



SUBMISSION TO AEMC

Review of Regulatory Arrangements for Embedded Networks

May 2017

The Alternative Technology Association (ATA) welcomes the opportunity to respond to the AEMC's Review of Regulatory Arrangements for Embedded Networks.

Founded 36 years ago, the ATA is a national, not-for-profit organisation whose 6,000 members are (mostly residential) energy consumers.

Our extensive experience in energy policy and markets informs our advocacy and research which, amplified by our close collaboration with fellow members of the National Consumer Roundtable on Energy, makes the ATA an important voice for energy consumers Australia-wide.

ATA has a uniquely twofold perspective as a consumer advocate. With the continuing support of the Energy Consumers Australia (and formerly the Consumer Advocacy Panel) we represent all small energy consumers in advocacy that seeks to improve energy affordability and the structure and operation of the National Energy Market (NEM). Additionally, we speak with authority on behalf of the growing portion of the consumer base that has an interest in environmental sustainability, renewable energy, and emerging energy products and services.

We thank the AEMC for preparing a comprehensive and thoughtful consultation paper, and for hosting a stakeholder consultation session that enabled considerable discussion about the review and related issues.

In this submission, we only address a subset of the questions raised. ATA also endorses SACOSS's submission to this review.

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Overview

The regulatory arrangements for embedded networks respond to a different type of energy services provision by creating a different policy framework for energy services providers and energy consumers in embedded networks. Currently, this creates a two-tier system where energy providers and energy businesses operating in embedded networks have fewer obligations and less monitoring, and customers in embedded networks have less choice and fewer consumer protections, than energy businesses and consumers in the mainstream market.

This can be addressed by revising the exemptions framework, or by developing a new approach to regulating embedded networks, perhaps via an expanded and more nuanced authorisations regime.

Revising the exemption framework

The exemptions framework could be revised to deliver uniform consumer protections as much as is practicable, by being predicated on a universal entitlement to the suite of consumer protections delivered by the NECF, with variations made only where a consumer protection is not applicable due to the nature of the exempt selling situation, or where it would cause compliance burdens that significantly outweigh the consumer benefits. This could be achieved by revising the Retail Exempt Selling Guideline to:

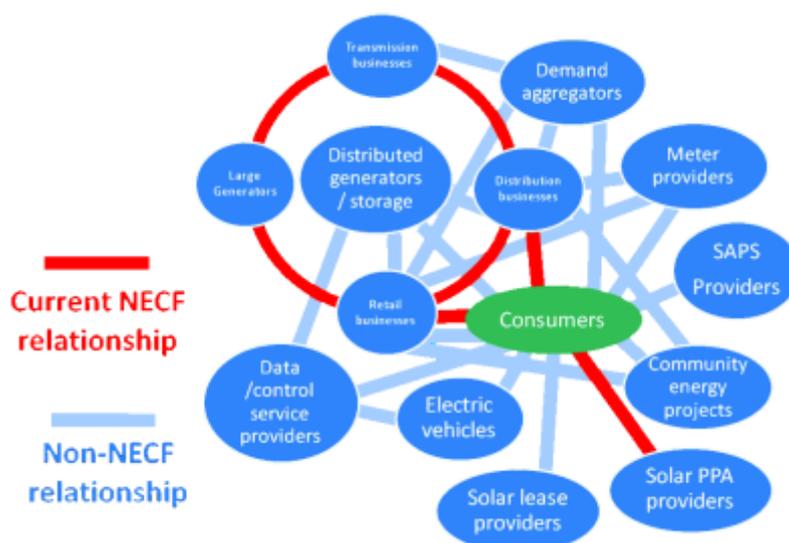
- stipulate that all provisions of the NECF apply except as varied in the Guideline
- identify which elements of the NECF are not applicable or unduly burdensome to the various exemption categories, and stipulate these as variations

Expanding the authorisations framework

The authorisations framework could be revised to include new small-scale authorisations designed for exempt sellers, solar PPA businesses, and other energy services providers. Small-scale authorisations would be predicated on a universal entitlement to the suite of consumer protections delivered by the NECF, with variations made only where a consumer protection is not applicable due to the nature of the exempt selling situation, or where it would cause compliance burdens that significantly outweigh the consumer benefits. These variations would be stipulated in the Retail Authorisation Guideline.

