



# Notice of Draft Instrument:

## Retail Exempt Selling Guideline Version 6

March 2022

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Inquiries about this publication should be addressed to:

Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601

Tel: 1300 585 165

Email: [AERInquiry@er.gov.au](mailto:AERInquiry@er.gov.au)

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# 1 About this document

## 1.1 Introduction

This Notice of Draft Instrument (Notice)<sup>1</sup> accompanies the Australian Energy Regulator's Draft Retail Exempt Selling Guideline (Guideline).

The *National Energy Retail Law* (Retail Law) provides a framework for businesses to sell energy via either a retailer authorisation, or by meeting the eligibility requirements to be considered an 'exempt' seller (i.e. selling where a retailer authorisation is not appropriate or practical). The Retail Law provides for deemed and registrable class exemptions, and for the AER to approve individual exemptions.

The AER must develop and publish the Guideline.<sup>2</sup> This Guideline sets out the processes for registering or applying for exemptions and outlines the various exemption classes, their eligibility criteria and exemption conditions. The Guideline also spells out our considerations on the policy principles specified in the Retail Law – including the exempt seller and customer related factors<sup>3</sup> – and how these have influenced our decisions on exemption classes and conditions.

We are now consulting on a draft version 6 of the Guideline, in accordance with the retail consultation procedure under the *National Energy Retail Rules* (Retail Rules).<sup>4</sup>

Our position takes into account submissions to our May 2021 consultation paper and stakeholder engagement.<sup>5</sup>

We also propose several amendments to strengthen protections for exempt customers, improve consistency between the Guideline and the *Network Exemptions Guideline* (network guideline) and some housekeeping amendments to clarify aspects of the Guideline and exemption conditions.

This Notice provides details of the context in which the draft Guideline has been prepared, the issues involved, and the effects of the proposed changes.<sup>6</sup>

A summary of the submissions is at **Appendix A**.

## 1.2 Role of the Guideline

The Retail Law requires anyone who is selling energy to hold a retailer authorisation or to be exempt from the requirement to hold an authorisation. To assist potential applicants for exemption we have developed a Guideline, which:

- explains what retail exemptions are and how they work

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<sup>1</sup> Retail Rules, r 173(2)(b)

<sup>2</sup> Retail Law, s 118(1)

<sup>3</sup> Retail Law, ss 115 and 116

<sup>4</sup> Retail Rules, r 173

<sup>5</sup> [Updating the Network and Retail Exemption Guidelines – Consultation Paper](#), May 2021

<sup>6</sup> Retail Rules, s 173(2)(b)(ii)

- provides information to assist exempt sellers in determining whether they, or their business, need a retail exemption
- explains which type of exemption might be appropriate for a seller
- explains how to obtain a retail exemption
- outlines the factors we consider when assessing individual exemption applications
- details the conditions attached to various classes of exemption.

The current Guideline titled [AER \(Retail\) Exempt Selling Guideline](#) (version 5) is available on the AER's website.

Apart from Tasmania, the Guideline applies in jurisdictions that have adopted the Retail Law: currently, Queensland, New South Wales, South Australia and the Australian Capital Territory. Although Tasmania has adopted the Retail Law, it has derogated aspects of the retail exemptions framework and the registrable and deemed exemption requirements do not apply.

### 1.3 Definitions and interpretation

In this Notice, key words and phrases have the meaning given to them in the glossary of the Guideline or, if not defined in the glossary, the Retail Law and Rules.

### 1.4 Version history and effective date

Version	Effective date	Comments
1	December 2011	The Guideline and exemption classes were subject to extensive consultation, including three rounds of consultation and an additional targeted consultation on hardship customers.
2	July 2013	Amendments sought to streamline the Guideline, remove redundancies and inconsistencies. We created a number of new exemption classes (R6, R7, D9 and D10) and merged some classes.
3	April 2015	Amendments to re-open certain exemption classes that had closed from 1 January 2015 (D1, D2, R1, R2 and R3) for persons, except in relation to retrofitted sites.
4	March 2016	Amendments to make the Guideline clearer, more flexible and to better reflect developments in the energy retail market, in particular in the area of alternative energy selling. There were also several new requirements on exempt sellers.
5	March 2018	Amendments to improve dispute resolution processes for exempt customers including providing residential exempt customers' access to energy ombudsman dispute resolution services.

We are currently consulting on draft version 6 of the Guideline.

## 2 Purpose of this Notice

We are required to explain any proposed changes to the Guideline in a Notice.

We propose several amendments to clarify aspects of the Guideline and conditions, and better align key protections for customers of exempt sellers with those that apply to customers of authorised retailers.

We invite stakeholder comment on our proposed amendments and positions, and in particular, the drafting of any amended or additional exemption conditions. We welcome submissions from exempt sellers, customers and other interested parties on the amendments and any other matters stakeholders wish to comment on.

### 2.1 How to make submissions

We invite interested parties to make written submissions to the AER regarding this paper by the close of business, **7 April 2022**.

Submissions should be sent electronically to [AERexemptions@aer.gov.au](mailto:AERexemptions@aer.gov.au)

Alternatively, submissions can be mailed to:

Mila Sudarsono, A/g Director – Compliance and Enforcement  
Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601

### 2.2 Publishing of submissions

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested.

Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim; and
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on the AER's website at [www.aer.gov.au](http://www.aer.gov.au). For further information regarding the AER's use and disclosure of information provided to it, see the [ACCC/AER Information Policy](#) available on the AER's website.

Enquiries about this paper, or about lodging submissions, should be directed to the Compliance and Enforcement branch of the AER on 1300 585 165 or [AERexemptions@aer.gov.au](mailto:AERexemptions@aer.gov.au)

## 3 Chilled water and bulk hot water

### 3.1 Current position under version 5 of the Guideline

Version 5 of the Guideline notes that we do not consider the sale of bulk hot water a ‘sale of energy’ under the Retail Law and Retail Rules. Version 5 does not present a position on whether the sale of chilled water is a sale of energy. Under version 5, entities recovering energy costs associated with the provision of chilled or bulk hot water are not required to seek an exemption from the requirement to hold an authorisation, for those selling activities.

### 3.2 Consultation paper discussion

Our consultation paper<sup>7</sup> sought views on whether stakeholders supported the regulation of the supply of chilled water and the potential issues associated with this. We expressed a preliminary view that if the product is sold in kilowatt-hours (kWh), rather than cents per litre, and is billed in the same way as electricity usage is billed then it is a sale of energy for the purposes of the Retail Law and should be regulated accordingly.

We advised that we were not considering the regulation of bulk hot water in this review based on our understanding that under bulk hot water arrangements suppliers generally charge customers for the water they consume in cents per litre, rather than the gas or electricity used to heat the water.

We received 13 stakeholder submissions outlining their positions around both chilled and bulk hot water regulation, many of which raised concerns with the AER regulating either or both. Our position in relation to bulk hot water was not within the original scope of the review of the Guideline. However, given the conceptual similarities between the supply of chilled water and bulk hot water, and the large number of submissions that considered both issues together, we have addressed the issues together within this Notice. We summarise and respond to key themes from the submissions below.

Several stakeholders made submissions that the AER should regulate the energy (that is, the gas or electricity) element of both chilled and bulk hot water supply, while others opposed the regulation of chilled and bulk hot water supply within embedded networks. Those submissions that only dealt with the question of regulating chilled water were also divided.

#### *Submissions in favour of regulating chilled and bulk hot water*

Some stakeholders considered that the AER should regulate chilled and bulk hot water if exempt customers are billed in cents per kWh or megajoules (MJ), rather than cents per litre.

Stakeholders considered that suppliers in these situations are recovering the costs associated with the underlying energy used to chill or heat the water, rather than for the water itself. The Energy & Water Ombudsman NSW (EWON) noted that, in many embedded networks, hot water suppliers are essentially billing customers solely based on the cost of the gas used to heat exempt customers’ water and are therefore selling an *energy* product.

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<sup>7</sup> *Updating the Network and Retail Exemption Guidelines* (May 2021)

Their submission also noted that hot water suppliers in embedded networks often do not own the water input (which the exempt customer pays for separately). EWON's view is that an entity is not selling a new chilled or bulk hot water product unless it owns or buys both the water and energy inputs.

EWON expressed concern about the lack of consumer protections for a growing number of NSW residents who currently reside in apartment complexes where their hot water is supplied, owned and maintained by third-party providers. EWON noted these customers are generally charged per litre of hot water rather than per MJ of gas to heat the water, and do not receive customer protections that apply to the sale of energy under the National Energy Customer Framework (NECF).

