Public Interest Advocacy Centre

PIAC submission to Review of the AER exemptions framework for embedded networks

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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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1. Introduction

The Public Interest Advocacy Centre (PIAC) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) *Review of the AER exemptions framework for embedded networks* ('the Review'). Addressing the significant, inequitable impacts experienced by residents of embedded networks is critical to ensuring fairer treatment of households, and the delivery of the intent of energy laws and protections. Resolving the inequities resulting from embedded networks and exempt sales is long overdue and increasingly urgent, as the use of embedded networks becomes more widespread.

The employment of embedded networks undermines equal treatment of energy consumers, and is not in the interests of consumers, leaving embedded network residents increasingly disadvantaged and more vulnerable.

Progress addressing issues in embedded networks has been stymied by the lack of transparency of the exemptions framework, and resulting difficulties establishing the scope of embedded networks and the harms they create. However, the (many) reviews into embedded networks[1] have repeatedly exposed significant consumer harms being experienced by people living in embedded networks. Ombudsman, tenants' advocates and community service organisations consistently present cases demonstrating the fundamental issues resulting from the employment of embedded networks.

Energy is an essential service and provision of energy outside the standard supply arrangements and protections should not occur. The default assumption for regulation of an essential service should be the full, consistent application of the regulatory framework through authorised service provision. In principle, exemptions should only be allowed in limited circumstances where specific conditions are met. The current approach to exemption has strayed from this and this review should be predicated on restoring this fundamental assumption.

Where exemptions are allowed, they must not simply become an avenue for additional revenue, or diminished responsibility for developers or embedded network service providers. Arguably this is the result of the current approach. Further, evidence from DNSPs indicates rapid growth in this approach is a material threat to the intent of the regulatory framework for energy itself, entrenching differential treatment of consumers.

PIAC supports reforming the Network Exemption Guideline and the Retail Exemption Guideline with the explicit objective of restricting the growth of future residential embedded networks. Reforms should strengthen consumer protections for legacy embedded networks, and improve overall transparency to ensure a robust oversight and enforcement of the market circumstances and outcomes for all consumers.

The AER has made great strides in developing a more advanced understanding of vulnerability and the harms resulting from the nature of the energy market itself. This understanding, and work

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[1] For example: those conducted by the Australian Energy Market Commission (AEMC)(*Review of regulatory arrangements for embedded networks* and *Updating the Regulatory Frameworks for Embedded Networks*); and the NSW Government (Parliament Committee on Law and Safety, *Embedded Networks in NSW*, and the Independent Pricing and Regulatory Tribunal (IPART), *The future of embedded networks in NSW*).

to address harm in the *Towards Energy Equity* strategy demonstrate an intent and ambition which must urgently be applied to people living in embedded networks.

Further delay, after years of aborted reviews and actions is unacceptable, and will only further compound the existing issues by leaving a larger number of legacy network arrangements to unwind and retrofit. We urge the AER to take this Review as the opportunity to finally make the necessary changes to protect the intent of energy regulation and restore fairer outcomes for residents in embedded networks.

The AER's approach to this review must be based on the principle that authorised service provision and consistent regulation is the default, with exemptions strictly limited. This review must be broad enough to deal with emerging forms of embedded networks, to either preclude them or ensure they conform to the requirement to deliver consistent consumer outcomes and protections. It should identify a robust forward program of monitoring, review and response to ensure intended progress eventuates, and serve as a basis for any ongoing reform required.

2. Approach to the review

The overwhelming majority of embedded networks do not deliver any benefits for consumers. They have been set up to take advantage of lighter regulation and lower costs to deliver additional revenue and reduced responsibility for operators. In most circumstances it is difficult to see how the application of the Network Exemption Guideline promotes the NEO. In theory, properly structured and regulated embedded networks could help enable benefits to consumers through lower costs, access to on-site generation and storage, and shared, efficient infrastructure and appliances. But those benefits cant simply be assumed as they currently are, simply because they are possible. In any case, those benefits do not warrant, and should not justify, lesser oversight, regulation and protection.

Given the repeated inquiries and reviews of embedded networks which have asserted their harm, and demonstrated their structural failings, the AER should not be asking *whether* any action should be taken, but rather, *what* action is needed to address the harms and imbalances created by embedded networks, and what role (if any) should they play in a fairer energy system.

As the AER noted in its *Review of consumer protections for future energy services: Options for reform of the National Energy Customer Framework*: 'stakeholder feedback in submissions was overwhelmingly supportive of reforming the exemption framework.'[2]

Assessment approach

1. ***Do stakeholders consider one factor or principle should take precedence over another? If so, what weighting should we give the various principles or factors provided by the Retail Law and set out above, to support any case for change to the exemptions framework?***

And

[2] At page 11.

2. ***Is the AER's proposed approach to the exemption framework review the preferred approach? If no, what other factors or criteria should the AER consider?***

The required principles listed in the Review document should align with and promote the interests of consumers. However, this is not the case for the optional principles. For example, whether the energy seller's circumstances warrant an exemption is irrelevant, especially when the arrangement is yet to be approved. Such a consideration undermines the consistency of the regulatory framework and its application to promote the interests of all consumers. The focus must only be on the outcomes for consumers and their ability to access affordable, reliable and sustainable energy services, regardless of where they live.

Proposed criteria to guide the AER's assessment of whether a particular option better delivers upon the NEO, should include:

- Benefits to consumers;
- Harms to consumers (and risk of harms); and
- The AER's ability to monitor and enforce compliance.

Whilst administrative cost for the AER should be considered, this cannot come at the expense of good consumer outcomes and consideration of administrative cost should not preclude the best regulatory response. Action now to remove scope for embedded networks that are not in consumers' interests will reduce the future administrative costs for the AER in the longer term, by more consistently applying the NECF. It is reasonable to expect the AER's administrative costs to increase in the shorter term to improve compliance amongst existing operators, and transition them to more robust regulation. This work will have a deterrent effect and help reduce future compliance activities and associated costs in the longer term.

Cost to exempt entities must not come before consideration of consumers' interests and must be explicitly demonstrated as material, where they are considered. In circumstances where costs associated with providing consistent protections are unsustainable, the AER should regard the business structure as inappropriate for the provision of an essential service, rather than seek to accommodate it.

PIAC supports utilising the NEO and its more robust and consistent application, as the main focus of assessment criteria.

Assertions regarding the impact of embedded networks in reducing housing costs should not be accepted or considered in this review. Housing costs are currently almost completely unrelated to construction costs, and any prospective reductions potentially attributable to embedded networks would be immaterial. In any case, any potential savings in construction cost have little guarantee of being passed on to buyers and residents. Any potential benefit to residents would be heavily contingent on many factors outside the control of the AER. PIAC recommends the AER ignore this argument and seek to focus on considerations and actions which are within its powers to influence with certainty.

Review focus and scope

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

PIAC supports the focus of the review on residential consumers. However, given the need for broad reforms, a fulsome review should consider changes to all residential exemption classes, including Residential Land Lease Communities (RLLCs) (Class NR4), retirement villages (Class NR3) and deemed classes which capture mixed use communities which include long term residents (ie Class ND3).

PIAC strongly disagrees with not considering hot and chilled water embedded networks as part of this review. PIAC, alongside the NSW Government,[3] regard them as the sale of energy and should be transparently billed for the energy input.

The NSW Parliament Committee on Law and Safety's Report on Embedded Networks in NSW found significant evidence of harms of hot and chilled water embedded networks:

> Residential customers in embedded networks have reduced and inequitable consumer protections and some face unjustifiably high energy costs. For example, the Committee heard reports of residents receiving outrageous hot water charges for $2 000 over a 9-month period and $9 700 for a 14-month period.[4]

And recommended that:

> That the NSW Government immediately ban the separate charging of hot and chilled water in embedded networks and implement fulsome price protection measures to prevent the unreasonable and unfair pricing of these essential services.[5]

EWON has also stated:

> EWON has long called for the definition of electricity and gas under the National Energy Retail Law (NERL) to be updated to include the sale of other products retailed by embedded network operators/energy retailers, including hot water and air conditioning and for these to be billed based on the underlying energy source used to heat/cool the product, and not billed per litre of hot or cold water.
>
> We do not consider billing customers for the hot water used ($/L) rather than the gas consumed ($/MJ or kWh), to be an accurate representation of the service provided to customers. Based on complaints investigated by EWON, there are no indicators/supporting information that hot water is a bundled product (water + energy) which is separate from the sale of energy.
>
> Further, there is no evidence that embedded network operators are buying the water that is used in the centralised hot water system – which means customers are simply paying for the energy used to heat the water.[6]

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3 Office of Energy and Climate Change, NSW Treasury, *Ministerial Statement of Expectations: Protecting NSW customers of embedded networks*, 1.

4 NSW Parliament Committee on Law and Safety, *Embedded Networks in NSW* (2022) 18.

5 Ibid.

6 Energy and Water Ombudsman NSW (EWON) *Submission to Draft Ministerial Statement of Expectations: Protecting NSW customers of embedded networks* (2023). EWON has also detailed their concerns regarding hot and chilled water embedded networks in:

EWON further stated:

> EWOQ and EWOSA are supportive of EWON's position on improving the consumer protections for customers paying for hot water services in embedded networks. EWOQ and EWOSA have also offered to provide data on hot water complaints from Queensland and South Australian consumers.[7]

PIAC is extremely concerned that with tighter regulation on electricity embedded networks, without regulation of hot and chilled water embedded networks, these types of embedded networks will be used to cross subsidise electricity embedded networks. This would simply move the 'loophole' and necessitate further reforms (and the complications of unwinding existing conditions) at a later date.

In the interests of addressing issues with embedded networks to improve outcomes for consumers we urge the AER to consider the issue of hot and chilled water embedded networks.

Recommendation 1

That the Review scope be expanded to include consideration of hot and chilled water embedded networks.

The rise of hot and chilled water embedded networks demonstrates the scope for the existing framework, in conjunction with new technologies and business models, to be used to circumvent regulation and intended protections, causing consumer harm. It is very likely that, absent any reform, the existing approach to utilising embedded network arrangements will be expanded to new products and services, for example, electric vehicle charging.

PIAC strongly recommends the AER take a principled approach, and rather than seeking only to 'solve' the problem for existing services, include in its scope for this Review an exploration of emerging embedded network arrangements (including hot and chilled water and vehicle charging and batteries). The intent should be to develop a framework than is future focussed and can be consistently applied across any potential technologies.

Recommendation 2

That the scope of the Review scope should be principles-based and capable of considering all potential applications of embedded networks, explicitly including emerging technological applications, to ensure remedies are consistently applicable, and deliver durable improvements to consumer outcomes.

- *Joint submission with EWOQ and EWOSA to AER Review of consumer protections for future energy services* (December 2022);
- *Submission to AER retailer authorisation and exemption review* (July 2022);
- *Submission to Updating AER Network and Retail Exemption Guidelines* (June 2021);
- *Spotlight On - hot water embedded networks* (March 2021);
- *Submission to AEMC Draft report on updating the regulatory frameworks for embedded networks* (March 2019).

7 *Joint submission with EWOQ and EWOSA to AER Review of consumer protections for future energy services* (December 2022);

If the AER considers that including these other types of embedded networks (ND3, NR3, NR4, hot water, chilled water and potential future embedded networks) in this process may delay reforms to address issues for NR2 embedded networks, a staged approach should be adopted. The immediate work can proceed with some consideration of future applicability, but with the process to explicitly address other network types scheduled to proceed as soon as possible (on a committed timeframe). However, this option would not be PIACs preferred approach.

3. The growth in embedded networks

4. What factors are driving the increase in residential exemptions?

As noted in the Review paper, NR2 exemptions have seen the most rapid growth. This rapid (and increasing) growth is due to the strong incentive the framework has created to use exempt selling arrangements as additional revenue in new developments, and improve profitability of ongoing operations through providing poorer, less reliable, less affordable, unsafe, or less supported and regulated essential services to residents.

The Energy and Water Ombudsman NSW supports this assessment:

> Calling it an 'exemption' framework clearly implies this is outside the norm...
>
> It can no longer be said that the exemption framework is for entities who are not selling energy as their 'core business'.
>
> Since the introduction of the exemption framework, we have witnessed the rapid growth of the embedded network industry. Authorised energy retailers have now moved into this section of the energy market, proof that the embedded network industry is now driven by the core business of selling energy to customers for profit. This situation creates an imbalance between the National Energy Retail Law (NERL) policy principles and the application of the current exemption framework.[8]

5. Which factors are having the biggest influence?

The differential in responsibility and oversight inherent in the exemption framework is the most influential driver of the growth in exemptions. The most significant growth is in residential apartment buildings, where establishing exempt selling arrangements has been used as an additional or improved revenue stream in new developments, as well as a means to establish a lower threshold of ongoing responsibility and regulatory cost (at no cost to the proponent). This behaviour is a direct result of the framework itself and the unreasonable differential in responsibility and regulatory oversight it establishes.

6. How common is it for new residential developments to be built as embedded networks?

Recent embedded network tariff proposals from Ausgrid have drawn on connection requests to indicate an exponential growth in new residential developments being structured as embedded

8 EWON, *Spotlight On: Embedded Networks - it's time for change* (2021).

networks. Endeavour has also shared information indicating the popularity of embedded networks in new residential developments. PIAC recommends the AER seek this information from DNSPs.

4. Benefits and harms in embedded networks

7. How do embedded networks result in lower energy prices for residential customers? Please provide supporting information.

PIAC has no examples of embedded networks resulting in lower energy prices for residential customers. Any theoretical scope for embedded networks to deliver lower energy proces to consumers is predicated on a developer/operator agreeing to pass on any benefit derived. With no requirement to demonstrate and pass on benefits, and no cost in not doing so, its unsurprising most embedded network arrangements are set up to benefit developers and embedded neywork operators, rather than consumers.

Further, as Ausgrid has pointed out in their submissions on embedded network tariffs, much of the putative cost reduction benefit to embedded network arrangements results from an effective cross subsidy to the embedded network operator, from other consumers in the DNSP network. This would appear to be at odds with all other aspects of the regulatory framework which seek cost-reflectivity.

8. How do infrastructure costs for new developments built as embedded networks compare to non-embedded networks?

PIAC does not consider this to be a priority concern of relevance for this review. Any cost differential is very difficult to estabslih with any certainty, as it would vary according to the circumstances of the devleopment itself. Moreover, it is impossible to demonstrate the actual impact of any established cost differential on consumers (which would be the only reason to consider it).

In any case development and property are unregulated markets with no transparent link between costs to developers and costs to end purchasers. There is even less tangible link between costs and dwelling prices for existing properties being sold. Any cost differential between embedded networks and non-embedded networks are likely to be absorbed by developers, not passed on to purchasers or renters.

Given these factors and that influence on property prices is outside the AERs purview, PIAC strongly recommends consideration of build costs and their impact on house prices, be given no weight in this review.

9. How do higher-density complexes configured as embedded networks benefit residential buyers? Please provide supporting information.

