

24 February 2021

Manager
Embedded Networks Review
Energy Sector Reform
Department of Environment, Land Water and Planning (Vic)
PO Box 500
East Melbourne VIC 8002

By email: EmbeddedNetworks.Review@delwp.vic.gov.au

Dear Manager,

Re: Embedded Networks Review – Issues Paper

Thank you for the opportunity to comment on the Expert Panel’s Embedded Networks Review Issues Paper (**Issues Paper**).

The Energy and Water Ombudsman (Victoria) (**EWOV**) is an industry-based external dispute resolution scheme that helps Victorian energy or water customers by receiving, investigating and resolving complaints about their company. Under EWOV’s Charter, we resolve complaints on a ‘fair and reasonable’ basis and aim to reduce the occurrence of complaints.¹ We are guided by the principles in the Commonwealth Government’s Benchmarks for Industry-based Customer Dispute Resolution.² It is in this context that our comments are made.

EWOV gained jurisdiction of embedded networks on 1 July 2018, following amendments to the General Exemption Order (**GEO**). Since then, we have gained 495 embedded network scheme participants (**SPs**) covering 1,196 embedded network sites, enabling 138,028 embedded network customers to access our service. This represents 53% of all embedded networks currently registered with the Essential Services Commission (**ESC**).³ Of the sites registered with us, 672 (or 56%), are residential embedded networks

¹ See Clause 5.1 of EWOV’s Charter: https://www.ewov.com.au/uploads/main/ewov_charter.pdf

² See EWOV’s website: <https://www.ewov.com.au/about-us/our-principles>

³ **Note:** Determining our coverage of the embedded network customer base is not a straightforward exercise. The 53% quoted above refers to entities, (not sites) that are required to be members of EWOV. There are 936 individual entities on the ESC’s register that hold embedded network exemptions. Many of those entities hold more than one exemption (selling and/or supplying) over more than one site, but are only required to be a member of EWOV once. When they join, they must register all sites relevant to their membership with us. The ESC register has 979 individual entities, and we have 495 embedded network members (i.e. 53%).

(i.e. apartment blocks), while 250 are caravan parks and 99 are retirement villages. Only 164 are commercial sites, and 11 are residential commercial sites.

While embedded network cases remain a small proportion of our overall caseload, they have been increasing. In our first year of jurisdiction, embedded network cases represented 1% of our overall caseload - rising to 2% last financial year (which represented a 34% increase in embedded network cases, year on year).

To elaborate further, in the 2018/19 financial year we received 423 embedded network cases, but only 30% of them fell into our jurisdiction largely due to a lag in on-boarding embedded network members during our first year of coverage. By contrast, last financial year we received 565 embedded network cases of which 84% were in our jurisdiction - because the embedded networks in question were by then SPs.

The expansion of our embedded network jurisdiction has given us visibility of the issues and challenges that embedded network customers commonly face. In broad terms, billing complaints are the most common form of complaint we receive from embedded network customers. In the 2019/20 year, billing complaints accounted for 76% of all embedded network complaints and were dominated by billing errors (18%), high billing (17.5%) and billing tariff complaints (17.5%). Collectively, those three sub-issues accounted for 53% of all embedded network cases.

By contrast, credit matters accounted for only 8% of embedded network cases, and the highest sub-issue in that category was *Credit>Disconnection/Restriction*, which accounted for 4.4%. Of those, only nine cases involved an actual disconnection – while the other 13 concerned an imminent disconnection (where the customer has received a disconnection warning notice, but has not yet been disconnected).

Beyond those headline figures, we gained an understanding of the customer experience of embedded networks, particularly in relation to the residential apartment blocks that form the majority of our embedded network jurisdiction. On a very high level, the central challenge for customers in embedded networks is their practical inability to 'leave' the embedded network if they choose to do so, to engage with market offers in the broader retail energy market. Embedded network customers are essentially a captive market, and therefore represent a market distortion in a system designed to encourage retail competition. A lack of clear and effective customer information is another concern, as is a significant variance in the knowledge levels and professionalism of embedded network operators. The fragmented nature of the embedded network sector, (comprised as it is of a large number of small operators), makes it difficult to monitor and even more difficult to enforce regulatory compliance – particularly when the compliance framework itself is extremely limited.

For all of those reasons, EWOV welcomes the Embedded Network Review and we are pleased to provide our comments to the Issues Paper. We have responded to all Issues Paper questions below, indicating where any question lies beyond our scope or expertise.

Our further comments are set out below.

