

06 August 2021

Submitted via Engage Victoria

Dear Expert Panel members,

Victoria's Embedded Networks Review: Response to the Draft Recommendations Report

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the Embedded Networks Review (**the Review**) Draft Recommendations Report (**Draft Report**).

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.

We agree with the Panel's vision that, "...consumers should have equal protections, market access and treatment no matter where they live or how they get their energy services."¹ We also broadly support the recommendations advanced by the Expert Panel (**the Panel**) in the Draft Report to realise this vision. This includes Recommendations 1 and 2 which outline the pathway proposed by the Panel to implement the Victorian Government's election commitment to ban embedded networks, namely through initial amendments to the *General Exemption Order 2017 (GEO)* before a phased transition to a licensing regime which will require parties supplying and selling electricity in private networks to obtain a Local Energy Service (**LES**) license from the Essential Services Commission (**ESC**).

Our responses to the Recommendations from the Draft Report, including several further recommendations, are provided below.

¹Department of Environment, Land, Water and Planning (2021), *Embedded Networks Review: Draft Recommendations Report*, [\[link\]](#), p.10.

Response to Recommendations in the Draft Paper

1. Banning embedded networks (Recommendations 1 and 2)

Given that electricity is an essential service, and the poor outcomes experienced by consumers in many embedded networks, it is essential that the ban on embedded networks as currently constituted is enacted as soon as practical, but also that consumers currently living in embedded networks have access to the same protections as on-market customers without delay. Consumer Action therefore supports the Panel's strategy to bring the ban into effect via amendments to the GEO by June 2022.

Further to this, we also support the Panel's recommendation in the Draft Report to remove 'automatic' residential exemptions under a revised GEO, and instead establish an exemptions approval process administered and regulated by the ESC. Entities selling and supplying electricity in embedded networks must be able to demonstrate that they have the capacity to deliver this essential service. Adverse outcomes experienced by consumers to date (evidenced by the high level of distress and frustration expressed in consumer submissions noted in the Draft Report) point to the need to do away with automatic exemptions and require providers to demonstrate to the ESC that they have the capacity to deliver services before any exemption is granted.

We are also supportive of the Panel's decision to focus on requirements for private networks to incorporate 'renewable and clean energy technology', rather than limiting to microgrids. This is a sensible decision, which will allow the definition to encompass new and evolving technologies in future. Our submission in response to the Issues Paper asked for "...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." We therefore welcome recommendations to this effect being included in the Draft Report. While not having identified a threshold ourselves, we suggest that the final threshold is set at a level which avoids any unintended 'greenwashing' where a system of negligible size is installed to gain an exemption. We note that research is available on the average potential photovoltaic capacity per dwelling in Melbourne apartments, which may assist the Panel in deciding on thresholds.² In implementing this decision, we recommend that for private networks to be granted an exemption under a revised GEO, the price benefits of renewable and clean energy technology must be passed through to residents, including renters, via reductions in their bills. Otherwise, the benefits of renewable energy generation may be applied in a manner that only benefits owners, for example via using the energy generated to run communal lighting or elevators, which would normally be paid for through body corporate fees.

RECOMMENDATION 1. In the final report, the Panel specify that exemptions for renewable and clean energy technology are tied to cost savings that lower residents' energy costs.

2. Introducing a licensing framework for new private networks, and applying it to other types of new residential and legacy (existing) embedded networks (Recommendations 3 and 4)

Consumer Action supports the Panel's recommendation to introduce a new licensing framework for future private networks to give longer-term effect to the ban. Given the nature of energy as an essential service, it is appropriate to do away with exemptions for businesses supplying and selling energy in private networks and instead require these providers to obtain a licence from the ESC, which requires them to demonstrate

² Mike B. Roberts (2019), *The value of co-operation: Opportunities for deployment of rooftop photovoltaics on Australian apartment buildings*, University of New South Wales, [[link](#)], pp.49-53.

that they possess the capacity to deliver services. Eliminating disparities between the conditions and regulatory obligations placed on licensed energy retailers and exempt sellers is critical to ensuring that all Victorians have access to the same retail offers and consumer protections regardless of where they live or how they purchase their electricity.

With the growth of third-party providers involved in providing services relating to the supply and sale of energy, we also agree with the Panel that the LES licensing regime must capture the appropriate entities – those businesses providing energy supply and sale services within the private network. This will ensure that these entities, for whom the supply and sale of electricity is their core business, are accountable for operating in consumers' best interests and are subject to compliance and enforcement action when they fail to do so. We agree with the Panel that improving outcomes for consumers must take precedence over providers choosing to exit the market. It is also the case that some third-party providers have customer bases equivalent to that of smaller licensed retailers so should be able to manage the existing obligations that come with licensing.

