




20 November 2017

Review of regulatory arrangements for Embedded networks – Implementation of recommendations in Draft Report

for the Australian Energy Market Commission

Review of regulatory arrangements for Embedded networks

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Executive summary

1. Executive summary

1.1 Minter Ellison has been commissioned by the AEMC to review and advise in connection with the implementation of the recommendations in its Draft Report 'Review of regulatory arrangements for embedded networks' dated 12 September 2017.

1.2 We have considered:

- (a) the appropriate means of elevating retail and network activities conducted in respect of Embedded networks into the framework established by the NEL and the NERL;
- (b) the establishment of an appropriate set of primary obligations for registered Embedded network operators, and Authorised on-selling retailers;
- (c) a procedure under the NERL for seeking variations to and waivers from registration conditions and regulatory obligations;
- (d) the consequent narrowing of the circumstances in which exemptions might be obtained under the NEL and NERL frameworks;
- (e) adjustments to metering arrangements for Off-market meters;
- (f) the role of Metering Co-ordinators; and
- (g) the extension of consumer protections to Embedded Network customers.

1.3 In summary, we propose implementation mechanisms under which:

- (a) the elevation of Embedded network operators into the NEL and NER is achieved by introducing a new sub-category of network service provider into clause 2.5 of the NER, and then defining the obligations of the Embedded network operator more narrowly than for existing regulated networks;
- (b) the elevation of Off-market retailers into the NERL and NERR is achieved by the establishment of a new class of retailer in Part 5 of the NERL, and then defining the obligations of the Off-market retailer more narrowly than for existing 'On market' retailers';
- (c) a mechanism is established to achieve relief or waivers from obligations and conditions in appropriate (but relatively limited) cases for Off-market retailers;
- (d) although a framework is retained for the granting of exemptions, the circumstances in which an exemption will be appropriate will be more limited;
- (e) base consumer protections and access to competition will generally be made available to Embedded network customers;
- (f) appropriate enforcement and monitoring powers will be maintained; and
- (g) existing exemptions will be recognised, in the context of the AEMC's policy determinations as to access to competition and consumer protection.

1.4 Our analysis and recommendations are set out in chapters 3 to 9 of this report.

1.5 The implementation mechanisms require changes to the NEL and NER, the NERL, the NERR and possibly the NERL Regulations, and various changes in administrative practice by regulators, principally the AER. Where appropriate we have identified in general terms the changes that will be required to existing provisions, and where new provisions are required, we have given an outline of the intent and location within the regulatory framework of those provisions.

1.6 The changes to the NER and NERR are significant, but much less substantial than those required to bring about the 'Power of Choice' reforms. A number of options are available for bringing about these changes. In general, where a choice of the mode of amendment is possible, we have recommended the amendment that is most consistent with the existing regulatory framework. If a choice has been possible between an amendment to the NEL and NERL, or the NER and NERR we have generally recommended amendments to the NER and NERR.



Mark Carkeet
Partner

Date: 20 November 2017

Report

1. Introduction

1.1 Background

On 12 September 2017, the AEMC released its Draft Report *Review of regulatory arrangements for embedded networks*. This review responds to terms of reference provided to the AEMC by the COAG Energy Council as a result of the AEMC's recommendations in the final determination on the Embedded networks rule change request.¹

The AEMC was asked to identify issues which affect Embedded network customers and identify solutions to these issues. To this end the terms of reference required the AEMC to consider options that:

- (a) support competition where effective;
- (b) take into account the cost of regulation and support for a range of supply and service models;
- (c) take into account the impact of current arrangements on vulnerable consumers, particularly in situations where other retail offers are not accessible;
- (d) aim to ensure regulatory frameworks are fit for purpose and sufficiently flexible to cope with the effects of emerging technologies and market innovation; and
- (e) enable consumers to benefit from innovative services while mitigating any risks.

1.2 AEMC's Draft Report

The Draft Report finds that the current regulatory framework for Embedded networks is no longer fit for purpose in the face of the rapid growth in their number and scope. The growth in Embedded networks means an increasing number of customers are being supplied under different regulatory arrangements and consumer protections from those available to customers that have a standard network connection.

In practice, the AEMC has found that, compared with Standard supply customers, Embedded networks customers receive less consumer protections than customers with standard supply arrangements and are also less able to change retailers. Embedded network service providers and On-selling retailers that serve small residential and business customers, as suppliers of an essential service, should meet a set of minimum standards and be subject to an appropriate level of enforceable consumer protections. In addition, the current legal framework does not operate effectively for some aspects of Embedded networks.

The main recommendations of the Draft Report are that:

- (a) Customers who are currently being served by legacy Embedded networks (both off and On-market) should be given improved access to competition. This includes making the process for switching to a Market offer as simple as possible. This may be achieved by changes to the manner in which the metering of Embedded networks operates, to allow access to the market by customers.
- (b) The regulation of new Embedded networks should be contained within the national regulatory framework. This will require that Embedded network operators and Off-market retailers will, in the majority of cases, be required to hold relevant registrations, rather than operating under the current exemptions frameworks;
- (c) Customers within new and legacy Embedded networks should be provided with an appropriate set of consumer protections which are better aligned with those available to customers serviced by standard network arrangements; and

¹ National Electricity Amendment (Embedded Networks) Rule 2015 No. 15

- (d) The regulatory framework for gas embedded networks be improved.

1.3 Draft Recommendations

The AEMC has made a series of Draft Recommendations relating principally to:

- (a) elevating new Embedded networks into the national framework by requiring embedded network operators and On-selling retailers to hold relevant registrations and by limiting the scope of exemptions available to network operators and On-selling retailers;
- (b) providing the AER with additional powers to impose conditions on retailers and enforce breaches of exemption conditions;
- (c) requiring metering services to be 'market facing' and increasing transparency around tariff charges; and
- (d) facilitating the entry of retailers into embedded networks by extending the tripartite relationship between retailers, Embedded network operators and Embedded Network customers.

1.4 Minter Ellison's instructions

We have been requested to provide a 'framework' legal advice on the key law and rule changes necessary to implement the AEMC's recommendations in the Draft Report. The AEMC has asked that the advice include:

- (a) a description of the key law changes and rule changes that would be required to implement the Draft Recommendations - including a description of any potential revisions to the Draft Recommendations that could be made to implement more effectively the policy settings outlined in the Draft Report from a legal perspective;
- (b) details of any material impediments to making law changes and rule changes to give effect to the policy settings outlined in the Draft Report;
- (c) an overview of some of the transitional provisions that would be necessary; and
- (d) a description of any further policy issues that may need to be addressed by the AEMC in order to implement the Draft Recommendations to the extent such issues are identified during the process of providing our legal advice.

1.5 Exclusions

Our advice does not include:

- (a) advice on any Draft Recommendations that the AEMC highlighted for jurisdictional or AER consideration in the Draft Report; and
- (b) the drafting of required law changes or rule changes.

In some cases, for the sake of expedience and economy, our report has highlighted the types of changes to specific provisions of the regulatory framework that might be necessary to implement the changes. On occasions, the best means of achieving this has been to identify possible changes to specific wording, but this does not mean we recommend that particular wording.

2. Recommended changes

2.1 Introduction

This chapter summarises, in table form, our recommendations as to the principal amendments to the NEM regulatory regime required to give effect to the Draft Recommendations. Where practicable, and a relevant rule making power exists, we have recommended changes to the NER and NERR (rather than to the NEL and NERL), in order to provide maximum flexibility. However, changes to the NERL and the NEL are recommended if they are necessary, or consistent with the existing regulatory structure. In a small number of cases, we have recommended that the policy objectives are best implemented by appropriate guidelines being developed and issued by the AER.

2.2 Changes to the NEL, NER

No	Recommended Change	Reason/Effect	Draft AEMC Report Reference/ Minters Instructions	Reference in Minters Report
National Electricity Law (NEL)				
1	Amend Section 13	Create express obligation to comply with exemption conditions, and (if thought necessary) declare a breach of the obligation to be a civil penalty provision. This will rectify any deficiency in AER enforcement powers	Ch 9.2.5	Section 5.3(d)
National Electricity Rules (NER)				
2	Amend clause 2.3	Require persons who on-sell to Embedded Network customers, to register as Second-Tier Customers and create two classes of Second-Tier customers.	New recommendation: Minters instructions question 13.	Section 4.4(c)
3	Amend clause 2.5	Recognise new category of 'Embedded network service provider', specify eligibility criteria, minimum service obligations and excluded service obligations.	Ch 8.5	Section 4.3.4(f)
4	Amend clause 2.5	Class exemption for passive asset owners.	Ch 8.6	Section 5.2(e)
5	Amend chapter 6B	Require/exempt the retailer to pay external network charges on a shadow pricing basis	Ch 7.5	Section 3.5 (c)
6	Chapter 7, generally	Amend to require: <ul style="list-style-type: none">• appointment of Metering Coordinator for Off-Market customers;• capturing of Off-market connection points;• provision of metering data	Ch 7.4	Section 8,2(c) Section 8.2(c) Section 8.2((c)



No	Recommended Change	Reason/Effect	Draft AEMC Report Reference/ Minters Instructions	Reference in Minters Report
7	Amend clauses 7.8.2 (ea)-(ec)	Extend Embedded network manager obligation to Off-market child connection points.	Ch 7.4	Section 3.3(d)(iv)
8	Amend clause 7.8.11	Extend to Embedded network managers	Ch 7.4	Section 3.3(d)(vi)
9	Amend clauses 7.10.2/7.11.1/7.15.5(c)	Extend to Exempt network service providers. (see alternative, impose new billing obligations on Embedded network manager	Ch 7.4	Section 3.4(b)(iii)
10	Amend clause 7.12.2	Extend to Embedded network managers	Ch 7.4	Section 3.3(d)(vi)
11	Chapter 10	Amend definition of Network Service Provider to deal with the Embedded network service provider concept, or Insert a new definition of ' Embedded network service provider'.	Ch 8.5	Section 4.3(f)(ii)
12	Transitional provision	Allow time for providers to integrate Power of Choice changes and AEMO to adapt NMI and MSATS systems	Ch 7.4	Section 3.3(e)

2.3 Changes to the NERL, NERR

No	Recommended Change	Reason/Effect	Draft AEMC Report Reference	Reference in Minters Report
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National Energy Retail Law (NERL)

1	Amend Section 2	Define Exempt Embedded network service provider Amend Definition of 'shared customer' Also note consequential amendments	Ch 8.8	Section 9.3(b) Section 9.4(d),
2	Amend Section 19	Specify which provisions of Part 2 (Relationship with Small Customers) apply to Off-Market retailers.	Ch 8.7.3	Section 4.3(e)(iii)
3	Amend Section 22	Define 'embedded network'	Ch 9.3	Section 9.3(b)
4	Amend Section 22 (5)	Extend the obligation to make standing offers to Customers who are connected to Embedded	Ch 9.3	Section 9.1(c), Section 9.3(b).



No	Recommended Change	Reason/Effect	Draft AEMC Report Reference	Reference in Minters Report
		networks (or delete the subsection)		
5	Insert new Section 37A	Obligation for Off-market retailer to publish prices. Note we raise questions about whether this is necessary if On-market retailers publish theirs.	Ch 9.5	Section 6.3
6	Amend Section 79	Clarify that Part 4 (Small Customer Complaints) applies to all retailers.	Ch 9.2.1	Section 4.3(e)(iv)
7	Amend Section 89	Provide for two different subclasses of Retailer: 'On-market' Retailer' and 'Off market Retailer', and Embedded Network Service Providers.	Ch 8.7	Section 4.3 (e)(i)
8	Amend Section 93	Extend power to ensure the AER has an express power to impose conditions either generally, or specifically to individual retail authority holders.	Ch 8.8	
9	Amend S114(2)	Include an appropriate consumer focussed test	Ch 8.8.3	Section 6.2
10	Repeal Sections 115 and 116	Unnecessary given the amendment to Section 114(2)	Ch 8.8.3	Section 6.2
11	Establish new Part 5, Division 6A.	Power and procedure to grant waivers and relaxation from exemption conditions.	Ch 8.8	Section 7.3(a)(iii)
12	Sections 273ff	Compliance obligations. We note that the AER has adequate monitoring and enforcement powers but that the obligation to have compliance programs is limited.	Ch 9.2.5	Section 6.5

National Energy Retail Regulations

13	General	A regulation giving power to make Rules permitting monitoring of compliance with exemption conditions	Ch 8.8	Section 6.5(f)
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National Energy Retail Rules (NERR)

14	Amend clause 3	Define 'Embedded Network service provider' by reference to the NER, to facilitate the inclusion of an ENSP in the 'tripartite relationship.	Ch 9.3.3	Section 9.6(c)
15	Division 3 of Part 1	Deal with customer classification by Embedded Network service providers.	Ch 9.3.3	Section 9.6(c)

No	Recommended Change	Reason/Effect	Draft AEMC Report Reference	Reference in Minters Report
16	Division 4 of Part 1	Specify which provisions do, and do not apply to On-Market Retailers	Ch 8	Section 4.3(e)(v)
17	Amend Part 5/ Create new part 5A	Establishment of a relationship between embedded network customers and retailers.	Ch 9.3.2	Chapter 9.4(f)
18	Part Six – Create new Division 3A	Create rules for de-energisation of premises by Embedded network service providers. Note comments on life support obligations.	Ch 9.3.3	Section 9.6(c)
19	New clause 148A	Declaring an Exempt seller to be a 'regulated entity' thus extending the monitoring guidelines to Exempt sellers.		Section 6.5(d)
20	New clause 154A	Limit the classes of exemption. Note our recommendation to include an 'other' category.	Ch 8.8.3	Section 6.2(b) See also consequential amendments
21	Transitional provision	Deal with the surrender of existing exemptions	Minters instructions	Section 6.4(b)
22	Transitional provision	Deal with the treatment of existing exemptions.	Minters instructions	Section 6.2(c)

2.4 Changes to guidelines and procedures

No	Recommended Change	Reason/Effect	Draft AEMC Report Reference	Reference in Minters Report
AEMO guidelines/procedures				
23	NMI and MSATS Systems	Allow NEM wide registration of Off-market connection points		3.3(e)(ii)
24	ENM Service Level procedures/NMI standing data schedule/CATS procedures	Extend to Off-market connection points, as applicable.	Ch7.4	Section 3.4(d)(v)
25	B2B and related guidelines			Section 8.2(d)
AER				
26	Retail Performance Reporting Procedures and Guidelines, Compliance Procedures and Guidelines	Amend to ensure applicable to Exempt sellers. <i>or</i> Amend retail exemption guideline to impose compliance conditions on Exempt Sellers. See also suggested NERR clause 148A.		Section 6.5(f)



No	Recommended Change	Reason/Effect	Draft AEMC Report Reference	Reference in Minters Report
27	Guidelines on conditions and waivers	Guidance to market on conditions attaching to Retailer authorisation and waivers.	Ch 8.2.3, 8.7.3	Section 7.3(a)(iii)(C)

3. Improving access to retail market competition in legacy embedded networks

3.1 Introduction

In Chapter 7 of the Draft Report, the AEMC notes that the network exemption guideline currently requires Exempt embedded network service providers to take reasonable steps to facilitate access to retail competition for Embedded network customers where it is available in a jurisdiction. However, practical impediments to competition remain, including:

- (a) bespoke Embedded network tariffs;
- (b) Embedded network billing arrangements that require retailers to implement special processes;
- (c) lack of visibility of Off-market Embedded network connections; and
- (d) transaction costs for the retailer in negotiating access to meters.

We have been asked to consider implementation requirements for the Draft Recommendations to:

- (i) require Embedded network managers to register a NMI with AEMO for Off-market child connection points, and provide NMI standing data and information that must be included in the Metering register for those Off-market child connection points to AEMO;
- (ii) require Metering data providers at On-market child connection points to provide metering data to Exempt embedded network service providers for billing purposes; and
- (iii) require that the Exempt embedded network service provider bill the On-market embedded network customer's retailer for a network tariff an amount that is no greater than the standard published Local network service provider's network tariff that would apply if there was no intermediate Embedded network.

Consistent with the AEMC's decision not to propose changes to arrangements applying to generators within Embedded networks, we have not considered implementation requirements relating to embedded generators.

3.2 AEMC proposal to require Embedded network managers to register an NMI and provide associated data for Off-market child connection points

(a) Background

In section 7.4 of the Draft Report, the AEMC notes that it:

'considers that retailers would be better placed to make offers to child embedded network customers if child embedded network customers were issued with NMIs, which were registered with AEMO in MSATS and discoverable by market retailers, regardless of whether the customer is on or off market.'

The AEMC further proposes that:

'all child embedded network customer metering installations [are] to be assigned an NMI, regardless of whether those customers are on or off market wherever an ENM is appointed - that is, generally on sites with 30 or more child embedded network customers or on sites with 29 or less child embedded network customers where one or more of those customers is On-market.'

(b) AEMC recommendations

The AEMC then recommends that Embedded network managers be required to:

- (i) apply to AEMO for NMIs for Off-market metering installations;
- (ii) register the NMI for Off-market metering installations with AEMO (i.e. in MSATS); and
- (iii) provide information to AEMO maintain in the Metering register (i.e. NMI standing, data in MSATS) about whether the meter complies with the current NEM requirements.

3.3 Implementation issues

(a) Introduction

In considering the implementation of the recommendations in the Draft Report, the starting point is to consider the process for how NMIs will be assigned to connection point/metering installations under the NER under the 'Power of Choice' reforms.

Accordingly, for the purposes of this report, we will only consider the metering arrangements (including the assignment of NMIs) that:

- (i) will apply on and from 1 December 2017 when the 'Power of Choice' amendments to the NER will commence; and
- (ii) apply to *electricity retailers* as FRMP for their customers' Market connection points (as that scenario has the closest parallels to the AEMC's Draft Recommendation as compared, for example, to the metering arrangements for market generators or interconnectors).

(b) NMI procedures – connection points that are not located in Embedded networks

By way of context, we thought it useful to start by outlining how NMIs are assigned to connection points that are *not* located in Embedded networks.

Under clause 7.2.1(a) of the NER, the electricity retailer as FRMP for a customer's On-market connection point must ensure that, before participating in the NEM in respect of that connection point, a NMI has been obtained for that connection point.

(i) *Current NMI assignment process*

The process to permit the retailer to meet this obligation, and to allow other relevant parties to be informed of the NMI assigned to a *new* On-market connection point, is set out in NER clauses 7.8.2(c)-(e) as follows:

- (A) the retailer for the connection point must apply to the Local Network Service Provider for a NMI to be assigned to the new connection point;
- (B) the Local network service provider must issue a NMI for the metering installation at the connection point to the retailer and register that NMI with AEMO in accordance with AEMO's procedures;
- (C) the retailer must provide the Metering Coordinator with the NMI for the metering installation within 5 business days of receiving it from the Local network service provider; and
- (D) the Metering Coordinator must, within 10 business days of receiving the NMI from the retailer, ensure that AEMO is provided with the relevant details for the Metering register that relate to the metering installation to which the NMI has been assigned.

