

18 January 2016

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

By email: AERinquiry@aer.gov.au

Dear Ms Proudfoot

Thank you for the opportunity to comment on the *Amendments to the AER Retail Exempt Selling Guideline v4.0 – December 2015*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Complaints to EWON regarding exempt sellers have traditionally involved residential parks. EWON recently also began receiving complaints from small business customers in shopping centres that have been retrofitted with embedded networks. While complaint numbers are still small, these complaints have highlighted customer confusion about the implications of retrofitting on access to retail competition, electricity prices and billing, and metering arrangements.

EWON considers this issue will become more pronounced as the exempt selling model gains prevalence in the energy market. It is therefore important that any changes to the exempt selling framework take into account current customer experiences as well as potential consumer detriment. This will assist in ensuring that regulation keeps pace with the emerging energy on-selling market. The views expressed in this submission are based on EWON's complaints handling experience and outcomes from our stakeholder engagement.

Proposed amendment in the Retail Exempt Selling Guideline v4.0

The AER proposes that energy sellers who wish to retrofit sites would need to meet additional obligations as part of their application for an individual exemption. The amendment requires energy sellers to advise affected tenants or customers about the proposal to retrofit, what this would mean in terms of accessing a retailer of choice, and provide to the AER evidence the energy seller has consulted with tenants or customers. This includes confirmation that the

energy seller has:

- advised tenants / customers of the plan to retrofit the site as an embedded network, including a copy of the advice to tenants / customers and details of how this will affect their ability to access a retailer of choice
- 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
- advised tenants / customers when the application is published for consultation and when the consultation period ends.

EWON notes that, as part of this amendment, the AER has proposed that they may require energy sellers to provide evidence of tenants' or customers' explicit informed consent in their applications.

EWON's response

Exempt selling framework – current status

Customers of exempt sellers currently lack the same level of consumer protection afforded to customers of authorised retailers under the *National Energy Customer Framework*. This is a major concern for EWON which we have raised with the AER on many occasions. Residential and business customers of exempt sellers do not have practical or affordable access to retail competition and can therefore only purchase energy from the exempt seller. If, in the AER's view, the fundamental principle is that 'access to retail competition is the best way to empower electricity consumers'¹, then any detraction from this principle must be treated cautiously.

Additionally, residential customers in residential parks, retirement villages and strata developments lack the following protections that are available to retail customers:

- In NSW they do not have access to Energy Accounts Payment Assistance Scheme (EAPA) vouchers, the NSW government emergency assistance for energy bills.
- They may not have access to government energy rebates. (In NSW customers of exempt sellers are able to apply for rebates by directly applying to the responsible government department).
- The exempt seller is not required to operate a hardship program in the same way that authorised retailers are.

¹ Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline, September 2015, p11.

- Individual customers may not be able to install solar panels and feed the energy generated back on to the embedded network grid, and there is no entitlement to any feed-in tariff.

EWON is therefore very reluctant to support any proposed amendment until the issue of inequity in consumer protection is addressed for all exemption classes (registrable, deemed and individual).

Proposed amendment

EWON acknowledges the current threshold for retrofitting is high, given the requirement to gain the explicit informed consent of 100% of customers, and may create a barrier to innovative business models that could bring benefits to those energy consumers.

If the AER intends to make an amendment before addressing the issue of equitable consumer protection, we suggest a staged approach is taken where any change is piloted with business customers first.

An amendment should only be considered for residential customers following a favourable evaluation of such an initial pilot.

EWON considers it crucial that any amendment which removes access to retail competition must include robust safeguards. While we agree that exempt sellers should be required to educate customers about the implications of converting to an embedded network and encourage their participation in exemption consultations, the requirements in the current proposal are inadequate.

Advice about how a retrofit will affect the ability of a consumer to access a retailer of choice

This requirement should be strengthened to include a detailed explanation of the actual impacts on access to a retailer of choice, to enable customers to develop informed views about the energy seller's exemption application and the benefits and costs of converting to the embedded network as opposed to the current authorised retailer arrangement. Information should be required to be provided in an accessible format and in multiple community languages.

Participation in and information about the AER consultation process on individual exemption applications

EWON's case work indicates that many small business customers speak English as a second language, are time poor and have a limited understanding, if any, of the role of the AER. These are all significant barriers to their participation in the AER exemption consultation process and

make it unlikely they could have any meaningful influence on decisions. In contrast, large businesses and franchisees are likely to have a greater ability to set out their case and clearly articulate any concerns they have in AER consultations.

Further measures are required that will ensure all businesses, regardless of size and level of sophistication, are able to participate effectively in the AER consultation process. We suggest that in developing more detailed requirements to address the needs of small businesses, the AER looks at the number and nature of submissions made by small businesses in past consultations. This will provide information about whether small businesses are under-represented and if so, provide the AER with the challenge or impetus of identifying what prevents them from understanding and/or participating in the process.

EWON strongly suggests any amendment should be accompanied by the introduction of a monitoring regime by the AER to ensure energy sellers meet their obligations under any amended provisions and ascertain customers' actual ability to participate in the AER's consultation process. Without this, the changes the AER is considering implementing may never be actually acted upon.

In conclusion

I reiterate that EWON is therefore very reluctant to support any proposed amendment until the issue of inequity in consumer protection is addressed for all exemption classes (registrable, deemed and individual).

For the small businesses sector, this includes having an AER consultative process that is open and effective for small business owners. For residential consumers, it is ensuring that moving to a retrofitted embedded network delivers long term benefits, including emerging products, for the residents as well as the exempt seller.

If you would like to discuss this matter further, please contact me or Jane Leung, Policy Officer, on 8218 5250.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW