number of submissions to the ESC, AEMC and the AER on the issues of reselling and embedded networks.

In discussions with SACOSS, CUAC highlighted several of these issues, some of which are pertinent to the different arrangements in Victoria but many of which are relevant to the national program as administered by the AER. These issues include:

- Lower consumer protections resellers' customers receive as compared to retailers' customers. Resellers are not obliged to offer hardship assistance to their customers. The dispute settlement arrangements for embedded network customers are also unsatisfactory. In all states except NSW, customers do not have access to the local energy ombudsman. Taking a dispute to the relevant Tribunal (depending on the jurisdiction) is more complex, 'risky' (especially for tenants obtaining their electricity supply from their landlord/reseller) and costly to the consumer than resolving a dispute through the energy ombudsman which offers a free and independent service for retailers' customers. While this will involve revision of the constitution ombudsman schemes in each state, CUAC considers it is important that the ombudsman schemes be extended to cover the customers of exempt sellers.
- CUAC believes that the same concessions and rebate framework that applies to energy retailers' customers should, in principle, also apply to re-sellers' customers. In Victoria, energy retailers' customers have the concession

<sup>204</sup> Electricity (General) Regulations 1997, R 6.

<sup>205</sup> Electricity (General) Regulations 1997, R6 (3).

<sup>206</sup> See Electricity (General) Regulations 1997, R 6 (3) ((e) - (h))

<sup>207</sup> For example, see CUAC, *Growing Gaps: Consumer Protections and Energy Re-Sellers, a CUAC Research Report*, December 2012. . The Department of Economic Development, Jobs, Transport and Jobs is currently undertaking a review on exemptions in Victoria. The Department considered CUAC's report in the development of its 'Review of the General Exemptions Order Issues Paper' in July 2015

amount applied directly onto their bills. This is not the same for resellers' customers who have to apply to the Department of Human Services for a rebate (half yearly/annually). This may result in some customers falling through the cracks and not claiming their entitlements because of a lack of awareness. CUAC is of the view that resellers should provide information to customers about concessions not just when the account is first set up but on a more ongoing basis such as on their bills.

- Despite improvements in the national rules and guidelines, there are still significant practical difficulties in implementing retail competition especially for existing properties with an embedded network. For example, there are still substantial costs for the customer associated with upgrading their meter. In addition, many authorised retailers are not willing to sell into this market because of the costs and complications.
- The AER's Guidelines still envisage a "deemed" category of exempt seller/operator. Deemed exemptions are automatic (no requirement to register or apply). The 'deemed' category is 'self-selected' by the embedded retailer or network operator.

A broadly similar category applies in Victoria under the GEO<sup>208</sup> and is likely to impact a broader range of customers. CUAC highlights that this means the state and national regulatory bodies know little about the size, location and conduct of the exempt seller/network operator and consumer experience. CUAC considers that such an outcome is quite unsatisfactory.

- Given the practical barriers that consumers experience in exercising retailer choice in embedded network arrangements, a price cap is appropriate. From a Victorian perspective, the standing offer is no longer an appropriate benchmark for a price cap given that prices are deregulated in Victoria. The standing offer as a benchmark does not guarantee that customers of exempt sellers receive a competitive offer from their reseller. Given that access to competitive energy services is a fundamental aspect of Australian energy policy, a price cap should reflect the best market offers available for a customer in a particular network area, rather than the standing offer.

The lack of energy price fact sheets on these pricing arrangements means that regulators or community organisations have very limited capacity to assess whether prices and other charges are fair and reasonable. CUAC is also concerned that some of the fees charged to exempt customers are high. For instance, CUAC cites a case where a customer contacted CUAC about a connection fee of \$450 in a new residential development.

- Given that the consumer protections extended to customers in embedded network arrangements are not comparable or equivalent to the consumer protections extended to energy retailers' customers, CUAC has concerns about retrofitting of sites to an embedded network. At the very least, tenants/customers need to know about the loss in consumer protections that would arise if they obtain supply from a re-seller (following retrofitting). This includes loss of access to the energy ombudsman (only customers of NSW resellers have access to the energy ombudsman) and hardship arrangements (resellers are not required to offer hardship support to their customers), and the differences in the way concessions are actually administered or applied to their bill.

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<sup>208</sup> The Department of Economic Development, Jobs, Transport and Jobs is currently undertaking a review on exemptions in Victoria. Concurrently, the Essential Services Commission of Victoria is undertaking a review on its licensing framework

# Appendix F: Embedded Network Customer Protections

## Embedded Network Customer Protections Mapped Against NECF

### Summary of Protections

This table is consolidated from a comprehensive list detailing each NECF provision.

Broad category	Summary of related provisions	Status for embedded network customer
<b>NECF</b>		
<b>Energy Marketing</b>	Required information, communication of required information, pricing information, restrictions on marketing	Equivalent protection
<b>Consent Requirements</b>	Explicit informed consent: obtaining and informing	Equivalent protection
<b>Standing contracts</b>	Terms and conditions, variations and designated retailers	Equivalent protection
<b>Market Contracts</b>	Provision of	No related protections
<b>Billing</b>	Estimations/actual, under and overcharging, collection cycles, late payment fees, information about Ombudsman	Equivalent protection
<b>Security deposits</b>	Retailers process and procedures	No related protections
<b>Hardship policy</b>	Minimum requirements	Equivalent protection
<b>Payment plans</b>	Terms of offer	No related protections
<b>Disconnection and reconnection</b>	Permissibility, pathway	Equivalent protection
<b>Disputes and complaints</b>	Procedures and information provision	No related protections
<b>Life support</b>	Distributor and retailer roles	No related protections
<b>Disruption of supply</b>	Planned and unplanned interruptions notification	No related protections
<b>Pre-payment meter systems</b>	Information and conditions	No related protections
<b>Pre-payment meter systems Information to be provided (other than minimum)</b>	System operating procedures, consumption, information about credit, recovery of debt, recovery of undercharged amounts, system testing, over and undercharging, self-disconnection, payment difficulties, contract termination	No related protections
<b>Victoria</b>		
<b>Wrongful Disconnection</b>		No related protections
<b>Smart meter consumer protections</b>		No related protections

### Key

Equivalent protection	Some related protections	no related protections
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St Vincent de Paul Society  
VICTORIA  
*good works*



Ethnic Communities'  
Council of NSW Inc.  
*Representing all communities*



consumer  
action  
law centre

Ms Anne Pearson  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

22 May 2017

Lodged online

Dear Ms Pearson,

**RE: RPR0006 - Review of regulatory arrangements for embedded networks**

SACOSS and the signatories thank the AEMC for their consultation paper for the review of regulatory arrangements for embedded networks.

We note that the consultation paper poses a number of questions related to the current regulatory framework. Prior to outlining in more detail our response to these questions (Attachment 1), we would like to make high level comment on the overarching question of whether the overall regulatory framework for embedded networks is fit for purpose.

As SACOSS and the signatories have identified through past research and consultation, the current regulatory arrangements has some flaws that adversely impact on customers. In addressing these flaws, as well as taking account of recent technological and market developments, we believe that there are two valid options for the reform of regulatory arrangements for embedded networks:

1. Retain the existing two tiered framework enabling registration/authorisation or exemption, with some modifications; or
2. Replace the existing framework.

SACOSS and the signatories consider that the existing framework has provided a high degree of flexibility and competition in products and services for embedded networks which has led to some valuable innovation and benefits to consumers – however, as the market has transformed the consumer protections are not currently balanced adequately with the competitive drivers. There are also significant residual issues with access to retail competition for significant portions of the market.

This submission builds on the SACOSS 2015 research report, *The Retail and Network Exemption Framework: Emerging Issues for Consumers* (Attachment 2)<sup>1</sup>. This report focussed on the growing concern with consumer protection arrangements for consumers in residential and caravan parks. Informed by this report, and further analysis of more recent trends, this submission largely considers how the existing framework could be modified to better protect the interests of customers (reform option 1) in response to a number of the questions raised in the consultation paper.

However, through further consultation in the course of preparing this submission, we have also developed our thinking about whether it may be necessary to consider replacing the existing framework, rather than simply modifying it to address the issues identified. For reform option 2, SACOSS and the signatories have considered the views of a range of consumer advocates including the Alternative Technology Association, St Vincent de Paul and the Public Interest Advocacy Centre to posit the question of whether the NERL should be transformed from regulating the selling of energy to a person for premises to regulating continuous supply of energy.<sup>2</sup> We believe this is an important consideration for the Commission as part of the review of regulatory arrangements for embedded networks.

A key consideration is how the current framework can be applied to the new and emerging technologies, many of which were not envisaged at the time the framework was developed and which may be utilised in an embedded network. SACOSS and the signatories strongly believe that the emerging technologies call for a holistic and integrated approach to the question of whether the current framework is fit for purpose. As per the Commission's own comments, we support the view "that the consideration of energy specific consumer protections required in the context of market developments must take a broad view of the products and services offered in the electricity market."<sup>3</sup>

SACOSS and the signatories believe that reform option 2 is a necessary consideration given the extensive transformation occurring in the energy market. In particular, we agree with a number of our consumer colleagues in their genuine concerns about how for example embedded generation, microgrids and peer to peer trading will impact on the nature of protections that consumers in these situations will be able to access and whether these will be adequate. We also note the comments of St Vincent de Paul that it may be important to reconsider the definition of an embedded network and whether all consumers in these types of situations will be defined as exempt or not, given the technology transformation which is occurring.

SACOSS and the signatories concur with the Commission in its position on the requirement for development of an overall framework before determining the appropriate suite of consumer protections. As the Commission has explained, the question of whether the existing consumer protection framework continues to meet its objectives should be "irrespective of whether consumers receive their electricity supply behind the meter, an interconnected electricity system or via stand-alone systems...With combinations of distributed generation, storage and other technologies there may be no one identifiable "primary" supplier and no retailer."<sup>4</sup>

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<sup>1</sup> Please note that while the signatories to this submission endorse the submission in full (Attachment 1), they do not necessarily endorse the content of the two attached SACOSS reports in full (Attachment 2 & 3).

<sup>2</sup> See for example Alternative Technology Association (2016) Submission to COAG Energy Council Behind the Meter Consultation at <http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Alternative%20Technologies%20Association%20-%20Response%20to%20consultation%20on%20behind%20the%20meter%20consumer%20protections.pdf>

<sup>3</sup> AEMC (2016) Submission to COAG Energy Council Behind the Meter Consultation at <http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Australian%20Energy%20Market%20Commission%20-%20Response%20to%20consultation%20on%20behind%20the%20meter%20consumer%20protections.pdf>: p.1

<sup>4</sup> AEMC (2016) p. 2&5.

SACOSS and the signatories are keen to further explore these issues with the Commission through the consultation processes surrounding this review. Our representatives attended the Public Forum organised by the Commission, and we are keen for the Commission to consult further with consumer organisations in developing options for consideration in progressing the review.

Whichever reform option is adopted, SACOSS and the signatories believe that the guiding principles for consumer protections should include:

- The regulatory arrangements for exempt sellers should not necessarily diverge from those applying to authorised retailers;
- Exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right;
- Exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the Law and Rules;
- All EN consumers should have access to a free, independent and impartial dispute settlement mechanism;
- The relevant regulators have an ongoing responsibility to monitor, report and enforce compliance with the requirements of the AER, including the conditions of exemption; and
- The safety and security of supply to consumers in an EN must be a paramount consideration of the AER in granting an exemption.

