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Submitted via email to EmbeddedNetworks.Review@delwp.vic.gov.au

Manager, Embedded Networks Review
Energy Sector Reform
Department of Environment, Land, Water and Planning (Vic)
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Dear Panel members,

Victoria's Embedded Networks Review: Response to Issues Paper

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Embedded Networks Review (**the Review**) Issues Paper.

We support the Victorian Government's decision to ban embedded networks in new residential apartment buildings (with exemptions for buildings using microgrids to deliver low-cost renewable energy to consumers). Despite the potential benefits of embedded networks, as the Issues Paper notes these benefits have often not been realised in practice, with too many customers finding themselves locked into effective monopolies for their energy supply, paying unfair prices while also lacking access to the protections afforded to consumers purchasing their electricity directly through the retail market.

In addition to the proposed ban, we also welcome several recent changes made by the Victorian Government for embedded network customers, including: enhanced consumer protection coverage; access to the Energy and Water Ombudsman (Victoria) for disputes; and a requirement that sellers obtain explicit and informed consent before creating an agreement. Combined with the Essential Services Commission's (**ESC**) decision to set the Victorian Default Offer (**VDO**) as the maximum price cap, there is now a much greater degree of equity of outcomes between customers in embedded networks and on-market customers.

However, as the Panel will be aware, further reforms are necessary to ensure that all Victorians have access to the most competitive retail offers and consumer protections, regardless of how they purchase their electricity. We consider there to be several gaps still to be addressed to improve protections and outcomes for consumers within legacy embedded networks, and new residential buildings which meet exemption requirements using microgrid technologies. In summary:

- Any definition of microgrids for the purpose of exemption should require that the costs savings associated with renewable energy are passed through to customers.
- Ensure that conditions and obligations around consumer protections which apply to licensed retailers also apply equally to exempt sellers.
- Allow embedded network operators to automatically apply annual electricity concessions for their customers, rather than having consumers apply for the rebate-based non-mains energy concession.
- The ESC undertakes work to ensure that the VDO reflects a fair price for households in embedded networks, given the potential for greater efficiencies and lower costs.
- The implementation of the alignment of the embedded network price cap and VDO be actively monitored and subject to public reporting from the ESC, in order to ensure people are receiving competitive prices.
- The ESC monitors bundling of services to identify if excessive margins are being shifted to other offers since the introduction of the VDO as the maximum price cap, and act where necessary.
- Align the enforcement and consequences of non-compliance for exempt persons and licensed retailers, including giving the ESC the ability to impose penalties for non-compliance.
- Require universal transitioning arrangements, ensuring that any costs associated are fairly allocated, with exemptions granted only in the case of clear evidence that customers will be worse off.
- Apply the retailer of last resort scheme to embedded networks to ensure customer's continuity of supply.

More detail on these points, as well as associated recommendations, is presented on the following pages. A summary of Consumer Action's recommendations is also available at **Appendix A**.

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About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

Response to selected questions

Section 4: What is a microgrid?

What do you consider to be an appropriate definition for a microgrid?

As noted in the Issues Paper, there is no clear current definition of a 'microgrid' in Victorian legislation. While Consumer Action has not arrived at a comprehensive definition for a microgrid ourselves, we consider that any definition should include on-site generation based on renewable resources. We would also ask the Review Panel to include the intended outcome into any definition—this being that the cost savings of any renewable energy generation are passed entirely through to tenants/occupiers. Any exemption for microgrids should not represent an opportunity for property owners and/or embedded network operators to extract economic rent from consumers.

Further to this, we suggest that as part of any registration and/or licensing of 'exempt' microgrids, that the ESC be required to assess if, and how, the benefits of onsite renewable energy generation are being passed through to tenants/occupiers. Part of the ESC's ongoing compliance activities would then be to regularly assess a sample of embedded networks operating as an exempt microgrid to ensure that the operators or owners are not capturing benefit of renewable energy and are passing these benefits on to end customers as per the requirement attached to their exempt status.

RECOMMENDATION 1. Any definition for a microgrid should include:

- **the presence of on-site generation based on renewable resource**
- **that the cost savings associated with renewable energy generation are passed through to customers.**

RECOMMENDATION 2. As part of ongoing compliance activities the ESC regularly assesses a sample of exempt microgrids to ensure that benefits are being passed through to end customers.

