

Submission to the Australian Energy Regulator: Draft Network Exemption Guideline (Version 7)

From: Compliance Quarter

Date: 28 April 2025

1. Introduction

1.1. About Compliance Quarter

Compliance Quarter (**CQ**) is a specialist advisory firm dedicated to assisting businesses navigate the complexities of the Australian energy regulatory landscape. CQ provides expert guidance and practical solutions to a diverse client base, including authorised energy retailers, embedded network proponents, operators, and service providers. Our services encompass the full compliance lifecycle, from assisting new entrants with licence and authorisation acquisition (including navigating AER and Essential Services Commission requirements) to developing and implementing robust compliance management frameworks, providing ongoing regulatory updates through our 'Compliance Insights' service, and offering innovative technology solutions like the 'Compliance HUB' and 'Titan Pro' to streamline compliance processes.¹

CQ possesses deep expertise in the National Electricity Law (**NEL**), the National Energy Retail Law (**NERL**), the associated Rules (**NER**, **NERR**), and various state-based regulatory instruments. Our team actively engages with regulatory developments and contributes to policy discussions, evidenced by our history of submissions to the Australian Energy Regulator (**AER**) and other relevant bodies on matters including network and retail exemption guidelines.⁴ We work collaboratively with clients, regulators, and other stakeholders to foster a compliance culture that supports both consumer protection and efficient market operation.³

This submission leverages CQ's practical experience in advising clients who operate under, or interact with, the AER's Network Exemption Guideline. Our perspective is informed by the real-world challenges and opportunities faced by embedded network operators and the need for regulatory frameworks that are not only effective in achieving their objectives but also clear, predictable, and pragmatically implementable. While regulatory frameworks create the need for advisory services like those provided by CQ, it is equally important that these frameworks facilitate viable business operations for compliant entities, fostering innovation and competition within the sector.

1.2. Purpose and Scope of Submission

This document constitutes Compliance Quarter's formal submission in response to the Australian Energy Regulator's consultation on the Draft Network Exemption Guideline (Version

7) (**Draft Guideline**). The Draft Guideline was released on 17 March 2025, alongside the Notice of Draft Decision, as part of the AER's broader Review of the AER exemptions framework for embedded networks.⁷

Compliance Quarter acknowledges the AER's invitation for stakeholder feedback by the close of business on Monday, 28 April 2025.⁷

This submission provides:

- General feedback on the Draft Guideline, acknowledging its underlying objectives.
- Specific commentary and recommendations concerning the terminology used in relation to specific site types, using retirement villages as a key example.
- Constructive suggestions on other aspects of the Draft Guideline aimed at enhancing its clarity, pragmatic interpretation, and effective implementation by embedded network operators and their advisors.

2. General Feedback on the Draft Guideline

2.1. Acknowledging AER Objectives

Compliance Quarter acknowledges the significant effort undertaken by the AER in reviewing the exemptions framework for embedded networks and developing the Draft Guideline. We recognise the AER's stated objectives, including strengthening protections for consumers within embedded networks, increasing the AER's visibility and regulatory oversight, enhancing reporting arrangements, and addressing potential harms identified through stakeholder feedback and previous jurisdictional reviews.⁷

The growth and increasing complexity of embedded networks, driven by factors such as higher-density living and the integration of new energy technologies like solar, batteries, and EV charging, necessitate periodic review of the regulatory framework to ensure it remains fit for purpose.⁶ Compliance Quarter supports the overarching goal of ensuring that the Network Exemption Guideline promotes the National Electricity Objective (**NEO**) by balancing consumer protection with the facilitation of efficient investment in, and operation of, electricity services.

2.2. Importance of Pragmatic Implementation

We are strongly supportive of a robust consumer protection regime. The proposed approach set out by the AER in its draft decision is consistent with a stronger consumer protection regime for consumers in embedded networks.

Compliance Quarter emphasises that the ultimate effectiveness of the Guideline hinges on its practical application. Regulations must be sufficiently clear and workable to allow well-intentioned embedded network operators (**ENOs**), owners, and their advisors to understand and meet their obligations efficiently and effectively.¹

Embedded networks can offer potential benefits, such as lower energy prices achieved through bulk purchasing or network charge efficiencies, and the ability to integrate distributed energy resources (**DER**) and innovative energy services more effectively at a site level.⁸ However, realising these benefits depends on a regulatory environment that does not impose ambiguous or disproportionately burdensome requirements.

The shift away from deemed exemptions for networks with fewer than 10 customers⁸ alters the regulatory landscape for these smaller sites. Previously, such sites operated with minimal direct AER interaction if they met the deemed conditions.¹⁵ The requirement to now register (likely under NR1 or NR2) and potentially undergo AER assessment¹⁴ introduces upfront administrative processes and costs.⁶ However, we agree with the proposed abolition of the two deemed exemption categories and believe that such administrative costs will be minimal and displaced by the benefit of increased visibility of embedded networks and stronger consumer protection.

