Submission No 14

EMBEDDED NETWORKS IN NEW SOUTH WALES

Organisation: Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd

Date Received: 24 June 2022

Caravan & Camping INDUSTRY ASSOCIATION NSW

Manufactured Housing INDUSTRY ASSOCIATION NSW

Land Lease Living INDUSTRY ASSOCIATION NSW

24 June 2022

Mr Ray Williams, MP
Chair
The Legislative Assembly Committee on Law and Safety
Parliament House
Macquarie Street
Sydney NSW 2000

Lodged online: *https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2873*

Dear Mr Williams

SUBMISSION ON LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND SAFETY INQUIRY INTO EMBEDDED NETWORKS IN NSW

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the State's peak industry body representing the interests of over 500 holiday parks and residential land lease communities (residential parks, including caravan parks and manufactured home estates) and over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufacturers of relocatable homes and service providers to these businesses.

Many holiday parks and residential land lease communities in NSW have embedded electricity networks serving holiday makers and/or residential customers. Under the Australian Energy Regulator's (AER) *(Retail) Exempt Selling Guideline, Version 5, March 2018* (Retail Guideline) and *Electricity Network Service Provider – Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) **our holiday park and residential land lease community members fall within Exemption Classes D3, ND3 and R4, NR4 respectively.**

In representing these embedded networks, the Association is an important stakeholder in relation to the Legislative Assembly Committee on Law and Safety's inquiry into and report on embedded networks in NSW and we welcome the opportunity to provide our feedback.

For the purpose of this submission, where we refer to 'holiday parks' we are referring to caravan parks that supply energy via an embedded network to occupants of holiday accommodation on a short-term basis (i.e., in these caravan parks there are no permanent residents occupying the accommodation as their principal place of residence).

Where we refer to 'residential land lease communities' we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who live there. This includes caravan parks that supply energy to as few as 1-2 residents (mixed parks) right through to residential land lease communities that are exclusively residential.

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Please see below for our feedback on the Terms of Reference for the inquiry as relevant to our industry.

THE CURRENT LEGAL FRAMEWORK

Embedded networks in NSW holiday parks and residential land lease communities are currently subject to a combination of Federal and State-based instruments, including the following:

Regulation of Embedded Networks in NSW Holiday Parks

- AER Retail Guideline – Exemption Class D3
- AER Network Guideline – Exemption Class ND3
- Australian Consumer Law
- NSW *Fair Trading Act 1987*
- NSW *Electricity Supply Act 1995*
- NSW *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*
- NSW *Holiday Parks (Long-term Casual Occupation) Act 2002*
- NSW *Civil and Administrative Tribunal Act 2013*

Regulation of Embedded Networks in NSW Residential Land Lease Communities

- AER Retail Guideline – Exemption Class R4
- AER Network Guideline – Exemption Class NR4
- Australian Consumer Law
- NSW *Fair Trading Act 1987*
- NSW *Electricity Supply Act 1995*
- *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021*
- NSW *Residential (Land Lease) Communities Act 2013*
- NSW *Residential (Land Lease) Communities Regulation 2015*
- NSW *Civil and Administrative Tribunal Act 2013*

These embedded networks are required to hold a valid exemption from the AER, comply with the conditions of their exemption class and the provisions of each Act and Regulation listed above. This includes a raft of obligations and consumer protections regarding the supply and sale of electricity, such as:

- Obligation to supply and continuity of supply
- Safety of persons and property
- Metering
- Complying with requests of the local Distribution Network Service Provider (DNSP)
- Disclosure and information provision to customers, including access to bills or other documents in relation to utility charges
- Requirements for written occupation agreements and site agreements containing provisions for utilities
- Billing requirements and payment arrangements, including pay-by dates and receipts
- Pricing controls
- Undercharging and overcharging
- Unpaid utility charges
- Payment difficulties, hardship and payment plans
- Disconnection and reconnection

- Facilitating access to concessions and rebates
- Facilitating choice of retailer
- Complaint handling and dispute resolution
- Membership of NSW Energy and Water Ombudsman (EWON)
- Planned and unplanned interruptions to supply
- Life support customers
- Record keeping

From a regulatory perspective, NSW holiday parks and residential land lease communities with embedded networks are highly regulated businesses with strict requirements regarding electricity supply and on-selling.

From a regulatory perspective, NSW holiday parks and residential land lease communities with embedded networks are highly regulated businesses with strict requirements regarding electricity supply and on-selling. They are subject to NSW Far Trading monitoring, compliance and enforcement powers, including obligations to cooperate with Fair Trading investigators.

They are also subject to the jurisdiction of the NSW Civil and Administrative Tribunal (NCAT), which can make orders resolving disputes that arise in relation to an occupation agreement or site agreement, including utilities, and claims under the Australian Consumer Law[1]

CHANGES PROPOSED BY THE AUSTRALIAN ENERGY MARKET COMMISSION 2019

In 2017 the Australian Energy Market Commission (AEMC) found the framework for embedded networks to be 'no longer fit for purpose'[2] and proposed a package of law and rule changes to update the regulatory frameworks in 2019.[3]

In the *Updating the Regulatory Frameworks for Embedded Networks Final Report* (2019) the AEMC proposed to elevate new embedded electricity networks into the national regulatory regime under the National Electricity Law (NEL), National Energy Retail Law (NERL), National Electricity Rules (NER) and National Electricity Retail Rules (NERR).

There was also a proposed transition framework to transition certain legacy embedded networks to the new authorisation and registration framework, which (if implemented) would impact existing residential land lease communities.

