



**Small Business  
Development Corporation**

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To the Review Team

## **REGULATING THE SALE AND SUPPLY OF ELECTRICITY IN EMBEDDED NETWORKS**

The Small Business Development Corporation (**SBDC**) welcomes the opportunity to comment on the Consultation Regulatory Impact Statement (**CRIS**) 'Regulating the sale and supply of electricity in embedded networks'.

The SBDC understands that this CRIS is part of a broader body of work associated with the introduction of an Alternative Electricity Services (**AES**) registration framework.

### **The role of the SBDC**

The SBDC is an independent statutory authority of the Government of Western Australia that has proudly been in operation for 40 years. The SBDC was established to support and facilitate the growth and development of small businesses in the State.

Under the leadership of the Western Australian Small Business Commissioner, the SBDC provides a range of services to assist and empower small business operators in this State when they are making crucial decisions over the course of their business lifecycle, and when they are faced with uncertainty or unfairness in their business, particularly when dealing with another party.

These services are tiered based on the level of support needed, and include:

- information and guidance through online channels (including the SBDC's website), workshops, business advice and outreach services
- dispute resolution service, which includes pre-mediation case management and mediation if required
- through the Investigations and Inquiry Unit, the SBDC can examine behaviour negatively impacting on the commercial interests of small businesses, particularly when there is a power imbalance between parties.

Through these various touchpoints with small businesses, the SBDC is able to monitor the Western Australian small business landscape and constructively contribute to relevant government reviews and policy development.

The SBDC has accrued considerable insight regarding small businesses' experience with embedded electricity networks throughout the State and has advocated over the years for enhanced customer protections and transparency within these systems. Through these advocacy efforts, the SBDC has developed a positive and collaborative relationship with Energy Policy WA.

While considerable information into the challenges faced by embedded electricity network small business customers has already been shared with Energy Policy WA, the SBDC takes this opportunity to reiterate the issues for the reviewing team's consideration.

### **Small business and embedded networks**

Access to electricity is an essential right for all residents and businesses – similar to water and telecommunications. Without which, lives and livelihoods would struggle to exist. For this reason, the Western Australian Government has provided critical utilities infrastructure and continues to monitor and intervene where appropriate to ensure the provision of affordable and reliable services.

As outlined in the CRIS, the electricity landscape has changed over time. Previously, small businesses predominately sourced electricity directly from licensed electricity retailers. Increasingly, this is being provided via the landlord through an embedded network. The proliferation of this practice, and a lack of regulation around its pricing, has resulted in, at times, extreme profiteering from landlords who are simply passing electricity (that is primarily owned and maintained by taxpayers) from 'A' to 'B' with no value-added service.

For over a decade, the SBDC has been receiving complaints from small business tenants that receive their electricity via an embedded network. These complaints relate to:

- landlords purchasing electricity at a reduced rate and not passing these savings onto the end-user. Instead, they are adding a margin to this rate in an apparent profit-making exercise
- a lack of transparency around this margin<sup>1</sup>
- a tenant's lack of choice regarding their electricity supplier
- lack of avenues for resolving disputes related to the on-selling of electricity via the embedded network.

In response to these complaints, in 2021 the SBDC initiated a Preliminary Inquiry into the on-selling of electricity within embedded networks in Western Australia (**the Inquiry**)<sup>2</sup>. In undertaking the Inquiry, information from a range of small businesses and franchise representatives was reviewed.

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<sup>1</sup> The SBDC notes that in 2016 there was the introduction of the requirement for improved transparency of billing information within embedded networks.

<sup>2</sup> Preliminary Inquiry Report available upon request.

After reviewing the evidence obtained through the Inquiry, the SBDC concluded that small business tenants receiving electricity via embedded networks are financially disadvantaged by the apparent unfair business practices of their respective landlords. The issue of on-selling of electricity is not isolated to a particular landlord or shopping centre, instead it is a concern spread across Western Australia.

The Inquiry found four issues that contribute to this unfair operating environment: price hiking; a lack of choice for tenants; a regulatory environment that has resulted in landlords profiting from the provision of what is an essential service; and the increasing incidence of solar panels. Further detail on these issues is outlined below.

#### *Unfair price hiking*

Tenants in embedded networks are charged more than the landlord actually paid for the electricity (i.e. adding a margin) and are also charged at a higher rate than their counterparts who can purchase electricity directly from a licensed electricity supplier (e.g. a standalone shop)<sup>3</sup>. In some cases, the price difference is significant – up to \$10,000 over the course of a year – particularly where the tenant is a high user of electricity and would otherwise be deemed a contestable customer.

#### *Lack of choice*

Tenants in an embedded network can only buy electricity from the embedded network supplier (generally the landlord). This is because of the way the network has been wired or because energy retailers may not want to sell to an individual consumer within an embedded network.

In the situation where a tenant can choose and the landlord is agreeable to the tenant establishing their own direct connection to an alternative licensed electricity supplier, the cost to do so is prohibitive (between \$50,000 and \$100,000) and therefore not viable for most small businesses.

