

Notice of Final Instrument

Retail Exempt Selling Guideline
(Version 6)

July 2022



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Contents

1	About this document	1
1.1	Introduction.....	1
1.2	Role of the Guideline	1
1.3	Version history and effective date	2
2	Purpose of this Notice	3
2.1	Approach to consultation	3
3	Exempt Seller hardship policy	4
3.1	Draft Guideline.....	4
3.2	Submissions	5
3.3	Final decision on Guideline amendments	7
4	Provision of a factsheet to embedded network customers	9
4.1	Draft Guideline.....	9
4.2	Submissions	9
4.3	Final decision on Guideline amendments	11
5	Chilled water and bulk hot water	12
5.1	Draft Guideline.....	12
5.2	Submissions	12
5.3	Final Guideline on Guideline Amendments	13
6	Other amendments	14
6.1	Registrable exemptions	14
6.2	Retrofit requirements	14
6.3	Who should hold the exemption?.....	15
6.4	Registrable exemption class amendments.....	17
6.5	Core condition variations	17
6.6	Exempt class conditions	18
	Appendix A: Summary of additional submissions and AER response	19

1 About this document

1.1 Introduction

This Notice of Final Instrument (Notice)¹ accompanies the Australian Energy Regulator's Final Retail Exempt Selling Guideline – Version 6 (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 this Guideline.² The 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 factors³ – and how these have influenced our decisions on exemption classes and conditions.

Our position takes into account public submissions and stakeholder engagement in response to the [draft Guideline](#) published in March 2022 and the consultation paper published in May 2021, [Updating the Network and Retail Exemption Guidelines – Consultation Paper](#).

We have made several amendments to the previous version of the Guideline to strengthen protections for exempt customers, improve consistency between the Guideline and the *Electricity Network Service Provider – Registration Exemption Guideline*⁴ (Network Guideline) and clarify aspects of the Guideline and exemption conditions.

This Notice provides details of the context in which the Guideline has been prepared and the effects of any amendments.⁵ It reflects the key changes we have made since the draft Guideline was published and should be read in conjunction with the [Notice of Draft Instrument: Retail Exempt Selling Guideline \(Version 6\)](#) (draft Notice).

A summary of the submissions received in response to the draft Guideline 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. This Guideline assists potential applicants for exemption by:

¹ Retail Rules, r 173(2)(b)

² Retail Law, s 118(1)

³ Retail Law, ss 115 and 116

⁴ Version 6 of the Network Guideline currently remains under review

⁵ Retail Rules, s 173(2)(b)(ii)

- explaining what retail exemptions are and how they work
- providing information to assist exempt sellers in determining whether they, or their business, need a retail exemption
- explaining which type of exemption might be appropriate for a seller
- explaining how to obtain a retail exemption
- outlining the factors we consider when assessing individual exemption applications, and
- detailing the conditions attached to various classes of exemption.

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 Version history and effective date

Version	Date	Pages
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 several 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 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.
6	July 2022	Amendments to support exempt sellers to understand their compliance obligations and ensure protections are accorded to customers. Key amendments include the introduction of a new hardship policy condition, a new information provision condition, and clarifying retrofit and ombudsman scheme membership requirements.

2 Purpose of this Notice

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

We have made 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.

Most of the amendments to the Guideline involve revision or ‘fine-tuning’ to support exempt sellers to understand their compliance obligations and ensure protections are accorded to customers. However, there are some key amendments to the current version of the Guideline:

- The introduction of a new hardship policy condition.
- The introduction of a new information provision condition for exempt sellers to provide their customers with an AER factsheet. This factsheet sets out for these customers the process, and the difficulties they may face, if they want to purchase energy directly from a retailer.
- Clarifying our expectations that conversions to embedded networks must only occur when prospective customers are fully informed of the impacts and have provided their consent.
- The introduction of a requirement to provide evidence of steps taken to obtain ombudsman scheme membership as part of the individual exemption application process.

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 the *National Energy Retail Rules* (Retail Rules).

2.1 Approach to consultation

On 9 March 2022, we released the draft Guideline and the accompanying draft Notice for public consultation. This Guideline has been informed by 28 written submissions to the draft Guideline, and feedback provided to us during the consultation process.

During the consultation process, we also met with various stakeholders to clarify the AER’s proposed positions outlined in the draft Notice and upon request by stakeholders.

3 Exempt Seller hardship policy

3.1 Draft Guideline

Given greater levels of customer vulnerability in embedded networks and reduced access to retail competition, we consider it appropriate to require exempt sellers to provide hardship support to their residential 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.

In response to stakeholder support for exempt sellers to have a hardship policy, we included a new condition (Condition 26 – Hardship Policy) in the draft Guideline. The new condition requires applicable exempt sellers to develop, implement, maintain and comply with a plain English hardship policy for their residential exempt customers that meets certain requirements as set out in the condition. Exempt sellers must provide residential exempt customers, at the start of their tenancy/residency/agreement, a hardcopy or electronic link to the hardship policy⁶, and must also do so if an exempt customer informs the exempt seller that they are experiencing payment difficulties due to hardship.⁷

To assist with reducing the potential administrative burden placed on exempt sellers, we prepared an *Exempt seller hardship policy template* (template) that includes standardised statements. Compliance under new Condition 26 requires exempt sellers' hardship policies to contain, at a minimum, the standardised statements in the template.

The standardised statements describe 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. The standardised statements mainly reflect existing requirements already imposed on these exempt sellers (for example, assistance with rebate and concession claims, flexible payment arrangements etc.) and are intended to be presented in clear and simple language that exempt customers will understand.

