

## **Submission:**

### **Australian Energy Regulator**

### **Updating the Network and Retail Exemption Guidelines Consultation Paper**

**June 2021**

AER Reference: 11537712.3

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30<sup>th</sup> June 2021

**To:** General Manager, Compliance and Enforcement  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

To the General Manager, Compliance and Enforcement – Australian Energy Regulator (AER),

**Re: Active Utilities Pty Ltd.'s (Active) Submission on the AER's Consultation Paper on Updating the Network and Retail Exemption Guidelines (guidelines).**

Thank you for the opportunity to comment on the AER's Consultation Paper in relation to Updating the Network and Retail Exemption Guidelines which was published in May 2021, with the intent of revising the guidelines to ensure they are simplified and fine-tuned.

Active is one of Australia's leading innovators and providers of utilities and a leader in Embedded Networks for multilevel developments, commercial and retail complexes, residential estates, and greenfield estates. In 2019, Macquarie Group became a Shareholder of Active.

Active operate Embedded Networks nationally, with a majority of our clients located on the east coast of Australia. Our Embedded Network business comprises of consulting to Developers, Strata Managers, and owners/managers of buildings, regarding the setup and ongoing management of embedded networks. As part of this service, we also offer a billing management agency service and Embedded Network Manager (ENM) function to these entities, thus ensuring their end customers receive a similar service offering to normal network conditions and meet relevant legislative requirements of operating these networks.

Active welcomes the revision of the guidelines to ensure simplification, plain English and to pivot away from technical terms that make the guidelines difficult to follow.

As discussed in the Consultation Paper, Active agree by revising the guidelines, this will:

- > Improve the clarity and readability of exemption requirements.
- > Streamline the network exemption guideline and remove redundancies.
- > Clarify concepts such as the issue of the ownership, control, and operation of embedded networks in the network exemption guideline.
- > Introduce standardised statements in both guidelines where information requirements need to be met; and
- > Improve consistency between the two guidelines.

To assist the AER in this review, Active have based this submission on our views of the issues at hand by directly answering the summary of consultation questions in the Consultation Paper.

Active look forward to continually working closely with the AER, on this submission, or any future reviews or inquiries. If you require any further information in relation to this submission, please do not hesitate to contact us.

Kind Regards,



Kyle Johnson  
Risk & Compliance Manager  
Active Utilities Pty Ltd

## NETWORK EXEMPTION GUIDELINE

### WHAT DOES IT MEAN TO OWN, CONTROL OR OPERATE AN EMBEDDED NETWORK?

#### QUESTION 1

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

Active's views align with the AER's in relation to a singular party being responsible for overall compliance of the network exemption conditions.

By only allowing a single party registration, Active believe this process will provide clarity to the AER and related stakeholders by ensuring the registered party is held accountable and accepts responsibility for the embedded network site in which they are registered with.

In ascertaining the responsible party (singular registrant), Active believe the following rules should apply:

