Submission to the Review of the AER exemptions framework for embedded networks: Draft Decision

28th April 2025

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About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are marginalised and facing disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

Energy and Water Justice

Our Energy and Water Justice work improves regulation and policy so all people can access the sustainable, dependable and affordable energy and water they need. We ensure consumer protections improve equity and limit disadvantage and support communities to play a meaningful role in decision-making. We help to accelerate a transition away from fossil fuels that also improves outcomes for people. We work collaboratively with community and consumer groups across the country, and our work receives input from a community-based reference group whose members include:

- Affiliated Residential Park Residents Association NSW;
- Anglicare;
- Combined Pensioners and Superannuants Association of NSW;
- Energy and Water Ombudsman NSW;
- Ethnic Communities Council NSW;
- Financial Counsellors Association of NSW;
- NSW Council of Social Service;
- Physical Disability Council of NSW;
- St Vincent de Paul Society of NSW;
- The Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

South Australia Council of Social Service

The South Australian Council of Social Service is the peak representative body for the non-government community, social and health sectors.

Tenants' Union of NSW

The Tenants' Union of NSW is the peak body representing the interests of tenants in New South Wales. We are a Community Legal Centre specialising in residential tenancy law and policy, and the main resourcing body for the state-wide network of Tenants Advice and Advocacy Services (TAASs) in New South Wales. The TAAS network assists more than 35,000 tenants, land lease community residents, and other renters each year. We have long-standing expertise in renting law, policy and practice.

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That the AER extend the timeframe for the Review of the AER exemptions framework for embedded networks in order to:

- *appropriately consider consumer input from recent relevant processes, including the Review of Payment Difficulty Protections, and*
- *enable a more robust consideration of consumer and community input provided to this process, particularly evidence of actual consumer detriment and risk of harm.*

This process should involve publishing a revised Draft.

Recommendation 2

That the AER review its approach to consumer and stakeholder engagement and implement a consistent, principles-based approach to all engagement which enables the better practice of the Review of Payment Difficulty Protections to become the standard.

Recommendation 3

That the AER implement in full the recommendations made by Safe and Equal to ensure better outcomes for victim-survivors of family violence living in embedded networks. This includes developing bespoke training modules for exempt sellers and implementing a dedicated hotline.

Recommendation 4

That the AER commence implementation of reporting requirements for all embedded network operators that requires data on:

- *how many embedded networks there are the NEM,*
- *their business structures,*
- *their bulk energy costs,*
- *what energy services are provided (including hot/chilled water),*
- *how many residents they serve (and what services are provided), and*
- *key consumer outcome data points, including:*
    - *disconnection statistics,*
    - *bill ranges, and average/median bills,*
    - *debt data,*
    - *usage/daily charge pricing data*

Recommendation 5

That the AER revise their decision and implement Option 4 - This involves closing the NR2 registerable network exemption class to future registrations and ensuring all residential

exemption classes are covered by this approach, including long term residents currently included in deemed categories.

Where the AER proceeds with the Draft as proposed, the AER should close D2 class for all new and existing D2 residential networks and transfer existing networks to the varied R2 class.

Recommendation 6

That the AER revise their Draft Decision and introduce a robust compliance reporting requirement for all embedded network providers, including exempt sellers.

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That the AER introduce reporting condition 1.18 and apply it consistently to all embedded network providers and operators.

Recommendation 8

That the AER introduce robust assessment of consumer benefits in the individual exemption application process. This must include assessment of what consumer benefits the embedded network will deliver and how these will be demonstrated (to enable dispute resolution, monitoring and evaluation).

1. Introduction

The Justice and Equity Centre (JEC), South Australia Council of Social Service (SACOSS), Tenants' Union of NSW (TUNSW) and AER CCG member Dr Georgina Davis welcome the opportunity to respond to the Australian Energy Regulator's (AER) *Review of the exemptions framework for embedded networks: Draft Decision* (the Draft).

Our organisations have been deeply engaged in understanding and highlighting the consumer experience of living in energy embedded networks over more than a decade and have been involved in the regular energy market body and jurisdictional reviews into embedded networks.

In this context, we are extremely concerned by the Draft, the positions it asserts and the limited reforms it proposes. The Draft appears to have relied heavily on the conclusions of a poorly structured consultant's report[1] and weighted those conclusions more heavily than consistent evidence of actual consumer harm provided by consumers, consumer-advocates, academics and energy ombudsmen over many years. This includes input provided in response to prior reviews by the AER, AEMC and jurisdictional governments. Notwithstanding our assessment of the robustness of the consultant's report, it is not acceptable for such a large body of other evidence provided by consumers and ombudsmen to be given such little apparent consideration in a process intended to assess relative experience of consumer harm.

Our organisations continue to observe evidence supporting our contention that embedded networks undermine the equality of treatment of energy consumers, and the equality of outcomes they can expect in the provision of an essential service.