The package of proposed changes set out in the AEMC's Final Report are summarised for our industry as follows:

1. Legacy embedded networks in NSW holiday parks (with tourists or tourists and long-term casual occupants only) would continue to operate under an exemption framework overseen by the AER, so long as they continued to qualify for the relevant exemption class or hold the required exemption. The AEMC decided to exclude legacy embedded networks subject to deemed exemptions from the transitional framework.

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[1] We note NSW holiday parks operating under deemed exemptions are not required to comply with as many of these obligations as residential land lease communities due to the supply/sale of electricity being to people in short term holiday accommodation. They are not required to be members of EWON, but are subject to NSW Fair Trading authority and the NCAT. The AER Retail Guideline notes deemed classes are usually for small-scale selling arrangements that need little regulatory oversight.
[2] AEMC, Review of Regulatory Arrangements for Embedded Networks Final Report, 28 November 2017.
[3] AEMC, Updating the Regulatory Frameworks for Embedded Networks Final Report, 20 June 2019.

2. New embedded networks in NSW holiday parks (with tourists or tourists and long-term casual occupants only), established after the effective date of the new laws and rules (to be confirmed at the time), would continue to be eligible for exemptions from the AER, but would be required to register with the AER **and be subject to the NEL and NERL enforcement framework.**

3. Legacy embedded networks in NSW residential land lease communities (which include caravan parks and manufactured home estates that have permanent residents only, or a mixture of permanent residents and long-term casual occupants, or a mixture of permanent residents, tourists and long-term casual occupants), would be required to transition to the new framework as follows:

Timing	Transitional Arrangement
Embedded networks in residential land lease communities granted a network exemption from the AER **from 1 January 2020 to the effective date of the new laws and rules** *(Tranche 1)*	Must undertake a **full transition** to the new arrangements. This would require exempt parties to obtain **registration with Australian Energy Market Operator (AEMO) as an Embedded Network Service Provider (ENSP)** and an **Off-Market Retailer authorisation** from AER. Transition must be completed **within 9 months of the effective date** of the new laws and rules.
Embedded networks in residential land lease communities granted a network exemption from the AER **between 1 December 2017 and 31 December 2019** *(Tranche 2)*	Must undertake a **full transition** to the new arrangements. This will require exempt parties to obtain **registration with AEMO as an ENSP** and an **Off-Market Retailer authorisation** from AER. Transition must be completed **within 2 years of the effective date** of the new laws and rules.
Embedded networks in residential land lease communities granted a network exemption from the AER **prior to 1 December 2017** *(Tranche 3)*	Must undertake a **partial transition** to the new arrangements: • All **existing retail exemptions** must be **transitioned to an Off-Market Retailer authorisation** within the new arrangements, **within 2 years of the effective date.** However, the transitioned off-market retailer would not be required to appoint a metering coordinator. They would be required to comply with the AER's pricing schedule which sets prices for off-market sellers (similar to exempt sellers) to grandfathered legacy networks (capped at the standing offer price of the local area retailer). • All **existing network exemptions would be retained** and no transition to the new arrangements required for this particular area. Transition by the exempt sellers must be completed within 2 years of the effective date of the new laws and rules. For these embedded networks, where this is possible, once a customer seeks to go on-market in accordance with the existing arrangements Chapter 7 of the NER would apply and

	the retailer at the on-market connection point would be responsible for appointing a metering coordinator.

4. All new embedded networks in NSW residential land lease communities (which include caravan parks and manufactured home estates that have permanent residents only, or a mixture of permanent residents and long-term casual occupants, or a mixture of permanent residents, tourists and long-term casual occupants) created after the effective date of the new laws and rules fall within the new framework.

If implemented, the AEMC's proposals would force all legacy NSW residential land lease communities to transition (partially or fully) to the new regulatory framework, which could be a costly, resource-intensive and time-consuming exercise for these communities - initially and on an on-going basis.

In our consultations during the review the AEMC acknowledged the challenges faced by holiday parks and residential land lease communities in NSW and the position was not to force existing businesses to transition to the new regulatory framework. However, as presented in the Final Report the proposed regulatory framework would result in this outcome for residential land lease communities. Albeit to varying degrees, it would impose on them an accelerated timeframe for expensive infrastructure changes and a more intensive and costly regulatory burden.

We appreciate the objective to give customers in embedded networks the same rights, protections and competitive prices as electricity customers who are connected direct to the grid. However, customers in NSW residential land lease communities are in a unique position that warrants consideration.

The AEMC's Final Report acknowledged that costs would increase for embedded networks because of the proposed changes, although the extent of these costs was unclear. We were concerned that no proper determination about whether those costs were appropriate had been made because no cost vs benefit analysis had been undertaken to provide insight and assistance at that time.

Costs to businesses and their customers resulting from regulation can be insidious, with customers almost always paying for the costs of compliance. We therefore pushed for such an analysis to be undertaken, as measuring the additional costs resulting from the new regulatory framework was difficult. Many costs were (and still are) unknown and would undoubtedly vary for each entity.

For example, the number of residential customers in NSW residential land lease communities can range widely in number, from as little as 1 to over 400. The reason for this is many are 'mixed' caravan parks – i.e., those with a mixture of permanent residents, tourists and long-term casual occupants. In our view the AEMC's proposals did not properly account for this and as such, the regulatory burden for communities with minimal numbers of residential customers would likely be disproportionate to the benefits.

We were also concerned by the AEMC's decision to use a time-based trigger for which each tranche would undertake either a full or partial transition, and which is based on when a network exemption was granted by the AER rather than when the embedded network was actually built. Given the practicalities of the embedded network space we did not agree with the AEMC's view that legacy embedded networks in Tranche 1 & 2 would face 'lower costs' and 'few issues' to transition.

