

**Submission to
NSW Legislative Assembly
Committee on Law and Safety**

**Inquiry into embedded
networks in NSW**

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program works for better regulatory and policy outcomes so people's needs are met by clean, resilient and efficient energy and water systems. We ensure consumer protections and assistance limit disadvantage, and people can make meaningful choices in effective markets without experiencing detriment if they cannot participate. PIAC 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;
- Salvation Army;
- Tenants Union NSW; and
- The Sydney Alliance.

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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

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Recommendation 1

That the Committee recommend measures to extend equivalent energy safety, quality, billing transparency standards, dispute resolution and access to assistance and protections, to residents in embedded networks excluded from proposed AEMC reforms.

That the Committee recommend the NSW Government progress these measures at a jurisdictional level rather than relying on stalled national reforms.

Recommendation 2

That the Committee recommend IPART be explicitly required to investigate and report on embedded network and exempt selling issues in its annual retail monitoring report.

Recommendation 3

That the Committee explore options to limit the growth of embedded networks except in defined circumstances where there is demonstrated consumer benefit.

Recommendation 4

That the NSW Government work with other governments to progress the recommendations made in the AEMC's 2019 Review Updating the Regulatory Framework for Embedded Networks. The NSW Government should explore measures to implement these reforms independently if National reform is unlikely.

Recommendation 5

That the NSW Government complete and implement embedded network reforms as part of the Residential (Land Lease) Communities Act 2013 Statutory Review.

Recommendation 6

That the NSW Government work with other NEM governments to have the DMO apply in embedded networks. This should include reform of the DMO to ensure it is a more effective default protection for all consumers.

Recommendation 7

That the NSW Government collect and monitor details about how many people are covered by network and retail exemptions in NSW, the types of business structures that are used, as well as key outcome information for consumers in embedded networks including usage, prices, payment difficulty experience and disconnection.

Recommendation 8

That the Committee recommend expedited work to enable the implementation of DER and sustainability infrastructure in land lease communities and other embedded networks, for the benefit of residents.

Recommendation 9

That the NSW Government support national reforms or directly implement protections ensuring the sale of hot or chilled water in embedded networks be billed according to the energy embedded in the heating or cooling.

Recommendation 10

That the Committee consider issues in gas embedded networks.

Recommendation 11

That escalating penalties be used for entities that continuously take steps to avoid ombudsman scheme membership – or continuously ignore the requirement to join. The Committee should consider jurisdictional measures to reinforce AER requirements.

Recommendation 12

That a mechanism be developed to ensure the cost of an EWON investigation cannot be passed on to the consumer.

Recommendation 13

Ensure long term residents in parks classified as ‘short term’ still have access to EWON. The Committee should consider measures to progress this at a jurisdictional level.

Recommendation 14

That embedded network operators be required to provide consumers with equivalent billing and usage information as consumers with authorised retailers. This includes aligning embedded network bills with the AER’s Better Bills Guideline. The Committee should consider measures to progress or support this at a jurisdictional level to ensure consistent access to NSW rebates and supports, regardless of national reform progress.

Recommendation 15

That people in embedded networks have access to EAPA. Where exempt sellers billing and recording system is not transparent or sufficient, EAPA should be delivered through direct payment to the recipient’s bank account rather than via the exempt seller.

Recommendation 16

That the NSW Government support exempt sellers and develop simple measures for exempt sellers to follow so they can proactively identify people experiencing payment difficulties and require them to offer support to these consumers. The NSW Government should require proactive support as part of measures to extend rebate and EAPA support more consistently to embedded network residents.

Recommendation 17

That embedded network operators be required to offer fair and sustainable payment plans that can be declined or altered. The Committee should consider measures to progress or support this at a jurisdictional level to ensure consistent access to payment options that support consumers in payment difficulty.

1. Introduction

The Public Interest and Advocacy Centre (PIAC) welcomes the opportunity to respond to the NSW Committee on Law and Safety's (the Committee) Inquiry into embedded networks in NSW (the Inquiry).

Energy is an essential service. It is a fundamental enabler and support for household health and wellbeing. People do not have the choice to 'refuse purchase' (such as when services are not appropriate, not affordable or where consumers do not feel confident available services meet their needs or preferences). In these circumstances purchase is often not an exercise of intention or active preference, but simply an inability to make another decision due to a need to use energy for daily life. This understanding of why electricity is essential and what implications that has, is crucial to assessing and reforming regulations and protections for consumers. It is particularly important in considering embedded network and exempt selling arrangements and their impacts on NSW residents.

Because energy is essential, PIAC strongly supports an outcomes or principles-based approach to regulation and consumer protection that ensures 'that consumer protections should be driven by the needs of customers and not the business model of suppliers'.¹ This is currently not the case in relation to embedded networks and exempt selling arrangements, where the relative priorities and business structures of the provider of energy is prioritised over the needs of consumers and their rights to equality of access to affordable and efficient supply, with equal access to supports and protections.

PIAC disagrees with the principles underpinning the creation of a separate framework for embedded networks and retail exemptions. The framework for exemptions has created an incentive to use embedded networks and exempt selling arrangements as an additional or improved revenue stream in new developments, and to improve the profitability of commercial operations through providing a poorer, less reliable, less affordable, unsafe or less supported essential service to NSW residents residing in embedded networks. This does not support or promote the interests of consumers, and creates an inequality of service expectations and protections that leave many residents served by embedded networks and exempt sellers, materially disadvantaged and more vulnerable.

We strongly recommend the Committee consider measures to unwind existing embedded networks and exempt selling arrangements to ensure equality of outcomes for all NSW residents, regardless of where they reside. Regardless of whether embedded networks and exempt selling arrangements continue, PIAC encourage the Committee not to rely upon remedy through National policy and Regulation, noting that proposed reforms by the AEMC have been continually stalled, and the AER have not demonstrated an intent to address the consumer impacts of exempt selling. NSW residents should not be left worse off as a result of inability to improve National Energy Regulations if there are opportunities to address issues at a jurisdictional level.

¹ AEMC, *Updating the Regulatory Frameworks for Embedded Networks, Final Report* (2019) i.

2. Current legal framework regulating embedded networks

There are a range of Commonwealth and State legal and regulatory frameworks that impact outcomes for NSW residents, determining what outcomes consumers can expect, and the protections available to them, in accessing the energy they need. These include:

- The National Energy Law (NEL) National Energy Retail Law (NERL) National Energy Regulations (NER) and National Energy Retail Regulations (NERR).
The framework of these instruments form the National Energy Consumer Framework (NECF), intended to ensure that the energy system operates in the long term interests of consumers with respect to safety, reliability, and affordability. Many of the provisions and protections these instruments intend for consumers, do not extend fully (or at all) to residents served in embedded networks or by exempt sellers.
- The Australian Energy Regulator (AER) guidelines for exempt entities (network and retail).
The AER exempts some entities from the requirement to be an authorised retailer or network entity, fully covered by the provisions of the NECF. The AER does this in situations where it considers the provider or seller of energy is doing so incidentally (ie the provision or sale is not the seller's core business), or where it considers the cost of having an authorisation outweighs the benefits to customers, or where it considers an insignificant amount of energy is being sold. It is important to note that this does not consider the consumer outcomes, but the characteristics of the provider and service provision. Examples include:
 - Retirement villages where an owner or manager buys electricity from an authorised retailer, then 'on sells' it to residents.
 - Caravan parks (or manufactured homes parks) where an owner or manager buys electricity from an authorised retailer, then 'on sells' it to residents.
 - Bodies corporate/owners' corporations who buy electricity from an authorised retailer, then 'on sell' it to tenants or residents.
 - Persons selling energy at no profit or as a community service.

There are three categories of exemption (deemed, registerable or individual), with only registerable or individual exemptions recorded by the AER. In NSW there are currently 1384 retail exemptions approved and registered with the AER² and 1900 network exemptions, including residential developments, shopping malls, residential parks, retirement villages and property trusts and investment groups. The number of residential consumers covered by these exemptions is not known or recorded but is likely to be many thousand. This number does not include an unknown (but significant) number of deemed exemptions where the entities are regarded as too small, cover too few people or provide too little energy to be regarded as significant enough to register.

Exempt entities are intended to abide by the AER exemption guidelines for networks and retailers, with these guidelines based on limited aspects of standard consumer protection measures. However, the AER does not actively seek registration, does not monitor the performance of registered entities, has limited information regarding exempt entities and conducts limited enforcement actions to ensure intended consumer outcomes are delivered.

² AER website [Public register of Exemptions, NSW](#)

- NSW jurisdictional laws, policies and regulations also impact outcomes for NSW residents in embedded networks, particularly where they are insufficient to fill gaps left by Commonwealth energy laws and regulations, or ineffective in ensuring equality of outcomes and access to NSW Government supports. These include:
 - The Residential Tenancy Act, which does not extend sufficient protection to tenants in embedded networks, ensuring they are aware of embedded network arrangements in advance and able to make informed decisions regarding the tenancy.
 - The Land Lease Community Act, which does not provide consistent and transparent protections to many residents, ensuring they are provided with sufficient safe supply, billed fairly and able to access retail and NSW Government support and assistance.
 - The Strata Management Act, which does not ensure that owners and tenants have full information regarding embedded network, exempt selling or long-term energy contract arrangements that may apply to the residence, impacting the cost of their energy and their ability to seek alternative arrangements.
 - NSW energy rebate and Emergency Accounts Payment Assistance (EAPA) programs, which are not currently configured to be applied consistently and accessibly to all residents in NSW, in many cases excluding residents in residential parks and some other embedded network arrangements.
 - A range of other instruments covering retirement villages, boarding houses, which do not explicitly recognise embedded network and exempt selling arrangements and extend rights and protections appropriately to impacted residents.

The current legal framework is not effective in regulating embedded network and exempt selling circumstances, leaving and increasing number of NSW residents' disadvantaged and worse off, simply because of where they live.

NSW residents should have essential energy access protected regardless of the business model of their service provider, or whether that provider has 1 or 100,000 customers. It should not be relevant to the resident whether the energy they rely on is provided 'incidentally' or as part of the providers main business. These factors should not be a consideration of the regulatory or protection framework.

3. Changes to the legal framework proposed by the AEMC in its 2019 review on updating the regulatory frameworks for embedded networks

PIAC participated throughout the AEMC process reviewing the regulatory frameworks for embedded networks, including making several public submissions and providing input to the review of the recommendations. PIAC supported the intent of the review and the final recommendations of the AEMC as the minimum required to address the issues faced by

residents served by embedded networks and exempt sellers. While the AEMC's proposed changes would be welcome improvements, they leave many issues unaddressed, including:

- Moving too slowly on incorporating existing embedded networks into the reformed framework,
- Not addressing the large number of smaller legacy and new exempt arrangements (including deemed arrangements)
- Not addressing jurisdictional framework issues with data collection, equity of access to rebates and supports, and transparent and consistent pricing in residential land lease communities
- Not improving information gathering requirements to cover all consumers, regardless of their circumstances
- Not improving compliance and enforcement frameworks to ensure the AER promotes and protects outcomes for all consumers, equally.

Deemed exempt classes and communities not included in the AEMC's proposal

Embedded networks with fewer than ten residential consumers, which are not retirement villages or residential parks, still fall into the deemed exemption class (D2). Short-term holiday accommodation is also considered deemed exempt (D3). It is not clear how many people live in communities under these classifications.

The AEMC's proposal would see transitioning for some existing embedded networks but there would be no requirement to transition for older communities classified as D2 or D3.

Many caravan and residential parks have a (sometimes fluid) mix of short and long stay tenants. Making a distinction between short-term and long-term holiday accommodation (in a static framework) is irrelevant and potentially counterproductive. The reality of the blurred lines between the mix of short and long-term accommodation and the ability of park operators to alter that mix could result in perverse incentives for operators to reclassify all of their operations as short-term, regardless of whether this represents the reality of arrangements in their facility.

People who receive electricity services under embedded networks in caravan and residential park arrangements are some of the most vulnerable consumers. There are entrenched power imbalances between residents and park operators, a lack of transparency in the composition of their accommodation and essential service charges, an unregulated and often unsafe standard of service delivery, and a lack of consistent regulatory enforcement. This often sees consumers paying charges well in excess of the cost of energy services that they receive, without access to minimum service quality, safety and consumer protection provisions.

The AEMC's proposal also does not include where energy charges are combined with rental or other charges, which is common in land lease communities. These residents often receive no consistent, transparent usage, price or other information. Recourse to complaint or dispute resolution is complicated and even in rare cases where residents can successfully dispute energy related charges, they may end up evicted and without any alternative accommodation options, and in many cases unable to afford to relocate a home to another property.

PIAC has concerns that the exclusion of protections for these categories will exacerbate existing issues, and lead to a range of unintended impacts upon potentially vulnerable consumers for

whom residential parks are their only affordable housing option, not their holiday accommodation. Such incentives include where an operator currently offers:

- Long term accommodation or a mix of short and long-term accommodation: they would have an incentive to cease offering long-term accommodation in order to avoid the increased expense and time required to upgrade their network and put in place the systems and arrangements required to be a network service provider or retailer, under the framework.
- Long term accommodation: they would have additional incentive simply to register as a short-term holiday accommodation operator, continuing to offer services to long-term residents yet without any recourse to basic protections or standards.

In these circumstances, the scope for long-term residents to complain or dispute payments is limited by their extreme vulnerability to a range of retaliatory actions by an operator. This vulnerability is exacerbated by the lack of regulatory oversight and enforcement responsibility (being neither clearly energy-based, nor clearly tenancy-based).

Even if the AEMC's recommendations are implemented a lack of consumer protections for many of the most vulnerable people in many existing embedded networks will remain.

Transitioning these, and other legacy embedded networks in NSW into a new framework that provides better, and more consistent protections to all consumers in embedded networks, should be undertaken as a priority, irrespective the progress of the proposed national reforms. Wherever possible, consumer protections should be equivalent to people who receive their energy through an authorised retailer. There must be a mechanism to monitor and enforce compliance of these communities.

Recommendation 1

That the Committee recommend measures to extend equivalent energy safety, quality, billing transparency standards, dispute resolution and access to assistance and protections, to residents in embedded networks excluded from proposed AEMC reforms.

That the Committee recommend the NSW Government progress these measures at a jurisdictional level rather than relying on stalled national reforms.

4. The effect of embedded networks on NSW residents and businesses including any health and safety concerns

A comprehensive picture of the impacts of embedded network and exempt selling arrangements on NSW residents is difficult as there is little visibility of how many residents are covered by such arrangements, and what their circumstances are. Neither the AER nor the NSW Government keep appropriately comprehensive and transparent public records of the number of embedded network and exempt selling arrangements in NSW, how those arrangements are configured, how many people are involved, and what outcomes they receive relative to key consumer outcomes of price, billing transparency, payment assistance and protection, usage, and disconnection.

Without comprehensive information on the circumstances and outcomes of consumers served by these arrangements, these residents are disadvantaged, through an inability to provide detailed,

quantitative evidence. This contrasts with residents served in standard retail and network arrangements where monitoring and information (though not perfect) is more consistent and transparent.

PIAC highlights the submissions of the Tenants Union NSW (TUNSW) and the NSW Energy and Water Ombudsman (EWON) and encourages the Committee to seek further information on the impacts of embedded networks on NSW residents, including:

- Residents in embedded network apartments being 'locked in' to a single energy provider as a result of a long-term contract with the developer or strata manager
- Residents in embedded networks being unaware the property they have rented or purchased is an embedded network
- Residents in embedded network apartment developments being unable to access an alternative due to the cost of new metering and connections required by the network operator
- Residents in land lease community embedded networks not receiving acceptable, safe, reliable electricity that meets normal standards of supply
- Residents in land lease community embedded networks not receiving appropriate, regular, consistent and accurate usage and billing information
- Residents in embedded networks being charged inconsistently, excessively, or in a manner that does not align with their usage
- Residents in embedded networks unable to consistently access assistance and payment supports measures from their energy supplier when they need it
- Residents in embedded networks unable to access NSW Government rebates and EAPA vouchers when they are eligible and in need of payment assistance.
- Residents in embedded networks being billed excessively or inconsistently for gas and hot/chilled water
- Residents in embedded networks having inconsistent access to independent dispute resolution.

PIAC notes that 'access to retail competition' or 'choice' is often cited as a detriment for consumers in embedded networks. PIAC does not consider competition or retail choice to be a consumer benefit. Residents in embedded network and exempt selling arrangements are impacted by ineffective or unaffordable pricing, information, protection, and assistance regulation. The absence of viable alternatives for these residents is a secondary impact that, if resolved, would not necessarily address any of the impact of the poor outcomes being experienced.

In the remainder of this section and section 4, we detail a number of specific impacts and identify recommended reforms to address them.

Assistance measures

Many people in embedded networks are unlikely to have the option to access their energy from an authorised retailer and many cannot alter their tariffs through their exempt provider. Provision of effective supports, assistance measures and disconnection protections is inconsistent in exempt sellers and non-existent in many, with monitoring and enforcement inadequate. Residing in an embedded network or being served by an exempt seller should not provide a NSW resident with less assistance and support than others, particularly where many embedded network

residents (such as those in social housing, retirement and nursing homes, and residential parks) may be some of the most vulnerable members of the community.

Energy Accounts Payment Assistance

Energy Accounts Payment Assistance (EAPA) is an important financial support provided by the NSW Government through the Social Programs for Energy Code. It is designed to help people in sudden financial crisis or emergency stay connected to their energy service.

Currently, many people living in embedded networks are not eligible to receive EAPA due to program policies and issues with consistent transparent billing.

Residential land lease communities

There are 518 land lease communities in NSW with about 36,000 people living in them.³ Not all of these are embedded network arrangements, though many are. Regardless, residents in land lease communities are particularly vulnerable as they are often older, on lower incomes and lack viable potential housing alternatives.

An unintended consequence of the *Reckless* decision⁴ has been operators contracting with authorised retailers to provide electricity retail services to their residents, without any scope for recourse by residents. PIAC has heard from the Tenants Union of NSW that residents in several land lease communities have been approached by an authorised retailer who is now responsible for their connection, often without explicit consent. Attempts by some residents to refuse has led to threats of disconnection, with no alternative options for residents. Other residents have indicated their charges are well above what they paid previously, with little recourse to administrative challenge due to the retailer being regarded as an independent agent rather than acting in the responsibility of the operator.

PIAC is concerned consumers such as these, in vulnerable situations, do not have the fundamental right to exercise explicit informed consent. These consumers are being charged unreasonably and threatened with disconnection, without any alternative or recourse to dispute resolution or challenge.

While much of this issue could be addressed if stalled Land Lease Community charging reforms were progressed, more effort must be made to identify and monitor outcomes for residents in residential land lease communities. PIAC urges the Committee to recommend IPART focus more explicitly on embedded network and exempt selling issues in its annual retail monitoring.

Recommendation 2

That the Committee recommend IPART be explicitly required to investigate and report on embedded network and exempt selling issues in its annual retail monitoring report.

³ NSW Department of Customer Service, *Residential (Land Lease) Communities Act 2013 Statutory Review*, 2021, 10.

⁴ Caselaw NSW [Civil and administrative tribunal](#) 9 January 2019

5. Policy and legal solutions to address the effect of and concerns about embedded networks, including to address any gaps in the regulatory framework or safety concerns raised by NSW residents and businesses

PIAC understands there may be some limited circumstances where exemptions from standard regulatory arrangements are in the interests of consumers. This may include circumstances where it helps enable a community renewable solution, where energy is being provided below cost to residents, where there is community or social benefit, or in defined circumstances where it can be explicitly demonstrated it is in the interests of the impacted consumers. In these instances, there must still be fit-for-purpose consumer protections.