The template brings our expectations of exempt sellers more in line with the requirement of authorised retailers (when responding to customers who are experiencing hardship), but also considers the different business structures of small-scale operators. As reflected in our draft Notice, 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.

In our draft Guideline we proposed that, unlike authorised retailer hardship policies, an exempt seller's hardship policy would not require our pre-approval. The exempt seller would be responsible for ensuring its hardship policy meets the minimum requirements set out in the Guideline and complies with the policy. We have maintained this position in the final Guideline, noting we intend to support exempt sellers to comply with the new requirements of Condition 26 via targeted education activities.

While authorised retailer hardship policies refer to the eligibility criteria to access a retailer's hardship *program*, we proposed the requirements for exempt sellers' hardship *policy* focus

⁶ Condition 2(1)(h)

⁷ Condition 9(1)

on the support elements that an exempt seller can provide their customers. The support would mainly be in the form of the provision of information and resources. We considered that a fulsome hardship program would likely be too onerous for small-scale operators to administer.

3.2 Submissions

3.2.1 Feedback on draft Guideline and draft Exempt Seller Hardship Policy template

All stakeholders who provided submissions welcomed the inclusion of a new hardship policy condition and template.

The Energy and Water Ombudsman Scheme NSW (EWON) and Public Interest Advocacy Centre (PIAC) both raised concerns with our use of the term ‘hardship’.

EWON recommended ‘hardship’ be replaced with ‘affordability’ or ‘financial vulnerability’ in the template, noting the term ‘hardship’ can be stigmatising. EWON proposed a greater number of affected customers might self-identify if we revised the term ‘hardship’ but recognised it may be necessary to use ‘hardship’ at specific points in the Guideline, in order to align the term with the hardship requirements under the Retail Law and Retail Rules.

Similarly, PIAC recommended ‘hardship’ be replaced with ‘payment difficulty’ in the template. PIAC noted ‘hardship’ focuses on the individual and their circumstances and does not acknowledge the role of energy systems and processes in causing payment difficulty. PIAC advised the language used in the template should be objective and free from stigma.

We have carefully considered these recommendations; however, we propose to maintain the current use of the word ‘hardship’ in the template but acknowledge there may be other customer facing materials where use of other terms may be more suitable. The term ‘hardship customer’ is defined in the Retail Law as ‘a residential customer of a retailer who is identified as a customer experiencing financial payment difficulties due to hardship in accordance with the retailer’s customer hardship policy’.⁸ The term ‘customer experiencing payment difficulties’ is not a defined term in the Retail Law or Retail Rules. While ‘customers experiencing payment difficulties’ and ‘hardship customers’ have access to a number of the same protections under the Retail Law and Retail Rules (for example, the obligation to offer payment plans and general prohibitions against disconnection), there are additional protections for ‘hardship customers’. As above, the introduction of new Condition 26 and the template is to bring expectations of exempt sellers more in line with what is required of authorised retailers in terms of ‘hardship customers’.

In exercising our powers to determine exemption conditions, the AER must take into account a number of policy principles, including that regulatory arrangements for exempt sellers do not unnecessarily diverge from those applying to retailers.⁹ As such, we consider it important for the template to incorporate terminology that is consistent with the terminology required to be used by authorised retailers in their hardship policies, while recognising the practicalities

⁸ s 2(1), Retail Law

⁹ s 114(1)(a), Retail Law

of requiring exempt sellers, particularly small entities with less expertise and resources, to provide such support.

PIAC proposed exempt sellers should be required to proactively identify people experiencing payment difficulties and we should reflect these processes in the template. PIAC provided a view that proactive identification could be manageable if simplified. It suggested including a trigger to offer support to customers if they miss a payment by a given number of days or have accrued a threshold debt amount.

The Caravan and Camping Industry Association NSW (CCIA) agreed with our draft position that it would be too onerous for smaller-scale exempt sellers to proactively identify residential customers experiencing payment difficulties due to hardship.

We have maintained our draft position. Implementing measures for proactive identification could prove difficult for some exempt sellers and may require significant process, policy, and system upgrades. We consider small-scale exempt sellers would be unlikely to have the systems or processes in place to prompt them if an exempt customer might be experiencing payment difficulties. We consider more sector research and stakeholder consultation would be required before we could determine if proactive identification may be feasible. As such, we have decided not to require exempt sellers to proactively identify customers experiencing payment difficulties at this stage. We consider value in providing exempt sellers a manageable obligation in the first instance and a reasonable period of adjustment to ensure they can provide support for customers experiencing hardship. However, we will continue to monitor compliance with Condition 26 and assess whether the condition remains suitable in its current form.

As exempt sellers are not restricted to only offer options of hardship support set out in the template, an exempt seller may extend its support to customers beyond the requirements captured in the template. This could include implementing processes to proactively identify customers experiencing payment difficulties. We encourage exempt sellers to do so.

PIAC raised concerns that the draft Guideline and the draft template provided insufficient opportunity for customers to vary repayments according to their capacity to pay. PIAC proposed the Guideline include steps an exempt seller must take to ensure a fair payment plan is developed and options for exempt customers to decline a payment plan. Having considered the matters raised by PIAC, we consider the requirement in the final Guideline and template that exempt sellers consider how much the exempt customer can pay when making the payment plan effectively mirrors the requirement in the Retail Law and Retail Rules that an authorised retailer have regard to a customer's capacity to pay in establishing a payment plan for a hardship customer.¹⁰ This allows the customer opportunity to engage in discussion with the exempt seller to develop a payment plan that suits the customer's need.