There is no inherent benefit to consumers in configuring a higher-density development as an embedded network. As currently framed this question will only elicit circumstances where embedded networks COULD help to enable consumer benefits. While this has value in considering which material benefits should be actively supported in any reformed framework, we

strongly caution against making an equivalence between potential to enable consumer benefit, and actual consumer benefit.

PIAC recommend the purpose of this question be clarified to seek potential uses for embedded networks in enabling consumer benefit in higher-density developments. Importantly, it should assess the necessity of an embedded network structure in delivering a putative benefit. This should be accompanied by specific examination of what regulatory oversight would be required to ensure these potential benefits could be demonstrated and actually delivered to residents.

10. What kind of innovative and emissions reduction arrangements can embedded networks offer residential customers?

PIAC understands that, properly configured and regulated, embedded networks have the potential to employ more innovative structures and help enable emissions reductions for residential consumers. However, as outlined in response to question 9, the purpose of this question must be clearly established as seeking more detail on the breadth of arrangements which could be employed and how they could aid emissions reductions. This should be accompanied by a specific examination of what regulatory oversight would be required to ensure these benefits are delivered and could be demonstrated, while retaining consistent protections and outcomes for consumers.

11. What other benefits are there for residential embedded network customers?

Refer to previous responses.

12. How should we consider any consequential benefits such as improved access to affordable housing in this review?

The AER should not consider impact on housing cost (positive or negative) in this review. The AER is not the housing regulator and has no scope to properly assess the impact of embedded networks on the cost of housing, and the actual delivery of any benefits to consumers. Moreover, the AER has no ability to ensure any prospective benefits are delivered. The AER should confine its considerations to aspects it has consistent oversight of and responsibility for.

As detailed previously, development and property are an unregulated (and restricted) markets where the price of housing responds to irrational market dynamics. The end cost of housing (particularly for secondary purchasers and renters) is untethered from development cost and material changes in development costs have little or no impact on housing costs.

More broadly, the regulatory and protections frameworks in energy services must consider how to achieve the best and most consistent (demonstrated) outcomes for people in respect of their energy services (the cost of those services, the reliability and safety of them and how consistently they are protected). Hypothetical considerations regarding how an arrangement may or may not possibly provide the opportunity or scope for benefit is not an appropriate or effective framing for considering reforms.

PIAC strongly recommend the AER frame this review in terms of addressing actual harms (which are well established), rather than canvassing possible benefits, particularly those unrelated to priority energy service outcomes for consumers.

13. What is the evidence that supports the view that embedded network customers are paying higher energy prices compared to on-market retail customers?

The NSW Parliament Committee on Law and Safety's Report, *Embedded Networks in NSW* concluded: 'The inquiry evidence indicates that embedded network consumers generally experience high bills, and many do not receive the intended benefit of bulk savings.'[9]

IPART reported in their *Embedded networks stakeholder workshop: summary of proceedings*:

> Customers told us about the following issues:
> • Persistently high bills, which were 25% higher than for an on-market customer
> • Gas supply charges being incurred even when gas is not used[10]

PIAC does not consider any further evidence of consumer detriment needs to be demonstrated in this case, given a string of reviews (including those cited above) have consistently documented this issue.

We would also note that a fundamental issue with the existing framework is illustrated by the AERs own lack of data in relation to embedded networks (including customer numbers, prices, payment difficulty, debt and disconnection). The mere fact that question 13 is being posed in this review should be taken as justification for the AER to urgently proceed with reforms that address this significant and unacceptable information gap in relation to embedded networks.

14. What evidence is available to understand the scale, extent or risk of harms?

PIAC reiterate our contention that this question should itself be regarded as evidence of the need to reform the existing framework and address the unacceptable information gap in relation to embedded networks.

The lack of monitoring and consistent data collection for embedded networks makes a definitive (and quantitative) answer to this question very difficult. Indeed, we consider the inability to establish the materiality and breadth of consumer harm with reliable data has been a key barrier to progressing embedded network reform. The AER should address this as a matter of urgency, regardless of the progress of other reforms considered in this review. In the meantime, PIAC recommends that individual case studies are gathered, assessed and regarded as indicative of wider impacts on residents.

Notwithstanding the ongoing issues with reliable data, in its *Updating the regulatory frameworks for embedded Networks: Final Report*, the AEMC concluded: While some embedded networks

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9 At page 17.

10 https://www.ipart.nsw.gov.au/sites/default/files/cm9_documents/Fact-sheet-Embedded-networks-stakeholder-workshop-summary-of-proceedings-29-September-2023.PDF. At page 2

are providing benefits to energy consumers that they may not receive in a standard supply arrangement, **often** they do not [emphasis added].[11]

15. What other harms do embedded network customers face?

As discussed in the Review paper, harms include:

- Lack of access to choice (competition);
- high energy prices;
- no guaranteed continuity of supply;
- reduced assistance where there is payment difficulty (including no requirement to proactively identify payment difficulty);
- less protections for people who require life support equipment;
- a limited compliance framework;
- problems being able to install appliances;
- safety issues; and
- a lack of information when moving into an embedded network.