The scope of energy regulation

Significantly, the inequity issues that make these changes necessary exist not only in embedded networks, but also in other areas of the energy market that fall outside the regulatory framework – such as off-grid systems, and many behind-the meter products and services. This regulatory divide is well-depicted in this diagram showing a range of energy products and services in terms of whether or not they fall within the ambit of the NECF.



Of particular note is the almost arbitrary distinction between Solar PPA and Solar Lease providers. To the consumer, these are almost identical products; but Solar Leases sit entirely outside the energy regulatory framework, while Solar PPAs fall within it solely because of the basis of charges – the NECF only applies where there is a sale of energy. Also noteworthy: the

Retail Exemption Guideline re-equalises Solar PPAs and Solar Leases by applying no consumer protection conditions to Solar PPAs except the duty to inform customers that they must rely on Australian Consumer Law instead of energy-specific consumer protections developed over decades of stakeholder engagement.

We note that the COAG Energy Council has been consulting on regulatory issues (including customer protections) for off-grid systems and behind-the-meter products and services, and that one possible approach (suggested by the ATA in our submissions to these consultations,¹ as well as in our discussion paper on customer protections for emerging energy products and services²) is to encompass them within the regulatory framework that applies to embedded networks – whether that is a revised exemptions framework, or an enhanced authorisations regime. It is worth quoting at length from the ATA discussion paper:

To drive good consumer outcomes in the changing energy market, appropriate energy specific consumer protections should not be limited to situations where volumes of energy are purchased and delivered through the conventional grid. Rather they should be applied based on:

- ***the extent to which the service or product in question is being relied on by the consumer to deliver the essential service of a continuous supply of electricity; and***
- ***the impact on the consumer of experiencing payment difficulties and hardship.***

The absence of basic protections for products and services that aren't currently under NECF will lead to a perverse outcome where, for example, a consumer with a product or service provided by a retailer or network business has a higher standard of customer protection than one with the same product obtained from another provider.

Further, the current approach of limiting the reach of regulation to where energy is metered and traded runs the risk of creating loopholes. For example, the provider of a product or service could avoid complying with some consumer protections and other requirements simply by not selling energy on a per-unit basis – thus avoiding the need for an exemption.

To remedy these anomalies, the NECF (and the Victorian customer framework) should be expanded to cover the provision of all current and future energy-related services for households – not only where there is an explicit sale of energy.

...

By extending appropriate regulation to all energy products and services, the evolving energy market will better embrace the growing diversity and pace of innovation, while promoting:

- *horizontal equity with regard to consumer access to a sufficient supply of energy;*
- *innovation and competition in provision of energy services; and*
- *consumer confidence in the energy market.*³

We recognise that this would involve changes to regulatory instruments such as the NER and the NERR to extend the ambit of the energy regulatory framework; but consider that this is a necessity as the energy market continues to transform in response to the demands of climate policy and the emergence of new technologies. Thus, while such a change is out of scope for this review, our proposals are informed by the expectation that whatever framework applies to embedded networks will in the future need to apply to other forms of energy provision.

¹ ATA submission to COAG Energy Council *Consumer Protections for Behind the Meter electricity supply* consultation paper (<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Alternative%20Technologies%20Association%20-%20Response%20to%20consultation%20on%20behind%20the%20meter%20consumer%20protections.pdf>), ATA submission to COAG Energy Council *Stand-Alone Energy Systems* consultation paper (<http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Alternative%20Technologies%20Association%20-%20Response%20to%20consultation%20on%20standalone%20systems.pdf>)

