

14 March 2019

Ms Anne Pearson  
Chief Executive  
Australian Energy Market Commission  
PO Box A2449  
Sydney South NSW 1235

**Lodged Online:** <https://www.aemc.gov.au/contact-us/lodge-submission>

Dear Ms Pearson

**SUBMISSION ON UPDATING THE REGULATORY FRAMEWORKS FOR EMBEDDED NETWORKS DRAFT REPORT, JANUARY 2019  
REFERENCE: EMO0036**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of holiday parks, residential land lease communities (residential parks, including caravan parks and manufactured home estates), manufacturers and retailers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons) and camping equipment and manufacturers of relocatable homes.

We currently have as members over 720 businesses representing all aspects of the caravan and camping industry. 456 of these members are holiday park and residential land lease community operators in various areas of New South Wales (NSW).

The geographical breakdown of these businesses is as follows:

Region	Number of Businesses
Far North Coast & Tweed	52
North Coast	70
New England	16
Manning/Forster	24
Newcastle, Hunter & Port Stephens	56
Central Coast	33
Sydney & Surrounds	24
Leisure Coast	48
South Coast	65
Central NSW	23
Murray & Riverina	27
Canberra & Snowy Mountains	13
Western NSW	4
Interstate	1

A 2012 survey of members operating residential land lease communities within NSW revealed that in approximately 60% of surveyed cases, electricity is supplied to residents by the community operator via an embedded network (park supply). However, in 22% of

surveyed cases electricity is supplied to residents by the operator AND the electricity supplier, resulting in a ‘mixed supply’ via what could be termed a ‘partial’ embedded network.

This survey did not take into account the supply of electricity via embedded networks in holiday parks, however the Australian Energy Market Commission (AEMC) is aware that there are holiday parks where embedded networks are established and in operation.

Under the Australian Energy Regulator’s (AER) *Electricity Network Service Provider Registration Exemption Guideline Version 6 March 2018* (Network Guideline) and *(Retail) Exempt Selling Guideline Version 5 March 2018* (Retail Guideline) our holiday park and residential land lease community members are classified as follows:

Embedded Network Type	AER Exemption Classes
Persons supplying/selling energy to occupants of holiday accommodation on a short-term basis.	<p>Class <b>D3</b> of the Retail Guideline and Class <b>ND3</b> of the Network Guideline.</p> <p>Do not need to register their details with the AER, however are required to comply with Conditions attached to their exemption.</p>
Persons supplying/selling energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (i.e. long-term residents).	<p>Class <b>R4</b> of the Retail Guideline and Class <b>NR4</b> of the Network Guideline.</p> <p>Must register their details with the AER and comply with Conditions attached to their exemption.</p>
Persons supplying/selling energy to occupants of holiday accommodation on a short-term basis as <b>well as</b> residents who principally reside in the caravan/holiday park (mixed park)	<p>Class <b>R4</b> of the Retail Guideline and Class <b>NR4</b> of the Network Guideline.</p> <p>Even if a caravan park has only 1 resident who principally resides there, they are required to register their details with the AER under Class <b>R4</b> of the Retail Guideline and Class <b>NR4</b> of the Network Guideline, even though the majority of their customers are occupants of holiday accommodation on a short-term basis.</p> <p>Must also comply with Conditions attached to their exemption.</p>

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, CCIA NSW is an important stakeholder in relation to the AEMC’s *Updating the Regulatory Frameworks for Embedded Networks Draft Report, January 2019* (Draft Report). Accordingly, we welcome the opportunity to comment on the proposed package of law and rules changes.

For the purpose of these submissions, wherever we refer to “holiday parks” we are referring to caravan parks that supply/sell energy via an embedded network to occupants of holiday accommodation on a short-term basis only (i.e. there are no residents that permanently reside in these caravan parks).

Wherever we refer to “residential land lease communities” we are referring to residential parks, including caravan parks and manufactured home estates, that supply/sell energy via

an embedded network to residents who principally reside there. This includes caravan parks that supply energy to as little as one or two residents right through to residential land lease communities that are exclusively residential.

## Holiday Parks and Residential Land Lease Communities in NSW

While there has been growth in the embedded network sector in recent times, with landlords looking to energy on-selling as a means of supplementing their rental income, there is no rapidly increasing development of holiday parks and residential land lease communities in NSW with embedded electricity networks. They are what the Draft Report describes as “‘traditional’ embedded networks”<sup>1</sup> and the number of holiday parks and residential land lease communities in NSW has remained fairly static for a number of years.