In addition to these harms, other harms (both direct and indirect) people living in embedded networks face include:

- Inadequate and inconsistent billing information. For example, The NSW Committee on Law and Safety found that:
    - 'embedded network customers received inadequate and inconsistent billing information compared to customers of authorised retailers'[12] and
    - 'residents in RLLCs do not receive appropriate, regular, consistent and accurate usage and billing information'.[13]

- Lack of transparency regarding business arrangements and the numbers of people affected.

- Lack of access to supports due to structural issues with business models employed in embedded networks. This leads to residents of embedded networks not being eligible for rebates, and circumstances where residents are eligible but have other systemic barriers to accessing them.

- Lack of access to ombudsmen schemes. Even where this should be available, not all exempt sellers complete their membership[14] . Inadequate monitoring and enforcement allows this to continue. The unequal power relationships that exist in many embedded networks (where energy supplier is also effectively landlord and the provider of other services) means that lack of access to independent dispute resolution impacts embedded network residents disproportionately, particularly considering the unconventional arrangements in embedded networks are more likely to be subject to disputes.

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11 At page i.
12 At page 17
13 Ibid.
14 EWON (n 8). *Spotlight on: Embedded networks – it's time for change*, June 2021.

- Complicated relationships with the exempt seller/operator who might also be the landlord. This impacts effective application of available rights and protections, so that rights and protections that are available to people in embedded networks might not actually impact them.

16. How can we maximise the extent to which any changes to our Guidelines complements jurisdictional actions and minimise the risk of misalignment or duplication?

Currently the states and territories are leading the way in making changes to improving outcomes for consumers. These improvements should be led at a federal level to minimise misalignment or duplication. To accomplish this, the AER should consider the 'highest common denominator' approach to reforms, ensuring that the most robust protections at a jurisdictional level are considered. That is, that the priority issues identified in any jurisdictions are applied to all, This approach is compatible with an objective to prioritise consumer protection and outcomes for consumers.

We note that jurisdictions retain an ability to derogate from any reforms they regard as unsuitable or materially inappropriate. Were any reforms under consideration by the AER are likely to be subject to such action, the AER could then consult on how best to proceed (ie – compromise to address the jurisdictional concern or proceed to the benefit of consumers in other jurisdictions and accept the possibility of derogation). This approach would in effect be the corollary of the current circumstances, where jurisdictions are considering 'derogations' to reduce instances and impacts of embedded networks.

PIAC strongly encourage the AER to draw on jurisdictional processes to identify priority areas for more robust regulation, and apply these to a common reform agenda through this process.

5. Potential options under the Network guideline

Option 1 - Close the ND2 deemed network exemption class and revise the activity class criteria for NR2 registrable network class

PIAC supports closing the ND2 deemed network exemption class.

Embedded networks with fewer than 10 residential consumers, which are not retirement villages or residential parks, can still fall into the deemed exemption class. Residents in these embedded networks do not have access to a large range of supports and protections they are entitled to. Compounding this is the limited visibility regarding these networks, the structure of their arrangement and how many people are impacted. Importantly there is no oversight of the operation and effectiveness of the existing protections framework.

PIAC supports abolishing the ND2 class. However, as discussed below in response to Option 4, this should be combined with abolition of the NR2 class

No residents should be included in deemed classes

The Tenants Union NSW (TU) has informed PIAC that many Residential Land Lease Communities (RLLCs) in NSW are mixed use. Thesecommunities have holiday cabins on site

that are owned by people who have a principal place of residence elsewhere (short term stay). However, they also incorporate cabins occupied by people who are long term residents with no other residence. These communities commonly fall into the ND3 Class, despite having long term residents living there. These mixed circumstnaces do not provide opportunity for simple categorisation.

TU has also informed PIAC that in some land lease communities long term residents have been asked to repeatedly sign short term occupation agreements (under the *Holiday Parks (Long-term Casual Occupation) Act 2002*). They are living on sites that are considered short term by their local council, despite these residents not meeting the definition of a short term casual occupant. Where cases have been taken to the NSW Civil and Administrative Tribunal (NCAT) they have been found to be 'long term' residents covered under the *Residential (Land Lease) Communities Act 2013* and the operators have been ordered to enter into written site agreements. TU is able to provide the names of mixed use RLLCs should it assist the AER in considering these circumstances.

PIAC urges the AER to pursue reforms ensuring that no long-term residents are included in deemed classes by ensuring all sites that could accommodate long term residents in registerable classes.

Recommendation 3

That the AER implement Option 1 - That is, close the ND2 deemed network exemption class and revise the activity class criteria for NR2 registrable network class. Any changes should ensure that no long term residents are able to reside in deemed classes by including all sites that could accommodate long term residents in registerable classes.

17. What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we require current deemed exemptions to be registered? How could any risks be mitigated?

PIAC do not consider there to be any material impacts resulting from a requirement to register exemptions. The risks listed in the consultation paper present no compelling reasons not to proceed with this option. We recommend the change be made and accompanied with education and a toolkit to assist with registration to minimise any inadvertent failure to register. This could be accompanied by an outreach program and a short amnesty period before enforcement action.