Therefore, this submission focuses on specific areas where enhancements to clarity and practicality in the Draft Guideline could improve its workability, thereby supporting both consumer protection and the efficient functioning of the embedded network sector.

3. Specific Recommendations

3.1. Terminology Regarding Retirement Villages

Compliance Quarter recommends that the AER ensures consistent use of precise, function-based terminology throughout the final Guideline when referring to entities undertaking regulated activities within specific site types, such as retirement villages. The preferred phrasing should focus on the activity being regulated – the ownership, control, or operation of an electricity network. For example, using terms like 'a person owning, controlling, or operating an electricity network within a retirement village' is clearer and more legally robust than potentially ambiguous shorthand like 'retirement village operator' or 'retirement village operating'.

We support the changes proposed by the AER in this regard, for example, to the NR3 exemption category. We note that a corresponding change should be made to item 3 in section 4.2.

3.2. Record-Keeping Requirements for Retrofit Explicit Informed Consent (Appendix C)

Appendix C of the Draft Guideline outlines the requirements for retrofit applications, including the process for obtaining Explicit Informed Consent (**EIC**) from existing tenants. A key requirement mandates that records of this consent must be kept for 7 years from the date the AER approves the application.

Compliance Quarter submits that the proposed 7-year retention period for retrofit EIC records presents additional practical difficulties and elevates risks for exempt network operators, without a commensurate increase in regulatory benefit. Key concerns include:

- **Increased Data Security and Privacy Risk:** EIC records inherently contain personal information. Mandating the retention of this data for 7 years significantly increases the window of exposure to potential data breaches and cyber security incidents. This prolonged retention runs counter to the data minimisation principles embedded in Australian privacy legislation, which generally advocate for holding personal information only as long as necessary for the purpose for which it was collected.
- **Disproportionate Administrative Burden:** Establishing and maintaining secure storage, ensuring accessibility, and managing the lifecycle of these records for a 7-year period imposes a substantial and ongoing administrative burden. This burden may be disproportionate, especially for smaller exempt entities or those for whom network operation is not a core business (e.g., body corporates) potentially increasing operational costs.⁶
- **Diminishing Relevance and Utility:** The primary regulatory purpose of EIC records in a retrofit context is to verify that tenants consented to the network conversion *at the time it occurred*. While crucial in the initial period following conversion, the practical relevance of these specific consent records for resolving disputes or verifying compliance diminishes significantly over a 7-year timeframe. Tenant populations change, and operational issues are more likely to relate to current service delivery than the original consent obtained years prior. The value proposition of retaining these specific records for such an extended period appears limited compared to the associated risks and costs.

The proposed 7-year retention period for exempt network retrofit EIC is notably inconsistent with the established standards for authorised energy retailers under the NERL and NERR. Section 40 of the NERL requires retailers to maintain records of EIC obtained for market retail contracts.¹⁹ Regulatory practice and associated rules/guidelines consistently point to a standard retention period of at least 2 years from the date of consent or withdrawal for these fundamental EIC records.¹⁶ While other records under different frameworks might have longer retention periods (e.g., 6 years for certain price communications under the ACCC Electricity Retail Code ²¹), the core requirement for EIC related to establishing the customer relationship is typically 2 years.

3.3. DNSP Advice Requirement for Retrofits (Appendix C, Paragraph 8)

Appendix C, paragraph 8 of the Draft Guideline specifies that applicants seeking approval for a retrofit conversion must obtain advice from the local Distribution Network Service Provider (DNSP) regarding potential wiring out for tenants and provide evidence of such advice to the AER. Compliance Quarter recommends that this requirement be refined to apply only in circumstances where there are tenants who do not consent to the retrofit and wish to remain with their retailer of choice. To avoid any doubt, we are not suggesting a change to the requirement to inform the relevant DNSP of the proposed retrofit.

The current drafting appears to impose an obligation to seek DNSP advice in all retrofit scenarios, regardless of the level of tenant consent obtained. This approach presents practical challenges:

- **Unnecessary Administrative Burden:** Where all tenants have provided consent to the retrofit, or where no tenants have expressed a desire to remain with their existing retailer, seeking DNSP advice represents an administrative step that provides limited regulatory benefit. This creates unnecessary administrative costs for both the embedded network operator and the DNSP.
- **Resource Allocation:** DNSPs have limited resources to respond to such inquiries. Requiring their input for all retrofits, including those where no tenant access concerns exist, may divert DNSP resources from addressing more complex cases where tenant choice is genuinely at issue.
- **Proportionate Regulation:** A more targeted approach would better align with principles of proportionate regulation by focusing regulatory requirements on scenarios where the potential impact on tenant choice is material.