It is not in the interests of energy consumers for residents in embedded networks to continue to be structurally disadvantaged. While we do not preclude the possibility that embedded networks, properly regulated, could be structured to provide consumer benefits, the current framework does not do this. It is not acceptable for the 'possibility' of benefits to justify continuation of the status quo. We contend the proposals contained in the Draft make insufficient changes to ensure consumer outcomes are actually improved or ensure that current and future embedded networks will achieve better outcomes for consumers.

Our submission does not seek to reiterate evidence of the consumer experience in detail. This evidence, provided by consumer organisations, academics and ombudsman over more than a decade, has been made available to the AER and other jurisdictional governments and regulators on many occasions. We have provided links to many of these resources in section 7 of this submission and strongly recommend the AER give them due consideration as part of finalising a decision.

In this submission we comment on the consultation and engagement process for this Review. We highlight what we regard as flawed processes which we contend have contributed to incorrect conclusions and draft recommendations. We strongly recommend a comprehensive

[1] We provide a summary of specific issues with the structure, content and approach of this report in an appendix 1 of this submission.

reconsideration of the evidence provided to the AER and an appropriate revision of the Draft Decisions.

2. Response to the consultation and engagement process

Over recent years our organisations have recognised the efforts of the AER and its success in improving the accessibility and robustness of consultation and engagement processes, helping to facilitate more meaningful outcomes for energy consumers. Recent processes considering future protections and the introduction of a payment difficulty framework have been laudable examples of good practice. Through these and other processes the AER has made great strides in developing a more advanced understanding of vulnerability and the harms experienced in access to energy, particularly those resulting from the nature of the energy market itself. This understanding, and work to address harm in the *Towards Energy Equity* strategy and *Gamechanger* reforms demonstrate an intent and ambition which we do not see evidenced in the Draft.

The process for this Review has not demonstrated the better practice shown elsewhere and has resulted in conclusions and recommendations which risk entrenching inequitable, poor outcomes for consumers living in embedded networks.

2.1 Engagement with consumer and community stakeholders

The AER's *Review of Payment Difficulty Protections in the NECF* demonstrated breadth and depth of engagement as well as an embrace of good principles in consultation and development of consumer-centric decisions. The PDF review:

- Saw the AER facilitating, supporting and attending workshops with consumer advocacy organisations in addition to the standard public consultation platforms the AER hosted;
- Involved commissioning in-depth and robust research that was informed by and built on long-term consumer advocacy research;
- Involved coordinating a respectful and meaningful listening session with Culturally and Linguistically Diverse consumers[2]; and
- Facilitated an ongoing, two-way conversation with stakeholders to confirm correct understanding of issues discussed, test solutions and communicate next steps.

All of this was undertaken to augment the standard submission and response process.

The better practice engagement with consumer and community stakeholders demonstrated during the PDF Review not only led to a stronger understanding of consumer issues that the Review could seek to resolve, but it broadened and strengthened stakeholder trust that the AER is well-positioned to facilitate positive consumer outcomes through the process.

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[2] AER and Sydney Community Forum, 2024, *Consultation summary: Voices for Power listening session*. The AER highlighted that "the session was also designed to establish a foundation for future engagement between the AER and Voices for Power on policy issues impacting culturally and linguistically diverse consumers in the changing energy system." P.1

Unfortunately, this current review process has not facilitated or embraced similar principles and approaches. More concerningly, it does not appear to have drawn on the work of these prior processes and the valuable input provided to them. This is a critical flaw where most community stakeholders have limited resources and often do not have the capacity to engage multiple times on similar issues. Good engagement and good decision-making processes by the AER must seek to recognise and leverage relevant prior input, resources and evidence provided by consumers and their stakeholders. This is critical to building and maintaining the trust of the community in AER processes and decisions.

It is particularly worrying in this case where evidence and input from consumer and community stakeholders, elicited through this review process, as well as others with direct relevance to it, was either not recognised or given lesser weighting than that provided by a single (poorly constructed) consultant report.

While our organisations want to see progress for residents in embedded networks as soon as possible, we don't consider the Draft sufficient to enable this. We strongly recommend that the AER pause this process to enable appropriate consideration of consumer input to recent relevant processes, including the Review of Payment Difficulty Protections, and ensure a more appropriate consideration of consumer input provided to this review, including consistent evidence of significant consumer detriment in embedded networks. This may involve recommending a staged implementation of reforms commencing with measures which can be introduced immediately (such as reporting and monitoring requirements) while more substantive reforms are developed.

More broadly, we recommend the AER prioritise the implementation of a consistent approach to consumer and community engagement, enabling the better practice engagement demonstrated through the PDF Review to become the standard for all relevant engagement processes and ensure input to any single process continues to be drawn on in other relevant processes.

Recommendation 1

That the AER extend the timeframe for the Review of the AER exemptions framework for embedded networks in order to:

- *appropriately consider consumer input from recent relevant processes, including the Review of Payment Difficulty Protections, and*
- *enable a more robust consideration of consumer and community input provided to this process, particularly evidence of actual consumer detriment and risk of harm.*

This process should involve publishing a revised Draft.

Recommendation 2

That the AER review its approach to consumer and stakeholder engagement and implement a consistent, principles-based approach to all engagement which enables the better practice of the Review of Payment Difficulty Protections to become the standard.

2.2 Principled decision-making

The AER's approach to this Review of exemptions framework must be based on the principle that a consistent standard and protection of essential services provision is the default. Exemptions from this should be strictly limited.

It must be noted that the creation of an authorisation and exemption framework was initially predicated on the assertion that in some (very limited) circumstances, where the provision of energy was not the only/primary purpose of the business, application of the full suite of regulatory requirements was not reasonable and providers should be exempted. While we strongly disagree with this in principle, the current utilisation of authorisations and exemptions is not restricted to these circumstances, having become an intentional avenue to increase business profitability at the expense of meeting a consistent responsibility for consumer outcomes. It is not in the interests of consumers for this to continue.

Energy is an essential service, and this is increasingly well recognised in AER decisions. The default assumption for regulation of this essential service should be application of consistent regulation, standards and protections, with service providers fully responsible for ensuring these. In principle, exemptions (if allowed at all) should only be allowed in limited circumstances, and only where specific conditions are clearly met. The current approach to exemption and authorisation has strayed from this, facilitating the growth and use of exemptions and authorisations for reasons not in the consumer interest. This review should be predicated on restoring the principle of consistent standards and protections for an essential service.

The Draft does not do this. It appears that maintaining scope for 'potential benefit' and reduction of administrative burden and costs for both the regulator and embedded network providers have been unduly prioritised over facilitating consistent positive outcomes for consumers. Prioritising the sustainability of embedded network energy service providers business models over consumer outcomes is not acceptable.

Our organisations strongly support the Australian Energy Market Commission's (AEMC) conclusion 'that consumer protections should be driven by the needs of customers and not the business model of suppliers'.[3] Consumers' long -term interest in equal and consistent access to affordable, dependable, sustainable energy must be the fundamental consideration for the AER when making their final decisions for this Review.

2.3 Consideration of evidence

Our organisations are extremely concerned with the way evidence has been considered and weighted in the development of conclusions and recommendations in the Draft.

We are particularly concerned with the apparent preference for a narrow set of inputs over the overwhelming evidence provided by consumers and stakeholders in this process, and over more than a decade of previous relevant processes.

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[3] Australian Energy Market Commission (AEMC), *Updating the Regulatory Frameworks for Embedded Networks, Final Report*, 2019, p.1

For this Review, the AER appears to be relying heavily on one caveated ACCC report and a consultant report commissioned by the AER. We regard the consultant report as extremely flawed in structure, approach and conclusions[4]. The consultant report shows evidence of a lack of understanding of the energy market and consumer interaction with energy services. It is not sufficiently robust, and is not based on a representative or large enough sample to derive valid findings capable of justifying the strong claims made in the Draft. We note that, despite considerable expertise in conducting consumer engagement and research, and deep understanding of the issues under consideration, the AER's Consumer Reference Group (CRG) was not involved in helping to shape or guide the research methodology to ensure meaningful results. This is not good practice.

The ACCC report exclusively, and the Bastion Consulting report predominantly present data on consumers living in embedded networks served by authorised retailers. An over-reliance on evidence from consumers living in embedded networks served by authorised retailers risks overlooking the significant consumer harms occurring in exempt selling circumstances.

We note that the ACCC recognised this and included an appropriately strong caveat to their findings on pricing and consumer harms, a caveat that was not reflected in the Bastion report.

> "An analysis of electricity bills alone cannot provide a complete picture of outcomes for embedded network customers. Most residential embedded network electricity customers are billed by their retailer for additional services, such as hot and chilled water, gas or air-conditioning. Customers with additional services generally have lower electricity usage and bills but we do not have data to quantify the impact of additional services on bills."[5]

Consumer advocates and energy ombudsman have consistently urged the AER to include these additional services, particularly hot and chilled water, in Reviews into embedded networks.

At the very least the costs and impact of these services must be recognised as effecting outcomes for consumers in these circumstances. While these additional services are billed separately, they are energy costs, billed otherwise to avoid being captured by regulation. The AER has not included or recognised the impact of these services in the current Review. This has undermined the validity of the research it commissioned (as we explain in appendix 1) and led to a misunderstanding of the consumer experience in embedded networks. Conclusions based on this are not reliably accurate.