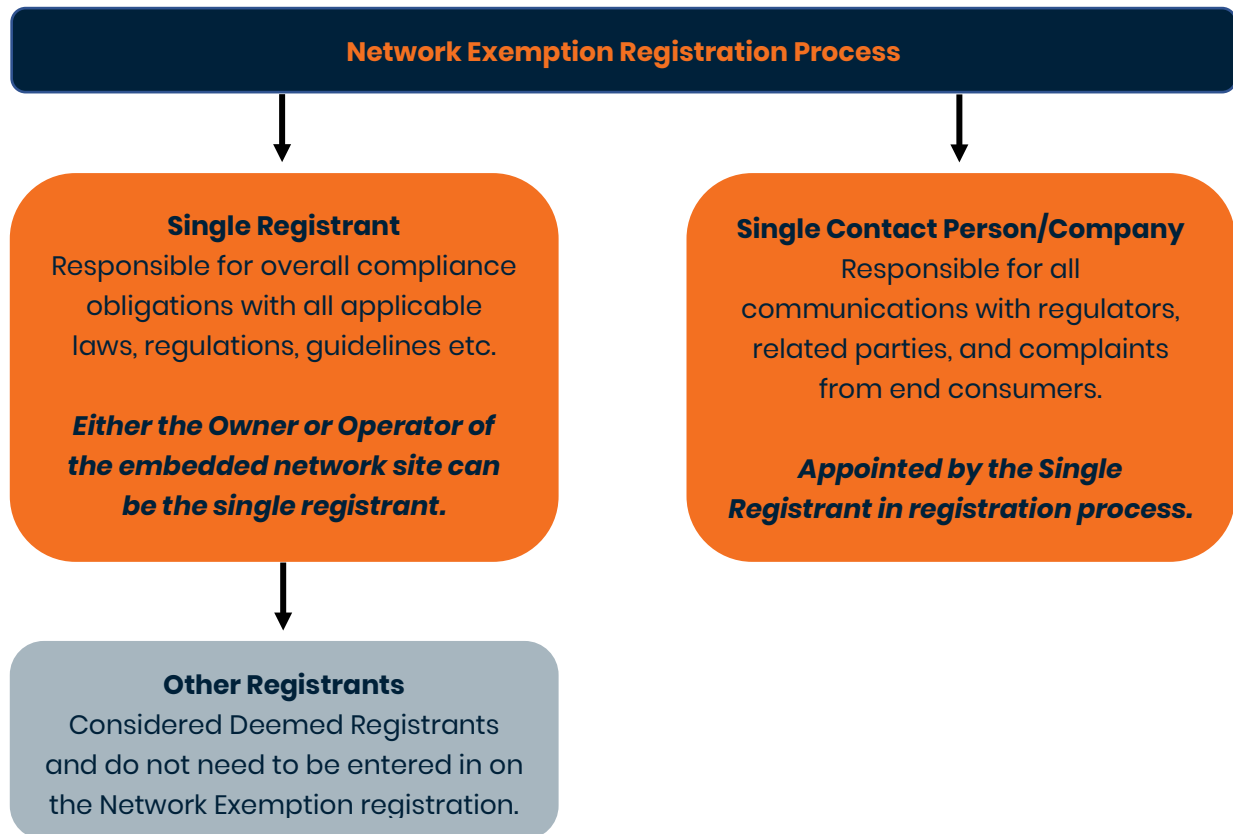
1. If the embedded network owner is responsible for the site, including the overall compliance, then network owner should be listed as the registrant for the site exemption.
2. If an embedded network operator is appointed and is responsible for the site, including the overall compliance, then the operator should be listed as the registrant for the site exemption.

In stating the above rules, consideration should be given for circumstances where there is apportioned responsibility between an embedded network owner and embedded network operator due to the commercial arrangements between the two parties. E.g., the embedded network owner maintains responsibility for overall compliance obligations of the site whilst engaging an embedded network operator to be responsible for the operation and contact point for regulators, consumers (including complaints) and other related stakeholders.

In Active's experience, although an embedded network owner is responsible for overall ownership/control of the site, an embedded network operator is appointed to provide expertise on the regulatory/compliance obligations to the embedded network owner, as well as maintain and operate the embedded network daily. These arrangements are normally captured through commercial/contractual arrangements via an executed agreement.

Therefore, due to commercial arrangements between an owner and operator, as highlighted above, Active proposes to the AER, the following registration process:

Figure 1: Active proposed network exemption registration process



The above process still allows for a single party registrant, as proposed by the AER. This single party registrant would be responsible for the overall compliance of the network site, but the above process also allows for a contact person (if applicable) details to be registered. By capturing a contact persons details, this ensures regulators, consumers within the embedded network and other related stakeholders can easily identify the correct contact details to ensure efficient communication.

To capture contact person information, Active believe that slight changes can be made to the current network exemption registration process, being:

- > **Registrant 1** subheading changes to **Single Party Registrant** - highlighting that this party has overall compliance responsibility for the site; and
- > **Registrant 2** subheading changes to **Contact Person details** - highlighting that this party is the contact point for all relevant stakeholders for the site.

In Active's opinion, the above process will allow varying commercial arrangements between both the network owner and appointed operator to continue unimpeded by a registration process, whilst providing the AER and other related stakeholders the required information of the responsible party for compliance obligations as well as an appropriate contact point.

Active believe, that if the above process is adopted, the network owner will be listed as the single registrant on the exemption in the majority of registrations. This process will greatly assist the AER in terms of administratively managing exemptions, only needing to update contact details in a current registration as opposed to making the exemptions historic. This is due to a network owner rarely changing at a network site, whereas operators/s are appointed contractually over defined time periods and subject to competition, which allows other operators to be appointed over the life cycle of an embedded network site.

## QUESTION 2

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

Active believe that designating responsibility via the exemption registration, as per Active's proposed process in Question 1 above, would be helpful in defining a person responsible for the compliance obligations of the site, and a contact person who is knowledgeable, and prepared to assist with all contact queries as required.

