

18 November 2015

Ms Michelle Groves
CEO
Australian Energy Regulator
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Melbourne Vic 3001

By email: AERInquiry@aer.gov.au

Dear Ms Groves

Thank you for the opportunity to comment on the *Draft AER (Retail) Exempt Selling Guideline September 2015*.

Exempt Selling is a rapidly evolving in many new developments; it is becoming the norm rather than the exception and is therefore capturing increasing numbers of energy consumers. It is vitally important that regulation keeps pace with the emerging market and, given the time which it takes to achieve regulatory change, endeavours to foresee potential consumer detriment. A proactive rather than reactive regulatory approach needs to be taken to address the emergence of potential negative impacts of disruptive change.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON is currently the only jurisdictional ombudsman to have jurisdiction to receive complaints from customers of exempt sellers and is therefore in a unique position to contribute our experience and perspective.

For ease of reference we have adopted the same numbering as the stakeholder questions in the *Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline September 2015*. We are providing responses to the questions posed in the Notice of Draft instrument which relate to EWON's jurisdiction.

1. Should the electricity tariff cap that exempt sellers may charge small customers (i.e. relevant retailer standing offer) be retained? If not, how else can small customer tariffs be kept to a reasonable level?

Under Condition 7(1) of the current AER (Retail) Exempt Selling Guideline (current Guideline), exempt sellers must not charge tariffs higher than the standing offer price charged by the

relevant local area retailer. This is in conjunction with the Australian Energy Regulator's (AER) expectation that exempt sellers charge their customers 'fair and reasonable energy costs'.¹

EWON notes the AER's concern that references to 'fair and reasonable' pricing has been unhelpful because it creates inconsistent expectations and lacks clarity for exempt sellers. We share this concern and support the AER's proposal to remove references to 'fair and reasonable' pricing and instead clarify that an exempt seller must not charge more than the relevant standing offer price. While exempt sellers can charge varying prices below the standing offer price, our view has always been that the standing offer price provides a price ceiling irrespective of subjective considerations of what constitutes a 'fair and reasonable' price.

2. Are there any potential barriers to exempt sellers offering a customer a minimum of two payment methods?

EWON supports the inclusion of a new clause under Condition 3 to require an exempt seller to offer customers at least two payment methods. While this is an improvement on the current Guideline, we note that the *National Energy Retail Rules* (NERR) set a higher standard for authorised retailers. Under Rule 32(1), retailers must offer a range of payment options: in person and by telephone, mail, direct debit and electronic funds transfer. Rule 74 also requires retailers to offer Centrepay in hardship circumstances.

EWON notes that in practice some authorised retailers may currently or in the future offer only one payment method such as direct debit where this approach aligns with the design of their retail energy product. This may suit those customers who specifically choose that type of product.

However, flexible payment options are beneficial to both customers of both authorised retailers and exempt sellers especially for standard/traditional retail energy products. Default options such as direct debit can raise barriers to choice for customers who prefer alternative payment options. Further, low income customers can be adversely affected by fees associated with direct debit, credit cards and other limited payment options. These customers may benefit more from Centrepay, as it assists them with budgeting and debt management and can thus prevent disconnection. The ability to choose from a range of payment methods, including Centrepay, is therefore an important protection for vulnerable customers. While Condition 3(3) of the draft Guideline requires exempt sellers to offer a payment plan option, we encourage the AER to consider mandating Centrepay as a payment option for exempt customers who are in hardship.

3. Under Condition 11 – Reconnection of supply – the AER has removed the term 'as soon as practicable' in relation to the requirement that an exempt seller must reconnect the premises.

¹ AER (Retail) Exempt Selling Guideline Version 3, April 2015, p. 25.

We seek views on whether the obligation should be time limited and if yes, what limits should be imposed.

Condition 11 of the current Guideline requires that an exempt seller must reconnect premises 'as soon as practicable' where the customer has met the specified conditions for a reconnection.² As discussed in the Notice of Draft Instrument, EWON agrees with the AER that this timeframe is open to subjective interpretation and provides unclear direction about an exempt seller's obligations. We are concerned that the lack of a specific timeframe may cause unreasonable delay in reconnection and result in customers being disconnected from an essential service for longer than necessary, especially where customers have taken the required steps to rectify the matter that led to the disconnection.

EWON notes that while Rule 121 of the NERR only requires retailers to initiate a re-energisation request with a distributor, the timeframe for reconnection by the distributor is outlined in NSW law under Clause 7(2) of the *Electricity Supply (General) Regulation 2014 (NSW)*:

(2) The distributor must energise or re-energise the small customer's premises:

- (a) if the energisation or re-energisation request is made before 3pm on a business day, by not later than the end of the next business day, or*
- (b) if the energisation or re-energisation request is made after 3pm on a business day, by not later than the end of the second business day following the day the request is made.*

There may be some difficulty in setting out a common timeframe for *National Energy Customer Framework* (NECF) jurisdictions under the Guideline as different jurisdictions may specify different reconnection timeframes. However, we support the inclusion of a timeframe that is the same as, or at least similar to, Clause 7(2) to ensure there is an equitable and consistent level of customer protection for the customers of authorised retailers and exempt sellers.