Halt or limit the implementation of new embedded network arrangements

PIAC does not see any compelling evidence of embedded networks and exempt selling arrangements enabling meaningful (or consistent) consumer benefit. Given this, PIAC sees merit in proposed reforms in Victoria which would effectively ban embedded networks in new residential apartment blocks, with appropriate exemptions for renewable energy microgrids that deliver low-cost renewable energy.⁵ Reform of this nature could be investigated in NSW to limit the growth in embedded networks and ensure those which are implemented, benefit residents and the community.

Recommendation 3

That the Committee explore options to limit the growth of embedded networks except in defined circumstances where there is demonstrated consumer benefit.

Outcomes for consumers currently served through embedded network and exempt selling arrangements should be consistent with consumers served by standard arrangements. PIAC recommends reforms at a jurisdictional and commonwealth level to ensure this.

Progress stalled AEMC recommended reforms

PIAC supports many of the recommendations made by the AEMC in its 2019 *Review Updating the Regulatory Framework for Embedded Networks*. Implementation of these reforms have stalled at a national level. PIAC encourages the NSW Government to work with the federal government and other governments operating in the National Energy Market (NEM) to have these reforms implemented.

Recommendation 4

That the NSW Government work with other governments to progress the recommendations made in the AEMC's 2019 Review Updating the Regulatory Framework for Embedded Networks. The NSW Government should explore measures to implement these reforms independently if National reform is unlikely.

⁵ Victorian Department of Environment, Land, Water and Planning, *Embedded Networks Review, Final Recommendations Report* (2022) 9.

Prioritise implementation of stalled pricing reforms for residential land lease community residents

The *Residential (Land Lease) Communities Act 2013 Statutory Review* contained recommendations to improve fairness and protections for energy supplied for people in land lease communities regarding a price cap, billing and sustainability infrastructure. These reforms were the result of extensive consultation with community and provider stakeholders and represent a workable and effective solution to many of the issues currently facing residents in land lease communities. After being identified as an urgent priority, these reforms have inexplicably stalled and PIAC encourages the Committee to remove roadblocks to implementing these reforms as a matter of urgency.

Recommendation 5

That the NSW Government complete and implement embedded network reforms as part of the Residential (Land Lease) Communities Act 2013 Statutory Review.

Extend Default Market Offer to embedded networks and exempt sellers

The Default Market Offer (DMO) was introduced in July 2019 as a cap on standard retail electricity offers. The DMO is imperfect, but provides some protection for consumers on standard offers, as well as serving as a reference for market offers. Embedded network consumers were explicitly excluded from DMO protections. For embedded network consumers outside land lease communities, the DMO should be available to provide some protection. PIAC recommends the NSW Government work with other governments operating in the NEM to extend the DMO to embedded networks, and ensure it is a more effective and meaningful default protection for all consumers.

Recommendation 6

That the NSW Government work with other NEM governments to have the DMO apply in embedded networks. This should include reform of the DMO to ensure it is a more effective default protection for all consumers.

Data collection and monitoring

It is difficult to understand what issues are affecting consumers in embedded networks without adequate data about them. The current information gaps on the location and type of embedded networks as well as the number of customers in embedded networks, their usage, prices, payment difficulty issues and disconnections experience is not acceptable. PIAC supports a role for the NSW Government to collect and monitor details about how many people are covered by network and retail exemptions in NSW and the types of business structures that are used. Embedded network operators of all kinds should be required to report on child connection points in their network. NSW DNSPs should facilitate greater visibility of the location, type and composition of embedded networks in their area of operation.

Consideration should be given to what other information could be collected by DNSPs regarding embedded networks in their area. It is important to understand key indicators for protections for consumers in embedded networks, such as disconnection and debt, and the availability of basic retail protections such as payment plans and access to government assistance. Data collected by the NSW Government on embedded networks could also be of value to the AER in event of any future process or changes to deal with embedded networks and for their enforcement activities.

Recommendation 7

That the NSW Government collect and monitor details about how many people are covered by network and retail exemptions in NSW, the types of business structures that are used, as well as key outcome information for consumers in embedded networks including usage, prices, payment difficulty experience and disconnection.

Distributed Energy Resources

Given the many problems facing consumers in embedded networks, access to Distributed Energy Resources (DER) such as solar, batteries and electric vehicles is not a top priority. But equal access to the benefits that DER can enable is an important way to help address disadvantage, and for households to reduce their energy bills and their household's contribution to climate change.