Most holiday parks and residential land lease communities are older developments that have evolved over time and the embedded electricity networks within them have come about through circumstance. In most cases, there was no conscious business decision to create an embedded electricity network to sell energy as a core component of business revenue.

Many caravan parks were originally camping grounds on reserves of Crown land in coastal areas outside the capital cities, squatted by people who had lost their homes and who had no housing alternative to living in tents, shacks and vans. The reserves were converted to caravan parks after the Second World War and maintained by local councils, although most parks had little in the way of communal facilities.<sup>2</sup>

In 1986 legislation was passed which legalised long-term occupancy of sites and set minimum standards for caravan park residency and in 1992 *State Environmental Planning Policy (SEPP) 21 – Caravan Parks* was introduced, encouraging “the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short term residents (such as tourists) or for long-term residents, or catering for both.”<sup>3</sup>

The *Residential Tenancies Act 1987* originally covered permanent residents of residential parks. However, it later became clear that there were so many differences between tenancies in parks and other residential tenancies that separate legislative provisions were necessary.

As a result, the *Residential Parks Act* was enacted in 1998, and a range of protections were secured for residents, including protections for energy consumption. These protections then carried over into the *Residential (Land Lease) Communities Act 2013* and the *Residential (Land Lease) Communities Regulation 2015*.

Although corporate ownership is increasing, the majority of holiday parks and residential land lease communities are in private ownership and are operated as separate legal entities. They are small to medium businesses where the supply of energy via an embedded electricity network is ancillary to their core functions.

Occupants of holiday accommodation in holiday parks are either tourists or occupants that leave their RVs in the park for occasional recreational use during the year under the terms of an ‘occupation agreement’.<sup>4</sup>

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<sup>1</sup> Australian Energy Market Commission, *Updating the Regulatory Frameworks for Embedded Networks Draft Report*, 31 January 2019, p ii.

<sup>2</sup> NSW Parliament e-brief, *Caravan Parks*, August 2011, p 2

<sup>3</sup> Section 3 (1) (a) *State Environment Planning Policy No 21 – Caravan Parks*

<sup>4</sup> Section 3 *Holiday Parks (Long-term Casual Occupation) Act 2002*

An occupant of residential accommodation in a residential land lease community can be:

- a tenant who leases a dwelling and a site from the community operator under a residential tenancy agreement,<sup>5</sup> or
- a Home Owner, a person who owns their dwelling but leases the site on which the dwelling sits from the community operator under a site agreement.<sup>6</sup>

The operators of residential land lease communities know their residents well and, in many cases, managers live on site. They are not large, faceless landlords who try and avoid their obligations to properly manage an embedded electricity network or unreasonably profit from customers. They are communities providing important affordable accommodation, highly regulated by federal and state legislation and it is in their interest to provide quality offerings. They want to respond to market demand and create desirable places for people to live.

There is also a mixture of embedded electricity networks in this sector, which causes difficulties under a framework that is attempting to collectively regulate all types of embedded networks. In some caravan parks, there could be as little as one or two permanent residents. Nevertheless, an operator of a 'mixed-park' is required to register their details with the AER and comply with conditions attached to their 'registrable' exemptions under activity classes R4 and NR4 (as opposed to activity classes D3 and ND3), even though the vast majority of customers in the embedded network are occupants of holiday accommodation on a short-term basis.

Further, as indicated by our 2012 survey of members, in 22% of surveyed cases electricity is supplied to permanent residents by the embedded electricity network operator AND the electricity supplier, resulting in a 'mixed supply' via what could be termed a 'partial' embedded network.

We understand the AEMC's position that the proposed regulatory framework for embedded networks should be determined based on the needs of customers, rather than the business models of suppliers. However, in situations involving tenancy arrangements these matters are not always easy to separate. Embedded networks that are run by small to medium enterprises have fewer resources to understand and implement compliance with complex regulatory systems and less ability to absorb compliance costs. Compliance costs for any business will almost always flow through to its customers.

As 'traditional' embedded networks, NSW holiday parks and residential land lease communities have been subject to effective consumer protection regimes for decades. Any changes resulting from the new regulatory regime should be based on the principles of necessity, fairness and efficiency.

Unfortunately, due to the numerous regulatory changes that have impacted embedded networks over the last 5-6 years in the fight against unscrupulous behaviour by developers building high rise apartments, NSW holiday parks and residential land lease communities are already dealing with rising compliance costs and their customers have gained little, if any, additional benefit.

During our consultations with the AEMC and AER, regulatory officers have on more than one occasion described holiday parks and residential land lease communities as "collateral damage". This is an unfortunate outcome, but it is not irreversible.