It was noted under the AMEC's proposal that legacy embedded networks would be able to seek an individual exemption from being required to register as an ENSP and seek authorisation by the AER as an off-market retailer, however it is difficult to have any confidence in this as an effective mitigation strategy without further details, such as eligibility criteria and assessment by the AER.

Thankfully, in 2020 a cost impact assessment was undertaken by KPMG and following KPMG's findings the AEMC's proposals were ultimately rejected by state energy ministers. We welcomed that decision, because costs relating to regulation of embedded networks, particularly in NSW residential land lease communities, had been escalating over many years and they would continue to do so under the AEMC's proposals. With no opportunity to recover these costs through electricity charges due to restrictions under state legislation (see more on this below) we could not support the AEMC's proposals.

Overall, KPMG's modelling demonstrated that for 46 case studies out of 75, the costs of the AEMC's proposals outweigh the benefits included in the assessment.[4]

For new embedded networks and those established[5] post December 2017 KPMG found that for many states the benefit-cost ratio was likely to be below 1 (net present value break-even point) and the total direct impacts of the AEMC's proposals would result in a net cost.[6] For NSW residential land lease communities in this category, the benefit-cost ratio was found to be 0.4.[7]

For embedded networks established before December 2017 KPMG found a benefit-cost ratio above 1 was more common among case studies due to lower costs.[8] For residential land lease communities in NSW the benefit-cost ratio was found to be 3 (while in QLD it was well below 1),[9] however we disagree with some high-level assumptions chosen by KPMG in their 'residential park established before December 2017 in New South Wales' case study.

For example, a 'medium-sized embedded network operator operating 20 embedded networks' was used with '60 customers in a residential park.' This is not an accurate reflection of the broader market, with many being small operators. There are also strict price controls under the *Residential (Land Lease) Communities Act 2013* (RLLC Act), resulting in electricity prices in residential land lease communities being less than the retail standing offer (often by a significant amount) and there is no profit allowance for operators.

In addition, KPMG made the following observation:

> *'…New South Wales and Queensland have different modelling outcomes for the same EN type and age. While legal and compliance costs and access to hardship benefit are approximately at the same level for both jurisdictions, the modelling results were driven by improved access to concessions benefit. While EN consumers in Queensland have access to all concessions, consumers in New South Wales under the AEMC's proposal would get access to the Energy Accounts Payment Assistance Scheme."*[10]

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[4] *KPMG, Embedded Networks Cost Impact Assessment – Full Report, 24 July 2020, p8.*
[5] *'Establishment' date does not refer to when an embedded network was built, rather when its exemption(s) were registered with the AER. There are issues with this approach, which we raised as a major concern with the AEMC's proposals.*
[6] *KPMG, Op. cit., p 45.*
[7] *Ibid., p 46.*
[8] *Ibid., p 49.*
[9] *Ibid., p 50.*
[10] *Ibid., p 53.*

It is important to note that the NSW Department of Planning and Environment (DPIE) is currently reviewing the Energy Accounts Payment Assistance (EAPA) scheme, including ease of access for embedded network customers. Once resolved, it follows that the benefit-cost ratio for NSW residential land lease communities established before December 2017, which KPMG found to be 'driven by improved access to concessions,' will be reduced.

While the exemption framework may no longer be fit for purpose for other types of embedded networks, our view is that the nature of NSW holiday parks and residential land lease communities and the combination of federal and state legislation that governs them needs to be considered.

Most are older developments that have evolved over time. They are one of the original intended recipients of the exemption framework and the supply of electricity remains an ancillary service. Such a framework should remain available for them.

EFFECT OF EMBEDDED NETWORKS

Issues commonly raised by governments and stakeholders in relation to embedded networks include:

- Potentially higher prices
- Lack of retail competition
- Customer access to complaint handling arrangements
- Information and disclosure
- Supply issues and disconnection
- Protections for vulnerable customers
- No retailer of last resort provisions

For embedded network customers in holiday parks and residential land lease communities, these issues do not rise in the same way as they might in other types of embedded networks.

Holiday parks are tourism businesses, so the primary relationship between an embedded network customer and an embedded network operator in a holiday park is an arrangement for holiday accommodation. The supply of energy is incidental and on a temporary basis.

As customers in holiday parks make use of the embedded network only occasionally and for holiday purposes, regulators have identified that these arrangements need little regulatory oversight. Operators still have obligations in relation to supply, pricing, information disclosure, billing, receipts, dealing with complaints and resolving disputes, but issues like retail competition and retailer of last resort provisions are not of concern in holiday parks.

For home owners in NSW residential land lease communities, state-based legislation supplements the ACL and the AER's Retail and Network Guidelines to give consumer protections beyond those provided to customers of other embedded network types and, in some respects, retailers.

Potentially Higher Prices

NSW holiday parks must comply with Condition 7 of the AER's Retail Guideline, which provides *'an exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.'*

This is further controlled by the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019,* which sets out the legislative framework for the Default Market Offer (DMO) that came into effect in NSW, SA and south east QLD on 1 July 2019.

The DMO is a rule that limits the price that retailers can charge electricity customers on default contracts, known as standing offer contracts, and the AER determines the maximum price that a retailer can charge a standing offer customer each year. Energy retailers can set supply and usage charges however they want, as long as the total bill is equal to or less than the DMO reference price.

The DMO has resulted in decreases in standing offer prices, which should be reflected in electricity pricing in embedded networks operating in accordance with Condition 7.