EWON contrasted this situation with the 250,000 NSW customers in Jemena's distribution network, who receive the full protections under the NECF because authorised retailers bill their customers for the gas (in MJ) used to heat the customers' hot water. In this scenario, we understand Jemena owns the gas and water meters directly feeding into the bulk hot water system – the meters form part of the distribution system (rather than an embedded network). Jemena calculates the total amount of gas used to heat the water in accordance with the AEMO *Retail Market Procedures (NSW and ACT)* and bills retailers accordingly.

EWON clarified that it does not consider the AER has the power to require third-party providers in hot water embedded networks to charge on a 'per litre' basis, rather than 'per MJ'.

EWON's concerns were supported by the Public Interest Advocacy Centre (PIAC), who further noted that chilled water (required for air conditioning) plays a role in maintaining health in apartments, which lack cross ventilation or other means to regulate temperature. PIAC also noted that the supply of chilled water for air conditioning is vital for people who have medical conditions that require moderate room temperatures. EWON's and PIAC's submissions were not accompanied by legal advice.

#### *Submissions against regulating chilled and bulk hot water*

Various stakeholders observed that regulating the sale of bulk hot and chilled water do not amount to the sale of energy for the purpose of the Retail Law:

- The most common reason stakeholders gave was that bulk hot and chilled water are types of thermal energy rather than energy as defined in the Retail Law ('electricity or gas or both'). One stakeholder noted chilled water is billed in units of 'kWh thermal'.
- A stakeholder stated that bulk hot and chilled water are manufactured products. Inputs (energy and water) are fed into a machine that uses and changes those inputs to make bulk hot or chilled water, but these outputs are not energy in themselves. According to this stakeholder, the unit (kWh) used to measure chilled water consumption is a commercial convenience and does not reflect the nature of the final product.

One stakeholder indicated that the cost of selling chilled or bulk hot water is not limited to the gas or electricity used to heat or chill water. It also includes significant capital investment in

central hot water systems and air conditioning, as well as installation and ongoing operations and maintenance.

Some stakeholders also raised concerns around the additional compliance costs exempt sellers and other third-party providers would incur if the AER subjected them to class exemption conditions for the sale of chilled or bulk hot water.

### **3.3 Draft policy position**

The preliminary view expressed in the consultation paper was that the supply of chilled water could constitute a sale of energy, on the basis that the affected customers are often billed in kWh, rather than cents per litre. EWON considered the same argument could apply to recovering the energy costs (billed in MJ) associated with the supply of bulk hot water.

As set out above, stakeholder submissions raised issues around whether the sale of chilled and bulk hot water constitutes a sale of energy for the purposes of the Retail Law. In considering these submissions and other relevant matters, we have reached a draft position that the sale of bulk chilled or hot water is unlikely to constitute the sale of energy for the purposes of the Retail Law. We therefore do not propose to determine an exemption (from the requirement to hold a retail authorisation) and related conditions in respect of the sale of bulk hot or chilled water.

Section 88(1) of the Retail Law sets out the requirement that a person (the seller) must not engage in the activity of selling energy to a person for premises unless they are the holder of a current retailer authorisation, or the seller is an exempt seller.

The Retail Law defines energy as ‘electricity or gas or both’.

Our power to authorise sellers, or exempt them from the requirement to be authorised, is enlivened when their selling arrangements constitute a sale of energy as defined by the Retail Law. Overall, and as submitted by several stakeholders, there is significant legal doubt as to whether the sale of bulk chilled or hot water constitutes a sale of energy for the purposes of section 88(1) of the Retail Law.

We note the AER is currently undertaking broader work to consult on the scope of the NECF and the application of section 88(1) of the Retail Law.

We acknowledge stakeholder concerns about the lack of consumer protections for embedded network customers. For this reason, we impose exemption conditions on exempt sellers to provide their customers, as far as practicable, the same rights and protections as those enjoyed by customers of authorised retailers. Further, affected customers do have access to general consumer protections under the [Australian Consumer Law](#).

#### **Proposed amendments to the Guideline**

No amendments. Given the sale of bulk chilled or hot water is unlikely to constitute the sale of energy for the purposes of the Retail Law, we do not propose to determine a new class of exemption to regulate the sale of bulk chilled and hot water in the Guideline.

## 4 Exempt seller hardship policy

### 4.1 Current position under version 5 of the Guideline

Version 5 of the Guideline does not require exempt sellers to provide a full suite of hardship protections to exempt customers. There is no requirement under the Retail Law or the Retail Rules for exempt sellers to maintain and implement an AER-approved customer hardship policy to identify and assist residential customers experiencing payment difficulties, which is required by authorised retailers under the Retail Law.

Version 5 exemption conditions are limited to a requirement for exempt sellers to offer customers, who have identified themselves as being in financial difficulty, the option of flexible payment plans and to assist them to access government concessions and rebates. There is no requirement in version 5 for exempt sellers to present this information in a consistent and easily understood form.

### 4.2 Consultation paper discussion

Given the greater levels of vulnerability in embedded networks, and reduced access to retail competition, we consider it appropriate to require exempt sellers to provide hardship support to their exempt customers to the extent possible. At the same time, we are mindful of the practicalities of requiring exempt sellers, particularly small entities with less expertise and resources, to provide such support. That being said, we consider there is scope to do more and asked stakeholders for views on whether a broader set of hardship assistance conditions or an exempt seller hardship plan was required. We also sought opinion around what key protections should be included in a hardship policy template for exempt sellers and if any additional obligations should be captured by the core conditions.

Stakeholders who responded to this question unanimously agreed that exempt sellers should provide greater hardship support to exempt customers, with many proposing that they should have the same protections as customers of authorised retailers. It was acknowledged by some stakeholders that although smaller exempt sellers have less resources than authorised retailers, the number of customers that they service is also smaller and therefore it would not be unreasonable for them to have processes in place to identify residential customers experiencing payment difficulties. Some stakeholders expressed a preference for a hardship condition, while others supported the introduction of a hardship policy template, noting the template would need to take into consideration different energy on-selling arrangements. Some of the key protections stakeholders suggested that exempt sellers should provide included:

- early identification of potential hardship customers and early engagement
- payment plans and flexible payment options
- identification and referral to external services, for example financial counselling services and state-based hardship assistance programs
- provision of education, including advice on how to reduce energy consumption and improve energy efficiency

- the introduction of AER-approved standardised statements (via a hardship policy template) to ensure consistency across all exempt seller's hardship policies, and
- assurance that elected representatives (elected by the customer) would receive the same level of engagement as if they were the exempt customers themselves.

### 4.3 Draft policy position

We have taken into consideration the support from stakeholders for exempt sellers to develop a hardship policy. We also acknowledge the additional effort and resources required for exempt sellers to develop, maintain and implement hardship policies.

We agree that exempt sellers should provide their customers consistent information if the seller has been informed that residential exempt customers are experiencing payment difficulties due to hardship. However, we also acknowledge that for many exempt sellers, the on-selling of energy is incidental to their core business and they may not have the administrative resources required to develop their own customer hardship policy.

To assist with reducing this potential administrative burden, we have prepared an *Exempt seller hardship policy template* (hardship policy template) which will be attached to the final Guideline. The template brings our expectations of exempt sellers more in line with what is required of authorised retailers (when responding to customers who are experiencing payment difficulties due to hardship) but also considers the different business structures of some small-scale operators.

Our proposed hardship policy template serves as a guide to exempt sellers in developing a hardship policy, which establishes how they will engage with a residential exempt customer who is experiencing payment difficulties due to hardship.

We consider the benefits of providing exempt customers with clear options for assistance, via a hardship policy, outweigh any potential increase in administration associated with maintaining and implementing the policy. However, we have tailored the hardship policy requirements to take into account that exempt sellers may not have the same administrative resources as authorised retailers, outlined below.

Unlike authorised retailer hardship policies, an exempt seller's hardship policy will not require pre-approval from the AER. We acknowledge that this would create a level of administrative burden that may not be sustainable for smaller exempt sellers or necessary to achieve our regulatory aims. The exempt seller will be responsible for ensuring their hardship policy meets the minimum requirements set out in the Guideline and complies with their hardship policy.

The standardised statements, which mainly reflect existing requirements for exempt sellers to offer assistance (for example, assistance with rebate and concession claims, flexible payment arrangements etc.), provide exempt customers with information that is all in one place and presented in clear and simple language. It describes the support options exempt sellers will be required to make available to residential exempt customers and explains the responsibilities of both parties when accessing hardship assistance.

