Notice of Final Instrument:

AER (Retail) Exempt Selling Guideline Version 5

March 2018

AUSTRALIAN ENERGY REGULATOR

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Amendment Record

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1 About this document

1.1 Introduction

This Notice of Final Instrument (Notice)[1] accompanies the Australian Energy Regulator's (AER) Retail Exempt Selling Guideline (Guideline) Version 5.

The National Energy Retail Law (Retail Law) requires businesses that sell energy to be either an authorised retailer or an 'exempt' seller (i.e. selling where a retailer authorisation is not appropriate or practical). Exempt sellers must either be members of deemed or registrable exemption classes, or hold an individual exemption.

The AER must develop and publish an exempt selling guideline. This Guideline sets out who requires exemptions, the processes for registering or applying for exemptions, and outlines the various exemption types and classes, their eligibility criteria and exemption conditions. It also sets out requirements for cancelling and revoking exemptions. In addition, the Guideline spells out our considerations on the policy principles specified in the Retail Law, the exempt seller and customer related factors,[2] and how these have influenced our decisions. It also outlines application requirements for energy selling through converted embedded networks by exempt sellers, and our approach to assessing applications.

We have revised the Guideline to improve dispute resolution arrangements for exempt customers. New and amended core exemption conditions now require exempt sellers to have appropriate complaints and dispute handling processes, and exempt sellers with residential customers must be members of, or subject to, energy ombudsman schemes where the scheme allows.

We have made a number of amendments to strengthen protections for exempt customers and to better align the protections of exempt customers to those of customers of authorised retailers. Finally, we have made some small housekeeping amendments to help clarify aspects of the Guideline and exemption conditions.

This Notice provides details of the context in which we have prepared the Guideline, the issues involved, stakeholder submissions and the effects of the proposed changes. We have prepared this Guideline and Notice in accordance with the retail consultation procedure in rule 173 of the National Energy Retail Rules (Retail Rules).[3]

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. To assist potential applicants for exemption we have developed a guideline, which:

- explains what retail exemptions are and how they work

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1 National Energy Retail Rules s 173(2)(b).

2 National Energy Retail Law, ss115 and 116.

3 National Energy Retail Rules s 173(2)(b)(ii).

- provides information to assist exempt sellers in determining whether they, or their business, need a retail exemption
- explains which type of exemption might be appropriate for a seller
- explains how to obtain a retail exemption
- outlines the factors we consider when assessing individual exemption applications
- details the conditions attached to various classes of exemption.

With the exception of 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 Definitions and interpretation

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 Rules.

1.4 Version history and effective date

Version 1 of the Guideline was released in 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.

Version 2 of the Guideline was released in July 2013. Amendments sought to streamline the Guideline, remove redundancies and inconsistences. A number of new exemption classes were created (R6, R7,D9 and D10) and some classes were merged.

Version 3 of the Guideline was released in April 2015. It was amended to re-open certain exemption classes that had closed from 1 January 2015. Except where sites are retrofitted, classes D1, D2, R1, R2 and R3 are now open to current sellers.

Version 4 of the Guideline was released in March 2016. It was amended to make the Guideline clearer, more flexible and to better reflect developments in the energy retail market, in particular in the area of alternative energy selling. There were also a number of new requirements on exempt sellers.

Version 5 is the current version of the Guideline. This Notice is in relation to version 5 of the Guideline.

1.5 Commencement

Version 5 of the Guideline will commence in March 2018.

2 Purpose of this Notice

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

We have made a number of important amendments to the Guideline to facilitate access to energy ombudsman schemes for residential customers of exempt sellers and to place obligations on exempt sellers regarding complaints and dispute handling processes. We explain the changes in **section 3**.

We also made a number of other amendments, explained in **section 4**, to clarify aspects of the Guideline and conditions and to better align key customer protections with those that apply to customers of authorised retailers, for example, those relating to:

- obligation to supply
- reconnection or re-energisation
- payment plans
- planned and unplanned outages.

