INTRODUCTION

The Shopping Centre Council of Australia (SCCA) represents Australia’s major owners, managers and developers of shopping centres. Our members own and operate shopping centres in metropolitan, regional and rural areas across Queensland.


Our comments on the Issues Paper principally relate to issues in relation to embedded networks and electricity on-selling.

We have previously engaged on various Queensland reviews on energy policy and legislative issues, including providing comment on the Electricity and Other Legislation (Batteries and Premium Feed-in-Tariff) Amendment Bill 2017 (and 2018) to the Parliamentary State Development, Natural Resources and Agricultural Committee last year, and this year; along with the Regulatory Impact Statement – On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland (November 2015) in January 2016.

We also have a longstanding engagement on national regulatory issues, including with the Australian Energy Regulator (AER), Australian Energy Market Commission (AEMC) and Australian Energy Market Operator (AEMO).

ASSESSING STATE-BASED ENERGY LEGISLATION

We have a key concern around areas of potential regulatory duplication, which can ultimately produce counter-productive activities (e.g. engagement on regulatory consultation) and regulatory risk (e.g. uncertain and duplicative compliance regimes).

We have always held a preference for a harmonised regulatory approach for embedded network exemptions across jurisdictions, which principally sits under the Australian Energy Regulator’s (AER’s) network service provider registration and retailer authorisation exemption frameworks – made in accordance with the National Electricity Law (NEL), National Electricity Rules (NER), and National Energy Retail Law (NERL).

We believe there should be no overlap of state energy-legislation with the AER’s framework, and further, that states should not open-up issues that have already been considered at the national level by the AER (e.g. the AER has a final policy position that it will not require exempt sellers that sell energy to non-residential customers to be member of, or subject to, energy Ombudsman schemes). We note that the AER has proven to be an active regulator, and the above respective exemption frameworks have been adapted and updated over time.

A related example in terms of potential duplication is the consideration of access to Ombudsman schemes by the Australian and New Zealand Energy and Water Ombudsman Network (ANZEWON), which includes the Energy and Water Ombudsman Queensland (EWOOQ). We understand that EWOOQ is currently considering issues relevant to its scheme, and consideration of issues at the national level should be encouraged, rather than any ad-hoc approaches.

Separate to the issues noted above is the need for energy-specific regulation (e.g. Qld, NECF, AER) to avoid duplication with non-energy-specific regulation and general customer protections. This could include general protections such as the Competition and Consumer Act 2010, tenant protections under the Retail Leases Act 1994 (e.g. to avoid confusion whereby there is an ‘energy’ issue that is regulated as an ‘outgoing’), and emerging issues such as the proposed Consumer Data Right which will be extended to the energy sector (along with banking and telecommunications, as part of the initial roll-out).
EXISTING PROVISIONS IN LEGISLATION: LICENSING

In relation to shopping centre embedded networks, we believe that both legacy and new networks should continue to have the ability to exempt from holding a license (e.g. network registration; retailer authorisation).

There has been no substantial change in risk, for operators or customers, which would warrant any structural reconsideration. The exemption framework has been adapted and updated over time, under the national framework.

We note, in relation to our sector, some key factors which inform the adequacy of enabling an ongoing exemption framework:

- Embedded networks/electricity on-selling remains an ancillary activity, and incidental to our primary business,
- Embedded networks are incidental to the principal relationship with ‘customers’ as retail tenants under leasehold (in some cases, short and temporary) arrangements.
- Our customer base (whereby ‘small’ energy customers can be ‘large’ companies who have 10s-100s of energy contracts across multiple jurisdictions) are not vulnerable and require protections to the extent that residential customers may.
- It is a relatively small national market (~65,000 customers, at a maximum, nationally; and ~15,600 in Queensland). This compares with, for instance, Origin Energy which has over 2 million small customers (NSW, Queensland, South Australia).
- These activities are confined to certain assets, have a relatively small customer base, and cannot access the broader energy customer market,
- There is no evidence of substantial issues or risks raised in relation to embedded networks,
- Embedded network regulation has continued to evolve – including a tailored approach for different activities (e.g. R1, R5), core customer protections, and the AEMC’s Rule Change which has required the appointment of Embedded Network Managers (ENMs),
- Our high visibility, including as highly visited public places and community hubs, and
- Our high compliance culture, in terms of regulatory compliance, monitoring and enforcement – and ongoing engagement with Governments and regulators.