18. How should we measure the benefits to consumers of registration?

The aim of this Review should to ensure all consumers have a service 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. Registration is therefore a benefit in itself, in that it provides transparency of consumers circumstances and outcomes and facilitates action to enforce greater compliance with existing (and new) regulatory protections. Registration equalises differences in consumer oversight and provides a consistent basis upon which to improve the outcomes consumers are experiencing.

Option 2 - Revising NR2 registerable network exemption class criteria

19. What are the risks and implications for embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we revised the NR2 registrable network class exemption activity criteria to include prescribed customer benefits that must be met by NR2 registrable network class exemption holders? How could the risks be mitigated?

20. If we were to prescribe a list of specific embedded network customer benefits, what could be included?

PIAC does not support revising the registered exemption framework approach as proposed in Option 2. Simply adding additional requirements will make little difference to the currently 'largely automated' arrangement. With little ability to see or verify the accuracy of the submitted information, this option would do little to change the current culture in embedded networks and would simply be a slightly larger administrative task for prospective exempt sellers without changing actual outcomes for consumers.

Option 3 – AER assessment of all NR2 registerable network class exemptions

This option does not go far enough to reduce incentives to employ embedded network arrangements in residential apartments, or ensure that any future embedded networks in apartments are only allowedwhere they deliver material benefits of consumers.

However, if the AER does decide to implement Option 3, it should apply to all residential embedded network classes, including RLLCs and retirement villages.

21. What other regulatory approaches would enable the AER to ensure future embedded networks are beneficial to customers?

PIAC supports Option 4, as detailed below.

22. What are the risks to embedded network service providers, prospective exempt sellers, customers and other relevant third parties if we introduced a requirement to apply to the AER to register an NR2 network class exemption?

PIAC does not consider a requirement to register an exemption introduces any material risks to embedded network service providers or other parties. While an incremental improvement on the status quo, this option does not provide robust, consumer focussed reform required to improve outcomes and ensure that embedded networks are only employed where they provide genuine consumer benefits.

23. What are the implications of requiring embedded network service providers to demonstrate customer benefits before being permitted to register an NR2 network class exemption?

PIAC does not consider there to be any material implications to requiring prospective providers to demonstrate tangible consumer benefits before registering an exemption.

Option 4 – Close the NR2 registerable network exemption class to future registrations

PIAC supports all prospective embedded network service providers (who are currently eligible under the NR2 class) being required to submit an individual exemption. The default assumption should be that consumers are covered by authorised service providers. 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 in the interests of impacted consumers, and submit to oversight to ensure they deliver on the commitments inherent in that registration.

With clear guidelines for the types of expected consumer benefits, this approach is the simplest means of consistently ensuring future embedded networks were truly in the residents' interests. This option would also signal the requiredchange in the current culture. That is, it would ensure that the exempt selling guidelines would only applied in exceptional and worthy circumstances.

Although growth has been particularly high in the NR2 exemption class, as outlined in the Review paper, they have also increased significantly in RLLCs (class NR4) and retirement villages (class NR3)

The additional detriment experienced by people living in RLLCs has been well documented by advocates. People who live in RLLCs often have significant vulnerabilities both due to their individual circumstances as well as the insecurities and vulnerability inherrent in residing in a RLLC.

Similarly, people living in retirement villages have particular needs and vulnerabilities that warrant particular attention and more robust remedies. These particular considerations include:

- Their need for affordable, appropriate housing which provides access to supports and accessibility arrangements.
- Complex contracts that make it difficult to be aware there is an embedded network, even where this may technically be disclosed.
- Complex power relationships between operators and residents, where residents are dependent on operators, often with little alternatives available.
- Hiigh levels of dependence onrebates/concessions.
- The prospect ofexpensive exit fees and costs, which when combined with other difficulties of moving at an older age (such as mobility issues and the ability to find alternative suitable accommodation) makes moving extremely difficult.

Accordingly, supports wider application of 'Option 4' to cover all other residential embedded network types such as retirement villages and RLLCs.

24. What support is there to stop the expansion of residential embedded networks by closing the NR2 registrable network exemption class?

PIAC supports this option, and wider application of this option, as the best means of ensuring embedded networks are only employed where they enable actual, material benefits to residents.

25. What would be the impacts on customers, embedded network service providers, exempt sellers, embedded network managers, and other parties if we ceased granting exemptions for embedded networks with more than 10 residential customers? Please provide information to support your views.

PIAC does not consider there to be any actual detrimental impacts on consumers resulting from cessation of exemptions for embedded networks more than 10 residential customers. In answering this question, the AER should seek evidence of actual impacts, rather than hypotheticals. That is, demonstration that a residence or service would not be available or would be materially more expensive as a direct result of an inability to operate in an exempt arrangement. The AER should not accept 'hypotheticals' as considerations in response to this question. That is, assertions that a requirement to register would impact an operators business model and 'increase costs to consumers'. Impacts, like benefits, must be tangible and demonstrated to be considered.
Again, we urge the AER to consider ways to restrict the proliferation of all exempt categories where there has been demonstrated consumer harm, and the scope for the harm is a result of exemption from standard conditions, regulations and protections.