EWON proposed we explore ways to include in the Guideline protections for customers experiencing family violence in line with the AEMC's recent consultation paper, *Protecting*

¹⁰ s 50(2), Retail Law; r 72(1) Retail Rules

Customers Affected by Family Violence. EWON referred to the AEMC's interest in 'exploring the regulatory avenues to apply family violence protections in embedded networks'.

As noted in the AER's public submission to the AEMC, we welcome the proposed rule change and the AEMC's consultation to improve consumer outcomes in this important area. The AER will continue to consult with the AEMC on the proposed rule change and will consider how the final rule might apply under the exemptions framework when it comes into effect.

We consider it prudent, in the first instance, to observe how authorised retailers demonstrate their compliance with the final rule to determine possible approaches we can take to require exempt sellers to afford similar protections to their exempt customers. This will ensure the AER is also acting with its obligation to ensure that regulatory arrangements for exempt sellers do not unnecessarily diverge from those applying to retailers. When we next review the Guideline, we will publicly consult whether family violence conditions should be applied to exempt sellers on-selling energy to residential customers, and if so, ways the conditions could be practically applied.

CCIA and Austin Tourist Park suggested state-based legislation impacting hardship policies should be recognised in the template. CCIA also recommended including the full URL link for Financial Counselling Australia and sought to clarify if providing this information to customers would sufficiently satisfy Conditions 9(1)(d) and 26 of the Guideline. We consider providing exempt customers with the link to the Financial Counselling Australia website *will* satisfy these conditions.

EWON raised the importance of exempt customers being aware of their right to contact the energy ombudsman scheme in Condition 26. We agree with this point.

3.3 Final decision on Guideline amendments

3.3.1 Exempt Seller Hardship Policy template

We have considered the submissions received and made the following amendments to the template:

- Strengthened the language under 'What we will do to help you' to ensure residential exempt customers are made aware that exempt sellers must provide a range of support if they advise the exempt seller they are experiencing payment difficulties.
- Deleted the statement that an exempt seller will 'ask the residential exempt customer a few questions about their circumstances and work out what support we can offer you' and replaced this statement with a commitment for exempt sellers to work with a residential exempt customer, to find ways to assist them if they are experiencing payment difficulties. We have noted stakeholder feedback suggesting the original statement in the draft template could intimidate vulnerable customers.
- Deleted a statement relating to exempt sellers providing residential exempt customers information of government concessions, relief schemes or energy rebates if the exempt seller agrees to provide hardship support. Exempt sellers are obliged to provide eligible residential exempt customers this information under Condition 13 in the Guideline,

regardless of whether the customer is experiencing payment difficulties. However, these information provision requirements are still captured in the template under 'Other supports to help you pay your energy bill'.

- Inserted under 'Payment Options' the statement 'Let us know if another payment method may help you maintain your payment plan. We offer the following payment methods' with a following free text field for exempt sellers to list their payment options.
- Updated the URL web link for Financial Counselling Australia.
- Included a footnote that disconnection for non-adherence to a residential exempt customer's payment plan is subject to any additional rights the residential exempt customer may have under their relevant state or territory legislation.

We acknowledge PIAC's recommendation to ensure exempt sellers' hardship policies are provided to residential exempt customers in different community languages and accessible formats. At this stage, we do not propose to make this a requirement in the Guideline however we intend to engage and educate exempt sellers as to how they can better communicate to their customers the protections and options for support of their hardship policies. Further, as discussed above, an exempt seller may extend their options for support beyond the requirements captured by the hardship policy template. This could also include providing the template in additional accessible format or different community languages.

3.3.2 Condition 26 – Hardship policy

The new Condition 26 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.

We acknowledge the important role the ombudsman schemes play in resolving customer disputes with their energy suppliers. As such, we have inserted Condition 26(6)(b) requiring an exempt seller to *advise a residential exempt customer of their right to contact the energy ombudsman scheme within their state* if the exempt seller deems the customer to be ineligible for hardship assistance.

We recognise that existing exempt sellers may need a period of adjustment in order to develop and implement their hardship policies when the new condition comes into effect. We consider it appropriate to provide existing exempt sellers sufficient time to make internal arrangements so they can comply with the new condition through a transitional period. We acknowledge existing exempt sellers will need time to implement processes to develop a hardship policy, and subsequently inform their customers of the policy and accordingly provide the protections. We will provide existing exempt sellers a transitional period of 6 months, from the date the new condition comes into effect, to ensure necessary arrangements are made for compliance under this new condition. This transitional period differs to the obligation imposed on new exempt sellers to implement their hardship policies within 3 months from the date of exemption registration or approval.

4 Provision of a factsheet to embedded network customers

4.1 Draft Guideline

The process to access retail competition for a customer located in an embedded network is complex and technical and can act as a barrier to customers engaging in the process. The information provision condition in version 5 of the Guideline does not provide an exempt customer with access to information on the process and requirements they must follow to be able to access retail competition, other than options for metering.

As such, we developed a factsheet for residential exempt customers: *How to access an authorised retailer of your choice if you live in an embedded network* (factsheet). The factsheet seeks to provide simple and plain English explanations for residential exempt customers that focus 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.

4.2 Submissions

Most of the stakeholders who provided submissions in response to the draft Guideline supported the inclusion of a requirement that exempt sellers provide a hardcopy or a link to a factsheet describing the process that an exempt customer must follow if they wish to enter a market retail contract.¹¹ We received varying feedback on the draft factsheet itself.