² ATA *Empowering the Future: Appropriate Regulation and Consumer Protections in Emerging Energy Markets*, 2016 (<http://www.ata.org.au/wp-content/uploads/2016/11/Empowering-the-future-appropriate-regulation-and-consumer-protections-in-emerging-energy-markets-ATA.pdf>)

³ ATA *Empowering the Future: Appropriate Regulation and Consumer Protections in Emerging Energy Markets*, 2016: p. 6–7

We note also that under the current arrangements, businesses that manage embedded networks on behalf of their owners (for example, ‘onsellers’ such as WINconnect, EnergyOn, Active Utilities, Network Energy Services, etc.) fall completely outside the scope of regulation because technically they do not sell energy – despite them handling all the billing and connection procedures, delivering network owners’ obligations under the exemptions frameworks, and in some cases having more customers than many authorised energy retailers (for example, WINconnect and NES each has more than 15,000 customers over more than 100 sites⁴). Expanding the scope of energy regulation to apply based not solely on the sale of energy but the extent to which a service or product is used to deliver the essential service of a continuous supply of electricity and the impact on the consumer of experiencing payment difficulties and hardship, would encompass these businesses and place them under the oversight of either the exemptions framework or an expanded authorisations framework.

Question 1: Does the two-tiered framework of requiring either registration/authorisation or exemption remain fit for purpose?

As discussed above, the two-tiered framework *as it currently stands* is not fit for purpose because it leads to two specific inequitable outcomes: customers of exempt sellers have fewer consumer protections than those of authorised retailers, and exempt sellers are subject to less regulatory oversight (in some cases, *no* oversight) than authorised retailers. This is despite the fact that most customers may not realise they are choosing to step outside the mainstream energy regulatory system when they choose to live in a dwelling located within an embedded network; and that some consumers (especially low income or vulnerable ones, most on need of a strong customer protection framework) may have little effective choice when offered a place in an affordable housing development that has an embedded network.

The existing framework could be fit for purpose if these inequities were remedied through revision of the network and retail exemption guidelines. The exemption guidelines should to be predicated on a universal entitlement to the suite of consumer protections delivered by the NECF, with variations made only where a consumer protection is not applicable due to the nature of the exempt selling situation, or where it would cause compliance burdens that significantly outweigh the consumer benefits. This could be achieved by revising the Retail Exempt Selling Guideline to be subtractive, rather than additive:

- stipulate that all provisions of the NECF apply except as varied in the Guideline
- identify which elements of the NECF are not applicable or unduly burdensome to the various exemption categories, and stipulate these as variations

It’s worth noting that the rationale for having lighter regulation on exempt networks was that network operators were not selling energy as their core business and this couldn’t be reasonably expected to meet the higher standards required for dedicated energy retail businesses. While this remains strictly true, the embedded network landscape is now characterised by businesses whose primary activity is indeed selling energy (effectively if not literally), and who are quite capable of delivering the full customer protection framework.

⁴ Jo Benvenuti and Caitlin Whiteman, *Consumer access to external dispute resolution in a changing energy market*, 2016.

In the context of the growing number, scale and diversity of exemptions:

(a) What issues does the two-tiered regulatory framework of requiring either registration as an NSP/authorisation as a retailer, or exemption give rise to?

The two-tiered framework lends itself too well to delivering a two-tiered customer framework, to the disadvantage of customers who end up in an embedded network or otherwise dealing with an exempt seller (e.g.: solar PPAs).

(b) Are there alternative regulatory arrangements, not based on a binary system of registration/authorisation or exemption, that would be more appropriate?

The alternative would be a unified authorisations system, with different types of authorisations for different business models. A small-scale authorisation could be a catch-all category for businesses that are not typical energy retailers, which by default puts the same requirements on businesses as retailer authorisations except where varied to suit the nature of the business scale and activity. To properly deliver for customers of embedded networks, the scope of the small-scale authorisations framework would need to be expanded to encompass embedded network operators who do not strictly (but in effect, do) sell energy.

Question 2: Does the exemption framework remain fit for purpose?

(b) Does an exemption framework continue to be necessary for some categories of embedded networks? If so:

(i) what should the objectives of a network and retail exemption framework be?