We are also supportive of the Panel's recommendation to apply the LES license to other types of residential private networks and legacy networks. Ensuring all sites are brought under the new framework is essential to ensuring equity and fairness for all Victorian energy consumers. However, we recommend that the Panel examine whether there is an opportunity to do this quicker than the 3-year timeframe set out in the Draft Report. While acknowledging the capital costs and complexity involved with proper retrofitting of existing sites to comply with new requirements justify a reasonable transition period, it is imperative that people in existing embedded networks receive the benefit of the changes being introduced as soon as possible.

RECOMMENDATION 2. That the Panel consider shortening the 3-year timeframe for legacy embedded networks to apply for an LES license, to ensure all Victorians in embedded networks benefit from the proposed changes as soon as possible.

3. Consumer protections (Recommendation 6)

As noted in our previous submission, and quoted in the Draft Report, we consider there to be no reason that customers in embedded networks should enjoy lesser consumer protections than on-market customers. We are therefore supportive of Recommendation 6 by the Panel that 'LES providers should be required to extend equal or equivalent protections and benefits to their customers as licensed retailers and distribution businesses are required to provide to on-market customers.'³ We consider that wherever possible protections and benefits should be equal between private network and on-market customers, especially with respect to disconnections, life support arrangements, and support for people affected by family violence. Where protections are required to be tailored to account for the differences between private networks and other licensed businesses, we agree with the Panel that the ESC is best placed to make these determinations.

Consistent with our previous comments in response to the Issues Paper, we agree with the recommendation from the Panel that customers in private networks have access to concessions at the time of paying their bill, as opposed to the current practice of waiting for an annual rebate. On-bill concessions are likely a better solution than annual rebates for consumers in vulnerable circumstances who are facing difficulty paying their monthly bills. On-bill concessions will also likely result in a higher number of people receiving concessions by

³ DELWP (2021), *Embedded Networks Review*, [\[link\]](#), p.25.

not requiring people to take the extra step of applying for a rebate at the end of each year. For these reasons, we consider it worthwhile to move to monthly concessions for people in private networks.

We are also supportive of private networks disputes being brought under the jurisdiction of the Energy and Water Ombudsman of Victoria (**EWOV**), so that all Victorians have access to free and independent dispute resolution. As we noted in our submission in response to the issues paper, access to EWOV's dispute resolution services is especially critical in embedded networks where a particular power disparity exists in that someone's energy provider might also be their landlord and so have say over their tenancy.

4. Enhancing the ESC's enforcement powers (Recommendation 7)

Consumer Action is supportive of the Panel's recommendation to align the compliance and enforcement framework for private networks with that for current licensed energy providers. As noted in our submission made in response to the Issues Paper, enforcement and consequences for non-compliance should not differ for exempt persons and licensed retailers. Central to this is the ability for the ESC to seek penalties for non-compliance.

Given the proposed licensing requirement for private networks to incorporate clean and renewable energy technology and pass the benefits on to consumers, we recommend that this be monitored as part of the ESC's ongoing compliance activities. As suggested in our previous submission, this would involve regularly assessing a sample of private networks to ensure that the operators or owners are not capturing benefit of renewable energy and are instead passing these benefits on to end customers as per the requirement attached to their exemption.

RECOMMENDATION 3. As part of their ongoing compliance activities for private networks, the ESC regularly assesses a sample of sites to ensure that cost benefits of renewable energy generation are being passed through to end customers.

5. Access to competitive retail offers and transitional arrangements (Recommendations 8 and 9)

We agree with the Panel's statement that, "all consumers should have access to competitive offers and should be able to transfer easily to a retailer of their choice."⁴ Even in the case of a well-functioning private network delivering benefits to consumers, people should have the right to opt-out and seek an alternative if they so choose. Not only do many consumers view this ability to exercise choice important in and of itself (as evidenced by the number of consumers submissions to this effect in response to the Issues Paper), but the ability also to easily access the retail market incentivises future LES licence holders to deliver value to consumers in order to retain their business.