Whilst authorised retailer hardship policies refer to the eligibility criteria to access a retailer's hardship *program*, the requirements for exempt sellers' hardship *policy* focus on the support elements that an exempt seller can provide their customers. The support is mainly in the form of the provision of information and resources that may assist a hardship customer, in

addition to the existing resources already required to be provided under version 5 of the Guideline (such as the offer of a payment plan). We consider that a fulsome hardship program would likely be too onerous for small-scale operators to administer. We are also conscious that exempt sellers may not have resources, comparable to authorised retailers, to ensure they can adequately train their staff to identify hardship customers. As such, we have omitted a requirement for exempt sellers to include processes to proactively identify residential exempt customers experiencing payment difficulties due to hardship.

We will provide existing and future exempt sellers a website link to our hardship policy template (which we will publish as an attachment to our final Guideline). Exempt sellers will be required to develop, implement, and maintain a hardship policy that includes the standardised statements provided in the hardship policy template. However, the support that exempt sellers can offer is not restricted to the options set out in the hardship policy template. An exempt seller may extend their options for support beyond the requirements captured by our hardship policy template, and we encourage them to do so (for example, including additional processes to identify customers experiencing financial difficulty, additional programs, initiatives, or services to assist their customers).

We have published a copy of our draft hardship policy template for public consultation. We encourage interested parties to provide their feedback during the open consultation process.

#### 4.4 Proposed amendments to the Guideline

We have created a new condition – *Condition 26 Hardship Policy* – that includes a requirement to develop, maintain and implement a hardship policy that contains at a minimum, the standardised statements provided in the hardship policy template. This new condition applies only to exemption classes that capture energy on-selling arrangements involving residential customers.

The new hardship policy condition requires an exempt seller’s hardship policy to be presented in plain English and sets out the minimum requirements for the support they must offer residential exempt customers who self-identify as experiencing payment difficulties due to hardship. It also identifies types of unreasonable conditions that must not be included in an exempt seller’s hardship policy.

To reflect the support requirements of the hardship policy, we have also expanded on existing conditions as outlined below:

Condition	Variation
<b>Condition 2 – Information provision</b>	Inclusion of a requirement for an exempt seller to provide any residential exempt customer a hardcopy or electronic link to their customer hardship policy at the start of their tenancy/residency/agreement or at any time on request by the exempt customer or the AER.

Condition	Variation
<b>Condition 9 – Payment difficulties and disconnection or de-energisation</b>	<p>Inclusion of a requirement for the exempt seller to make the exempt customer aware of financial counselling services.</p> <p>Inclusion of a requirement for an exempt seller to provide any residential exempt customer a hardcopy or electronic link to their customer hardship policy.</p>
<b>Condition 12 – Payment Plans</b>	<p>Clarification that an exempt seller’s flexible payment options must offer a payment plan to an exempt customer who has identified themselves as being in financial difficulty.</p> <p>Inclusion of a requirement that the exempt seller must not make changes to an exempt customer’s payment plan without their agreement.</p>

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We will work with exempt sellers to ensure they are aware of their obligations to ensure exempt customers understand the new requirements. Although it is not an obligation for exempt sellers to have their hardship policy approved by the AER, we will continue to provide advice and assistance upon request.

## 5 Provision of a factsheet to embedded network customers

### 5.1 Current position under version 5 of the Guideline

Version 5 of the Guideline requires exempt sellers to advise exempt customers, in writing, at the start of their tenancy, residency, or supply agreement any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice. Version 5 of the Guideline requires exempt sellers to provide this information to customers at any time on request by them or the AER.

### 5.2 Consultation paper discussion

The consultation paper outlined our proposed amendment to the Guideline to require exempt sellers to provide a hard copy or a link to a factsheet describing the process that an exempt customer must follow if they wish to enter a market retail contract. Exempt sellers would be required to provide exempt customers a copy of the factsheet (developed by the AER) at the start of their tenancy, residency, or supply agreement, when the customer requests this information, and following an enquiry from a customer to leave an embedded network.

Stakeholders were encouraged to provide any additional information they believed should be provided to exempt customers to help them access retail competition.

Most stakeholders supported the provision of a factsheet with one submission noting that AER branding would add additional credence. One stakeholder proposed that the factsheet could assist customers in understanding the process required to exit an embedded network, however noted that the factsheet should highlight an authorised retailer's part in assisting a customer to access retail competition and that they are under no obligation to provide an 'energy only' offer. There was also support for the factsheet to highlight the potential costs associated with accessing retail competition.

### 5.3 Draft policy position

The information provision condition in version 5 of the Guideline stops short of providing an exempt customer with information on the process and requirements they must follow to be able to access retail competition, beyond options for metering. The process to exit an embedded network is complex and technical and can act as a barrier to customers engaging in the process.

As such, we have developed a factsheet for residential exempt customers: *Accessing retail competition – a guide for residential embedded network customers* (factsheet). The factsheet seeks to provide simple, plain English explanations for residential exempt customers focussing on some of the difficulties they may face if wanting to access retail competition. This includes difficulties an exempt customer may face in trying to find an authorised retailer who will provide them an 'energy only' contract and the potential high costs associated with having to update the metering infrastructure and wiring if the exempt

customer lives within an older embedded network that does not meet current metering specifications.

## 5.4 Proposed amendments to the Guideline

We have expanded on existing conditions as outlined below:

Condition	Variation
<b>Condition 2 – Information provision</b>	<p>Inclusion of a requirement for an exempt seller to provide any residential exempt customer at the start of their tenancy/residency/agreement of the following:</p> <ul style="list-style-type: none"><li>• a hardcopy or electronic link to our factsheet, and</li><li>• a copy of the factsheet, along with information relating to any right of the exempt customer under state or territory laws, to elect to purchase energy from a retailer, and of their choice and information on the options for metering that would allow this choice, following an enquiry from an exempt customer seeking to access retail competition.</li></ul> <p>The exempt seller must also provide a copy of the factsheet as soon as practicable, upon request by the exempt customer or the AER or following an enquiry from an exempt customer seeking to access retail competition.</p>

We consider the development of the factsheet and requiring exempt sellers to provide it to their residential exempt customers, will support both sellers and customers in understanding some of the complexities associated with choosing to go ‘on market’ and access retail competition.

Whilst it will be a requirement under Condition 2 for the exempt seller to provide the factsheet to exempt customers, exempt sellers may contribute any additional supporting materials and information that they consider would assist exempt customers in understanding the process required to exit an embedded network.

We have published a copy of our draft factsheet for public consultation. We encourage interested parties to provide their feedback during the open consultation process. Please note we are only seeking submissions relating to the *written content* of the factsheet and intend to explore options to ensure the final factsheet is ‘visually appealing’ for exempt customers following consultation. We further note that we intend to explore options for accessibility for customers who are culturally and linguistically diverse and aim to provide this factsheet in multiple languages following finalisation.

## 6 Additional amendments

We propose several amendments to the Guideline to clarify some ambiguities and gaps in the current version of the Guideline.

### 6.1 Guideline name change

We have revised the title of the Guideline from *AER (Retail) Exempt Selling Guideline* to *Retail Exempt Selling Guideline*. Similarly, we have changed the title of the *Electricity Network Service Provider – Registration Exemption Guideline* to *Network Exemptions Guideline* (network guideline). The title changes of both guidelines aim to promote symmetry between the two documents. The overarching purpose of each document, however, remains the same. We have also amended references to the network guideline throughout the Guideline to reflect this change.

### 6.2 Who should hold the exemption?

We have provided additional information in section 5 of the Guideline to clarify that only legal persons may hold an exemption.

We have inserted our expectation that where a change of ownership occurs in relation to a site, the new owner should notify us within 20 business days of the change in ownership taking effect. We also confirm that if a legal person purchases a site, for which the AER has granted an individual exemption, they will need to submit a new application for an individual exemption.

We have added under section 5 of the Guideline that we expect exempt sellers to advise the AER of any significant change in circumstances relating to an existing exemption.

We also make clear in the Guideline that we expect an exempt seller to advise the AER if the contact details for their authorised representative changes in any way. This will ensure that we can address compliance concerns as they arise by engaging the authorised representative in the first instance.

### 6.3 Individual exemptions

When applying for an individual exemption involving retrofits, applicants should address the specific circumstances of the proposed retrofit and propose measures to mitigate the detriments particular to that conversion. We have sought to provide applicants with further guidance on the information to be included in exemption applications.