Beneath these principles, a minimum level of consumer protections should apply to all small customers. These include:

- Explicit Informed Consent
- Access to concessions and payment difficulties measures
- Appropriate marketing rules and restrictions
- Availability of relevant and accessible communication
- Protection from harmful products.

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

Yours sincerely,



Ross Womersley  
Chief Executive  
Officer



Gavin Dufty  
Manager, Policy and  
Research  
St Vincent de Paul  
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Iain Maitland  
Energy Advocate  
Ethnic Communities'  
Council of NSW



Gerard Brody  
Chief Executive  
Officer  
Consumer Action  
Law Centre

## SACOSS and the signatories response to consultation paper questions<sup>5</sup>

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

### **The two tiered framework has some benefits, but also some gaps in meeting consumer need in a changing energy landscape**

In drawing this conclusion SACOSS and the signatories start from the position that the overall regulatory framework must be consistent with the national objectives, specifically the national electricity objective (NEO) and the National Energy Retail Objective (NERO). Both objectives emphasise that the regulatory framework must promote efficient operation and use of energy services in the long term interests of electricity (NEO) or energy consumers with respect to price, quality, safety, reliability and security of the supply of electricity/energy supply.

It is clear that the two national objectives apply to all energy consumers; they do not apply to just some, or a majority – they apply to all consumers. In addition, the Australian Energy Market Commission (AEMC) is specifically tasked under the National Energy Retail Law (NERL) to consider the application of consumer protections to small energy consumers and this too clearly applies to all small energy consumers. Simply because an energy consumer receives its energy supply from an on-seller and an embedded network operator (ENO), should not diminish the responsibility of the AEMC to ensure this requirement in the NERL is satisfied.

However, the NEO and NERO all point to fact that a decision by the AEMC, or the Australian Energy Regulator (AER), is always one of developing or applying regulation in a manner that is ‘fit’ for its purpose and balances between sometimes competing outcomes. For example, consideration of prices must be balanced with consideration of quality, safety, reliability and security of supply of energy (and vice versa). The benefits of regulation must be weighed against the cost of that regulation, including the costs of enforcing the regulation.

Importantly, with respect to the National Energy Retail Rules (NERR), and as highlighted by the AEMC in the Consultation Paper, the AEMC must, where relevant, be satisfied that a Rule in the National Energy Retail Rules (NERR):<sup>6</sup>

...is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

The AEMC further emphasises the importance of considering the compatibility of any recommendation with the application and development of consumer protections. In a recent publication on the interpretation of the energy objectives, the AEMC states:<sup>7</sup>

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<sup>5</sup> Please note, in responding to these questions, we have cited examples from recent applications to the AER for an exemption. We have made a judgement that it is not appropriate to provide the details of the relevant applicants and third party service providers in this public submission but will provide those references separately to the AEMC on request.

<sup>6</sup> National Energy Retail Law section 236(2)(b). The relevance criteria refers to situations where the AEMC review or rule change relates to ‘small customers’ as defined in the Law and rules and jurisdictional regulations. In general, ‘small customers’ refers to residential customers and small business customers.

<sup>7</sup> AEMC, *Applying the energy objectives, a guide for stakeholders*, December, 2016, p. 8.

## Attachment 1

For any changes to the NERR, understanding the compatibility of the recommendation with the application and development of consumer protections is just as important as establishing the implications for efficiency of the rule change. Consumer protections are an important factor in promoting and maintaining customer confidence in retail energy markets. Where consumers have confidence in a market they are more likely to engage in that market, which promotes efficient outcomes.

The AER is subject to a similar general obligation under the NERL. Section 205 states:

The AER must, in performing or exercising an AER regulatory function or power, perform or exercise that function or power in a manner that will or is likely to contribute to the achievement of the national energy retail objective and where relevant, in a manner that is compatible with the development and application of consumer protections for small customers, including (but not limited to) protections relating to hardship customers.

It is reasonable, therefore, to assume that this interpretation also applies to the AEMC's assessment of the rules in the NERR that relate to on-selling in embedded networks. Similarly, the AEMC's interpretation is relevant to the AER including the Exempt Selling Guidelines that must be published by the AER<sup>8</sup> and that includes enforceable exemption conditions that apply to each individual or class of exemptions.<sup>9</sup>

The NERR requirements also suggest that the balance of efficiency and consumer protections may change over time as circumstances change and the risks of detriment to consumers arising from embedded network (EN) arrangements increases or decreases.

The licencing authorisation and exemption arrangements in the NERL (and NER) are one such matter.

Ten years ago, the two-tiered licencing arrangement of authorisation and exemption from authorisation (with set conditions) may have provided a satisfactory balance between the costs and complexity of the regulation of authorised retailers and the protection of energy consumers supplied in an EN.

The two-tiered licencing arrangement was also recognition of the historical fact that there were many relatively small long-established sites where the on-sale of energy was very much a secondary activity to the provision of services such as accommodation. On-selling provided a relatively low cost and convenient way of providing energy services to energy consumers that were located 'behind the parent meter'.

Since that time, however, there have been major changes in the energy market activity as highlighted in the AEMC's consultation paper. The number and size of on-seller activity has grown rapidly, particularly in the last few years with many more energy consumers impacted by the EN processes.

New business models have emerged including conversion of existing sites to embedded networks, the expansion of district/community level power purchase arrangements (PPAs) associated with new technologies (e.g. solar and batteries), and commercial arrangements established by large organisations such as owners/operators of multi-site retirement villages, shopping centres, and apartment complexes.

New parties have also entered the embedded network market, such as authorised retailers seeking exemptions, and third party service providers. These third party providers may not hold the exemption but

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<sup>8</sup> NERL, s. 118 (1).

<sup>9</sup> NERL, s 112 (3) states that: "The AER may deal with a breach of a condition imposed under this section as if it were a breach of the Rules. "

receive their income from providing EN owners/body corporates and the like with metering, billing, collection and other related services. SACOSS and the signatories see evidence of increasing activity by these parties to promote their services, including promoting the conversion of multi-occupant apartments from their current individual arrangements with authorised retailers to an EN arrangement with bulk purchasing from an authorised retailer.

In the light of the rapid growth and structural changes in the EN market, the gap between the energy services and the consumer protections provided to EN small customers under the exemption framework, and those provided to small customers of authorised retailers, has become too significant to ignore (for more detail on the consumer protections provided to customers of authorised retailers see the SACOSS' report at Attachment 3).

There is also a growing policy imperative to expand competition throughout the energy supply chain in order to ensure provision of efficient services that are responsive to consumer needs. ENs challenge this imperative to the extent that they limit energy consumers access to the competitive retail market and the potential price and service options that a competitive market can deliver.

The AEMC's amendments to the NER delivered a framework that (from 1 December 2017) would, in theory, enable EN consumers to access the competitive retail market. However, the AEMC correctly recognised that reform of the NER was a necessary but not sufficient condition to achieve its competition objectives. Nor was it sufficient to address the consumer protection issues set out in the NERL and NERR and the issues confronting consumers located within community PPAs, and other new energy supply models.

Given these developments, this current broad review of the NERL, NER and related instruments is both timely and necessary.

In making our assessment, SACOSS and the signatories draw on our experience and deep concern with the current EN arrangements as they impact on vulnerable customers. These concerns were set out in SACOSS' 2015 report<sup>10</sup> on the experience of EN consumers in long-stay caravan parks.<sup>11</sup> While the study was limited in scope to caravan park residents, SACOSS and the signatories consider that many of the observations are relevant to the broader community of vulnerable customers located in an EN (particularly those with little or no choice in their accommodation arrangements).

Feedback from other consumer representative organisations indicates that many share similar concerns. The representatives have highlighted how vulnerable customers subject to housing affordability challenges and fixed incomes, are increasingly exposed to exploitation without effective consumer protection, despite the conditions set out in the current EN arrangements.

At the same time as highlighting the deficiencies in the current arrangements, SACOSS and the signatories also acknowledge that ENs have the potential to deliver benefit in terms of reduced costs of supply to

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<sup>10</sup>SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>11</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>



individual EN consumers, as well as the flexibility to adapt to new market options such as district energy supply options.<sup>12</sup>

SACOSS and the signatories believe it is therefore important, to achieve a regulatory outcome that ensures all consumers are treated equally, particularly with respect to consumer protections for small customers and effective access to retail competition, while still allowing for the benefits of belonging to an EN to be delivered where appropriate protections are in place

#### *Benefits of the current framework*

SACOSS and the signatories observe the following benefits – or potential benefits<sup>13</sup> - of the two-tiered regulatory framework for embedded networks:

- Lower cost and regulatory simplicity for on-sellers when selling energy is not their primary business, particularly providers of low cost housing arrangements;
- Potential cost savings for EN consumers, given that savings that can be made through bulk purchase arrangements, where these savings are passed through to consumers;
- Provides greater flexibility to the AER to adapt and apply the conditions in the guidelines to reflect the diverse and changing EN market;<sup>14</sup>
- Protects the wholesale energy market and distribution companies from the risks of default by small-scale sellers;<sup>15</sup> and
- Arguably, an active EN market creates a de facto competitive energy supply source for consumers that can put pricing pressure on authorised retailers (although it may also ‘crowd out’ smaller authorised retailers given the ‘unequal’ regulatory burden placed on them).

#### *Gaps in the current framework in meeting consumer need*

As mentioned above, it is apparent that gaps exist in meeting consumer need within the two-tiered framework. As the size and structure of the EN market expands, they are becoming more prominent and important. The gaps that SACOSS and the signatories have observed to date include a number of issues already identified in the SACOSS 2015 report<sup>16</sup>, as well as other developments that SACOSS and the signatories have observed in the EN market including some preliminary analysis of recent exemption applications.

SACOSS and the signatories acknowledges that the AER has made significant improvements to the AER’s Exempt Selling Guidelines<sup>17</sup> and in its examination of applications for exemption. These improvements have addressed in part some of the issues described below. However, the AER’s scope to do so is still limited by the current framework as discussed in later sections of this submission.

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<sup>12</sup> By district energy options, SACOSS is referring to the emergence of grid supply to a specified district or community alongside or as a back up to supply from a central renewable energy source, such as a centralised district solar/battery system

<sup>13</sup> As discussed in this submission, a concern is that the potential benefits may not be realised in practice due to the lack of regulatory oversight and enforcement.

<sup>14</sup> The AER’s flexibility is subject to the NERL and NERR requirements such as the requirement for the AER to perform its functions in accordance with the policy principles, the exempt seller related factors, and the customer related factors (see NERL, s. 114) (1)(2). However, the AER may give such weight to these policy principles and factors as it considers appropriate (NERL, s. 114 (3)) which allows significant flexibility to the AER within the NERL framework..

<sup>15</sup> Authorised retailers are required to be registered with AEMO as market participants and to have an agreement with the relevant local distribution service provider along with the appropriate financial guarantees.