We are particular concerned with the AERs assertion that "there is no evidence of systemic price harms[6]" for customers living in embedded networks and that "embedded network customer are [not] systematically missing out on eligible rebates and concessions[7]". This goes against consistent evidence presented by consumer stakeholders and ombudsmen[8]. The ACCC report did not make such strong claims from their report, and indeed flagged considerable limitations with their initial findings. In this context we are extremely concerned the AERs conclusions are

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4 We provide a detailed summary assessment of the Bastion report as Appendix 1 to this submission.
5 ACCC, 2024, *Inquiry into the National Electricity Market Report – June 2024*, p. 62
6 AER, 2025, *Draft Decision: Review of the AER exemptions framework for embedded networks*, P.12
7 Ibid, P.25
8 See the list of resources provided in section 7 of this submission.

not supported by robust evidence and if not corrected, will contribute to recommendations which are not in the interests of embedded network consumers.

The NSW Independent Pricing and Regulatory Tribunal (IPART) Draft Report on the Future of Embedded Networks in NSW[9] arrived at considerably different conclusions when considering the harms being experienced by consumers living in embedded networks. While the NSW Government has yet to finalise their Embedded Network Action Plan, IPART made a series of strong recommendations including the introduction of consumer-centric pricing objectives, robust pricing protections and regular reviews into consumer-outcomes being experienced by people living in embedded networks. These recommendations, alongside those of the NSW Legislative Assembly Committee on Law and Safety Inquiry into Embedded Networks[10] respond to clear evidence of structural disadvantage and set out a comprehensive set of reforms required to address them. This includes reforms the AER is responsible for, and which should be examined in this process.

There is potential for serious flow-on impacts for consumers and consumer and community advocacy organisations from the AER drawing inaccurate conclusions in the Draft. We are concerned that some industry stakeholders will use these claims to seek to halt progress on reform and wind-back protections that customers in embedded networks are currently afforded. We strongly encourage the AER to reconsider the consultant report in the context of the full range of evidence and input it has received (particularly lived experience and evidence of actual harm), and account for the range of factors which should influence the conclusions it draws as part of a process to re-draft a decision in this process.

2.4 Weighing of benefits and harms

Taking a 'harm-based' approach to considering reforms is good practice. But the process of weighing potential benefits against actual and potential harms must be done appropriately.

We are extremely concerned that the Draft consistently downplays actual harms being experienced by consumers (and risks of harm), while highlighting the *potential* benefits of embedded networks. This undermines an effective harm-based approach to regulation and risks recommendations which are insufficient to protect consumers from likely harms.

Throughout the Draft the potential benefits of embedded networks are discussed. However, as we have noted consistently in previous processes, there is no significant evidence of consumers living in embedded networks actually experiencing these positive outcomes.

Experience to date demonstrates that benefits to residents of embedded networks will not occur without robust regulation. Any future for embedded networks (including hot and chilled water embedded networks or embedded networks employing CER) must squarely place the onus on the proponent to demonstrate what tangible beneficial consumer outcomes will actually be

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9 See: IPART, 2023, *Draft Report: The future of embedded networks in NSW* and Justice and Equity Centre, 2024, *Submission to IPART Draft Report: The future of embedded networks in NSW*

10 NSW Legislative Assembly Committee on Law and Safety, 2022, *Report: Inquiry into Embedded Networks in New South Wales*.

realised as a result. This must be accompanied by robust regulation to ensure equivalent consumer rights and protections are also delivered.

In any case, actual and likely consumer harms must be significantly weighted above potential benefits. This is particularly important where potential benefits are contingent, unlikely or require very specific circumstances or actions which run counter to the profit-incentive of the operator.

2.5 Role of the AER

We are disappointed that where the Draft recognised consumer harms are occurring or are at risk of occurring, jurisdictions were cited as responsible for resolving the issue. We consider this repeats a cycle that has been evident for over a decade, where reviews at multiple levels decline to take responsibility for reforms which can enable change. This is a cycle which has prevented critical reforms, left consumers worse off, and enabled the problem to grow as the business benefits of embedded network arrangements are increasingly exploited.

We accept no single organisation has responsibility for fully resolving the growing embedded network problem, and jurisdictions have a critical role to play. But progress has been stymied for too long. A key contributor has been a lack of transparency of the exemptions framework, a problem the AER can solve.

The lack of transparency, consistent with on-market service provision, creates difficulties establishing the scope of embedded networks, the actual experience of people in them, and the harms (or benefits) they create. The AER should, at the very least, be taking this opportunity to introduce consistent transparency to all energy services, ensuring that authorised and exempt sellers are exposed to the same (or equivalent) requirements to report on consumers and their outcomes, as on-market service providers.

We urge the AER to reconsider the approach presented in the Draft and take this Review as the opportunity to make the necessary changes to protect the intent of energy regulation and restore fairer outcomes for residents in embedded networks.