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<sup>5</sup> Section 13 Residential Tenancies Act 2010

<sup>6</sup> Section 4 Residential (Land Lease) Communities Act 2013

Therefore, in determining the new regulatory framework for new and legacy embedded networks, we urge the AEMC to acknowledge the distinctions of NSW holiday parks and residential land lease communities, give proper consideration to the particular circumstances of these operators and their customers and consider how the framework could be improved for this sector.

## **Proposed Framework for New Embedded Networks**

We note that the Draft Report presents a package of law and rule changes the majority of which the AEMC advises will only apply to **new embedded networks**, set-up after the introduction of the new regime.

It is proposed to elevate new embedded 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) – the same framework that applies to energy network distributors (e.g. Ausgrid, Essentially Energy) and National Electricity Market (NEM) retailers (e.g. Origin, Energy Australia).

Based on our understanding of the Draft Report in the context of our industry, a summary of the main changes is below:

### **New Residential Land Lease Communities**

Under the proposed framework, new residential land lease communities that supply or on-sell energy to residents via an embedded electricity network will have to:

#### ***Registration and Exemption***

- a. Register with AEMO as an Embedded Network Service Provider (ENSP) and be subject to many of the existing regulatory requirements placed on Distribution Network Service Providers (DNSPs).
- b. Obtain an authorisation from the AER as an Off-Market Retailer and be subject to most of the existing regulatory requirements placed on authorised retailers NEM Retailers.

#### ***Market and System Integration***

- c. Register all child connection points with AEMO and maintain information in AEMO's systems (including registering a NMI for a connection point and maintaining NMI standing data in MSATS).
- d. Appoint a metering coordinator at all off-market child connection points in the same way that NEM Retailers appointed metering coordinators following the introduction of new metering arrangements in December 2017.

#### ***Network Billing***

- e. Where a customer has gone 'on-market' with an alternative retailer, set network charges at a level no greater than what the customer

would have paid had it been directly connected to the Local Network Service Provider (LNSPs) network (the 'shadow price').<sup>7</sup>

- f. Use standardised processes and data formats to bill retailers these network charges for on-market customers.

### ***Network Regulation and Connection***

- g. Make an offer for new connections and connection alterations within their embedded network area in accordance with a connection policy to be developed by the AER (or a connection policy approved by the AER).

This includes an obligation to make an offer for a new connection to non-registered embedded generators (e.g. solar) seeking to connect to an embedded network.

- h. Set connection charges that are reasonable, reflect the efficient cost of providing connection services, limit cross-subsidisation of connection costs between classes of customers and be competitively neutral (if the connection services are contestable).

### ***Consumer Protections in the NERL and NERR***

- i. Comply with all applicable consumer protections that standard supply customers have, including amended concepts and requirements relating to a designated retailer (obligated to sell energy to a customer at a child connection point), shared customer obligations, disconnection and re-energisations, supply interruptions, life support arrangements and the modified retailer of last resort scheme.

### ***Monitoring and Compliance***

- j. Be subject to AER's monitoring, investigation and conduct powers, general information gathering powers and reporting requirements (as a registered ENSPs), and
- k. Be subject to the compliance framework applicable to NEM Retailers.

The AEMC is also asking jurisdictional governments to consider whether any changes need to be made to jurisdictional frameworks to extend the following consumer protection and safety regulations to new embedded networks:

- access to state and territory concessions and rebates
- access to independent dispute resolution for distribution and retail services
- retail price controls
- network reliability protection, including Guaranteed Service Level (GSL) schemes
- Safety requirements and monitoring regimes
- technical regulation, such as equipment and performance standards
- Ability to access land required for the supply of electricity
- Other GSL payments

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<sup>7</sup> Residential land lease communities in NSW are subject to further caps on energy charges, including network charges, under State laws and regulations.

## **Comments and Feedback**

It is our understanding that most, if not all, new residential land lease communities in NSW are developed so that long-term sites have a direct connection to the local distributor (i.e. no embedded electricity network supplying energy to residents who principally reside there).

As such, many of the proposed changes in the Draft Report that will apply to new embedded networks will not likely impact new residential land lease communities in NSW. Any developers seeking to build a new residential land lease community in NSW after the introduction of the new framework will have been put on notice and will have sufficient information in order to make a strategic decision about whether it is worthwhile including an embedded network in its development plans.

Nevertheless, we take issue with the regulatory approach being adopted for new embedded networks. Forcing these energy models to adhere to the same framework that governs NEM participants is likely to discourage the development of embedded networks, except for those large enough to absorb the additional costs of compliance. The AEMC has suggested that smaller entities could appoint third parties with the necessary registrations and authorisations to minimise costs, however there is no evidence to support this assumption.