We clarify at section 7 of the Guideline that if the applicant fails to resubmit an updated application within 12 months of our request for additional information, we will consider the application to have been withdrawn.

### 6.4 Retrofit requirements

#### 6.4.1 Explicit informed consent

Version 5 of the Guideline details the information that network owner/operators must provide prospective exempt customers to enable them to make an informed choice as to whether

they want to be part of the proposed retrofit (and to provide their explicit informed consent). Network owner/operators must submit examples of the information provided to prospective exempt customers to the AER as evidence that they have met the retrofit requirements set out in the network guideline.

We have provided an additional sentence in the Guideline to link applicants to the network guideline, where we provide requirements for marketing campaigns that applicants must conduct, to ensure proposed customers are fully informed.

We have clarified under section 4.4 our expectation that applicants obtain explicit informed consent in the form of a signed consent form wherever possible. We acknowledge that some customers may not be able to provide their signature on a printed consent form so have included a customer's electronic signature as an acceptable form of explicit form consent. We provide further clarification that verbal consent is only acceptable in instances where the consent is evidenced in such a way that it can be verified and made subject of a record (and provide further clarification around the minimum requirements that must be met for us to consider verbal consent acceptable).

#### **6.4.2 Retrofit application process for an individual exemption**

Given the significant impact that network conversions ('retrofits') have on customers' electricity supply arrangements and customer protections, the Guideline imposes requirements on network owner/operators intending to retrofit a site to mitigate potential customer detriment. Generally, a person wanting to retrofit a site must apply to the AER for an individual retail exemption to on-sell electricity and be eligible to register a network exemption.

As such, we have made several changes to the information requirements (set out in Appendix B of the Guideline) that individual exemption applicants generally need to meet to demonstrate that proposed embedded network customers are fully informed of the energy selling arrangement they are entering.

Whilst many changes are editorial so as to improve readability and comprehension of the requirements, we have also included some clarifying statements and/or requirements, including:

- that where a third party is submitting the application on the applicant's behalf, a statement or letter verifying that the third party has the authority to act on their behalf must be provided
- a footnote that specifies the applicant must be a legal person, for example an individual, company, corporation or body corporate
- a new inclusion for an applicant to disclose if they have ever been refused an energy selling exemption or retail licence (retail authorisation) in any state or territory
- a requirement for the applicant to provide information as to whether any customers will be 'wired out' of the embedded network and if so, to provide supporting information
- a retrofit application requirement to disclose the types of meters to be installed if the site relates to the proposed retrofit

- a retrofit application requirement to provide explicit informed consent records for customers affected by a proposed retrofit. This is a change from the previous requirement to *confirm* that evidence of written consent has been acquired for the purposes of a retrofit application
- a new requirement to confirm the explicit informed consent percentage calculation for total customers affected by the proposed retrofit
- an expansion of the requirement for a retrofit applicant to confirm whether they sought advice from the distributor (as to whether non-consenting customers could be wired out of the embedded network) to include a requirement to provide evidence of the correspondence
- a new requirement for applicants to evidence whether they are a member, or have taken steps to become a member of an energy ombudsman scheme
- a clarifying statement that we will assess the need for ombudsman scheme membership on a case-by-case basis
- a new requirement for applicants to provide dated records of consultation and meetings with all affected customers
- a new retrofit application requirement to agree to observe conditions 4.9.1 to 4.9.7 of the network guideline, and
- a new requirement for retrofit applicants to provide information to prospective customers about the pros and cons of being an embedded network customer.

We have also made minor changes to the requirements for power purchase providers' applications set out in Appendix C to align with changes made to Appendix B.

### **6.4.3 Retrofit expansions**

Version 5 of the Guideline provides no guidance around what exempt sellers are required to do if they wish to expand an existing commercial and/or residential retrofit within the same site for which they hold an existing individual exemption. We have clarified that the scope of the original individual exemption will likely determine whether a new individual exemption is required, and we will assess and approve retrofit expansions on a case-by-case basis.

### **6.4.4 Record keeping requirements**

To align the record keeping requirements for exempt sellers with those of authorised retailers under the Retail Law, we have amended the Guideline to reflect our expectation that exempt sellers retain all documents, relating to network conversions, for a period of at least two years.

Stakeholders unanimously agreed with our proposal to implement the requirement that record keeping obligations should apply to all situations where consent is required.

## **6.5 Breaches of conditions**

We have provided updated civil penalties information under section 8.2 in the Guideline, for non-compliance with an exempt seller's exemption conditions, to reflect the increased civil

penalties as effected by the *Statutes Amendment (National Energy Laws) (Penalties and Enforcement) Act 2020*.

## 6.6 Ombudsman scheme requirements

The Guideline requires exempt entities to have dispute resolution processes for small customers. They also require exemption holders with residential customers to join the energy ombudsman in their state or territory if membership is available.

In our consultation paper, we noted feedback from our ombudsman stakeholders suggesting that many exempt entities are failing to follow through on their membership requirements. Non-compliance with this requirement deprives residential customers of an important customer protection – access to independent dispute resolution.

Submissions to the consultation paper indicated support for our proposal to introduce a new requirement that individual exemption applicants must provide evidence of the steps they have taken to obtain ombudsman membership in the jurisdiction/s in which they intend to sell energy to residential customers. The requirement to join an ombudsman scheme is a standard condition imposed on most individual exemptions approved by the AER. As such, this requirement has been included in Appendix B of the Guideline, noting that if we determine an exempt seller is required to join an ombudsman scheme, the exempt seller must provide this evidence as part of their individual exemption application.

## 6.7 Condition variation

We have included a new section (section 9) in the Guideline outlining the different processes the AER will follow when varying existing deemed and registered exemption conditions, as well as conditions attached to existing individual exemptions.

We have clarified in Appendix D that exempt sellers need to request a variation to an existing individual exemption where the nature of the exempt seller's energy on-selling arrangement has changed at the relevant exempt site.

## 6.8 Cancelling and revoking exemptions

We have updated our process for cancelling a registrable exemption to recognise that, when an exempt seller requests their exemption be cancelled, the AER will amend the exemption to reflect in the public register of exemptions that it is no longer effective.

## 6.9 Class variations

We have made minor variations to exemption class criteria and applicable conditions.

### D1 and D2

We have updated the class restrictions of **D1** and **D2** to reflect that exempt sellers will be required to apply for an individual exemption if proposing to retrofit an existing site. A further clarification has been added to the class restriction of D1 to confirm an individual exemption is only required if less than 100% of commercial customers provide their explicit informed consent to the retrofit.

We have added marinas to the list of example site types where the energy on-selling arrangements may be captured under **D1**.

### **D3**

We have removed a reference to holiday accommodation and note D3 captures persons selling metered energy to occupants of accommodation on a short-term basis.

### **R1**

We have added marinas to the list of example site types where the energy on-selling arrangements may be captured under **R1**.

### **R2**

We have clarified that the application of **R2** may apply to owners or operators of marinas who sell energy to residents principally residing on site.

### **R4**

We have updated the registrable exemption class description of **R4** to improve consistency with the description of the related NR4 network class exemption.

### **R8**

We have corrected the **R8** exemption class application to clarify that these exemption classes are not site specific.

## **6.10 Core condition variations**

In addition to the exemption condition variations set out in section 4 and 5 above, we have varied additional conditions. These amendments are refinements of existing conditions to introduce improved support for residential customers.

<b>Condition</b>	<b>Variation</b>
<b>Condition 1 – Obligation to supply</b>	We have clarified that relevant disconnection provisions are provided under Conditions 9(2)-(7).
<b>Condition 8 – Undercharging and overcharging</b>	We have increased the overcharge amount threshold from \$25 to \$50 to reflect the current threshold requirements of Rule 31(6) of the Retail Rules.
<b>Condition 13 – Concessions and rebates</b>	We have added a clarifying timeframe to when an exempt seller must apply an issued rebate, concession, or assistance to an exempt customer's bill.
<b>Condition 16 – Dispute resolution</b>	We have removed the title of the Australian standard dispute resolution guideline to avoid the document title becoming outdated as new editions are published.

Condition	Variation
	We have removed the sentence ' <i>...and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant</i> ' to be consistent with the dispute resolution requirements of the network guideline.
<b>Condition 21 – Continuity of supply</b>	We have revised the condition to specify that exempt sellers, if they are unable to continue selling energy, they must notify their exempt customers and the AER immediately and advise of the steps they are taking to arrange an alternative supply.

## 6.11 Glossary

We have updated the glossary to align with the formatting and style of the network guideline.