(ii) *Current data entry process*

The details and data that the Metering Coordinator must enter into the Metering register for a new metering installation at a connection point² include:

- (A) the connection and metering point reference details, including location and reference details, loss compensation calculation details, site identification names, the FRMP, Metering Coordinator and LNSPs associated with the connection point, and the transfer dates for incoming retailers from time to time;
- (B) the identity and characteristics of metering equipment (ie instrument transformers, metering installation and check metering installation), including serial numbers, metering installation type and model details, and

² The applicable details for the metering register are set out in Schedule 7.1 of the NER.



the Metering Provider(s) and Metering Data Provider(s) for the metering installation, etc.;

- (C) data communication details, including the telephone number(s) for access to energy data, communication equipment type and serial numbers, communication protocol details or references, data conversion details, user identifications and access rights and the 'write' password for the metering installation;
- (D) data validation, substitution and estimation processes agreed between affected parties; and
- (E) data processing prior to the settlement process, including algorithms for customer half-hourly load calculation and Local Retailer net load calculation.

(iii) *NMI discovery for connection points that are not in Embedded networks*

For *existing* On-market connection points, retailers commonly are able to discover the NMI for the connection point/metering installation via MSATS.

However, to the extent that this is not possible, the NER requires DNSPs:

- (A) within 1 business day of request, to provide the retailer with the NMI and NMI checksum for the premises by reference to a unique meter identifier held by the Distribution Network Service Provider, a street address or Australian postal address data (with up to 99 search results to be provided); and
- (B) within 2 business days of request, to provide the retailer with the NMI standing data for the requested premises.

NMI standing data and information in the Metering register (and related passwords) must be treated as, and must be protected as, confidential information by DNSPs, retailers, Metering Coordinators (and others with authorised access under the NER) in accordance with the confidentiality obligations in section 8.6 of the NER.

(c) NMI procedures – On-market connection points in Embedded networks

From 1 December 2017, the NER will provide that Embedded network managers are required to obtain and register an NMI for On-market connection points with AEMO.³

Under AEMO's supporting procedures, the Embedded network manager will be required to undertake the following roles for the metering installations of an embedded network customer⁴:

- (i) provide market interface services for market Embedded network customers, for example, by creating a Child NMI, maintaining Child NMI standing data and network tariff codes;
- (ii) if requested by a retailer, apply to AEMO for NMIs for child connection points in the Embedded Network;
- (iii) register Child NMIs in MSATS;
- (iv) provide relevant persons with the NMI of the child connection point;
- (v) establish and maintain the NMI standing data for its Child NMIs within MSATS;
- (vi) allocate embedded network codes for their Child NMIs in MSATS;
- (vii) act in the role of the LNSP in MSATS for its child connection points;

³ NER, cl 7.8.1(ea).

⁴ See AEMO's *Service Level Procedure ENM Services*

- (viii) maintain and manage relevant embedded network wiring information and meter arrangements;
- (ix) assign a distribution loss factor to each Child connection point in MSATS;
- (x) provide AEMO with a list of all distribution loss factors for all their child connection points (indicating which ones were calculated by the Embedded network operator); and
- (xi) maintain a register of all allocated Child NMIs.

Under the Draft Recommendations, it is proposed that Embedded network managers will perform a subset of these obligations for Off-market connection points in Embedded networks by applying for the allocation of Child NMIs for the Off-market connection points and, upon issue, registering the Child NMIs in MSATS.

(d) Amendments to the regulatory framework

- (i) *No requirement to amend the NERL or NERR*

In our view, there is nothing in AEMC's recommendations that would require any amendment to be made to the NERL or NERR.

In relation to metering, the NERL only addresses targeted metering obligations in relation to prepayment meter systems but does permit the NERR to address *'the use of interval meters and smart meters and other related technologies'*.⁵

The NERR does not deal with the assignment of NMIs and maintenance NMI standing data or Metering register information to which the AEMC's recommendations relate.

- (ii) *No requirement to amend the NEL*

In our view, there is nothing in the AEMC's recommendations that would require an amendment to be made to the NEL.

Except for the provisions which relate to Ministerial smart metering determinations (which are not applicable to the current review)⁶, the NEL does not specifically regulate metering, except to state that⁷:

'AEMO has the following functions(f) to facilitate retail customer transfer, metering and retail competition'.

The AEMC's recommendations will, if introduced, impose obligations on accredited Embedded network managers for Off-market embedded network customers that will assist AEMO perform this function prescribed by the NEL.

- (iii) *Amendments to Chapter 7 NER*

We recommend that the best way of achieving this would be (after an appropriate grace period) to use and adapt the framework introduced by the *National Electricity Amendment (Embedded Networks) Rules 2015* in relation to On-market child connection points in Embedded networks to extend the Embedded network manager's obligations to include Off-market child connection points.

From 1 December 2017:

- (A) the NER provides that Embedded network managers are required to obtain and register an NMI for On-market connection points with AEMO;⁸
- (B) AEMO's Embedded network manager service level procedure provide that the Embedded network manager must establish and maintain the NMI Standing Data for NMIs assigned to On-market connection points as part

⁵ NERL, s 237(2)(ia).

⁶ NEL, ch 8A.

⁷ NEL, s 49.

⁸ NER, cl 7.8.1(ea).

of the services it provides (see further details in the following paragraph);⁹ and

- (C) the NER also provide that the Metering coordinator must provide information (and report any changes to information) that AEMO is required to include in the Metering register.¹⁰

We consider that each of these obligations must be extended to Embedded network managers for Off-market connection points in Embedded networks¹¹.

(iv) *Obtain and register a NMI*

The Embedded network manager's obligation under cl 7.8.2(ea)-(ec) of the NER¹² to obtain a NMI and register it with AEMO for an On-market connection point in an Embedded network could be extended to apply also to Off-market child connection points.

Clause 7.8.2(ea)-(ec) provide that:

- (A) the Embedded network manager must apply to AEMO for NMIs to be assigned to all metering installations at On-market connection points in Embedded networks for which it is the Embedded network manager;
- (B) AEMO must, upon application, issue NMIs to the Embedded network manager; and
- (C) the Embedded network manager must, within five business days of receipt of the NMI, provide it to the Metering coordinator, financially responsible Market participant, Exempt embedded network service provider and register the NMI with AEMO.

An 'Exempt Off-market connection point' could be defined by reference to any agreed point of supply between an Exempt embedded network service provider and an Authorised retailer or Exempt seller within an embedded network that is not an On-market child connection point.

Cl 7.8.2(ea)-(ec) could then be amended to apply to both child connection points and Exempt Off-market connection points. We note in Chapter 8 we discuss alternatively referring simply to 'Off-market connection points' where the relevant rule applies to both exempt and registered Off-market connection points. Aspects of sub-clause 7.8.2(ea)(2) (requiring provision of the NMI to the Metering Coordinator and Financially Responsible Market Participant) would not apply in relation to exempt Off-market child connection points.

AEMO's ENM Service Level Procedure and NMI Procedure will require amendment to account for the expansion of the Embedded network manager's role.

(v) *Maintain NMI Standing Data*

Clause 7.13.3 of the NER provides that the distribution network service provider must provide NMI Standing Data within 2 business days of a retailer's request. If the AEMC so recommended, this obligation could be revised to sit with the Embedded network manager for On-market and Off-market child connection points in Embedded networks.


The Embedded network manager's obligation to maintain NMI Standing Data in relation to On-market connection point in an Embedded Network is found in AEMO's ENM service level procedure, NMI standing data schedule and CATS procedures. Accordingly, the AEMC should consider recommending that AEMO amend its

⁹ Service Level Procedure ENM Services, cl 2.1.1(e)

¹⁰ NER, cl 7.3.2(e)(5); 7.8.2(e) 7.8.11(d).

¹¹ The implementation requirements in this section 3.2 of this report should be considered in conjunction with those set out in chapter 8 of this report.

¹² cl 7.8.2(ea).



procedures and the NMI standing data schedule to apply the AEMC's recommendations for Off-market connection points in Embedded networks.

The AEMC should also consider whether any elements of the NMI Standing Data, defined in Chapter 10 of the NER and in AEMO's NMI Standing Data Schedule are not necessary for the Embedded network manager to maintain in relation to Exempt Off-market child connection points.

(vi) *Provide information to AEMO for Metering register*

In the Draft Report, the AEMC has proposed that a Metering Coordinator would also be appointed at Off-market child connection points supplied by a registered network service provider, but it has not presently made the same recommendation in relation to Off-market connection points supplied by legacy Exempt sellers.

Accordingly, we consider that it is necessary to impose a new obligation on the Embedded network manager for Off-market connection points in Embedded networks that is modelled on the Metering Coordinator's current Metering register obligations for On-market connection points.

This would require amendments to the NER to require the Embedded network manager to:

- (A) ensure that changes to parameters or settings within a metering installation are reported to AEMO to enable AEMO to record changes in the Metering register (cl 7.8.11); and
- (B) arrange for discrepancies in information in the Metering register identified by AEMO to be corrected (cl 7.12.2).

We also consider that clause 7.1.1(b)(1) would also need to be amended to extend the purpose of the *Metering register* to cover registration of Off-market connection points.

Schedule 7.1 of the NER will also likely need to be amended to prescribe the details that the Embedded network manager will be required to provide to AEMO to enter into the Metering register for Off-market metering installations in Embedded networks.

(e) Transitional provisions

We suggest that a transitional period should be considered by the AEMC to allow time for:

- (i) Embedded network managers to first process the initial demand for their services for On-market connection points in Embedded networks from 1 December 2017 upon commencement of the Power of Choice reforms;
- (ii) AEMO to design (or amend its existing) NMI and MSATS systems and procedures to allow for the NEM-wide registration of Off-market connection points in Embedded networks (using cl 11.87 of the NER as a model);
- (iii) exempt Embedded network service providers and Embedded network managers to amend contractual arrangements to cover the provision of additional services in relation to Off-market child connection points; and
- (iv) Embedded network managers to build the capability to provide information (and report any changes to information) that AEMO is required to include in the Metering register (an obligation which the Metering coordinator provides in relation to On-market connection points in the NEM).

However, AEMO and accredited Embedded network managers are better placed than us to provide submissions to the AEMC on the scope of any such transitional arrangements.

3.4 Requiring for Metering data providers to provide data in respect of On-market meters

(a) Introduction

The AEMC proposes that Metering data providers at On-market child connection points should be required to provide metering data to Exempt embedded network service providers for billing purposes.

Rules 7.13 and 7.15 of the NER set out who may access metering data, NMI standing data and other data:

- (i) the Embedded network manager may access and receive metering data, settlements ready data, NMI standing data and data from the Metering register in relation to a metering installation at an On-market child connection.¹³ The Metering Data Provider must provide the metering data and NMI standing data to the Embedded network manager in accordance with the NER and AEMO's procedures. AEMO must also provide access to its metering database, which contains the metering data, settlements ready data, and information to be included in the Metering register under rule 7.12.¹⁴ The distribution network service provider has an express right to use settlements ready data for the purpose of determining distribution service charges under clause 6.20.1 of the NER.
- (ii) the Exempt embedded network service provider may access and receive metering data in relation to a metering installation at an On-market child connection point.¹⁵
- (iii) the Embedded network manager may also access energy data directly from the metering installation via a read only password provided by the metering provider.¹⁶

(b) Amendments to the regulatory framework

- (i) *No amendment to the NEL*

In our view, there is nothing in the AEMC's recommendations that would require an amendment to be made to the NEL.

- (ii) *No requirement to amend the NERL or NERR*

In our view, there is nothing in AEMC's recommendations that would require any amendment to be made to the NERL or NERR.

- (iii) *Amendments to the NER*

(A) Metering data

Clause 6.20.1(e) of the NER provides that, in relation to Market Customers, Embedded Generators and Second-Tier Customers, a distribution network service provider must calculate distribution charges from 'settlements ready data' obtained from AEMO's metering database for Type 1 – 4 metering installations, and either 'settlements ready data' from AEMO's metering database or 'metering data' for Type 5 – 6 metering installations.¹⁷ These three types of Distribution Customers constitute the vast majority of Distribution Customers.

To ensure the Exempt embedded network service providers are able to accurately calculate shadow network tariffs on the same basis as distribution network service providers, it would be useful for them to have access to the 'settlements ready data' and 'metering data' that distribution network service providers rely on.


¹³ NER, cl 7.15.5(c)(5a); 7.15.5(f)(4).

¹⁴ NER, cl 7.11.1

¹⁵ NER, cl 7.15.5(d)(5); 7.15.5(f)(4).

¹⁶ NER, cl 7.15.4(e)(1).

¹⁷ In limited circumstances (embedded generators that are not market generators, non-registered customers and franchise customers), cl 6.20.1 of the NER provides that the distribution network service provider must instead use data consistent with the metering data used by the relevant Local Retailer to determine energy settlements.



The *National Electricity Amendment (Embedded Networks) Rules 2015* identified that Exempt embedded network service providers only require access to metering data, and not NMI standing data, settlements ready data, or data from the Metering register.¹⁸ If, however, the Exempt embedded networks service provider is required to pass through a network tariff no greater than that which would apply if there was no intermediate embedded network, it may be appropriate for them to have access to a broader range of information. It is also useful for them to have access to NMI standing data and information maintained by AEMO in the Metering register to ensure all parties are identifying the correct metering installation in a consistent manner.

Provision of 'settlements ready data', 'metering data' and information held in the 'Metering register' is controlled by AEMO via access to its 'metering database' in accordance with clause 7.11.1 of the NER. Provision of 'metering data' directly by a Metering data provider via access to its 'metering data services database' is also separately regulated by clause 7.10.2 of the NER. Both clauses provide that access must be provided to persons listed in clause 7.15.5(c)(1)-(5a). This list includes Embedded network managers for On-market child connection points, but not Exempt embedded network service providers. Exempt network service providers' current access rights are instead set out in clauses 7.15.5(d) and (f).

NER clause 7.15.5(c) could be amended to refer to the Exempt embedded network service provider, which would provide it with rights to access to four types of data: metering data, settlements ready data, NMI standing data, and information held in AEMO's metering register. Clauses 7.10.2 and 7.11.1 could also be amended to require the Metering data provider and AEMO respectively to provide access to settlements ready data, metering data and information held in the 'Metering register'.

However, we understand that the concept of an 'Embedded network manager' was created in part to avoid the need for Exempt embedded network service providers to engage in market interface functions. Exempt embedded network service providers are also not Registered Participants bound by confidentiality provisions under the NER. Embedded network managers are bound by confidentiality obligations set out in the ENM service level procedures.¹⁹

The AEMC could alternatively implement its proposal to resolve issues associated with access to metering data for On-market child connection points for billing purposes by imposing new billing obligations on the Embedded network manager, rather than expanding the Exempt embedded network service providers' access to energy data.

The Embedded network manager could calculate the maximum network tariff the Exempt embedded network service provider using its existing rights to access relevant energy data, and communicate that maximum figure to the Exempt embedded network service provider as a part of the embedded network management services it is required to provide.

Regardless of which approach is adopted, inserting an equivalent to cl 7.11.1(g) for the Embedded network manager or Exempt embedded network service provider will ensure that they can use the relevant data for the purposes of calculating shadow network tariffs.

¹⁸ National Electricity Amendment (Embedded networks) Rule 2015 Rule Determination, 17 December 2015, at p 115.

¹⁹ NER, cl 7.16.6A(d)(2).

(B) Password access

A related question is whether Exempt embedded network service providers should receive passwords to directly read the metering data for On-market embedded network customers. Drawing from parallels with the current arrangements, Exempt embedded network service providers could (in place of the LNSP) be given 'read-only' passwords for large customer metering installations within the Embedded network but not for Small customer metering installations.

We note, however, as further discussed in Chapter 5, upon implementation of the Draft Recommendation to require most Exempt embedded network service providers to become registered, those registered entities would become entitled to obtain metering data from the Metering Data Provider for On-market connection points within an Embedded network. This is because we consider that they would become, upon registration, a *'Registered Participant with a financial interest in the ... energy measured by that metering installation'*.

(c) **Transitional provisions**

Although the AEMC's proposal is intended to apply to existing Embedded networks, on face value we do not envisage that significant transitional arrangements, or a transitional period, will be required for implementation of the proposal.

This is because we do not consider that, from a regulatory compliance perspective, it is particularly onerous to require meter data providers to provide metering data to Exempt embedded network service providers in addition to the classes of persons who are already entitled to receive that data.

However, we are conscious that the 'Power of Choice' metering arrangements will only commence in December 2017 and the issue of whether a transitional period is needed for the present proposal should be reassessed once these measures have been sufficiently implemented in the market. In particular, we may have under-estimated the administrative burden that may be imposed on metering providers to provide 'read-only' passwords to Exempt embedded network service providers in relation to large customer metering installations within Embedded networks.

If access is provided via AEMO's metering database, it will also require time to amend relevant procedures to account for the new information flow.

3.5 **Ensure access to standard network tariffs**

(a) **Introduction**

The AEMC has identified through stakeholder engagement that the lack of transparent network charges for Embedded network customers is a significant impediment to competition.

To alleviate this, the AEMC has proposed to allow:

'a retailer of an On-market embedded network customer to pay the Exempt embedded network service provider a network tariff that is equal to the standard published LNSP network tariff that would apply if there was no intermediate embedded network.'

In turn, the AEMC has proposed that:

'...the Exempt embedded network service provider (or their agent) would issue an invoice to the On-market customer's retailer. The invoiced amount would be the same amount that the customer would have paid had they been directly connected to the LNSP's network. The On-market customer would then be issued with a bundled network and energy bill by their retailer in the usual manner.'

(b) Considerations for implementation of the Draft Recommendation

(i) Introduction

For Small customers who are not in an Embedded network, the NERL and NERR establish a tripartite contractual relationship between the Customer, the retailer, and the network service provider.

Despite this, it is the retailer, not the network service provider, who bills Small customers on a 'bundled' basis for all aspect of the sale and supply of electricity to the customer. The NERR obliges retailers to bill their standing offer customers on a bundled basis.²⁰ Chapter 6B of the NER, and related provisions of the NERR, also establish this as the statutory arrangement for Market customers (who are connected to a distribution network)²¹.

The Exempt embedded network service provider may charge the retailer under the network exemption guideline on a 'shadow pricing' or 'causer pays' basis.²²

The NERL/NERR and chapter 6B of the NER do not regulate the tripartite contractual relationship between an On-market embedded network customer, its retailer of choice, and an Exempt embedded network service provider.

However, as discussed in the Draft Report:

- (A) it is open for a retailer, with the customer's consent, to invoice and charge an On-market embedded network customer on an 'energy-only' basis (ie, with no pass-through of network charges);²³ and
- (B) in those cases, the network exemption guideline requires the Exempt network service provider to recover external network charges from the On-market embedded network customer either on a 'shadow pricing' or 'causer pays' basis, as discussed above in relation to tripartite arrangements.