Separately, NSW residential land lease community operators must comply with section 77(3) of the RLLC Act which provides an *'operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.'*

The meaning of this section was clarified on 4 September 2018 by the NSW Supreme Court's determination in the case of *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless* [2018] NSWSC 1343 (*Reckless*). The Court's decision was that the concept of a 'regulated offer retailer' no longer existed (following deregulation of the energy market in 2014) and under s 77(3) of the RLLC Act the plaintiff was not entitled to charge the defendant any more than the plaintiff had been charged for the supply or use of the electricity consumed by the defendant.

While there are some practical difficulties in calculating the tariff to apply (known as the *'Reckless* method') the outcome is that these types of embedded networks are prohibited from profiting on the sale of energy and they have no opportunity to cover operational, maintenance or replacement costs of the network through energy charges.

This outcome also means many home owners in residential land lease communities are currently paying very cheap prices, equivalent to commercial rates (with some as low as 9c per kWh for usage), compared with customers in the National Electricity Market (NEM) supplied energy by a retailer.

These pricing controls prevent the risk of higher prices for these types of embedded network customers.

<u>Lack of Retail Competition</u>

It has been noted by regulators and stakeholders that, in practice, consumers in an embedded network often have difficulty buying energy from a seller other than the exempt seller due to limitations in wiring and metering and because retailers may be reluctant to sell energy to a consumer inside an embedded network.

For embedded network customers in NSW residential land lease communities the likelihood of them even seeking to go on-market is low, should it happen at all. This was acknowledged by the AEMC in its final *'Rule Determination - National Electricity Amendment (Embedded Networks) Rule 2015'* (Rule Determination).

On page 49 of its Rule Determination the AEMC made it clear that an advantage of providing the AER with flexibility and discretion regarding the appointment of an Embedded Network

Manager (ENM) is so *'embedded network operators operating embedded networks where the likelihood of customers seeking to go on-market is low will not be required to bear the costs unless a customer seeks to go on-market.'*

We are not aware of any cases of customers of embedded networks in NSW residential land lease communities going on-market or seeking to go on market. Pricing limits imposed by the RLLC Act and the AER Guidelines on these businesses make it unlikely that customers will seek retail competition.

Consequently, there is limited value in retail competition for these embedded network customers, as contracting directly with a retailer is unlikely to result in an energy cost saving.

Customer Access to Complaint Handling Arrangements

There are internal and external complaint and dispute resolution processes available to customers in NSW holiday parks and residential land lease communities.

Holiday parks are required to have a telephone number for account inquiries and complaints under the AER Retail Guideline and, like all businesses, the Australian Consumer Law requires them to provide consumer guarantees for the goods and services they sell. This includes electricity use as part of accommodation in the park.

If a customer complains and demands a remedy, holiday parks are legally obliged to provide the appropriate remedy under the consumer guarantees provisions of the ACL. If they do not, the customer can report the problem to the Australian Competition & Consumer Commission (ACCC) or NSW Fair Trading or have the matter heard and resolved in the NCAT.

Authority to intervene and resolve disputes is also given to NSW Fair Trading and the NCAT under the *Fair Trading Act 1987* (FT Act), the *Holiday Parks (Long-term Casual Occupation) Act 2002* (HP Act) and the *NSW Civil and Administrative Tribunal Act 2013* (NCAT Act).

Obligations for residential land lease communities are more extensive in relation to customer complaint handling arrangements. They are required to have internal procedures for handling complaints and disputes under the AER Retail Guideline and Network Guideline, as well as be a member of EWON and comply with the requirements of that scheme.

Like other businesses, residential land lease communities also have obligations under the ACL and if they do not comply customers can report the problem to the ACCC or NSW Fair Trading or have the matter heard and resolved in the NCAT.

Authority to intervene and resolve disputes in residential land lease communities, including in relation to utilities, is also given to NSW Fair Trading and the NCAT under the FT Act, the RLLC Act and the NCAT Act.

Information and Disclosure

In NSW residential land lease communities there is detailed information provision and disclosure about the embedded network to customers.

Condition 2 of the AER's Retail Guideline requires exempt sellers to provide extensive information to embedded network customers at the commencement of supply and on request. This includes:

- the name and contact details of the exempt seller,

- the customer's right to retail competition,
- that the exempt seller is not subject to all the obligations of an authorised retailer and the customer will not receive the same protections as when purchasing from an authorised retailer,
- complaints and dispute resolution processes, including accessing free EWON services,
- the conditions applicable to the embedded network,
- available government or non-government energy rebates, concessions and relief schemes,
- assistance and process if the customer is unable to pay energy bills due to financial difficulty,
- details of the energy tariffs and all associated fees and charges that apply,
- flexible payment options,
- contact numbers in the event of a gas or electricity fault or emergency.

Prospective home owners of residential land lease communities also have rights to disclosure of information under Part 4, Division 1 of the RLLC Act in a detailed, approved Disclosure Statement prior to entering into a written site agreement. They are also encouraged to seek legal and professional advice.

These mechanisms are in place for customers considering moving into an embedded network within a NSW residential land lease community to ensure they have the benefit of informed choice.

Holiday parks are also required to provide information at the start of an agreement under Condition 2 of the AER's Retail Guide, including the name and contact details of the exempt seller, details of the energy tariffs and all associated fees and charges that apply and contact numbers in the event of a gas or electricity fault or emergency.

The HP Act also requires operators to provide written information to prospective occupants as set out in section 9, which includes whether the occupant has to pay any additional or extraordinary charges (other than occupation fees) and for what purposes and how any disputes about the occupation agreement or other disagreements will be sorted out.

Supply Issues and Disconnection

In relation to supply interruptions most outages in NSW holiday parks and residential land lease communities are those planned or unplanned under the management of the local DNSP, because of climatic events or when an upgrade is required (e.g., powerhead replacement). It is in operators' best interests to have supply running as much as possible as they cannot operate the common facilities and business activities without power.