There have been a few minor changes to glossary definitions:

- **Brownfield site** – we have removed this definition as it is not referred to in the Guideline.
- **Energy** – we have clarified that 'energy' means electricity or gas, or both.
- **Energy ombudsman scheme** – we have provided further specificity regarding the applicable legislation.
- **Exempt hardship customer** – we have defined 'exempt hardship customer' as a residential exempt customer of an exempt seller who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the exempt seller's hardship policy.
- **Explicit informed consent** – we have specified the acceptable forms of explicit informed consent and note that explicit informed consent can only be provided verbally if it can be evidenced in such a way that it can be verified and made the subject of a record.
- **Long-term resident of a caravan park, residential park or manufactured home estate/park** – we have deleted this definition as it no longer forms part of the R4 exemption class definition (to better align the definition with the Network Exemptions Guideline NR4 exemption class definition).
- **Large customer** – minor drafting amendment resulting in no change to definition.
- **On-market customer** – we have removed this definition as it is not referred to in the Guideline.
- **Public register** – we have provided clarification regarding the applicable legislation.
- **Retailer** – minor drafting amendment resulting in no change to definition.
- **Small customer** – minor drafting amendment resulting in no change to definition.

## Appendix A: Summary of submissions and AER response

The summary of submissions below relates to stakeholder feedback supplied in relation to the Guideline only. We summarise submissions relating to the network guideline in the network guideline’s Reasons for Decision document published on our website.

### Submissions to the AER consultation paper– *Updating the Network and Retail Exemption Guidelines* – May 2021

Stakeholder submissions	Key stakeholder responses	AER response
<p><b>Question: Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail guidelines?</b></p>		
ACT Civil and Administrative Tribunal (ACAT) Active Utilities Altogether Group Ausgrid Caravan Parks Association of Queensland (CPAQ) Compliance Quarter Energy Intelligence Energy Locals ENM Solutions Energy and Water Ombudsman (NSW) MTA Energy Origin Energy Shopping Centre Council of Australia (SCCA) Strata Community Association WINconnect	<p>Stakeholders who responded to this question unanimously agreed with the AER’s proposal for record keeping requirements to apply to all situations where consent is required.</p> <p><b>CPAQ</b> proposed that we should require exempt sellers keep the relevant information on file for a minimum specified period.</p> <p><b>Compliance Quarter</b> proposed the record keeping requirements should be the same as the requirements under section 40 of the Retail Law.</p> <p><b>Energy Intelligence</b> recommended that retrofit registrants be required to keep records for a minimum of two years, including in situations where embedded network owner/operators have attained 100% consent from affected customers.</p> <p><b>SCCA</b> recommended that the record keeping requirements should expressly allow for electronic records.</p>	<p>We agree that exempt sellers should be required to keep records in all situations where consent is required under the Guideline and have inserted an expectation that exempt sellers will retain all documents evidencing consent in relation to network conversions, for a period of at least two years to align with the requirements of authorised retailers under the Retail Law.</p> <p>We agree that record keeping requirements should allow for electronic records and have included this as a permissible option for recording consent. Whilst we have stated our preference in the Guideline for signed explicit informed consent forms, we will accept the following records of explicit informed consent – in writing signed by the customer (written or electronic) or verbally, so long as the verbal consent is evidenced in such a way that it can be verified and recorded.</p>

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

<p>ACAT Active Utilities Ausgrid Compliance Quarter Energy Intelligence Energy Locals ENM Solutions MTA Energy Origin Energy SCCA Strata Community Association WINconnect</p>	<p>The majority of stakeholders who responded to this question supported the proposed clarifications to the retail and network exemption guidelines' retrofit requirements.</p> <p><b>Active Utilities</b> supported clarification and possible updating of the number of documents relating to retrofit explicit informed consent requirements.</p> <p><b>Ausgrid</b> proposed that any retrofit or Brownfield conversion should require an individual exemption to be published on the AER website.</p> <p><b>Compliance Quarter</b> proposed the development of a 'Fast Track Approval Process' where the AER could review certain applications within a set timeframe. Compliance Quarter also proposed that the AER should set out the mandatory contents and format of applications for retrofits within the guidelines.</p> <p><b>SCCA</b> did not support additional exemptions for one site due to the confusion caused by multiple exemptions.</p> <p><b>Strata Community Association</b> proposed further consultation with industry to undertake new provisions in this area.</p> <p><b>WINconnect</b> provided a view that the exemption guidelines are sufficiently clear in regards to retrofit requirements.</p>	<p><b>Explicit informed consent</b></p> <p>While we consider that version 5 of the Guideline is clear in regard to retrofit requirements, we have sought to expand on our expectations around explicit informed consent in version 6. We have also expressed our preference that a person record a prospective customer's explicit informed consent to a proposed retrofit via a signed customer consent form.</p> <p>Whilst we have clarified our expectation around explicit informed consent and individual exemption application requirements in version 6 of the Guideline, the network guideline will expand on the requirements for network conversions and the details around the documents that exempt customers must provide to customers of a proposed retrofit.</p> <p>We note the customer is required to provide their explicit consent to the proposed change (preferably via one signed consent form) and separately consent to the energy agreement.</p> <p><b>Retrofit expansions</b></p> <p>Our view is that the potential customer detriment resulting from affected customers not being fully informed or consenting to a retrofit expansion outweighs the potential confusion that may arise from an exempt seller being required to hold multiple exemptions for one site. While our expectation is that retrofit expansion applicants will seek their own legal advice to determine the requirements of their unique circumstances, the AER will provide additional support to minimise potential confusion. We have also clarified in the Guideline that the scope of the original individual exemption will likely determine whether a new individual exemption is required, and the AER will assess and approve retrofit expansions on a case-by-case basis. If an additional exemption application is required, it is likely that each exemption will be distinct on the <i>AER public</i></p>
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Stakeholder submissions	Key stakeholder responses	AER response
		<p><i>register of retail exemptions</i> (for example Site Address A and Site Address B) to minimise confusion.</p> <p><b>Application process timeframes</b></p> <p>We do not agree that a set timeframe for assessing certain applications is appropriate. The AER requires flexibility in how we utilise our resources to best meet stakeholder expectations and agency priorities across our various roles and functions. We will continue to work with applicants to ensure they have provided all the required information for us to process their application as quickly as is practicable. The quality of the initial application remains the biggest factor influencing the time it takes us to progress and approve an application.</p> <p><b>Publication of individual exemption relating to retrofits</b></p> <p>We publish all individual exemptions on our <i>AER public register of retail exemptions</i>. We also publicly consult on each individual exemption as per the Retail consultation procedure under the Retail Rules (which allows for a minimum 20 day consultation period).</p> <p>We do not consider it necessary to require persons, who are retrofitting a <i>commercial</i> site and have obtained 100% explicit informed consent, be required to apply for an individual exemption before being eligible to register a network exemption relating to the retrofitted site. This is because commercial customers generally require fewer customer protections than residential customers.</p>

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

ACAT Active Utilities Altogether Group Ausgrid CPAQ Compliance Quarter	<p><b>ACAT, CPAQ, Compliance Quarter, ENM Solutions, EWON and PIAC</b> supported the provision of a factsheet that outlines the process for a customer going on-market.</p> <p><b>Compliance Quarter</b> proposed the factsheet should be in a similar vein to the AER's proposed standardised retrofit information.</p>	We agree that the provision of standardised information to residential exempt customers would prove helpful and have developed a factsheet incorporating many of the recommendations put forward by stakeholders. Our factsheet provides residential exempt customers with information around some of the difficulties they may experience when trying to access retail competition.
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Stakeholder submissions	Key stakeholder responses	AER response
<p>Energy Locals ENM Solutions EWON MTA Energy Origin Energy PIAC Watts Energy</p>	<p><b>CPAQ</b> proposed that having this information branded by the AER would provide additional credence. CPAQ also noted that if a factsheet is developed, it should consider different circumstances.</p> <p><b>PIAC</b> proposed we should require exempt sellers to provide exempt customers information in advance of lease signing, upon request and at the time of an inquiry to leave an embedded network.</p> <p><b>Origin Energy</b> did not support a factsheet until the practical issues of exiting an embedded network are resolved.</p> <p><b>Active Utilities</b> recommended that a factsheet must both explicitly highlight an authorised retailer’s part in assisting a customer to access retail competition and explicitly communicate that an authorised retailer has no obligation to provide an ‘energy only’ offer to a customer.</p> <p>A range of other information to be provided to embedded network customers was proposed.</p> <p><b>ACAT</b> proposed requiring purchasers and tenants be informed of the existence of an embedded network prior to purchase or signing a lease, customers to be made aware they can choose a provider of their choice and requiring exempt sellers to advise customers they can raise concerns with the energy ombudsman.</p> <p><b>Altogether Group</b> proposed ensuring consumers are informed of their rights to nominate a retailer of their own choice.</p> <p><b>Ausgrid</b> proposed embedded network customers are provided with information on their parent connecting NMI in addition to the child NMI.</p> <p><b>Energy Locals</b> proposed that exempt sellers should be required to observe the same rules as on-market retailers. Energy Locals also recommended that on-market retailers clarify whether they take on embedded network customers to avoid the poor experience</p>	<p>We have designed the factsheet with the different exempt selling arrangements in mind and have ensured the information is high level in nature and appropriate for different embedded network contexts but still helpful in supporting customers understand their energy-related circumstances.</p> <p>We invite interested parties to provide their feedback on the draft factsheet.</p> <p>Exempt sellers will be required to provide the factsheet to their residential exempt customers at the start of their tenancy or agreement or upon their request. However, exempt sellers are encouraged to provide any additional information that they believe could assist their customers in making informed decisions. The information that an exempt seller can provide is not limited to the information provided in the factsheet.</p> <p>We do not currently require authorised retailers to provide information to the AER as to whether they offer ‘energy only’ contacts to embedded network customers and consider this issue out of scope of this Guideline.</p> <p>Changes to Energy Made Easy are out of scope for this Guideline. However, we will continue to pursue ways in which Energy Made Easy can further support customers.</p>