<sup>16</sup> SACOSS, The Retail and Network Exemption Framework: Emerging Issues for Consumers, December 2015

<sup>17</sup> AER, Exempt Selling Guideline, Version 4, March 2016

In summary, SACOSS and the signatories have identified the following gaps in the **current** two-tiered model:

- **There are different standards of service and consumer protection arrangements** for small customers under the exemption conditions, even when the exempt seller is selling to essentially the same type of small customer as the authorised retailer.
- **There is limited or no access to an effective, low cost unbiased dispute settlement process** in many instances. This gap is particularly problematic given the power imbalances between the seller and the EN customer that can occur in many situations, including renters.
- **The lack of information on EN arrangements and the conditions** associated with various exemptions for EN consumers to make informed decisions.
- **There is no requirement under the NERL for the AER to monitor or audit compliance with conditions of exemption or to publish performance reports.** Nor is there a requirement under the NERL for exempt sellers to establish monitoring and reporting systems, to provide information to the AER about their compliance with the exemption conditions or for the exempt seller to provide other relevant information to the AER.<sup>18</sup>
- **The apparent expansion of the role of third party service providers**, who are not a direct party to the exemption, in promoting embedded network models to various EN owners and body corporates. This raises new questions around the capacities of these third parties, and the systems and processes they have in place to ensure compliance with exemption conditions. This includes compliance by the third party services provider with respect to their dispute management policies and hardship policies, disconnection procedures and so on.<sup>19</sup> SACOSS is seeking further information on the current performance of these third party service providers for vulnerable customers.<sup>20</sup>
- **There is also a potential conflict of interest** if a third party, whose income derives from the provision of EN services, also becomes the Embedded Network Manager (ENM) from 1 December 2017 responsible for facilitating customers who choose to transfer to an authorised retailer;
- **A related concern is the potential growth in 'brownfield conversions'** where consumers move from having direct relationships with an authorised retailer and access to the competitive retail market, to an EN situation. In particular, having converted to an off-market EN arrangement, there are substantial regulatory, financial and practical barriers to an EN consumer later seeking to revert to an on-market arrangement (outlined more below).<sup>21</sup> Brownfield conversions raise important questions such as:
  - To what extent has there been explicit informed consent (EIC) to the conversion to an EN? EIC is particularly important given these consumers may be giving up important consumer protections including comfort that their supplier's performance is being monitored by the regulatory authorities and the on-seller is passing on savings to EN customers;

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<sup>18</sup> The NERL sets out these obligations compliance, reporting and auditing obligations for the AER with respect to 'regulated entities' and for these regulated entities to report to the AER. Regulated entities only include 'a retailer', or 'a distributor' or 'any other person identified in the Rules as a regulated entity.'

<sup>19</sup> For example, in a recent application for exemption, the applicant noted, and considered sufficient compliance, that they relied on the dispute resolution process that was developed and operated by their 'nominated billing agent'. The billing agent will also 'facilitate access to hardship arrangements' (such as those available from the Queensland Government), but does not refer to a hardship policy.

<sup>20</sup> An on-line search (dated 15 May 2017) revealed a review of the nominated billing company that suggested receiving a notice that disconnection for non/delayed payment would be made in 3 days. There is no independent confirmation of the full circumstances of this complaint. However, it does point to the potential gap between conditions and practice, and the difficulties of tracing the policies and procedures of third parties and their compliance with the conditions. It also highlights the information asymmetry and the AER's difficulty under the current arrangements in ensuring compliance with the conditions in the absence of an ongoing reporting framework.

<sup>21</sup> For example, recent brownfield exemption applications suggest that an EN consumer wishing to revert back to an on-market EN customer would face costs of some \$25,000 or more.

- What happens for customers who choose not to be part of the newly created EN; will they face additional charges from the owner/body corporate?
- How are the interests of tenants, who will have been on competitive on-market retail contracts, protected (noting that they may not benefit from any stated savings)?
- There are no energy specific minimum contract terms establishing a contract between the on-seller and the EN consumer, unlike the requirements set out in the NERR for authorised retailers. For this reason, any proposed benefits such as price savings may not necessarily be sustained over time. As these customers will have, in practice, little opportunity to revert to an on-market contract, they cannot switch retailers as a response to any future price increases.<sup>22</sup>
- Will the broader policy intent of developing competitive retail markets be placed at risk if the new EN business models expand further?
- Will small authorised retailers be deterred from entering the market if a significant portion of the potential target market of small customers are 'locked' into EN arrangements?
- **Major property developers, owners and managers have received individual exemptions from authorisation.** These on-sellers have multiple customers and generally, conduct the same business model over multiple sites. In aggregate, these large scale on-sellers may have as many or more customers than a small authorised retailer without the same costs and obligations. Similarly, operators of multiple retirement villages such as Australian Unity and Lend Lease, have multiple sites that in total cover a substantial number of customers. Many of these organisations have, or are establishing, embedded networks for the supply of electricity and gas to their village occupants.
- **Authorised retailers may sell to embedded network customers under a market contract without applying for an exemption** and are therefore not subject to the conditions of exemption, and in particular, are not constrained to the exemption limitation that prices to EN customers must be no more than the standard retail price published by the area retailer.

SACOSS and the signatories are concerned that the likely impetus for many third party providers, body corporates and major property owners/managers seeking an exemption is likely to be the opportunity to profit directly or indirectly<sup>23</sup> from providing an EN service.<sup>24</sup> Should this be the main motivation, an EN may not prove to be in the long term interests of consumers, unless counterbalancing consumer protections are in place.

### **A number of modifications could be made to the current two-tiered regulatory framework to address the gaps in meeting consumer need**

The two-tiered framework was not designed to cope with these new business models and new exempt service providers (including third party service providers). Despite the AER's capacity to modify the conditions of exemptions and the recent evidence that it is requiring more information and assurances from

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<sup>22</sup> SACOSS is aware that the conditions limit the on-seller to charging no more than the standard price charged by the local area authorised retailer. However, the standard prices are significantly above most market prices and prior to the conversion to an EN, the customer would have the opportunity to take up these better market offers. For example, one exemption proposal suggests savings of some 25% - 35% compared to the "very best costs savings offered from retailers...". However, there is no commitment to future prices other than the claim that the price will "always ' be better than a retailer can offer.

<sup>23</sup> For instance, a property developer may consider it adds to the value of the property and/or reduces the costs of construction.

<sup>24</sup> SACOSS notes that in Queensland, body corporates are restricted from making a profit out of the provision of energy and water services. However, this does not seem to restrict the body corporate from using some of the value of bulk billing for provision of facilities to the site, which may be in the interests of owners but not renters. We are seeking clarification of this matter but note the comment from one Queensland applicant for exemption that "Body Corporates are not permitted to conduct a business enterprise for profit under the Body Corporate and Community Management Act (Qld).

applicants for exemption, SACOSS and the signatories believe at minimum there is substantial opportunity for further reform of the existing two-tiered framework to ensure it is more consistent with the intent of the NERO.

**Recommendation 1<sup>25</sup>:** The AEMC/AER investigate the option to establish a new category of exemption that would apply to exempt on-sellers (and embedded network operators) that have a substantial number of customers and/or a substantial number of sites in total. The underlying principle here is that the exempt seller has a customer base equivalent to a small retailer and should therefore be subject to the same obligations and consumer protection conditions as a retailer. Specifically:

- The new category of exemption would, therefore, go beyond the current individual exemption conditions and provide mandatory conditions that replicate the supply contract minimum terms, customer protection and performance reporting obligations that apply to authorised retailers. There would also be a requirement for ongoing transparency and accessibility of key compliance requirements such as the exempt sellers published hardship policy and dispute resolution process.
- However, the AER would still retain the authority to vary these conditions or add to them if individual circumstances warranted such a change. SACOSS and the signatories continue to value the flexibility inherent in the exemption framework and believe that this is a simpler approach than adopting a new category of retail authorisation. For instance, it is not appropriate that these large-scale exempt sellers are also required to be registered market participants or have direct contractual relationships with the local distribution service provider as part of the triangular relationship between authorised retailers, distribution businesses and the consumer.
- The new category of 'large scale exempt seller' could require:<sup>26</sup>
  - a. A market retail contract be provided to exempt customers with terms that are modelled on the minimum requirements for a market retail contract under the NERL and NERR;<sup>27</sup>
  - b. A standard term contract equivalent could be provided in jurisdictions which explicitly restrict access to retail competition;
  - c. The relevant exempt sellers be given an explicit obligation to develop, publish and communicate to all existing and incoming participants a hardship plan that is approved by the AER - this obligation cannot be outsourced to a third party;
  - d. The establishment of a performance and compliance monitoring and reporting system across all sites with an obligation for the large scale exempt sellers to provide a publically available report annually (or as determined by the AER) in a format similar to that required by authorised retailers;
  - e. Large scale exempt sellers to have an obligation to provide further information on request by the AER on compliance with conditions and provide for audits conducted by the AER, similar to the obligations in the NERL for authorised retailers;
  - f. Large scale exempt sellers to publish formal dispute resolution procedures equivalent to that required by an authorised retailer – this obligation cannot be outsourced to a third party;<sup>28</sup>

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<sup>25</sup> A summary of all recommendations made in this submission is found on pages 33-35

<sup>26</sup> SACOSS recognizes that some of the market contract and standard contract terms would not be relevant, however, the detailed assessment of this is not possible within the current timeframes.

<sup>27</sup> Specifically, NERL, Division 4 s.34 and the corresponding elements in the NERR (e.g. Divisions 2,4,6,7, 8 and 9).

<sup>28</sup> As cited previously, SACOSS has noted that in a recent application for exemption, the applicant states that the dispute resolution procedures are provided by the third party service providers. This procedure is not public and it is not clear how the EN consumer or consumer advocate would be aware of the availability, cost and other elements of the process.

- g. The disconnection (de-energisation) procedures in Part 6, Division 2 of the NERR to generally apply to exempt sellers and small customers, including disconnection warning notices, protected periods, reminder notices and the like;<sup>29</sup>
- h. Where allowed, exempt sellers to become members of the jurisdictional ombudsman scheme. This is likely to require a special membership category under the various ombudsman schemes. If restricted to this particular new exemption category, the number of such members is unlikely to be overwhelming.

**Recommendation 2:** The NERL/NERR be amended to require the AER to collect information and produce an annual performance report for this new proposed category of large scale exempt sellers and include summary information on other relevant developments in the EN market. This will increase transparency and facilitate consumers becoming more aware of their rights and obligations, as well as improving incentives for compliance with the conditions of exemption.

**Recommendation 3:** The AER consider developing a reporting framework that provides both the AER and consumers with ongoing information on compliance with conditions by EN operators and exempt sellers, including 'spot' audits of compliance and public reporting of outcomes. This will also facilitate consumers becoming more aware of their rights and obligations. Associated with this, we encourage the AER to make more transparent access to information on approved exemptions and the conditions attached to these approvals.

**Recommendation 4:** The AEMC consider the policy implications of brownfield conversions and whether such conversions should be subject to more stringent conditions by the AER given the queries around EIC, the potential detriment, restriction of competition and long term constraints on reverting to an on-market consumer within an EN. SACOSS and its signatories note the particular issue in Queensland where following a brownfield conversion, the estimated cost of reverting to an on-market customer was approximately \$25,000 per customer due to the rewiring requirements.

**Recommendation 5:** The AEMC, in conjunction with the AER, investigate the implications of the rapid development of third party service providers who are actively promoting the benefits of EN and their services to body corporates and the like. These third party providers are offering end-to-end services including provision of metering, meter reading, billing, management of complaints and information provision to the EN customers. While there are potential benefits in these arrangements, there are also risks around accountability for compliance and lack of transparency in processes, systems, disconnection policies, privacy controls and the like.

**Recommendation 6:** The AEMC consider the competition implications of a third party service provider becoming an embedded network manager given the possible conflict of interest between the two roles.

**Recommendation 7:** The AEMC/AER also consider establishing more formal requirements for the registrable class of EN sellers and EN operators in order that there is greater transparency for customers and regulators on the ongoing compliance with the conditions of exemption. This could include some low cost and standardised form of annual reporting to the AER and the publication of these reports on the AER's web-site. Penalties would apply for failure to report or false reporting.