The legal and contractual requirement to return the premises to the original condition upon lease end is another factor making it unrealistic for many tenants to establish their own electricity connection.

#### *Regulatory environment*

The lack of regulation around the price that landlords can charge for on-sold electricity and a lack of appropriate dispute resolution avenues for embedded network customers has created an environment whereby landlords are able to profit through the provision of an essential service to their captive tenants.

#### *Solar panels*

The use of solar systems can compound the issue for tenants. Increasingly, commercial landlords are installing solar systems and batteries on their premises, thus generating more affordable energy for their business. It is becoming the fastest growing business practice in Western Australia and across the country.

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<sup>3</sup> The SBDC does not allege that this issue is occurring across all embedded networks, however, was prevalent across the sample of small businesses examined in the Inquiry.

The Inquiry found examples where shopping centre landlords are renting out building and carpark rooftops to energy retailers for solar power generation. In addition to receiving a financial benefit from this, they are then able to purchase electricity from the generator for a discounted rate. They are then on-selling this electricity at a significantly increased rate to their tenants who are in the embedded network.

In one of the shopping centres examined during the Inquiry, a small business tenant requested permission to install solar panels on the roof of the shop's premises at his own expense. The landlord subsequently rejected the proposal citing that the tenancy agreement only allowed for electricity provided within the embedded network. The SBDC surmises that the landlord's decision was made for financial reasons.

### **Embedded network data**

As outlined in the CRIS, there is a lack of data around the number of small businesses that receive their electricity via an embedded network in Western Australia. Having visibility of this data would be beneficial to understand the true breadth of embedded networks across the State and to enable ongoing government oversight to ensure a fair playing field for commercial end-users.

In terms of estimating current numbers of small businesses within embedded networks, the SBDC is aware that Treasury undertook some modelling as part of the Small Business and Charities Energy Bill Relief grant program, which led to an allocation of funding for 6,000 applications<sup>4</sup>. Given the fact that there are over 12,500 small businesses in just the retail industry (let alone the other industry types also found in embedded networks)<sup>5</sup>, the SBDC believes that 6,000 significantly underestimates the true number of small businesses that are embedded network customers.

This view is supported in the CRIS which states that Energy Policy WA estimates that tens of thousands of small use customers are currently sold and supplied electricity as an essential service through embedded networks, with the number increasing.

### **Preferred regulatory approach**

The SBDC strongly supports the introduction of increased protections for embedded network customers, with **Option 4: AES registration framework** the SBDC's preferred regulatory option.

As outlined in the CRIS, under this option, each embedded network supplier would be required to register with the Economic Regulation Authority, become a member of the Electricity Ombudsman Scheme, and meet obligations under the AES Code that would extend substantially equivalent customer protections to those of a licensed retailer, modified as necessary.

This balances the need for enhanced transparency and protections for customers and keeping regulatory compliance costs to a minimum for the embedded network

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<sup>4</sup> This grant was administered by the SBDC and offered a \$650 electricity rebate for small businesses in embedded networks. Applications closed on 31 March 2024 with 1,168 applications received.

<sup>5</sup> Australian Bureau of Statistics, Counts of Australian Businesses publication.

supplier. This is particularly the case if fast-tracked applications are introduced, which the SBDC believes represents a reasonable, risk-based approach for the registration of embedded network suppliers and will minimise the considerable administrative effort required by the Economic Regulation Authority.

Modelling outlined in the CRIS estimates that the additional cost to customers would be an additional \$10 to \$37 per year (on top of actual electricity costs). This cost could be considered reasonable given the additional protections it provides to tenants, particularly if it was complemented by restrictions on the mark-up that embedded network suppliers could add to the electricity cost.

The SBDC recommends that Energy Policy WA engages further with Consumer Protection to determine whether landlord costs associated with registration would be considered management fees or operating costs under the *Commercial Tenancy (Retail Shops) Agreements Act 1985 (WA) (CT Act)* and the associated legal implications related to whether these costs can be passed on to retail shop tenants. If considered a management fee, these would be prohibited from being passed on to tenants, whereas recovery of operating costs can only occur on a cost-recovery basis.

The CRIS outlines a list of potential protections that would be introduced under a registration model. In line with this, the SBDC provides the following specific comments for consideration.

Proposed protection	SBDC comment
A requirement for supply agreements to be in writing and include certain information such as tariffs, fees and charges and how they may be varied.	The SBDC supports this proposal as it would provide greater transparency to billing information.
Prohibiting an embedded network supplier from unreasonably withholding, preventing or obstructing the supply of electricity to a customer.	The SBDC supports this proposal.
Provision of information up-front to customers through a standard Disclosure Statement.	The SBDC supports this proposal and would argue that this disclosure should be provided prior to the tenant entering into a lease agreement to allow them appropriate time to make an informed decision.
Facilitating non-residential customers who consume more than 50MWh in any 12-month period of electricity obtaining a supply of electricity from a different supplier, at the customer's cost.	The SBDC supports this but notes that the cost of obtaining electricity from a different supplier is prohibitively costly and out of reach for many small businesses that also happen to be large consumers of electricity. This proposed protection should also be expanded to include facilitating non-residential customers to install their own solar panels at their own cost.