There is an opportunity for the Government to develop a better, more suited regulatory framework – one that encourages, rather than stifles, the development of new embedded networks (regardless of size) where real benefits could actually be provided to groups of consumers by way of shared discounted prices, multi-service offerings, integration of affordable and more environmentally sustainable housing and/or improved access to embedded energy generation.

Residential land lease communities are an important provider of alternative and affordable housing in NSW. They offer great lifestyle benefits to residents and their growth and viability must be encouraged, including those that wish to offer additional benefits to residents via an embedded network that they would not otherwise get via a direct connection to the local distributor.

We are concerned, however, that the regulatory burden and costs that will result from the proposed framework for new embedded networks will likely deter such innovation in our industry by distorting investment decisions. The level of scale required for a NSW residential land lease community to justify the establishment of an embedded electricity network under the new framework is likely to be limited by compliance costs that are too high, as well as constraints under state planning laws and land availability that can limit their size.

In order to leave the door open for developers that want to be innovative, we reiterate that an exemption framework should be retained for new residential land lease communities.

### **New Holiday Parks**

In relation to the proposed network and retail exemption framework, we understand that the AEMC is recommending to disallow new deemed network exemptions and new deemed retail exemptions and provide for 'registrable exemptions' only, in limited circumstances.

Consequently, new holiday parks that supply or on-sell energy to occupants of holiday accommodation via an embedded electricity network will have to:

### **Registration and Exemption**

- a. Register with AER as an Exempt Network Operator (ENO) and be subject to the AER's Exempt Network Guideline and relevant network conditions.
- b. Register with AER as an Exempt Seller and be subject to the AER's guidelines and relevant on-selling conditions.

### **Monitoring and Compliance**

- c. Be subject to the AER's compliance audit provisions and general information gathering powers, and monitoring, investigation and enforcement procedures.

### **Comments and Feedback**

For obvious reasons, new holiday parks are developed with embedded networks. Electricity needs to be supplied to holiday cabins, powered campsites and short-term sites occupied by holiday makers and long-term casual occupants,<sup>8</sup> where guests 'plug in' their RVs to the holiday park's power supply. Arranging for each short-term site or powered campsite to have a direct connection to the local distributor is nonsensical.

Energy costs for holiday cabins are usually included in the accommodation tariff, while energy costs for powered campsites and short-term sites can be recouped on a 'user pays' basis or included in the accommodation tariff. Where holiday parks choose not to absorb energy costs as part of accommodation tariffs, they should have the ability to charge tourists and long-term casual occupants for the energy they consume on a metered, 'user pays' basis, rather than spread the cost over all customers and cause a rise in accommodation fees.<sup>9</sup>

We agree that any new embedded networks within NSW holiday parks should continue to be exempt. However, we question the need for that exemption to be a 'registrable exemption' as proposed in the Draft Report.

We do not believe that the proposed, or existing, level of regulation is really needed for holiday parks and therefore request that the AEMC to give consideration to redrafting the definition of "distribution system" to exclude them or develop an alternative, more efficient regulatory approach.

As noted above, occupants of short-term accommodation in holiday parks are either holiday makers or occupants that store their RVs on a park site for occasional recreational use under the terms of an 'occupation agreement.' This is distinguishable from short-term accommodation such as serviced apartments or hotels where individuals can invest in the property under management agreements, as well as use it from time to time.

The supply of energy in holiday parks can also be considered an optional service (as opposed to an essential service) depending on a customer's choice of accommodation (e.g. guests can *choose* between powered or unpowered sites) and they essentially 'plug in' their RVs to the holiday park's power supply.

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<sup>8</sup> Long-term casual occupants are able to occupy their site up to a maximum of 180 days per year under occupation agreements, which are regulated under the Holiday Parks (Long-term Casual Occupation) Act 2002.

<sup>9</sup> Our understanding is where guests are required to pay for energy they tend to be more mindful of how much energy they consume and avoid wasteful behaviour.

In addition, apart from conditions in the AER's Network Guideline and Retail Guideline, embedded network customers in NSW holiday parks have the benefit of appropriate consumer protections under the Australian Consumer Law, the *Holiday Parks (Long-term Casual Occupation) Act 2002*, the *Holiday Parks (Long-term Casual Occupation) Regulation 2009* and their occupation agreements. The NSW Civil and Administrative Tribunal (NCAT) has jurisdiction to hear and determine disputes relating to a breach of an occupation agreement or to a disagreement that could form the basis of a breach of the occupation agreement, which includes utilities. These customers can also seek the assistance of NSW Fair Trading to assist in resolving disputes.