While generally supportive of the factsheet, PIAC recommended we provide a clearer explanation of the benefits and difficulties of living in an embedded network and present the information in a format that considers customers’ literacy skills and disabilities. PIAC also supported the factsheet being made available to customers in multiple languages. We acknowledge PIAC’s recommendation and intend to explore our options for translating the factsheet in different languages and accessible formats following release of the Guideline. This may potentially form part of a separate education strategy to support exempt sellers and exempt customers to understand their obligations and protections.

EWON proposed that the AER develop an additional and simpler factsheet that could provide exempt customers with conceptual information, which could be accompanied by a more complex factsheet providing the technical details. We consider that requiring an exempt seller to provide multiple factsheets to residential exempt customers may create confusion, especially as the requirement for an exempt seller to provide this factsheet is new. However, we acknowledge exempt customers may benefit from having access to information

¹¹ Condition 2(b)

presented in multiple ways and as noted above, we will explore possible options following release of the Guideline through a potential education strategy.

CCIA advised more detail was required in explaining the limitations of older embedded network infrastructure, the costs related to changing energy suppliers and the low likelihood of retailers offering energy only contracts. Similarly, Energy Locals raised concerns that the factsheet was not clear enough on who would bear the costs of a customer going 'on market'. We consider the factsheet sufficiently addresses these issues however we have made it clearer the potential for customers to wear the costs.

In this context, CCIA also suggested the factsheet include a section where the exempt seller could include supporting materials. PIAC further recommended we provide additional space on the factsheet for exempt sellers to add additional supporting materials. We consider there is potential risk in permitting exempt sellers to revise an AER branded factsheet. We consider it more appropriate for the exempt seller to provide any additional supporting information or materials separately to the factsheet, as they are not precluded from doing so. In developing the factsheet, we have aimed to strike a balance between providing enough information to sufficiently inform exempt customers, with the need to ensure the information is applicable to all residential embedded network scenarios, across jurisdictions.

PIAC proposed we clarify that customers who live in embedded networks lack the same protections as those provided by authorised retailers. We consider Condition 2(1)(c)¹² of the Guideline imposed on exempt sellers sufficiently addresses this issue.

Austin Tourist Park had concerns with provision of the factsheet as they estimate the number of customers who have moved to 'on market' electricity supply is very low. Austin Tourist Park also submitted that updating the network infrastructure in many residential settings would come at a considerable cost to the network owner. We acknowledge the significant costs involved in moving customers 'on market' but note that in most circumstances, customers would bear these costs. It is not always necessary to 'wire out' a customer (i.e., reconfigure the network infrastructure) for them to access retail competition. However, there can still be significant costs to customers if they need to upgrade their meters to access retail competition. We consider the factsheet will support both sellers and customers in understanding some of the complexities and potential costs associated with choosing to go 'on market' and access retail competition.

Austin Tourist Park advised some customers would have difficulty understanding the factsheet. We have considered the feedback provided and have simplified the factsheet to ensure it is consumer friendly and appropriate for its intended audience. We have also added graphics to the factsheet. We consider these graphics will support the text provided and assist exempt customers in their understanding through visual representation.

¹² Condition 2(1)(c) – *The exempt seller must advise exempt customers, in writing, at the start of their tenancy/residency/agreement that the exempt seller is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if it were purchasing from an authorised retailer*

4.3 Final decision on Guideline amendments

4.3.1 Factsheet

We recognise exempt customers can face challenges if they elect to go 'on market' to access retail competition. While we cannot resolve these issues within the scope of this review, we consider that the factsheet would assist exempt customers to better understand their circumstances and could go some way to addressing the lack of customer awareness.

We have considered the submissions received and made the following amendments to the factsheet:

- Simplified the factsheet to ensure appropriateness for the target audience.
- Revised the title of the factsheet to *How to access an authorised retailer of your choice if you live in an embedded network*. We consider the revised title is clearer in communicating that accessing a retailer of choice in an embedded network is optional for an exempt customer (and not a requirement).
- Inserted two new graphics providing exempt customers with a visual representation of an embedded network, as well as examples of where an embedded network may occur.
- Inserted a sub-heading *Avoiding paying twice for network charges* to further break up the information for ease of reference.
- Inserted a qualifying statement that customers are likely to have to pay the significant costs associated with upgrading an exempt customer's meter for them to go 'on market.'
- Revised the term 'energy only' *offer* to 'energy only' *contract* to ensure we adopt accurate and clearer use of terminology.

4.3.2 Condition 2 – Information provision

We have maintained the intent of revised Condition 2(1)(b), as presented in the draft Guideline, however, we have updated the factsheet title in the condition.

Revised Condition 2(1)(b) requires an exempt seller to provide an exempt customer, who is also a residential customer, a hardcopy or electronic link to the factsheet if they live in an embedded network as published on the AER's website and as in force from time to time. Exempt sellers would be required to provide exempt customers a copy of 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.

5 Chilled water and bulk hot water

5.1 Draft Guideline

As set out in the draft Guideline, 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. 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 kilowatt-hours, rather than cents per litre. EWON considered the same argument could apply to recovering the energy costs (billed in megajoules) associated with the supply of bulk hot water.

In considering the submissions and other relevant matters, we 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. On this basis, we proposed not 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 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.

5.2 Submissions

The Shopping Centre Council of Australia (SCCA) submitted that the regulation of chilled and bulk hot water should be out of scope for this guideline review.

EWON maintains the AER create a registerable class exemption for gas on-selling when its purpose is to heat water. EWON proposed the exemption class could be silent on how the hot water is billed to customers to allow for different metering technologies, products and services to be captured without further need to expand or change the definition in the future.