Despite this, holiday parks and residential land lease communities have strict responsibilities for electricity supply under the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2021* (LG Regulation 2021) and the NCAT has jurisdiction to hear and resolve disputes.

Disconnection is one area where embedded network customers in NSW residential land lease communities enjoy consumer protections that customers under standard NEM supply do not. Home owners are protected by section 78 of the RLLC Act, which provides that a home owner's electricity supply cannot be disconnected without an order from the NCAT.

Community operators are also prohibited from applying site fee payments to unpaid utility charges and the NCAT has jurisdiction to make binding orders regarding payment plans for utility arrears, making operator determined disconnection unavailable. In our experience, the NCAT always seeks to preserve a site agreement, and this extends to utility supply.

As outlined above, these embedded network customers can also seek the assistance of EWON and NSW Fair Trading to resolve disputes.

Protections for Vulnerable Customers

Social policy obligations are addressed in the regulatory framework for embedded electricity networks within NSW residential land lease communities. This includes access to energy rebates, assistance for customers facing financial difficulties and protection for life support customers.

Residents of 'an on-supplied residential community' are currently eligible to apply for the Family Energy Rebate, NSW Gas Rebate, Low Income Household Rebate, Life Support Rebate and Medical Energy Rebate direct[11] and DPIE is currently reviewing the EAPA scheme, including ease of access for embedded network customers.

Condition 13 of the AER's Retail Guideline provides that where an energy rebate can only be claimed by the exempt person on behalf of the eligible exempt customer, the exempt person must make that claim and apply the rebate to the exempt customer's bill.

Further, embedded network customers in NSW residential land lease communities have, for many years, had the benefit of a framework that provides payment assistance and support. We reiterate that home owners are protected by section 78 of the RLLC Act and the NCAT frequently makes orders for payment plans to enable home owners to catch up on arrears for site fees and utilities.

We recently raised these protections in our submission on the AER's draft *Retail Exempt Selling Guideline, Version 6, March 2022*, which proposes to require all exempt sellers provide additional hardship supports. These will complement existing processes for NSW residential land lease communities.

We also noted that if a home owner living in a residential land lease community is behind on their utility bills they are usually also behind on their site fees, so the issue is much broader than providing additional support for non-payment of energy bills due to financial hardship. The NCAT, as opposed to an energy ombudsman scheme, is better equipped to deal with these sorts of situations where issues other than energy are difficult to decouple.

There are also obligations on embedded network operators to communicate with retailers and distributors about customers on life support equipment and life support customers are also protected from disconnection in residential land lease communities.

As community operators work on site and some also live within the embedded network, they are in a good position to know who is a life support customer and needs help. In the recent floods that have impacted parts of NSW, park and community operators were on the ground assisting their guests and residents.

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[11] *NSW Government, 'Energy Saver,' updated 12 August 2021, accessed 25 May 2022, <https://www.energysaver.nsw.gov.au/browse-energy-offers/household-offers/find-energy-rebate>*

Retailer of Last Resort Provisions

While there are difficulties with Retailer of Last Resort provisions and embedded networks, it is important to point out there are alternative state-based protections for customers in NSW residential land lease communities.[12]

In most cases, the embedded network operator is also the owner/operator of the residential land lease community and they rely on continued energy supply to the embedded network for their own operations and common facilities. This creates an inherent motivation to maintain supply, aligning an operators' interests with the interests of their customers.

In the event of an exempt seller/operator failure (e.g., being placed into external administration or otherwise going out of business) customers of residential land lease communities will be concerned with their security of tenure, not just their energy supply. Therefore, the RLLC Act contains provisions regarding the appointment of administrators, receivers and managers to protect the well-being and financial security of the residents of the community. These are set out in Part 13, Division 2, sections 164 – 170.

In requiring administrators, receivers and managers to exercise all the functions of the operator of a community, and comply with an operator's obligations under the RLLC Act as if the person were the operator, the RLLC Act provides for the ongoing supply of energy to exempt customers in the event of an exempt seller failure.

The RLLC Act also requires operators to notify the Commissioner when a place ceases to be a community, and Condition 21 of the AER's Retail Guideline requires an exempt seller to notify its customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

Attempting to overlay the existing state-based regime for residential land lease communities with a RoLR scheme could add unnecessary complexity and disruption for these exempt customers. In addition, the AEMC has noted that where an embedded network operator becomes insolvent standard insolvency laws will apply:

> *"Ultimately, electricity will only be one of a number of services that the embedded network owner – typically a body corporate or shopping centre – will no longer be providing to the customers in the relevant apartment or shopping centre. In this instance, the Commission considers that it is appropriate for standard insolvency processes to apply and a RoLR equivalent is not required."*[13]

POLICY AND LEGAL SOLUTIONS TO ADDRESS REGULATORY GAPS

From an operator's perspective there are two key issues that need to be resolved for embedded networks in NSW residential land lease communities. These are problems regarding electricity charges and the ability for operators to properly accommodate solar photovoltaics (solar PV) and other forms of Distributed Energy Resources (DER).

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[12] *RoLR arrangements should not apply to exempt customers in embedded networks within NSW holiday parks who are tourists or long-term casual occupants with occupation agreements governed by the Holiday Parks (Long-term Casual Occupation) Act 2002. All energy that is supplied/on-sold to such customers is for holiday purposes and should be excluded from any RoLR arrangements. We note the AEMC's proposals for RoLR arrangements in its 2019 review 'Updating the Regulatory Frameworks for Embedded Networks' recommend changes to the National Energy Retail Law to include default arrangements for a child connection point supplied by an off-market retailer. Holiday parks would not be required to register as off-market retailers.*

[13] *AEMC, 2019, Op. cit., p 101.*

Electricity Charges

Urgent amendment of section 77(3) of the RLLC Act is needed to address the problems regarding electricity charges that have plagued the industry since the *Reckless* case (2018).