From a reliability and safety point of view, it is in every holiday park's interest to provide guests with a reliable, compliant and safe power supply, notwithstanding their responsibilities under state planning laws, local government regulations and duties of care under legislation such as work, health and safety laws and the common law. They also have numerous responsibilities under state planning laws and local government regulations, as well as their insurance policies.

Finally, measures to improve access to retail market competition for embedded network customers in NSW holiday parks are unnecessary because these customers are unlikely, if ever, to seek to go 'on-market'. This was acknowledged by the AEMC in its final '*Rule Determination - National Electricity Amendment (Embedded Networks) Rule 2015*' (Rule Determination).

Page 49 of the Rule Determination makes it clear that an advantage of providing the AER with flexibility and discretion regarding the appointment of an Embedded Network Manager (ENM) is so "*embedded network operators operating embedded networks where the likelihood of customers seeking to go on-market is low will not be required to bear the costs unless a customer seeks to go on-market.*" Unfortunately the drafting of the final rule did not provide the AER with discretion to exempt a person or class of persons from the requirement to comply with the ENM conditions entirely – only "*until such time as an ENM conditions trigger occurs.*"

Although such trigger will likely never happen in holiday parks, this drafting has been carried over in proposed rule 2.15.3 (b) of the NER. The Draft Report also proposes, as part of changes for market and system integration and network billing, that where a customer goes 'on-market' with an alternative retailer, new (and legacy) holiday parks (as ENOs) must:

- a. Act as or appoint an ENM to provide market interface services.
- b. Comply with Part 5 of the NERR as if the ENO were a distributor within the meaning of that Part.
- c. Set network charges at a level no greater than what the customer would have paid had it been directly connected to the LNSPs network (the 'shadow price').
- d. Use standardised processes and data formats to bill retailers these network charges for on-market customers.

Applying these requirements to holiday parks is essentially regulating an outcome that will never happen. This is not efficient regulation and we ask the AEMC to consider our recommendations.

However, should the AEMC proceed with the arrangements currently proposed, proposed new clause 2.14.2(b)(3) of the NER and proposed draft rule 150 of the NERR require further amendment as follows:

## **National Electricity Rules**

### **2.14.2 Network exemptions determination for distribution systems**

(a) Subject to paragraph (b), the AER may determine a class of persons who own, operate or control a distribution system and in respect of whom a network exemption applies on registration on the Public Register of Exempt Network Operators.

(b) The AER must only determine a class for the purposes of paragraph (a) where the distribution system owned, operated or controlled by a person who is a member of the class is used primarily for the provision of a distribution service in respect of any of the following activities:

...

(3) the supply of electricity to occupants of holiday accommodation (including cabins, recreational vehicles such as motorhomes, campervans, caravans, camper trailers, tent trailers, fifth wheelers and slide-ons, tents and like accommodation) on a short-term basis;

## **National Energy Retail Rules**

### **150 Determination of exemption classes**

(1) The AER may determine a class of persons in respect of whom an exemption applies on registration on the Public Register of Authorised Retailers and Exempt Sellers.

(2) The AER must only determine a class for the purposes of subrule (1) in respect of persons:

(a) selling metered energy to occupants of holiday accommodation (including cabins, recreational vehicles such as motorhomes, campervans, caravans, camper trailers, tent trailers, fifth wheelers and slide-ons, tents and like accommodation) on a short-term basis;

## **Proposed Framework for Legacy Embedded Networks**

In relation to legacy holiday parks, please refer to our comments above. As accommodation businesses regulated by the Australian Consumer Law, as well as state laws and local government regulations, many aspects of the proposed and existing regulatory framework are not necessary.

In relation to NSW residential land lease communities, we strongly oppose any amendments to the regulatory framework that would require these legacy embedded networks to transition to the new framework. Such a requirement would wreak havoc on these businesses and communities for minimal consumer gain, particularly those residential land lease communities that only have a small number of residents.

### **Escalating Compliance Costs**

The AEMC has asked stakeholders for feedback on the costs of transitioning legacy embedded networks to the new framework, but measuring all these costs is very difficult as many are unknown and will vary for each entity. Unfortunately, no 'cost benefit' analysis has been undertaken in support of the Draft Report to provide assistance.

What we do know is that costs to businesses and their customers resulting from regulation can be insidious and customers will almost always pay for the costs of compliance, usually indirectly through higher prices for goods and services.