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<sup>29</sup> The current conditions require only limited notice before disconnection (6 days). This may be appropriate in small EN settings given the cash flow implications of outstanding debt but where large scale embedded networks and sellers are seeking exemptions, then disconnection procedures that apply to authorized retailers are more appropriate.

**Recommendation 8:** The AEMC investigate whether additional rule changes are required to address the emerging gap where authorised retailers can sell to EN or ‘behind the meter’ customers, without the constraints imposed by the exemption framework on the maximum price charged. Note: SACOSS and the signatories have only recently become aware of this issue and would welcome further discussion with the AER and AEMC on this matter.

Finally, SACOSS and the signatories note that in making these recommendations, we have not investigated the detailed amendments to the NERL and NER that would be required to implement them. However, it is clear that it would involve changes to the NERL and the NEL as, for instance, both these instruments set out the exemption categories for retail exemptions and for network service provider exemptions. There would be consequential amendments to the NERR and NER that also flow from these changes in categories and AER reporting requirements.



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

**There is a risk within the current exemption framework that customers may not receive the benefits of being in an embedded network, while still carrying the costs of reduced consumer protections and limited access to retail competition**

The intent of the exemption categories was to provide a relatively low cost registration and compliance process for on-sellers and EN operators, while requiring a minimum standard of consumer protections. Thus, the framework provided an opportunity for both exempt suppliers and exempt customers to enjoy savings in infrastructure and energy costs while reducing the risks for consumers of being outside the 'standard' regulatory requirements. Recent changes to the NER around metering and the requirement to appoint an ENM (and the associated obligations set out by AEMO for an ENM) may change the allocation of risks in this relationship. However, they also (at least in theory) reduce the risk for the EN customers by providing greater access to the competitive retail market.

As SACOSS and the signatories have highlighted above, with the right regulatory arrangements in place consumers may continue to both benefit from a two tiered regulatory framework, without losing key consumer protections. However, under the current arrangements, there is a very real and growing risk that many EN consumers may not reap the full benefits of potential savings in energy prices by being a consumer in an EN. Instead, SACOSS and the signatories are concerned that there is a growing trend for exempt sellers and EN operators to see the EN market as an opportunity for additional profit, albeit selling energy is still not their 'primary' business.

This largely stems from the fact that the exemption conditions only require the exempt seller to charge no more than the standard retail price published by the local area retailer. Under this arrangement, there is significant opportunity for the exempt seller to capture the difference between the negotiated bulk purchase price and the price it sells to the EN customer. Moreover, in the case of brownfield conversions at least, these EN customers may well have had to pay for the cost of conversion through various fees or body corporate charges.

This may result in a significant net loss in efficiency as consumers experience both a reduction in their consumer protections and incur the additional costs (through fees/charges) of implementing an EN, while not receiving the counter balancing benefits of lower energy prices compared to retail market offers.

Further, while there may be significant cost savings to the EN customer at one point in time (such as the beginning of the arrangement), there is no guarantee that this saving relative to retail market offers will be sustained. Rather the price may creep up over time to the cap of the retail standard price, usually considerably higher than the available market prices. If this was to occur the customer would be left without both the costs savings associated with being part of an EN, and the consumer protections and access to competitive retail market that a retail offer would provide. Given that it may be difficult for a customer to simply revert back to a retail offer (see response to consultation questions 4 & 5), there may be little incentive for the EN owner/operator to keep prices lower than the standard price over the longer term. The absence of standardised energy supply contract terms (similar to the minimum terms set out in the NERR) between the exempt seller and the EN consumer exacerbates this risk to the consumer.

The discussions above illustrate that there is a significant increase in the overall exposure of EN customers to risks, particularly as the market extends to entities that are more likely to be driven by profit maximising motives. Other concerning risks that SACOSS and the signatories have identified include:

- The AER has no formal requirements to actively monitor the performance of exempt sellers and EN operators, nor do the exempt sellers and EN operators have formal requirements to monitor and report to the AER on performance and compliance with the conditions of exemption. Without these requirements, the AER has very limited enforcement capacities even though there are civil penalties attached to non-compliance with the conditions of exemption. This may reduce confidence of consumers in the market over the longer term.
- The information provision requirements placed on exempt sellers are also not as significant as those placed on authorised retailers. This limits the ability for consumers to compare their embedded network energy arrangements with retail offers, as well as their ability to achieve explicit informed consent in making changes to their arrangements.
- More generally, the multiple barriers to accessing retail competition allow for inefficient monopoly behaviour to emerge by the on-sellers, exacerbated by the information asymmetry and the relative gaps in the commercial power between the on-seller and the exempt customers. Vulnerable EN customers (financial/housing /medical) are in a particularly difficult position. Vulnerable customers often have little negotiating power in the relationship and limited information on how to identify and remedy issues of non-compliance. They are, therefore, at even greater risk of being poorly serviced by either the exempt seller or the third party service provider. Renters may also be exposed to greater risks as they are not party to the agreements between the overall site owner/body corporate and the owners of the individual apartment.
- In the absence of a formal and transparent dispute settlement process (including access to an Ombudsman Scheme), and given relative asymmetry of information between the exempt seller and the EN customers, the risks of non-compliance by the exempt seller fall largely on the EN customer.
- The growth in the EN market itself increases the risk of ‘crowding out’ the opportunity for entry of authorised retailers into the energy market leading to a diminution of retail competition generally. It is notable that larger retailers are taking a position in this exempt market further challenging the overarching principle of enhancing efficiency through retail market competition.
- There is a significant potential risk for EN customers that ‘costs’ are recovered by the exempt seller or the EN operator in other ways, for example, through general lease charges, ‘facility charges’ or ‘fixed (unspecified) charges. While the NER states that internal network charges are ‘generally not permitted’ there remains the potential for the suppliers to recover these costs in other charges that are not transparently linked to energy use (see SACOSS 2015 report at Attachment 2).
- In a growing number of sites, the metering, meter reading, billing, disconnection, hardship and dispute handling policies are controlled by third party service providers, unseen and unregulated by the regulator. The lack of transparency in these arrangements and the lack of clarity on the contractual chain may add further risks to EN customers.
- There is minimal incentive for an exempt seller or an embedded network operator to innovate in terms of products, services or infrastructure (such as metering). There is an open question, for instance, as to whether an on-seller would introduce cost-reflective pricing structures (TOU, peak demand) even if they

are charged at the parent meter, as this would require investment in interval type meters and more complex billing arrangements.

- Further consideration is required as to whether the EN framework encourages or hinders efficiency improvements and the installation of PV systems, battery storage and the like.

### **Modifications to the current exemption framework have the potential to address many of the risks to consumer within the current framework**

As discussed in response to consultation Q1, the exemption framework provides a number of potential benefits to EN consumers including lower energy prices for these customers. It also provides more flexibility than the retail authorisation process and allows the AER to adapt the exemption conditions to the particular circumstances. As such, we have suggested that there may be value in continuing the overall two-tiered framework but with some modification to address the flaws and risks identified in a changing energy landscape. Potential modifications include:

- The inclusion of a new category of large scale exempt sellers/EN operators. For this new category of exemption, the customer protection obligations and the monitoring and reporting obligations would be closely aligned with those imposed on authorised retailers. This will ensure that a significant number of exempt customers are more fully protected under the exemption framework in line with the objectives of providing equivalent consumer protections.
- Modified consumer protection and reporting obligations could be extended to other categories of exemption (individual and registrable exemption categories) as determined by the AER, taking into account the costs and benefits of these requirements. With respect to this assessment, SACOSS and the signatories note again that the NERL and NERR require that the AER and AEMC must act in a manner that is 'compatible with the development and application of consumer protections for small customers'. The preferences of exempt sellers for simple low cost arrangements should not trump this obligation.
- The removal of the 'deemed exemption' category. We question the need for the exemption framework to continue to include this category at least in its current form and believe there may be better ways to manage embedded customer risks than including this category as part of the licencing framework arrangements. SACOSS and the signatories have some concern that the 'deemed' category of network and retail exemptions serves little practical purpose. The exempt service providers not only 'self select', they have no obligation to register with the AER, and the AER has no knowledge of where these places are and how many sellers and consumers may be included in this category. As such, issues of compliance with the conditions of exemption will only arise if an exempt customer has sufficient knowledge to raise questions with the AER. The AER's role is, therefore, purely reactive rather than proactive and it is not clear what actions the AER could take even if it became aware of some action of non-compliance with the conditions of a deemed exemption. Can it revoke an exemption for a party that is not registered with it; can it impose penalties on the party? Absent further clarification on these issues, SACOSS and the signatories consider that this category of exempt supplier customer may be better managed through other regulatory arrangements, such as expanded obligations under existing Tenancy Law, Retirement Village Law, Permanent caravan park law (as relevant to each state).

In making these and possibly other modifications, SACOSS and the signatories emphasise that the framework should seek to meet a number of objectives:

- Ensure that EN customers have access to the range of consumer protections available to customers of authorised retailers. This is a fundamental objective that is reflected in the NERL and NERR and is essential to retaining the confidence of consumers in the market. The larger the scale of the exempt seller's operation (s), the more important it is that the consumer protection obligations reflect the consumer protection obligations set out in the laws and rules for authorised retailers.
- Improving access to retail competition also remains a valid objective as the 'threat' of competition provides a discipline on exempt sellers to continue to maintain lower prices and improve the quality and relevance of their services to the consumer. The AER's assessment of applications for brownfield conversions must take particular note of this objective as the potential exempt customers are in practice giving up a 'right' of ready access to competitive offers and improved service packages.
- Ensure ongoing compliance by the EN operator or exempt seller with the exemption conditions set by the AER. At this stage, the AER does not have the necessary resources or powers to establish an effective monitoring, reporting and penalty regime for exempt EN operators and exempt sellers. Until it does, the EN consumers will continue to be at risk relative to customers of authorised retailers (see above). Ensuring compliance with the conditions in turn requires some form of obligations on both the AER and the exempt seller (and the EN operator) to monitor and report on compliance with conditions and to promote greater transparency and enhanced information provision to EN consumers on both the exemption conditions and the performance outcomes of exempt sellers.

**Recommendation 9:** The AEMC investigate whether there is any benefit in continuing with the 'deemed' category of exemption given that the AER has no way of knowing if, where and how many sites fall within that category. The customer protection obligations may be more effectively captured in other regulatory instruments.

**Recommendation 10:** The AEMC include a new objective for the exemption framework, namely the objective of ensuring compliance with the conditions of exemption through an effective monitoring and reporting framework and consistent application of the civil penalty regime for non-compliance with conditions.

### **The AER has not been provided with the appropriate powers and functions in relation to the granting of exemptions**

SACOSS and the signatories conclude that the AER has not been provided with the appropriate powers and functions in relation to the granting of exemptions, particularly for embedded network exemptions approved under the NEL. The NEL does not provide the AER with the power to impose civil penalties for non-compliance with conditions and does not set out the principles and factors that guide the AER in approving an exemption.

Another key gap that applies to both the NEL and the NERL is the absence of any obligations on either the AER or the exempt EN operators or exempt seller to develop and maintain performance monitoring and reporting systems. There is also no explicit power provided to the AER to require exempt operators and sellers to provide the AER with relevant information.

SACOSS and the signatories have highlighted above, a number of areas where we consider that the AER requires additional powers and functions to ensure that the potential benefits of EN are realised, while the detriments to the customer protections and access to retail competition for small customers are minimised.