Compliance Quarter recommends that paragraph 8 of Appendix C be amended to explicitly state that DNSP advice is only required to be sought where:

1. One or more tenants have not provided explicit informed consent to the retrofit; AND
2. Those non-consenting tenants have expressed a desire to remain with their existing retailer.

This targeted approach would maintain appropriate consumer protections for tenants wishing to exercise retail choice while reducing unnecessary administrative burden in situations where such protections are not required.

3.4. Primary Registrant Definition (Section 5.1)

The Draft Guideline contains provisions in Section 5.1 regarding the concept of a "primary registrant" for embedded networks. However, the current drafting creates potential uncertainty regarding the basis for determining which entity holds primary responsibility.

The concept of a primary registrant is critical for establishing clear lines of responsibility, particularly in complex ownership and management arrangements common in the embedded network sector. We welcome the proposed approach in terms of the establishment of a primary registrant. The current reference to a "responsible" person may create ambiguity in scenarios where multiple parties have different forms of involvement with the network.

Compliance Quarter recommends that Section 5.1 be amended to define the primary registrant more precisely as "a person who has a *contractual right or responsibility* for registering and operating the network." This formulation offers several advantages:

- **Legal Clarity:** Anchoring the primary registrant status in contractual rights or responsibilities provides a clearer legal basis for determining which entity should assume this role.

- **Reduced Ambiguity:** The term "responsible" on its own may be subject to differing interpretations, particularly in arrangements involving property owners, asset owners, and third-party operators. Referencing contractual arrangements provides a more objective standard.
- **Alignment with Commercial Practice:** In the embedded network sector, contractual arrangements typically delineate operational and compliance responsibilities. Aligning the regulatory framework with these commercial realities enhances practicality.

This amendment would provide greater certainty to industry participants and reduce the potential for disputes regarding which entity should fulfill the primary registrant role and associated compliance obligations.

3.5. Victorian Jurisdictional Requirements

The Draft Guideline does not currently include specific reference to the interaction between the AER's exemption framework and the Victorian jurisdictional requirements for embedded networks.

Victoria maintains its own regulatory framework for electricity networks through the General Exemption Order made under the Electricity Industry Act 2000 (Vic)- in relation to sale and distribution. This creates a dual regulatory regime for embedded networks operating in Victoria, which may not be immediately apparent to all stakeholders.

Compliance Quarter recommends the inclusion of a note in the Guideline to clarify that embedded networks in Victoria may require an exemption issued under the Victorian General Exemption Order in addition to an exemption under this guideline. This clarification would:

- **Enhance Compliance:** Alert network operators to their full regulatory obligations, reducing the risk of inadvertent non-compliance with Victorian requirements.
- **Provide Jurisdictional Context:** Acknowledge the continued operation of state-based frameworks alongside the national framework.
- **Reduce Regulatory Confusion:** Assist network operators and their advisors in navigating the complexities of overlapping regulatory regimes.

This addition would be particularly valuable for new entrants to the embedded network sector who may not be familiar with the jurisdictional nuances of energy regulation across Australia.

4. Conclusion

4.1. Summary of Key Recommendations

Compliance Quarter appreciates the opportunity to provide feedback on the Draft Network Exemption Guideline. We support the AER's objectives to enhance consumer protection and regulatory oversight in the embedded network sector while making the following specific recommendations to improve clarity and practical implementation:

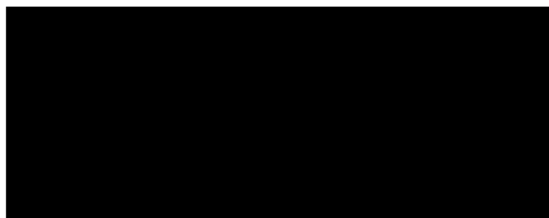
1. **Terminology:** Ensure consistent, function-based terminology throughout the Guideline, particularly regarding entities operating networks in retirement villages.
2. **Record Retention:** Revise the proposed 7-year EIC record retention period to 2 years, consistent with established standards and to reduce unnecessary administrative burden.
3. **DNSP Advice Requirement:** Modify Appendix C to require DNSP advice only where tenants have not consented and wish to maintain their retail arrangements.
4. **Primary Registrant Definition:** Amend Section 5.1 to define the primary registrant as "a person who has a contractual right or responsibility for registering and operating the network."
5. **Victorian Requirements:** Include a note clarifying that embedded networks in Victoria may require additional exemptions under the Victorian General Exemption Order.

These targeted amendments would enhance the clarity, practicality, and proportionality of the Guideline while maintaining robust consumer protections. We believe these changes would reduce unnecessary compliance costs and administrative burden without compromising the regulatory objectives.

4.2. Offer of Further Engagement

Compliance Quarter remains available to discuss these recommendations further with the AER and to provide additional information or clarification as needed. We are committed to constructive engagement in the regulatory process to support outcomes that serve the long-term interests of energy consumers.

Kind regards,



Connor James

Compliance Quarter

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