Issues Paper – Questions

Design process

1. What processes exist to ensure the interests of lot owners and tenants are considered at the start of, and throughout, the embedded network design cycle?

In our March 2019 report, *Coverage of Embedded Networks – Progress Update*, we identified that a lack of clear, early information for people buying into or leasing an apartment in an embedded network was a major concern.⁴ While those decision points lie well before our involvement with embedded network customers, the issue is material to us because it can lead to complaints.

Customers currently run the risk of finding themselves in an embedded network without clearly understanding the implications of their decision. Given the relatively limited consumer protections that apply to those customers, (and the current barriers that exist to prevent them from accessing market offers), this is an inequitable outcome that should be addressed. More should be done to ensure that all lot owners or tenants are fully apprised of the energy supply arrangements attached to their potential new dwelling before they make the decision to purchase or sign a lease. While currently required information under the GEO emphasises the right to choose to purchase from a licensed retailer, this should be tempered with the current practical realities of embedded networks – which are ‘captive’ markets, and will remain so without further reform. This would allow customers to make a decision based on market realities rather than a legally desirable ‘construct’, and could help to avoid complaints. Not only should this information be provided, but there should be a requirement for purchasers and lessees to proactively indicate that they have read and understood the information by providing their signature.

Of course, exempt sellers are currently subject to explicit informed consent (EIC) provisions of the GEO and the Energy Retail Code (ERC)⁵, but this has a rather limited effect when a person has only one realistic option to purchase their energy. While EIC provisions for embedded networks do provide customers with transparency concerning their energy contract, they do not ensure that customers are able to make their property purchase or leasing decision with full knowledge of the embedded network arrangement, before having committed themselves to it.

When we briefed stakeholders on our March 2019 report, we developed an Embedded Network Customer Journey Map (**Journey Map**) to inform our discussions. If it is of assistance to the Panel, please find a copy of the Journey Map at Attachment A to this submission.

⁴ EWOV, *Coverage of Embedded Networks – Progress Update*, (2019): 10. https://www.ewov.com.au/files/embedded-networks-paper_-_31.03.2020.pdf

⁵ *Energy Retail Code*, s3C.

2. Do you have any comments about the design process of an embedded network in other residential settings (e.g. caravan parks, retirement villages etc)?

A similar dynamic (as that described in our response to question 1 above), exists for customers entering a caravan park or a retirement village, and on that basis the same protections should be provided.

If anything, customers in those contexts are more likely to be in vulnerable circumstances, and have an even greater need to be clearly advised of the energy arrangement they are entering into. Further, it should also be required that those customers provide their full understanding and consent before signing a lease, or entering into any other contractual arrangement.

Microgrids

3. What do you consider to be an appropriate definition for a microgrid?

In our June 2020 report, [Charging Ahead – New Energy Technology and the Future of Energy Complaints in Victoria](#), we noted that the term ‘microgrid’ is poorly defined and often used to describe a variety of different arrangements.⁶ For the purposes of that report, we adopted the AEMO definition, which is very broad and defines a microgrid as:

“...a small-scale power system that consists of distributed generation sources that are linked to an intelligent communication and control system to supply power to distributed loads. They are usually operated autonomously to be part of the main electricity network or switched to be ‘islanded’ depending on their type and operation scenarios.”⁷

While it is beyond EWOV’s scope to provide a clear definition for microgrids where so many others have failed, it does seem that the capacity to ‘island’ could perhaps be regarded as a defining characteristic. While on-site generation must also be considered a defining characteristic, there is likely to be far more over-lap of that feature with embedded networks - both existing and in the future as solar uptake continues to increase.

A system that has both on-site generation and the ability to ‘island’, however, would seem to be clearly distinguishable from an embedded network - at least as they are currently understood.

4. What is the most effective way to offer an exemption for microgrids? How can the proposed exemption pathway for microgrids ensure the benefits of microgrids are passed onto customers?

Currently, EWOV is able to serve customers in distributor-led microgrids, but not those in third party microgrids because our jurisdiction is linked to SPs. To broaden our jurisdiction and ensure that all

⁶ EWOV, *Charging Ahead – New Energy Technology and the Future of Energy Complaints in Victoria*, (2020): 34. https://www.ewov.com.au/reports/charging_ahead/202006

⁷ AEMO (2018) cited in: Legislative Assembly Parliament of Western Australia, Economics and Industry Standing Committee, *Implications of a Distributed Energy Future: Interim Report* [report No. 5], (2019): 17. [https://www.parliament.wa.gov.au/parliament/commit.nsf/\(WebInquiries\)/B78DC78FC2007FAE482583D7002E3073?opendocument](https://www.parliament.wa.gov.au/parliament/commit.nsf/(WebInquiries)/B78DC78FC2007FAE482583D7002E3073?opendocument)

microgrid customers are able to access free dispute resolution services, it would be useful to include an exemption for microgrids in the GEO, requiring that exemption holders must belong to EWOV – just as embedded network exemption holders are required to. Of course, a range of other consumer protections should also be attached to the exemption, just as they currently are for embedded networks.