The JEC is engaging with NSW DCCEEW on their ongoing embedded network work plan as part of the NSW Consumer Energy Strategy, and will seek to achieve strong outcomes for NSW consumers. However, we note that notwithstanding any NSW reform, consistent national action is required. Action by the AER is also critical for other jurisdictions whose state or territory governments are not currently pursuing reform of embedded networks.

3. Response to the Draft Decision – Retail Guideline Changes

We reiterate our recommendation for this review to be extended to produce a revised draft. Should this not occur, we provide the following comment and recommendations on the proposed changes to the retail and network guidelines.

3.1 Family violence protections

We support consistent application of family violence protections and obligations to exempt sellers. We welcome the AER's engagement of *Safe and Equal,* a trusted and specialist organisation, to provide recommendations on how to introduce a family violence condition.

We broadly support the draft position on family violence protections. However, we strongly encourage the AER to fully implement the recommendations made by Safe and Equal. In particular, we support the AER working with Safe and Equal to develop bespoke training modules for exempt sellers and implementing a dedicated hotline. We consider the dedicated hotline to be an important option for situations where the proximity of exempt sellers to customers is likely to inhibit victim-survivors from accessing support.

Recommendation 3

That the AER implement in full the recommendations made by Safe and Equal to ensure better outcomes for victim-survivors of family violence living in embedded networks. This includes developing bespoke training modules for exempt sellers and implementing a dedicated hotline.

3.2 Increasing exempt seller visibility

As discussed above, and in the JEC's response to the Issues Paper, the lack of consistent visibility and data on embedded networks broadly and exempt sellers in particular (and the consumers served by them) remains a considerable barrier to improving consumer outcomes for people living in embedded networks and undermines scope for jurisdictional action.

Poor experiences for consumers living in embedded networks can continue where those experiences are not visible, and not quantifiable. This is recognised on-market, where the AER has continued to improve the quality and detail of its monitoring and reporting. There is no reasonable justification for some providers of an essential service to be held to a lesser, inadequate standard, particularly where this is demonstrated to be a significant factor enabling poor consumer outcomes in embedded networks.

The AER should commence implementation of equivalent reporting and monitoring of consumer data in all embedded networks. At minimum, this must commence with the AER collecting and reporting data on:

- how many embedded networks there are the NEM,
- their business structures,
- their bulk energy costs,
- what energy services are provided (including hot/chilled water),
- how many residents they serve (and what services are provided), and
- key consumer outcome data points, including:
    - disconnection statistics,
    - bill ranges, and average/median bills,
    - debt data,
    - usage/daily charge pricing data

These data points are critical to overcoming the ongoing inertia that has prevented reform and more consistent standards of consumer information. The cost/benefit of potential reform (including those by jurisdictions) cannot be accurately established because the exemption framework has no scope to meaningfully determine how many people are impacted and what those impacts are. While we do not regard such an assessment as necessary where experience of individual harm is so well demonstrated, the AER should recognise its role in facilitating it as key to promoting the long-term consumer interest.

Our organisations support the AER draft decisions to:

- introduce a new condition requiring exempt sellers to notify any revised contact details for the exempt seller's authorized representative.
- introduce a new pricing condition requiring exempt sellers to publish their residential and small business customer tariffs on their website.

However, these decisions need to be strengthened to align with the data points detailed above.

Recommendation 4

That the AER commence implementation of reporting requirements for all embedded network operators that requires data on:

- *how many embedded networks there are the NEM,*
- *their business structures,*
- *their bulk energy costs,*
- *what energy services are provided (including hot/chilled water),*
- *how many residents they serve (and what services are provided), and*
- *key consumer outcome data points, including:*
    - *disconnection statistics,*
    - *bill ranges, and average/median bills,*
    - *debt data,*
    - *usage/daily charge pricing data*

While our organisations support the draft decision to close the D2 class, we recommend this decision be strengthened by implementing Option 4 as discussed in the JEC's response to the Issues Paper[11].

Where the AER proceeds with the minimal changes proposed in the draft, we recommend that the D2 class be closed for all new **and existing** D2 residential networks, and that existing networks be transferred to the varied R2 class.

Recommendation 5

That the AER revise their decision and implement Option 4 - This involves closing the NR2 registerable network exemption class to future registrations and ensuring all residential

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[11] Public Interest Advocacy Centre, 2024, *Submission to Review of the AER exemptions framework for embedded networks*

exemption classes are covered by this approach, including long term residents currently included in deemed categories.

Where the AER proceeds with the Draft as proposed, the AER should close D2 class for all new and existing D2 residential networks and transfer existing networks to the varied R2 class.

Exempt seller compliance reporting requirements

Our organisations do not support the AER Draft Decision not to introduce a compliance reporting requirement on exempt sellers. The reasoning provided by the AER is not consistent with a focus on promotion of the consumer interest and a harm-based approach to regulation.