Proposed protection	SBDC comment
	<p>It is important that tenants are not restricted from decarbonising their businesses, particularly if Australia is to achieve its Net Zero emissions targets.</p>
<p>Access to suitable meters and ability to request a meter test.</p>	<p>The SBDC supports this proposal.</p>
<p>Minimum billing information requirements.</p>	<p>The SBDC supports this proposal. Minimum billing information should include the purchase rate of electricity, the mark-up and the tenant's usage for the billing period.</p>
<p>Robust dispute resolution procedures, including access to the Energy Ombudsman.</p>	<p>The SBDC supports this proposal as it would improve small business access to justice.</p>
<p>Suitable processes for managing disconnections, reconnections and supply interruptions.</p>	<p>The SBDC supports this proposal.</p>
<p>Cost pass-through measures to facilitate decarbonising the electricity supply in embedded networks.</p>	<p>The SBDC welcomes further discussion with Energy Policy WA around this proposal.</p> <p>While the SBDC supports the incentivisation of commercial decarbonisation, care needs to be taken to ensure a balanced approach and that upfront installation costs are not borne by small business tenants. Further to this, the SBDC believes that tenants should be able to benefit from the long-term cost savings that renewable energy can provide, rather than this being an ongoing income source for the landlord.</p> <p>Another factor to consider is that under the CT Act, the installation of solar panels would be deemed as capital works, with landlords unable to ask retail tenants to pay for or contribute to such costs. It is also noted that the CT Act does not cover all small business tenants (i.e. restricted to those that retail is their predominant business), some of whom may have a lease term prohibiting the recovery of capital work costs.</p>

Proposed protection	SBDC comment
	It would be preferable if all businesses benefited from the same protections in this space.
Restrictions on price.	<p>The SBDC supports restrictions on price, with cost recovery the preferred option, particularly when the landlord is generating electricity via solar panels. At a maximum, the SBDC supports restrictions capped at the regulated tariff rate that the tenant would otherwise be entitled to if it was a standalone shop.</p> <p>The CT Act again needs to be considered when examining price restrictions. If the provision of the electricity is considered an operating expense (to be determined by the State Administrative Tribunal) then landlords can only charge retail tenants for cost recovery of actual costs incurred in the management of the embedded network and not add a profit margin. This would mean that setting a maximum rate as that which a customer could otherwise obtain from an alternative supplier is not permissible under the CT Act.</p> <p>It is the SBDC's view that this is an opportunity to ensure appropriate protections for all commercial embedded network customers in Western Australia, regardless of whether they are covered by the CT Act.</p>

### Information requirements for registration

The SBDC has considered what the minimum information requirements should be for the registration of embedded network suppliers and suggests the following:

- business identification details
- the number of embedded networks the business is managing
- the address of each embedded network
- the predominant purpose of each premises (e.g. caravan park, shopping centre, industrial complex, residential, mixed use, etc.)
- the number of customers in each embedded network, at each location.

If registration renewals are to be required, it would be useful to know if the embedded network supplier purchases electricity from a generator or whether they generate electricity via solar panels or other alternative energy source.

## **Transitional arrangements**

The SBDC supports transitional arrangements to allow time for embedded network suppliers to understand their new obligations and register under the AES framework. This is a best practice approach and acknowledges that there may be some unsophisticated and under-resourced embedded network suppliers who need additional time and assistance to register.

The SBDC notes that Energy Policy WA will be running an awareness campaign which is strongly supported by the SBDC. The SBDC offers its assistance to disseminate the message about the regulatory change and suggests that relevant industry bodies and local government authorities (via the WA Local Government Association) are also utilised.

## **Concluding remarks**

Small businesses are the lifeblood of our communities, providing essential goods and services and employing hundreds of thousands of Western Australians. But it is not easy – having a profitable business can be challenging, particularly in times of economic pressure when the cost of labour, goods, transport and rent are skyrocketing. It is incumbent on government to create a fair, transparent and supportive operating environment for these businesses to thrive.

Currently in this State, businesses are being disadvantaged depending on their location and how they receive their electricity. In many cases, small business tenants receiving electricity via an embedded network are providing landlords with an additional revenue stream on-top of what they are paying in rent. The SBDC considers this to be unfair and that a small business operator in an embedded network should only pay the actual cost of electricity or no more than what they would pay if in an alternative location and not connected to an embedded network.

The SBDC strongly supports regulatory intervention to enhance the protections available to embedded network customers. This includes requiring embedded network suppliers to register with government and introducing minimum bill requirements, restrictions around electricity mark-up and enhanced dispute resolution avenues.

If you would like to discuss this submission in more detail, please contact Lauren Westcott, Senior Policy and Advocacy Officer on [REDACTED] or email at [REDACTED]

Yours sincerely

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David Eaton PSM  
**SMALL BUSINESS COMMISSIONER**

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