Our examination of the AER's recent responses to applicants for exemption indicates that the AER is using the guideline framework to obtain more information from applicants on issues such as evidence of obtaining explicit informed consent (for brownfield conversions), evidence of suitable hardship and dispute management policies, accountability for compliance between the exempt party and third party service providers, and so on. This is a significant development by the AER and is strongly supported by SACOSS and the signatories.

More specific comments are set out below. SACOSS and the signatories emphasise that these are preliminary observations and we look forward to further discussions on these issues over the course of the AEMC's review.

The NEL sets out very high level requirements for issuing an exemption for an EN operator. The NEL does not set out principles to guide the AER in granting an exemption to a network operator. Nor does the NEL provide for the AER to impose civil penalties for non-compliance with the exemption conditions. Thus, although the AER's Network Exemption Guideline includes exemption conditions that parallel obligations of a network service provider, there is little capacity for the AER to monitor or enforce these conditions other than revocation of the exemption. For example, the NEL does not provide for the AER to issue civil penalties to an exempt network operator for non-compliance with the conditions of the exemptions. Nor does the NEL require the EN operator to provide ongoing information or performance data to the AER, irrespective of the size of the EN operator or the number of sites it operates at.

The NERL provides more specific direction to the AER. That is, the NERL sets out some basic policy principles that the AER must take into account in exercising its power in relation to its exempt selling regulatory function.<sup>30</sup> The NERL also sets out a number of 'exempt seller related factors'<sup>31</sup> and 'consumer related factors'<sup>32</sup> that the AER may take into account in approving an application for a retail exemption. The NERL empowers the AER to prepare a Guideline and to apply a range of civil penalties for non-compliance with the conditions of the exemption.

However, the NERL does not authorise the AER to audit exempt sellers or to monitor and report on their performance. Nor does it place an obligation on exempt sellers to develop and maintain performance data and to provide relevant performance and compliance data to the AER. These are all important requirements with respect to authorised retailers. The absence of such obligations in the exempt seller legislation is a major gap in the effective protection of current and future EN customers.

While the AER has the power to revoke an exempt seller's exemption and an EN operator's exemption, it is not clear under the current legislative framework what happens to the EN consumers following a revocation. SACOSS and the signatories consider that as this exemption market expands some consideration should be given to how these EN customers are guaranteed continuation of supply. A similar situation may arise if the EN operator or the exempt seller defaults on their payments to an authorised retailer and is disconnected from supply by the retailer. A possible solution is that the authorised retailer becomes the default exempt seller and/or EN operator; however, this raises further questions on allocation of costs and the legal nature of the relationship between the authorised retailer and the EN customer.

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<sup>30</sup> NERL, s. 114 (1) .

<sup>31</sup> NERL, s.s. 114(2)(a) and 115

<sup>32</sup> NERL, s.s. 114(2)(b) and 116.

Overall, therefore, SACOSS and the signatories consider it is appropriate that the NEL is amended to better align with the NERL in terms of setting out policy principles that the AER must take into account in granting an exemption, and the exempt seller and consumer factors that may also influence the AER's decisions. Similarly, the NEL/NER should be amended to provide for the AER to impose civil penalties for non-compliance with the exemption conditions in an embedded network exemption.

In addition, it is essential for ongoing compliance, and for the continued confidence of EN customers that a monitoring and reporting framework is developed, and that this framework applies to both exempt networks and retailers. It is appropriate that the AER develop this framework and that the framework includes some degree of flexibility so that the AER can adapt the reporting requirements to the particular circumstances and customer types.

Given the growth in the EN market, it is also appropriate that the AEMC/AER consider what options are available in the event of default or non-compliance and revocation of exemption by the exempt seller or EN operator. The existing Retailer of last Resort (RoLR) in the energy laws does not seem appropriate to manage such a situation or to allocate responsibilities and possible costs.

The AEMC and AER will also need to consider whether this framework should include reporting requirements for third party service providers and for embedded network managers (post 1 December 2017). However, we note that AEMO has quite extensive powers with respect to the ENM under its accreditation and registration procedures.

**Recommendation 11:** The AER develop and implement a cost efficient monitoring, reporting and enforcement regime for both exempt sellers and EN operators to ensure consistent compliance with its exemption conditions and greater transparency for EN customers and their advocates.

**Recommendation 12:** The NEL (or NER) and the NERL is amended to include an obligation on all exempt network operators and exempt sellers to monitor and report on compliance with the conditions of exemption, the format and timing of which is at the discretion of the AER.

**Recommendation 13:** The AER be provided with the resources and legislative authority to conduct mandatory audits from time to time and acquire information from the exempt networks and retailers to ensure better compliance with the conditions of exemption and provide assurance to EN consumers.

**Recommendation 14:** The NEL and/or the NER be amended to include a set of policy principles that the AER must take into account when issuing an EN exemption. The NEL and/or the NER also include a range of 'exempt seller factors' and 'exempt consumer factors' (similar to those set out in the NERL) to guide the AER in granting an exemption.

**Recommendation 15:** The NEL is amended to allow the AER to impose civil penalties on EN operators that do not comply with the network exemption conditions and that parallel the penalty regime in the NERL.

**Recommendation 16:** The AEMC or AER investigate whether more formal registration requirements should be placed on third parties providing customer services on behalf of the registered exempt parties and, more generally, whether these third parties should be subject to civil penalties for non-compliance, or only the exempt seller or embedded network operator registered directly with the AER.

**Recommendation 17:** There is a need to develop more specific rules or procedures relating to the management of EN customers in the event that the EN operator or exempt seller has its exemption revoked and/or can no longer provide the services to these EN customers.

**Recommendation 18:** The AER be provided with the resources to develop an accessible data base that includes not only the list of exempt sellers and EN operators, but also the details of the relevant exemption conditions. This will provide greater transparency to the EN consumers on their rights and the exempt sellers or EN operator's obligations.

In addition to the above recommendations, SACOSS and the signatories note that from 1 December, the role of the ENM will become central to facilitating access by EN customers to retail competition. At this stage, SACOSS is aware of, but has not been party to, the development of AEMO's accreditation and registration procedures or AEMO's enforcement responsibilities. The ENM will over time have a central role in achieving the objectives of the exemption process and we would welcome further insights into these requirements.



*Question 4: Can access to retail competition be improved?*

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

### **A number of barriers impede embedded network customers going on-market**

SACOSS' 2015 study<sup>33</sup> found that for electricity consumers in long-stay caravan and residential parks, "retail competition is most unlikely to be a practical or cost effective option... [and] there is minimal competitive price and service pressure on the on-seller and embedded network operators". Informed by this study and further research and consultation, SACOSS and the signatories have identified a number of barriers for embedded networks customers going on market that may apply more broadly than just caravan and residential parks. These barriers are outlined below.

#### *Upfront costs may provide a disincentive for EN customers going on-market*

Upfront costs may provide a disincentive for many customers in smaller embedded networks going on-market. The SACOSS 2015<sup>34</sup> study identified that ENs in long stay caravan and residential parks tend to have aging infrastructure that are likely to require upgrades to enable customers to access market offers. For example market offers are likely to require the installation of a market-ready meter capable of reading half hourly interval consumption data. Should this be the case in any EN, upgrade costs will either have to be borne by the customer wishing to go on- market (or their landlord if they are renting), the retailer providing the market offer or the embedded network owner/operator (and possibly in turn shared by all residents in the EN). This is likely to provide a strong disincentive for all parties unless it can be clearly and confidently demonstrated that they will reap longer term benefits that outweigh the initial upfront costs. Yet as will be outlined in more detail below, SACOSS and the signatories believe that under current arrangements it is very difficult to assess whether the long term cost savings from a retail offer will in fact outweigh the initial infrastructure upgrade costs. Therefore without the ability to confidently and accurately make this comparison, any upfront costs are likely to provide a disincentive for embedded network customers seeking to go on-market.

Even where an EN customer may be confident that they will receive costs savings over time, they may not have the resources available to pay the upfront costs. As SACOSS highlighted in its 2015 report<sup>35</sup>, EN customers in caravan and residential parks, are often on low incomes, and do not have the available resources to spend on infrastructure upgrades. Further many EN customers are tenants and as such are reliant on their landlord to agree to make the upgrade and pay the costs. While there may be benefits for owner occupier customers through long term cost savings, or for retailers through a growing customer base,

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<sup>33</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>34</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>35</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

there are unlikely to be benefits for landlords or EN owner/operators for paying for the upgrade. As such, SACOSS and the signatories believe that there are many EN customers for which the upfront costs will provide a real or perceived barrier to going on market.

*A lack of transparency about energy arrangements for EN customers will make it difficult to assess whether they will benefit from going on-market*

A very strong practical barrier for many EN customers going on-market is the lack of information provided to them about their energy pricing arrangements, the customer protections they are entitled to, and their rights to access retail offers (in jurisdictions where this right exists). As highlighted in the SACOSS 2015<sup>36</sup> Report, a key characteristic of embedded networks is that the customer's energy seller is also likely to be their landlord, body corporate or have some other relationship that is primarily tied to the occupancy of their home or business. In these circumstances the information provided to EN customers about their energy arrangements is usually subsumed within a larger body of information about their tenancy or occupancy of their home or business. Further as was observed in SACOSS' 2015 study<sup>37</sup>, for tenants, energy bills are often also rolled into one tenancy bill, with little information provided to distinguish energy costs from other general tenancy costs. As such in practice, many EN customers have little awareness of their energy arrangements, particularly the nature of their costs as well as their rights and consumer protections. This has significant implications for EN customers' ability to assess whether they would be better off under a retail offer compared to their EN arrangements.

While it is the case that the AER's Exempt Selling Guideline<sup>38</sup> requires that information about customers energy arrangements must be provided by the exempt person at any time on request by the exempt customer or the AER, and so in theory EN customers should be able to access at any time the information they need to make an informed assessment of any retail offers, in practice the SACOSS 2015 study<sup>39</sup> found that most exempt consumers felt that they were not kept adequately informed about their bills, rights and protections, and when they requested park management for more information, they were effectively "brushed off". For example one SACOSS case study noted that:

"Communication from the park owner is perceived as problematic for residents. There is a lack of transparency on charges, including the supply charges the park owner is paying; residents are not always notified when arrangements change and there is no transparency if formal reductions (i.e. abolition of the carbon tax) are being passed on to residents. There is also no consumer knowledge of any information/formal processes for new residents moving into the park."<sup>40</sup>

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<sup>36</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>37</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>38</sup> AER, Exempt Selling Guideline, Version 4, March 2016

<sup>39</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>40</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

Common EN customer experiences cited across the parks investigated in the study include:

- A lack of explanation from EN owner/operators when energy prices change;
- Fixed energy charges ranging from \$10 per fortnight to approximately \$40 per month. There did not seem to be any reasonable basis for the amount charged, and the exempt seller was not open to explaining the charge;
- The view that the exempt seller was being charged lower, market based prices than the standard prices from the authorised electricity retailer at the 'gate' meter, and this market benefit was not passed onto the exempt consumers; and
- Savings benefits from installation of solar PV on common park buildings not being passed on to the exempt consumers.

SACOSS and the signatories are also aware from research and consultation conducted by the Ethnic Communities' Council of NSW, that many small businesses in retail shopping centres are also experiencing similar issues obtaining clear, accurate and consistent information from their EN owner/operators. As such these issues are not just limited to caravan and residential parks but are likely being experienced across many forms of ENs.