While microgrids may provide great benefits to customers and will generally be entered into mindfully and with a good understanding of the arrangement, it will also be necessary to consider whether microgrid consumers should have the ability to ‘opt-out’ if they choose to do so. Without that ability, creating a microgrid exemption would replicate the current issue that hinders embedded network customers – i.e. they would be a captive market, with no ability to access market offers. Of course, for very isolated microgrids in remote, regional locations this may not be possible – but for microgrids that are located adjacent to the broader grid, the customer’s ability to ‘opt-out’ should be a consideration when devising the exemption.

Consumer protections

5. What is the most appropriate approach to expand the obligations on an exempt person to improve consumer protections for embedded network customers?

As a matter of principle, all energy customers should have the same protections regardless of the arrangement by which they purchase their energy. Not only is this equitable, it also makes the energy sector easier to regulate and energy related disputes simpler to resolve. The ‘two-tier’ model of consumer protection that currently exists in the Victorian energy market, (whereby customers in embedded networks have less protections than customers in more traditional energy arrangements), is difficult to defend. The Australian Energy Market Commission (**AEMC**) has identified this in other parts of the NEM and has proposed that consumer protections should be driven by the needs of customers and not the business models of suppliers.⁸

Whether this is achieved by mirroring the retail licence requirements in the obligations attached to exemptions under the GEO, or whether consideration is given to requiring embedded network operators to hold a new form of licence (as the AEMC have proposed), makes little practical difference from the customer standpoint.

6. What are the most important protections to extend to embedded network customers?

It is difficult to separate out which protections are more important than others, but given the potential for customers in caravan parks and retirement villages to experience financial difficulty, applying the full

⁸ AEMC, *Updating the Regulatory Frameworks for Embedded Networks – Final Report* (2019): i, para 4.

[https://www.aemc.gov.au/sites/default/files/2019-](https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF)

[06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF](https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF)

suite of entitlements under the Payment Difficulty Framework (PDF) to embedded network customers should be a high priority.

These protections include an entitlement to practical assistance⁹ and for arrears to be put on hold for six months¹⁰ (for those customers that are sufficiently in arrears, and unable to afford their ongoing energy use). Wrongful disconnection payments are another very important protection that should be extended to embedded network customers. Even if the awardable amounts are not the same as those applicable to licensed retailers, such payments serve as a strong disincentive to unwarranted disconnections. It is worth noting that the wrongful disconnection regime for licensed retailers will soon be strengthened by the addition of a new criminal offence attracting significant penalties, as part of the Victorian Government's Energy Fairness Plan.¹¹

In terms of other protections, embedded network operators are not currently required to take family violence circumstances into account when progressing a disconnection for non-payment,¹² and clearly this must be rectified. As the Issues Paper notes, embedded network operators also have lesser obligations in relation to life support arrangements, (although they do generally discharge this through the requirement to notify the electricity retailer when they are advised of a life support customer).¹³

Measures designed to foster a sustainable, ongoing, affordable energy supply for customers in vulnerable circumstances should always be regarded as a priority. These are the areas where a failure to apply appropriate protections can cause the greatest harm, and lead to the worst consumer outcomes.

7. How can access to concessions and rebates for embedded network customers be improved?

We reported in 2019 that, anecdotally, embedded network customers are not always aware (or made aware) of available concessions.¹⁴ This situation has not changed, and should also include non-mains utility relief grant scheme (**NURGS**) payments. As the Issues Paper highlights, even if they are aware of available concessions, embedded network customers are restricted to the non-mains energy concession - which is received as a rebate only after they have paid their energy bills for the year. This can represent a major challenge for low-income customers. Having access to the low-income concession that applies for mainstream energy consumers (17.5% off every bill) would be preferable.