Recommendation 4

That the AER implement Option 4 - This involves closing the NR2 registerable network exemption class to future registrations, and ensure all residential exemption classes are covered by this approach, including long term residents currently included in deemed categories.

6. Potential options under the Retail Guide

Option 5 – Introduce mandatory compliance and performance reporting

26. What compliance breaches should exempt sellers be required to submit to the AER, if they on-sell to residential customers?

27. What performance reporting indicators would best support the AER to identify consumer trends and inform regulatory reform for embedded networks.

28. What would be the benefits, costs and risks to exempt sellers, and other stakeholders, if the AER were to impose compliance and/or performance reporting obligations on exempt sellers, who on-sell to residential customers?

29. Should we extend any compliance reporting obligations to exempt embedded network service providers, via the Network Guideline?

PIAC supports the introduction of mandatory compliance and performance reporting in all categories, regardless of the progress or direction of other reforms. compliance and performance reporting obligations is vital to address existing deficiencies, and would significantly improve the AER's (and other stakeholders) understanding of consumer outcomes. It would enable identification of problems and to provide an ongoing basis to develop suitable remedies. This would give the AER visibility of consumer outcomes as well as acting as a deterrent for non-compliance. It would also assist the AER to meet priority objectives of its *Towards Energy Equity*

strategy (specifically, Objective 1: Improve identification of vulnerability; Action 7: Improve outcomes for consumers in embedded networks; and Objective 3: Strengthen protections for consumers facing payment difficulty).

Data collection, performance monitoring and compliance reporting for any exempt sellers should be equivalent to that covering authorised sellers. While there may be some limitations for some exempt sellers, the default should be to seek equivalence, before considering the practicalities for operators.

Arguments that such requirements would impose unreasonable additional administrative cost on operators should not be accepted without robust evidence which demnstrates:

- The source of increased costs,
- the quantum of increased costs,
- demonstration that these costs would materially and unreasonably impact the business to the degree it would be unsustainable.

Additional costs are not in themselves a reason not to pursue reforms and the starting position should be that If an exempt seller can't afford to suppot consistent compliance reporting, they are not a suitable entity to provide an essential service.

PIAC supports the collection of data outlined in the Review paper and does not regard them as a significant obligation to require of operators making profit ffrom the provision of an essential service. PIAC further recommends collecting data on:

- Total number of child connections in the embedded network, as well as an estimate of the total number of people living in the embedded network.
- The number of consumers on 'on-market' and 'off-market' contracts and the number of consumers on 'energy only' contracts.
- Number of parent or gate meters supplied by the retailer.

EWON has documented examples of businesses adopting a structure allowing them to be classified as billing agents rather than specialist external providers.[15] Removal of the word 'generally' from 'We do not generally consider class exemptions are appropriate for service providers…' in the Retail Exempt Selling Guideline Version 6 provides some re-enforcement that exemptions are only for situations where selling energy is not the core business activity of the service provider. However, this, and other business models should be monitored by the AER so that action can be taken to ensure consumer protections are afforded. To accomplish this, PIAC recommends collecting data on:

- How many embedded networks (defined by number of parent connection points) are operated by the exempt entity and the total number of consumers they manage services for.
- The type of business structure being used.

It is important to understand the nature and impact of benefits consumers in embedded networks are accessing, and how this may compare to any consumer detriment or disadvantage that may

[15] EWON (n 8). Energy and Water Ombudsman NSW, *Embedded networks – it's time for change* (2021)

be experienced. This information is crucial to determining whether any 'trade-offs' on regulation are in the interests of the impacted consumers. To accomplish this the AER should collect data on:

- Whether there are renewable energy or other benefits for consumers in embedded networks/their nature/their impact on all effected consumers.

It is necessary to have greater visibility of the type of embedded network services provided, particularly where it may impact other consumer outcomes. The AER should collect data on:

- Whether there is unmetered supply.

PIAC is aware of bills being provided in embedded networks that are inadequate, missing standardised information and not in standardised forms. This is especially problematic in land lease communities (long-term caravan homes). Whilst this is a problem in itself, it can also prevent otherwise eligible people from accessing government supports such as Energy Accounts Payment Assistance.

Being required to provide an example of a bill will help ensure compliance with billing rules and allow the AER to be aware where non-conforming bills are being provided to consumers. The AER should seek to improve visibility by regularly collecting:

- An example of an actual bill being provided to consumers.

The AER is aware of exempt sellers not complying with the requirement to join their jurisdictional ombudsman scheme.[16] PIAC consider membership of ombudsman's schemes a non-negotiable protection and the AER has a crucial role in improving consistency of adherence to this requirement. The AER should collect data on:

- Whether they are members of their jurisdictional ombudsman scheme.

Given the greater relative disadvantage and vulnerability of many residents in embedded networks PIAC highlights the following key indicators for consumer protection, in addition to the factors listed in the Review paper:

- Price outcomes – This must involve assessment of the prices (and total bills) consumers are actually paying.
- Late payments and energy debt – This should cover the number of people in energy debt and the amount of debt they have and whether any energy debt has been sold to a third party debt collector.
- Duration of any payment plans in place over the period.
- Hardship support – This should cover the number of people in hardship support and how long these arrangements have been in place. The AER should consider options for registration of hardship and payment assistance policies of exempt sellers.