Many residents in land lease communities would otherwise be eligible for a solar system as part of the Bill Buster program.⁶

However, access to DER is limited for residents in embedded networks where people own their own roof due to:

- Residents may regard asking permission to install solar panels as a risk that may place increased pressure on their relationship with the community operator. The provisions in section 4 of the *Residential (Land Lease) Communities Act 2013 (NSW)* and other protections for residents may be amended to help address this issue.
- Residents may not currently have a connection that is capable of accommodating a solar system without a substantial upgrade, both to the residence and to the connecting community infrastructure. Provisions on supply adequacy, the facilitation of network maintenance charging and other incentives for operators, may help to address this.
- Multiple residents with solar systems operating at the same time may have an impact upon the community connection to the surrounding network. It could result in requiring the community to upgrade connection infrastructure or move on to a different connection arrangement. While provisions to fairly recoup community infrastructure costs may assist in addressing this, it is likely that Distribution Network Service Providers (DNSP) will need to be consulted in implementing durable solutions that are affordable for community operators and residents.

PIAC would support the NSW Department of Customer Service working with the NSW Office of Energy and Climate Change to initiate a process to develop a suite of recommendations enabling the implementation of sustainability infrastructure in land lease communities and other embedded networks. Such a process should engage with energy networks, and resident and consumer stakeholders, to identify opportunities to use DER to improve community resilience, independence and long-term financial sustainability. PIAC would welcome an opportunity to contribute to such a process.

⁶ <https://www.nsw.gov.au/media-releases/budget-2022-energy-bill-buster>

Recommendation 8

That the Committee recommend expedited work to enable the implementation of DER and sustainability infrastructure in land lease communities and other embedded networks, for the benefit of residents.

Reforms to NSW Government policy, programs and legislation

There remain a range of issues related to embedded networks. Progress on the AEMC framework is uncertain, with no guarantee it will address and remedy all major issues, particularly for existing embedded networks. Whilst PIAC supports the AEMC's approach to include embedded networks into the national energy regime to improve consistency of outcomes for consumers and improve consumer protections, some embedded network issues can be addressed through NSW mechanisms, including: data collection, information provision, eligibility for EAPA vouchers, accessing rebates, and connection security, metering and pricing regulation.

In addition, there are many gaps in protections and lack of clarity around rules that could be ameliorated by jurisdictional solutions. Given there is no timeline or guarantee of reforms being made at a national level, we urge the NSW Government to make what changes it can to improve the outcomes for people in embedded networks as a matter of priority.

Ensure hot and chilled water are correctly charged as energy

There are numerous consumer issues with the sale of chilled and hot water in embedded networks.

In 2021, at least 49,000 households in NSW received their hot water through an embedded network.⁷ This is a significant – and growing – number of consumers who are not receiving the same consumer protections that other consumers receive. The current regulatory framework means that the embedded network operator can choose which regulatory framework they operate in and, understandably from a business perspective, choose the framework which has the least regulation and consumer protections.

Chilled water used for air conditioning can be extremely important for health, particularly in apartments which lack cross ventilation or other means to cool. It is also vital for people who have medical conditions which means they need to maintain room temperatures within a certain range. PIAC does not have access to the figures for the number of consumers in chilled water embedded networks, but some issues facing both chilled water and hot water embedded networks are similar. Consumers in these networks might not:

- Get clear billing information that shows them how much they use and what they are being charged for.
- Have access to retail competition to enable them to look for a cheaper deal.
- Have a right to access payment plans or hardship assistance should they need it.
- Have certain disconnection protections.
- Get access to an ombudsman service should an issue arise.

For hot water embedded networks, EWON identified the following common complaints:

⁷ EWON, *Spotlight On: Hot water embedded networks*, <https://www.ewon.com.au/page/publications-and-submissions/spotlight-on/hot-water-embedded-networks>

- high bill disputes
- estimated bills
- customer service issues
- opening and closing accounts
- credit issues, including affordability.⁸

These sorts of complaints are likely to also apply to chilled water. It is unfair that consumers with these problems in embedded networks cannot get assistance from a jurisdictional ombudsman as consumers outside of these arrangements can.

Hot and chilled water are essential for health and wellbeing (chilled water being required to maintain healthy temperatures in buildings which lack cross ventilation or other means to cool). They are part of energy supply and are essential services. Loopholes should not prevent people's access to appropriate consumer protections including billing and access to ombudsman services.

Protections for hot and chilled water must be brought up to the standards that those outside of embedded networks receive. For hot water, this means not being able to operate outside of energy regulations, for example, not being able to charge for hot water in litres.

A solution needs to be found which should include:

- Consumer protections, including access to payment plans, hardship programs and protections against disconnection.
- Pricing that is transparent, based on calculations that are easily understood.
- Tariffs and fees for connection/disconnection, late payment etc clearly listed and easy to access.
- Access to retail competition or regulation, including price caps for tariffs, fees for connection /disconnections and late payments.
- Access to ombudsmen services.
- Collection of data regarding how many people have embedded hot and/or chilled water and what their experiences are.
- Monitoring and enforcement of these as monopoly essential services.

Recommendation 9

That the NSW Government support national reforms or directly implement protections ensuring the sale of hot or chilled water in embedded networks be billed according to the energy embedded in the heating or cooling.

Address gas embedded networks

The AEMC found that many gas embedded networks will fall outside the scope of the national process and would be better dealt with at a jurisdictional level.⁹

⁸ EWON, *Spotlight On: Hot water embedded networks*, <https://www.ewon.com.au/page/publications-and-submissions/spotlight-on/hot-water-embedded-networks>

⁹ AEMC, *Updating the Regulatory Frameworks for Embedded Networks, Final Report* (2019) xv.