If the external network charge is clearly attributable to a specific On-market Embedded network customer, it may be passed through by the Exempt network service provider at cost to that customer (**causer pays**). If the charge cannot be readily attributed to a particular customer, the network charge for each On-market Embedded network customer may be based on a charge that is no greater than the published regulated charge which the DNSP would have charged that customer, if the customer been served directly by the distributor (**shadow pricing**).

In either case, the Exempt network service provider is not entitled to levy a charge for the On-market embedded network customer's use of the Embedded network.

(ii) Draft Recommendations

In this context, the AEMC has proposed in the Draft Report that:

- (A) a retailer will be permitted to charge an On-market Embedded network customer a 'bundled' electricity charge incorporating, in relation to the network component, a pass-through of external network fees determined on a shadow pricing basis; and
- (B) for the Exempt embedded network service provider to invoice, and receive payment from, the retailer for the On-market Embedded network customer's share of those external network tariffs for an amount no greater than the amount determined on a shadow pricing basis.

²⁰ See clause 12 (and Schedule 1);

²¹ See 6B.A2.1 and clause 46 of the NERR, under 6B.A.2.2, a DNSP can only bill the shared customer with the shared customer's consent

²² Network exemption guideline, clause 4.6.2.

²³ See NER clause 6B.A.2.2(d)

(c) NER amendments to the regulatory framework

(i) *No changes to NEL*

No changes would be required to the NEL.

(ii) *Chapter 6B changes*

At a minimum, to implement the AEMC's proposal, we consider that chapter 6B of the NER will need to be amended to:

- (A) require a retailer to pay to the Exempt embedded network service provider the On-market embedded network customer's external network charges determined on a shadow pricing basis;²⁴ and
- (B) exempt the retailer from that requirement if the Exempt embedded network service provider and the On-market embedded network customer agree that the customer will pay those charges directly.

Those arrangements would be similar to those currently in place between retailers and DNSPs for shared customers who are connected to a distribution network.²⁵

(iii) *Related changes*

A series of related changes would then need to be made, (mostly likely in the NERR although, alternatively we suspect that it could also be done in the NER (eg, in one or more new parts of Chapter 6B or in a new Chapter 6C)):

- (A) to introduce a new concept of 'shared embedded network customer',²⁶ to apply to a person who is a customer of the retailer and whose premises are connected to an Exempt embedded network service provider's Embedded network;
- (B) to assign responsibility for determining the external network tariff payable by the retailer to the Exempt embedded network service provider. Presumably, the retailer, as an electricity industry participant, is in a better position to do this (compared to the Exempt embedded network service provider);
- (C) to introduce terms including those for invoicing and payment, and tariff reassignment, similar to those that apply between a retailer and a DNSP under chapter 6B of the NER.

As with the position that applies for Standard supply customers, we consider that these changes (even if not all are ultimately adopted) would effectively require retailers to bundle retail and network electricity charges under the terms of their market contracts, except if the Exempt embedded network service provider and the On-market embedded network customer agree direct payment arrangements.

We consider that the AEMC's rule making powers under the NEL and the NERL are sufficiently broad to allow for the above changes to be introduced to both the NER and the NERR.


(d) Transitional provisions

If thought appropriate by the AEMC, a form of default arrangement could be deemed to apply between retailers and Exempt embedded network service providers, in the absence of a negotiated agreement. Although there is no parallel in the NERL or NERR between a retailer and a conventional network service provider, such an approach may be appropriate for Embedded networks due to:

²⁴ Prices would be a maximum only.

²⁵ See clauses 6B.A2.1 and 6B.A2.2 of the NER.

²⁶ This could also be achieved by amending the existing concept of a 'shared customer' in the NERL.

- 
- (i) the much larger number of Exempt embedded network service providers than network service providers across the NEM (resulting in a higher negotiation obligation on retailers in the absence of deemed arrangements); and
 - (ii) the relatively lower awareness of energy regulation, markets and systems by Exempt embedded network service providers compared that of more experienced retailers and network service providers.

One issue we have identified for consideration is the practicality of the B2B e-hub arrangements to be introduced to NER clauses 7.17. Particular issues that require further consideration include the registration requirements for B2B e-Hub Participants, and the scalability of the system.

3.6 Application of regulatory changes to existing Embedded networks

(a) Introduction

The Draft Report makes a number of recommendations concerning:

- (i) amending the NERL/NERR to establish a shared customer concept (see section 9.3.2 of the Draft Report);
- (ii) extending the tripartite relationship to Exempt network service providers (see section 9.3.3 of the Draft Report); and
- (iii) establishing an Exempt embedded network service provider – Embedded network customer relationship (see section 9.3.4 of the Draft Report).

We have been asked to advise on arrangements which would be required to implement those Draft Recommendations to apply to *existing* Authorised retailers, Exempt network service providers and retail customers in Off-market arrangements at the time the changes to the regulatory framework commence.

For the purposes of recommendations (i) and (ii) above, we note that the Embedded network manager will be required to record the network tariff code for the Child NMI that relates to an On-market embedded network customer's metering installation (see section 3.6(c) of this report).

(b) Shared customers

In sections 9.4(e) and 9.4(f) of this report, we discuss how the NERL might be amended to permit the concept of 'shared customers' to be applied to Exempt embedded network service providers.

We consider that the same approach could be taken to apply the concept to legacy Embedded networks, if the AEMC recommends that such approach should be taken. Accordingly, the transitional arrangements discussed in section 9.4(e) and 9.4(f), might assist with the introduction of the shared customer concept to legacy Embedded networks.

(c) Tripartite relationship to Exempt network service providers

In section 9.6 of this report, we discuss how the tripartite contractual relationship under the NERL and NERR between a customer, the retailer and the distributor might be extended to apply to Embedded network customers, their retailers and the Embedded network service provider. The recommendations apply equally to Registered Embedded network service providers and to Exempt embedded network service providers.

We also consider that they could be drafted to apply to legacy Embedded networks. In principle, we expect that the 'implementation' considerations in section 9.6(c) of this report should, practically speaking, clarify many aspects of the relationship between Embedded network customers, their retailers and the Exempt network service provider that may already be adopted 'on the ground' in legacy Embedded networks to permit:

- (i) retailers to service their Embedded network customers; and
- (ii) Exempt network service providers to comply with the conditions of their registration exemptions under the Network exemption guideline.



(d) Exempt embedded network service provider – Embedded network customer relationship

In section 9.5 of this report, we suggest that a minimum level of consumer protection obligations could be imposed on Exempt embedded network service providers via the AER's mandatory conditions under the Network exemption guidelines. It would be open for the AER to do this in relation to legacy Embedded networks as well.

4. Options for elevating regulation of new Embedded networks into the national framework

4.1 Options for regulating supply to Off-market embedded network customers

Chapter 8 of the Draft Report recommends that new Embedded networks be 'elevated' into the national regulatory framework and market systems that govern the sale and distribution of energy. This recommendation requires the amendment to the existing 'two-tiered framework', under which Embedded network service providers and energy On-selling retailers to Embedded network customers are largely regulated under an exemptions framework.

The Draft Report contemplates limiting the availability of exemptions for Embedded network service providers and On-selling retailers, and in turn extending their obligations to obtain a Retailer authorisation and be registered as a network service provider under the national energy legislation and rules.²⁷ The Draft Report also emphasises the ongoing utility of a narrower exemption framework, to preserve a degree of regulatory flexibility that remains appropriate to a more limited number of scenarios.²⁸

4.2 Options considered by the AEMC

The AEMC has asked Minter Ellison to consider two possible options to implement the Draft Recommendations in Chapter 8 of the Draft Report.

(a) Option 1:

- (i) Narrowing the scope of the AER's discretion to grant exemptions to persons from registering as network service providers in respect of Embedded networks, and to grant exemptions from the requirement to register as retailer under the NERL/NERR in respect of Embedded network customers;
- (ii) Creating sub-categories of Authorised retailers within the NERL or NERR, which would provide for a different set of rights and obligations depending on the category of Authorised retailer in which the person has been registered as. For example, a person selling to Off-market embedded network customers would be subject to a narrower set of obligations than existing Authorised retailer which may include obligations such as:
 - (A) providing access to independent dispute resolution through Ombudsman schemes;
 - (B) explicit informed consent when entering into a contract;
 - (C) life support requirements; and
 - (D) restrictions on arranging de-energisation of customers and obligations regarding re-energisation; and
- (iii) Creating sub-categories of network service providers within the NEL or NER, which would provide for a different set of rights and obligations depending on the category of network service provider in which the relevant person has been registered.

(b) Option 2:

- (i) Narrowing the scope of the AER's discretion to grant exemptions to persons from registering as network service providers in respect of Embedded networks and to grant exemptions from the requirement to register as a retailer under the NERL/NERR in respect of Embedded network customers;
- (ii) Providing the AER with limited discretion to exempt Authorised retailers supplying Off-market embedded network customers from certain obligations that ordinarily apply to retailers supplying On-market Embedded network customers. For example, the AER could exempt Authorised retailers supplying Off-market

²⁷ See section 8.7.3 of the Draft Report.

²⁸ See section 8.2.3 of the Draft Report.

embedded network customers from certain obligations such that only key aspects of the existing framework in the NERR apply, including obligations such as:

- (A) providing access to independent dispute resolution through Ombudsman schemes;
 - (B) explicit informed consent when entering into a contract;
 - (C) life support requirements; and
 - (D) restrictions on arranging de-energisation of customers and obligations regarding re-energisation; and
- (iii) Providing the AER with limited discretion to Exempt network service providers from certain obligations that ordinarily apply to network service providers. For example, the AER could Exempt network service providers supplying Embedded network customers from certain obligations such that only key aspects of the existing framework in the NER apply.

4.3 Considering the options

(a) Option 1 : Sub-categories of Authorised retailers and registered network service providers

In our view, Option 1 would provide the most effective mechanism for regulating Embedded networks having regard to the policy objectives outlined in the Draft Report. Option 1 has the following important advantages:

- (i) *Providing increased clarity to both the regulator and the regulated*

The Draft Report suggests that confusion exists among Embedded network service providers regarding the scope and nature of their obligations which has undermined their effective regulation.²⁹ Specifying within the legislation and rules the obligations of Embedded network service providers and Authorised On-selling retailers will provide increased clarity to those parties about their obligations, facilitating compliance with the regulatory framework.

- (ii) *Reducing the regulatory burden on the AER*

The Draft Report identifies unsustainable regulatory burdens and related enforcement challenges experienced by the AER as a result of the current exemptions framework. The exemptions framework reduces transparency with respect to Exempt network service providers and sellers' obligations, and requires frequent and extensive exercises of discretion by the AER. We consider Option 1 would address this issue more effectively than Option 2, by simplifying the task of identifying, and therefore monitoring and enforcing, the requirements of any individual Embedded network service providers and retailers.

In addition, we consider Option 1 would be preferable from a drafting perspective, since there are clearly identifiable provisions of the NEL/NER and NERL/NERR that could be amended in relatively simple ways to provide for sub-categories of registered network service providers and Authorised retailers.

(b) Option 2: conferring discretion on the AER to provide exemptions

While Option 2 might provide increased flexibility to tailor the obligations of Embedded network operators to the specific features of individual Embedded networks, we do not consider that this outweighs the advantages of Option 1. In our view, Option 2 would deprive the framework of the advantages of increased certainty and increase the complexity of achieving both compliance and effective enforcement and monitoring.

²⁹ See for example section 5.1.2 of the Draft Report.

(c) Waiver – for retailers

An additional option would be to include a provision for waiver of specific obligations in the case of retailers. These would also have the consequence of reducing the number of cases warranting an exemption. We discuss the application of a waiver mechanism in Section 7.3 of this report.

(d) Considerations for implementation of the Draft Recommendation

This section discusses issues that may arise in the implementation of this recommendation, and alternative possibilities for implementation, for further consideration by the AEMC. It proceeds on the basis that option 1 will be implemented. Our specific recommendations for implementation of the draft recommendation are described in paragraph (d).

(i) *How should 'On-market retailer' and 'Off-market retailer' be defined?*

We recommend inserting new terminology in the NERL for categories of Authorised retailers, including 'On-market retailer' and 'Off-market retailer'. An 'Off-market retailer' would broadly be defined as a person who sells electricity to customers within Embedded networks.

It has been suggested, however, that persons who currently engage, or will engage, in 'On-selling' within Embedded networks may not consider themselves as engaging in energy selling as that term is used in the NERL and NERR. Any such misunderstanding has, we think, its origins in the use of the term 'selling energy' in s88 of the NERL. The term 'selling' and its cognate term 'sale' imply concepts of the passing of property or title from one person to another. While this concept works well for tangible property such as gas, it is more difficult to apply to the conveyance of electrons in any energised alternating current electrical system.

Whatever the difficulties with the concept, it is clear that when electricity is supplied and used, and an invoice is provided in relation to that electricity, the supplier is engaged in the 'selling' of electricity to the customer. What is not so clear is where access to and use of electricity is one of a number of services made available to the customer, particularly where no separate price is expressed to be payable in respect of electricity.

This may be particularly prevalent for persons who consider that they are in fact providing a service, such as access to and use of premises which happen to be electrified, rather than selling electricity directly to the customer.

We consider that this is a perception issue which is most likely to effect:

- (A) New Embedded networks whose business models would have previously operated under a deemed exemption, but who will be subject to the proposed 'new' regulatory framework; and
- (B) Existing Embedded networks who currently operate under a deemed exemption.

Though we are not aware of concerns in this respect having been raised in the review, that ambiguity could be reduced by using more precise terminology in the new definitions of 'Off-market retailer'. For example, the definition could provide that if no separate charge is made or ascertainable in respect of a customer's use of electricity, the supplier is taken not to have sold electricity.

However, this will need to be coupled with education, through industry bodies.

(ii) *To what extent would multiple sub-categories of 'embedded retailer' be justified?*

Our base case recommendation is that the categories of Authorised retailers under the NERL and NERR be limited to two only: an 'On-market retailer' and an 'Off-market retailer'. However, the AEMC could also consider including sub-categories of Embedded retailer, as a means of ensuring the scope of obligations that apply to a particular embedded class are proportionate to the profile of the embedded

customers which the retailer supplies, consistent with the regulatory objectives identified in the Draft Report.

- (iii) *To what extent should obligations to enter standard retail contracts apply to Embedded retailers?*

The Draft Report contemplates extending the obligations of Off-market retailers to require them to supply Embedded network customers under 'market retail contracts'.³⁰ The Draft Report does not expressly recommend, or appear to contemplate, a similar extension of the obligations in relation to 'standard retail contracts'. Our recommendation is that obligations under the NERL and NERR to supply services under a 'market retail contract' should be extended to Embedded retailers, but that obligations relating to the terms of 'standard retail contracts' should be excluded from the scope of obligations of Embedded retailers.

(e) Amendments to the regulatory framework for Retailer authorisations

We set out detailed advice for implementing Option 1 below, in relation to the Retailer authorisation framework.

- (i) *Amendments to the NERL to extend the obligation to obtain a Retailer authorisation to retailers on-selling to Off-market customers in Embedded networks*

NERL, section 89 contains a general provision for a person to apply to the AER for a 'retailer authorisation'. We recommend that this would be the appropriate place to introduce further sub-categories of authorisation. In our view this would be more appropriate than any amendments to the definitions of the terms 'retailer' or 'retailer authorisation', since a number of obligations under the NERL and NERR arise by reference to those definitions. Instead, we suggest that the simplest way to provide for different obligations to apply to different categories of retailer is via an 'application' provision, as detailed below.

Specifically, we recommend amending Section 89 of the NERL to provide for two categories of retailer, including an 'On-market retailer' and an 'Off-market retailer'. This could be achieved by inserting additional wording in Section 89(1), to the effect that a person may apply for a Retailer authorisation, including either an 'On-market retailer authorisation' or an 'Off-market retailer authorisation'³¹. These terms would then be required to be defined in section 2 of the NERL, by reference to whether sales by the retailer take place exclusively within an Embedded Network.

While not strictly necessary, the AEMC could consider whether to adapt the entry criteria for applying for a Retailer authorisation under Section 90 of the NERL, to provide criteria specific to Embedded retailers.


- (ii) *Amendments to the NERL required to specify the scope of obligations applying to Authorised retailers*

We consider that the most effective way to distinguish between the obligations applying to 'On-market retailers' and 'Off-market retailers' is by amending section 19 of the NERL, to limit the scope of obligations applying to 'Off-market retailers' under Part 2 of the NERL.

Part 2 of the NERL deals with the relationship between retailers and Small customers, and imposes a number of obligations on retailers in relation to their terms of sale to Small customers. Section 19 sets out the application of Part 2 of the NERL and accordingly provides a straight-forward mechanism for specifying those obligations under Part 2 that should apply to Off-market retailers, without requiring creation of a new provision or division.

³⁰ See section 8.4.2 of the Draft Report, which suggests that under the proposed retailer authorisation framework, 'the authorised retailer on-sells that electricity to the embedded network customer under a retail market offer'.

³¹ This terminology overlaps with the term 'Authorised On-selling retailer' in the Draft report.



In accordance with the Draft Report, the capacity to grant exemptions to the requirement to obtain a Retailer authorisation would be retained. However, for flexibility, we suggest that Section 110 of the NERL be replaced by a section modelled on Section 13 of the NEL. Specific rules about exemptions would then be contained in the NERR. We discuss the Exempt seller framework in further detail in Section 6 of this advice.

(iii) *The specifics of the amendments*

We recommend that section 19 of the NERL be amended as follows:

(A) Amend Section 19(1) to provide that Part 2 applies to the relationship between On-market retailers and Small customers.

(B) Insert a new Section 19(2A) to specify the sections of Part 2 that apply to Off-market retailers. To give effect to the AEMC's draft recommendation at 8.7.3 of the Draft Report, and having regard to the broader objective identified in the Draft Report of ensuring adequate consumer protections for Embedded network customers, our preliminary recommendation is that the following sections of Part 2 of the NERL should apply:

(I) Division 2 (Customer retail contracts generally)

We note in particular that the application of Section 20(2) to Off-market retailers is necessary to ensure obligations triggered by the existence of a 'market retail contract' between a retailer and customer apply to Embedded retailers. This includes, for example, the obligations under the NERR in relation to explicit informed consent. However, it may be necessary to insert a further sub-clause into Section 20 to clarify that obligations in relation to 'standard retail contracts' do not apply to Authorised on-selling retailers, as discussed in further detail below.

(II) Division 4 (Market retail contracts for Small customers)

We assumed the AEMC intends the obligations in relation to market retail contracts to apply to Embedded retailers, based on the AEMC's comments in Section 8.3.2 of the Draft Report. As above, the application of Division 4 of NERL Part 2 is also necessary to ensure that certain obligations imposed under the NERR apply to Authorised on-selling retailers.