Stakeholder submissions	Key stakeholder responses	AER response
	<p>customers face when signing up to an offer that is later withdrawn by the on-market retailer.</p> <p><b>MTA Energy</b> noted cost, rather than information, is the biggest impediment to customers being able to access retail competition, though agreed clarity and standardisation of information would be helpful.</p> <p><b>Watts Energy</b> proposed the removal of condition 2(1)(b) of the Retail Guideline.</p> <p><b>WINconnect</b> proposed that cost is the biggest barrier to customers' access to retail competition. This stakeholder supported providing clear information to consumers, but proposed the AER should be clear to frame customer expectations around access to retail competition.</p>	

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

<p>MTA Energy SCCA</p>	<p><b>MTA Energy</b> raised concerns relating to larger property investment companies in the embedded network environment, proposing that it is not in their best interests to comply with intention obligations to facilitate retail customer competition. This stakeholder highlighted customers of these companies being delayed requests to access on-market retail competition and not having market compliant metering installations which restricts the changing of retailers.</p> <p><b>SCCA</b> proposed the allowance of the application of the energy retail code in Victoria (where the network exemption guideline is applicable for network issues).</p>	<p>The allowance of the application of the energy retail code in Victoria is out of scope for this Guideline review and beyond the AER's jurisdiction.</p> <p>Revisions are being made to the network guideline to ensure that network owner/operators are required to assign an Embedded Network Manager within a specified timeframe to minimise opportunities to delay requests for exempt customers to access retail competition. The network guideline also specifies the minimum requirements for metering.</p>
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**Question: Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?**

<p>ACAT Active Utilities Altogether Group Ausgrid</p>	<p><b>ACAT</b> supported a broader set of hardship assistance conditions.</p> <p><b>Active Utilities</b> proposed that if we were to introduce a hardship policy requirement, the AER should review and</p>	<p>We agree that exempt sellers should provide their customers consistent information if they are informed that their customers are experiencing payment difficulties due to hardship.</p> <p>We consider it appropriate to provide hardship support for customers of exempt sellers to the extent possible and</p>
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Stakeholder submissions	Key stakeholder responses	AER response
CCIA NSW CPAQ Compliance Quarter Energy Intelligence Energy Locals ENM Solutions EWON EWOSA Origin Energy PIAC WINconnect	<p>approve all exempt sellers' hardship policies prior to implementation.</p> <p><b>Ausgrid, CPAQ, Compliance Quarter, EWON, EWOSA and PIAC</b> communicated a preference for an exempt seller hardship plan.</p> <p><b>CPAQ</b> highlighted that caravan parks often house vulnerable residents, but caravan park operators may not know the best place to refer a resident facing hardship. CPAQ proposed that a 'best practice' hardship policy, which embedded network operators could choose to adopt as is, or with minor amendments would support both these embedded network operators and their customers.</p> <p><b>Energy Intelligence</b> proposed an option where exempt sellers could elect to either adopt the broader set of hardship assistance conditions or the exempt seller hardship plan.</p> <p><b>EWON</b> proposed that if the AER appropriately tailors the hardship template for smaller exempt entities and any burden in adopting the template would be outweighed by the benefit. EWON also proposed that while smaller exempt entities may not have the same resources as authorised retailers, in most cases the number of customers that they service will also be smaller, which would assist in the provision of hardship support.</p> <p><b>PIAC</b> noted exempt sellers sometimes have complex relationships with their exempt customers, which can create fear for customers that seeking assistance may put their tenancy or other services at risk.</p> <p><b>WINconnect</b> proposed there should be a requirement for an internally developed hardship program.</p> <p><b>Watts Energy</b> proposed that exempt sellers should be able to recover reasonable costs from exempt customers.</p>	<p>consider there is scope to do more, whilst remaining mindful of the practicalities of requiring exempt sellers, particularly smaller entities, to provide such support.</p> <p>Exempt sellers will be required to develop, implement, and maintain a hardship policy that contains the standardised statements in the hardship policy template. We have developed the template with smaller exempt sellers in mind, to reduce the administrative burden for those that may not have the resources or knowledge to implement a retailer-like hardship program. We have provided guidance on appropriate financial counselling resources and energy efficiency websites to assist exempt sellers in meeting their hardship obligations.</p> <p>We do not agree at this stage that there should be a requirement for the AER to approve exempt seller's hardship policies as this is likely to result in considerable administrative burden for the exempt seller and we do not consider it is warranted to achieve improvements for exempt customers. However, we may reassess this position if we determine that exempt sellers are not appropriately complying with the requirements.</p>

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

ACAT	<b>Active Utilities, Altogether Group, Ausgrid, Energy Intelligence, Energy Locals, ENM Solutions, EWOSA, Origin Energy, PIAC and WINconnect</b> supporting exempt customers having the same protections as on-market customers, where possible.	In determining the level of support that exempt sellers should provide their residential exempt customers under the new <i>Condition 26 – Hardship policy</i> in the Guideline, we sought to consider the practicalities of requiring exempt sellers to provide support, particularly small-scale operators. At the same time, we have aimed to align hardship protections for exempt customers with those for on-market customers to the extent possible.
Active Utilities		
Altogether Group		
Ausgrid		
CCIA NSW		
CPAQ	<b>ACAT and PIAC</b> proposed processes for early response to potential hardship customers.	
Compliance Quarter	<b>ACAT, PIAC, CCIA NSW and EWON</b> proposed processes to identify appropriate financial counselling services.	We have included most stakeholder recommendations as requirements under Condition 26 and have provided standardised statements (as part of the exempt seller's hardship policy template) as guidance for exempt sellers that may not have the resources to develop their own templates without assistance.
Energy Intelligence	<b>ACAT, CPAQ, Energy Intelligence and PIAC</b> proposed requiring exempt sellers be required to inform exempt customers of, or assist them in securing, relevant government concessions and rebates.	We have elected not to require exempt sellers to inform exempt customers of specific state-based hardship programs as the exempt seller's hardship policy template is aimed at exempt sellers operating in multiple jurisdictions and who have varying levels of administrative resources. However, exempt sellers are not limited to the minimum requirements in the Guideline and can choose to provide additional support and information they deem appropriate (in compliance with the requirements of Condition 26).
Energy Locals		
ENM Solutions		
EWON	<b>ACAT</b> proposed requiring exempt sellers to inform customers of ACAT's hardship assistance program; bills for energy should be separate to those for rent; and there should be no interest on energy debt accrued by hardship customers.	We have also omitted the requirement for exempt sellers to include the option of Centrepay in their hardship policy. Services Australia requires a stringent approval process for providers that wish to include Centrepay as an option for payment, including providing evidence that they meet the detailed eligibility criteria. We acknowledge the administrative burden this could place on small-scale operators. However, our template provides <i>minimum</i> support requirements for hardship customers and we encourage any exempt seller that wants to use Centrepay (and meets Service Australia's requirements) to do so.
EWOSA		
Origin Energy		
PIAC	<b>Compliance Quarter</b> proposed a template based on the AER's <a href="#">Customer Hardship Policy Guideline</a> to the extent possible, with a focus on continued engagement and proposed the inclusion that an exempt seller be restricted from applying late payment fees if a customer is adhering to a payment plan.	
WINconnect	<b>CCIA NSW, CPAQ, and EWON</b> supported the inclusion of payment plans.	
	<b>Energy Intelligence and EWON</b> proposed flexible payment options, with EWON proposing this include Centrepay.	
	<b>Energy Intelligence and PIAC</b> supported processes for identifying customers experiencing payment difficulties due to hardship and the inclusion of processes or	