Put simply, the operation of section 77(3) of the RLLC Act as it applies to an embedded network in a residential land lease community is an aberration. It is not the result of considered government policy informed by careful analysis and robust public consultation. In fact, due to an error in drafting, the section flies in face of government policy that operated well for the industry for 30 years prior to the current situation.

Over the last four years, section 77(3) has caused an immense amount of confusion, angst and discord in residential land lease communities. Operators are unsure of what they can charge home owners for electricity and home owners are unsure of what they should be paying.

In addition, a number of operators who thought they had been doing the right thing have had to issue refunds to home owners amounting to hundreds of thousands of dollars, causing unforeseen issues for their businesses.

The history of NSW government policy on electricity charging in communities with embedded electricity networks can be summarised as follows:

- From 1986

  Legislation was passed which legalised long-term occupancy of sites and set minimum standards for caravan park residency.[14] The Energy Authority of NSW's 1986 *Code of practice for electricity supply to long term residents of caravan parks EA86/20* provided for amounts payable by long term residents to be calculated in accordance with the local electricity supply authority's domestic tariff.

- From 1989

  The *Residential Tenancies Act 1987* extended to permanent residents occupying movable dwellings in residential parks. Term 4 of the standard form agreement under the *Residential Tenancies Regulation 1989* provided for a resident to pay for charges in respect of electricity at a rate not greater than the published domestic tariff by the electricity supply authority.

- From 1995

  The *Residential Tenancies Act* was amended by the *Residential Tenancies (Caravan Parks and Manufactured Home Estates) Amendment Act 1994*. Term 5 of the standard form agreement under the *Residential Tenancies (Moveable Dwellings) Regulation 1995* provided for a resident to pay for charges in respect of electricity at a rate not greater than the published domestic tariff of the electricity supply authority.

  The Department of Energy published the *Code of Practice for Electricity Supply to Long-Term Residents of Caravan Parks* as called up in the *Local Government (Caravan Parks and Camping Grounds) Transitional Regulation 1993*. The first Code of Practice, published as EA86/20 in July 1986, was superseded by this document. The new Code provided that the amount payable by a resident with respect to each

[14] Ordnance 71 under *Local Government Act 1919*

meter reading period shall be calculated in accordance with the local electricity distributor's domestic tariff.

The *Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995* and *Local Government (Manufactured Home Estates and Manufactured Homes) Regulation1995* came into effect. The regulations provided that if a dwelling site is provided with electricity otherwise than by way of direct connection to the local electricity supply authority's electricity main, electricity must be supplied at a rate no greater than the electricity supply authority's domestic tariff.

- From 1999

The *Residential Tenancies Act* in its application to moveable dwellings was replaced by the *Residential Parks Act 1998*. Charges for the supply or resupply of electricity to the resident are calculated in accordance with the relevant code.

Under the *Residential Parks Regulation 1999* the prescribed code in relation to electricity is the code published by the Department under the title *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks*, as published in March 2006. In the second reading speech on introduction of the *Residential Parks Bill* on 28 October 1998 Mr Paul Crittenden stated:

> *"This provision makes the position of park residents consistent with other tenancies and effectively means residential park residents will pay the same rate as that of other households."*

- From 2005

The *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005* comes into effect. The maximum amount that may be charged for the supply of electricity during a particular period is the amount that the standard retail electricity supplier for the relevant district would have charged under a standard form customer supply contract for that supply during that period.

- From 2006

Clause 22B of the *Residential Parks Regulation 1999* was re-enacted in clause 17 of the *Residential Parks Regulation 2006* with the publication date of the code titled *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* amended to August 2006.

The Customer Service Standards provided that where the park owner supplies electricity to the resident and the resident has agreed to pay for electricity, two types of charges can be made: a charge for electricity consumption expressed as a cost per kilowatt hour (kWh) of electricity consumed, and a network access charge expressed as a cost per day that electricity is supplied.

> *"3.1.1 Maximum charge per kWh*
> *The charge for electricity consumption, expressed as a price per kilowatt hour (kWh), can be no more than the standard or default regulated retail tariff that would have been charged by the local standard retail supplier under a standard form contract for the same level of consumption.*
>
> *3.1.2 Maximum Service Availability Charge (SAC)*

The service availability charge (SAC) is a component of the regulated retail tariff determined by the Independent Pricing and Regulatory Tribunal (IPART) for each standard retail supplier in New South Wales.

Where electricity is supplied to the park resident by the park owner, the park owner may charge the SAC at a rate no greater than that charged by the standard retail supplier in whose supply district the premises are located, except where electricity is supplied to the park resident's site at a rate of less than 60 amps. Where supply is less than 60 amps, the maximum rate for the SAC is according to the following table:

Level of Supply to Site	*Maximum level of SAC*
less than 20 amps	*20% of local standard retail supplier's SAC*
20-29 amps	*50% of local standard retail supplier's SAC*
30-59 amps	*70% of local standard retail supplier's SAC*
60 amps or more	*100% of local standard retail supplier's SAC"*

- From 2014

In July the *National Energy Retail Law (Adoption) Amendment (Retail Price Deregulation) Regulation 2014* removed reference to 'regulated offer retailer' and provided for a standing offer to a small customer for whom it is the designated retailer.

The *Customer Service Standards* were amended to reflect the changes in terminology:

'3.1.1 Maximum charge per kWh
The charge for electricity consumption, expressed as a price per kilowatt hour (kWh), can be no more than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the resident.

