

ACCC INQUIRY INTO RETAIL ELECTRICITY SUPPLY AND PRICING: ISSUES PAPER (31 MAY 2017)

The Shopping Centre Council of Australia (SCCA) represents Australia's major owners, managers and developers of shopping centres. Our 25 members are listed at the end of this submission.

We welcome the opportunity to provide a submission on the Australian Competition and Consumer Commission's (ACCC) Issues Paper: Inquiry into retail electricity supply and pricing. We have reviewed the Issues Paper.

The focus of this submission relates to our ongoing participation with 'embedded network' regulation, and specialist regulators such as the Australian Energy Regulator (AER), as it principally relates to the current network and retail exemption frameworks which have been the subject of ongoing policy and regulatory review (including under the National Energy Retail Law (NERL) overseen by the AER. This also includes reforms and rule changes driven by the Australian Energy Market Operator (AEMO), and Australian Energy Market Commission (AEMC), including under the 'Power of Choice' reforms.

The retail and network exemption frameworks apply to embedded networks to ensure appropriate and 'fit-for-purpose' regulation, including customer protections such as access to retail competition, safety issues, dispute resolution, pricing and billing and payments.

We note that the ACCC's Issues Paper has one reference at page 12 regarding embedded networks, relating to 'retailer of choice' and 'offers'. We do not believe the ACCC should investigate embedded network regulation (or other) issues under this Inquiry for the reasons set out below.

Our principal reason is that the current 'fit-for-purpose' embedded network regulatory framework has been, and continues to be: (1) subject to ongoing review and reform, (2) by specialist independent regulators/ market entities, and (3) includes key stakeholders such as consumer representatives. Examples of recent key reforms include the AEMC's Embedded Network and Competition in Metering rule changes that commence on 1 December 2017 and the AEMC's current review of regulatory arrangements for embedded networks, for which comments closed on their consultation paper on 16 May 2017. These reviews encompass a broad range of relevant matters including competition and consumer issues.

These ongoing reviews involving specialist market entities and key stakeholders also ensure that the nuance of embedded networks, including their separation from being 'mainstream' retailers and different types and customers, are appropriately considered.

By general definition, the current exemption framework applies to parties that sell, or 'on-sell', energy, but where it is not their main business (e.g. shopping centre management) and is therefore an incidental activity. In addition, the exemption framework applies in circumstances where energy is being on-sold to a defined group of customers at one site (e.g. such as a shopping centre), versus (for instance) across a broader market.

The AER's submission to the AEMC's current regulatory review notes such issues in relation to embedded networks/on-sellers as follows: "In our view it will not always be appropriate to treat these sellers as if they were retailers. Added to this, the relationship between an embedded network customer and ENO is more complex than a sale of energy, as it can involve landlord/tenant relationships and include the provision of other services. Such relationships are often impacted by other legislation (e.g. tenancies legislation...)".

The AER's exemption framework also includes a range of 'core exemption conditions' applied to embedded network operators under rule 153 of the Retail Rules – which doesn't limit the conditions that the AER can apply – which expressly includes conditions and various business and consumer protections relating to Information provision (Condition No. 2), Billing and payment arrangements (Condition No. 3), Pricing (Condition No. 7) and Choice of Retailer (Condition No. 13).

From a 'pricing' perspective, this includes that tariffs cannot be higher than the standing market offer price – and how 'energy-only' offers are dealt with (noting that, even where a customer chooses an external energy provider, they are still using an embedded network owners' network and are hence subject to 'shadow' network pricing).

We are mindful that issues surrounding access to competition is an ongoing issue for consideration in relation to embedded networks. The AER notes, in its submission to the AEMC referred to above, that competition "is the missing element that would offer the great benefit to customers".

In this regard, the pending commencement of the AEMC's Embedded Network rule change, which commences on 1 December 2017, is intended to improve access to retail competition and remove a perceived structural barrier to competition, principally through the new 'Embedded Network Manager' role, and better enable customers to access other offers.

We were actively involved in this review, and the AEMO's working group that proposed the rule change.

In addition, as noted above the AEMC is currently undertaking a comprehensive review of embedded network regulation.

This stemmed from a request from the Council of Australian Governments' (COAG) Energy Council in December 2016 to undertake a review under the NERL and National Energy Retail Rules (NERR). This stemmed from the AEMC's Embedded Network rule change. The AEMC's review Consultation Paper received over 30 submissions.

In addition, the AER is currently consulting on its Issues Paper in relation to an embedded network customers' access to Ombudsman schemes. We have held discussions with the AER – and participated in other previous consultations on this issue (e.g. a separate Queensland Government process) – and discussed the issue with members of the Australia New Zealand Energy and Water Ombudsman Network (ANZEWON).

The Queensland Government also recently tabled their amendment legislation, the Electricity (Batteries and Premium Fee-in Tariff) and other Legislation Amendment Bill 2017, to remove structural barriers, by enabling embedded network customers to access their retailer of choice in line with the new AEMC rule change.

In short, having regard to the above mentioned ongoing reviews, we do not believe the ACCC should investigate embedded network issues as part of its Inquiry.

Embedded network regulation continues to be reviewed by specialist independent regulators, and in our view – as an ongoing stakeholder participating in relevant reviews – should continue to be addressed in those forums. These forums also appropriately recognise the 'incidental' nature of on-selling, and the nuance between different embedded network types, such as residential vs. non-residential assets and customers, large vs. small customers and access to appropriate dispute resolution.

We believe it is desirable to avoid overlap across different reviews, which would otherwise be inefficient and create confusion. We believe these reviews should continue to be centralised and coordinated.

Regulators such as the AER are also already familiar with other issues associated with embedded networks such as the relationship to landlord/tenant legislation; in our case being retail tenancy legislation.

In addition, the current approach can best monitor and review yet to commence reforms such as the AEMC Embedded Network rule change, referred to above, to see whether it has a desired effect – such as encouraging retailers to offer 'energy-only' offers to embedded network customers.

We would be pleased to discuss this issue with the ACCC, and respond accordingly to the Preliminary Report if relevant.

ABOUT US

The SCCA represents Australia’s major shopping centre owners, managers and developers. Our members are as follows:



Owner and Operator of *Westfield* in Australia and New Zealand



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