Further, EWON notes that many exempt customers do not have the support of an energy ombudsman to stay connected where disconnection or the threat of disconnection occurs. While EWON has jurisdiction³ to take complaints from customers about exempt sellers, in practice most exempt sellers are not members of EWON and therefore are not bound by a decision of EWON. Hence exempt customers who bring a disconnection complaint to EWON will not have the same safety net as retail customers who contact EWON under the same circumstances. Customers of exempt sellers should have the same protections as customers of authorised retailers in staying connected. Equity for all Australian energy consumers should be provided.

² *AER (Retail) Exempt Selling Guideline Version 3*, April 2015, p. 46.

³ This is discussed in detail later in this paper.

4. We are proposing to require exempt sellers to claim government rebates or concessions on behalf of customers who cannot claim the rebates or concessions themselves. In the current guideline exempt sellers must use best endeavours only. We are interested to understand what this change would mean for exempt sellers – in particular, what costs exempt sellers would incur in making the claims. We are also interested in whether stakeholders see other possible solutions to this issue.

It is an inequitable situation where, compared to authorised retailers who manage the rebate process and incur costs as a result, that exempt sellers are protected from these costs and their customers may not be receiving the rebates they are entitled to. As the distinction between exempt sellers and authorised retailers becomes more fluid costs related to these kinds of activities should be borne equally. Customer choice is at least limited, if not totally impracticable when it comes to many embedded networks and this should not be compounded further by limiting access to financial assistance for eligible customers.

EWON therefore strongly supports the introduction of a positive obligation on exempt sellers to claim government rebates or concessions on behalf of customers who cannot claim these themselves. We consider this requirement will provide clearer direction to exempt sellers about their obligation to assist their customers in claiming these rebates or concessions. We note that these changes will not impact on rebate arrangements for customers of exempt sellers in NSW as they are able to claim rebates directly from the responsible government department.

EWON notes that under Condition 2(e) of the current Guideline, exempt sellers must advise their customers of the availability of relevant government energy rebates. While we strongly support this obligation, we consider it is equally important for the AER to actively monitor compliance with this obligation to ensure that customers who are eligible to receive government assistance are not missing out. This is particularly relevant in the NSW context as access to rebate information in the first instance is crucial to customers being able to claim rebates directly from the government.

6. Your views on any other proposed changes.

Condition 1 – Obligation to supply

EWON supports the proposed amendment to allow exempt sellers to refuse to sell energy to a customer where the customer owes money under their ongoing energy account or where the customer has been disconnected for a reason other than failure to pay a bill. We consider this is an important change that delivers consistency between the Guideline and Rules 18(5) and (6) of the NERR, which prevent a designated retailer from refusing to open an account on the basis that the customer owes them money from a previous account.

Condition 9 – Payment difficulties and disconnection or cessation of supply

EWON supports the proposed wording in Condition 9(2)(d)(i) and (ii) that clarifies that it is not the intent of the Guideline to prevent exempt sellers from disconnecting non-residential customers for non-payment of their bills. We consider this is an important clarification as the current wording places a potentially unreasonable restriction on exempt sellers from taking credit action against business customers who are not entitled to the same level of hardship assistance as residential customers.

EWON notes that under Condition 10(1)(c), an exempt seller is prohibited from disconnecting a customer where the customer has made a complaint to the energy ombudsman and the complaint remains unresolved. To date complaints about from exempt customers about disconnection have been low however this has the potential to increase significantly over time as the number and demographic of customers supplied under this arrangement increases. Given the adverse impacts associated with being disconnected from an essential service and the urgent assistance EWON provides to reconnect customers, we recommend that Condition 9(2)(d)(ii) be amended to require exempt sellers in NSW to include EWON's contact details on disconnection warning notices. This amendment would work given that EWON has jurisdiction to accept complaints from customers of exempt sellers. (There may need to be other considerations for jurisdictions where this is not the case.) This is a requirement for authorised retailers under Rule 110 of the NERR. Our proposed amendment would ensure a consistent level of customer protection around disconnection between the Guideline and the NERR.

Condition 10 – When disconnection or cessation of supply is prohibited

Conditions 10(1) and 10(2) of the current Guideline outline the situations in which an exempt seller is prohibited from disconnecting supply to exempt customers. However Condition 10(4) allows jurisdictional tenancy legislation to override this prohibition where there are provisions for the disconnection of tenants.

EWON shares the AER's concern that this results in the removal of significant protections for tenants and presents considerable inequity in the level of protections available to tenants and other types of exempt customers. We therefore support the AER's proposal to remove Condition 10(4).