While the SACOSS 2015 study<sup>41</sup> found that many EN customers in long stay caravan and residential parks felt that park management were disinterested in providing energy related information, SACOSS and the signatories also note that a lack of compliance with information provision requirements is not always intentional, rather sometimes it is also due to a lack of awareness on the part of EN owner/operators about their legal requirements. It's important to remember that this role is usually secondary to their primary role as park/village manager, landlord or body corporate and may require one person, or a small number of people to wear multiple hats at one time. Lack of awareness appears to be a particular issue for smaller embedded networks, where the owner/operator may not have access to sufficient legal or administrative resources or possess the required literacy/experience to help them understand the complex array of regulations found in the AER Exempt Selling Guidelines<sup>42</sup>, as well as jurisdictional specific tenancy and other legislation. In many cases the establishment of embedded networks in caravan parks, retirement villages, community housing complexes or smaller apartment blocks pre-date the introduction of the AER's guidelines and as such, management has never "caught up" with the new requirements placed on them by the AER guidelines. Putting aside questions around intention, as will be outlined in more detail below, a light touch regulatory regimes means that there has been little prompting or incentive for pre-existing ENs to self-identify and comply with the AER's guidelines.

Even where EN owners/operators are complying with their obligations to provide information about energy arrangements to their EN customers, the level of detail required by some classes of exempt sellers is insufficient for customers to make an informed judgement as to whether they are better off under a retail offer. Under the National Energy Consumer Framework, a retailer is required to provide a great degree of transparency about the offers they make available to consumers, including an accessible presentation of standing and market offer prices on their website, and to produce an 'Energy Price Fact Sheet' for each offer that includes unit price of energy, daily supply charge, and any other applicable charges, discounts and rebates. In contrast the AER's Exempt Seller Guideline does not require all exempt sellers to supply the same

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<sup>41</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>42</sup> AER, Exempt Selling Guideline, Version 4, March 2016

degree of detailed pricing information. Nor does it require the exempt seller to provide information about the basis of the prices and other charges and how these prices and charges might vary over time. For retail competition to be effective and explicit informed consent to be achieved, an exempt customer will need to have information about the basis for current prices, as well about any likely changes to prices in the future in order to compare their current EN pricing arrangements with an alternative retail market offer. Further the customer will need explicit information on any additional charges that the exempt seller/network operator might pursue in the event the customer takes up a retail market offer, such as a charge for the use of the internal network or for changes to the internal network. Without this level of detail about current and future energy arrangements, it will be difficult for EN customers to assess whether they will be better off overall under a retail offer.

Further this will have implications for whether a retailer and the regulator can be confident that where a customer may have made a judgement that they will be better off, that the explicit informed consent test has actually been met in coming to this conclusion. SACOSS and the signatories are concerned that unless clear and transparent information about current and future retail and network energy arrangements within the embedded network is provided to EN customers, retailers and regulators, that even in circumstances where all parties are on board with a customer taking up a retail offer, there is no clear way of any party knowing whether in fact the customer will be better off. This places EN customers at risk of ending up worse off over the long term. More troublingly it also potentially provides an opportunity for dodgy retailers or third party billing agents to intentionally exploit this lack of clarity by marketing products that appear to be in the customer's best interests, but may in reality not be. Further, without full transparency over pricing and customer protections, the regulators, or other independent parties may find it difficult to assess what is and what isn't a fair and competitive offer, and in turn combat this type of dodgy practice.

*The power imbalance between EN owner/operators and their customers can provide a barrier to customers seeking to go on-market*

The cost and transparency barriers outlined above are made more difficult to overcome in smaller embedded networks because of the power imbalance between the owners/operators of the EN and their customers. As indicated above, the owner/operator of an EN may also be the landlord or body corporate for the EN customer or have some other relationship that is tied primarily to the customer's occupancy of their home or business. This gives the EN owner/operator far more power and influence over the lives of their customers than is the case in a typical retailer/customer energy relationship. While in theory, energy related issues in an embedded network should not have any tangible impact on a customer's broader residential arrangements, in practice these lines can and are easily blurred. The SACOSS 2015 study<sup>43</sup> found that in long-stay caravan and residential parks, there is widespread fear and frustration among residents that if they raise energy related issues with their EN owner/operator (who is usually also their park manager and/or landlord) that they will be labelled trouble makers and that this in turn may create difficulties for their ongoing tenancy, or simply make living in the park unpleasant. Given that residents of these types of embedded networks are often low income, asset poor and vulnerable, SACOSS found that they were extremely reluctant to risk their living arrangements by raising concerns with management. So much so, SACOSS had to meet with residents in secret locations and be very careful about not identifying in any way

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<sup>43</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

the parks referred to in our report. SACOSS and the signatories also expect that this power imbalance may also be particularly acute in retirement villages, where elderly people are more vulnerable to the care of their village managers and staff, and tenants in apartments who are vulnerable to the actions of their landlords who are likely to be part of the body corporate that owns or operates the embedded network.

Due to this power imbalance, SACOSS found caravan and residential park residents felt extremely disempowered, and were unable to negotiate on equal terms with their EN owner/operator. Without the capacity to confidently and securely negotiate about things such as accessing more transparent and detailed pricing information, upgrades to aging infrastructure and access to retail offers, it is highly unlikely that customers of smaller ENs, particularly where there is a tenant/landlord relationship, are going to pursue retail offers. Certainly, in our 2015 study<sup>44</sup> we did not find any EN customers that were actively seeking access to market offers. While customers were generally aware that there were cheaper retail market prices available and would like to have access to these savings, they did not particularly want access via the path of retail competition. Rather their preference was for regulation by government to force EN owners/operators to share the savings that they are making from access to market offers through bulk purchasing arrangements. Going it alone so to speak to access these savings through the market, was seen as too risky and too complicated to achieve their desired outcomes.

If both the EN customer and the owner/operator believe that is too difficult, costly or troublesome for customers to go on-market, then the reality is that this perception will provide a powerful barrier in itself to EN customers going on-market. In turn the threat of competition will continue to be minimal for EN owner/operators, and as such they will continue to have little practical incentive to make changes to their practice that is in the interests of their customers.

### **The embedded network manager rule change is unlikely to practically reduce barriers for embedded network customers going on-market**

In December 2015, the AEMC made its final determination on an embedded network rule change<sup>45</sup> to promote competition by giving more embedded network customers a choice between services from retailers or from their EN operators. This rule change, due to come fully into effect in December this year, created the new role of Embedded Network Manager (ENM) to link EN customers with retailers of their choice. By making it easier for EN customers to access retail offers, the rule change, at least in theory, is intended to also provide EN operators with a greater incentive to compete with retailers, and thus also benefit those customers who stay within the bulk purchasing energy arrangements of their embedded network.

While SACOSS and the signatories are generally supportive of the intent of the rule change, and believes that it may achieve its intended outcomes for larger embedded networks, for smaller embedded networks we note the devil is in the detail. The AER's latest version of its Electricity Network Service Provider-Registration Exemption Guideline<sup>46</sup> sets out the specific requirements for the ENM position, and here it becomes clear that not all embedded networks will be required to appoint an ENM manger and thus reap the benefits intended by the rule change. For example small ENs with under 30 customers are not required to appoint an

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<sup>44</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>45</sup> National Electricity Amendment (Embedded Networks) Rule 2015, 17 December 2015

<sup>46</sup> AER, Electricity Network Service Provider - Registration Exemption Guideline Version 51, December 2016

ENM, while ENs within activity classes ND2, NR2, NR3, and NR4 (including caravan park, holiday park, residential land lease, manufactured home site and retirement communities and other groups of a similar nature participating in a group purchasing scheme whereby the benefits of bulk purchasing are shared across all members of the community) are provided with a mechanism to not engage an ENM if there is insufficient demand among EN customers to appoint one<sup>47</sup>. For embedded networks where an ENM is not appointed, SACOSS and the signatories are not confident that the rule change will have any impact on reducing the barriers outlined above.

Even where in theory ND2, NR2, NR3, and NR4 classes of ENs may appoint an ENM, in practice the mechanism to decide whether to appoint an ENM may prove to be too much of a time, cost and administrative burden for EN customers and owners/operators to pursue. In short the mechanism involves a requisite number of EN customers requesting a poll of all EN customers within the EN to decide whether to appoint an ENM. Following the poll, the EN owner/operator is required to abide by the decision of a two-thirds majority of the customers<sup>48</sup>. If the decision is taken that an ENM be appointed, a further decision must be made as to whether the costs to appoint an ENM are to be shared among all the EN customers within the EN (irrespective of whether they themselves intend to take up a market offer), or borne by only those that take up a retail offer and thereby choose to leave the bulk purchasing agreement.

While SACOSS and the signatories assessment of this process cannot be tested until the rule change comes into effect, we are confident based on our past research and consultation that the nature of this process will deter many EN customers from attempting to go on market using this process. As outlined above, EN customers in smaller embedded networks, particularly where there is a tenant/landlord relationship and/or where customers are vulnerable and disadvantaged, already feel very nervous about “rocking the boat” by challenging the status quo arrangements with their EN owner/operator. SACOSS and the signatories believe it is extremely unlikely that these customers, already feeling the impacts of the power imbalance outlined above, will seek to instigate a potentially complex administrative process that may provoke a backlash from their owner/operator, especially given as stated by the AER they must also “factor in the added costs of ENM services to their decision”<sup>49</sup>.

Further SACOSS and the signatories have concerns that the majority rule decision making process to appoint an ENM and distribute the costs of doing so, may introduce additional power imbalances and points of conflict between EN customers (in effect between neighbours). Again we cannot test this concern until the rule change comes into effect, however we feel the process raises a number of significant questions that should be addressed:

- How will it impact residential harmony in what are often small residential communities? Will residents divide into groupings for and against going on market? How will this impact on more vulnerable residents, including for example elderly residents of retirement villages that may make decisions in conjunction with or have decisions made by their non-resident partner or children?
- How will the power imbalances be addressed? Who will monitor the fairness of the decision making process and protect the interests of the “one third minority” who don’t get the outcome they believe is in their best interests? Who will ensure there are no social or tenancy repercussions for those on “the other side” of the owner/operator’s wishes?

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<sup>47</sup> AER, Electricity Network Service Provider - Registration Exemption Guideline Version 51, December 2016, p63

<sup>48</sup> AER, Electricity Network Service Provider - Registration Exemption Guideline Version 51, December 2016, p64

<sup>49</sup> Reasons for Decision - Amended Network Exemption Guideline -Version 5, December 2016, p28

In considering these questions and the broader power balances in play, it may simply not be worth the social and financial risks for many embedded network customers to pursue the appointment of an ENM and access a retail offer, despite the possibility of better prices and customer protections under a retail offer.

**Strengthened regulation may reduce some of the barriers to embedded network customers going on-market, as well as ameliorate some of the risks for customers who remain off-market**

As SACOSS and the signatories have outlined above, there are a number of significant barriers to customers of ENs going on market, and these barriers are unlikely to be reduced by (and may even be exacerbated by) the new ENM rule. SACOSS and the signatories believe that strengthened regulation can play a role in reducing some of the barriers identified, as well as ameliorating the risks for EN customers who stay off-market, particularly where there are limits to the extent in which retail competition alone can address all the issues experienced by EN customers.

*Require greater transparency of information about EN energy arrangements for EN customers*

As indicated above the lack of transparency around energy arrangements in embedded networks makes it difficult for customers (as well as retailers interested in making appropriate offers and regulators and advocates looking to monitor fairness) to assess whether they would be better off overall leaving their bulk purchases EN energy arrangement to take up a retail offer. Currently the level of detail a EN owner/operator is required to provide to a customer is far more limited than that required by an authorised retailer, making it hard for customers to compare like for like. SACOSS and the signatories note that there are understandable reasons for this lower burden given the smaller size of ENs and more limited capacity for EN owners/operators to provide this level of detail. Nonetheless to achieve the outcomes of effective retail competition and explicit informed consent for customers, more detailed pricing and consumer protection information will need to be provided to EN customers.