2.1 Approach to consultation

We released a draft Guideline (draft Guideline) and an accompanying Notice of Draft Instrument (draft Notice) for public comment on 6 November 2017.

On 14 December 2017, we held a public forum via video conference in our Canberra, Sydney, Melbourne, Adelaide, Brisbane and Hobart offices.

This Guideline has been informed by submissions and feedback provided to us during the consultation process. In addition to feedback and discussion at the public forum, we received 20 submissions to the draft Guideline.[4]

Our considerations of key issues raised on the dispute resolution changes and other amendments are discussed in **sections 3 and 4** respectively. **Attachment A** details other dispute resolution issues raised in the submissions not discussed in **section 3**, and our response to those issues. **Attachment B** summarises all non-dispute resolution issues raised in submissions, and details our response.

The draft Guideline, draft Notice, submissions, and agenda and slides from the public forum are published on our website.[5]

[4] Stakeholder submissions can be accessed on the AER website: https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/draft-retail-exempt-selling-guideline-november-2017/draft-decision

[5] The draft Guideline, draft Notice, submissions, and agenda and slides from the public forum can be accessed at: https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/draft-retail-exempt-selling-guideline-november-2017/draft-decision

3 Dispute resolution

We have amended the Guideline to give effect to two key changes to improve dispute resolution processes for exempt customers. These are to:

(i) require exempt sellers that sell energy to residential customers to be members of, or subject to, the relevant energy ombudsman scheme/s where they are eligible to be members and

(ii) explicitly place obligations on exempt sellers to have in place appropriate complaints and dispute handing processes.

The first change is a preliminary step in improving residential exempt customers' access to energy ombudsman dispute resolution services. We note that ombudsman schemes may need to amend their charters, constitutions or constituting legislation in order to allow exempt sellers to be participants in their schemes.[6]

Until recently, the ombudsman schemes, with the exception of NSW, have not heard or been able to hear complaints from exempt customers. This is because they precluded membership by exempt sellers or explicitly precluded the consideration of complaints by customers of exempt entities. The significant growth of exempt energy sales, particularly in embedded networks, has lead to an increased number of customers without recourse to free and independent dispute resolution services.

The final drafting of the Guideline retains the intent of the changes proposed in the draft Guideline. We have made minor amendments to the drafting of Conditions 2 and 16 to clarify the circumstances in which an exempt customer can contact an energy ombudsman. We have also amended Condition 16 to refer to the Australian Standard for complaints handling.

3.1 2017 consultation and outcomes

The dispute resolution amendments to the Guideline, in particular for external dispute resolution (EDR), are the culmination of extensive consultation throughout 2017. We have been working collaboratively with the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON) on this project since mid-2016.

We detailed the key issues concerning access to dispute resolution services in an issues paper published June 2017.[7] That paper set out our work to date with ANZEWON and included feedback from engagement with exempt entities and exempt customers throughout the first half of 2017. The paper also sought feedback on our approach to considering the issue, the scale of the problem, the nature of energy disputes and the adequacy of existing EDR mechanisms. We detailed the outcomes of that consultation, where the majority of

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6 For the purposes of this document, we refer to the energy ombudsman schemes in Retail Law jurisdictions and the ACT Civil and Administrative Tribunal collectively as 'ombudsman schemes'.

7 AER issues paper, Access to dispute resolution services for exempt customers, June 2017, https://www.aer.gov.au/system/files/AER%20issues%20paper%20-%20access%20to%20dispute%20resolution%20services%20for%20exempt%20customers%20-%20June%202017.pdf

stakeholders were supportive of expanding ombudsman schemes' jurisdictions, in the draft Notice.[8]

The draft Notice also explained our final policy position to expand energy ombudsman access to residential customers. We consider this position appropriate based on the principle that exempt customers should, to the extent possible, have the same consumer protections as customers of authorised retailers. In addition, evidence from the consultation indicates the characteristics of some particular groups of exempt customers, such as those in caravan and residential parks, are such that they have the greatest need to access ombudsman schemes.

