

General Manager, Compliance and Enforcement
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RETAIL AND NETWORK EXEMPTION GUIDELINES REVIEW

The ACT Civil and Administrative Tribunal (ACAT) is the jurisdictional energy ombudsman for the Australian Capital Territory under the NECF. The ACAT has jurisdiction to receive and resolve complaints by customers and consumers about the supply of energy by exempt sellers in the ACT, including caravan parks, shopping centres and some apartment complexes. The ACAT also has the function of ACT Water Ombudsman under the *Utilities Act 2000* (ACT).

The ACAT makes the following responses to the questions raised by the AER in its Consultation Paper *Updating the Network and Retail Exemption Guidelines*, published in May 2021.

Question 1: *Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?*

The ACAT generally agrees with the AER proposal to amend the network exemption guidelines to require there be one registrant. We also recommend amending the network exemption guidelines to clarify the types of parties that may control or operate an embedded network.

An issue might arise in respect of new developments where the registration might need to change hands during the process of building and selling units or sites. This will raise issues of who is responsible when an event occurs, and to what extent the new exempt network registrant inherits problems which have been caused by the previously registered entity.

Question 2: *Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?*

In the ACT, utilities and embedded networks cannot become members of the ACAT, which is a statutory authority, and therefore are not required to do so. This is discussed in the response to Question 19 (below).

It is our experience that the register of exempt sellers on the AER's web site needs to be more easily searchable (for example, an ability to search by the address of the exempt site).

Question 3: *Should we clarify the meaning of controlling and operating an embedded network?*

Yes. This may assist caravan park owners to understand what is required of them.

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Question 4: *Do stakeholders consider there is a need to regulate small generator aggregators under the network exemption guidelines?*

The ACAT has no comment at this stage. We have no experience yet of Small Generation Aggregators operating in the ACT.

Question 5: *Do stakeholders interpret small generator aggregators as being captured under the NER?*

No comment.

Question 6: *What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?*

60 days

Question 7: *Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?*

No comment in relation to regional Queensland issues.

Agreed in relation to legacy unmetered sites.

Question 8: *Do stakeholders agree that the appointment of Embedded Network Managers be deferred if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?*

Agreed

Question 9: *Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?*

Agreed

Part 6.1: *Network exemption guideline: Allowing unmetered supply for networks established before 2012.*

The ACAT agrees with the changes proposed by the AER at 6.1.

Part 7.1: *Network exemption guideline: Disconnections for energy only customers.*

The ACAT agrees with the changes proposed by the AER at 7.1.

Please note that there are additional protections in relation to disconnection of energy supply to residential customers in Part 12 of the Utilities Act. Under this Act, the ACAT has statutory power to order the reconnection of a customer's energy supply within 24 hours, or the maintenance of an energy supply where disconnection is threatened, where disconnection would cause substantial hardship to the customer or a consumer in the premises.

Question 10: *Should the information embedded network owners/operators provide prospective customers be standardised?*

Agreed

Question 11: *Should the network exemption guideline's term 'express written consent' be replaced with 'explicit informed consent', and be provided in writing?*

Agreed

Question 12: *Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail guidelines?*

Agreed

Question 13: *Do stakeholders support proposed clarifications to the retail and network exemption guidelines' retrofit requirements? If not, what are reasons for not supporting the changes?*

Agreed

Question 14: *Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions guidelines?*

No comment

Question 15: *Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?*

Making it a condition that purchasers and tenants be informed of the existence of an embedded network prior to purchase or signing a lease.

Tenants and purchasers be given the proposed factsheet that the AER has agreed to develop.

Making customers aware they can choose a provider of their choice, the approximate costs involved (if any) of doing so, and the approximate length of time required to get a retailer of their choice.

Requiring the exempt seller to advise the customer that, if they are unhappy with any of the information provided to them during this process, they can raise this with the energy ombudsman.

Question 16: *Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?*

The ACAT's preference is for a broad set of hardship assistance conditions. It is the ACAT's experience that some embedded networks in the ACT are not providing customers with hardship assistance.

Question 17: *What key protections should be included in a hardship policy template for exempt sellers?*

Bills for energy separate to bills for rent and for water (not intermingled).

No interest on energy debt.

A requirement for appropriate payment plans.

A requirement that debt is managed from payment default onwards and not left to grow to an unmanageable level.

A requirement that an exempt seller advises their customers/consumers about Territory-based assistance such as the utilities concession, financial counsellors, and the ACAT's hardship assistance program.

Question 18: *What additional obligations should the core exemption conditions include?*

Connection and disconnection obligations for embedded networks.

Question 19: *Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?*

The ACAT is the statutory jurisdictional energy ombudsman for the ACT and does not have membership. Our jurisdiction in relation to energy exempt sellers is conferred by the Utilities Act and other legislation and instruments.

The difficulties faced by the ACAT are how to identify who is an exempt seller covered by the legislation, how to contact them in the event of a complaint, and the extent of our statutory enforcement powers in the absence of an explicit licensing system.

While exemption applicants cannot be expected to provide evidence of the steps they have taken to obtain 'ombudsman membership' in the ACT, it would be reasonable to ensure that they are aware of the energy ombudsman arrangements in the ACT and that they have contacted ACAT Energy and Water to provide contact information.

Question 20: *Do stakeholders support regulation of the sale of energy to chill water?*

The ACAT has not received any complaints about chilled water supply and believe that this is not common in exempt seller situations in the ACT, except possibly in shopping centres.

We frequently encounter problems with supply of hot water through the use of gas common boiler and reticulation systems and believe that there should be strong regulation of such systems, even

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though the gas billing for individual customers is based on individual water meters in their own residence.

Question 21: *What are the main issues for this type of energy sale and what sorts of conditions should apply?*

The ACAT has not had experience of chilled water supply complaints. By analogy with gas common boiler systems, regulation seems desirable in relation to metering, billing and connection to supply, at the very least.

Please contact me if you would like any further information.

Yours sincerely



Graeme Neate AM

President

30 June 2021

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