Generally, compliance activities and associated costs can take many forms, including but not limited to:

- Regulator imposed licensing or registration and renewal costs.
- Time and business resources (including employee wages) to review, understand, and stay up to date with regulatory requirements, including accessing subordinate codes, guidelines and standards.
- Development and ongoing review of compliance policies.
- Development, implementation, ongoing monitoring and review of compliance procedures and processes, including the production and use of prescribed forms, templates and checklists.
- Responding to customer enquiries and providing information.
- Adhering to auditing and reporting requirements.
- Record keeping.
- Purchase, upgrade and renewal of software.
- Staff training.
- General administrative tasks.

The size of an entity will impact its ability to manage compliance costs. As stated above, embedded networks that are run by small to medium enterprises have fewer resources to understand and implement compliance with complex regulatory systems and less ability to absorb compliance costs.

By transitioning legacy residential land lease communities into the new framework the AEMC would be asking these small to medium businesses to decipher and comply with hundreds of pages of complex energy laws and rules – a time-consuming and costly task to which NEM retailers, distributors and larger embedded networks would likely dedicate whole teams.

There are also external fees to consider for embedded networks, including fees associated with consultants' advice, third party contractors (such as billing agents and ENMs) as well as fees associated with membership of energy ombudsman schemes. As an example, NSW residential land lease communities are already facing the following costs by way of external fees:

<b>External Provider</b>	<b>Cost</b>
Energy Expert/Legal Advisor (to assist with compliance)	\$150 - \$900 per hour (plus GST)
NSW Energy and Water Ombudsman (EWON)	Joining Fee \$125 - \$2,500 Base Fee \$150 - \$2,000 per year

	Customer Number Fee \$150 - \$1,000 per year  Casework Fees per Case \$196.92 (Enquiry) up to \$1,334.53 (Level 2 Investigation) then \$3.77 per minute
Embedded Network Manager	Estimate fee \$5,076 - \$14,000 per year (based on 423 sites) <sup>10</sup>
Billing Agents	\$63,000 - \$127,000 (based on 423 sites at \$150 - \$300 per meter per year)

These costs are not insignificant for residential land lease communities. Over time, compliance costs relating to regulation of embedded networks have been escalating and they will continue to do so as a result of the proposals set out in the Draft Report.

Residential land lease communities are, first and foremost, important providers of alternative and affordable housing. They are not energy businesses. Yet, they now face a complex, overlapping web of legislation for an activity that is an ancillary, non-profitable service.

This is not a positive outcome for energy consumers. The reality is that any costs associated with complying with energy regulation that can't be recouped directly through energy charges will be recouped from customers through higher prices elsewhere.

This means residents in residential land lease communities – many of whom are retired and on fixed incomes – will face higher site fees as compliance costs continue to escalate. The alternative is that profits continue to be eroded until it is no longer profitable for a land lease community to stay in business.

### **Current Regulation**

Due to the primary relationship between embedded network customers and embedded network operators in NSW residential land lease communities being one of tenancy, these businesses are highly regulated under federal and state legislation.

As a result, customers have multi layered consumer protections under these legislative instruments, as well as their site agreements, that other embedded network customers do not have. These factors, which justified an initial exemptions framework for these types of embedded networks, have not changed and will continue in the future.

Relevant legal instruments governing NSW residential land lease communities include:

- Australian Consumer Law
- AER Network Guideline
- AER Retail Guideline
- NSW Fair Trading Act 1987
- NSW Electricity Supply Act 1995
- Residential (Land Lease) Communities Act 2013
- Residential (Land Lease) Communities Regulation 2015

<sup>10</sup> These fees are likely to increase with the ENM's expanded functions under the proposed framework.

- NSW Civil and Administrative Tribunal Act
- Local Government Act 1993
- Local Government (Manufactured Homes Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005

In relation to energy disputes, the NCAT has jurisdiction to hear and determine disputes relating to a right or obligation under the Residential (Land Lease) Communities Act 2013 and Residential (Land Lease) Communities Regulation 2015 (which includes utilities) or a dispute arising from, or relating to, a site agreement or collateral agreement. These customers can also seek the assistance of EWON and NSW Fair Trading, as well as other organisations like the Affiliated Residential Park Residents Association and their own Residents Committee.<sup>11</sup>

### **Price Controls**

One of the objectives of the proposed new framework is to improve embedded customers' access to retail market competition. However, pricing controls imposed on residential land lease communities by NSW legislation, the AER guidelines and recent case law makes it unlikely that customers will seek retail competition, as the incentive to do so is limited. In residential land lease communities, operators are strictly limited in what they can charge for electricity.