The AER argued that:

- Exempt sellers would likely not have adequate systems and processes in place to administer this requirement and may not report breaches for fear of reprisal;
- The AER would require significantly more resources to enforce a breach reporting requirement; and
- Given the absence of definitive data supporting systemic embedded network harms, they consider that a breach reporting requirement is not feasible at this time.[12]

We disagree in the strongest possible terms. The current lack of systems and processes is not a valid consideration, particularly when this is a contributor to consumer harm or detriment. Energy is an essential service, and if exempt sellers are unable to comply with fundamental requirements for consumer protection and regulation, they should not be profiting from the provision of energy and should undertake processes to transfer service provision to an operator who can fulfil their responsibilities.

Consumers living in embedded networks should not be worse-off than their on-market counterparts purely as a result of AER resourcing. If the AER is going to continue to allow exempt selling arrangements, then resourcing for compliance and enforcement must be sufficient to enable outcomes commensurate with on-market consumers.

Finally, the decision to not implement a compliance reporting requirement for exempt sellers due to an "absence of definitive data supporting systemic embedded network harms" is not supported by any evidence presented to the AER. As detailed throughout this submission we strongly disagree with the validity of the evidence the AER is relying on, and note that consistent and significant evidence of structural harms (particularly in exempt selling circumstances) was apparently ignored or given lesser consideration.

We recommend the AER revise this decision, and introduce a robust compliance reporting requirement on exempt sellers as part of implementing consistent reporting and monitoring requirements.

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12 AER, 2025, *Draft Decision: Review of the AER exemptions framework for embedded networks*, P.39

Recommendation 6

That the AER revise their Draft Decision and introduce a robust compliance reporting requirement for all embedded network providers, including exempt sellers.

4. Response to the Draft Decision – Network Guideline Changes

4.1 Closing ND1 and ND2 classes

We refer to section 3.2 of this submission in relation to this proposed change.

4.2 New reporting and notification requirements

Our organisations support the introduction of reporting condition 1.18 requiring exempt network service providers to report residential customer numbers annually. We disagree with limiting this to NR2 class embedded networks, rather than applying it to all embedded network providers.

Recommendation 7

That the AER introduce reporting condition 1.18 and apply it consistently to all embedded network providers and operators.

The aim of this Review must be to ensure all consumers have service standards and protections outcomes equivalent to consumers in standard supply arrangements. It is unacceptable that people living in deemed exemption classes do not have access to basic protections afforded to other households. Minimum reporting and notification requirements provide some level of transparency of consumers circumstances and outcomes and facilitate action to enforce greater compliance with existing (and new) regulatory protections.

Our organisations do not accept regulatory decisions where "minimis[ing] administrative burden for all[13]" is prioritised over consumer protection. This is not inappropriate for an essential service.

The AER has highlighted a risk of "potential wide scale non-compliance" if reporting and notification requirements are deemed too onerous by embedded network providers. We regard this as unacceptable reasoning for a regulator of an essential service. It effectively concedes that poor outcomes and actual harm for consumers must be accepted because any attempts to strengthen regulation and reporting would simply result in non-compliance. If the AER regards embedded network providers as organisations at high-risk of non-compliance with the level of regulation deemed necessary to support good consumer outcomes, they should not be allowed to profit from provision of an essential service. The AER must reconsider its assessment and response to this issue.

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13 AER, 2025, *Draft Decision: Review of the AER exemptions framework for embedded networks*, P.44

4.3 Individual exemption application process

Our organisations' preferred outcome from this Review is all prospective embedded network service providers being required to submit individual exemptions responding to tightly defined criteria. The default assumption should be that consumers are covered on market or by authorised service providers held to an equivalent standard as that required on-market. Accordingly, it is reasonable and appropriate to require any providers who wish to be exempted from the regulatory norm, to register and demonstrate why this is necessary, reasonable and in the interests of impacted consumers. It is also necessary for them to submit to oversight to ensure they deliver on the commitments inherent in that registration.

We strongly recommend the AER revise their draft decision and reconsider a wider application of Option 4 as presented in the Issues Paper.

We do not support embedded networks in their current form. However, we do not preclude the possibility that subject to robust reforms, appropriately regulated embedded networks could be structured to help enable good consumer outcomes. Embedded networks, properly structured, can provide benefits to consumers through more efficient access to on-site generation, and shared, efficient infrastructure and appliances. However, this is not currently the case and is highly unlikely to occur under the proposed reforms. The vast majority (if not all) embedded networks are structured to absorb energy cost differentials and take advantage of lighter regulation and less responsibility and oversight, to deliver additional revenue for developers and operators. In short, they have become an opportunity to exploit a regulatory loophole the authorisations and exemptions framework has created. This was not the intent of the original framework and must be addressed.