PIAC proposed we extend regulation in embedded networks to hot and chilled water services to improve consumer access. PIAC is concerned with the significant and growing number of people receiving hot water in embedded networks. It also acknowledged the likely increasing number of people receiving chilled water in embedded networks as a result of the rapid growth in apartments utilising embedded network arrangements.

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.

The issue relating to the regulation of chilled water and bulk hot water is not a straightforward issue, but an issue the AER takes seriously. Ensuring embedded network compliance with exemption conditions, including consumer access to Ombudsman schemes, is a current AER Compliance and Enforcement priority.

In considering all the submissions to the issue and other relevant materials, we remain of the view that the sale of bulk chilled or hot water is unlikely to constitute the sale of energy for the purposes of section 88(1) of the Retail Law. Key issues include the nature of the service and how sale of energy is constructed.

We note the AER is currently considering the scope of the provision of energy services and the application of section 88(1) of the Retail Law as part of its broader NEM 2025 work program. This includes the AER's current Authorisations and Exemptions review.

5.3 Final Guideline on Guideline Amendments

We have maintained not to create a new class of exemption to regulate the sale of bulk chilled and hot water.

6 Other amendments

Most of the other amendments we have made to the draft Guideline are minor in nature and reflect changes to use of language based on feedback from our stakeholders. We have outlined the key changes below.

6.1 Registrable exemptions

Section 4.2 of the Guideline now makes it clear that registrable exemptions come into effect when published on the AER's website, and not when the online form is submitted to the AER. This supersedes any previous communications the AER has issued on this topic. In so doing, we have inserted the following statement: *A registered exemption only comes into effect once we publish the exemption on the AER's public register of retail exemptions.*

6.2 Retrofit requirements

An applicant seeking an individual retail exemption may also be planning to retrofit the site. In these circumstances, the applicant must apply to the AER for an individual retail exemption to on-sell electricity and also seek additional approval from the AER for eligibility to register a network exemption in order to commence the retrofit. If applicants are planning to retrofit a site, they will need to comply with the requirements of the Guideline and also the Network Guideline.

6.2.1 Explicit informed consent

Draft Guideline amendments

In the draft Guideline, we clarified under section 4.4 our expectation that applicants obtain explicit informed consent by way of a signed consent form wherever possible. In the draft Notice we clarified that we consider a customer's electronic signature is an acceptable form of explicit informed consent. We provided 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 to mirror the requirements in the Retail Law. In so doing, we provided further clarification around the minimum requirements that must be met for us to consider verbal consent acceptable.

Submissions

PIAC recommended that the information provided to prospective customers to acquire their explicit informed consent should be provided in community languages and accessible formats. While we have decided not to impose a specific requirement of this nature at this stage, we encourage exempt sellers to proactively provide their marketing materials in community languages and accessible formats if necessary. It is ultimately the responsibility of the exempt seller to ensure customers are 'fully informed' in order for the customer to provide explicit informed consent.

SCCA recommended we should provide that a person planning to retrofit a commercial site could do so by registering a retail exemption if the explicit informed consent of 95% of tenants (rather than 100%) is obtained. We maintain that the requirement to apply to the

AER for an individual exemption for a commercial retrofit, if less than 100% explicit informed consent is acquired, is reasonable. A retrofit changes the way residents/tenants receive energy supply, as well as their supply choices. They should therefore be sufficiently consulted on the changes and have their concerns heard and addressed, to the extent possible. Our preference is for energy customers to be able to participate fully in the retail market. Any changes to a customer's electricity arrangements that may affect their ability to participate in the market should be agreed to by all affected customers. A prospective customer's consent, gathered after providing the customer key information, is critical for us to be satisfied that minimal customer detriment will result if the retrofit should proceed.

Final Guideline amendments

We have retained the amendments in the draft Guideline. We have further included a recommendation submitted by PIAC to note the information provided to prospective exempt customers of a proposed retrofit should be presented in plain language.

While we have clarified our expectation around explicit informed consent in the Guideline, we are currently considering, as part of the review of the Network Guideline, to expand on the retrofit requirements and the materials that embedded network operators must provide prospective customers of a proposed retrofit.

6.2.2 Retrofit expansions

Draft Guideline amendments

We clarified in the draft Guideline 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.

Submissions

SCCA provided a view that the new information around retrofit expansions should be separated into residential and non-residential scenarios. We consider it is appropriate to seek prior approval from the AER for a retrofit expansion, irrespective of the customer type.

Final Guideline amendments

We have retained the amendments proposed in the draft Guideline and made no further amendments.

6.3 Who should hold the exemption?

Draft Guideline amendments

We provided additional information in the draft Guideline to clarify that only legal persons may hold an exemption.

We 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 clarified that if a legal person purchases a site, for which the AER has granted an individual exemption, they may need to submit a new application for an individual exemption.

We clarified that we expect an exempt seller to advise the AER if the contact details for their authorised representative changes in any way.

Submissions

SCCA sought clarification that our requirement that only legal persons may hold exemptions would not affect the common ownership of shopping centres, which are typically registered as corporations or trustees. We can confirm that legal persons include corporations and trustees.

SCCA proposed the period for notifying the AER of a change of site ownership should be increased to 60 days. We consider 20 days is reasonable given that customers should be afforded adequate protections as soon as practicable when a change of site ownership takes place. The 20-day period is also consistent with the requirements of the current Network Guideline.

