



17 April 2025

Ms Stephanie Jolly  
Executive General Manager, Policy  
Australian Energy Regulator  
GPO Box 3130  
Canberra ACT 2601

Via email: [AERexemptions@aer.gov.au](mailto:AERexemptions@aer.gov.au)

Dear Ms Jolly

**Review of the AER exemptions framework for embedded networks – Draft decision, incorporating Notice of Draft Instruments**

Thank you for the opportunity to comment on this draft decision.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those questions in the consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this rule change.

If you would like to discuss this matter further, please contact Rory Campbell, Manager Policy & Systemic Issues, on [REDACTED].

Yours sincerely

[REDACTED]

Janine Young  
Ombudsman  
Energy & Water Ombudsman NSW

### Review of the AER exemptions framework for embedded network

Energy and Water Ombudsman schemes (EWOs) have extensively documented our concerns and the consumer detriment evident from complaints about embedded networks.

In our previous [submission](#) to the AER's Issues Paper - Exemptions framework for Embedded Network we expressed our concern that it had been 7 years (now 8 years) since the AEMC concluded that the existing arrangements for embedded networks are not fit for purpose, and that a new framework was required to improve access to retail competition and better consumer outcomes.<sup>1</sup> It has been 6 years since the AEMC issued its final report<sup>2</sup> that proposed legislative changes.

The AER has concluded that:

- The information that it has reviewed indicates a material proportion of embedded network customers are paying comparable or lower prices than they would be if they were connected to the grid. We note however that, the review fails to consider those customers that are paying for separate services, such as chilled water, and that this is part of a customer's overall household energy consumption, but is not factored into energy pricing.
- The Default Market Offer (DMO) is an appropriate tool that ensures all consumers receive comparable pricing protections, regardless of their connection type. The AER therefore supports, as soon as practicable, the extension of the DMO price cap to embedded networks.
  - EWON does not support this and instead, is supportive of the position reached by the NSW Independent Pricing and Regulatory Tribunal (IPART) Embedded Networks – Final Report<sup>3</sup> in which it concluded that it did not consider that the DMO is an appropriate price cap for embedded network customers, unless the customers are large corporate entities.
- That the sale of bulk hot and chilled water does not fall within the scope of the National Electricity Consumer Framework because it is not a sale of electricity or gas for residential premises.
  - EWON does not support this view, and we again refer the AER to our previous submission which extensively outlines EWON's position.

### Changes to the Retail Exempt Selling Guidelines

#### Family violence protections

EWON strongly supports the inclusion of family violence obligations being extended to exempt sellers who on-sell to residential and small business customers. We also strongly support the AER's development of a family violence policy template for small embedded network operators to adapt and adopt and the additional obligations around notification to a customer of the availability of the family violence policy at the start of a tenancy.

This development of assistance and levelling of protections is vital. Family violence protections under NECF are making a significant difference to many customers who experience family violence. Consistency in protections will also contribute to building a family violence protection framework that embeds changes in attitudes and business cultures across the energy sector.

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<sup>1</sup> Review of regulatory arrangements for embedded networks (AEMC, 2017)

<sup>2</sup> Updating the regulatory frameworks for embedded networks (AEMC, 2019)

<sup>3</sup> IPART Embedded Network – Final Report April 2024

In some circumstances this will be difficult for exempt sellers to navigate due to the nature of the relationship within their communities. For example, a survivor and perpetrator may both be residents of the same embedded property (ie residential park or apartment building), and both known by the park operator. We strongly support the work undertaken, but there are additional barriers in its implementation, because it relies on a customer to inform their exempt seller that the customer is a victim of family violence, whereas the similar protections in NECF requires a retailer's staff to recognise that the customer is impacted by family violence.

We acknowledge the AER's position that it is unable to deliver training modules due to the time and costs involved to develop fit-for-purpose products and that instead, it will publish family violence resources. In developing resources, we encourage the AER to consider that there is a need for provision of additional support and guidance for small operators as compared to authorised energy retailers and that highly effective, low cost training could be provided via on-line e-learning modules. This is essential because:

- without effective training, materials and support, provisions may not be applied appropriately, if at all
- promotion of provisions may not occur leading to them being underutilised by the customers who need them most ie victims and survivors of family violence
- the penalty provisions for a failure to develop, implement and maintain a family violence policy, or comply with the overall requirements of the family violence conditions, is significant. Given it is readily accepted that energy is not the core business of these small scale retailers, many will not have the resources or knowledge of how to fulfil these obligations sufficiently and therefore they are greater risk of non-compliance.

### Increasing exempt seller visibility - Notification requirement

EWON supports the AER's proposal to introduce basic notification obligations that require exempt sellers to update their contact numbers and authorised representatives' details. We note that the Guidelines currently stipulate that an exempt seller should notify the relevant energy ombudsman of the change of ownership if the site includes residential customers.

EWON would encourage the AER to add an additional requirement for exempt sellers to update the ombudsman of any changes in circumstances, such as ownership structure or the engagement of a billing agent. Up to date information underpins the effectiveness of EWON's role.

### Compliance reporting

The AER's position is that small-scale exempt sellers would likely not have adequate systems and processes in place to administer compliance reporting requirements. The AER notes that it works closely with ombudsman schemes to identify themes of exempt seller non-compliance and considers this approach to be the most practical method to obtain this data.

We acknowledge this, however reiterate our previous position that we strongly support compliance reporting obligations being extended to relevant classes of exempt embedded network service providers, such as retirement homes, particularly in relation to life support, payment plans and disconnection information provisions. We believe there is currently a significant lack of data in any form that helps to identify issues being faced by customers of these classes of exempt entities including those arising from non-compliant actions / behaviours.