Stakeholder submissions	Key stakeholder responses	AER response
	<p>programs to assist customers with strategies to assist their energy efficiency.</p> <p><b>PIAC</b> supported the inclusion of processes to review the appropriateness of a hardship customer's contract.</p>	<p>We cannot require exempt sellers to bill energy as a discreet charge (as opposed to bundled with other costs, for example rent) as this is outside of our regulatory jurisdiction.</p>

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

<p>ACAT Altogether Group DEPW Energy Intelligence Energy Locals ENM Solutions EWON EWOSA Origin Energy WINconnect</p>	<p><b>ACAT</b> proposed connection and disconnection obligations for embedded networks.</p> <p><b>ENM Solutions</b> supported the inclusion of privacy policies and a requirement for the exempt seller to include the core conditions on their website.</p> <p><b>EWON</b> proposed:</p> <ul style="list-style-type: none"> <li>external dispute resolution requirements for small business customers in embedded networks</li> <li>a requirement to exempt sellers to provide access to clear and easy-to-understand information, which compares their existing embedded network contract with the standing offer price that would be charged by the relevant local area retailer for new connections</li> <li>requirement that exempt sellers adhere to the Retail Law and Retail Rules where conditions are 'silent'.</li> <li>a condition equivalent to Rule 115 of the Retail Rules (relating to de-energisation for non-notification by move-in or carry-over customers).</li> </ul> <p><b>EWOSA, Energy Locals, Origin Energy</b> and <b>WINconnect</b> proposed aligning conditions to provisions, which apply to on-market customers.</p>	<p>We agree that, in principle, customers of exempt sellers should be afforded the same rights as customers of authorised retailers. The core exemption conditions have sought to balance the objective of extending the same protections to exempt customers as those that apply to customers as authorised retailers, as well as the administrative burden placed on exempt sellers.</p> <p>We have received minimal complaints from small business customers in embedded networks. As such, we do not consider it necessary at this stage to extend external dispute resolution requirements to small business customers. However, we will continue to monitor our position as to whether exempt sellers who sell energy to small business customers should be required to join an ombudsman scheme in the future.</p> <p>We do not agree that exempt sellers should be required to provide details of the standing offer price of the local area retailer at this stage. This information is readily available on our consumer-focussed Energy Made Easy website.</p> <p>We do not consider a condition relating to de-energisation for non-notification by move-in or carry over customers is required. As embedded network customers are primarily supplied energy by the exempt seller alongside accommodation and other utilities, the risk of that customer not engaging with the exempt seller is low. We have received no feedback from exempt sellers to suggest that a condition of this nature is required.</p>
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**Question: Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?**

Active Utilities Altogether Group Ausgrid CAPQ DEPW Energy Locals EWON EWOSA Origin Energy PIAC	<p><b>Active Utilities, Ausgrid, Energy Locals, MTA Energy, Origin Energy and PIAC</b> supported our proposal to require individual exemption applicants confirm that they have taken steps to obtain ombudsman membership at the time of application.</p> <p><b>Active Utilities, Ausgrid, EWON, EWOSA and PIAC</b> proposed that AER compliance and enforcement powers would assist in facilitating membership uptake.</p> <p><b>CPAQ</b> recommended information and advice for exempt sellers needed to be clear, easy to access and provided to the exempt seller directly.</p>	<p>We agree that a requirement should be imposed for individual exemption applicants to confirm they have contacted the relevant ombudsman scheme to discuss membership requirements and this will assist in ensuring exempt customers have access to ombudsman schemes.</p> <p>We also agree that an effective compliance program is required and note that ensuring embedded network compliance with exemption conditions, including consumer access to ombudsman schemes is a key compliance and enforcement priority for 2021-22. We will work closely with Ombudsman schemes to achieve membership and full participation in the schemes and will consider enforcement action, if warranted.</p>
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**Question: Do stakeholders support regulation of the sale of energy to chill water?**

ACAT Active Utilities Altogether Group Ausgrid Compliance Quarter Energy Intelligence Energy Locals ENM Solutions EWON PIAC SCCA Watts Energy WINconnect [Confidential submission]	<p><b>ACAT, Active Utilities, Ausgrid, Compliance Quarter, ENM Solutions, EWON, PIAC, SCCA, Watts Energy and WINconnect</b> supported regulation of the sale of energy to chill water.</p> <p><b>Active Utilities</b> and <b>WINconnect</b> proposed the sale of chilled water could be regulated under a deemed exemption, if it is sold as energy usage (kWh or Mj).</p> <p><b>SCCA</b>, despite indicating its support, noted that chilled water is usually in 'kWh thermal' units and hence not a true type of electricity supply.</p> <p><b>EWON</b> supported the regulation of the sale of energy to chill and heat water. We discuss further details of EWON's submission at section 3.</p> <p><b>PIAC</b> supported EWON's views and concerns. It highlighted that chilled water used for air conditioning</p>	<p>The AER does not propose to regulate bulk hot or chilled water by way of amendments to the Guideline. See Section 3 for our detailed response.</p>
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can be extremely important for health, particularly in apartments which lack cross ventilation or other means to regulate temperature. PIAC also noted it is vital for people who have medical conditions that require them to maintain room temperatures within a certain range.

**ACAT, Compliance Quarter, EWON and PIAC** also indicated support for the regulation of the sale of energy to heat water (i.e. bulk hot water)

Four stakeholders (including an anonymous stakeholder) did not support regulation of chilled and/or bulk hot water:

- **Altogether Group** did not support the regulation of chilled water because chilled and bulk hot water are types of thermal energy and are not compatible with current energy legislation and regulations.
- **Energy Intelligence** did not support the regulation of the sale of energy to chill water due to the increased compliance and reporting obligations that would result.
- **Energy Locals** did not support the regulation of chilled water due to the complex nature of the product and the increased compliance costs for small-scale operators. It also indicated the cost of selling chilled and bulk hot water is not limited to the gas or electricity used to heat or chill water. It also includes significant capital investment in central hot water systems and air conditioning, as well as installation and ongoing operations and maintenance.
- An anonymous stakeholder opposes the regulation of chilled or bulk water. The stakeholder proposes they are manufactured goods, rather than energy. They note that inputs (energy and water) are fed into a machine that uses and changes those inputs to produce

Stakeholder submissions	Key stakeholder responses	AER response
	<p>chilled or bulk hot water, but these outputs are not energy in themselves. According to this stakeholder, the unit (kWh) used to measure chilled water consumption is a commercial convenience and does not reflect the nature of the final product.</p>	

**Question: What are the main issues for this type of energy sale [to chill water] and what sorts of conditions should apply?**