Other examples of parties being assisted by this designated responsibility includes:

- > Regulators
- > Distributors
- > Licenced Retailers
- > Other related government departments; and
- > Consumers

In relation to ombudsman membership and opposing views on which party should be required to join, as highlighted in the AER's consultation paper, Active believe that the ombudsman membership is sophisticated enough to allow either of the below registration processes to occur:

- > the person who has ultimate responsibility for the network, be it the owner, body corporate or strata plan, should join the ombudsman scheme; and
- > an existing member who operates the network, should be allowed to register the embedded network in which they operate under their membership.

In Active's view, allowing the network site to effectively manage the best way to register with an ombudsman has benefits to all parties, including the administration requirements of ombudsman membership as well as reducing the cost burden of singular ombudsman



membership fee structures, by not allowing an operator to register a site under their membership. By disallowing a network site to choose the best registration process for their individual needs, the costs of this restriction are normally reflected to the end consumer.

Active notes, by allowing the network site to choose the best way to register with an ombudsman scheme will not affect the compliance obligation, being the requirement of a network site to register with an ombudsman scheme, and may have a positive impact on participation levels increasing with non-compliance of this requirement receding.

Lastly, Active also refer the AER to ombudsman schemes registration processes that require both the following sets of information:

- › Details of the owner of a network site; and
- › Details of the relevant contact person

The above registration process is not dissimilar to Active's proposed process of the network exemption registration, as highlighted in Question 1.

This process seems to operate efficiently for the Ombudsman with an understanding of the network owner and relevant contact details, which could be different parties.

### QUESTION 3

#### **Should we clarify the meaning of controlling and operating an embedded network?**

Active believe there should be clarification emphasis in the guidelines on meanings and terms relating to owning, controlling and operations but believe the AER's attention on this clarification should focus on the clarification of the terms **owning** and **operating**. Furthermore, Active believe the term **controlling** can be omitted from the guidelines, due to the confusing nature of this term as controlling can both refer to the owner of the network controlling the network as well as the operation controlling the network.

## SHOULD EXEMPT NETWORKS BE CREATED TO ALLOW FOR THE CREATION OF SMALL GENERATION AGGREGATOR SCHEMES?

### QUESTION 4

#### **Do stakeholders consider there is a need to regulate SGAs under the network exemption guidelines?**

Active agree with the AER's view, that a better option than accommodating SGAs in the network exemption guideline would be for regulation of SGUs through separate regulation or captured under the NER.

### QUESTION 5

#### **Do stakeholder interpret SGAs as being captured under the NER?**

Active interpret that SGAs are currently captured under the NER and any regulation updates or reviews should be captured under a separate external process as defined in Question 4 above.

## EMBEDDED NETWORK MANAGER REQUIREMENTS

### QUESTION 6

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

Active agree with the AER's view that an Embedded Network Manager must be appointed by the exemption holder within a specified number of business days. Active believe 2 business days is a sufficient period for exemption holders to appoint an Embedded Network Manager seeing that the process and requirements are well defined as to when/if an appointment of an Embedded Network Manager is required and a procurement/due diligence or groundwork can be accomplished by the exemption holder prior to the requirement, with contractual arrangements being finalised during the 2 day business process.

## QUESTION 7

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

Active disagrees with the deferral of Embedded Network Managers in regional Queensland and legacy unmetered sites for the following reasons:

- › To not cause jurisdictional confusion in the wider network;
- › To proactively plan for changes in unmetered sites and or de-regulation in regional Queensland; and
- › Embedded Network Managers conducting other important works in the current regulatory environment that need to be considered.

In Active's consideration of the AER's reasons to query a deferral of Embedded Network Managers in certain situations because of unnecessary costs, Active feel that costs associated with the appointment of an Embedded Network Manager are negligible as opposed to the administration and other reasons as highlighted above.

As the intent of this consultation is to streamline and simplify the guidelines relating to embedded networks and standardise fact sheets and information provided to the end-consumer, Active feel this would add to the confusion and stated by relevant stakeholders without a large positive impact on costs that Active believe are negligible.

## QUESTION 8

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

As per question 7, Active disagree with the deferral of Embedded Network Managers.

Active believe that the benefit to cost ratio is not justified, as stated above, and is a detriment to the end-consumer who may find this process difficult to understand and enact.

Active believe the current requirements for the appointment of an Embedded Network Manager are clear and concise.

## QUESTION 9

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

Active agree with the AER's recommendation to these provisions from the network exemption guideline.