Energy Intelligence proposed we clarify the process of change of ownerships at sites which were subject to individual exemptions. Energy Intelligence further submitted that proposed new owners may need time to fully understand their responsibilities under the acquisition and the process of applying for a new individual exemption is an onerous exercise.

We note it is the responsibility of the person intending to sell energy to ensure they are authorised or hold the appropriate exemption. This means that when a change of ownership occurs the new seller should contact the AER to advise of the change of ownership and ensure they are registered for the relevant exemption(s).

CCIA NSW raised concerns that some of their members have indicated that some exemptions are currently held by trusts and partnerships. We urge any exemption holders who have been affected by this policy clarification to contact us at AERExemptions@aer.gov.au. We will work with exempt sellers to ensure their existing exemptions are registered by an appropriate party.

Final Guideline amendments

We have considered the submissions received and made the following amendments to section 5 of the Guideline (pg. 18): *Who should hold the exemption?*:

- Clarified that if the circumstances of an exempt seller's energy on-selling activities change significantly (for example, they purchase additional embedded network sites), they should notify us of this change. The exempt seller should also seek their own legal advice to determine whether exemptions remain appropriate or if they should apply to become an authorised retailer.
- Clarified that when notified of a change of site ownership we will assess whether an individual exemption or registrable exemption is appropriate on a case-by-case basis.
- Clarified an exempt seller should also notify the relevant energy ombudsman of the change of ownership if residential customers reside at the relevant site.
- Inserted a sub-heading *5.1 Change of site ownership* for ease of reference.

6.4 Registrable exemption class amendments

We have made minor variations to the exemption classes below:

Deemed exemption class	Amendment
Class D2 Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.	We have clarified that Class D2 applies to owners or operators of marinas who sell energy to residents principally residing on site. Customers include tenants, occupants and owner-occupants.
Class R5 Persons selling metered energy to large customers.	We have removed Victoria from the large customer electricity thresholds, as exempt sellers who on-sell to sites based in Victoria are outside of our regulatory remit and this information was originally included in error.

6.5 Core condition variations

We have made minor variations to the conditions below to provide better clarity:

Condition	Variation
Condition 2 – Information provision	We have: <ul style="list-style-type: none"> – updated the title of the factsheet that must be provided to exempt customers under condition 2(1)(b). – revised the wording of condition 2(1)(h) to clarify that exempt customers must advise the forms of assistance available if the exempt customer is experiencing payment difficulties (previously '<i>unable to pay energy bills due to financial difficulty</i>'). The requirement has been adjusted to reduce any ambiguity in our intended meaning.
Condition 9 – Payment difficulties and disconnection or de-energisation	<ul style="list-style-type: none"> – revised the wording of condition 9(1) to clarify that when an exempt customer informs the exempt seller that they are experiencing payment difficulties (previously '<i>unable to pay energy bills due to financial difficulty</i>') the exempt seller must adhere to the requirements set out in condition 9(1)(a)-(g). The requirement has been adjusted to reduce any ambiguity in our intended meaning.
Condition 16 – Dispute resolution	<ul style="list-style-type: none"> – reinstated (and updated) the title of the Australian Standard dispute resolution guideline in condition 16(2) upon receiving stakeholder feedback that omitting the title may result in confusion or uncertainty. – reinstated (and revised) a requirement under condition (16)(3) that in the event of a complaint or dispute concerning the sale of energy to an exempt customer, and consistent with any determination of the complaint by the relevant tenancy tribunal if the customer is a tenant, the exempt seller must adhere to the conditions set out in condition 16(3)(a)-(c). This requirement has been revised upon receiving stakeholder feedback on the importance of tenancy tribunals in resolving exempt customer complaints.
Condition 21 – Continuity of supply	<ul style="list-style-type: none"> – strengthened the condition to require the exempt seller to advise of the steps they are taking to ensure continuity of the applicable requirements.

6.6 Exempt class conditions

We have adjusted the conditions that attach to the exemption classes below due to typographical errors stemming from previous Guideline updates:

Exemption class	Guideline Version 5	Guideline Version 6
Class D9 Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.	Condition 2 – information provision N/A: 1(b), (d)-(f), (h)	Condition 2 – information provision N/A: 1(b), (f), (g), (i)
Class D10 Government and similar agencies, including their sub-contractors, selling metered energy to non-residential customers.	Condition 2 – information provision N/A: 1(e), (f), (h)	Condition 2 – information provision N/A: 1(f), (g), (i)
Class R1 Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.	Condition 12 – Payment Plans N/A: 1	Condition 12 – Payment Plans N/A
Class R5 Persons selling metered energy to large customers.		
Class R6 Persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate.		
Class R7 Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.		