(III) Division 5 (Explicit informed consent)

Having regard to the Draft Recommendation, we consider it appropriate that all sections of Division 5 apply to Authorised on-selling retailers, to ensure that a retailer is required to obtain the explicit informed consent of a Small customer;

(IV) Division 8 of Part 2 (Energy Marketing)

Energy marketing obligations were not identified in the Draft Report as a specific obligation that should apply to Authorised on-selling retailers, presumably because Authorised on-selling retailers are unlikely to engage in energy marketing activities. However, the incentives for Authorised on-selling retailers to engage in energy marketing activities may increase as competition increases with respect to Off-market customers. Accordingly, we think it would be appropriate for the AEMC to consider specifying that Division 8 of Part 2 applies to Off-market retailers. In any event, the obligations in relation to energy marketing under Division 8 by retailers will only arise to the extent that the retailer does engage in energy marketing activities.

(V) Division 10 of Part 2 (Prepayment meter systems)

As above, obligations relating to prepayment meter systems were not identified in the Draft Report as a specific obligation that should apply to Authorised on-selling retailers. We note, however, Division 10 is drafted so that the obligations in relation to prepayment meter systems will only arise if the retailer uses a prepayment meter system.

For consistency with the existing drafting of section 19, we recommend the new section 19(2A) be drafted to reflect the structure of Section 19(2) which specifies the sections of Part 2 that apply to 'retailers and large customers'.

In addition, we consider some limited amendments to the sections of Part 2 of the NERL may be required to ensure that any provisions of those sections not relevant to Authorised on-selling retailers do not apply.

(iv) *Application of other obligations under the NERL to Off-market retailers*

Other sections of the NERL outside of Part 2 impose obligations on retailers including obligations of a nature identified in the Draft Report as relevant to Authorised on-selling retailers. Specifically, Part 4 of the NERL imposes obligations on retailers with respect to Small customer complaints and dispute resolution.

We do not consider that any amendments are required to Part 4 to ensure that its provisions apply to Authorised on-selling retailers.

However, the AEMC could consider recommending amending the definition of 'relevant matter' in section 79 to make it explicit that Authorised on-selling retailers have obligations under Part 4. For example, additional wording could be inserted after the term 'retailer' in the definition of 'relevant matter' specifying that 'retailer' as it is used in that definition includes Authorised on-selling retailers.

(v) *Amendments to the NERR: scope of Authorised on-selling retailer obligations*

The NERR will apply to Authorised on-selling retailers pursuant to section 16 of the NERL. Accordingly, the requirements of the NERR expressed to apply to 'retailers' will therefore apply to Authorised on-selling retailers, unless the NERR expressly provides otherwise or the relevant triggering provisions under the NERL do not apply.

We consider the most effective way to implement the AEMC's recommendation in the Draft Report that a narrower class of obligations apply to Authorised on-selling retailers as apply to On-market retailers, is to expressly exclude the application of specific provisions of the NERR to Off-market retailers.

For consistency with existing structure and drafting of the NERR, this could be achieved by inserting an 'application' clause into relevant divisions of the NERR to specify the rules that do not apply to Off-market retailers. The provision itself could be inserted as Division 4 of Part 1. By way of example, see the provisions of Part 2 of the NERR which specify the rules that apply to 'standard retail contracts' and 'market retail contracts' respectively – for example, clauses 20(4) and 20(5) and 21(6) and 21(7).

The Draft Report provides that the AEMC is currently undergoing stakeholder consultation to determine the scope of obligations that should apply to Embedded retailers.³² We note, however, that many retailer obligations under the NERR are triggered by the existence of, or an offer to enter, a customer retail contract.

By way of example, consistent with the minimum obligations specified in the Draft Report as relevant to Embedded retailers, we suggest the AEMC consider

³² See section 8.7.3 of the Draft Report.

recommending an amendment to Part 2 of the NERR to provide expressly that the following provisions do not apply to Embedded retailers:

(i) Division 1 (Standard retail contracts – terms and conditions generally)

Since we have recommended that Off-market retailers should not be required to comply with obligations in relation to standard retail contracts, this provision is not relevant.

(ii) Division 4 (Customer retail contracts – billing)

The AEMC considers whether or not these requirements are appropriate to Off-market sales, following its additional consultation with stakeholders. We note that some of these obligations are expressed to apply only to 'standard retail contracts' and not 'market retail contracts'.

(iii) Division 5 (Tariff changes)

All provisions of Division 5 (cl. 36-38) expressly provide that they apply to standard retail contracts and do not apply to market retail contracts. However, there should, of course, be obligations to notify tariff changes.

(iv) Division 6 (Customer retail contracts – security deposits)

Further consideration should be given to whether or not these requirements are necessary in the Embedded network context. We note that some of these obligations are expressed to apply only to 'standard retail contracts'.

(f) Consequential amendments to the regulatory framework for network service provider registrations

We consider the most effective way to implement Option 1 in respect of Embedded network service providers is to provide additional categories of network service provider under the NER. While we consider the necessary changes will largely be affected by amending the NER, some clarifying amendments could also be made to terminology used in the NEL, to provide increased certainty to Embedded network operators about the scope of their obligations. We are happy to report further on NEL changes, should you so require.

Eligibility criteria specific to Embedded network service providers could be included in a new provision in clause 2.5 of the NER, to reflect the existing 'eligibility' provisions in Chapter 2 of the NER that apply to other registered roles. This approach would permit the AEMC to develop eligibility criteria that clearly apply specifically to Embedded network Operators only, i.e. without any need to expressly exclude the application of the eligibility criteria from Network Service Providers more generally.

(i) *Amendments to Chapter 2 of the NER*

We recommend amending clause 2.5 of the NER to provide for different categories of Network Service Providers, and to expressly extend the registration requirements of Network Service Providers to Embedded network service providers. The existing structure of Chapter 2 of the NER would facilitate amendments to this effect, modelled, for example, on the approach to creating different classes of generators under clauses 2.2.1(f), or different types of Customers under cl. 2.3.1(d) of the NER.

Specifically, we recommend amending clause 2.5 as follows:

- (A) inserting an additional provision in clause 2.5.1(a1) to provide that a person who engages in the activity of owning, controlling or operating an Embedded network must apply to AEMO for registration as an Embedded network operator or be the subject of an exemption; and
- (B) inserting an additional clause in Chapter 2.5 (i.e. a separate clause, such as a clause 2.5.4) to specify the obligations imposed under the NER that apply specifically to Embedded network operators; and

- (C) A parallel example is the introduction, in 2012, of the 'small generation aggregator' class to apply to Market participants to the NER that could otherwise be registered as a 'Generator' or 'Intermediary' under the NER.
- (ii) *Amendments to Chapter 10 of the NER*

In addition, the amendments referred to in paragraph (iii) would require the following amendments to Chapter 10 of the NER:

- (A) amending the definition of 'Network Service Provider' to include an express reference to an 'Embedded network service provider'; or
- (B) inserting a new definition of 'Embedded network operator'. This could be defined in a straight-forward manner, consistent with the approach to other defined terms in Chapter 10 including 'Network Service Provider'.

(iii) *Minimum service obligations*

The Draft Report considers the minimum obligations that should apply to Embedded network service providers under the NER, including:

- (A) participation in the NER dispute resolution process under clause 8.2 of the NER;
- (B) confidentiality obligations with respect to confidential information;
- (C) regulatory oversight and reporting requirements as determined by the AER, including under Part 12 of the NERL; and
- (D) an obligation to pay any participant fees to AEMO.³³

Table 8.2 of the Draft Report also provides details of appropriate obligations for Embedded network service providers.

We recommend these obligations be specified under the amended clause in 2.5 of the NER. It is also possible that there will need to be parallel amendments to the NERL and NERR.

(iv) *Excluded service obligations*

The Draft Report also recommends the following obligations should not apply to Embedded network service providers, to avoid imposing disproportionately onerous obligations:

- (A) price and revenue regulation pursuant to Chapter 6 of the NER;
- (B) all detailed technical standards in Chapter 5 of the NER;
- (C) requirements to ring-fence the provision of distribution services from the provision of other services in accordance with the AER's Distribution Ring-Fencing Guideline; and
- (D) obligations to provide connection services (ie relevant sections of Chapter 5A of the NER, and Part 3 of the NERL and Part 4 of the NERR).³⁴

Again, these can be included in an amended NER clause 2.5.

4.4 Require Authorised on-selling retailers to be Registered Participants

(a) Introduction

The AEMC is considering whether Authorised retailers that On-sell to Off-market embedded networks customers be required to be Registered Participants under the NER even if they are not the FRMP at the parent connection point or 'financially responsible' at the child

³³ See section 8.5.2 of the Draft Report.

³⁴ Ibid.

connection point. This would apply to any Authorised retailer selling to an Off-market Embedded network customer.

(b) Context: the NERL

The NERL provides that a person who engages in the activity of selling electricity to a person for premises must have a Retailer authorisation or exemption.³⁵ However, at present, it is only where a person purchases directly from the market at any connection point, that they are required to register as a Market participant (Market Customer).³⁶ A Market Customer must, as a condition of purchase of electricity from the market at a connection point, classify that connection point as one of their *market connection points* from which they receive load. In doing so, the Market customer becomes *financially responsible* for the connection point and must make arrangements in respect of the appointment of a *responsible person*.³⁷

Currently, a person who engages in the activity of purchasing electricity at any connection point, *other than from the market*, **may** classify its load as a first or second tier load (depending on the source of the electricity) but there is no requirement that they do so.³⁸ Authorised retailers may purchase electricity at a connection point from a source other than the market, for instance, if the retailer were to purchase electricity at the parent connection point from another retailer. In such cases, there is no requirement that they become a Registered Participant.

The AEMC is considering whether persons who engage in On-selling (Authorised retailers), but who do so 'Off market', be required to register with AEMO.

(c) Could the regulatory framework be changed to require Authorised retailers that On-sell to embedded network customers to register as a Registered Participant but maintain the status of end-user as an Off-market customer?

If the AEMC wishes to require these customers to register, we recommend that the NER be amended to accommodate the registration of persons as Registered Participants where they purchase electricity other than from the market.

In our view the most appropriate way to implement this change would be to amend clause 2.3.1(d) of the NER to *require* Authorised retailers who are not otherwise registered to register with AEMO.

In order to retain the person's status as an end-user Off-market customer, we recommend amending clause 2.3.3(a) to create two classes of Second-Tier Customer. The difference between the two classes would be that registration as a Second-Tier Customer would effectively be compulsory for the relevant Off-market customer. By registering as a Second-Tier Customer, the On-selling retailer would be prohibited from participating directly in the spot market, and from classifying itself as a Market Customer and its load as a Market Load.³⁹

There may be some concern by the AEMC as to whether the classification of On-selling retailer as Second-Tier Customer is appropriate given that the On-selling retailer may be a 'conventional retailer' who may in fact purchase its load at the site connection point. Establishing a further class of Market participant would create a further administrative workload for AEMO. However, by creating an obligation to register, AEMO would have enhanced visibility of the existence of retail activities on the Embedded network. In formulating its final recommendation, the AEMC will need to consider whether, given the enhanced authorisation framework it has recommended under the NERL, the benefits of additional visibility outweigh the additional administration costs.

³⁵ NERL, s 88

³⁶ NER, cl 2.3.1(c)

³⁷ NER, cl 3.15.3, 3.15.5; also see definition of 'financially responsible'

³⁸ NER, cl 2.3.1 (d)

³⁹ NER, cl 2.3.3(a)

(d) Are there any regulatory gaps with respect to Off-market sales where there may not be anyone 'financially responsible' at a child connection point?

The current definition of 'financially responsible' provides:

financially responsible

In relation to any market connection point, a term which is used to describe the Market Participant which has either:

- 1. classified the connection point as one of its market loads;*
- 2. classified the generating unit connected at that connection point as a market generating unit; or*
- 3. classified the network services at that connection point as a market network service.*

This definition only applies to those entities who are registered as a Market participant. Such a participant is required to be registered as a Market Generator, Market Customer, Market Small Generation Aggregator, Market Ancillary Service Provider or Market Network Service Provider under Chapter 2 of the NER. There is no present requirement that an Off-market Authorised retailer register as a Market customer and, accordingly, they are not Market participants. This means that those entities will not be required to be financially responsible for child connection points.

(e) If the scope of persons who may need to be an Authorised retailer in order to provide retail services to Embedded network customers is expanded (in accordance with the Draft Report), does this create issues if the Authorised retailer is not a Registered Participant under the NER because they are not facing the market?

In our view, any such issues may be dealt with by appropriately defining the obligations of the relevant class of Second-Tier Customer.

5. Proposed Embedded network service provider registration and exemption framework

5.1 Introduction

(a) Requirements to register or be exempt

The NEL and NER require a person who engages in the activities of *'owning, controlling or operating a distribution system that forms part of the interconnected national electricity system'*, to be registered with AEMO as a Network Service Provider, or be exempted from that requirement by the AER.⁴⁰

(b) Definition of 'Embedded network'

The term 'Embedded network' is defined in the NER as being a distribution system that is connected at a parent connection point to either another distribution system, or a transmission system, that forms part of the national grid. Accordingly, the present intention of the NER is that a person who owns, operates or controls an 'Embedded network' must either register as a Network Service Provider or be exempted from registration.

(c) Network exemption guidelines

Under the NER, the AER is responsible for determining applications for exemption from the requirement to register as a Network Service Provider and, to that end, is empowered to issue exemption guidelines.⁴¹

The NEL and the NER provide limited guidance to the AER in exercising its discretion to grant an exemption. The NEL requires the AER to determine applications for exemption in accordance with the NER, without itself imposing any substantive requirements on that exercise of discretion⁴², except in relation to some limited specific matters⁴³. Under the NER, the AER's discretion is constrained only by the general requirements that:

- (i) granting an exemption must not be, in the AER's opinion, inconsistent with the NEO;⁴⁴ and
- (ii) must be consistent with its exemption guidelines.⁴⁵

Since the AER is responsible for developing and issuing the exemption guidelines,⁴⁶ these requirements offer little substantive guidance to the AER in determining the appropriate circumstances for an exemption.

(d) Deemed, registrable, and individual exemptions

The AER's current network exemption guideline establishes three categories of exemptions, being 'deemed', 'registrable' and 'individual' exemptions. In turn, the network exemption guideline describes specific classes of activities and customer types that attract a deemed or registrable exemption.

Deemed exemptions are granted automatically to entities who own, operate or control Embedded networks that fall within those exemption classes. Registrable exemptions are also granted 'as of right' to owners, operators or controllers each of the eligible Embedded networks with the AER, via an online registration process.

Individual exemptions are available on a case-by-case basis, for activities that do not meet the eligibility requirements for either the deemed or the registrable exemption classes. They require a formal application to be made for review and consideration by the AER before grant.

⁴⁰ See section 11(2) of the NEL and clause 2.5.1(a) of the NER.

⁴¹ Clause 2.5.1(d) of the NER.

⁴² Section 13(3) of the NEL.

⁴³ Such as the ENM Conditions – see clause 2.5.1(d1) of the NER.

⁴⁴ Clause 2.5.1(d) of the NER – see also our discussion in Section 4.3(d) of this report.

⁴⁵ Clause 2.5.1(d) of the NER.

⁴⁶ Clause 2.5.1(e) of the NER.

(e) The Draft Report

The Draft Report identifies a number of developments that indicate it may no longer be appropriate to regulate supply of electricity within Embedded networks primarily under the AER's exemption framework. The Draft Report refers to the following issues and developments which are relevant to our enquiries :⁴⁷

- (i) significant and rapid growth in the number of exemptions being granted for Embedded networks, indicating that Embedded networks are no longer a minor exception to standard supply arrangements;
- (ii) uncertainty among Embedded network operators about the regulatory arrangements that apply to Embedded networks and specifically, whether a network service provider exemption is required at all;
- (iii) lack of regulatory oversight of Embedded networks as a result of the exemption framework. Specifically, provision for deemed exemptions, which are not registered with the AER, inhibits effective monitoring of Embedded network operators; and
- (iv) growth in the number of exemptions for Embedded networks has the consequence of increasing pressure on the AER's regulatory capacity to enforce conditions.

5.2 New registration class and restricted availability of exemptions

(a) Background

In the Draft Report, the AEMC recommends that the 'two-tiered' regulatory framework should be abolished, and regulation of Embedded networks should be 'elevated' into the national framework.⁴⁸ Two options for achieving this have been discussed in Chapter 4.

In this Chapter we consider the AEMC's recommendation that any person who engages in the activity of owning, controlling or operating an Embedded network be subject to the requirement to be registered with AEMO as an Embedded network operator, or be exempted in a narrow set of circumstances.

While the Draft Report recommends reducing the circumstances in which network service provider exemptions are available to Embedded network operators, it emphasises the ongoing utility of the network service provider exemption framework for some Embedded network scenarios.⁴⁹

The Draft Report recommends that class exemptions should only be available to Embedded network operators in three specific scenarios – namely, where the Embedded network operator:

- (a) only supplies infrastructure (and does not operate that infrastructure);
- (b) only supplies infrastructure or associated services to related parties, such as subsidiary companies; or
- (c) is an owner of short duration accommodation with simple network arrangements.

Under the proposed exemption framework, the AER would still be responsible for determining whether to grant an exemption to Embedded network operators that satisfy any of these three criteria.

(i) *Infrastructure only supply*

The Draft Report provides the following examples of supply of infrastructure which might attract the benefit of a class exemption:

- (A) networks housing electric vehicle charging stations;
- (B) broadcasting television and radio signals;

⁴⁷ See section 5.1.2 of the Draft Report.

⁴⁸ See section 8.2.3 of the Draft Report.

⁴⁹ See section 8.6.3 of the Draft Report.

- (C) electric traction systems;
- (D) metering installations;
- (E) equipment in any premises such as NBN with an input current rating not exceeding 3 amps DC;
- (F) any supply of electricity that facilitates provision of telecommunications services.

(ii) *Supply related parties*

In this scenario, the AEMC considers that access to retail competition is unnecessary.

(iii) *Short term accommodation*

In respect of the third scenario, the AEMC considers:

'access to retail competition is unnecessary and the regulatory oversight of an exemption framework is likely to be sufficient in relation to the operation and maintenance of the embedded network'.⁵⁰

The Draft Report provides the following examples of short term or temporary supply in respect of which network exemptions would be available – hotels, motels, inns, holiday flats, holiday cabins, campsites, temporary hire caravan parks and marinas.

(b) Considerations for implementation of the Draft Recommendation - New registration class for Embedded network operators

We first consider the appropriate regulatory requirements for Embedded network operators in order to implement the AEMC's recommendations.

One approach would be to require Embedded network operators to comply with the existing registration requirements that apply to network service providers generally. However, in the absence of extensive amendments to the regulatory framework, this would mean that, upon registration as a Network Service Provider, the Embedded network operator would become subject to the full regulatory requirements that attach to that registration.