3.1.2 Maximum Service Availability Charge (SAC)
Many of the costs in supplying electricity to retail customers are fixed, such as the cost of providing access to the network infrastructure. The service availability charge (SAC) recovers these fixed costs and ensures all customers contribute to the overall cost of making the supply of electricity available.

Where electricity is supplied to the park resident by the park owner, the park owner may charge the SAC at a rate no greater than that charged by the relevant local area retailer, except where electricity is supplied to the park resident's site at a rate of less than 60 amps. Where supply is less than 60 amps, the maximum rate for the SAC is according to the following table:

Level of Supply to Site	*Maximum level of SAC*
less than 20 amps	*20% of relevant local area retailer's SAC*
20-29 amps	*50% of relevant local area retailer's SAC*
30-59 amps	*70% of relevant local area retailer's SAC*
60 amps or more	*100% of relevant local area retailer's SAC'*

- From 2015

The RLLC Act was assented to on 20 November 2013 but did not commence until 1 November 2015. Section 77 (3) provided:

'77 Utility charges payable to operator by home owner
…

(3) The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.'

Unfortunately, section 77(3) was not amended to replace the words 'regulated offer retailer' with 'local area retailer' following deregulation of the energy market in 2014. However, these changes were adopted in the *Customer Service Standards* in July 2014 and the words 'local area retailer' were also adopted into clause 13 of the RLLC Regulation.

Operators of communities continued to charge for electricity as they always had, in line with long-standing government policy and supported by guidance from NSW Fair Trading.

- From 2017

  NSW Fair Trading's Factsheet *Utilities and other charges* (updated April 2017) provided that operators cannot charge a home owner usage charges for utilities more than a home owner would otherwise be charged if they were a direct residential customer of a local utility service provider. Operators were advised to check their local provider's website to see what the standard rate for usage is.

- From 2018

  In the case of *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless [2018] NSWSC 1343* the Supreme Court of NSW finds on the proper construction of section 77(3) of the RLLC Act, the plaintiff (operator of the community) is not entitled to charge the defendant (the home owner Ms Reckless) any more than the plaintiff has been charged for the supply or use of the electricity consumed by the defendant.

Current Situation

The Supreme Court's decision in the *Reckless* case was that the concept of a 'regulated offer retailer' no longer existed, and under section 77(3) of the RLLC Act Ballina Waterfront Village is not entitled to charge Ms Reckless any more than the village has been charged for the supply or use of the electricity consumed by Ms Reckless.

At paragraph 39 of his judgement Justice Davies says:

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

Following the *Reckless* case, the interpretation of section 77(3) is that, now, residential land lease community operators in NSW cannot charge a home owner for the supply and use of electricity more than the operator has been charged for the electricity supplied to and used by the home owner.

Consequently, the Government's policy on energy charges in residential land lease communities, which had been working well for the industry for decades, has been fundamentally altered. The current policy outcome of section 77(3) has been distorted from

its original intent merely due to a drafting error by the legislature following deregulation of the energy market in 2014.

Not only has this case left community operators with a legislative provision that prevents them from charging for electricity in accordance with intended, long-standing government policy, what remains of the provision fails to take account of the infrastructure limitations in communities that prevent accurate calculation.

Most residential site meters within embedded networks in residential land lease communities are not 'smart meters' and they do not 'communicate' with the parent smart meter (or meters) for the community. Site meters that are accumulation meters measure how much electricity has been consumed at the site, but they cannot discern when the electricity has been used, so home owners are charged the same rate for electricity regardless of the time of day that they use power.

What this means is that operators cannot accurately calculate what a home owner should be charged based on what the operator has been charged for the electricity supplied to and used by the home owner at the site. If an operator is receiving electricity at the parent 'smart meter' under commercial time-of-use tariffs, the total of the operator's bill will be an amalgamation of multiple tariffs and it is not possible to accurately calculate how much electricity a home owner used for which the operator was charged at the off peak rate, rather than the peak rate or shoulder rate.

The best that is available to operators is a 'method of approximation', as set out in the case of *Reckless v Silva Portfolios Pty Ltd t/as Ballina Waterfront Village and Tourist Park (No. 2) [2018] NSWCATCD 59*. Operators divide the community's total kilowatt hour usage into the total the utility service provider has charged the operator to produce an overall cents per kilowatt hour rate. This rate is then be applied to the total kilowatts used by a resident (the '*Reckless* method').

In terms of complying with their obligations, the only assistance NSW Fair Trading can currently offer operators is the following:

> *'If you need assistance to comply with the Supreme Court decision, and to calculate how much to charge home owners for their electricity usage, you may consider contacting:*
>
> - *your energy supplier,*
> - *an industry association, or*
> - *one of the many businesses that specialise in providing billing and other services to operators of embedded electricity networks.*
>
> *Please note, this information supersedes and replaces previous Fair Trading Fact Sheets dealing with the same subject matter. It does not constitute legal advice and you should seek such advice independently, if required.'*[15]

This situation is unacceptable and requires urgent rectification. This Association has been advocating for change since the *Reckless* case.

[15] NSW Fair Trading, *Utilities and other charges,* https://www.fairtrading.nsw.gov.au/housing-and-property/strata-and-community-living/residential-land-lease-communities/utilities-and-other-charges, accessed 23 June 2022

Not only has section 77(3) of the RLLC Act created a situation that flies in face of government policy that operated well for decades prior to the *Reckless* case, it is imposing a charging method that is unworkable for most communities and a pricing cap that is out of step with the pricing conditions that apply to other embedded electricity networks.