EWON and exempt sellers

As stated previously, EWON, unlike all the other jurisdictional energy and water ombudsmen, has jurisdiction over exempt sellers:

- *Electricity Supply Act 1995 (NSW)* – s96B gives EWON jurisdiction to investigate complaints between small customers and exempt sellers.
- *Electricity Supply Act 1995 (NSW)* – s96D provides that a retailer or exempt person, in so far as they are members of an energy ombudsman scheme, is bound by a decision by the energy ombudsman and must not fail to comply with any such decision.

- *Electricity Supply (General) Regulation 2014 (NSW)* – s11 includes among the persons who may apply to an energy ombudsman for a review of a decision ‘a small customer in respect of a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer’.
- *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks August 2006 (revised July 2014)* – s1.2 provides that the park owner is bound by, and must comply with, any decision of EWON in relation to a complaint or dispute relating to the provision of connection services or the supply of electricity.

In accordance with NSW legislation, consumers can make a complaint to EWON about their supply under these arrangements however exempt sellers are not required to join the EWON scheme. This means that while EWON has jurisdiction to handle complaints about exempt sellers and while we can generally resolve the complaint, those who are not members of EWON are not bound to any decision by EWON. We are concerned that EWON’s ability to exercise its jurisdiction is qualified by scheme membership. As the majority of exempt sellers in NSW are not members of the EWON scheme, their customers are therefore not afforded the same level of access to dispute resolution as other customers whose providers are members of EWON. This can result in inequitable outcomes for energy customers essentially receiving the same product.

Further, as exempt sellers are not required to be members of EWON, they do not pay for our services. The costs of these complaints are spread across the membership. This was a decision of the EWON Board when the number of complaints was relatively low and predominantly involved residential parks in recognition of the difficulty of:

- potentially compelling hundreds of small exempt sellers to join EWON;
- managing their membership; and
- billing them for dispute resolution services.

Since the introduction of the NECF in July 2013, the number of exempt sellers in NSW has increased. In particular there has been an expansion of activity in retirement villages, residential strata title buildings and shopping centres. In some instances there are management companies operating across a number of exempt sellers. Some of these management companies have applied for a retail authorisation and EWON membership. We have an example of a business seeking to circumvent their obligations as an EWON member by entering into multiple agency arrangements with strata plans and despite EWON membership refusing to pay for casework related fees.

The growth of solar services and other innovative energy services has seen the AER grant many more exemptions this year and this is likely to increase further over the coming years. The types of businesses that can operate as exempt sellers is rapidly expanding and an increasing number of people are at risk of not being afforded the same consumer protections as those covered by a retail authorisation.

The EWON Board is considering these changes in the energy market and the related issue of access to dispute resolution at EWON and other consumer protection issues. EWON's position is that all NSW residential and small business consumers should have access to the energy ombudsman office, whose providers are bound by any EWON decision.

While other energy ombudsman do not have jurisdiction to accept complaints from customers of exempt sellers, the ombudsman offices still incur costs associated with responding to complaints from these customers and referring them to other non-energy specific complaint agencies. Therefore costs are still borne by the members of those ombudsman offices.

We therefore strongly suggest that the AER engage with stakeholders to consider how to implement access to Ombudsman services across all jurisdictions covered by NECF supported by an appropriate Ombudsman membership and/or funding arrangement.

Exempt seller complaints to EWON

Traditionally complaint numbers have averaged less than 100 per year, and these have mainly related to Residential Parks. The following table provides a breakdown of exempt seller complaints to EWON by provider for the 2014/15 year:

Complaint Source ⁴	Case Subject	2012/13	2013/14	2014/15
General Enquiry Non-member	Dual Fuel			1
General Enquiry Non-member	Electricity	18	20	23
General Enquiry Non-member	Gas		2	4
General Enquiry Non-member	Water			1
Residential Park Operators	Electricity	83	56	56
Residential Park Operators	Gas			1
Residential Park Operators	Water	2	1	
Exempt Seller EWON member	Electricity			11
Total		103	79	96

The issues brought to EWON by customers of exempt sellers are primarily about billing. Other issues include payment difficulty, poor customer service, and requests for information (often from residential park operators) about the regulations and rules for supplying and billing residents. The table below provides a primary issues count for the 2014/15 year, broken down by exempt seller type:

Primary Issue	General Enquiry ⁵	Residential Park	Exempt Seller EWON member	TOTAL
Billing	23	66	9	98
Credit	8	1		9
Customer Service	3	4	5	12

⁴ General Enquiry covers all other exempt sellers, separate to residential parks and exempt sellers who are members of EWON.

⁵ As above.

General	4	4	1	9
Provision	2	1		3
Supply	1			1
Total	41	76	15	132

While complaint numbers currently are low, I envisage that this will increase over time as complexity in the market increases and the number of energy products expands. We cannot wait for this to occur as the detriment to consumers is most probably much more significant than that evidenced in EWON's case numbers now or in the future.

If you would like to discuss this matter further, please contact me or Jane Leung, Policy Officer, on 02 8218 5250.

Yours sincerely



Janine Young
Ombudsman
Energy & Water Ombudsman NSW