⁹ *Energy Retail Code*, s79 (1)(e)

¹⁰ *Ibid*, s79(1)(f)

¹¹ Premier of Victoria, *Creating Jobs and Driving Down Energy Prices – Media Release*, (2019): <https://www.premier.vic.gov.au/creating-jobs-and-driving-down-energy-prices/>

¹² *Ibid*, ss111(6) & 111A(2)

¹³ *Ibid*, s132(1)(d)

¹⁴ EWOV, *Coverage of Embedded Networks – Progress Update*, (2019): 10. https://www.ewov.com.au/files/embedded-networks-paper_-_31.03.2020.pdf

More recently, we have also been made aware that embedded network customers who would otherwise be eligible for the \$250 Power Saving Bonus¹⁵ cannot access it because applying for the payment requires a National Meter Identifier (NMI) number, (which child meters in embedded networks do not have). This is an arbitrary and inequitable outcome, and undermines the State Government's intent to financially support customers in vulnerable circumstances during the COVID-19 pandemic.

To address these issues, a suitable mechanism should be devised to ensure that embedded network customers receive the same concessions and support payments as other customers. Once again, it is difficult to justify why a 'two-tier' system should exist entitling vulnerable customers to lesser or greater degrees of support, depending on whether they happen to live in an embedded network or not. The simplest way to achieve this would be to align exemption holder obligations with those applied to licence holders, and also to issue NMI's to child meters to enable equitable administration of initiatives such as the Power Saving Bonus.

Dispute resolution

8. Are there any barriers embedded network customers face in bringing a complaint to EWOV? If so, what are they?

In order for an embedded network customer to bring a complaint to us, their embedded network operator must have first registered with the ESC and then joined our scheme (which is a requirement of holding their exemption(s), under the GEO).

Exemptions are split into distribution (supply) exemptions, and retail (selling) exemptions, so both exemption holders for a site must join our scheme before we can consider all aspects of a potential complaint from a customer at that site. Further, where an exempt person has appointed a billing agent to act on their behalf in managing an embedded network, we require the exempt person to execute a Deed of Appointment to enable that agent to act in their shoes for the purpose of fulfilling their obligations to us as a member. This process contributed significantly to the administrative lag we experienced when on-boarding embedded networks, not least because levels of understanding of regulatory obligations varied significantly amongst exempt persons, requiring us to 'shepherd' many of them through the joining process - often involving multiple contacts. The lack of a compliance and enforcement framework attached to the GEO (by which exemption holders may have been more swiftly compelled to join our service), did not help our cause.

In our first year of jurisdiction, we received a high proportion of embedded network cases outside of our jurisdiction, because the exempt person(s) in question had not yet joined our scheme. In 2018/19, these matters represented 70% of our embedded network cases. By 2019/20, the proportion had fallen to

¹⁵ Premier of Victoria, *Cutting the Cost of Energy Bills for Struggling Victorians – Media Release*, (2 February 2021). <https://www.premier.vic.gov.au/cutting-cost-energy-bills-struggling-victorians>

16%. By that stage, the challenges we faced in on-boarding the embedded network sector had been largely overcome. The challenges we faced in on-boarding the embedded network jurisdiction are described in more detail in our 2019 report, *Coverage of Embedded Networks – Progress Update*.

Even with this improvement non-SP embedded network operators continue to comprise a significant proportion of our out of jurisdiction cases. In 2019/20, they accounted for 15% of all such cases. This made it the third most common reason for a case to be cited as out of jurisdiction that year, (after 'Other' with 16% and 'Solar - installation' with 33%). While we have greatly improved our coverage and over 130,000 embedded network customers now have access to our services, (remembering that prior to 1 July 2018, none did), the failure of some embedded network operators to join our scheme remains a significant barrier to accessing external dispute resolution services for some customers.

It should also be noted we do still occasionally receive a complaint from a customer in an embedded network that has not yet registered with the ESC, let alone joined our scheme (noting that the deemed exemption category is now quite narrow, so only a small minority of networks are required to join us without registering with the ESC).¹⁶ In these instances, customers may face a lengthy wait before we are able to handle their complaint. Although we endeavour to re-contact those customers once their embedded network has joined our service, it is not unknown for the customer to have moved on in the interim and be living at an entirely new address.

Other barriers to access include behavioural factors that may not be immediately obvious, but nonetheless inhibit customers from using our service. In a caravan park, for example, the embedded network operator is often also effectively the landlord for a long-term resident. Such customers can be loath to make an energy complaint as they fear to damage the landlord/tenant relationship, and we have heard from customers who feared they might be evicted from their accommodation due to unpaid energy bills. In those circumstances, some customers have wished to make anonymous complaints, which we cannot progress. We have also had customers express a view that they weren't sure if they'd be able to make a complaint with us, because they had previously been unable to do so (before their embedded network operator had joined our service). It is possible that others have also made that assumption, and not accessed our service on occasions when they could have.