The Residential (Land Lease) Communities Act 2013 states:

#### ***Part 7 Utility and other charges***

##### ***76 Limit on amounts payable by home owner***

- (1) The only fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community, are as follows:*
  - (a) site fees, including site fees payable in advance as permitted under section 57,*
  - (b) the cost of registering or recording the site agreement under the Real Property Act 1900 if any fixed term period exceeds 3 years,*
  - (c) a refundable deposit for a key or any other opening device to access the community, not exceeding \$25 or another amount prescribed by the regulations,*
  - (d) other fees, charges and deposits required or permitted by this Act or the regulations.*
- (2) The regulations may require or permit payment of fees, charges and deposits that are specified or of a kind specified by the regulations and, in particular, may (but need not) provide that they are not payable by a home owner unless required by the site agreement to be paid by the home owner.*
- (3) An operator of a community must not require or permit the payment of any fee, charge or deposit from a home owner in contravention of this section.*

*Maximum penalty: 20 penalty units.*

##### ***77 Utility charges payable to operator by home owner***

- (1) This section applies if, under a site agreement, the home owner is required to pay utility charges to the operator for the use by the home owner of a utility at the residential site.*
- (2) The home owner cannot be required to pay for the use unless:*
  - (a) the use is separately measured or metered, and*
  - (b) the operator gives the home owner an itemised account and allows at least 21 days for the payment to be made.*
- (3) The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer*

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<sup>11</sup> Under Part 9 of the RLLCA residents of a community may by resolution establish a residents committee. Their functions include representing the interests of the residents in connection with the day-to-day running of the community and any complaint about the operation of the community.

who is providing the service for the quantity of the service supplied to, or used at, the residential site.

Maximum penalty: 20 penalty units.

- (4) The regulations may:
- (a) provide for a maximum utility charge payable by home owners to the operator, and
  - (b) create an offence for an operator to request or receive more than that maximum charge (if any).
- (5) The regulations may provide that a service availability charge for electricity payable by home owners to the operator of a community is to be discounted in accordance with the regulations where less than 60 amps are being supplied.

The Residential (Land Lease) Communities Regulation 2015 states:

**13 Maximum service availability charge—electricity**

- (1) The maximum service availability charge payable, in respect of any period, by a home owner to the operator for the supply of electricity at a residential site is the amount that would have been payable for the period if the electricity had been supplied to a small customer under a standard retail contract of the applicable local area retailer at standing offer prices.
- (2) Despite subclause (1), the service availability charge payable by a home owner to an operator of a community for supply at a residential site of less than 60 amps of electricity is to be discounted in accordance with subclause (3).
- (3) The maximum service availability charge payable by a home owner to an operator for supply at a residential site of less than 60 amps of electricity is:
  - (a) if less than 20 amps of electricity is supplied to the residential site—20 per cent of the service availability charge that would apply if the home owner were a small customer under a standard retail contract of the applicable local area retailer, or
  - (b) if 20 amps or more but less than 30 amps of electricity is supplied to the residential site—50 per cent of that service availability charge, or
  - (c) if 30 amps or more but less than 60 amps of electricity is supplied to the residential site—70 per cent of that service availability charge.
- (4) In this clause, **local area retailer**, **small customer**, **standard retail contract** and **standing offer prices** have the same meanings as in the National Energy Retail Law (NSW).

On 4 September 2018, the NSW Supreme Court made a determination on the interpretation of s 77(3) of the Residential (Land Lease) Communities Act 2013, which further limits what operators of residential land lease communities can charge home owners for electricity.

In the case of *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless* [2018] NSWSC 1343 the Court's decision was that the concept of a 'regulated offer retailer' no longer existed (following deregulation of the energy market in 2014) and under s 77(3) the plaintiff is not entitled to charge the defendant any more than the plaintiff has been charged for the supply or use of the electricity consumed by the defendant.

The Supreme Court said:

*I am firmly of the opinion that the Legislature overlooked the fact that the RLLC Act, which had been passed and assented to in 2013, was not amended to take account of the changes made by the 2014 Regulation before the RLLC Act was proclaimed to commence.*<sup>12</sup>

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<sup>12</sup> *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless* [2018] NSWSC 1343, para 39.

What this case means is that residential land lease community operators in NSW cannot charge a home owner for the supply and use of electricity more than the operator has been charged for the electricity supplied to and used by the home owner.

While there are some practical difficulties in calculating the tariff to apply (due to old style meters at child connection points), the outcome is that these types of embedded networks do not have an opportunity to profit on the sale of energy and any savings obtained at the parent meter will be passed on to home owners.

### **Infrastructure Impediments**

As set out in the Draft Report, the new framework requires metering infrastructure in embedded networks to be NEM compliant. This presents a major impediment to transitioning legacy residential land lease communities with embedded networks to the new framework because to do so would require mass infrastructure upgrades.