CUSTOMER PROTECTIONS

While noting potential issues, we don’t believe that there should be a separate suite of energy-specific customers protections developed under state-based legislation. The AER’s framework already provides a comprehensive set of core customer protections, which have evolved over time.

Where there are any potential issues, it should be advanced for potential consideration under the national framework.

DISPUTE RESOLUTION

We are cautious about blanket calls for embedded network customers to be able to access Ombudsman schemes, including EWOQ.

We understand that the Energy and Water Ombudsman Queensland (EWOQ) may be currently considering relevant issues.

In this regard, we refer to our previous submission on the Regulatory Impact Statement – On-supply customer access to energy rebates and the Energy and Water Ombudsman Queensland (November 2015) in January 2016.

We are also mindful of the Electricity and Other Legislation (Batteries and Premium Feed-in-Tariff) Amendment Bill 2018, which proposes changes to the Energy and Water Ombudsman Act 2006.
As a key consideration on this issue in terms of any potential policy position, the Government should note the final position of the AER on this issue, where it considered the issue of access to Ombudsman schemes, in collaboration with ANZEWON, where it outlined a final policy position that it would not require exempt sellers that sell energy to non-residential customers to be members of, or subject to, energy Ombudsman schemes.

The AER noted that that customers of residential embedded networks should be caught as a priority – and this is reflected in the AER Retail Exempt Selling Guideline (Version 5): March 2018.

In forming this position, the AER expressly noted that “unlike residential customers, we have not received evidence of a need for small business customers to access ombudsman schemes” (Notice of Final Instrument: Revised AER Retail Exempt Selling Guideline Version 5: March 2018).

We believe the Government should adopt this position.

To the extent that the Government, or EWOQ, may consider potential issues, we submit the following principles which we believe need to be considered:

- We support the principle of customer protections, and their current legislative basis. Our members provide internal complaints and dispute resolution mechanisms (e.g. call help-lines) for customers to ensure that issues can be raised and seek to be addressed.
- There is no compelling ‘problem’ to address, evidence of structural failure, or case for Ombudsman schemes to be the preferred approach to enable fit-for-purpose, appropriate and cost-effective dispute resolution for embedded network customers. This includes the relationship with existing dispute resolution mechanisms including the need to avoid ‘forum shopping’.
- The difference between customers across embedded networks and their characteristics needs to be further considered, including residential and non-residential customers, ‘vulnerable’ customers, and the fact that some ‘small’ customers can be very large companies that have multiple energy contracts across multiple jurisdictions.
- Alternate approaches should be considered – in company with the energy-specific (e.g. NECF, AER) and general protections (e.g. Competition and Consumer Act) - but also to avoid ‘forum shopping’ - including (but not limited to) existing mediation mechanisms and tenancy tribunals (which in our sector, are well-known, well-established and one-stop-shops) and industry codes of practice (which could clearly spell out clear, cohesive fit-for-purpose expectations and obligations).
- Any transition to EWOQ would need to be risk-based, and cost-effective, acknowledging that such costs are spread across the incidental nature of embedded networks, and a relatively small customer base.
  There is also a need to ensure the fee-model is appropriate (e.g. pay-for-service, post-funding), and the membership model is appropriate, which we believe should not be based on an ‘exempt-network’ basis, but at a corporate entity basis or an industry group model.
  In addition, inclusion of embedded networks as members of Ombudsman schemes must be matched with appropriate representation at the highest levels of governance – such as the Board - to ensure that representatives come from broader groups than traditional energy (and water) companies and consumer groups.

We also advise that we are currently on the Energy and Water Ombudsman Victoria’s (EWOV) Embedded Network Working Group which is assisting on the transition to embedded network customers accessing EWOV scheme under the Victorian General Exemption Order, which requires exempt entities registered with the Essential Services Commission (ESC) to become EWOV members by 1 July 2018.

EWOV is, appropriately, considering various practical issues (e.g. potential inquiries), along with key issues such as membership and funding.
CONTACT

We would be pleased to discuss this submission with the Government.

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