PIAC also urges the Committee to consider gas in embedded networks including the related issues of gas-heated bulk hot-water, gas cooktop and gas connection charges that often serve as an effective proxy for gas consumption and availability charges in embedded networks, particularly high-rise apartments.

Recommendation 10

That the Committee consider issues in gas embedded networks.

Support access to ombudsman scheme

In addition to improved NSW Government collection and monitoring of data relating to residents in embedded networks, steps should be taken to ensure all energy providers are members of the Energy and Water Ombudsman NSW (EWON), to ensure residents have access to robust dispute resolution regardless of how they access their essential energy.

PIAC supports the proposed requirement in the AER's Guideline for exempt sellers to provide evidence 'confirming they have taken steps to obtain membership with the relevant ombudsman scheme.'¹⁰

EWON raised issues that '[s]ome embedded network operators have responded to the requirement to join an Ombudsman scheme by delaying their application indefinitely, disengaging from the discussion, or simply refusing to join.'¹¹

The steps taken to obtain ombudsman membership should be confirmed with EWON.

Escalating penalties should be used for entities that continuously take steps to avoid EWON membership. These penalties should take into account the number of consumers the entity services across the jurisdiction, not just in the individual embedded network.

Recommendation 11

That escalating penalties be used for entities that continuously take steps to avoid ombudsman scheme membership – or continuously ignore the requirement to join. The Committee should consider jurisdictional measures to reinforce AER requirements.

PIAC has heard from ARPRA of instances where a matter has escalated through EWON and resulted in a fee for the exempt entity, and the exempt entity has sought to recoup this fee by increasing the resident's site charges. Site charges are not transparent, and a resident cannot challenge operating costs in a land lease community in the NSW Civil and Administrative Tribunal (NCAT).

PIAC recommends that a mechanism be developed to ensure the cost of an EWON investigation cannot be passed on to the consumer.

¹⁰ Australian Energy Regulator (AER), *Draft Exempt Selling Guideline (version 6)* 21.

¹¹ Energy and Water Ombudsman NSW (EWON), *Embedded networks – it's time for change*
<https://www.ewon.com.au/page/publications-and-submissions/reports/spotlight-on/embedded-networks>

Recommendation 12

That a mechanism be developed to ensure the cost of an EWON investigation cannot be passed on to the consumer.

As detailed in this submission under 'Most at risk communities', people often live in places classed as short term accommodation. Exempt sellers operating under this class (D3) currently do not have to be EWON members, meaning that any long-term resident is not protected. Care must be taken with classifications of short and long-term accommodation to ensure that they do not result in negative outcomes for residents. PIAC recommends that the distinction not be made and that all long-term residents have access to EWON.

Recommendation 13

Ensure long term residents in parks classified as 'short term' still have access to EWON. The Committee should consider measures to progress this at a jurisdictional level.

Billing

Billing information helps consumers understand their usage and be confident the amount they are charged is correct. PIAC is aware that people in embedded networks do not always get a bill, let alone a bill with adequate information on it.

Residents in embedded network should be provided with equivalent billing and usage information as consumers with authorised retailers. The AER has spent significant time developing a Better Bills Guideline¹² to improve the way bills are presented to make it easier for consumers to understand payment amounts, due dates and payment methods; increase comprehension of how the bill was calculated; and know where to seek assistance. Much of this is achieved through the requirement to present information in tiers and to apply design principles. Whilst some information such as better offer notification will not be applicable for bills in embedded networks, many of the requirements in the Better Bills Guideline should be required for bills for people who live in embedded networks.

Recommendation 14

That embedded network operators be required to provide consumers with equivalent billing and usage information as consumers with authorised retailers. This includes aligning embedded network bills with the AER's Better Bills Guideline. The Committee should consider measures to progress or support this at a jurisdictional level to ensure consistent access to NSW rebates and supports, regardless of national reform progress.

Assistance measures

People in embedded networks are unlikely to have the option to access their energy from an authorised retailer and many cannot alter their tariffs through their exempt provider. Provision of effective supports, assistance measures and disconnection protections is inconsistent in exempt sellers and non-existent in many, with monitoring and enforcement inadequate.

Residing in an embedded network or being served by an exempt seller should not entitle a NSW resident to a less assistance and support than others, particularly where many embedded

¹² <https://www.aer.gov.au/retail-markets/guidelines-reviews/better-bills-guideline/final-decision>

network residents (such as those in social housing, retirement and nursing homes, and residential parks), may be some of the most vulnerable members of the community.

While there are processes considering improved equity of access to assistance and supports for residents in embedded networks and exempt selling arrangements at a commonwealth level, the Committee should not assume these will progress or be effective. The Committee should consider recommending measures to support or progress improved access to retail assistance at a jurisdictional level.