We have previously communicated the following issues to the AEMC:

- Almost 100% of energy meters in caravan parks are simple, 'read only' kWh meters. They read and record in kilowatts, via a visual register, the electricity consumed by the customer.
- The rollout of 'smart' meters within Australia saw meters that read and record kWh consumed at 30-minute intervals. That information is then transmitted remotely to the retailer, who forward the charges to their customer.
- Energy retailers use a number of different remote communication technologies to read their customer's meters, none of which are able to be used by the simple 'read only' meters currently in parks.
- Due to most parks site size constraints, powerheads have traditionally been designed to be as compact as possible. Manufacturers have tried to source the smallest electrical components for the powerheads. This is especially true for kWh meters, which for a powerhead servicing four sites, will require four kWh meters.
- A typical energy retailer's smart kWh meter would not fit into any powerheads currently on the market in Australia.
- Issues can also be created by multiple meters mounted on a power board, or for example one electrical cable into the park, which goes to the main meter.
- From the main meter the line goes to the main fuse board where the fuse board has twenty or so fuses, which each serve up to 4 dwellings at a time. Each cable goes to a green turret where the supply is split into individual cables which then supply each dwelling. Each dwelling then has its own meter to monitor the amount of power each resident uses.
- In order for an external provider to provide electricity to an individual in the park there would have to be an individual cable running to each dwelling wanting to source their electricity from an independent provider from the main fuse board. This would require major work to the existing network.

These issues indicate that the practical difficulties presented by the older infrastructure in land lease communities extend beyond metering installations.

We are also concerned that infrastructure impediments in legacy residential land lease communities will cause difficulties complying with the ENSP obligation to provide connection services to non-registered embedded generators seeking to connect to the embedded network. State-based legislation would also prevent them from recovering any connection charges unless amended. We have raised the issue of solar panels in holiday parks and residential land lease communities directly with the AER, but no steps have been taken as yet to address this issue.

Put simply, if legacy residential land lease communities with embedded networks were transitioned to the new framework major and costly works would likely be needed in the majority of cases, which would be disastrous for the industry.

However, the AEMC has previously stated to our Association that it does not intend to force holiday parks or residential land lease communities to undertake major and costly infrastructure changes. We therefore assume that residential land lease communities are not the type of exempt network service providers and exempt sellers under consideration by the AEMC to transition to the new framework.

## Outstanding Issues

There are a number of outstanding issues that are unclear or not specifically addressed by the Draft Report that require further examination. For example:

1. Will existing or new exemptions/registrations/authorisations be lost under certain circumstances? Will they be transferable on the sale of the business?
2. What is meant by the term “long term holiday accommodation” on page viii of the Draft Report?
3. Following the commencement of the new regulatory framework, what will happen to legacy holiday parks should they be required to appoint an ENM (although unlikely) which, under the current regime, triggers a deemed exemption to become a registrable exemption?

In addition, if a legacy holiday park converted to a residential land lease community under a local development approval, but no changes were made to the embedded network, would this constitute a “new embedded network?”

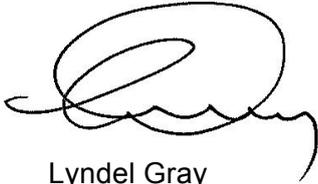
4. Similarly, following the commencement of the new regulatory framework, if a new or legacy residential land lease community wishes to undertake development works to expand or reconfigure its sites under local planning regulations (for example increase or decrease the ratio of short-term sites versus long term sites), how will this impact their exemption/registration/authorisation under the framework?
5. In relation to NMI standing data kept in MSATS, which is to include the applicable network tariff, will this reflect variations in what certain types of embedded networks are entitled to charge under state-based price controls?

For example, as set out above, NSW residential land lease communities are required to charge a home owner for the supply and use of electricity what the operator has been charged for the electricity supplied to and used by the home owner. Under the proposed framework, the customer’s applicable network tariff will be different from the ENSP’s or ENO’s applicable network tariff.

Thank you for taking into consideration the issues we have raised. We would, however, like to meet with the AEMC to provide further feedback on the Draft Report, discuss our questions and concerns and assist in the development of appropriate solutions.

We would therefore be grateful if an AEMC officer could please contact Shannon Lakic, Policy, Training and Executive Services Manager on (02) 9615 9940 or email [shannon.lakic@cciansw.com.au](mailto:shannon.lakic@cciansw.com.au) to make arrangements.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lyndel Gray', with a large, stylized initial 'L'.

Lyndel Gray  
**Chief Executive Officer**