One anomaly that does arise in embedded network cases is the potential for a customer to effectively lodge a complaint against themselves. If a customer owns an apartment in an apartment block and is in the owner's corporation, and if the owner's corporation holds the retail exemption,¹⁷ then if that

¹⁶ The deemed exemption category includes embedded networks with fewer than ten customers; temporary networks on building sites; and electricity sales to a related company (i.e. from a parent company to a subsidiary) – amongst other examples. More information on deemed exemptions can be found on the ESC website, here:

<https://www.esc.vic.gov.au/electricity-and-gas/electricity-and-gas-licences-and-exemptions/electricity-licensing-exemptions#toc-deemed-exemption>

¹⁷ Around 25% of exemptions held by owner's corporations are retail exemptions.

person makes a complaint, they are not only the customer – but are also partly liable for the complaint handling fees that ultimately flow back to the owner’s corporation.

Finally, one major barrier to customers accessing our services is a lack of effective customer information. Unless we are visible to the customer and they understand the benefits of contacting us, then they are unlikely to access our services. This is an issue for customers across the entire energy market - not just embedded networks - but it is exacerbated in some embedded networks because of their small size and the fact that they are operated by entities for whom energy provision is not their core business. In those circumstances, levels of industry knowledge and professionalism can vary widely, and it is difficult to ensure that customers are being appropriately advised of all of their rights and responsibilities, including the ability to contact us in the event of a dispute.

9. Should microgrid operators in embedded networks be required to be members of EWOV?

Yes.

As discussed in our response to question 4 above, microgrid customers should have access to EWOV services, and while those who are in distributor-led microgrids already do, those in existing (and future) third party microgrids currently do not, and will not, without targeted reform.

Microgrids are in their infancy in Victoria, but to accommodate future potential growth an exemption should be created in the GEO (or a similar classification in any alternative regulatory instrument replacing the GEO), requiring microgrid operators to be members of EWOV – along with providing other consumer protections. This would place microgrid customers on an even footing with other energy consumers and avoid the risk of a two-tier, or even a cascading multi-tier Victorian energy system (in consumer protection terms).

Accessing retail competition

10. What are the approaches to pricing, now that the VDO has been implemented? Are there specific examples of prices less than the VDO being offered to customers?

Pricing and tariff setting issues lie beyond the scope of EWOV’s operations, so we are unable to participate in this discussion other than to make broad observations from our own data.

It is notable that since 1 September 2020, (when the VDO was implemented in embedded networks), high billing complaints have reduced slightly as a proportion of our embedded network customer cases (from approximately 16-17%, to 13-14%). At the same time, even at that reduced proportion, the high billing sub-issue remains our most prominent complaint sub-issue for the embedded network sector (as it does for our complaints overall).

11. What are the main practical barriers to customers in embedded networks accessing retail market competition? How can these barriers be removed? Are there any issues specific to customers in long-term caravan parks and other residential embedded network settings?

The inability of embedded network customers to access retail market offers is a longstanding issue, and represents a distortion in a market designed to encourage retail competition. It is generally understood that the two key barriers to market access for embedded network customers are:

1. Child meters do not have NMIs, and even if they do obtain one;
2. Retailers do not generally offer usage only plans, so even an 'NMI enabled' embedded network customer can find themselves unable to sign on with a new retailer.

To illustrate these points, we have reproduced a case study below, taken from our 2019 report *Coverage of Embedded Networks – Progress Update*.

'Terry'* lives in an apartment block in the inner-southern suburbs of Melbourne. He contacted EWOV in early August 2018, dissatisfied with his energy provider. Terry wanted to switch to an alternative energy retailer but was having difficulty doing so because he did not have an NMI number.

From the description of his circumstances, EWOV ascertained that Terry was in an embedded network – but Terry could not provide the name of his embedded network operator. We were unable to determine our coverage in our first contact with Terry. Upon further investigation, we determined that Terry's embedded network operator had joined our service and were able to assist him.

We progressed Terry's case through the Assisted Referral stage, eventually upgrading it to a Stage 2 Investigated Complaint.

Following significant correspondence with Terry's embedded network provider, they allocated an NMI number to Terry in early October 2018 – approximately two months after he first contacted us.

In closing Terry's case we advised Terry that now he had an NMI he should be able to transfer to another retailer on a 'usage only' plan – but that some retailers were still adapting to the accommodation of such transfers, and he may encounter difficulties.