The key obligations imposed on DNSPs that Exempt embedded network service providers currently do not have to comply with, broadly relate to:

- (i) price controls pursuant to Chapter 6 of the NER;
- (ii) compliance with detailed technical standards in Chapter 5 of the NER;
- (iii) requirements to ring-fence the provision of distribution services from the provision of other services in accordance with the AER's Distribution Ring-Fencing Guideline made pursuant to clause 6.17.2 of the NER);
- (iv) obligations to provide connection services on fixed terms, including a requirement that all Off-market connections become On-market⁵¹;
- (v) requirements for Distribution network service providers' relationships with retailers⁵²; and
- (vi) detailed regulatory oversight and reporting requirements⁵³

As the Draft Report acknowledges,⁵⁴ Embedded network operators (and their Embedded networks) are not as complex as regulated networks. As a consequence, there would be a real risk of a substantial imbalance between the cost of imposing the existing regulatory

⁵⁰ Ibid.

⁵¹ see Chapter 5A of the NER in relation to making new connections and connection alterations, and Part 3 of NERL and Part 4 of the NERR

⁵² Chapter 6B of the NER and Part 5 of the NERR

⁵³ NERL, Part 12

⁵⁴ See Draft Report, Section 8.5.2

framework for Network Service Providers on Embedded network operators in terms of compliance burden and the potential benefits of doing so.

(c) Consequential amendments to the regulatory framework – New registration class for Embedded network operators

Under s.34 of the NEL, the AEMC has power to make rules for or in respect to:

- (a) *regulating... the activities of persons ...involved in the operation of the [interconnected distribution system];*
- (b) *any matter or thing contemplated by [the NEL], or [which] is necessary or expedient for the purposes of [the NEL].*

This provision of the NEL together with Section 11(e) and the definition of 'Registered Participants' provides sufficient power for the AEMC to introduce a new registration class of 'Embedded network service provider' or 'Embedded network operator' in the NER, to cover a subset of 'distribution systems' that would otherwise be required to be registered, or be exempted, as a 'Network Service Provider'.

As discussed in section 4.3(f)(iii) of this report, we suggest the most effective way to implement the new registration class proposed in the Draft Report would be to insert one or more additional clauses under clause 2.5 of the NER. See further discussion in section 5.2(e)(iii) of this Report, about the form that these amendments might take.

(d) Considerations for implementation of the Draft Recommendation - Standing exemptions for Embedded network operators

The regulation, in the NEL, of '*the activity of owning, controlling or operating*' electricity infrastructure reflects a regulatory formulation that dates back to the very start of the NEM, and is familiar to industry. However, the scope of those words is open to interpretation and a purposive interpretation is commonly taken to limit the application of those words, rather than applying them in their broadest sense (as the AER notes in its network exemption guideline).⁵⁵

Further, as the market has matured in relation to Embedded networks, one issue that must be considered is whether the registration of a bare (ie passive) asset owner remains appropriate, if the operator or controller of the asset is separately registered.

However, under the wording in section 13(2) of the NEL as it stands, the NER must address the licensing position of an 'owner' of a distribution system (including the owner of an Embedded network) within the proposed framework for Embedded networks.

While the NER already contains mechanisms (primarily, the intermediary framework in clause 2.9.3 of the NER) to exempt the owner in circumstances where the operator of a distribution system is registered with AEMO, in our view the following reasons support a class exemption being granted to a passive asset owner:

- (i) the intermediary framework would only exempt the asset owner on the basis that it (together with and the asset operator controller (ie, the intermediary)) is jointly and severally liable for the acts, omissions, statements, representations and notices of the intermediary as Registered Participant for the asset.⁵⁶ This may not be acceptable for a passive asset owner (eg, an asset financier);
- (ii) Embedded networks sit behind the wholesale market and do not give rise to a prudential risk to other participants in the wholesale market (as compared to, say, a market generator); and
- (iii) a class exemption would avoid the scenario of unnecessary intermediary applications being made to AEMO by asset owners (on the basis that such applications are, without a class exemption, possibly the only way for an asset owner to avoid being regulated under the NER).

⁵⁵ See section 2.2 of the Network Service Provider Exemption Guidelines.

⁵⁶ See clause 2.9.3(d)(5) of the NER.

(e) Amendments to the regulatory framework – Standing exemptions for Embedded network operators

(i) Does the AEMC have the rule marking power?

To consider how to implement the existing exemption classes, the starting point is section 13(1) of the NEL, which provides that a person engaged in or proposing to engage in who would otherwise require to be registered may request the AER to exempt them from the requirement to be registered. Section 13(2) provides that such a request must be made in accordance with the NER, and section 13(3) confers broad discretion on the AER to grant that exemption, 'subject to the NER'.

In turn, under s.15(1)(e) of the NEL, the AER has power to:

'exempt persons proposing to engage, or engaged, in the activity of owning, controlling or operating a distribution system forming part of the interconnected transmission and distribution system from being registered as Registered participants'.

In our view, the AEMC may amend the NER to require that the AER only provide exemptions from the requirement to register as a registered Embedded network service provider in certain specified circumstances.

The subject matters in relation to which it may make rules amending the NER include the exemption of persons from the requirement to be Registered participants (such as an NSP).⁵⁷

(ii) Changes to the NER

Currently, the key requirements in relation to registration or exemption of network service providers are contained in clause 2.5 of the NER. Clause 2.5.1(a) imposes a general registration requirement on network service providers, subject to cl. 2.5.1(d). Clause 2.5.1(d) confers discretion on the AER to 'exempt any person or class of persons who is or are required to register as a Network Service Provider' from that requirement, or from the operation of Chapter 5. Clause 2.5.1(d) imposes limited restrictions on the AER's exercise of that discretion to grant an exemption.

Relevantly, clause 2.5.1(d1) specifies that the 'ENM conditions' apply specifically to Embedded networks the subject of an AER exemption granted under cl. 2.5.1(d). However, the ENM conditions do not apply to exempt Embedded networks:

- (A) that are located in a participating jurisdiction in which Embedded network customers do not have the right to a choice of retailer; or
- (B) in respect of which the AER considers that the likely costs of complying with ENM conditions outweigh the likely benefits to the customers within the Embedded network.

We recommend the following amendments to the NER:

- (A) a new clause would be inserted imposing a general registration requirement (like clause 2.5.1(a) NER) on Embedded network operators;
- (B) the 3 exemption scenarios noted in the Draft Report could be listed as being class exemptions to the general registration obligation which may be applied by the AER in accordance with the delineated criteria and any guidelines developed by the AER to apply that criteria; and
- (C) clause 2.5.1(d1) could be amended or relocated to apply the 'ENM conditions' to registered Embedded networks as well as to legacy exempted Embedded networks. The amended/relocated clause could contain either:
 - its own listed exceptions, or

⁵⁷ NEL, s 34(2); Schedule 1, Item 3.

- a general exemption power for the AER,

to preserve/apply the AER's existing exemption conditions/categories where an Embedded network manager is not required to be appointed for an Embedded network.

(f) Transitional provisions

The proposed registration obligation is restricted in application to new Embedded networks only (i.e. it does not apply to legacy Embedded networks). Accordingly, we cannot presently envisage a scenario where transitional provisions would be required in relation to the proposed registration requirement for Embedded network operators, so long as sufficient advance notice of the commencement of the new requirements is given to Embedded network operators. However, some consideration will need to be given to whether it is appropriate to reconsider the status of an existing exemption where there are substantial alterations to the exempt network. For example, when the second stage of a property development proceeds.

5.3 AER's monitoring and enforcement powers under the NEL

(a) Introduction

In section 9.2.5 of the Draft Report, the AEMC considers the scope of the AER's powers to monitor and enforce exemption conditions in relation to:

- legacy Embedded networks that will continue to operate under the exemption framework in the AER's network exemption guideline; and
- the 3 classes of exemptions proposed under the new registration framework for Embedded networks (see discussion in section 5.2 of this Report).

(b) Our instructions

We have been asked to advise on:

- whether there is a lack of clarity in the NEL with respect to the AER's ability to monitor and enforce exemption conditions (having regard to the existing framework for Retailer authorisation exemptions, which appears to provide for a more express role in this regard); and
- whether the AEMC currently has powers to specify such a monitoring role for the AER under the NEL.

(c) Are the AER's powers to monitor and enforce conditions on network service provider exemptions described in sufficiently clear terms under the NEL?

The requirements to register and the procedure to obtain an exemption are set out in sections 11 and 13 of the NEL, discussed at section 5.1 of this Report.

(i) Present power

The AER's powers under s.15(1) of the NEL include the ability to:

- 'monitor compliance by Registered participants **and other persons** with the NEL, the National Electricity Regulations and the NER' [emphasis added]; and
- investigate breaches or possible breaches of provisions of the NEL, the National Electricity Regulations and the NER, including offences against the NEL.

Under s.61 of the NEL, the AER may apply to a court for a declaration that a person is in breach of all or any of the NEL, the National Electricity Regulations or the NER. The Court may, among other things, impose civil penalties, require corrective action, and order the institution of compliance programs.



(ii) *Unregistered operators*

Embedded network operators who are neither registered nor hold the requisite exemptions are accordingly liable to be found to be in breach of s.11(2) of the NEL, which is a civil penalty provision.⁵⁸

The AER could investigate and seek an enforcement order from a court, for a failure to be registered.

Alternatively, because s.11(2) is a civil penalty provision, the AER can issue an infringement notice. An infringement notice may, in relation to an alleged breach by a body corporate, impose an infringement penalty of \$20,000 for the breach.

(iii) *Breach of exemption conditions*

However, it is not clear that a failure to comply with a *condition of an exemption* constitutes a breach of the NEL.

Under Section 13(4), an exemption:

'may be subject to such terms and conditions as the AER considers appropriate in accordance with the Rules'.

However, there is no express obligation to comply with any conditions.

Even without such a provision, it is arguable that Section 13 of the NEL, particularly sub-section (4), necessarily imports an obligation on Exempted network service provider to comply with the terms and conditions imposed. However, the situation is to be contrasted with Section 112 of the NERL which expressly requires the holder of a retail exemption to comply with conditions.

Further, section 13(4) of the NEL is *not* a civil penalty provision (nor a provision which attracts a criminal sanction). Accordingly, even if an obligation to comply with conditions could be implied, any enforcement action by the AER would be limited to seeking an order directing the Exempt embedded network service provider to comply with the terms and conditions in the network exemption guideline.

(iv) *Breach by agents*

Lastly, the AER has noted that, its ability to monitor compliance may, at best, be restricted to the activities of the Exempted network service provider, and not any agent acting on its behalf. This is of concern to the AER because it is common for contractors to act as agent for the Exempt embedded network service providers in interactions with Embedded network customers, such that customers have little visibility of the Embedded network service provider in relation to the Embedded network.

However, in our view under s.68 of the NEL, the AER, depending upon the facts, has scope to seek orders or civil penalties against the Embedded network contractor/agent if it can be established the contractor/agent 'aided, abetted, counselled or procured' an Embedded network operator not to hold the requisite registration or exemption in breach of s.11(2) of the NEL.

However, that same does not apply in relation to an agent who aides or abets a breach of *exemption* terms and conditions by an Exempted network service provider. This is because s.13 of the NEL is neither a civil penalty provision nor a 'conduct provision' within the meaning of the NEL and the National Electricity Regulations.⁵⁹

⁵⁸ For present purposes, we have assumed that no applicable derogations apply.

⁵⁹ NEL, s.2AA(2) and s.6A and schedule 1AA of the National Electricity Regulations.

(d) What changes could be made to provide additional clarity regarding the AER's powers to monitor and enforce conditions on network service provider exemptions under the NEL?

(i) *Options to provide clarity*

If thought fit, the AEMC could recommend that these concerns could be resolved in one of two ways:

- (A) s.13 of the NEL could be amended to create an express obligation on the part of an Exempt embedded network service provider to comply with the conditions attaching to the exemption. As noted above, a useful comparator is s.112 of the NERL; or
- (B) an obligation to comply with the AER's exemption conditions could be imposed on Exempted network service providers by inserting such a requirement into clause 2.5 of the NER. For example, a similar provision is included in relation to the conditions of appointment of a Scheduled Generator, in clause 2.2.2(c) of the NER.

In either case, the obligation to comply with conditions would become an obligation under the NEL or the NER, and would then fall within the AER's monitoring and enforcement powers. Ideally, for the sake of consistency with the NERL, an obligation to comply with the AER's exemption conditions would be inserted in the NEL, rather than the NER. By clearly creating an obligation to comply with the conditions attaching to an exemption, monitoring an agent who counselled, aided or abetted a breach of an exemption condition would also be within the AER's powers.

(ii) *NEL*

If the legislative route is adopted (ie., to amend s.13 of the NEL), then the amending legislation could make it clear that the provision will only apply in respect of breaches which occur after the amendments become effective. The amendment of the NEL would require jurisdictional support as per standard arrangements.

(iii) *NER*

We consider that, subject to one caveat, the AEMC has power under the NEL to introduce such amendments, if it saw fit to do so.

In particular, under s.34 of the NEL, the AEMC has power to make rules for or in respect to:

- (a) *regulating... the activities of persons ...involved in the operation of the [interconnected distribution system];*
- (b) *any matter or thing contemplated by [the NEL], or is necessary or expedient for the purposes of [the NEL].*

The caveat is that s.36 of the NEL prevents the AEMC from creating offence provisions, civil penalty provisions or criminal provisions in the NER. Accordingly, the National Electricity Regulations would need be amended to provide that the new sub-section of the NER is a civil penalty provision.⁶⁰

Consequently, whether the NEL or NER is amended, jurisdictional support would be required to designate a breach of an exemption condition by an Exempt network service provider to be a matter that can attract a civil penalty.

⁶⁰ *National Electricity (South Australia) Act 1996* (SA), s 11(3).

6. Proposed selling exemption framework

6.1 Introduction

(a) The requirement to hold a retail authorisation

Under the NERL, a person who engages in the activity of selling energy to another person for use at premises must hold a retail authorisation or relevant exemption.⁶¹ A person seeking a standard retail authorisation must meet certain entry criteria outlined in the NERL.⁶² The AER has also produced a guideline that informs applicants as to how the relevant criteria will be applied.⁶³

(b) The rules for exemptions

Under the NERL, the AER, in deciding whether to grant an *exemption* from the requirement to hold a retail authorisation to an individual or class of persons, must take into account policy principles, but may also have regard to seller and customer factors specified in sections 114 and 115 of the NERL.⁶⁴

As with networks, exemptions are categorised as individual, deemed, and registrable.⁶⁵ While the AER undertakes formal assessment of applications for individual exemptions, deemed exemptions apply automatically to certain classes of energy sellers, and registrable exemptions are not in practice formally assessed. If a seller falls within a deemed exemption, it is not required to register with the AER.⁶⁶

All exemption categories have conditions attached to them depending on the nature of the energy sale.⁶⁷ Those conditions often place similar obligations on sellers as those attached to retail authorisations.⁶⁸ A breach of these conditions is a breach of the NERL.⁶⁹

(c) The AEMC's concerns.

The AEMC is concerned that On-selling retailers are presently engaging in activities similar to those of Authorised retailers because of the broad range of arrangements which are currently the subject of the exemptions framework. This may impact consumer access to standard protections, and the AER's ability to monitor sellers' activities. While the AER has some capacity to monitor *registered* exemptions, there is a lack of visibility for those unregistered sellers who are operating under a deemed exemption. In addition, there may be some sellers who, despite not qualifying for a deemed exemption, continue to sell electricity without AER knowledge

6.2 Restricting the availability of seller exemption

(a) Introduction

The AEMC's Draft Report recommends⁷⁰:

'...the exemption framework in the NERL should be amended to remove exempt seller factors and to simply restrict exemptions to where the costs of authorisation would be high compared to the benefits to consumers and the need for regulatory oversight is low. Also, the Commission is of the view that the level of detail provided in relation to the exempt seller and customer factors would be more appropriately contained in the NERR.'

The AEMC notes that the current exemptions framework is based on the activities of the seller, rather than the services provided to the customer. On this basis, the AEMC

⁶¹ NERL, s 88

⁶² NERL, s 90

⁶³ Retail Authorisations Guidelines, December 2014

⁶⁴ NERL, ss 114, 115, 116

⁶⁵ NERL, s 110(2)


⁶⁶ AER (Retail) Exempt Selling Guideline, Version 4, March 2016

⁶⁷ NERL, s 112; AER (Retail) Exempt Selling Guideline, Version 4, March 2016, 8.1

⁶⁸ AER (Retail) Exempt Selling Guideline, Version 4, March 2016, 8.1

⁶⁹ NERL, s 112

⁷⁰ Section 8.8.3



recommends that new exemptions be restricted to circumstances where the compliance burden on the seller would outweigh the consumer benefits, and the need for regulatory oversight is low. The Draft Report provides examples where the AER, under proposed new exemption criteria, would grant exemptions and recommends that the Exempt seller and customer factors should be moved into the NERR.

(b) Considerations for implementation of the Draft Recommendation

- (i) *Removing or amending the exempt seller factors and Exempt customer factors in the NERL*

The adoption of a more generic formulation and the removal of the Exempt seller factors and the Exempt customer factors could be achieved by:

- (A) amending section 114(2) by the inclusion of an appropriate consumer focused test; and
- (B) removing the existing sections 115 and 116

- (ii) *Including principles in the NERL or NEL which would limit selling exemptions to circumstances where the costs of retail authorisation and facilitating retail competition would outweigh the benefit to customers.*

It would be possible to achieve this objective by amending section 114(2) as described in paragraph (i).

However, an alternative formulation, consistent with the exemption framework in the NEL/NER, would be to link exemption to the NERO. More specific factors could then be set out in the NERR.

- (iii) *Including more prescription in the NERL or NERR on the criteria that must be satisfied before the AER could grant a selling exemption, including limiting the classes of exemption to:*

- short term accommodation;
- temporary construction services on same or adjacent property;
- unmetered residential consumption of electricity;
- selling to related (parent or subsidiary) companies on same property;
- selling in conjunction with or ancillary to provision of telecommunications/information services;
- selling to large customers who would be in a position to negotiate their terms and conditions and also in accessing retail market competition; and
- selling between government agencies on the same property.


This could be achieved by the inclusion of a clause 154A in the NERR. Additional flexibility could be achieved by adding an 'other' category at the end of the list. Consequential amendments would be required to NERR clauses 154, and 157.

(c) Transitional provisions

The Draft Report does not show an intention that there should be any element of retrospectivity in relation to existing exemptions. However, the prolonged grandfathering of existing exemptions would result in the AER effectively having to administer two systems.