This review presents an opportunity for the Government to 'right the wrong' of section 77(3) and develop a fairer, more suitable regulatory framework for electricity charging in residential land lease communities. In the interest of helping the industry move forward, we have been urging the Government to resolve this issue through appropriate legislative change as soon as possible.

We note that the Department of Customer Service has been considering how people living in residential land lease communities could be charged for electricity as part of reviewing the RLLC Act, but in our view the resolution of this issue is taking longer than necessary.

The NSW Government needs to progress, as a matter of priority, the solution agreed to by stakeholders in 2021 - that is, setting the maximum amount that a resident in residential land lease community may be charged for electricity at the median market price determined by IPART.

We advocate for a 'median market price - separate charges method' with separate usage and supply charges. From an industry point of view, this is the best interim alternative to Option 3 set out in the *Statutory Review of the Residential (Land Lease) Communities Act 2013 Discussion Paper.*

Despite its drawbacks, the median market price – separate charges method would send a clearer pricing signal for operators, home owners and other stakeholders than the *Reckless* method and should assist in reducing disputes about electricity charging in land lease communities.

In addition, the separate charges method is a fairer and more accurate reflection of retailer pricing practices in the NEM, as well as the NSW Government policy that applied to the industry for 30 years prior to the *Reckless* case. Separating charges for supply and usage would provide home owners with a clear indication of the respective charges, rather than a single aggregated amount, and this would allow ongoing comparison with other charging regimes whilst still maintaining a level of pricing protection.

In relation to discounting Service Availability Charges (SAC) for sites with lower amperage, the industry has never supported such discounts. These discounts were arbitrarily determined and introduced in 2006 as a policy response to address the issue of sites with amperage lower than 60 amps.

The costs of supplying electricity to a site in a residential land lease community are the same whether the site is receiving 20 amps or 60 amps or more, and the levels of amperage supplied to sites are determined by planning and supply authority laws at the time. In communities established many years ago, the provision of lower amperage to sites was normal development. In addition, operators now face additional administrative and compliance costs associated with running the embedded networks, including costs associated with mandatory membership of EWON.

It is also important to note that in communities where some home owners are retailed electricity by an authorised retailer the full SAC is charged by the retailer even if the amps supplied (via the embedded network) to the home owner's site is less than 60amps. This

amount is not passed on to the operator like network charges in the NEM. Meanwhile, for other home owners in the same community who are on-sold electricity by the operator, they receive the discounts if their site receives less than 60 amps.

Despite these issues, the industry is prepared to accept and apply the existing discounts for SAC for home owners who receive less than 60 amps under the median market price - separate charges method.

The National Energy Customer Framework provides that customers should receive the same level of consumer protections, regardless of where they live. However, many home owners in NSW RLLCs are currently at a significant advantage in relation to pricing compared to other residential customers simply because of where they live. This is not fair and equitable and needs to be addressed.

Electricity is an essential service, but this does not absolve a person from paying their fair share for this resource. Like other embedded electricity network operators, retailers and distributors, residential land lease community operators should be allowed to charge home owners fair prices for electricity usage and service availability.

Distributed Energy Resources (DER)

We have previously raised the issue of solar PV in residential land lease communities because there are gaps and barriers at the state and federal level.

We have received reports from some operators that home owners who are connected to the embedded network are installing solar PV systems on their moveable dwellings (either with or without consent from the operator) and operation of these solar PV systems is causing the child meters in the embedded network to run backwards.

This is just one issue. Operators are finding many aspects of solar PV challenging to manage, including how to deal with impacts on the embedded network (e.g., reverse flows, voltage), safety and compliance, billing and negative meter readings, refund/credit entitlements, ongoing maintenance, what rules and regulations apply to managing access and connections and the rights and responsibilities of home owners and operators.

There is also the issue of cost recovery in facilitating solar PV systems and other DER in residential land lease communities. Currently, the RLLC Act does not consider DER arrangements and there is a limitation on the fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community (see section 76).

The cost of solar PV systems is falling and the technology is constantly improving. Coupled with the pressure of rising energy costs, the desire to install of solar PV systems within holiday parks and residential land lease communities is becoming more popular. This is a good thing because for operators, energy costs are usually second only to wages costs, and many residents of residential land lease communities are retirees on fixed incomes and seeking low-cost living. However, the issues noted above are creating a barrier apart from the upfront costs of installing solar PV systems.

In terms of other DER that may become common or appealing in residential land lease communities, we envisage demand will rise for battery storage and electric vehicles.

The regulatory framework should incentivise and support operators that want to encourage new energy products and services within their embedded networks. As part of this, and in order to comply with their own responsibilities, where home owners are installing (or want to install) new energy technologies like solar PV and other DER operators must be able to have a say over what energy technologies are being installed and how on individual sites.

There needs to be shared responsibility between customers, operators and suppliers of DER and the RLLC Act will need to be less obstructive, particularly in relation to fees and charges (including electricity usage and supply charges).

In addition, operators should not be left out of pocket. If costly infrastructure upgrades are going to be required to accommodation new energy technologies then sufficient financial support from governments, such as grants, tax incentives and loan schemes need to be made available.

We note the AER is currently undertaking a review of the retailer authorisation and exemption frameworks in the context of a transitioning energy market. We have raised these issues in our submission on the Issues Paper.

CONCLUSION

Thank you for considering our feedback. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, CCIA NSW is an important stakeholder in relation to the Legislative Assembly Committee on Law and Safety's inquiry into and report on embedded networks in NSW.

Should you wish to discuss the issues raised please contact Shannon Lakic, Policy, Training and Executive Services Manager, on [redacted] or email [redacted].

We look forward to our continued involvement in the consultation process.

Yours sincerely

[redacted]

Lyndel Gray
Chief Executive Officer