In mid-October, Terry contacted us with a further complaint, advising that he wished to switch to a retailer but the new retailer would not accommodate him. Terry advised that this was not the first retailer he had tried to switch to since acquiring his NMI, and in each case he had been refused.

We provided Terry with an Assisted Referral for his second complaint, and found that the retailer he wished to switch to did not offer a 'usage only' plan and therefore the retailer's system could not accommodate him. This was frustrating for Terry, as from his point of view he was being told he could not switch because his NMI number started with a 7, and not a 6 - an arbitrary and unsatisfying reason from his point of view.

In closing this second case, we advised Terry that the retailer he wished to transfer to was unable to accommodate him, and we were unable to compel them to do so.

We also advised that retailers are not required to make offers to embedded network customers, and that we were aware of other embedded network customers who wish to switch but have been unable to do so.

* - name changed for de-identification purposes.

Not all current child meters are capable having an NMI allocated to them, and in those circumstances, there is a question of where the cost of installing an NMI compliant meter should lie. Beyond resolving that issue, it is clear that the simplest way to provide embedded network customers with access to the broader retail market is to allocate an NMI to their child meter. Further, it will be necessary to ensure they have access to usage only energy plans. In terms of who should bear the cost of installing new meters, and how usage only plans should be provided, those issues lie beyond the scope of EWOV's operations, so we are unable to contribute to that discussion.

In relation to caravan parks and other residential settings, the same fundamental dynamics apply – although there is a higher likelihood that new meters will be required for customers to be allocated an NMI. In caravan parks in particular we have seen an extremely wide range of meters, from smart meters to meters requiring 20c coins to operate.

12. What would be the best way to ensure embedded network customers can access competitive price outcomes?

As described in our response to question 11 above, the simplest way to ensure customers have access to competitive prices (and by doing so, help to drive price competition), is to allocate NMIs to all child meters within embedded networks. While further reform to address the lack of usage only energy plans would also be required, allocating a NMI would at least create the digital infrastructure needed for consumers to access on market plans, when they are available.

In relation to energy retailers to providing usage only plans, pricing and tariff setting issues lie beyond the scope of EWOV's operations, so we are unable to contribute to that discussion.

Consumer information

13. Are information disclosure requirements to prospective owners and occupants adequate (regarding the existence of an embedded network, ownership structure of embedded network infrastructure and assets, and the contractual arrangements with third-party service providers and/or agents)? If not, how can they be improved?

As outlined in our response to question 1 above, it is important that occupants of embedded networks are fully apprised of the energy arrangements for their property before they purchase an apartment or sign a lease agreement. In that earlier response, we also outlined a process by which prospective

owners and occupants should be required to acknowledge that they have read and understood the information, and provide a signature to that effect.

Without repeating that earlier response any further, we only add that the information should be clear and accessible, and regulations should be realistic about the complexity of information that some consumers will be able to comprehend. To that end, the lived experience and consumer impact of the embedded network should be strongly emphasised, and should not be buried by excessive and (from the consumer's perspective), arcane technical and legal detail regarding the embedded network operation and ownership structure. While it is important that those elements are communicated, significant thought should be given to ensuring the information is highly accessible.

14. For other residential embedded network settings (i.e. retirement villages, social housing, caravan parks), are there any other factors which need to be considered?

Please see our response to question 8 above, where we note that in these settings levels of knowledge and professionalism can vary widely amongst embedded network operators and can sometimes be very low. This makes it difficult to ensure that customers receive appropriate customer service, including the provision of necessary information.

To combat this, targeted education campaigns should be undertaken to upskill embedded network operators in retirement villages, social housing and caravan parks. Ideally, this would be supported by monitoring, compliance and enforcement activity by the ESC, which should be facilitated by appropriate reform. Undertaking this compliance and enforcement work will be more viable when further growth of residential embedded networks has been 'ring-fenced' by the proposed ban, allowing the ESC to focus on existing embedded networks (rather than ensuring all new embedded networks are properly registered).

15. How can we ensure transparency of pricing information for embedded network customers (including common area electricity lighting costs, the gas used to produce hot water and unmetered gas for stove tops)?

The simplest way to ensure transparency of pricing information is to require each cost be itemised on the customer's bill. This could be implemented through billing requirements applicable to embedded networks.

Implications of a ban on embedded networks

16. How are any financial benefits of embedded networks shared between the developer, the third-party service provider and the customer in practice?