Section 5: Summary of issues relating to the Review's core focus

What are the most important protections to be extended to embedded network customers?

As noted in the Issues Paper, embedded network customers still have lesser protections with regards to disconnections, life support arrangements, reliability standards and support for people affected by family violence. Customers also have different entitlements in terms of guaranteed service-level payments for outages and how they access concessions (discussed more under the following question).

This situation has arisen because conditions and regulatory obligations placed on licensed energy retailers are more stringent than those placed on exempt sellers. Closing these gaps and ensuring that the same obligations and conditions apply to all sellers is critical to ensuring that all Victorians have access to the same retail offers and consumer protections regardless of how they purchase their electricity.

This is particularly true with the emergence of numerous embedded network operators serving multiple customers over multiple sites, some which have customer bases equivalent to small licensed retailers. Given

this comparable scale, and the associated ability to manage additional obligations, we consider that exempt sellers should be subject to the same obligations and consumer protection conditions as a licensed retailer.

RECOMMENDATION 3. Ensure that all conditions and obligations relating to disconnection, life support arrangements, reliability standards and assistance for people affected by family violence which apply to licensed retailers also apply equally to exempt sellers.

How can access to concessions and rebates for embedded network customers be improved?

We consider that the most straightforward option would be to allow embedded network operators to manage annual electricity concession, rather than requiring people to apply for the non-mains energy concession. As the Issues Paper notes, on-bill concessions are likely to be a better solution than rebates for vulnerable consumers who may struggle to afford their monthly bills. The Issue Paper also notes lower uptake of concessions when customers are required to claim a rebate, rather than having concessions automatically applied to their bill.

The growth of embedded networks in the recent past has seen multiple on-sellers emerge who operate networks on behalf of building owners. With larger on-sellers having multiple customers over multiple sites many may have the same (or more) customers than smaller licensed retailers. Given the scale of these operators they should have the capacity to administer concessions on behalf of customers.

RECOMMENDATION 4. Allow embedded network operators to automatically apply annual electricity concessions for their customers.

What are the approaches to pricing, now that the VDO has been implemented? Are there specific examples of prices less than the VDO being offered to customers?

What would be the best way to ensure embedded network customers can access competitive price outcomes?

As mentioned in the opening section of this submission, we support the ESC's decision to apply the VDO as the maximum price that exempt sellers may charge customers in embedded networks. This decision was a practical way forward, providing households with significant and immediate bill relief.

Although we have not seen examples of the prices being offered to embedded network customers since the ESC's decision, we are concerned that there remains significant opportunity for the exempt seller to capture the difference between the negotiated bulk purchase price and the price it sells to the customer, even when VDO compliant.

Given this, the ESC should work towards understanding whether the cap should be lower than the VDO in the future with a view to ensure the price cap is fair, and factors in the potential efficiencies available within embedded networks. The price cap should be lowered further where it is found that the VDO allows exempt sellers to recover retail margins greater than what is allowed for licensed energy retailer in the VDO methodology.

We also suggest that the implementation of the VDO as the maximum price for embedded networks should be actively monitored by the ESC and be subject to public reporting. A lack of transparency around pricing information is noted as an ongoing issue for embedded network customers in the Issues Paper. We believe that increased scrutiny of pricing within embedded networks is an important mechanism to ensure these

households access receiving competitive prices. This monitoring is particularly critical as households in embedded networks (and particularly vulnerable households) may be less likely to dispute pricing given the confusing nature of embedded network billing, and the unequal power dynamic in which their energy supplier may also be their landlord.

As a further measure to ensure competitive price outcomes, embedded network customers should have the right to choose a retail offer from an on-market licensed retailer. We consider that this would create an additional incentive on the embedded network operator to pass savings on to their customers in order to retain them. While we recognise that this may require amendments to metering & network charges, to the extent which costs are incurred the benefits associated with good customer outcomes would outweigh this.

RECOMMENDATION 5. The ESC commits to a work program to ensure that the VDO reflects a fair price for households in embedded networks and lowers the cap where excessive retail margins are found.

RECOMMENDATION 6. The implementation of the alignment of the embedded network price cap and VDO be actively monitored and subject to public reporting from the ESC.

Section 6: Inter-related issues for consideration

From an embedded network customer perspective, what are the issues regarding the bundling of services?