In our view, the options open to the AEMC include recommendations to:

- (i) preserve all existing exemptions indefinitely, on their current terms and conditions;
- (ii) provide that existing exemptions only apply until such time as there are substantial changes to the network;
- (iii) preserve each existing exemption until such time as the premises to which they relate are sold. We note that under the NERL, while authorisations are transferable, exemptions are not;

- 
- (iv) deem pre-existing individual and registrable exemptions to be authorisations for the premises to which they relate on the conditions on which they have been granted. Such mechanism could either:
 - (A) require the previously exempt retailer to comply with the conditions attaching to the exemption as if they were contained in an authority; or
 - (B) require the previously exempt retailer to comply with exemption conditions and the obligations of an Off-market retailer under the NERL and NERR;
 - (v) give the holders of exemptions a certain time in which to elect to convert their exemptions to authorisations; and
 - (vi) require the holders of deemed exemptions to notify the AER of the existence of their deemed exemptions within a certain time frame, in order to maintain them.

In our view, given that one of the dominant themes of the Draft Report is the lack of information available to the AER about the extent and number of deemed exemptions, we are attracted to option (vi). We also consider there is some merit in further exploring options (iii) and (iv).

6.3 Require Exempt sellers to publish prices

(a) Introduction

Section 9.5 of the Draft Report recommends:

'embedded network customers should be able to review and choose from ... market offer prices, comparing them to prices charged in their embedded network' .

(b) Considerations for implementation of the Draft Recommendation

We have discussed elsewhere in this report the means by which Authorised retailers will gain the ability to offer electricity for sale to Embedded network customers. This fact should create competition that should constrain the ability of an Exempt seller to charge monopoly prices.

(c) Consequential amendments to the regulatory framework

If an express obligation to publish prices is thought necessary, then sections 37A of the NERL could be added that would specifically apply to Authorised on-selling retailers. In this way the integrity of the present section 37 would be maintained. Such a provision would, in our view, only be valuable if it included an obligation to comply with the Pricing Information Guidelines.

Alternatively, the obligation to publish prices could be included as a condition of the Off-market Retailer authorisation, or in the NERR.

(d) Transitional provisions

We do not see any additional specific transitional provisions as being required, so long as an adequate grace period is allowed.

6.4 Process for Exempt sellers to surrender existing exemptions and obtain authorisation

(a) Is a statutory power to revoke required?

Currently, section 9.1 of the Retail exemption guideline states:

"If your circumstances change and you no longer need an exemption you may apply to the AER to cancel your exemption. The process for cancelling an exemption is the reverse of the process for creating it. In the case of a registrable exemption this will simply mean removing your exemption from the public register of exemptions. However, the process for cancelling an individual exemption will mean public consultation and a decision making process.

Before we begin the process of cancelling an exemption we will want to be satisfied that all energy selling has ceased, or if energy is still being sold, that it is being sold

by someone holding the appropriate regulatory instrument such as an exemption or authorisation."

The surrender of exemptions is not expressly dealt with by either the NERL or the NERR. Section 111 of the NERL contains a procedure for revocation of an exemption in the event of default, but not for surrender of an exemption. Further, the NERR does not contain an express power to revoke an exemption.

However, the NERL gives the AER clear powers to exempt persons from the registration and authorisation requirements under those laws, as well as the power to *'do all things necessary or convenient to be done for or in connection with the performance of its functions'*.⁷¹ In addition, section 20 of the interpretation schedule to the NGL (and thus the NERL) provides that a person or entity who makes a decision has authority to revoke that decision. These powers are wide enough, in our view, to enable the AER to withdraw an exemption.

If an Exempt seller sought to surrender their exemption and obtain a new authorisation:

- (i) for a deemed exemption, the relevant class criteria in the exemption guidelines would cease to apply and the Exempt seller would cease to be exempt at the date the authorisation is obtained;
- (ii) for a registrable exemption, the Exempt retailer would apply online to remove its registration for the site at or after the time the new authorisation is obtained; and
- (iii) for an individual exemption, the Exempt retailer would be advised, from a prudent compliance perspective, to ensure that conversion of the electrical infrastructure at the site was undertaken in parallel with, and not before the completion of the public consultation and a decision making process to cancel the exemption.

(b) Transitional provisions

Although it may not be strictly necessary (given the mechanisms discussed above), in our opinion it would be administratively efficient to insert transitional provisions in the NERR, requiring the AER to revoke an exemption granted under the retailer exemption guidelines, without public consultation, on and from the date that the Exempt seller obtains an authorisation.

6.5 AER's monitoring and enforcement powers under the NERL

(a) Introduction

In section 9.2.5 of the Draft Report, the AEMC considers the scope of the AER's powers to monitor and enforce exemption conditions in relation to:

- (i) legacy Embedded networks that will continue to operate under the exemption framework in the AER's network exemption guideline; and
- (ii) the exemption classes under the proposed new registration framework for On-selling retailers.

The AEMC concludes that the NERL should specify a role for the AER to monitor Exempt seller behaviour and notes that:

'[g]iven the large numbers and diversity of embedded networks the requirement would need to give the AER the ability to design a program that did not impose a large regulatory burden on exempt sellers and was cost effective for the AER to implement'.

(b) Our instructions

We have been asked to advise on:

- (i) whether there is a lack of clarity in the NERL with respect to the AER's ability to monitor and enforce exemption conditions (having regard to the existing framework

for Retailer authorisation exemptions, which appears to provide for a more express role in this regard); and

- (ii) whether the AEMC currently has powers to specify such a monitoring role for the AER under the NERL.

(c) Are the AER's powers to monitor and enforce conditions on network service provider exemptions described in sufficiently clear terms under the NERL?

(i) *Background*

Section 88 of the NERL requires a person who engages in the activity of selling energy to a person for premises to be licensed or exempt. Breach of this obligation is a civil penalty provision.

Under section 110 of the NERL, the AER has power to grant individual, deemed and registrable exemptions.

The AER's powers under s.204 of the NERL include the ability to:

- (A) monitor compliance by persons with the NERL, the National Energy Retail Regulations and the NERR; and
- (B) investigate, and institute and conduct proceedings in relation to, breaches or possible breaches of provisions of the NERL, the National Energy Retail Regulations and the NERR.

(ii) *Existing Court Powers*

Under sections 289 and 291 of the NERL, a court may, following commencement of civil proceedings⁷² by the AER, declare that a person is in breach of all or any of the NERL, the National Energy Retail Regulations and the NERR. In addition, it may order civil penalties, remedial action, and compliance programmes.

Exempt sellers who are not authorised or do not hold the necessary exemptions are accordingly liable to be found to be in breach of section 88 of the NERL.

(iii) *Investigatory powers for failure to be authorised*

If an electricity seller did not hold the necessary authorisation, the AER could investigate and seek a court order:

- (A) that the Exempt seller pay a civil penalty for breach of section 88 of the NERL;
- (B) that the Exempt seller properly obtain an exemption under the exempt network guideline or seek registration under section 88 of the NERL.

Alternatively, because section 88 is a civil penalty provision, the AER can, under s.308 of the NERL and Part 7, Chapter 8 of the National Gas Law issue an infringement notice.

(iv) *Differences from the NERL – Exemption Conditions*

Unlike the position that applies under the NEL for Exempt network service providers, it is clear that a failure to comply with a *condition of an exemption* constitutes a breach of the NERR. This is because s.112 of the NERL requires an Exempt seller to comply with the conditions imposed on it, or on persons within the relevant exemption class, under the NERR and the Retail exemption guidelines. A breach of this requirement can attract a civil penalty and the breach may be treated by the AER as being a breach of the NERL.

It follows that a breach of a condition of an exemption can attract the same penalties and orders as a breach of the licensing requirement under the NERL.

(v) *Agency arrangements*

As noted in section 5.3 of this Report, it is common for contractors to act as agent for the Exempt sellers in interactions with Embedded network customers, so that customers have little visibility of the Exempt seller in relation to their electricity supply.

Section 304 of the NERL extends liability to 'officers' of a corporation in some circumstances, and section 305 makes a corporation liable for the actions of its officers and employees. But there is no provision which expressly extends liability to agents.

However, of course, the Exempt seller is liable for the actions of its agents. Further under s.298 of the NERL, the AER may, depending upon the facts seek orders or civil penalties against a contractor/agent if it could be established the contractor/agent 'aided, abetted, counselled or procured' an Exempt seller to breach a civil penalty provision by:

- (A) failing to hold the necessary licensing exemption in breach of s.88 of the NERL; or
- (B) failing to comply with a condition of an exemption.

(d) Are the AER's powers to monitor and enforce conditions on retail exemptions set out sufficiently clearly under the NERL?

Under NERL Section 272, the AER has the power and duty to monitor compliance of regulated entities and 'other persons' with the NER, the NER Regulations, and the NERR. This is wide enough to monitor compliance with:

- (i) an obligation to comply with the conditions of an exemption;
- (ii) a breach of an obligation to hold a licence.

However, the specific powers and duties in Sections 273 to establish compliance policies, to provide information, and to conduct audits, only apply to 'regulated entities'. The term 'regulated entities' includes retailers but does not at present include parties who have the benefits of a retail exemption.⁷³ Similarly, the AER performance regime in Division 2 of Part 12 only applies to 'regulated entities'. Further, the AER's powers of monitoring hardship (section 283) apply to retailers but not to the holders of exemptions.

So, in summary, the AER has a general monitoring power which applies to compliance with the conditions of an exemption, but few of the specific compliance powers that otherwise apply to retailers.

If the AEMC did not wish to recommend the full extension of monitoring and compliance powers to exemption holders, one option would be to choose some specific obligations (such as hardship and life support) and limit compliance obligations to these provisions.

(e) What changes could be made to provide additional clarity regarding the AER's powers to monitor and enforce conditions on retail exemptions under the NERL?

The two relevant provisions, sections 88 and 112(2) are already civil penalty provisions. See our comments in section 6.5(d) of this report


(f) Does the AEMC currently have powers under the NERL to confer responsibilities on the AER with respect to monitoring compliance with conditions on retail exemptions?

- (i) *Application to 'regulated entities'.*

Part 12 of the NERL provides that the Performance Reporting Procedures and Guidelines and the Compliance Procedures and Guidelines (**Monitoring Guidelines**) apply to 'regulated entities'.⁷⁴

⁷³ NERL S 2(1).

⁷⁴ NERL, ss 273, 274, 275, 276, 282.



Regulated entities are defined as retailers, distributors, and any other person identified in the *National Energy Retail Rules* as a regulated entity. The *National Energy Retail Rules* could be amended to provide that Exempt sellers are regulated entities. This could be done either by inserting a new rule 148A or a new division 5.

The AER would also need to amend the Monitoring Guidelines prior to the commencement of the amendment to the *National Energy Retail Rules* to ensure they are applicable to Exempt sellers.

Alternatively, section 112(1) of the NERL provides that the AER may impose conditions on an Exempt seller or class of Exempt sellers in accordance with the Rules and the Retail exemption guideline.

The AER could rely on these powers to amend its Retail exemption guideline and network exemption guideline to expressly include a condition that the Monitoring Guidelines are taken to apply to exempt persons.

In our view, the amendment of the NERR is a more convenient option, as it could clearly cover the monitoring of existing exemptions.

(ii) *The Rule making power*

- (A) The AEMC derives its rule making power from Sections 237(1) and (2) of the NERL. Section 237(1) contains a general power to make rules, while Section 237(2) contains express powers to make rules with respect to specific subject matters.
- (B) There is no express power in 237(2) to make a rule conferring monitoring powers on the AER. The primary heads of power in subsections 237(1) and (2) apply to the provision of energy services, and the sale or supply of energy to 'customers'. The term 'customers' is defined by reference to an 'Authorised retailer' and not an 'exempt' retailer.
- (C) Accordingly, in order to make rules conferring monitoring powers on the AER, the AEMC would need to rely on NERL section 237(1)(b), which permits the making of rules for, or with respect to:

'any matter or thing contemplated by this law, or necessary or expedient for the purposes of this law.'

Earlier in this report we have recommended changes to the NERL, which would expand the categories of 'Retailer' that are recognised under the NERL and NERR to include Authorised on-selling retailers. Once that change is made, changes to the NERR affecting the status and monitoring of Authorised on-selling retailers would be within the AEMC's powers, subject always to such changes meeting the NERO.

However, in our view, there remain arguments that the monitoring by the AER of *exemption* conditions cannot conclusively be said to be 'contemplated' by the NERL, or to be 'necessary or expedient' for the purposes of the NERL.

(D) Recommendation

Accordingly on a strict reading of the rule making powers in NERL sections 237(1) or (2), in order to give the AEMC clear power to make rules with respect to the monitoring by the AER of compliance with exemptions, either:

- the NERL definition of 'customer' would need to be amended; or
- a power to make such a rule should be given through an NERL regulation.

Given the likelihood of unforeseen consequences of an amendment to the term 'customer', we prefer the approach of amending the regulations.

7. Flexible framework for conditional Retailer authorisation

7.1 Introduction

The Draft Report notes that the number of Embedded networks have grown rapidly, and while the AEMC is able to obtain information as to the number of registered exemptions, there are many Embedded networks which are currently operating under the deemed exemptions category for which such information cannot be accessed.⁷⁵ In addition, exemptions within the registrable categories, are not assessed or approved by the AER.⁷⁶ This means that there is little information available to regulators concerning the manner in which these Embedded networks operate and the extent of any protections provided to consumers within those networks.⁷⁷

The AEMC does not consider that the current exemptions framework appropriately balances the policy considerations of innovation, consumer protection, and access to retail market competition.⁷⁸ In addition, it is concerned that the current exemptions framework no longer meets the underlying rationale of the exemptions framework or the NERO.⁷⁹

7.2 Draft recommendations to confer discretionary powers on AER to impose additional obligations on Authorised retailers

The AEMC recommends that all persons who engage in the On-selling of electricity should be required to hold a Retailer authorisation, except for a narrow set of circumstances.⁸⁰ However, the AEMC acknowledges that the 'one size fits all' framework that Retailer authorisations currently operate under may be inappropriate to accommodate all sellers who will be required to hold an authorisation.⁸¹ Accordingly, the AEMC has suggested sufficient flexibility should accompany any revised authorisation framework in order appropriately to balance the need to have sellers meet minimum standards with oversight considerations, and the regulatory burden imposed on such persons.

The Draft Report proposes that this objective would be facilitated by a modification to the existing Retailer authorisation framework.

At present, the AER has a broad power to impose conditions on an *exemption*⁸². However, its power to impose conditions on a Retailer authorisation⁸³, is limited to the 'entry criteria' (broadly, the technical, financial and personal qualifications of the retailer). The legislation does not contain an express power to impose conditions on the conduct by the Authorised retailer of its business.

The AEMC has recommended that the AER be given discretionary powers to exempt an authority holder from certain Retailer authority conditions, or impose further conditions where appropriate. Such a discretion would be intended to ensure that obligations are not imposed that are inappropriate to the nature of the proponent's selling activities, or where the compliance burden would outweigh the consumer benefits.⁸⁴ The AEMC aims, by adding this flexibility to incentivise on On-selling retailer to operate under a Retailer authorisation, rather than an exemption.

The AEMC also considers that there is also a minimum set of conditions that should apply to all Retailer authorisations. These include:

- (a) providing access to independent dispute resolution through Ombudsman schemes;
- (b) explicit informed consent when entering into a contract;
- (c) life support requirements; and
- (d) disconnection requirements.

⁷⁵ Draft Report, 3.2

⁷⁶ Draft Report, section 4.3

⁷⁷ Draft Report, section 4.3.

⁷⁸ Draft Report, 6.1.1

⁷⁹ Draft Report, 8.8.3

⁸⁰ Draft Report, 8.7.3

⁸¹ Draft Report, 8.7.3

⁸² NERL, S112.

⁸³ NERL, S93.

⁸⁴ Draft Report, 8.7.3

7.3 Considerations for implementation of the Draft Recommendation

(a) The power to impose conditions

Key changes to the NERL and NERR

(i) *NERL Sections 92 and 93*

On the basis that the entry criteria under section 92 of the NERL remain appropriate, this section will need to be preserved.

NERL section 93 could then be amended to accommodate an additional category of conditions that may be imposed by the AER on the proviso that it has granted, or will grant, the Retailer authorisation, or cross refer to the new Division 6A discussed below.

(ii) *The power to grant waivers*

It will then be necessary to insert a series of provisions that identify the process by which conditions may be relaxed. In our view, any framework would need to contain the following basic requirements:

- (A) The applicant submits with its application a further request for an exemption from, or modification to, certain conditions attached to the authorisation together with supporting information;
- (B) The AER is able to request further information from the person;
- (C) The AER makes a determination based on the criteria within the relevant instrument(s);
- (D) The AER gives notice to the person of its draft decision;
- (E) The applicant is able to make a further submission on the AER's decision; and
- (F) A final decision is made.

(iii) *The form of regulation*

(A) Establishing a new Part 5 Division 6A

One means of achieving this would be to insert the framework and principal criteria into an additional division of the NERL (for instance a new Division 6A of Part 5).

The AEMC recommended that such discretion be exercised under criteria based on costs, benefits, and consumer detriment. We recommend the wording of these key criteria be laid out in the NERL.

(B) Amending the NER

Additional discretionary and administrative elements could be inserted into the NERR or guidelines as appropriate.

(C) Guidelines

It would be also appropriate as time goes on for the AER to develop guidelines which give direction to proponents on how the key criteria are interpreted by the AER. This approach would be consistent with the AER Exempt Retailer Selling Guideline.

(iv) *Limiting the term of an authorisation*

We have been advised that the AEMC is considering recommending imposing a condition in relation to maintaining services. Parallels can be found with the ACCC authorisations procedure.

To give effect to this, the AEMC may consider making a triennial compliance review a condition of an Embedded network authorisation.

(b) Transitional provisions

Other than the grandfathering provisions which will allow legacy Embedded networks to operate under existing exemptions⁸⁵ we do not consider that any additional transitional provisions will be required to implement the Conditions Framework as described in chapter 7.

The AEMC may consider it appropriate that holders of current Retailer authorisations are able to apply for modifications to the standard conditions. While there may be issues associated with this process, including increased administrative costs for the regulator, we do not believe that this would require the inclusion of any transitional provisions.

(c) The mechanisms for authorising a variation or waiver of conditions

(i) Introduction

We have been asked whether an authorisation procedure similar to that which exists under the CCA would be appropriate. In summary, we consider that the formality associated with the authorisation process within Part 7 of the CCA, involving public enquiries and calling for submissions, is not well suited to projects of this scale.

We instead suggest that the AEMC adopt, in modified form, a process for waiver similar to that employed as part of the ring fencing provisions under the NER. A framework based on these provisions is likely to streamline the process and reduce costs for both proponents and the regulator, while achieving the benefits associated with having the AER exercise its discretion with reference to a suitable statutory test.

(ii) The CCA authorisation framework

Under the CCA authorisation regime, parties are entitled to obtain statutory protection in relation to conduct that would otherwise be a breach of the CCA by applying for an 'authorisation' from the ACCC.⁸⁶ The ACCC decides each application on a case-by-case, by considering whether the public benefits of the conduct outweigh any anti-competitive detriment of the conduct in question.