This question lies beyond the scope of EWOV's operation, so we are unable to provide a response to this part of the Issues Paper.

17. Should the legislative framework be strengthened to ensure greater transparency of network and first-time connection fees?

This question lies beyond the scope of EWOV's operation, so we are unable to provide a response to this part of the Issues Paper.

18. Is there a risk that other services, such as bulk hot water and unmetered gas cooktops will no longer be installed in an apartment building if there is no embedded electricity network? Is this a concern? How might the risk be mitigated?

This question lies beyond the scope of EWOV's operation, so we are unable to provide a response to this part of the Issues Paper.

19. From an embedded network customer perspective, what are the issues regarding the bundling of services?

This question lies beyond the scope of EWOV's operation, so we are unable to provide a response to this part of the Issues Paper.

Compliance and enforcement

20. What compliance and enforcement functions should the ESC have to ensure more effective compliance and regulatory oversight of embedded networks? If not, why not?

As noted in our 2019 report, *Coverage of Embedded Networks – Progress Update*, when DEWLP revised the GEO in 2017 they consciously omitted a compliance and enforcement regime, stating:

“...the Department’s final approach will be to progress a compliance and enforcement regime once more information is discovered about the scale and scope of embedded networks within Victoria. Although most consumer advocacy groups viewed this approach as overly cautious, the Department considers that further information is required to determine the appropriate compliance and enforcement regime that should apply to the exemptions regime. This position will be reviewed following establishment of the public registration and enhanced consumer protections framework for the GEO.”

They further stated:

“In the meantime, the Department will work with the ESC to investigate what alternative enforcement measures may be utilised by the ESC to enhance consumer protections. This may include, for example, the ESC consulting with EWOV and the Department to develop a compliance framework to be applied to exempt entities where compliance issues with the GEO framework arise. The government will consult with relevant stakeholders as it develops this framework further.”

Since that time, we have experienced difficulty on-boarding some embedded networks into our service, partly because there is no compliance and enforcement regime to compel them to do so. A refusal to pay membership or complaint handling fees, (or agree with other regulatory conditions necessary to membership), can leave businesses exposed to removal from our scheme - and thus to breaching the

GEO. The ESC currently has limited options available to remedy this situation, and this leaves customers unable to access our services while their embedded network is not a member.

Beyond our own particular issue, it is now clear from what we have learned of embedded networks that standards of regulatory understanding and professionalism vary widely between embedded network operators and can sometimes be very low. This can result in poor consumer outcomes, and underlines the need for an effective compliance and enforcement regime to empower the ESC to compel embedded network operators to comply with their regulatory obligations. This could be achieved by applying adequate penalties, but the penalty regime itself should be devised carefully - with the varied resources of different embedded networks in mind.

21. Should the enforcement and consequences of non-compliance differ for exempt persons and licensed retailers? If so, how and why? If not, why not?

It would be inappropriate to apply the existing penalty regime for licensed retailers to embedded networks, as the business models and relative size of those entities are very different.

To arrive at an appropriate and effective compliance and enforcement regime for embedded networks, the varied and fragmented nature of the sector will need to be taken into account. In all likelihood, penalties will need to be scalable depending on the size and nature of the business. In each case, the overriding concern should be whether the applicable penalty will be sufficient to prompt the desired compliance, and serve as a signal in the market to prompt compliance from other, similar operators. If the penalties are not sufficient, they will not generate the desired consumer protection.

It is not necessary for embedded network operators to be penalised as if they are licensed retailers – it is only necessary for them to be penalised to the extent necessary to prompt their own regulatory compliance. On that note, another factor that will need to be considered is the prevalence of billing agents in the embedded network sector. This creates a complication for any new compliance regime, as applicable penalties will naturally fall to exemption holders – while the non-compliant conduct itself will in many cases have been committed by a billing agent.

Transitional arrangements

22. What factors need to be considered when developing a transition strategy for the proposed ban on embedded networks in new residential apartment buildings?

The Issues Paper itself correctly identifies many of the factors that need to be considered in developing a transition strategy for the proposed reforms. We support the broad principle that the reforms should be phased in, acknowledging that the implementation phase can involve significant administrative lags (our own challenges in on-boarding the embedded network jurisdiction is a good example), and these should be taken into account when possible. Providing an appropriate lead time is also very important, the lack of which was also central to the challenges we faced in on-boarding embedded networks.

Arriving at an appropriate implementation timetable will obviously depend on the recommendations that the Panel ultimately makes, and the extent to which they are fully adopted by the Government.