3.2 Submissions to the draft Guideline

3.2.1 Feedback on final policy position

All but a few stakeholders who provided submissions on the dispute resolution amendments supported the final policy position to expand ombudsman access to residential exempt customers. The exceptions were the bodies representing the caravan parks and manufactured homes industries in NSW, Queensland and Victoria. They opposed exempt customer access to ombudsman schemes, stating that EDR in their industries is long-standing, appropriate and effective and additional obligations were unnecessary, costly and burdensome. As stated in the draft Notice, we acknowledge stakeholder concerns around cost. We note the ombudsman schemes are actively considering this issue and are committed to ensuring membership and fee structures are not overly burdensome on smaller operators and, as far as possible, remove any cross-subsidies from other members. On that basis, we consider any costs related to the proposal are outweighed by the benefits to customers (and sellers) of effective EDR schemes.

Of the supportive stakeholders, many considered we had not gone far enough and should extend the protection to small business exempt customers. In the draft Notice we stated our reason for not doing so was due to a lack of evidence of need from this particular customer group. We maintain this position. While recognising the principle that exempt customers should have the same protections as customers of authorised retailers, we must balance this with demonstrated need. Unlike residential customers, we have not received evidence of a need for small business customers to access ombudsman schemes. We will reconsider our position if we become aware of a need for this protection to apply to small business customers.

[8] See section 3 of Notice of Draft Instrument – Draft AER (Retail) Exempt Selling Guideline Version 5, pp. 7-11, https://www.aer.gov.au/system/files/Notice%20of%20draft%20instrument%20%E2%80%93%20Amendments%20to%20AER%20%28Retail%29%20Exempt%20Selling%20Guideline%20%E2%80%93%20November%202017_0.pdf

3.2.2 Feedback on drafting of conditions

The draft Guideline proposed drafting of core exemption conditions to give effect to our policy position to expand ombudsman access to residential exempt customers and to make clearer exempt seller obligations regarding internal dispute resolution (IDR) processes. **Table 1** summarises stakeholder feedback:

Table 1: Stakeholder feedback on drafting of conditions

Stakeholder	Stakeholder feedback	AER response
Condition 2 – Information provision		
Energy and Water Ombudsman NSW (EWON)	Suggest a footnote is added to condition 2(1)(c)(i) containing suggested wording for referring customers to an energy ombudsman scheme.	Given exempt sellers are new to ombudsman scheme membership, we agree it would be useful to clarify the circumstances in which an exempt customer can access an energy ombudsman scheme. We prefer to achieve this within the drafting of the condition, rather than through a footnote.
Condition 16 – Dispute resolution		
Caravan and Camping Industry Association NSW (CCIAN) Caravan Parks Association Queensland (CPAQ)	Stakeholders sought clarity on whether the Australian or international standard for complaints handling was being referred to.	We clarify we intended to refer to Australian Standard *AS/NZS 10002:2014 Guidelines for complaint management in organizations*.
Energy and Water Ombudsman NSW (EWON)	Suggest footnote is added to 16(3)(c) to clarify that referring exempt customers to an ombudsman scheme is not conditional on the customer completing the sellers' internal dispute resolution process.	We have clarified the intent of this suggestion with EWON and other ombudsman schemes, which is to make clearer the circumstances in which an exempt customer can access an energy ombudsman scheme. We consider adopting the amended drafting of condition 2(1)(c)(i) (now 2(1)(d)(i)) will meet the intent of this suggestion.
Condition 17 – Member of energy ombudsman scheme		
CCIAN, CPAQ, SACOSS	Stakeholders noted the drafting of condition 17(1) should be sufficiently broad to enable flexibility of membership models, such as allowing peak bodies to be members of an ombudsman scheme. Stakeholders considered that drafting in the draft Guideline is sufficiently flexible.	We agree the current drafting is sufficient to allow for flexible membership models.