<p>ACAT Active Utilities Altogether Group Ausgrid Compliance Quarter Energy Intelligence Energy Locals ENM Solutions EWON PIAC SCCA Watts Energy WINconnect</p>	<p><b>Altogether Group</b> raised concerns around the varying conversion factors between invoice periods for the supply of thermal energy.</p> <p><b>Ausgrid</b> indicated that, as energy storage technologies evolve, there will be a range of energy conversion methods and energy transfer services potentially linked to kWh that will require additional guidelines. Ausgrid recommended the AER develop separate guidelines for these energy transfer services to facilitate clarity for consumers.</p> <p><b>Compliance Quarter</b> highlighted the lack of transparency in how these costs are calculated or converted and recommended that while a deemed exemption may be appropriate, they question why these services (and cooktop gas) are not subject to a broader range of exemption conditions.</p> <p><b>Energy Intelligence</b> proposed expanding the sale of energy to include chilled water would require additional compliance and reporting obligations, for minimal customer value. Energy Intelligence also advocated for fair treatment of consumer complaints without an ombudsman membership requirement.</p> <p><b>Energy Locals</b> opposed additional regulation in this area due to the complex nature of the product and the resulting increase in compliance costs for small providers.</p> <p><b>EWON</b> recommended that all residential customers should fall within a registered class exemption and not a</p>	<p>See Section 3 for our detailed response.</p> <p>We are conscious that energy markets and technologies are constantly evolving, and many new energy sellers do not sell energy under a typical energy retailer model and are not typical exempt sellers. Our approach to regulation will be flexible and pragmatic in these circumstances.</p> <p>In its final advice to Energy Ministers on the Post 2025 Electricity Market Design dated 27 July 2021, the Energy Security Board tasked the AER with conducting a review of the authorisations and exemptions framework in the context of anticipated changes to the National Electricity Market (NEM). As part of this project, the AER is looking at how the NEM can accommodate new technologies and expanding consumer choices.</p> <p>In the short term, we do not propose to develop separate guidelines for regulation of energy conversion methods and energy transfer services linked to kWh. Given our position on the regulation of chilled and bulk hot water, we do not consider that there should be any other specific energy conversion methods and energy transfer services covered within the guidelines.</p>
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Stakeholder submissions	Key stakeholder responses	AER response
	<p>deemed class exemption. EWON recommended the AER create a registered exemption class for entities selling unmetered gas combined with a hot water service, and that this class should only apply to entities that bill customers for the energy (gas) used to heat the hot water, not entities that bill for litres of hot water used. EWON proposed this promotes consistency across the exemption framework and increases accountability of the energy services provided to small residential customers.</p> <p><b>PIAC</b> proposed that loopholes should not prevent people's access to appropriate consumer protections including billing and access to ombudsman services.</p> <p><b>SCCA</b> advised they saw a few issues, including in relation to metering and billing.</p> <p><b>WINconnect</b> proposed that similar conditions as the sale of gas for cooking appliances should apply to the sale of energy to chill water.</p>	
<b>Additional feedback</b>		
CCIA NSW	<p><b><i>Additional resources</i></b></p> <p><b>CCIA</b> requested the AER develop additional resources (in plain English), explaining the requirements of the guidelines to assist less sophisticated embedded network operators to fully understand their obligations.</p>	<p>Whilst we consider the recommended additional resources are beyond the scope of this Guideline review, we will continue to explore ways in which we can support exempt sellers to better understand their compliance obligations and exempt customers to better understand their rights.</p>
CCIA NSW	<p><b><i>R4 class description</i></b></p> <p><b>CCIA</b> suggested drafting changes to the R4 retail class exemption and NR4 network class exemption to improve the consistency of definition across both guidelines.</p>	<p>We agree and have amended the description of the R4 retail class exemption.</p>
CPAQ	<p><b><i>Compliance burden</i></b></p> <p><b>CPAQ</b> highlighted their concern that changes will impose an unnecessary and costly compliance burden on small embedded networks, such as caravan parks.</p>	<p>We recognise that small-scale operators may face difficulties in complying with new compliance requirements, for example the introduction of a hardship policy for their residential customers.</p>

Stakeholder submissions	Key stakeholder responses	AER response
		<p>We have aimed to limit the burden on these sellers by developing a template that provides the minimum requirements to be compliant and includes standardised statements that can be copied verbatim into an exempt seller's hardship policy. We note, however, that exempt sellers should ensure that they are able to comply with the hardship policy they implement.</p> <p>We also recognise that our position to require exempt sellers to develop, maintain and implement a hardship policy template must also come with an educational campaign to ensure customers are aware of their rights and exempt sellers are aware of their new obligations.</p>
Compliance Quarter	<p><b>'Site' definition</b></p> <p><b>Compliance Quarter</b> noted that there is an opportunity for the AER to define 'site' and provide further clarity.</p>	<p>We do not agree that 'site' requires a formal definition. We have concerns that if we were to define 'site' we may unduly restrict some embedded network scenarios.</p> <p>The norm in jurisdictions is that the boundaries of the site are defined by reference to land title. The norm is also that power networks may not cross a land title boundary without the approval of a state-in regulator or the relevant distribution network service provider. However, there are exceptions to these norms in some jurisdictions that mean the exempt network can cross many land titles.</p>
Compliance Quarter Watts Energy	<p><b>Pricing condition</b></p> <p><b>Compliance Quarter</b> proposed that the price cap in the Guideline should be clear and easy to determine for exempt sellers.</p> <p><b>Watts Energy</b> suggested we should consider allowing exempt sellers to charge tariffs higher than the standing offer price in situations whether the exempt customer specifically requests and provides explicit informed consent to be charged higher for an energy product (for example, for a 'green energy' contract).</p>	<p>Rule 152(4) of the Retail Rules states that where the AER determines that it is appropriate to impose a condition in relation to prices to be charged to exempt customers at residential premises by an exempt seller, the AER must ensure that those customers are charged no more than the standing offer price of the local area retailer.</p> <p>Changes to current legislation is outside the scope of this Guideline review.</p> <p>We consider the pricing condition is fair and clearly reflects this requirement.</p>
EWON Origin Energy	<p><b>Compliance and enforcement</b></p>	<p>We have clarified in the Guideline that we expect exempt sellers to notify us if any of their contact details change.</p>

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PIAC	<p><b>EWON</b> recommended the AER take a more active role in engaging with exempt sellers and add a requirement for exempt sellers to maintain to keep their details updated.</p> <p><b>Origin Energy</b> considered that the existing compliance and oversight should be strengthened to mirror the obligations under a retail licence, to ensure that embedded networks are operating as intended and providing consumer protections consistent with that provided to mass-market customers.</p> <p><b>PIAC</b> recommended we impose a system of escalating penalties for non-compliance, and we should increase visibility as to how many customers are covered by an exempt seller's retail and/or network exemptions.</p>	<p>The Tier 1 penalties associated with the requirement to hold an exemption from being an authorised retailer and complying with the conditions attached to that exemption are set out under section 4A(1)(c) of Retail Law. Legislative changes are out of scope for the review of the Guideline.</p> <p>Exempt sellers are required to advise us of exempt customer numbers as part of the exemption registration, or individual exemption application process. We do not consider it appropriate to require ongoing mandatory performance reporting by exempt sellers at this time due to the compliance burden this could place on small-scale operators.</p>
Watts Energy	<p><b><i>Change in exempt seller's details</i></b></p> <p><b>Watts Energy</b> noted inconsistency between the retail and network guidelines with respect to timeframe permitted for notifying the AER of a change of ownership.</p>	<p>We have revised both guidelines to reflect a 20 business day period in which the new owner should notify us of a change of ownership.</p>
EWON PIAC	<p><b><i>Residential customer exemption classes</i></b></p> <p><b>EWON</b> and <b>PIAC</b> recommended all residential customers be included in a registrable exemption class.</p>	<p>The sale of energy for many deemed exemption holders is incidental, for example body corporates selling to a small number of residential tenants. We consider it overly onerous to require these sorts of arrangements to be registered, and do not consider there to be any consequent customer benefit from requiring registration.</p> <p>Although not required to register, most classes of deemed exempt seller have conditions attached to their exemption/s, and we have enforcement powers in respect of these sellers.</p> <p>However, noting that there may be vulnerable customers in some of these groups—for example, small residential tenants—we may consider making certain deemed categories registrable in future if issues in the market become apparent.</p>
PIAC	<p><b><i>Billing requirements</i></b></p>	<p>As the AER's Better Bills Guideline is not yet finalised, we are likely to consider new billing requirements for exempt sellers</p>

Stakeholder submissions	Key stakeholder responses	AER response
	<p><b>PIAC</b> proposed exempt customers should be provided with equivalent billing and usage information as consumers with authorised retailers, including aligning embedded network bills with the AER’s work to develop a billing guideline.</p>	<p>as part of a future review of this Guideline, to ensure consistency of approach.</p>
<p>EWON</p>	<p><b>Public register of exemptions</b></p> <p><b>EWON</b> proposed the AER be more proactive in collecting the numbers of customers covered by exemptions and should report these numbers publicly on a regular basis – or change the public register so that customer numbers are included in the details on a registered exemption.</p> <p>EWON also supported amended the current online exemption registration forms on the AER website to place more onus on registrants to provide details of their application for membership with an ombudsman scheme.</p>	<p>Changes to the public register, online exemption registration form and reporting are outside the scope of the review of this guideline. However, we have noted this feedback for consideration as part of our ongoing public register maintenance.</p>
<p>Stephen Parkes</p>	<p>Mr Parkes raised compliance concerns about exemption holders misusing their exemptions to exploit exempt customers for profit and noted exempt customers should have a choice of retailers.</p>	<p>We consider that this submission is outside the scope of the review of this Guideline and the network guideline and will address Mr Parkes’ concerns through our usual complaints process.</p>