In that sense, it is perhaps too early to provide any further thoughts on a transition strategy – other than to say it should be guided by genuine industry consultation.

Supplementary issues

23. What would be the most effective solution to ensure customers in embedded networks continue to receive electricity, even if their network operator is no longer able to supply electricity?

EWOV has raised the need for a Retailer of Last Resort (**RoLR**) process for embedded networks with the ESC on a number of occasions, and the issue remains unresolved.

It is disappointing that the Review will not make specific recommendations in this area. While a solution will obviously require thorough consultation, one approach would be to extend the RoLR process that currently applies to licensed retailers, to include embedded networks. The existing RoLR scheme allocates retailers of last resort by distribution area. Of course, significant practical difficulties arise when this option (or any other) is considered. Allocating a NMI to child meters would help to resolve most of those challenges.

24. What aspects of the AEMC's proposal, if any, should apply in Victoria? Why? Why not?

The AEMC has clearly expressed a view that “consumer protections should be driven by the needs of consumers and not the business models of suppliers”¹⁸. To that end, they have proposed to elevate new embedded electricity networks into the national regulatory regime under the National Electricity Law (**NEL**), National Energy Retail Law (**NERL**), National Electricity Rules (**NER**) and National Energy Retail Rules (**NERR**). This approach is at odds with that taken by the ESC in 2018 when making their [Energy Retail Code Review \(obligations for exempt sellers\) - Final Decision](#) (**Final Decision**).

In their Final Decision, the ESC were mindful not to over burden businesses that were being made newly subject to the *Energy Retail Code* after a long period of unregulated operation, so they chose to apply consumer protections selectively. While the consumer protection regime for embedded networks is strong, it is not as strong as that applying to customers of licensed retailers – and does create a ‘two-tier’ system. Now that Victorian embedded network operators have had time to adjust to their new obligations (including the requirement to join EWOV), there is a strong argument to revisit consumer protections in this sector, and to adopt the AEMC approach when doing so. Put another way, it is increasingly difficult to justify why customers in embedded networks should have less consumer

¹⁸ AEMC, *Updating the Regulatory Frameworks for Embedded Networks – Final Report* (2019): i, para 4.

[https://www.aemc.gov.au/sites/default/files/2019-](https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF)

[06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF](https://www.aemc.gov.au/sites/default/files/2019-06/Updating%20the%20regulatory%20frameworks%20for%20embedded%20networks%20-%20FINAL%20REPORT.PDF).

protections than those who happen to purchase their electricity from a licenced retailer. This is particularly so when one considers:

- the vulnerable demographics of customers in embedded networks (particularly retirement villages and caravan parks);
- the size of the embedded network sector and the number of customers it serves (which is much larger than commonly believed when the GEO was revised); and
- the fact that many embedded network customers do not enter the arrangement with their “eyes open”, but instead find that they are in an embedded network when it is already too late to leave.

The AEMC approach recognises that the embedded network sector has essentially out-grown the NEM exemption regime, citing significant recent growth:

Across the NEM, the number of residential network exemption registrations increased from around 500 in 2014 to around 2,500 in 2018. In total, there are currently almost 4,500 embedded electricity networks that have been registered as being exempt from registering as a Network Service Provider.¹⁹

Without reform, this growth renders an untenably high number of customers subject to a second tier consumer protection framework. As a result, the AEMC has proposed a new framework for embedded networks that will significantly reduce the number of parties eligible for exemptions, by creating two new categories instead.

Those categories are:

- embedded network service providers (ENSPs), which will be required to register with AEMO; and
- off-market retailers, which will be required to obtain an authorisation from the AER, and will be subject to largely the same requirements as existing licensed retailers.²⁰

Whether the ESC chooses to create a framework similar to the AEMC or to retain the current exemption framework under the GEO, the guiding principle of equal consumer protections for energy consumers in all circumstances is sound, and worth pursuing.

25. Are there any other matters that you wish to bring to the attention of the Review? Do you have any other comments?

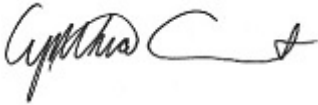
No, the Issues Paper has canvassed all matters of concern to us in relation to embedded networks.

¹⁹ Ibid, ii.

²⁰ Ibid, 10.

We trust these comments are useful. Should you like any further information or have any queries, please contact Zac Gillam, Senior Policy and Stakeholder Engagement Officer, on (03) 8672 4285.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)

ATTACHMENTS:

- ***A – Embedded Network Customer Journey Map***