Energy Accounts Payment Assistance

Energy Accounts Payment Assistance (EAPA) is an important financial support provided by the NSW Government through the Social Programs for Energy Code which is currently not available to many people living in embedded networks. People living in embedded networks, some of whom live in very vulnerable circumstances, should have access to EAPA to help them afford their energy bills to avoid mounting debt or going without energy or other essentials such as food and medicine in order to afford their energy bill.

Ensuring people in embedded networks receive electricity bills with proper billing information would help smooth the process for people living in embedded networks to receive EAPA.

PIAC also recommends that where the exempt sellers billing and record system is not transparent or consistent enough to process EAPA, the impacted resident is not left without support. In these circumstances EAPA payments should be made directly into the applicant's bank account. This is already a process used to provide rebates for eligible people in embedded networks.

Recommendation 15

That people in embedded networks have access to EAPA. Where exempt sellers billing and recording system is not transparent or sufficient, EAPA should be delivered through direct payment to the recipient's bank account rather than via the exempt seller.

NSW Rebates

The introduction of eligibility of rebates for people living in embedded networks was a welcome step by the NSW Government, with eligibility beginning from 1 February 2022. Work will need to continue to ensure that residents in embedded networks who are eligible are able to access them.

Assistance for people experiencing payment difficulty

In NSW, people who receive their energy from authorised retailers can access a series of assistance measures if they are experiencing payment difficulty. Many exempt sellers do not have to offer such assistance and people in embedded networks do not have the same level of protection from disconnection as people outside embedded networks do.

The AER has proposed some assistance measures for people in embedded networks in its recent Retail Exempt Selling Guideline review. If implemented, these measures will go some way to improve assistance for people experiencing payment difficulty. But the proposed changes to the Guideline would still not bring supports up to the level that consumers living outside

embedded networks can access. This includes sellers not having to proactively identify payment difficulty nor offering consumers fair, sustainable and flexible payment plans.

Proactive identification of payment difficulty

Early and proactive assistance is a key enabler of improved outcomes for consumers experiencing payment difficulty. Objective 1 of the AER's recent Vulnerability Strategy is to 'improve identification of vulnerability.' As the Vulnerability Strategy recognises, there are many reasons people are not always able to recognise their own payment difficulties. They may also have concerns about raising these difficulties with a service provider. People who live in an embedded network often have additional concerns and may be afraid to ask for help for their energy bill knowing that the operator will then be aware that they may not be able to make their rent or other payments owed to the operator.

Failure to provide proactive and early assistance can lead to significant debt issues which can be disastrous for consumers, particularly when it's not only their access to energy at stake, but also their housing. People are increasingly turning to Buy Now Pay Later (BNPL) loans¹³ and these loans are being used to cover everyday essentials including utility bills.¹⁴ Many people manage their energy bills in unhealthy ways such as energy rationing and/or going without other essentials such as food and medicine.

Proactive identification of consumers experiencing payment difficulties need not be difficult or onerous for exempt sellers and could be as simple as offering support options to consumers when they miss a payment by three or more days, have a certain debt amount (such as \$55), have been unable to maintain a payment plan and/or have requested a payment extension. Support options should be proactively offered if a consumer is at risk of disconnection.

Meeting basic obligations of assistance when people experience payment difficulty is a fundamental requirement and cost of business in selling an essential service. Exempt sellers unable to meet these obligations should not be selling an essential service.

The NSW Government has done work through the Department of Customer Service to develop a consistent, principles-based framework for identifying and responding to financial hardship. This work could be used to help inform and develop material and services to support exempt sellers in identifying and responding to payment difficulty.

Recommendation 16

That the NSW Government support exempt sellers and develop simple measures for exempt sellers to follow so they can proactively identify people experiencing payment difficulties and require them to offer support to these consumers. The NSW Government should require proactive support as part of measures to extend rebate and EAPA support more consistently to embedded network residents.

Fair and flexible payment options

The AER's Guideline and draft hardship policy template proposed as part of their Retail Exempt Selling Guideline review provides insufficient opportunity for consumers to decline or vary

¹³ Financial Counselling Australia, *It's credit, it's causing harm and it needs better safeguards* (2021) 5.

¹⁴ Financial Counselling Australia, *It's credit, it's causing harm and it needs better safeguards* (2021) 9.

repayments according to their capacity to pay. This does not strike an appropriate balance in line with equivalent protections in the National Energy Customer Framework (NECF). This is likely to lead to people entering unsustainable payment plans that they cannot manage or cannot manage without forgoing other essentials. It may also expose consumers to intimidating behaviour from exempt sellers who are in powerful positions, where the consumers cannot simply move to a new retailer.

Exempt sellers must be required to follow simple and transparent steps to ensure a fair payment plan is developed and there are options available to consumers to decline or alter a payment plan.

Recommendation 17

That embedded network operators be required to offer fair and sustainable payment plans that can be declined or altered. The Committee should consider measures to progress or support this at a jurisdictional level to ensure consistent access to payment options that support consumers in payment difficulty.

6. Continued engagement

PIAC welcomes the opportunity to meet with the Committee and other stakeholders to discuss these issues in more depth.