Noting that changes to metering and other infrastructure will be required to enable this in legacy embedded networks, we suggest that changes are made either by the end of life of infrastructure, or 5 years from the introduction of the revised GEO, whichever is earlier. Sticking to this timeframe would ensure that the required infrastructure changes are made by the time the LES regime is proposed to be fully operational (mid-2027). Anecdotally, we have heard from consumers who have told us that the upfront cost to transition their metering to access on-market offers is prohibitively expensive. Where there are costs associated with transitioning, these should be shared fairly between all stakeholders involved, rather than the current

⁴ DELWP (2021), *Embedded Networks Review*, [\[link\]](#), p.29.

situation where residents are expected to shoulder the cost burden of the transition if they wish to access on-market offers.

We agree with the Panel that obligations also need to be placed on on-market retailers to offer access to private network customers. We have heard from consumers in embedded networks who have been unable to find a retailer willing to supply to them, so consider that it also is necessary to address any supply-side barriers when looking to ensure that all Victorians can access competitive retail offers.

RECOMMENDATION 4. Require universal transitioning arrangements so that consumers in legacy embedded networks can access competitive retail offers, with a deadline for transition set at the end of life of existing infrastructure, or 5 years from the introduction of the revised GEO, whichever is earlier.

RECOMMENDATION 5. Ensure that any costs associated with transitioning are fairly shared between all stakeholders, including property owners, embedded network operators, and on-market retailers who are gaining customers - rather than just residents.

6. Information disclosure requirements (Recommendation 10)

Consumer Action agrees with the Panel's recommendation to strengthen information disclosure requirements for private networks. In our submission to the Issues Paper, we noted that increased scrutiny of pricing within embedded networks is an important mechanism to ensure these households are receiving competitive prices.

Ensuring prospective residents (whether owners or tenants) receive clear information about the presence of a private network and the costs involved (including for bundled services) before contracts are signed will allow people to make more informed decisions. We are supportive of this information being provided annually as recommended by the panel, but also when costs or services are due to change, including clearly presenting the financial impact of the change (presented in monthly and annual dollar amounts).

RECOMMENDATION 6. As well as being provided annually, information packs about cost also be provided to residents whenever costs or services are due to change, with clear information on the financial impact of upcoming changes.

7. Bundled services and other fees and charges (Recommendation 13)

As noted in our submission to the Issues Paper, the confusing nature of billing for bundled services in embedded networks presents a significant risk that excessive profit margins, which were removed by aligning the cap for electricity pricing in embedded networks with the VDO, are shifted to other services or general lease charges. We are therefore supportive of the Panel's suggestions that pricing of bundled services in private networks should be clear and transparent and publicly available, that maximum prices should be set for these services, and that the ESC monitor and enforce compliance with maximum pricing (as well as any other regulatory requirements for sale and supply of these services).

8. Mitigating disruption of supply due to failure of an embedded network (Recommendation 14)

We previously noted the failure to extend the Retailer of Last Resort (ROLR) scheme to embedded networks as a significant gap in protections for customers in embedded network in response to the Issues Paper. As

such, we welcome proposed actions by the Panel to protect customers in the event that a private network operator fails. We support the Panel's strategy to have the Victorian Government confer power on the ESC to appoint an alternative provider to manage the site if the original provider fails.

9. Giving voice to energy consumers in private networks (Recommendation 15)

Consumer Action welcomes the Panel's recommendation to ensure the voices of consumers, particularly those in vulnerable circumstances, are heard as part of policy and regulatory development. As the Report notes, the ESC has recently released their draft vulnerability strategy, *Getting to Fair: Breaking down barriers to essential services*. In our submission to the ESC about this strategy we welcomed its focus on consumer engagement, including through convening a community panel to inform the draft strategy itself. Direct engagement with people in vulnerable circumstances is critical to shaping policy and regulatory reform, as hearing people's lived experience provides a deeper understanding of the challenges people face. In addition to having people living in private networks on general community panels, it will also be necessary to have panels comprised solely of people residing in private networks where consultation is specific to these sites (for instance in this review). This consumer engagement can be complemented through consultation with consumer advocacy organisations that can provide data about trends and talk to systemic issues they are seeing through their services and casework. In any engagement, we recommended that the ESC seek to engage with consumer groups representing the diversity of residential sites containing a private network, including groups representing people in social housing and retirement villages.

RECOMMENDATION 7. That the ESC build on existing practice to give voice to consumers in private networks, by ensuring their inclusion on general community panels, hosting focused private network consumer consultations when required and engaging with consumer advocates representing people in private networks.

Thank you once again for the opportunity to submit in response to the Draft Report. 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,

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