We consider that the pricing of bundled services (with gas hot water, gas stove tops) on the same bills can be very confusing, lacking in transparency and difficult for consumers to understand. Given the confusing nature of billing in embedded networks where services are bundled, there is a significant risk that excessive profit margins removed by aligning the cap for embedded networks with the VDO are shifted to other services or general lease charges. We want to avoid a situation where exempt sellers attempt to recover this lost revenue by transferring charges to other services like bulk hot water or the supply of gas for cooktops.

To guard against this, we recommend that the ESC closely monitor pricing arrangements for bundled services to identify any shifting of excessive margins to other services. Where this is found to be occurring, the ESC should take enforcement action, or recommend reform where there are barriers to their acting.

RECOMMENDATION 7. The ESC monitors embedded networks to identify if excessive margins are shifted to other offers for essential services at the same dwelling and act where necessary.

What compliance and enforcement functions should the ESC have to ensure more effective compliance and regulatory oversight of embedded networks? If not, why not?

Should the enforcement and consequences of non-compliance differ for exempt persons and licensed retailers? If so, how and why? If not, why not?

We believe that the ESC needs to have the same compliance and enforcement functions for exempt sellers as it does for licensed retailers. In particular, the ESC needs to be able to impose penalties for non-compliance. We consider that the current arrangement, which allows the ESC to use the threat of deregistration of the exempt seller to prompt compliance, is an insufficient deterrent.

We do not believe the enforcement and consequences of non-compliance should differ for exempt persons and licensed retailers. As noted earlier in this submission, many embedded network operators have a similar number of customers as small retailers. Given their comparable scale, these exempt persons should be subject to the same enforcement regime and face the same consequences for non-compliance. This is particularly the case with electricity being an essential service, and the potential for harm to vulnerable consumers in fringe housing arrangements.

RECOMMENDATION 8. Align the enforcement and consequences of non-compliance for exempt persons and licensed retailers, including the ability of the ESC to impose penalties.

What factors need to be considered when developing a transition strategy for the proposed ban on embedded networks in new residential apartment buildings?

Although Consumer Action is highly supportive of the Victorian Government's decision to impose a ban on new residential embedded networks, we also consider that there must be a strong focus on transitioning legacy embedded networks alongside the implementation of the ban.

Given the issues experienced by customers in embedded networks, we therefore strongly support universal transitioning arrangements. There is no good reason that customers in legacy embedded networks should enjoy lesser consumer protections than customers in newer embedded networks, or indeed on-market customers.

For any legacy network to avoid transition, we consider that the onus should be on the embedded network owner/operator to provide sufficient evidence demonstrating how transition will leave customers worse off. Any evidence of consumer harm put forward would then be weighed against the benefits associated with the rights customers should have but cannot realise within legacy embedded networks.

We also acknowledge that there will be costs associated with transitioning legacy embedded networks, but that this should not prevent transition. Transparency about the costs of bringing legacy embedded networks into line with other grid standards will be critical to determining whether transitions should proceed. Where retrofitting is required, costs should be fairly allocated. The timeframe from transition will be dependent on the number of legacy networks which will be required to transition, and the extent of work required.

RECOMMENDATION 9. Require universal transitioning arrangements, ensuring that any costs associated are fairly allocated, with exemptions granted only when there is clear evidence customers will be worse off in the new environment.

Section 7: Supplementary issues for consideration

What would be the most effective solution to ensure customers in embedded networks continue to receive electricity, even if their embedded network operator is no longer able to supply electricity?

We consider the most effective solution to be the extension of the Retailer of Last Resort (**ROLR**) scheme to apply to embedded networks. The failure to do so currently represents a significant gap in protections for customers in embedded network. In extending the scheme, the ESC ROLR designations should apply so that each property has a retailer assigned based on which energy distribution area it is located in. This is

preferable to requiring the retailer at the parent meter to act as the ROLR, as these retailers may not be set-up or licensed to sell to individual customers.

RECOMMENDATION 10. Apply the ESC's ROLR scheme to embedded networks to ensure customer's continuity of supply.

Thank you once again for the opportunity of providing this submission. Please contact **Luke Lovell** at **Consumer Action Law Centre** on 03 9670 5088 or at luke@consumeraction.org.au if you have any questions about this submission.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Luke Lovell | Policy Officer

Annex A. Summary of recommendations

RECOMMENDATION 1. Any definition for a microgrid should include:

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