[16] For example, this issue was raised in AER, *Updating the network and Retail Exemption Guidelines Consultation paper* (2021), 36-37.

- The circumstances that lead to any disconnection; how long before the service was re-connected; and the number of repeat disconnections for the same consumer.
- Number of people who have accessed independent dispute resolution services.
- Whether their consumers have access to government assistance, including concessions and emergency supports where available.

Recommendation 5

That the AER urgently implement more robust and consistent monitoring and compliance reporting for exempt sellers. This should be equivalent to monitoring and compliance reporting for authorised sellers, but capable of accounting for the special circumstances of embedded networks, as detailed by PIAC in this submission.

PIAC also recommends the AER pursue opportunities to collect information about the number of people living in hot and chilled water embedded networks. These networks involve the sale of embodied energy and should be billed as such. The scale of this issue (and quantifying its impact) is hard to determine without reliable data. PIAC recommends data on hot and chilled water embedded networks include:

- Total number of consumers in the embedded network.
- The type of business structure being used.
- What embedded network services they provide.
- How many embedded networks are operated by the exempt entity and the total number of consumers they manage services for.
- Whether there are renewable energy or other benefits for consumers in the embedded network.
- An example of an actual bill being provided to consumers.
- Key indicators for consumer protection:
    - Price outcomes.
    - Late payments and debt – number of people in debt from their hot and/or chilled water service and the amount of debt they have; whether any debt has been sold to a third party debt collector.
    - Payment plans – number of people on payment plans and how long these arrangements have been in place.
    - Whether they provide any hardship support and if they do, what does this support include, the number of people in hardship support and how long these arrangements have been in place.
    - Disconnections and the circumstances that lead to the disconnection; how long before the service was re-connected; and the number of repeat disconnections for the same consumer.
    - Number of people who have accessed independent dispute resolution services.
    - Whether their consumers have access to independent dispute resolution services.

Recommendation 6

That the AER implement collection of data regarding hot and chilled embedded networks.

Option 6 - Introduce family violence protections

30. Should family violence obligations be extended to exempt sellers who on-sell to residential and small business customers?

31. What obligations would, and would not be feasible, to implement?

32. Could some obligations be tailored to the specific circumstances of an exempt selling scenario? How, and what support might enable sellers to meet their obligations effectively? What additional obligations should the core exemption conditions include?

The AER should seek to consistently apply family violence protections and obligations to exempt sellers. The AEMC found a case for implementing additional protections and supports for victim-survivors of family violence and the AER concurred with the importance of these protections in its *Interim guidance note: Family Violence Rule.* There is no reason that these protections and supports should not be extended to people in embedded networks,. Given that many of the current provisions use language such as 'take/n into account' and 'take reasonable steps', there is more than sufficient latitude in the regulatory framework, and applying it to all sellers would not present an unreasonable burden.

The family violence rule change can be reasonably effective for victim-survivors. However, effectiveness depends on victim survivors:

- recognising they are victim-survivors,
- knowing that there will be a benefit to them if they do disclose their situation, and
- that they are in a position to disclose their circumstance to the seller.

Given that situations can be more complicated in embedded networks than in standard supply arrangements - the exempt seller may be personally known to the victim-survivor (indeed the exempt seller may also be the perpetrator) and/or the exempt seller might also be their landlord - it will be important that the existence of family violence protections be made known to victim-survivors, such as by providing the policy at the time of moving in.

In addition, it will be vital that support services can work effectively with exempt sellers. For example, where family violence is disclosed to a government agency (such as Service NSW undertaking an Energy Accounts Payment Assistance) or community worker that, with the victim-survivor's consent, that exempt sellers take this as a referral and apply the required protections and supports to the victim-survivor's energy service.

Recommendation 7

That exempt sellers take referrals regarding family violence from government agencies and community workers and apply family violence protections to the victim-survivor's account.

PIAC sees no reason why all family violence obligations in Retail Rules should not be implemented, but makes the following observations regarding how some aspects of the rule could be modified to be suitable for implementation in smaller embedded networks:

- Whilst it is preferable that a family violence policy be developed by a provider so that they have 'buy-in', for a smaller provider, it may be more realistic for a model family violence policy developed by the AER. This would also enable it to be available in a variety of accessible formats.

- The AER could have a role in organising family violence training that exempt sellers could attend if they don't have capacity/expertise to organise their own training/achieve the skills requirements.

- The AER might need to provide some guidance or advice regarding locating appropriate external support services for some exempt sellers.

- If an exempt seller does not have a website or has a very simple website, required information could be available on an AER webpage and the link provided to residents as part of all correspondence (for example bills).

Recommendation 8

That the AER consider the provision of additional support to smaller exempt sellers to assist them to comply with the full range of family violence obligations as provided in the Retail Rules. This could include: providing a model family violence policy; organising family violence training; guidance locating appropriate external support services; and hosting required family violence information on their website.

7. Continued engagement

PIAC would welcome the opportunity to discuss these matters further with the AER and other stakeholders.