To better ensure any embedded networks actually deliver meaningful benefits, the individual exemption application process must include assessment of what consumer benefits the embedded network is structured to deliver, and how they will be provided and demonstrated (thus indicating how monitoring and enforcement may be undertaken). Any future for embedded networks (including hot and chilled water embedded networks) must squarely place the onus on the proponent to demonstrate what tangible beneficial consumer outcomes will be realised as a result. This must be accompanied by robust regulation to ensure equivalent consumer rights and protections are also delivered.

Recommendation 8

That the AER introduce robust assessment of consumer benefits in the individual exemption application process. This must include assessment of what consumer benefits the embedded network will deliver and how these will be demonstrated (to enable dispute resolution, monitoring and evaluation).

5. Further engagement

Our organisations welcome the opportunity to further discuss these issues with the AER or other stakeholders. Please contact awest@jec.org.au for further discussion.

6. Appendix 1 – comment on consultant's report

JEC Bastion report notes

Summary & general points

The approach, structure and methodology are not fit for the purpose of achieving the stated objective of the research. Flaws include the scope of the research, lack of focus on priority experiences, what is included and what is not, and reliance on 'market research' perception questions over examination of comparative objective outcomes. The results drawn from this research cannot meaningfully indicate the relative benefits or harms of being served by an energy embedded network and cannot be reasonably used as a robust basis for the assessment of reform costs and benefits (as intended by the objective). Broad issues include:

Methodology and approach

- The sample size is too small and inadequate to robustly capture and assess the breadth of different embedded network circumstances and experiences (outlined below). This makes it impossible to be confident results are reliably indicative of the outcomes (beneficial or harmful) experienced. This is a critical issue where the purposes is to draw conclusions on the comparative benefit/detriment arising from embedded network circumstances.

- There is no detail on how both the qualitative and quantitative samples were derived to ensure a representative diversity of experience and circumstances (outlined below), with results indicating a concerning lack of representation.

  Demographic representation (age and gender) is less relevant when looking at comparative outcomes between retail and embedded network experiences, and at best is a secondary assessment criterion. Priority criteria should have been structured to ensure capture of experiences most determinative of relative harm, according to the objective purpose. They should have included:

  - Experience of actual difficulty paying bills in full on time in the last 12 months (with descriptive criteria of what this involves), and/or

  - Experience of debt accumulation or threats of disconnection due to inability to pay in the last 12 months, and/or

  - Experience of payment assistance by your energy provider (with descriptive criteria of what this involves) in the last 12 months, and/or

  - Wanting or attempting to switch energy offers due to price outcomes in the last 12 months, and/or

  - Being eligible for an energy concession or rebate in the last 12 months (should be at least 35% of the sample, on NSW numbers), and/or

- Accessing other government assistance, or requiring other assistance in the last 12 months (including EAPA or other jurisdictional equivalents), and/or

- Having a complaint or dispute with your energy retailer in the last 12 months, which required resolution (with descriptive criteria for what this involves).

- The methodology employed, including the structure and nature of questions, is more appropriate to market research, rather than robust research to determine relative outcomes and impacts. The research relied on self-perception, open ratings and descriptions, rather than detailed analysis of objective criteria and actual outcomes and causes (with detailed focus on priority areas of impact including those above). The approach taken introduces unreasonable layers of contingency and qualification to the results, such that they cannot be reliably used for the objective purpose. Qualifiers impacting the results include:

    - Awareness of retail assistance and obligations on retailers,

    - Self-assessment bias and tendency for people to over-estimate their capability/outcomes they are achieving,

    - The impact of experience on expectations, where peoples experience can narrow their frame of reference and cause them to be 'satisfied' with performance that is much less than should be expected (or even required).

Accuracy in assessing and comparing bills

- In comparing pricing and billing outcomes there is no apparent accounting for factors which would significantly alter the relative quality of pricing outcomes such as:

    - Whether participants have a gas connection, and if so, what appliances are electric versus gas – usage level can be less relevant where it does not control for what is driving that usage, how efficient that usage is and what other costs are being incurred. For instance – for one household the same usage level could be due to inefficient cooling/refrigeration, while not including hot water (which is often in excess of 30% of a bill) and heating (either because its gas or provided as an embedded service paid for separately), while for another all-electric home it may represent the total cost of energy.

    - What other energy related services and charges an embedded network participant may be exposed to – such as charges for hot/chilled water, heating/cooling charges.

    - The service quality of an embedded network residents supply (recognising that many in residential parks and some small apartment buildings may have lower quality supply – paying the same for a lower quality of service – or may be getting a discount for lower service quality – that is, their apparently comparable bill is actually a discount because they are receiving less than 60Amp service).