Further, while EWON is positioned to report themes of exempt seller non-compliance to the AER, from a family violence perspective, our suggestion that the AER positions these entities to be able to

effectively establish family violence protections through AER provided training and resources, is much more important than us later reporting lack of compliance with family violence protection requirements across this sector.

We acknowledge that there may be some additional cost at the outset for relevant classes of exempt entities that do not already have a mechanism for compliance reporting. However, the benefits or reporting are critical in working towards providing equal protections for customers that reside in embedded networks.

In the absence of a compliance framework, EWON encourages the AER to work with the ombudsman schemes on a reporting framework for exempt entities, to ensure consistency across all states.

As noted in our submission to the AER's Review of the Draft Network Exemption Guidelines 2022-23, we continue to recommend that the AER consider the following compliance and engagement activities with embedded network operators:

1. Commence a communications campaign after version 7 of the Exempt Selling Guideline and version 7 of the Exempt Network Guideline are published, to ensure that exempt entities are aware of their compliance obligations under the Guidelines.
2. Running webinars or workshops for exempt entities as part of the AER communication campaign following publication of the new Guidelines.
3. Surveying or auditing exempt entities to assess general compliance with the Guidelines and the current accuracy of the exemption register. This could be a risk-based project based on:
  - a. publicly available information from Ombudsman schemes (for example membership lists), and
  - b. current retail and network exemptions on the register that have incomplete data (for example no customer numbers).

Similarly to the approach that was taken in providing our members with correspondence from the AER relating to changes to the Exempt Retail Guidelines, EWON would welcome the opportunity to work with the AER to assist in any activities that will further the understanding and knowledge of the changes to the Network Guidelines of our members.

### Pricing visibility

EWON strongly supports the AER's proposal to introduce a new pricing condition that would require exempt sellers to publish their residential and small business customer tariffs on their website (or displayed in a communal area if they do not have a website). We believe that this will increase the effectiveness of protections by:

- enabling prospective customers to check prices before they become part of an embedded network and compare prices with what they currently pay, and with available market offers
- enabling building / owners' corporations to take into account what comparable embedded networks are charging when renegotiating contracts and/or changing embedded network operators.

We support the AER's revised sub-condition 7(2) that states that an exempt seller must provide notice to its customers of any change in the customer's tariff at least 5 business days before the variation takes effect. This aligns this obligation with Rule 46 of the Retail Rules, which is applicable to authorised retailers. However the AER may wish to review the [AEMC's Draft Rule determination – Improving consumer confidence in retail energy plans 2025](#), which is set to increase

the notification requirement to 20 business days. This rule change, if effected, would again create inconsistent price increase timeframes.

### Increasing transparency by closing the D1 and D2 class

EWON supports the AER's proposal to close ND1 (small business) and ND2 (residential) deemed retail exemption classes for future residential networks from December 2025, and to instead require these to fall under the current R1 and R2 registrable exemption classes. This will improve AER visibility of structural changes and business model changes the embedded network sector .

### Changes to the Network Exemptions Guideline

The AER published and consulted on its draft Network Guidelines (version 7) in October 2022. EWON made a submission to this consultation, and we note that the draft Network Guideline was not finalised due to the commencement of this current review. We acknowledge that the AER proposes to retain the changes and we reiterate our support and comments as noted in our October 2022 submission.

### Primary Registrant

We continue to support the inclusion of this provision.

EWON recommends that the AER provide guidance in the Guidelines around who the primary registrant should be. For example, if one party is authorised in the market in some other way, then it should be recognised as the primary registrant as they would have the best ability to be able to comply with conditions under the exemption, to apply necessary consumer protections such as affordability programs or payment plans, may already be a member of EWON (and other energy ombudsman schemes) and are familiar with how to operate in the space, including compliance reporting obligations.

### Disconnection protections for energy only customers

EWON supports the proposed changes in the draft Guidelines that requires embedded network operators to provide on-market customers within an embedded network with additional consumer protections. This includes the requirement to offer a payment plan for network tariff costs if the customer faces financial difficulty, and protections around disconnection.

In practice, due to the difficulties and potential costs faced in 'leaving an embedded network and buying electricity from an authorised retailer' it is rare that customers would be faced with these circumstances. However, EWON supports protections being aligned with the NERR, wherever possible.

In the absence of a requirement for authorised retailers to have an energy only offer, we also strongly support the proposal that the AER would publish a list of retailers offering 'energy only' offers on its website and would recommend that it be reviewed every 6-12 months to ensure information accuracy and currency.

### Continuity of supply for embedded network customers

The AER has outlined provisions that will require embedded network service providers to notify customers and the AER if they are at risk of failure or disconnection, and to advise of the actions they are taking to protect customers. We acknowledge that the establishment of an embedded network Retailer of Last Resort scheme would require Retail Law reform and support the AER's current approach.

It is also positive to see the inclusion of a requirement for new applicants to include contingency arrangements to ensure continuity of supply for customers if the proposed network service provider ceases operations.

### EWO details on customer bills

We recommend that the AER consider implementing changes to *Condition 3* of the Retail Exempt Selling Guideline to mirror the current requirements under the Better Bills Guidelines which requires a retailer to publish details of the relevant Energy Ombudsman scheme on on-market customer bills. This should be approached carefully, for example residential park operators with less than 30 permanent residents should be exempt from this requirement, as it could cause unnecessary regulatory burden and costs, while being of limited benefit.

The inclusion of this information was very beneficial to customers of authorised retailers, and this would ensure embedded network customers are aware of the existence of EWOs as the relevant external dispute resolution agency.