



Amendments to the AER Retail Exempt Selling Guideline v 4.0

**Specific sections for additional
consultation only**

December 2015

About this consultation

Background

On 25 September 2015, the AER released the revised draft Retail Exempt Selling guideline (Guideline) and an accompanying Notice of Draft Instrument (Notice) for public consultation.

We received 22 submissions and these were generally supportive of the proposed amendments including in relation to applications for retrofitted embedded networks. The consultation documents, submissions and a summary of the public forum are published on our website.¹

One of the concerns raised during the consultation was that, even with the proposed changes to the Guideline, the consultation process for individual exemption applications is not well understood or used by stakeholders. Stakeholders raised a related concern about how exempt sellers consult with affected customers when retrofitting an embedded network.

We have considered the issues raised throughout the consultation process. To inform our finalisation of the Guidelines, we are inviting feedback from stakeholders on a further amendment that we are proposing relating to the manner in which businesses consult with tenants / customers over proposed network conversions. This document discusses the proposed amendment.

- Feedback should be submitted to AERInquiry@aer.gov.au by **Monday 18 January 2016** (see page 3).
- The implementation timeline has been updated to accommodate this extension to the consultation period (see page 3).

The proposed amendments should be read in conjunction with the Guideline released on 25 September 2015.

Approach to consultation

Under the retail consultation procedure, the AER must prepare a draft Guideline for consultation, together with a Notice providing details of the context in which the Guideline has been prepared, the issues involved and the possible effects of the Guideline.²

The AER must invite submissions and comments on the draft Guideline, and consider all submissions made within a specified time period of at least 20 business days. The AER must then publish a final Guideline on its website, together with a written Notice stating the reasons for making the final Guideline.

This consultation has met these requirements. In addition to meeting these formal consultation requirements, we have conducted a stakeholder forum following the release of the draft Guideline and continue to meet with stakeholders on request.

¹ <http://www.aer.gov.au/retail-markets/retail-guidelines/review-of-retail-exempt-selling-guideline-2015/initiation>

² Rule 173 of the National Energy Retail Rules sets out a consultation procedure that the AER must follow when it is required by the Retail Law or Retail Rules to publish an instrument (such as the Retail Information Pricing Guidelines) and a Notice that sets out reasons

We regard this consultation as an opportunity for interested stakeholders to consider and provide feedback on amendments that we are proposing to include in the final Guideline. It is not a new consultation, rather an extension of the ongoing consultation process.

Amended timeline

Due to the extension of the consultation phase, we anticipate the final version of the Guideline to be published in the first quarter of 2016.

Please refer to the Retail Exempt Selling Guideline consultation page of the AER website for an updated timeline³.

Submissions

Interested parties are invited to provide written feedback regarding these amendments by close of business, **Monday 18 January 2016**.

Feedback should be sent electronically to: AERinquiry@aer.gov.au with the subject line 'AER Retail Exempt Selling Guideline'.

Alternatively, written feedback can be sent to:

Ms Sarah Proudfoot
General Manager—Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

We prefer that all feedback be publicly available to facilitate an informed and transparent consultative process. Feedback 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
- provide a non-confidential version of the submission in a form suitable for publication.

We will place all non-confidential feedback on our website at 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, June 2014, available on the AER website.

³ <http://www.aer.gov.au/retail-markets/retail-guidelines/review-of-retail-exempt-selling-guideline-2015>

Amended sections of the Guideline

Set out below are the amended sections that we are inviting further stakeholder feedback on. References provided are to the initial consultation draft.

Table: amended sections of the Guideline

Section	Reference	Amendment
Consultation requirements for retrofitted embedded network applications	Section 4.4	<i>As part of your application you will need to advise affected tenants or customers about your proposal to retrofit, in particular, what this will mean in terms of accessing a retailer of choice, and to provide us with evidence that you have consulted tenants or customers.</i>
	Appendix B	<i>If you are planning to convert a site to an embedded network</i> 16 <i>As part of your application to sell energy through a planned brownfield embedded network please confirm the following:</i> a) <i>you have advised tenants / customers that you are planning to retrofit the site as an embedded network. You must include a copy of the advice to tenants / customers including details about how this will affect the tenants' / customers' ability to access a retailer of choice.</i> b) <i>you have informed tenants / customers that the AER consults on individual exemption applications and provide them with information about how to make a submission to the AER's consultation process.</i> c) <i>you will advise tenants / customers when the application is published for consultation and when the consultation period ends.</i> 17 <i>We may require you to provide evidence of tenants' / customers' explicit informed consent for applications involving retrofitted embedded networks.</i>

Additional information to be provided as part of individual exemption application

We are proposing to amend Appendix B (*Information required for individual exemption applications (other than PPA providers)*) to include a number of additional information requirements for applicants proposing to retrofit a site. This proposed amendment arises out of the AER's recent consideration of a number of individual exemption applications for retrofitted embedded networks and the consultation process following the release of the Guideline and Notice.

In the course of considering individual exemption applications for shopping centre sites to be retrofitted as embedded networks, it has become clear to the AER that stakeholders immediately affected by the conversion do not always know about, or understand, the AER's consultation process or the exemption application more broadly.

As set out in the Table above, we are proposing to require an applicant to confirm the embedded network operator / exempt seller:

- a) has advised tenants /customers that they are planning to retrofit the site as an embedded network. They must include a copy of the advice to tenants / customers including details about how this will affect the tenant's / customer's ability to access a retailer of choice.
- b) has informed tenants / customers that the AER consults on individual exemption applications and has provided them with information about how to make a submission to the AER's consultation process.
- c) will advise tenants / customers when the application is published for consultation and when the consultation period ends.

Section 4.4 of the Guideline is also amended to include a summary of these requirements.