Appendix A: Summary of additional submissions and AER response

Subject	Stakeholder	Stakeholder feedback	AER response
Network-related submissions	Energy Locals	<p>Energy Locals proposed the terms ‘controlling’ and ‘operating an embedded network’ be clearly defined and also queried whether vacant lots should be included within this calculation.</p> <p>Energy Locals also proposed the Guideline should provide more clarity on what percentage of residents or tenants are required to provide their explicit informed consent in order to satisfy the retrofit requirement.</p>	<p>This feedback is out of scope of the Guideline but is currently being considered as part of the Network Guideline review. We consider further clarity will be provided on this in the final Network Guideline, which is intended to be read in conjunction with the Guideline. Further, we are also considering to clarify how the required consent from 85% of customers is to be calculated by way of the Network Guideline review.</p>
Market surveillance	PIAC CCIA Energy Locals	<p>PIAC proposed our compliance activities include ongoing data collection and analysis to capture the number of embedded network customers within our jurisdictions, the types of business structures and key indicators of consumer protection. Further, the AER should monitor the number of businesses adopting a structure allowing them to be classified as billing agents, rather than specialist external providers.</p>	<p>We acknowledge the potential value of collecting data to identify performance trends of embedded networks. We consider in order to collect meaningful performance data, such as that proposed by PIAC, we would need to explore our permitted scope to require exempt sellers to potentially self-report data to us (such as on a periodic basis).</p> <p>We are mindful that imposing performance data reporting requirements could lead to increased administrative costs for exempt sellers, which could ultimately be borne by their customers. We consider extensive sector engagement would first be required, to determine the possibility and likely impact of imposing such a requirement, before we could require exempt sellers provide performance data to us.</p> <p>In the meantime, we will continue to engage with our stakeholders and public register of exemptions data to identify performance trends and potential compliance risks.</p>
		<p>Energy Locals proposed the Guideline include a provision requiring authorised retailers to report if they offer ‘energy only’ contracts to embedded network customers.</p>	<p>We note that considering obligations imposed on authorised retailers is outside the scope of the Guideline review.</p>
Compliance monitoring	PIAC Altogether group	<p>PIAC proposed we should develop systems which can monitor the structure of existing retail and network exemptions and monitor compliance with exemption conditions.</p> <p>Altogether Group proposed we consider reviewing existing registrable exemptions to ensure they are appropriate to the sites they relate to.</p>	<p>While we consider these recommendations are out of scope for the current Guideline review, we acknowledge this useful feedback and will consider how this may apply for future compliance activities.</p>

Subject	Stakeholder	Stakeholder feedback	AER response
Penalties for non-compliance	PIAC Ausgrid	<p>PIAC suggested that exempt sellers who fail to comply with their hardship policies should be penalised. PIAC also proposed using escalating penalties for entities that continuously take steps to avoid ombudsman scheme membership, or continuously ignore the requirement to join.</p> <p>Ausgrid proposed civil penalties should be increased for non-compliance with the guideline.</p>	<p>Exempt sellers who fail to comply with the conditions of their exemptions are potentially in breach of section 112(2) of the Retail Law. This includes failure to join the relevant ombudsman scheme and/or develop, implement and maintain a hardship policy (if they on-sell to residential customers). A breach of section 112 may attract Tier 1 civil penalties which for conduct that occurred on or after 29 January 2021 can include penalties of:</p> <ul style="list-style-type: none"> • up to \$10,000,000 or • if the Court can determine the value of any benefit reasonably attributable to the breach of the civil penalty provision that the body corporate, and any body corporate related to the body corporate, has obtained, directly or indirectly—3 times the value of that benefit. • if the Court cannot determine the value of the benefit—10% of the annual turnover of the body corporate during the 12-month period ending at the end of the month in which the body corporate breached, or began breaching, the civil penalty provision. <p>The AER however can only issue an infringement notice where it has reasonable grounds to believe a business has contravened a civil penalty provision. The penalty amounts that attach to the infringement notice are set in section 76 of the National Electricity Law and section 279 of the National Gas Law. The payment of infringement notices does not constitute an admission of liability.</p>
Consumer protections	Ausgrid Energy Locals	<p>Ausgrid recommended we should provide greater clarity in explaining the responsibilities and consumer protections available when an authorised retailer is managing an embedded network.</p>	<p>Authorised retailers are not subject to the requirements of the Guideline and must comply with the authorised retailer obligations set out in the Retail Law and Retail Rules. We consider that as exempt sellers are the target audience of our Guideline, setting out the responsibilities of authorised retailers in this document is not the appropriate platform. However, we have taken Ausgrid’s feedback on board and will consider how we may utilise separate educational activities to promote authorised retailers’ responsibilities and consumer protections if selling to customers in embedded networks.</p>

Subject	Stakeholder	Stakeholder feedback	AER response
		Energy Locals proposed that the AER require on-market retailers to pay the customers' network charges, invoiced by the embedded network operator.	While we agree with Energy Locals that this would resolve the issue of embedded network customers being billed twice for network charges, we do not consider we have the power to impose a requirement of this nature.
		Energy Locals suggested the explanation in the factsheet that most 'exempt sellers' are not required to become authorised energy retailers may confuse some customers who are buying energy from an authorised retailer within an embedded network.	We note that if an embedded network customer is buying their energy directly from an authorised retailer, the requirement to provide the fact sheet to the customer does not apply.
Marinas	Marina Industries Association (MIA) Anchorage Marina Clontarf Marina Marks Point Marina Royal Motor Yacht Club Broken Bay HolmePort Marinas Advanced Marina Management East Coast Marina Mulpha Sanctuary Cove Marina Soldiers Point Marina Gulf Marina Management The Quays Marina	Marinas were generally supportive of the amendments to the class exemptions capturing their energy on-selling activities. MIA proposed marinas should be eligible for deemed exemptions, in the same way that caravan park owners have been exempted. MIA proposed deemed exemptions would enable the marina industry to meet their compliance obligations more easily. MIA proposed we clarify in the Guideline that where marinas supply unmetered energy and charge an aggregated lease/rent containing the range of services provided by the marina (including electricity), an exemption would not be required.	We recognise that marina owners may only on-sell energy to a small number of residential customers at a given time. As such, we have added marinas to the application of D2 – <i>persons selling metered energy to fewer than 10 residential customers within the limits of a site that they own, occupy or operate to capture energy on-selling activities of this nature.</i> We recognise the sale of energy for many deemed exemption holders is purely incidental, for example, caravan park owners who sell to short-term holiday makers, persons selling to related entities, and those selling to a small number of commercial or residential tenants. Deemed arrangements are not required to be registered with the AER. However, while deemed exemptions do not have to be registered, deemed exemption classes relating to residential customers require exempt sellers (including marina owners) to comply with multiple obligations to ensure those customers have adequate protections. We do not consider marinas supplying unmetered energy supplied as only one part of a fixed charge to be 'selling energy' for the purposes of the Retail Law and have clarified this in the Guideline.