The ACCC published authorisation guidelines which provide an analytical framework by which the application may be assessed against the statutory test.⁸⁷ The ACCC has the right to impose conditions upon an authorisation to address public benefit or public detriment concerns rather than make a decision not to grant authorisation.⁸⁸

(iii) Advantage of the authorisation procedure

A formal authorisation process has the advantage of allowing the regulator to make detailed inquiries into the proposed activity before granting the authorisation. In addition, the formality and public nature of the process could be said to discourage the abuse of the authorisation process.

A similar statutory test to the one currently employed under the CCA could be used as part of the proposed framework as the criteria by which the AER decides whether to modify conditions. Guidelines produced by the AER could be produced to further describe the application of any such test.

(iv) Disadvantages of authorisation

However, the procedure would inevitably increase formality, time periods and costs. For large developments this level of scrutiny and cost may be justified and reasonable. However, it is likely that the majority of applications will be made by smaller On-selling retailers who consider that the authorisation conditions are

⁸⁵ With some modifications to exemption conditions and AER functions and powers. See Draft Report 6.1.4

⁸⁶ CCA, s 90

⁸⁷ Authorisation Guidelines 2013

⁸⁸ Authorisation Guidelines 2014, pg. 51

inappropriate for their operation, or that the costs associated with the process are prohibitive and time consuming.

(v) *Conclusion*

On balance we do not believe that the CCA model is the most simple and effective method by which to have the AER exercise discretion in these circumstances. We now turn to consider other methods by which the same objectives and benefits could be achieved as per the CCA model, but without placing additional burden on the applicant and regulator.

(d) Alternative arrangements

In this section we set out, possible alternative arrangements to those we recommended in section 7.3(c).

(i) *Use of current exemptions framework*

The NERL and NERR already contain a substantial framework for granting and administering retailer exemption.⁸⁹ The NERR provides that in the exercise of its powers and functions, the AER must take into account the following policy principles:

- (A) regulatory arrangements for Exempt sellers should not unnecessarily diverge from those applying to retailers;
- (B) Exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable Retail customers in the same jurisdiction have that right;
- (C) Exempt customers should, as far as practicable, not be denied customer protections afforded to Retail customers under this Law and the Rules.⁹⁰

It *may* also take into consideration the Exempt seller and customer related factors set out in Sections 115 and 116. One option would be to make minimalist changes to the existing framework.

The AER already has significant powers and discretions, whether to grant exemptions, and the conditions which may be imposed.⁹¹ For example, clause 152 of the NERR provides:

Without limitation, a condition may require an exempt seller or class of exempt sellers to abide by specified obligations derived from energy laws and applicable to retailers, with any modifications specified in the condition, as if:

- (a) *an exempt seller were a retailer; and*
- (b) *the exempt customers of an exempt seller were retail customers of a retailer.*

We consider that the current exemptions framework within the NERL and NERR may provide some guidance as to the criteria the model would adopt. It may also be instructive as to the level of instrument (NERL, NERR, guidelines) in to which the appropriate provisions are inserted.

(ii) *Use of procedure like the 'waiver' process under ring fencing guidelines*


Currently DNSPs must comply with the requirements of the relevant Ring Fencing Guidelines, unless they have applied for and obtained a waiver.⁹² The applicant must make such a request to the AER, and as part of the request is required to provide information, including:

⁸⁹ NERR, Pt 9

⁹⁰ NERL, s 114

⁹¹ See NERR rr 158, 153

⁹² NER, 6.17; Ring Fencing Guideline, 5.2

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- (A) the obligation in respect of which the DNSP is applying for a waiver;
 - (B) the reasons why the DNSP is applying for the waiver;
 - (C) details of the service, or services, in relation to which the DNSP is applying for the waiver;
 - (D) the proposed commencement date and expiry date (if any) of the waiver and the reasons for those dates;
 - (E) details of the costs associated with the DNSP complying with the obligation if the waiver of the obligation were refused;
 - (F) the regulatory control period(s) to which the waiver would apply;
 - (G) any additional measures the DNSP proposes to undertake if the waiver were granted; and
 - (H) the reasons why the DNSP considers the waiver should be granted with reference to the matters specified in the relevant guideline, including the benefits, or likely benefits, of the grant of the waiver to electricity consumers.⁹³

Under the Ring Fencing Guidelines, the AER must make a decision on whether to grant, grant with conditions, or refuse the application.⁹⁴ The matters the AER must have regard to in making this decision include:

- the NEO;
- whether the benefit, or likely benefit, to electricity consumers of the DNSP complying with the obligation (including any benefit, or likely benefit, from increased competition) would be outweighed by the cost to the DNSP of complying with that obligation.⁹⁵

The AER may also have regard to such other matters as it considers appropriate.⁹⁶ It may also consider that an interim waiver is appropriate and may grant such a waiver for a fixed period.⁹⁷

In our view a procedure like the ring fencing waiver procedure would be more likely to strike an appropriate balance between the formality, convenience and the interests of consumers than a formal authorisation procedure.

⁹³ Ring Fencing Guidelines, 5.2

⁹⁴ Ring Fencing Guidelines, 5.3.1

⁹⁵ Ring Fencing Guidelines, 5.3.2

⁹⁶ Ring Fencing Guidelines, 5.3.2

⁹⁷ Ring Fencing Guidelines, 5.3.3

8. Roles and responsibilities within the proposed registration framework

8.1 Introduction

The AEMC has proposed extensions of the roles of the Embedded network manager, Metering coordinator, metering provider and Metering data provider to include obligations in relation to Off-market child connection points.

In this section, we consider the amendments to the Rules that are required to extend those roles, and other matters which the AEMC may need to consider in determining how to implement this proposal.

8.2 Extend Metering coordinator, metering provider and Metering data provider responsibilities to new Embedded networks

(a) Introduction

The AEMC has proposed requiring that the Authorised (on-selling) retailer appoint a Metering coordinator to provide metering services at Off-market connection points within each Embedded network to which the proposed registration framework applies. The Metering coordinator would in turn have an obligation to appoint a registered metering provider and Metering data provider.

Metering coordinators, metering providers and Metering data providers would have the same responsibilities as they will have in relation to a Standard supply customer's connection point or an On-market child connection point, with amendments to address the fact energy supplied to Off-market connection points is not settled in the NEM. We understand that this recommendation is not intended to apply to existing Embedded networks.

The proposal would eliminate key barriers to retail competition for Embedded network customers. Reallocating responsibility for metering from the Embedded network service provider to the Metering coordinator reduces the number of potential counterparties with whom a retailer would be required to negotiate in order to supply electricity at a child connection point. Retailers are likely to have existing contractual arrangements and commercial relationships with each Metering coordinator.

Leveraging these existing relationships will significantly reduce transaction costs for retailers, including by facilitating the use of existing churn agreements with Metering coordinators.


The proposal also mitigates the need for a retailer to negotiate with an Embedded network service provider for access to metering in circumstances where the Embedded network service provider may have an incentive to frustrate competition and maintain the end user's connection as an Off-market connection.

(b) Considerations for implementation of the Draft Recommendation

(i) *Background*

The AEMC has proposed implementing the proposal to extend Metering coordinator responsibilities by:

- (A) requiring Authorised retailers and Authorised (on-selling) retailers to appoint a Metering coordinator for Off-market connection points;
- (B) requiring the Metering coordinator to in turn appoint a metering provider and Metering data provider; and
- (C) requiring the Metering coordinator, metering provider and Metering data provider to meet the same obligations under the NER and AEMO's procedures as would apply at connection points for Standard supply customers, with some exceptions (namely, to remove the requirement that the Metering data provider submit metering data to AEMO and other Market participants).



From 1 December 2017, amendments to the NER take effect under which Metering coordinators, metering providers, and metering data Providers will need to be appointed in relation to any On-market child connection point. These amendments can be leveraged to minimise the number and extent of further amendments to the Rules required to implement the AEMC's proposal.

(ii) *Provision of Metering Data*

We understand that the AEMC proposes that the Metering coordinator, metering provider and Metering data provider will be required to comply with all obligations that would ordinarily apply in relation to Standard supply customers, except those relating to the provision of information to AEMO for market settlements.

Separating obligations to provide, estimate, validate and substitute metering data for the purposes of market settlements from similar obligations that would remain relevant to Off-market activity will likely require significant further consultation with both AEMO and Market participants.

A key consideration for implementation will be how metering data will be provided to interested parties for Off-market connection points outside AEMO's 'metering database'. The Authorised (on-selling retailer), registered Embedded network service provider, Embedded network manager, Embedded customer, and authorised representatives of the embedded customer all have an interest in receiving accurate metering data in relation to off market child connection points.

Ordinarily there are three separate sources of metering data accessed by different parties: data within the metering installation itself, data held in the Metering data provider's metering data services database, and data held in AEMO's metering database. Data within the metering installation can only be altered in limited circumstances.⁹⁸

Registered Participants with a financial interest in a metering installation or the energy measured by the metering installation and AEMO may access the metering services database.⁹⁹

It may be necessary to allow a wider range of participants to access the metering data services database maintained by the Metering data provider whilst a connection remains Off-market, including for example, the embedded customer and its authorised representatives.

Error correction contemplated by cl 7.11.2 of the Rules would not occur where metering data is not transferred from the Metering data provider's metering data services database to AEMO's metering database. This is unlikely to be a material issue in relation to off market child connection points, as the registered Embedded network services provider and Authorised (on selling) retailer are responsible for all metered usage at the Parent connection point, less any metered energy consumption at On-market child connection points. Any errors will be apparent from discrepancies between Parent connection point and aggregated child connection point metering data.

(c) Amendments to the regulatory framework

(i) *Summary*


The amendments which are required to give effect to the Draft Recommendations are similar to those relating to the appointment of Metering Coordinators set out in the *National Electricity Amendment (Embedded networks) Rule*.

The required amendments:

- (A) impose an obligation on the On-selling Authorised retailer to appoint a Metering Coordinator;

⁹⁸ NER, cl 7.11.23.

⁹⁹ NER cl 7.10.2(4).

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- (B) extend definitions and references to defined terms to appropriately capture Off-market connection points; and
 - (C) exclude and extend specific metering data provision obligations relevant to Off-market connection points.
- (ii) *Require Authorised retailers or On-selling Authorised retailers to appoint a Metering coordinator at Off-market child connection points*

The basic obligation to appoint a Metering Coordinator rests with the market participant that is Financially responsible for the connection point.¹⁰⁰ Where an Embedded network customer acquires services 'On-market' from a retailer, that retailer will classify the load at the On-market child connection point as a 'market load' so that it can purchase electricity in the market to sell to the retailer customer at the child connection point.

Loads at Off-market child connection points are not classified as Market loads. The Authorised retailer instead classifies the load at the Parent connection point as a Market load. It purchases electricity in the national electricity market at the Parent connection point for On-sale by itself or the Exempt seller to Embedded network customers at those Off-market child connection points. There is no Financially responsible Market Participant at the Off-market child connection point within the Embedded network.

It is necessary to amend Chapter 7 to include a new rule which require an Authorised retailer who sells electricity to a Retail customer at an Off-market child connection point to ensure that, for so long as it sells electricity to the Retail customer:

- (A) a Metering Coordinator is appointed in respect of the Off-market child connection point before selling electricity at the connection point;
- (B) the Off-market child connection point has a metering installation that is registered with AEMO; and
- (C) an NMI has been obtained from the Embedded network manager with respect to the Off-market child connection point.

Such a provision would be drafted in a similar style to clause 7.2.1 of the Rules (as at 1 December 2017).

- (iii) *Amendments to definitions to capture Off-market child connection points*


The current definitions of 'connection point' and 'child connection point' exclude Off-market child connection points.

We consider that the most straightforward amendments would involve:

- (A) replacing the defined term 'child connection point' with 'On-market child connection point' throughout the Rules;
- (B) creating a new definition of an 'Off-market child connection point'; and
- (C) including reference to an 'Off-market child connection point' after each reference to a 'connection point' or 'On-market child connection point' if it is appropriate that the relevant Rule be extended.

An 'Off-market child connection point' could be defined by reference to any agreed point of supply between a Registered embedded network service provider and an Authorised retailer, or Exempt seller within an Embedded network that is not an On-market child connection point. An Exempt seller would need to be defined by reference to the exemption regime under the NERL.

¹⁰⁰ NER, r 7.2.



We note this definition aligns with that suggested in Chapter 3 in relation to Off-market child connection points which are supplied by Exempt embedded network service providers. The AEMC could also alternatively define these points as 'registered Off-market child connect points' and then use the term 'Off-market child connection points' to refer to either 'exempt Off-market child connection points' or 'registered Off-market child connection point'. This term could be used in rules which will apply to both exempt and registered Off-market child connection points, such as in relation to registering NMIs, maintaining NMI standing data, and providing information to AEMO to include in the Metering register.

The term 'child connection point' will appear in 14 locations through the Rules on 1 December 2017, and the term 'connection point' appears in approximately 750 locations. It will be necessary to consider whether each Rule referring to either term should be extended to cover Off-market child connection points.

It is likely to be appropriate to extend references to 'child connection points' appearing at:

- clauses 7.3.2(i)(2)(i) and 7.3.2(i)(3)(i) dealing with rights to disconnect and reconnect customers;
- clause 7.8.2(ea) providing that the Embedded network Manager must obtain an NMI from AEMO, provide it to the Metering Coordinator and register it with AEMO;
- clause 7.8.2(eb) limiting the application of clause 7.8.2(ea) to child connection points where the metering installation does not have an existing NMI;
- clause 7.8.2(ec) compelling AEMO to provide NMIs for child connection points;
- clause 7.15.4(e)(1), which requires the Metering Provider to provide a metering installation access passwords to the Metering Coordinator, Metering Data Provider, Embedded network manager and AEMO (it will reduce barriers to going on market if passwords are maintained whilst a connection point remains Off-market);
- clause 7.15.5(d)(5), which provides the Exempt embedded network service provider with access to metering data at child connection points;
- 7.16.6A(c)(4), which relates to assignment of connection points on an Embedded network; and
- Chapter 10 (definition of NMI Standing Data).

It is not likely to be appropriate to extend references to child connection points that appear at:

- clause 7.8.7(b), which provides that the Financially responsible Market Participant, the ENM and AEMO must use their best endeavours to agree to adjust metering data to allow for physical losses (the authorised on selling retailer will be responsible at the Parent connection point for any metrology errors at an Off-market child connection point – it is not necessary for the Financially responsible Market Participant or AEMO to engage with data errors at Off-market child connection points);
- clause 7.15.5(c)(5a), which relates to access to data from the Metering register maintained by AEMO; and
- chapter 10 (definitions of child connection point, connection point, distribution loss factor, ENM conditions trigger).

We have not undertaken a comprehensive analysis in relation to references to a 'connection point'. Generally, references to a 'connection point' are only likely to be relevant when appearing in Clause 2.4A (Metering Coordinator), Chapter 7 (to the

extent that they do not relate to the provision of metering data for market settlements), and in relevant definitions in Chapter 10. We understand that rights to receive connection services under Chapter 5A will be extended to Embedded network customers through other mechanisms, and system security obligations under Chapter 4 and (to a lesser extent) Chapter 5 can be adequately addressed through the application of those Chapters at the Parent connection point.

(iv) *Amendments to exclude and apply specific metering data obligations*

Chapter 7 will require amendments to incorporate Off-market connection points and limit metering data provision obligations. Key amendments include:

- (A) excluding Off-market child connection points from obligations to provide metering data to the metering database maintained by AEMO and related obligations to validate, substitute and provide information to AEMO, (cl 7.3.1(a)(2), 7.8.2(a)(3), 7.9.4(a), 7.10.1(2)-(5), 7.10.1(b) 7.10.2(c), (e) – (h), 7.10.5(a)-(b), 7.10.7, 7.11.1, 7.11.2, 7.11.3(c)(2) and 7.14);
- (B) replacing references to the Exempt embedded network service provider with references to both exempt and authorised embedded network service providers (cl 7.3.2(i), 7.5A.2(c), 7.15.5(d)(5), and (f));
- (C) replacing references to the FRMP with reference to both the financially responsible Market participant and any Authorised retailer or Authorised (on-selling) retailer at an Off-market child connection point (cl 7.5A.2, 7.6.2(c), .6.2(3)(i), 7.7.1, 7.7.2(a), 7.7.3(d), 7.8.2(ea)(2), 7.8.4(e)-(f), 7.8.9(f), 7.9.1, 7.9.4(e), 7.9.6, 7.10.5, 7.15.3(g), 7.16.3, and Ch 10 (definitions of 'Incoming Retailer', 'metering data services database');
- (D) extending AEMO's obligation to maintain the Metering register to include Off-market child connection points (cl 7.12.1);
- (E) extending references to the operation of the *Market Settlement and Transfer Procedures* to include situations where an Embedded network customer transfers Off-market to On-market and vice versa (cl 7.6.2(c), 7.8.9(e)); and
- (F) limiting the application of the minimum services specification to Off-market child connection points (including, by way of example, the right of the Local Network Service provider to arrange connection and disconnection) (Sch 7.5).

(v) *Other amendments*

Other amendments to consider include:

- (A) whether to require that AEMO authorise alterations to parameters or settings within a metering installation prior to the alteration being made (cl 7.8.11(a));
- (B) whether to clarify that clause 7.14 applies to Off-market embedded network customers (we consider it clear that an Authorised (on-selling) retailer would be captured by the definitions of retailer and Customer, but it may be useful to allow Embedded customers to make a request to the registered Embedded network service provider under clause 7.14 rather than to the distribution network service provider);
- (C) whether to extend rights and obligations of the Local network service provider to the authorised network service provider in relation to the security of the metering installation and access to energy data (cl 7.15.2(c)-(e); 7.15.3(c), 7.15.4(b)(3)(i) and 7.15.5); and
- (D) whether to reframe the requirements to include in the Metering register details relating to data validation, substitution processes and data processing as set out in S7.1.2(d) and (e) to apply in relation to the provision of metering data relating to Off-market child connection points to the

Authorised (on-selling) retailer, registered Embedded network service provider and other interested parties.

(d) Transitional provisions

(i) *Amending Procedures and Guidelines*

AEMO and the Information Exchange Committee will need to make amendments to a number of the procedures they maintain. The required amendments will need to address:

- (A) including and extending obligations to Authorised (on-selling) retailers and registered Embedded network service providers in relation to Off-market connection points;
- (B) extending the Metering coordinator's, metering provider's, Metering data provider's and Embedded network manager's responsibilities to include Off-market connection points;
- (C) adjusting procedures dealing with transitions Off-market and On-market to reflect the higher level of integration of Off-market connection points into AEMO's procedures;

(ii) *B2B procedures*

The required amendments will necessitate detailed consultation. The Information Exchange Committee will need to amend the B2B Procedures to accommodate the provisions of metering data and NMI Standing Data. AEMO, Market participants and other relevant parties will then require sufficient time to amend their systems, processes and commercial relationships to accommodate amendments introduced by AEMO and the IEC.