**Recommendation 19:** Require exempt sellers to provide customers with more detail information on:

- the basis for current prices, in particular fixed charges,
- the basis for any changes in prices and charges and the likely future timing of such changes, and
- any additional charges that the exempt seller/network operator might pursue in the event the customer takes up a retail market offer, such as a charge for the use of the internal network or for changes to the internal network.

*Require EN owner/operators to pass on to their customers any ongoing savings they may be making from bulk purchase energy arrangements with retailers and from communal renewable energy generation and storage*

While it would ideal that access to retail competition alone drives price savings and better service and protections for EN customers, both on and off-market, the reality as outlined above is that because of a number of reasons (power imbalances and cohort vulnerability, lack of clarity around prices, questions around cost effectiveness and the complicated and burdensome administrative process to access retail competition) going on-market may not be desirable or realistic for all EN customers. As identified above,



SACOSS' 2015 study<sup>50</sup> did not find any customers that were actively seeking access to market offers. What these customers did expect, however, was a 'fair deal'. For example, they expected that the benefits to the exempt seller of lower retail market prices compared to the standard offer price of the local retailers would be shared with the exempt customers in the embedded network. Similarly, they considered that the benefits of on-site solar generation should also be shared. The exempt customers in the study, however, did not look to retail competition as a way of improving the services and energy prices provided by their exempt seller. Instead, they looked to the various regulatory authorities to provide this pressure on the suppliers.

In this context if EN customers do not seek to use market pressure to achieve their desired outcomes, then it is highly likely that the status quo of potentially higher costs and lower protections will continue because EN owners/operators, believing that their customers are unlikely to pursue a market offer, will have little incentive to change current practice. As such, SACOSS and the signatories believe it is vitally important that options be considered to the strengthen the ability of the regulator to prevent EN owners/operators from "profiting" from the on selling on electricity to their EN customers by charging the standard offer, but receiving the lower market offer price (which can be as much as 20% lower<sup>51</sup>) or not passing on savings generated by communal renewable energy generation and storage. SACOSS and the signatories understand that in Queensland there is tenancy and body corporate legislation that applies constraints on the prices charged to tenants and occupiers of units, over and above the AER pricing conditions, that in effect prevent body corporates from profiting from the on selling of electricity. SACOSS and the signatories would like to see similar energy provisions in energy regulations to ensure all EN customers are protected in this way, and can be confident that even if they are unable to seek or obtain a retail offer, that they are at least receiving a fair deal from their EN owner/operator.

**Recommendation 20:** The AEMC/AER investigate options to enforce sharing of savings obtained by the exempt seller through lower market offer prices, and government supported efficiency schemes or solar PV generation.

*Introduce monitoring and enforcement of ENs to incentivise compliance with all legal requirements*

As identified in the SACOSS 2015 report<sup>52</sup>, and earlier in this submission, even where regulations are in place to require EN owners/operators to provide information to EN customers and have in place consumer protections, on the ground there is evidence that EN owner/operators are not always complying with these requirements. Sometimes this is because of malicious intent, while other times it is more to do with lack of awareness or a sense that things should be done as they always have been. Irrespective of the reason, where non-compliance occurs, EN customers are missing out on their legal protections and potentially much needed savings.

SACOSS and the signatories are concerned that the current light touch regulatory approach does little to monitor and enforce EN compliance. For example under current arrangements, either ENs are either deemed to be exempt without any application process or are required to self-identify for registration. Once

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<sup>50</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

<sup>51</sup> AEMC, Consultation Paper: Review of regulatory arrangements for embedded networks, April 2017

<sup>52</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

deemed or registered, they are not monitored for their compliance with their exemption requirements. In practice this means that the AER has little visibility of whether an EN exists, let alone whether they are complying with their legal requirements. As such, the AER are effectively flying blind, and must take on faith that ENs are largely doing the right thing. The fact that few EN customers can currently access free, user friendly external dispute resolution processes, and noting the power imbalances identified above, it is highly unlikely that most minor or even serious non-compliances will ever be uncovered and rectified, particularly in smaller ENs. While SACOSS and the signatories acknowledge that it is a significant task to develop procedures for monitoring, reporting and enforcement in this market given the special features of this market and will likely require additional resources to be allocated to the AER, without it many of the barriers to retail competition will remain in place, and customers will continue to miss out on protections and the opportunity for saving they are be entitled to.

**Recommendation 21:** The AER develop and implement over time a cost efficient monitoring, reporting and enforcement regime to support its statutory powers and to encourage compliance with the conditions of exemption. The AER should be provided with the resources to undertake regular 'sample' investigations of compliance with the registration process and the associated conditions of exemption.

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

**The objective of providing comparable consumer protections to exempt customers and customers of authorised retailers is not being achieved in practice**

There are two elements that underpin this conclusion. The first is that the conditions of the exemption are not adequate to provide comparable consumer protections. For example there are significant gaps in key areas such as access to effective dispute mechanisms, hardship and payment difficulty programs and relevant information. These gaps have a particularly severe impact on vulnerable customers who are often not in a position to dispute the actual conditions and services provided by the exempt seller or embedded network operator. These gaps are discussed in more detail below.

The second element is the evidence of non-compliance by some EN owners/operators with the conditions of their exemptions. In making this statement, SACOSS and the signatories are also aware that there are a wide range of practices by EN operators and exempt sellers and it is likely that many operators and sellers are complying with their exemption conditions. SACOSS found some evidence of this in its 2015 qualitative study<sup>53</sup>, however, the difficulty – and it is a substantial difficulty – is that we simply do not know to what extent EN operators are compliant with the conditions in practice and over time.

It is likely that the regulatory authorities and Ombudsmen are aware of only the most egregious of non-compliance activity. This is why SACOSS and the signatories have stressed in previous sections of this submission the importance of the AER developing a monitoring and reporting framework that will provide both transparency around the current market and consistency in future assessments of the market. It is also why SACOSS and the signatories have recommended that the NEL/NER be amended to include civil penalties for non-compliance with conditions, similar to those that apply in the NERL/NERR.

SACOSS and the signatories acknowledge that establishing a ‘fit for purpose’ monitoring and reporting framework and an extended penalty regime, and maintaining this over time represents a significant additional regulatory burden, necessitating additional resources for the AER. However, given the growing size and complexity of the exemption market and the consequent increase in risks for EN consumers, it is appropriate for the AER to commence this process as soon as possible.

SACOSS and the signatories have also suggested that as a starting point, the creation of a new category of exemption, the ‘large scale individual exemption’, with extended consumer protection requirements, would allow the AER to focus initially on monitoring and reporting in this key growth sector of the market. Moreover, it is reasonable for the AER to seek some cost recovery from these large scale operators and sellers who are in the main intending to make profits from the embedded network/exempt selling business model.

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<sup>53</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

## **There are a number of gaps in the customer protection framework and consequential risks to EN consumers**

As noted above, SACOSS's 2015 report<sup>54</sup> identified a number of gaps in the customer protection framework that have a significant impact on small consumers, particularly vulnerable consumers.

Since that time, we have identified further gaps in the framework many of which have been discussed in previous sections of this submission. In summary therefore, we consider that the most important gaps include the following:

- Lack of an effective low cost energy specific and independent dispute handling mechanism equivalent to the Ombudsman services available to the customers of authorised retailers;
- The absence of any compliance monitoring and reporting system along with gaps in the enforcement regime particularly for EN operators;
- Restricted access in practice to competitive retail market offers and innovative products even following the appointment of the ENM;
- Limited information available to EN customers from either the regulators or the exempt sellers and EN operators on the EN customers rights, and the exemption conditions that apply to their particular site;
- Lack of any clear and standardised contractual relationships between the exempt seller or EN operator and the EN customer that provides at least the minimum standards and ongoing price certainty available to customers of authorised retailers;
- The absence of an obligation on exempt sellers (or their agents) to provide access to Centrepay. In addition, the various requirements for accessing concessions in different jurisdictions is a challenge for these customers notwithstanding that the AER's retail exemption guideline requires the exempt seller to ensure that EN customers have information on and can access their concessions;
- Customers experiencing payment difficulties or in hardship have limited ability to make payment plans as there is no equivalent to the AER's Hardship Policy requirements that apply to authorised retailers;
- There is a gap in the regulatory framework to ensure continuing supply to EN customers in the event of default or non-compliance by the exempt seller or EN operator or revocation of exemption by the AER;
- Lack of clarity on the ongoing responsibilities of EN operators to maintain a safe and secure network and accurate metering along with emergency arrangements in the event of loss of supply;
- The use of third party service providers by exempt sellers to provide key customer services such as metering, meter reading, billing, debt collection, payment options and hardship customer and dispute management services. The AER has no monitoring or enforcement capacity to ensure these third parties are providing adequate and compliant services.

SACOSS and the signatories would add to this list the general issue that the diversity of jurisdictional and local government arrangements that encompass embedded networks and exempt sellers compounds the difficulties for EN customers in knowing what their overall rights are and where they can take their concerns.

## **The existing principles in the NERL should be supplemented with a number of new guiding principles that should, in turn, drive the extension of the consumer protection framework**

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<sup>54</sup> SACOSS, The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers, December 2015, p 64 <https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

In its 2015 report on embedded networks<sup>55</sup>, SACOSS identified a number of gaps in the exemption framework that in practice mean that the objective of comparable consumer protections has not been achieved. It was indicated in that report a particular concern with the impact of these gaps on vulnerable customers who do not necessarily have the wherewithal to challenge the exempt seller or network operator (usually the same entity) or have knowledge of and capacity to pursue their fundamental rights for a safe, reliable and affordable energy supply.

The report indicated that the existing principles in the NERL should be supplemented with a number of new principles that should, in turn, drive the extension of the consumer protection framework. Overall, SACOSS advocated the following principles be included in the NERL, noting that the first three principles are derived from the NERL. The remaining principles are suggested by SACOSS and the signatories as being also necessary to ensure adequate protection of EN consumers.

The growth in the sectors of the exempt market outlined earlier in this submission, adds to SACOSS and the signatories concern and to the need for a priority to be placed on applying the principles and addressing the gaps.

**Recommendation 22:** Six guiding policy principles should be addressed by the AER when approving an exemption application. They are:

- The regulatory arrangements for exempt sellers should not necessarily diverge from those applying to authorised retailers;
- Exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right;
- Exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the Law and Rules;
- All EN consumers should have access to a free, independent and impartial dispute settlement mechanism;
- The relevant regulators have an ongoing responsibility to monitor, report and enforce compliance with the requirements of the AER, including the conditions of exemption; and
- The safety and security of supply to consumers in an EN must be a paramount consideration of the AER in granting an exemption.

As discussed in previous sections of this report, adopting these principles will require consequential changes to a range of regulatory instruments including the NEL, NER, NERL, NERR and the AER's Guidelines.

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## Summary of recommendations in response to the consultation paper questions

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

**Recommendation 1:** The AEMC/AER investigate the option to establish a new category of exemption that would apply to exempt on-sellers (and embedded network operators) that have a substantial number of customers and/or a substantial number of sites in total. The underlying principle here is that the exempt seller has a customer base equivalent to a small retailer and should therefore be subject to the same obligations and consumer protection conditions as a retailer.