Deferring the appointment of an Embedded Network Manager until after a counter offer is not made or is rejected seems unnecessary given the requirements for a customer to enter into a market contract and the expiry of the cooling off period still need to be met.

## ALLOWING UNMETERED SUPPLY FOR NETWORKS ESTABLISHED BEFORE 2012

### **Proposed Changes**

Active agree with the AER's proposed clarification that unmetered connections in embedded networks that existed before 2012 may continue to be unmetered unless a customer requests a meter be installed. If a customer requests a meter be installed, the (actual) cost may be passed directly to that customer provided they were informed what this cost is and that they would bear this cost at the time of their request.

Active feels this clarification is important due to the acknowledged large additional costs on embedded networks that were compliant prior to 2012.

However, Active acknowledge that customers should not be prevented from having metered supply. Active also believe that compliance should also be adhered to with current metrology procedures at the ending life of meters and enforcement will ensure compliance of individual metering requirements will eventually see the industry fully compliant with metered supply for all networks at some point in the future.

## DISCONNECTIONS FOR ENERGY ONLY CUSTOMERS

### PROPOSED CHANGES

Active agrees with the AER's view that network operator disconnection protections should be the same for on-market customers as for off-market customers.

Amending the network exemption guideline to include the retail exemption guideline's disconnection obligations (conditions 9-11) will ensure that these protections are ensured for network disconnections.

## RETAIL AND NETWORK EXEMPTIONS GUIDELINES

### RETROFIT REQUIREMENTS - EXPLICIT INFORMED CONSENT

#### QUESTION 10

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

Active agrees in principal that there should be standardised statements required in order for the information provided to prospective customers to be clear and adequate, so customers can make an informed decision.

However, Active believe these standardised statements must be concise statements that work in a variety of mediums and can be populated in marketing materials and fact sheets that embedded network owners / operators develop. This would be in the best interest of presenting the information to the prospective customers to assist their understanding and being able to provide explicit informed consent.

In Active's experience, customers have described being time poor and not being able to clearly place energy on reading and understanding certain materials presented to them and often require other mediums to comprehend and assist with their time management. Secondly, cultural and language barriers have been issues for relating the required information as required by the current guideline clauses.

To disallow or restrict a network owner and/or operator on providing the required information to prospective customers in a well-researched, plain English manner that best represents the demographic of prospective customers due to an over-abundance of standardised statements may have negative impacts and may not lead to the desired outcome of clear and adequately disclosure of information to the prospective customers need to make an informed decision.

If executed correctly, standardised statements will have a positive impact on customers and obtaining explicit informed consent, but Active request further consultation with industry stakeholders occurs prior to enforcing standardised statements that are not tested or other outcomes that may not have been considered when implementing a particular standardised statement.

## QUESTION 11

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

Active agrees, to ensure consistency and clarity, that the requirements for consent should be the same in the network and retail exemption guidelines.

Active agree with the AER's proposal of applying the retail exemption guideline term, 'explicit informed consent', to the network exemption guideline and specifying (in both guidelines) that evidence of consent will need to be written (a signed consent form) rather than verbal.

## QUESTION 12

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

Active agrees with the proposal of applying consent gathering and record keeping requirements to all situations where explicit informed consent is required under the guidelines.

## QUESTION 13

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

Active agrees with the proposed clarifications to the retail and network exemption guidelines' retrofit requirements. In particular, Active supports the AER:

- > providing more guidance on the calculation of retrofit consent figures.
- > providing more guidance on whether additional exemptions are required for any buildings retrofitted on a site already subject to a retail exemption.

Active also believe clarification and possible updating on the number of individual documents needing explicit informed consent relating to retrofit requirements should be considered. In Active's experience, prospective customers do not have the time to go through various documents received over a period of time and provide consent to individual documents.

Customers have requested an information pack with all the information, supported by town hall, visits or workshops prior to deciding whether to provide consent to a retrofit. To support customers in their lives, retrofit guidelines should take into consideration the efficiency and streamlining of retrofit requirements whilst still providing assurances and requiring an appropriate level of explicit informed consent is obtained.

## QUESTION 14

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

As highlighted in Question 13, Active feels clarification and consideration is needed on the updating of the number of individual documents needing explicit informed consent relating to retrofit requirements. In Active's experience, prospective customers do not have the time to go through various documents received over a period of time and provide consent to individual documents. Customers have requested an information pack with all the information, supported by town hall, visits or workshops prior to deciding whether to provide consent to a retrofit. To support customers in their lives, retrofit guidelines should take into consideration the efficiency and streamlining of retrofit requirements whilst still providing assurances and requiring an appropriate level of explicit informed consent is obtained.