We recommend proposing transitional provisions requiring that AEMO and the IEC amend and publish updated procedures with sufficient time for interested parties to amend their systems, processes and commercial relationships to reflect the new regime.

9. Consumer protection issues for Embedded network customers supplied by Authorised retailers

9.1 Regulatory gap : The obligations of designated retailers

(a) The Regulatory Gap

Section 9.3.1 of the Draft Report outlines a regulatory gap in the obligations of 'designated retailers' to make a standing offer to Embedded network customers.

This gap arises from the following features of the current regulatory framework:

- (i) 'designated retailer' is defined by reference to a 'connection', which is in turn defined by reference to a registered distribution system for the purposes of the NERL;
- (ii) Section 22(5) of the NERL does not require a designated retailer to make a standing offer to a Small customer if the customer's premises are not connected to a 'distributor's distribution system'; and
- (iii) the term 'distribution system' is defined by section 2(1) of the NERL to mean:
 - (a) *for a distributor who is a regulated distribution system operator within the meaning of the NEL – a distribution system within the meaning of the NEL;...*
 - (c) *for a nominated distributor under section 12 – the nominated distribution system...'*

The procedure for creating a 'nominated distribution system' is, in our view, too cumbersome for present purposes. It would require, every Embedded network to be 'nominated'.

The term 'regulated distribution system operator' is defined in the NEL¹⁰¹, to mean a Registered Participant 'whose revenue or prices' are regulated under a 'distribution determination'. The revenues of an Embedded network operator will not be regulated under a distribution determination. Accordingly, as an Embedded network is not a 'distribution system', there is no obligation to make a standing offer.

(b) The AEMC's recommendation

If the AEMC recommends the extension of standing offers to Customers who are connected to Embedded networks, amendments will be required first to the NERL, and then to the NERR. A separate approach will need to be taken to sell to customers within registered Embedded networks and Exempt embedded networks. Lastly, whether or not the standing offer concept is extended to new customers of Embedded networks, changes will need to be made to the shared customer framework and the relationship between Embedded network operator and their customers. We will deal with each of these in turn.

(c) Minter's recommendation

We recommend the amendment of NERL section 22(5) as the simplest, most direct way, of achieving the AEMC's objective.

9.2 Addressing the regulatory gap : registered Embedded networks

(a) Introduction

Our recommendations in Chapters 4 and 5 of this report will go some way to addressing this issue. The effect of these recommendations will be to extend the registration obligations of Embedded network service providers, while confining the availability of network service provider exemptions. As a result, a greater number of Embedded networks will be registered distribution systems for the purposes of the NEL.

¹⁰¹ NEL, section 2(1)

(b) Recommendations

(i) Introduction

There are two ways in which the regulatory gap identified in section 9.1 of this report could be overcome: by amending the definition of 'distribution system', or by extending the operation of section 22(5).

(ii) Amending the definition of 'distribution system'

This would be implemented by amending the definition of 'distribution system' in section 2 of the NERL, by changing the reference to a 'regulated distribution system operator' to a person 'who owns, controls, or operates a distribution system within the meaning of the NEL', or to a person who is registered as such under clause 2.5 of the NER. Parallel amendments would need to be made to the definition of 'distributor'.

However, this amendment may well have unforeseen consequences. For example, section 167 of the NERL regulates payments to distributors under a Retailer of Last Resort recovery scheme. For that reason, we do not recommend this option.

(iii) Amend Section 22(5)

This would involve amending section 22.5, by extending its operation to Embedded networks which are registered under clause 2.5 of the NER.

(c) Recommendation

We recommend the amendment of section 22(5) as the simplest, most direct way, of achieving the AEMC's objective.

9.3 Addressing the regulatory gap for sale within exempt networks

(a) Introduction

The primary means of granting an exemption from registration for Embedded network service providers will be under the NEL/NER. However, if the AEMC recommends the extension of standing offers to customers within exempt networks, the appropriate means of doing so is by amending the NERL/NERR.

(b) Specific amendments

We suggest the following amendments to the NERL would extend this obligation to customers supplied by an Exempt embedded network service provider:

- (i)* Insert a definition of the term 'embedded network' for the purposes of section 22 only, by reference to the definition of that term in the NER, or by adopting the same wording as used to define that term in the NER. This could be achieved simply and effectively by inserting definitions in s 22(6) of the NERL, which already provides definitions that apply to terms used in section 22. This approach avoids unintended consequences of amending the definition of 'distribution system' in the NERL to include distribution systems operated by Exempt embedded network service providers.
- (ii)* Amend section 22(5) to include an obligation to supply to an Embedded network, or delete the subsection.

9.4 Extension of the shared customer concept to Embedded network service providers, registered or exempt

(a) Introduction

Section 9.3.2 of the Draft Report describes the 'shared customer' concept that currently exists in the NERL and NERR and imposes shared obligations on Authorised retailers and distributors in relation to 'shared' customers (ie customers to whom they both provide services).



(b) Shared Customers and Embedded networks

'Shared customer' obligations do not presently apply to Embedded network service providers, either in respect of customers they may share with Authorised retailers or with Exempt sellers. The Draft Report suggests that the absence of those obligations has restricted the availability of consumer protections available to Embedded network customers as compared with Standard supply customers.

(c) Request for advice

The AEMC has asked what amendments would be required to be made to the NERL and the NERR to establish a 'shared customer' concept between:

- (i) retailers, Exempt embedded network service providers and Embedded network customers; and
- (ii) retailers, Registered embedded network service providers and Embedded network customers.

(d) Amendments required – Registered Embedded Networks

The term 'shared customer' is defined in the NERL by reference to a distributor and a retailer:

'Shared customer, in relation to a distributor and a retailer, means a person who is a customer of the retailer and whose premises are connected to the distributor's distribution system.'

The NERL then provides, under section 237(2), that the NERR may make provision for or with respect to, among other things, 'the rights and obligations between distributors and retailers who have shared customers', including in respect of, but not limited to, the matters listed in section 237(2).¹⁰²

The term 'distributor' is, like 'distribution system' defined by reference to a 'regulated distribution system'. Accordingly, it will be necessary to amend either the definition of 'Shared Customer' or the definition of 'distribution system' to give effect to the AEMC's objectives. Again, to avoid unintended consequences, we think that it would be preferable to amend the definition of 'shared customer'.

(e) Amendments required - Exempt embedded network service providers

We consider the simplest way to extend shared customer obligations to *Exempt embedded network service providers* (if that is what the AEMC recommends) would be to amend the definition of 'shared customer' to include a reference to a shared customer 'in relation to an Exempt embedded network service provider and a retailer'. For example, amend the definition by inserting words to the following effect:

'Shared customer means:

- (a) in relation to a distributor and a retailer, means a person who is a customer of the retailer and whose premises are connected to the distributor's distribution system; or*
- (b) in relation to an Exempt Embedded network service provider and a retailer, a person who is a customer of the retailer and whose premises are connected to the Exempt embedded network service provider's Embedded network.*

¹⁰² In addition, s. 317 provides for indemnification of distributors/retailers by distributors/retailers in respect of an action by a shared customer to recover any loss or damage.

(f) Consequential amendments

Depending on the nature of the changes to the definition of 'Shared Customer', it may also be necessary to amend the following sections of the NERL:

- (i) Section 237(2)(a): to provide that the Rules may make provision for, in addition to the rights and obligations between distributors and retailers who have shared customers, 'the rights and obligations between Embedded network service providers and retailers who have shared customers'.
- (ii) Section 317: by inserting references to Exempt embedded network provider alongside all references to 'distributors'. For example, cl. 317(1)(a) could be amended by inserting wording to the following effect: '*...the distributor or Exempt Embedded Network Service Provider, as applicable*'.
- (iii) Amendments to the NERR to extend shared customer obligations to Exempt embedded network service providers.

We consider that the most effective way to ensure that shared customers obligations applying to 'distributors' under the NERR also apply to Exempt embedded network service providers, is to insert new sections in the NERR which apply separately to Exempt embedded network service providers. We consider this is a simpler approach than amending all provisions imposing shared customer obligations on distributors. Further, inserting separate sections applying specifically to Exempt embedded network service providers will provide a relatively straight forward way to specify a limited set of specific shared customer obligations for Exempt embedded network service providers, where appropriate.

This could be achieved by the insertion of an application provision in Part 5, or a new Part 5A entitled 'Relationship between Exempt embedded network service providers and retailers – retail support obligations' could be inserted in the NERR. This part could reflect the obligations as between distributors and retailers in Part 5 of the NERR.

9.5 Establish an exempt/registered Embedded network service provider – Embedded network customer relationship

Section 9.3.4 of the Draft Report identifies certain consumer protections that distributors are required to provide to their customers under Part 4 of the NERR. The Draft Report expresses concern about the absence of corresponding obligations imposed on Embedded network service providers, given they have similar characteristics to a distributor.

As discussed above, a consequence of our recommended amendments under Chapter 4 of this advice and in this section 9, is that a greater number of Embedded network service providers will meet the definition of 'distributor' for the purposes of the NERL and NERR, since a greater number will be required to be registered as network service providers. The effect is that the consumer protection obligations of distributors under the NERL and NERR, including under Part 4 of the NERR, will apply to many more Embedded network operators.

We suggest that the most effective way to ensure that a minimum level of consumer protection obligations are also imposed on *Exempt* embedded network service providers is to impose conditions on exemptions granted by the AER. For example, the AER could specify in its Network Exemption Guideline that compliance with obligations imposed on distributors under Part 4 of the NERR is a minimum condition of exemptions granted to Embedded network service providers.

9.6 Extend the tripartite relationship to Exempt network service providers

(a) Background

Section 9.3.3 of the Draft Report describes the existing tripartite relationship under the NERL and NERR between a customer, the retailer and the distributor. It identifies a lack of flexibility to incorporate Embedded network operators within this relationship, as a result of the unique features of Embedded networks. The Draft Report suggests:

*'it may not be appropriate to simply substitute an Exempt embedded network service provider for a distributor as key information and processes may not be able to be properly administered.'*¹⁰³

For example, the following issues arise from the specific features of Embedded networks when considering how the tripartite relationship should apply to Embedded network operators:

- (i) the appropriate role of the Embedded network operator in customer classification;
- (ii) practices in relation to periodic disconnection with respect to an Embedded network customer;
- (iii) appropriate obligations in relation to life support customers within Embedded networks;
- (iv) appropriate liability for network charges when a child connection point is de-energised;
- (v) appropriate application of the restrictions on de-energisation under the NERR to an Exempt embedded network service provider; and
- (vi) appropriate liability for the costs of a Retailer of Last Resort event with respect to a retailer supplying an Embedded network customer.

(b) Draft Recommendation

The Draft Report provides that in order for the tripartite framework to operate effectively in an Embedded network context, it is necessary to extend the relationship:

*'to include the obligations regarding the relationship between the embedded network service provider, the retailer and the local network service provider to ensure that all relevant parties are involved where necessary and appropriate.'*¹⁰⁴

That is, extending the tripartite relationship to include the Embedded network service provider is proposed as an alternative to simply substituting the relevant obligations of distributors with obligations applying to Embedded network service providers.

(c) Implementation

This recommendation could be implemented by making the following amendments:


- (i) inserting a definition of 'Embedded network service provider' in the NERR. We suggest this definition should refer to, or reflect the wording of, the definition of that term in the NER
- (ii) in Part 1, Division 3 of the NERR (customer classification by retailers and distributors): insert separate sections providing expressly for 'Embedded network service provider classification' and 'Embedded network service provider re-classification', to accommodate the separate considerations and requirements that may arise in the context of classifying Embedded network customers; and
- (iii) in Part 6 of the NERR, obligations of retailers and distributors in relation to the disconnection and re-energisation of Small customers:
 - (A) insert a new Division 3A providing expressly for 'Embedded network service provider de-energisation of premises'; and
 - (B) insert a new section under Division 4 providing for the obligations of Embedded network service providers to re-energise premises.

(d) Amending NERR 125(1)

We query whether the nature of the differences between distribution systems supplying Standard supply customers and Embedded networks would justify any divergence in

¹⁰³ See section 9.3.3 of the Draft Report.

¹⁰⁴ Ibid.



obligations relating to life support customers, unless the Embedded network itself is not capable of distinguishing between loads. While this is ultimately a policy consideration for the AEMC, arguably there are no notable differences between the two types of supply from the perspective of a life support customer.

This could be achieved in a simple way by inserting a provision under clause 125(1) of the NERR to provide that the rule also applies where:

- (i) 'a retailer advises an Embedded network service provider'; or
- (ii) 'a customer provides an Embedded network service provider with confirmation from a registered medical practitioner';

and inserting additional wording wherever a reference to an obligation of a 'distributor' arises, to provide that the obligation also applies to Embedded network service providers. For example, inserting wording to the following effect: 'or Embedded network service provider, as applicable'.

10. Glossary

ACCC means the Australian Competition and Consumer Commissioner.

AEMC means the Australian Energy Market Commission.

AEMC means the Australian Energy Market AEMC.

AEMO means the Australian Energy Market Operator.

AER means the Australian Energy Regulator.

Authorised on-selling retailer means an authorised retailer on-selling energy purchased at a parent connection point to customers in an embedded network.

Authorised retailer means a retailer authorised by the AER under the NERL to engage in the activity of selling energy (electricity or gas) to a person for premises.

CCA means the *Competition and Consumer Act 2010* (Cth).

Child connection point means a connection point for a child embedded network customer (so called because it sits behind the parent connection point for the Embedded network).

Child NMI means the NMI assigned to a child connection point.

COAG means the Council of Australian Governments.

DNSP means distribution network service provider.

Draft Recommendations means the recommendations in the Draft Report.

Draft Report means the document titled Draft Report: Review of regulatory arrangements for embedded networks produced by AEMC dated 12 September 2017.

Embedded network means a distribution system, connected at a parent connection point to either a distribution system or transmission system that forms part of the national grid, and which is owned, controlled or operated by a person who is not a Network Service Provider.

Embedded network manager means a person:

- (a) who meets the requirements listed in schedule 7.7 and has been accredited and registered by AEMO as an Embedded network manager; and
- (b) who has not been deregistered by AEMO as an Embedded network manager under clause 7.4.4(d).

Embedded network operator is a term commonly used to describe the party that owns, controls or operates an embedded network, and commonly also on-sells electricity to customers within that embedded network, under exemptions from the AER from being a registered network service provider or holding a retailer authorisation.¹⁰⁵

Exempt customer means a person to whom an exempt seller sells energy and who would be a retail customer of the seller if the seller were an authorised retailer.¹⁰⁶

Exempt embedded network service provider means a person who engages in the activity of owning, controlling or operating an embedded network under an exemption granted or deemed to be granted by the AER.¹⁰⁷

Exempt seller means a person who is exempted by the AER from the requirement to hold a retailer authorisation.¹⁰⁸

Financially responsible has the same meaning as in the NER.

First-tier customer has the same meaning as in the NER.


FRMP means the financially responsible market participant for an On-market connection point.

¹⁰⁵ To come into effect 1 December 2017 as part of the *National Electricity Amendment (Embedded networks) Rule 2015*

¹⁰⁶ NERL, s 109

¹⁰⁷ Section 13 of the NEL; clause 2.5.1(d) of the NER

¹⁰⁸ NERL, Div 1, Pt 1, 2(1)



Local network service provider or **LNSP** means, within a local area, a Network Service Provider to which that geographical area has been allocated by the authority responsible for administering the jurisdictional electricity legislation in the relevant participating jurisdiction.

Market connection point has the same meaning as in the NER.

Market customer has the same meaning as in the NER.

Market load has the same meaning as in the NER.

Market participant means a person who is registered by AEMO as a Market Generator, Market Customer, Market Small Generation Aggregator, Market Ancillary Service Provider or Market Network Service Provider under Chapter 2.

Market retailer means an authorised retailer that purchases electricity in the national electricity market and sells it to an embedded network customer.

Market offer means an offer by an authorised retailer to a small customer to provide customer retail services under a market retail contract.¹⁰⁹

MCE means the Ministerial Council on Energy.

Metering coordinator has the same meaning as in the NER.

Metering data provider has the same meaning as in the NER.

Metering register has the meaning given in the NER.

MSATS means AEMO's market settlement and transfer solutions.

National Electricity Regulations means the *National Electricity (South Australia) Regulations*.

NEL means the National Electricity Law.

NEM means the National Electricity Market.

NEO means the national electricity objective.

NER means the National Electricity Rules.

NERL means the National Energy Retail Law.

NERO means the National Energy Retail Objective.

NERR means the National Energy Retail Rules.

Network exemption guideline means the Electricity Network Service Provider - Registration Exemption Guideline published by the AER.¹¹⁰

Network Service Provider means a person who engages in the activity of owning, controlling or operating a transmission or distribution system and who is registered by AEMO as a Network Service Provider under Chapter 2 (of the NER).

NGL means the National Gas Law.

NGO means the national gas objective.


NMI means a national metering identifier assigned to a metering installation.

NMI standing data has the meaning given in the NER.

Off-market or **Off-market activity** means where, under an Off-market arrangement, an exempt seller or authorised retailer on-sells electricity purchased at a parent meter from the NEM to an embedded network customer. This is known as 'Off-market' activity because there is no financially responsible market participant at the customers' connection point and the customer's electricity consumption is not settled in the national electricity market.

¹⁰⁹ NERL, s 2

¹¹⁰ See: <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-december-2016>.



On-market or **On-market activity** means where, under On-market arrangements within embedded networks, an authorised retailer purchases electricity in the national electricity market and sells it to the Embedded network customer.

On-selling means an arrangement where a person purchases electricity from the national electricity market and they, or a person acting on their behalf, sells the electricity to others. On-selling is an Off-market activity.

Parent connection point has the same meaning as in the NER.

Preliminary Report means the document titled Preliminary issues report: Embedded networks – Implementation of recommendation in Draft Report produced by MinterEllison dated 3 October 2017.

Registered embedded network service provider means a person who engages in the activity of owning, controlling or operating an embedded network and who, under the changes proposed in the Draft report (Review of regulatory arrangements for embedded networks), is registered by Australian Energy Market Operator (AEMO) as an embedded network service provider.

Registered Participant has the same meaning as in the NER.

Responsible person has the same meaning as in the NER (prior to the Power of Choice amendments which will take effect on 1 December 2017).

Retail authorisation means grant of authorisation under section 92 of the NERL.

Retail customer means a retail customer as a person who is a customer of an authorised retailer.¹¹¹

Retail exemption guideline means the AER (Retail) Exempt Selling Guideline published by the AER.¹¹²

Second tier customer has the same meaning as in the NER.

Small customer means a customer who is a residential customer; or who is a business customer who consumes energy at business premises below the upper consumption threshold.¹¹³

Standard supply customer a customer whose electrical supply is connected to a distribution system that is owned and operated by a distribution network service provider (DNSP) and whose retail services are provided by an authorised retailer.

¹¹¹ NERL, s 109; NERR, s 148

¹¹² See: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2016>

¹¹³ NERL, s 5(2)