**Recommendation 2:** The NERL/NERR be amended to require the AER to collect information and produce an annual performance report for this new proposed category of large scale exempt sellers and include summary information on other relevant developments in the EN market. This will increase transparency and facilitate consumers becoming more aware of their rights and obligations as well as improving incentives for compliance with the conditions of exemption.

**Recommendation 3:** The AER consider developing a reporting framework that provides both the AER and consumers with ongoing information on compliance with conditions by EN operators and exempt sellers, including 'spot' audits of compliance and public reporting of outcomes. This will also facilitate consumers becoming more aware of their rights and obligations. Associated with this, we encourage the AER to make more transparent access to information on approved exemptions and the conditions attached to these approvals.

**Recommendation 4:** The AEMC consider the policy implications of brownfield conversions and whether such conversions should be subject to more stringent conditions by the AER given the queries around EIC, the potential detriment, restriction of competition and long term constraints on reverting to an on-market consumer within an EN. SACOSS and its signatories note the particular issue in Queensland where following a brownfield conversion, the estimated cost of reverting to an on-market customer was approximately \$25,000 per customer due to the rewiring requirements.

**Recommendation 5:** The AEMC, in conjunction with the AER, investigate the implications of the rapid development of third party service providers who are actively promoting the benefits of EN and their services to body corporates and the like. These third party providers are offering end-to-end services including provision of metering, meter reading, billing, management of complaints and information provision to the EN customers. While there are potential benefits in these arrangements, there are also risks around accountability for compliance and lack of transparency in processes, systems, disconnection policies, privacy controls and the like.

**Recommendation 6:** The AEMC consider the competition implications of a third party service provider becoming an embedded network manager given the possible conflict of interest between the two roles.

**Recommendation 7:** The AEMC/AER consider establishing more formal requirements for the registrable class of EN sellers and EN operators in order that there is greater transparency for customers and regulators on the ongoing compliance with the conditions of exemption. This could include some low cost and standardised form of annual reporting to the AER and the publication of these reports on the AER's web-site. Penalties would apply for failure to report or false reporting.

**Recommendation 8:** The AEMC investigate whether additional rule changes are required to address the emerging gap where authorised retailers can sell to EN or ‘behind the meter’ customers, without the constraints imposed by the exemption framework on the maximum price charged. Note: SACOSS and the signatories have only recently become aware of this issue and would welcome further discussion with the AER and AEMC on this matter.

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

**Recommendation 9:** The AEMC investigate whether there is any benefit in continuing with the ‘deemed’ category of exemption given that the AER has no way of knowing if, where and how many sites fall within that category. The customer protection obligations may be more effectively captured in other regulatory instruments.

**Recommendation 10:** The AEMC include a new objective for the exemption framework, namely the objective of ensuring compliance with the conditions of exemption through an effective monitoring and reporting framework and consistent application of the civil penalty regime for non-compliance with conditions.

**Recommendation 11:** The AER develop and implement a cost efficient monitoring, reporting and enforcement regime for both exempt sellers and EN operators to ensure consistent compliance with its exemption conditions and greater transparency for EN customers and their advocates.

**Recommendation 12:** The NEL (or NER) and the NERL is amended to include an obligation on all exempt network operators and exempt sellers to monitor and report on compliance with the conditions of exemption, the format and timing of which is at the discretion of the AER.

**Recommendation 13:** The AER be provided with the resources and legislative authority to conduct mandatory audits from time to time and acquire information from the exempt networks and retailers to ensure better compliance with the conditions of exemption and provide assurance to EN consumers.

**Recommendation 14:** The NEL and/or the NER be amended to include a set of policy principles that the AER must take into account when issuing an EN exemption. The NEL and/or the NER also include a range of ‘exempt seller factors’ and ‘exempt consumer factors’ (similar to those set out in the NERL) to guide the AER in granting an exemption.

**Recommendation 15:** The NEL is amended to allow the AER to impose civil penalties on EN operators that do not comply with the network exemption conditions and that parallel the penalty regime in the NERL.

**Recommendation 16:** The AEMC or AER investigate whether more formal registration requirements should be placed on third parties providing customer services on behalf of the registered exempt parties and, more generally, whether these third parties should be subject to civil penalties for non-compliance or only the exempt seller or embedded network operator registered directly with the AER.

**Recommendation 17:** There is a need to develop more specific rules or procedures relating to the management of EN customers in the event that the EN operator or exempt seller has its exemption revoked and/or can no longer provide the services to these EN customers.

**Recommendation 18:** The AER be provided with the resources to develop an accessible data base that includes not only the list of exempt sellers and EN operators but also the details of the relevant exemption



conditions. This will provide greater transparency to the EN consumers on their rights and the exempt sellers or EN operator's obligations.

*Question 4: Can access to retail competition be improved?*

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

**Recommendation 19:** Require exempt sellers to provide customers with more detail information on:

- the basis for current prices, in particular fixed charges,
- the basis for any changes in prices and charges and the likely future timing of such changes, and
- any additional charges that the exempt seller/network operator might pursue in the event the customer takes up a retail market offer, such as a charge for the use of the internal network or for changes to the internal network.

**Recommendation 20:** The AEMC/AER investigate options to enforce sharing of savings obtained by the exempt seller through lower market offer prices, and government supported efficiency schemes or solar PV generation.

**Recommendation 21:** The AER develop and implement over time a cost efficient monitoring, reporting and enforcement regime to support its statutory powers and to encourage compliance with the conditions of exemption. The AER should be provided with the resources to undertake regular 'sample' investigations of compliance with the registration process and the associated conditions of exemption.

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

**Recommendation 22:** Six guiding policy principles should be addressed by the AER when approving an exemption application. They are:

- The regulatory arrangements for exempt sellers should not necessarily diverge from those applying to authorised retailers;
- Exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right;
- Exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the Law and Rules;
- All EN consumers should have access to a free, independent and impartial dispute settlement mechanism;
- The relevant regulators have an ongoing responsibility to monitor, report and enforce compliance with the requirements of the AER, including the conditions of exemption; and
- The safety and security of supply to consumers in an EN must be a paramount consideration of the AER in granting an exemption.

Attachment C: Customer issues mapped against the retail and network exemption conditions for respective classes R4/NR4

Core condition	Issues identified
<b>Retail</b>	
<b>Obligation to Supply</b>	We did not observe any instance of refusal to supply. Customers' greater concern was their general vulnerability as residents of a caravan park to the decisions of the owner/operator.
<b>Information Provision</b>	Customers expressed significant concerns with the lack of information provided to them about their energy supply. This included information about prices and charges and changes to these prices and charges. Customers were also concerned about the lack of information on arrangements and contacts in the event of failure of supply particularly on weekends and public holidays when the "office" was closed.
<b>Billing &amp; Payment Arrangements</b>	The Energy bill is a just a line item on the overall rental invoice. The information is limited to a stated kWh amount, the price per kWh, a fixed charge and the total amount. There are no actual start and end meter readings on the account to validate the reported consumption. Customers report very limited options regarding payment and can change at the discretion of the park owner/operator. There was no evidence of offering flexible payment terms if person is in financial difficulties.
<b>Estimation as basis for bills</b>	Customers are not always confident that meters are "read" on regular basis or, if it is done, whether it is an accurate reading. The bills do not appear to indicate if the reading is estimated or actual.
<b>Pay-by-date</b>	Not assessed
<b>Receipts</b>	Not assessed
<b>Pricing</b>	The energy rate (c/kWh) appears generally to be at or below the standing offer price (but is likely to be higher than the rate charged to the network operator at the gate meter by the authorised retailer). However, the fixed charges for supply appear to be very high and not consistent with the pricing obligation – consumers do not understand the basis of the fixed charge and the changes to this charge. Consumers were not satisfied that they were adequately informed about changes in prices and charges No information on the treatment of late payments – the assessment of this is complicated by having combined rental and energy bill.
<b>Undercharging &amp; overcharging</b>	No incidences reported.
<b>Payment difficulties and disconnection</b>	Difficult to assess this as the customer was invoiced for both energy and rental on the same invoice. However, the long-stay residents appear to prioritise payment of their rental/energy agreement invoices and the situation of disconnection for debt does not appear to have arisen.
<b>When disconnection or cessation of supply is prohibited</b>	See above
<b>Reconnection of Supply</b>	See above
<b>Concessions &amp; Rebates</b>	Rebates in South Eastern Australia were provided by the State Governments directly to customers on the basis of their bills, and only limited additional information was required from operator of the park (e.g. parent NMI). This does not therefore appear to be an issue for customers, at least in the South Eastern regions, other than the inconvenience of an annual payment. Further assessment is required for customers in North Eastern Australia because the exempt supplier must submit the rebate claims on behalf of the consumers. Anecdotally, this can be an issue and delay receipt of refunds.
<b>Choice of Retailer</b>	Customers were aware that there were cheaper retail market prices available and would like to have access to these. However, they did not particularly want this via

	retail competition – the preference was for regulation by government to force owners to share savings.
<b>Contact Details</b>	Customers expressed concern about raising complaints to the park operator. However, they did not usually know who else they could contact. Some were aware that they could raise a complaint with the relevant tenancy tribunal or civil and administrative tribunal. However, they considered this would be a difficult, expensive and a confrontational process.
<b>Complaints &amp; Dispute Resolution</b>	Customers do not consider they can get a fair hearing from the park operator in the event of a complaint or dispute. There was no evidence of a formal dispute mechanism. Customers are very frustrated at the lack of independent and safe options for resolving disputes or addressing complaints.
<b>Life support customers</b>	Not assessed
<b>Continuity of Supply</b>	Not assessed
<b>Termination of energy supply agreement</b>	Not assessed
<b>Maintaining records</b>	Not assessed
<b>Network</b>	
<b>Meter requirements</b>	The customers lacked confidence in the accuracy of the meters but had no way of checking these meters. The meters are unlikely to always meet these requirements given age and reported structure of the meters.
<b>Energy must be metered</b>	The usage was metered, but not necessarily by meters that satisfy technical requirements (as above).
<b>Safety of the network</b>	Some customers considered that there was an ongoing lack of maintenance of their embedded network. Customers also had safety concerns, particularly with respect to the electricity wiring from the meter to the customer’s premise. There did not appear to be clear standards for this in some parks.
<b>Embedded generation conditions</b>	Not generally applicable. However, some parks had solar PV installed on common buildings. Greater clarity is required on how this condition applies to solar PV generation within an embedded network.
<b>Restrictions on who could sell electricity</b>	At this stage only the park operator sells the electricity. It is not known if the operators all meet the requirements of being approved by the AER as exempt from registration with AEMO.
<b>Complaints &amp; Dispute Resolution Procedure</b>	Customers report that they are not aware of any formal dispute resolution process with the park operator. Nor do they recall if this issue was discussed with them at the time of entry to the park. However, most residents in our sample had been at the park for more than five years. Disputes seem to be addressed through informal contacts and customers do not always feel they are on an equal footing with the owner/operator in these disputes.
<b>Customers with adjoining or multiple exempt sites</b>	Not applicable
<b>Timing of application for registration</b>	Not applicable
<b>AER right to revoke or vary conditions</b>	Not applicable
<b>Life support customers</b>	Not assessed. But this is an important issue given the current focus on continuing to supply to LSC.
<b>Disconnection of LSC</b>	Not assessed
<b>Access to retail competition</b>	There is no evidence that consumers were aware of this right to access competition. Most were only mildly interested but very concerned about whether the cost savings to the park operator of a retail market offer were fairly passed on to the exempt customers. Similarly, for parks that installed solar PV systems, consumers believed they should receive some benefits.