## RETAIL EXEMPTION GUIDELINE

### MANDATORY INFORMATION DISCLOSURE BY EXEMPT SELLERS

#### QUESTION 15

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

Active believe the requirement of providing clear guidance on how to exit an embedded network could assist customers to better understand the process required to exit an embedded network if requested.

However, if the AER is proposing to develop a factsheet that describes the process that an embedded customer must follow to enter into a market retail contract, similar to the factsheet currently available to retailers it must explicitly highlight a licenced retailers part in assisting a customer to access retail competition as well as explicitly stating a licenced retailer has no obligation to provide an energy only offer to the customer

In principle, Active have no issues with amending the retail exemption guideline to require exempt sellers to provide a hard copy or a link to the factsheet 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 as long as it is made clear on the role and obligation of licenced retailers in relation to customers accessing retail competition.

The above will alleviate and better explain the entire process to customers in a well-mannered, documented process.

### HARDSHIP ASSISTANCE

#### QUESTION 16

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

Active agree with the exploration of options to provide further hardship provisions to embedded network customers.

Active believe consideration should be given to broadening the current range of exemption conditions to include additional hardship obligations.



Active also note that the AER also provides an option to require exempt sellers to adopt hardship plans/templated. Active believe this option should be more aligned to the requirements placed on licenced retailers to adopt certain statements in a hardship policy and for all hardship policies to be reviewed and approved by the AER. If the AER is serious about customer protections with embedded network customers, Active believe this provision is only appropriate to align the current requirements between licenced retailers and embedded on-selling to protect the end consumer.

## QUESTION 17

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

Active believe the standardised statements that the AER imposes on licenced retailers should also be imposed on exempt sellers, with specific clauses that are currently not relevant to be omitted.

Further to above, Active believe that the AER should review and approve all hardship policies, similar in nature to the current undertaking the AER conducts for hardship plans from licenced retailers.

## QUESTION 18

### **What additional obligations should the core exemption conditions include?**

Active refers the AER to answers provided throughout this document when considering additional obligations that the core exemption conditions should contain, including a more comprehensive alignment to the conditions placed on licenced retailers, where relevant.

## OMBUDSMAN MEMBERSHIP

## QUESTION 19

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

Active agrees with the AER's proposal to require exemption registrations to confirm they have taken steps to obtain ombudsman membership at the time of registration / application.

Active also believes enforcement powers should be provided to the AER to issue non-compliance civil penalties and other infringement notices on sites that have failed to register with a relevant ombudsman scheme.

Finally, I believe ombudsman schemes should look at registration processes and requirements of who should be able to register as defined in Question 2 of this document. Ombudsman schemes should also look at the fees associated with complaints and correlate them to the unique requirements of embedded network sites to ensure better collaboration and uptake of these schemes in a fair and impartial manner.

## CHILLED WATER

### QUESTION 20

#### **Do stakeholders support regulation of the sale of energy to chill water?**

Active agree, that if any product is sold as energy usage (kWh), then it represents the sale of energy for the purposes of the NERL and should be regulated accordingly.

Therefore, if chilled water, is sold as energy usage, Active agree, that this could be regulated via a deemed exemption given this product is very specific and, in terms of a customer's overall energy consumption, relatively small.

### QUESTION 21

#### **What are the main issues for this type of energy sale and what sorts of conditions should apply**

As discussed in question 20, Active believe that deemed exemption conditions are relevant to the sale of chilled water, if sold as energy usage (kWh).

## APPENDICES

### APPENDIX 1: SUMMARY OF CONSULTATION QUESTIONS

Questions	
Question 1	Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?
Question 2	Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?
Question 3	Should we clarify the meaning of controlling and operating an embedded network?
Question 4	Do stakeholders consider there is a need to regulate small generator aggregators under the network exemption guidelines?
Question 5	Do stakeholders interpret small generator aggregators as being captured under the NER?
Question 6	What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?
Question 7	Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?
Question 8	Do stakeholders agree that the appointment of Embedded Network Managers be deferred if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?
Question 9	Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?
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Question 14	Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions guidelines?
Question 15	Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?
Question 16	Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?
Question 17	What key protections should be included in a hardship policy template for exempt sellers?
Question 18	What additional obligations should the core exemption conditions include?
Question 19	Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?
Question 20	Do stakeholders support regulation of the sale of energy to chill water?
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