(ii) what types of embedded networks and on-selling arrangements should be eligible for exemption?

With an expanded authorisation regime, there may still be some cause for an exemptions framework for certain types of embedded networks or onselling situations where the customer protection issues are minimal or where energy sale is incidental and an embedded network management business is not involved, such as:

- caravan parks, where a dedicated embedded network business is not contracted to operate the network, but it is operated by the caravan park as a part of their core business of providing accommodation (because this aligns with the original rationale for exemptions as an alternative to authorisations)
- short term holiday accommodation (because the customer protection issues are minimal)
- small-scale community energy projects, under a new, dedicated exemptions class (because the unique nature and consumer participation aspect of community energy projects)

(iii) Do the three categories of deemed, registrable and individual exemptions remain appropriate? If not, what changes should be made to the exemption framework?

These categories are broadly appropriate, and the distinctions are well-made in all cases but one: *Class D2* for people selling energy to fewer than ten residential customers. The ten-customer threshold is essentially arbitrary, and the low visibility (for compliance and monitoring purposes) of deemed exemptions gives a lower standard of customer protection to residents of small apartment developments. Providing the essential energy to a residential customer is a significant responsibility, and demands a high standard of regulatory oversight to ensure consumer protection obligations are being delivered. Giving a lower standard of consumer protection to residents of small developments is an arbitrary inequity.

Question 4: Can access to retail competition be improved?

- (a) What barriers exist for small and large customers in embedded networks going on market?*
- (b) Are retailers currently providing or planning to provide competitive market offers to embedded network customers? What barriers will remain to providing these offers after 1 December 2017 with the commencement of the Embedded networks rule?*
- (c) Are there examples or cases of small and large embedded network customers going on-market? What were the circumstances that made going on-market desirable and possible for these customers?*
- (d) What is the level of competition to provide electricity to embedded network operators at the parent meter?*
- (e) Is there an imbalance in negotiating power between embedded network customers and embedded network operators in negotiating terms and conditions, including price, due to barriers to accessing retail market offers?*

SACOSS's recent study⁵ identified a number of barrier for customers in embedded networks to access retail competition, including upfront costs necessary to enable retail choice, and lack of incentives for embedded network operators or managers to offer it. Anecdotal reports suggest that very few customers access retail choice from within embedded networks, and given that enabling retail choice requires traditional retailers developing special offers and making special arrangements with embedded network managers to do so, it seems unlikely that it will be widespread (though it may well occur in very large developments where it is worthwhile for as retailer to make custom arrangements to acquire a large group of customers.

Even when on market arrangements are available from within embedded networks, it seems unlikely that customers will have much of a choice – due to special arrangements and energy-only offers needed. So it seems unlikely that access to the retail market will provide sufficient competitive pressure to drive competitive prices. (Keeping in mind also that in the conventional contestable retail market, competition has not driven long-term competitive prices for more than a small group of continually engaged customers.)

Question 6: What consumer protections, in relation to the sale of energy, are appropriate for off-market embedded network customers?

Customers in embedded networks should have the same consumer protections as customers in the conventional retail market as much as is practicable. This can only be achieved by predicating the exemption guidelines on delivery of the full suite of consumer protections, with explicit variations only where a specific protection is irrelevant or places an undue burden on the exempt seller that significantly outweighs the consumer benefit. Delivering the essential energy supply to a household is a significant social responsibility that is reflected in the suite of energy-specific consumer protections in the NECF and the various jurisdictional frameworks. It is appropriate for entities delivering this service to be subject to regulatory oversight, to meet a high standard of service delivery, and to have considerable obligations to their customers.

It's worth revisiting the scope of consumer protections in the NEM. The NECF was developed over an extended period of time, with significant stakeholder input and drawing from jurisdictional frameworks that had themselves been developed an defined over considerable time and with broad input.