Subject	Stakeholder	Stakeholder feedback	AER response
	Fenwicks Marina Gladesville Bridge Marina Spinnaker Sound Marina Palazzo Versace Gold Coast Marina Industry Association		
Grandfathering of new conditions	Energy Locals	Energy Locals proposed the new hardship condition should not apply to existing sites to avoid disruptions within the industry.	<p>We consider that <i>all</i> exempt residential customers should be afforded the same protections.</p> <p>We recognise that some small-scale exempt sellers may find it difficult to adjust to the new hardship policy requirement. We aim to minimise disruption for these sellers by providing them the Exempt Seller Hardship Policy template, which includes standardised statements that can be copied verbatim into their own hardship policy. The template should aid exempt sellers in establishing a compliant and manageable hardship policy.</p> <p>We further recognise that our position to require exempt sellers to develop, maintain and implement a hardship policy template must be accompanied by an educational strategy, to ensure customers are aware of their rights and exempt sellers are aware of their new obligations. We are exploring potential educational activities following finalisation of the Guideline.</p> <p>While we recognise a period of adjustment will be required for existing exempt sellers to comply with Condition 26, we consider that 6 months will be sufficient time for existing exempt sellers to develop and implement their hardship policies.</p>
Exempt customer protections	Energy Locals	Energy Locals proposed that exempt sellers should be required to observe the same rules as 'on market' retailers.	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 authorised retailers' customers, as well as considering the administrative burden placed on exempt sellers.

Subject	Stakeholder	Stakeholder feedback	AER response
Energy only offers	Energy Intelligence	Energy Intelligence supported pressure being placed on authorised retailers to offer energy only offers to customers in embedded networks.	We currently have no power to require authorised retailers to make energy only offers.
Ombudsman membership	EWON Altogether Group SCCA	EWON support the requirement for individual exemption applications to demonstrate steps have been taken to obtain ombudsman membership. EWON noted there is still a gap in increasing awareness and ensuring compliance within the deemed and registrable exemption classes, as well as ongoing individual exemption classes. Altogether Group queried whether an embedded network operator is required to hold multiple memberships to the ombudsman scheme if they are acting as both the embedded network operator and as a retailer.	We note EWON's feedback. We recognise that exempt sellers, who on-sell energy to less than 10 customers under exemption class D2, may not be 'visible' to the AER as those that hold registrable exemptions. We will continue to explore opportunities to raise awareness of exemption compliance obligations, including deemed, registrable and individual exemption holders. We agree an effective compliance program is required and note that ensuring embedded network customers have access to ombudsman schemes remains a key compliance and enforcement priority for the AER. We will continue to work closely with ombudsman schemes to achieve membership and full participation in the schemes and will consider enforcement action, when warranted.
Common area charges	Altogether Group	Altogether Group proposed we provide clarification as to whether bodies corporate recovering apportionment of common area electricity costs to tenants is considered 'energy selling'. SCCA sought clarification that the changes under section 2 'Are you an energy seller' of the draft Guideline don't overlap with existing state retail lease legislation that covers the subject of 'outgoings' (outgoing are operating costs that a shopping centre owner can recover from a tenant for common area charges, which include electricity costs, amongst other costs).	Whether a person is engaging in the activity of selling energy to a person for premises for the purposes of section 88(1) of the Retail Law will depend on the particular circumstances. In most cases, we would not consider that a sale of energy has occurred where a landlord seeks to recover costs for energy supplied to common areas. Bodies corporate and other entities should obtain their own legal advice as to whether an exemption is required in their particular circumstances.
Exemption examples	CCIA NSW	CCIA NSW proposed we provide a new example to set out the likely exemption requirements for energy on-selling in mixed parks.	We have included an additional example (Example D). This example sets out the likely exemption requirements if a person aims to on-sell energy in a mixed park, consisting of both long-term and short-term residents.
Individual exemption application timeframes	SCCA	SCCA queried whether there was a time period that applicants could expect the AER to assess and grant an individual exemption.	We aim to assess individual exemption applications within 16 weeks of receiving all the relevant information from the applicant. However, we are likely to require more time than this period for complex applications that may require further considerations. 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.

Subject	Stakeholder	Stakeholder feedback	AER response
Terminology	SCCA CCIA	SCCA proposed we replace the word 'registered' with 'registrable' in section 9.1 of the Guideline, for consistency.	The use of the word 'registered' is intentional. This is because once a <i>registrable</i> class exemption is registered on our Public Register of Exemptions, it becomes a <i>registered</i> exemption for the purposes of the Retail Rules.
		In relation to draft Conditions 2(2)&(3), CCIA proposed we clarify in the final Guideline what constitutes an 'enquiry' or 'request' from an exempt customer. On this basis, CCIA proposed we specify an exempt customer' request for information must be in the form of a <i>written</i> request in order to enliven the requirements.	We consider imposing a condition on customers to provide their 'enquiry' or 'request' in written form could disadvantage exempt customers who may be non-literate, noting the draft condition provides customers to make an 'enquiry' or 'request' in either written or verbal form.