Capturing and accounting for the diversity of embedded network experience

- There is no recognition and qualitative consideration of the diverse range of circumstances under which embedded network customers may be served, which go beyond the building structure or tenure of their residence, including:
    - That they are provided energy directly by a residential park operator or building owner they also pay rent to or who otherwise has a position of power/control over them.
    - That they may not receive a compliant individual, metered energy bill at all.
    - That they are in a small, embedded network where energy is (either totally or in part) not individually metered.
    - That they are in an embedded network where there are other energy related services and charges which are not included in their energy bill (such as hot/chilled water, heating/cooling, common area any use (where this charge is not clearly distinguishable from hot/chilled water, heating/cooling or other energy related charges for the residence)
    - That they may also be required to retain a gas supply/pay for a gas connection or reside in a 'gas embedded network' in addition to receiving electricity services this way.
    - That there are a range of business structures and contract arrangements under which energy services can be provided within embedded networks – beyond being either authorised or exempt – including that the provider may be responsible for other services (and that this can have either a positive or negative impact on perceptions of them and ability to interact effectively with them, or switch providers).

Notwithstanding these broad issues, the data presented and the commentary from consumers provided clear indications of impacts which should warrant further investigation and provide sufficient justification for robust reform measures. The report seems to demonstrate a lack of understanding of the energy market. It undertakes no apparent detailed investigation and interpretation of results and in many cases, makes incorrect assumptions and conclusions.

7. Further Resources

- Joint submission by EWOV, EWON, EWOSA & EWOQ to AER Review of exemptions framework for embedded networks.
    - See pg.4-5 for comprehensive list of submissions and feedback provided by energy ombudsmen on embedded networks
- ACTCOSS, 2024, Submission to the AER Review of exemptions framework for embedded networks

- COTA Australia, 2024, Submission to the AER Review of exemptions framework for embedded networks
- Combined Pensioners & Superannuants Association of NSW, 2024, Submission to IPART's Draft Report on the Future of Embedded Networks in NSW
- Combined Pensioners & Superannuants Association of NSW, 2024, Submission to the AER's Review of the exemptions framework for embedded networks
- Justice and Equity Centre, 2024, Submission to NSW DCCEEW on the Future of Embedded Networks in NSW
- Justice and Equity Centre, 2024, Submission to IPART's Draft Report on the Future of embedded networks in NSW
- Justice and Equity Centre, 2024, Submission to the AER Review of exemptions framework for embedded networks
- Sherry, C. 2024, Submission to the AER Review of exemptions framework for embedded networks
- Sydney Community Forum & Voices for Power, 2024, Submission to IPART Draft Report on the Future of Embedded Networks in NSW
- Sydney Community Forum & AER, 2024, Consultation summary: Voices for Power Listening Session
- Combined Pensioners & Superannuants Association of NSW, 2023, Submission to IPART's Review: The Future of Embedded Networks in NSW
- Justice and Equity Centre, 2023, Submission to IPART's Consultation Paper on Energy prices in embedded networks
- Justice and Equity Centre, 2023, Submission to NSW OECC and Treasury on Protecting NSW customers of embedded networks
- Justice and Equity Centre, 2023, Submission to IPART Draft Terms of Reference: The future of embedded networks in NSW
- Justice and Equity Centre, 2022, Submission on NSW Committee on Law and Safety's Inquiry into embedded networks in NSW
- Justice and Equity Centre, 2022, Submission to the AER's Retailer Authorisation and Exemption Review: Issues Paper
- Justice and Equity Centre 2022, Submission to the AER Retail Exempt Selling Guideline

- Tenants' Union of NSW, 2022, Submission to the NSW Committee on Law and Safety's Inquiry into embedded networks in NSW
- Justice and Equity Centre, 2021, Submission to the AER Updating the Network and Retail Exemption Guidelines Consultation Paper
- Justice and Equity Centre, 2021, Submission to NSW Department of Customer Service on Land Lease Community Charging Proposal
- SACOSS, 2021, Submission to the SA Department of Human Services Review of the SA Residential Parks Concessions Scheme
- SACOSS, 2021, Submission to the Economic and Finance Committee SA Parliament: Inquiry into Embedded Networks in South Australia
- Tenants' Union of NSW, 2020, Submission to NSW DPIE Consultation Paper on proposed amendments to the Social Programs for Energy Code
- Justice and Equity Centre, 2019, Submission to the AEMC Draft Report on Updating the framework for embedded networks
- COTA Australia, 2017, Submission to the AER Access to dispute resolution services for exempt customers
- Justice and Equity Centre, 2017, Submission to the AEMC Consultation Paper on the Review of regulatory arrangements for embedded networks
- Justice and Equity Centre, 2017, Submission to AEMC Draft Report on the Review of regulatory arrangements for embedded networks
- Justice and Equity Centre, 2017, Submission to the AER's Draft Retail Exempt Selling Guideline
- SACOSS and Uniting Communities, 2017, Joint Submission on the AEMC's Draft Report on the Review of Regulatory Arrangements for Embedded Networks
- Justice and Equity Centre, 2016, Submission to AER's Issues Paper on Exempt customer dispute resolution
- SACOSS, 2015, Report on the Retail and Network Exemption Framework: Emerging Issues for Consumers