⁵ SACOSS, *The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers*, December 2015

Among other things, customers of traditional energy retailers can be confident that:

- They will be able to connect to an energy supply
- Their energy supply will meet minimum reliability, quality, and safety standards, and they will be compensated if it doesn't
- Sufficient notice will be given for any planned interruptions to supply, and special consideration given to people reliant on life-support systems
- They will be given clear information about the service they are purchasing, a cooling-off period for any contract they sign, and in some circumstances (for more novel supply arrangements) a limited right to exit a contract and revert to their previous contract
- The basis of all charges is clear and subject to regulatory oversight
- They have access to historical billing data
- They have access to discounts on their energy costs if they are eligible for concessions
- If they come into payment difficulties, they will be given support and flexibility and only disconnected as a last resort and according to a regulated process
- They have access to an external dispute resolution service if they are unable to resolve a dispute with their energy supplier
- During billing disputes they can stay on supply and not have to pay the disputed amount
- If their supplier ceases trading, their supply is uninterrupted

Currently, the exemptions framework delivers some of these and not others; and many of those that it does deliver are delivered less thoroughly than they are for retail market customers.

(a) Is the objective of providing comparable consumer protections to exempt customers and customers of authorised retailers being achieved in practice?

No. There are numerous gaps in the framework that applies to customers of exempt sellers.

(i) What gaps or issues exist?

We draw your attention to SACOSS's recent report⁶ as well as further detail on gaps and issues in their submission to this review. We have particular noted external dispute resolution, payment difficulties and financial hardship, access to concessions, choice of payment methods, and information about historic usage as areas where customers of exempt sellers are significantly less well served than customers of authorised retailers.

(ii) Do stakeholders consider the ACL and tenancy legislation to provide suitable complementary protection for embedded network customers alongside the energy specific consumer protections included the exemption conditions?

No. ACL does not address any of the issues noted above to the extent they are handled by the energy-specific protections in the NECF, if at all.

Tenancy legislation in most states gives no more than elementary protection to tenants for tenancy matters, and in many states is silent on energy supply. For example, Victorian tenancy regulations do not even require that energy is supplied or, if it is supplied, that it is safe.

⁶ SACOSS, *The retail and network exemption Framework: Emerging Issues for Consumers: Report on the growing concern with consumer protection arrangements for exempt consumers*, December 2015

(b) Are there changes required to the consumer protection framework for off-market embedded network customers?

Yes: off-market embedded network customers should have the same consumer protections as customers in the conventional retail market as much as is practicable.

(i) What should the guiding principles for consumer protections for embedded customers be?

The guiding principle for embedded customers should be that all residential energy customers should have equal consumer protections as much as is possible, irrespective of how they receive their essential energy supply.

(ii) What risks should be addressed by consumer protections for embedded network customers?

(iii) Should consumer protections continue to be contained in the retail exemption conditions or should they be elevated into another legal instrument, e.g. the NERR?

Consumer protections should be based in the NECF (thus across a range of instruments including the NERR, as is the case for conventional retail customers). The retail exemption conditions should stipulate any additional protections that are unique to embedded network customer (such as access to the contestable market, pricing rules, and so on) and any variation of NECF protections that is required due to the specific circumstances of embedded networks or specific types of embedded networks.

(d) How do the current arrangements for consumer protection impact on vulnerable embedded network customers? How can access to concessions and rebates be improved?

Concessions and rebates are a core part of the energy customer framework. Exempt sellers should be required to inform customers of the existence of concessions and proactively request them to advise of eligibility. They should assist customers to determine eligibility, and to claim concessions and rebates. They should apply on behalf of eligible customers if this is required to secure the concession or rebate.

Conclusion

Thank you for the opportunity to respond to the Review of Regulatory Arrangements for Embedded Networks. We also appreciate the comprehensive and thoughtful consultation paper, and the stakeholder consultation session that enabled considerable discussion about the review and related issues – our attendance at this helped inform our submission.

If you wish to discuss anything raised in this submission further, please contact Dean Lombard, Senior Energy Analyst, at dean@ata.org.au or on (03) 9631 5418.