CPAQ	Wording of condition 17(1) should be consistent with the Electricity Network Service Provider Registration Exemption Guideline (Network Guideline).	We agree that the *intent* of condition 17 and the condition at 4.1.13 of the Network Guideline should be consistent, and consider the current drafting of both achieves this. The drafting of Condition 17 deliberately differs from the corresponding condition in the Network Guideline as the two guidelines place obligations on different entities—that is, exempt sellers and exempt network operators respectively.
Shopping Centre Council of Australia (SCCA)	Concerned that wording of condition 17 could inadvertently require non-residential exempt sellers to be members of ombudsman schemes. Wording should expressly exclude non-residential exempt sellers.	We consider that Appendix A-3 (Exemption class conditions) is sufficiently clear in explaining which conditions apply to which class.

3.3 Final decision on Guideline amendments

We have retained the intent of the amendments in the draft Guideline to core exemption conditions (conditions 2, 16 and 17) relating to dispute resolution to give effect to our policy position to expand ombudsman access to residential exempt customers and to make clearer exempt seller obligations regarding IDR processes, as described in the draft Notice.

We have made minor amendments to improve the clarity of drafting to reflect policy intent. No changes have been made to the policy intent detailed in the draft Notice.

Table 2 describes the changes. We have not included in the table changes where we have retained drafting from the draft Guideline. For ease of comparison, we indicate additions and deletions to the final Guideline by red and ~~red strikethrough~~ text respectively.

Table 2: Summary of changes to Guideline drafting since November 2017

Condition	Drafting in November 2017 draft Guideline	Final drafting in March 2018 Guideline	Reason for change
Condition 2(1)(d)(i) – Information provision	…of any right that the exempt customer has to access the energy ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located	any right the exempt customer has to access the energy ombudsman scheme (if applicable), including to lodge a complaint or for free independent information and advice, or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located	Change made to clarify the circumstances in which an exempt customer can access an energy ombudsman scheme.
Condition 16(2) – Dispute resolution	The procedures must be consistent with the Australian Standard AS ISO 10002-2014 (Customer satisfaction—Guidelines for complaints handling in organisations) as amended and updated from	The procedures must be consistent with the Australian Standard ~~AS ISO 10002-2014 (Customer satisfaction—Guidelines for complaints handling in organisations)~~ *AS/NZS 10002:2014 Guidelines for*	Change made to correctly refer to the Australian Standard for complaints handling.

	time to time.	*complaint management in organizations* as amended and updated from time to time.	
Condition 16(3)(c)(i) – Dispute resolution	…of any right the exempt customer has to access an energy ombudsman (if applicable) or any other external dispute resolution body in the state or territory where the exempt customer is located	…of any right the exempt customer has to access an energy ombudsman (if applicable), including to lodge a complaint or for free independent information and advice, ~~(if applicable),~~ or any other external dispute resolution body in the state or territory where the exempt customer is located	Change made to clarify the circumstances in which an exempt customer can access an energy ombudsman scheme. For consistency, this change echoes the drafting of condition 2(1)(d)(i).

4 Other amendments

In addition to the dispute resolution changes, we have made a small number of amendments to the Guideline to better align exempt seller protections with retail customer protections. We have also sought to clarify some ambiguities and gaps in the current version of the Guideline, and to remove repetition where possible. We consider these amendments are of a minor nature.

Stakeholders generally supported the proposed amendments. The main concerns raised were from exempt sellers and industry bodies, and related to the amendments we proposed to align exemption conditions with retailer obligations, for example the obligation to supply and reconnect, and notification obligations in relation to supply interruptions. Some concerns were also raised about our proposed information and consent requirements for network conversion applications.

Having considered the issues raised we remain of the view that the changes we proposed to customer protections, such as the changes to the obligations to supply and reconnect, are necessary and should be adopted. We note others, such as revised information requirements (including for consent for network conversion applications) do not represent a material change from current requirements, but rather clarify those requirements. We note concerns in relation to notification requirements for outages and have incorporated stakeholder suggestions.

Ombudsmen and consumer representatives were particularly supportive of the amendments and suggested some additional changes; including obtaining explicit informed consent from all customers entering an embedded network, and establishing specific notification obligations for move-in and carry-over customers. While we note these concerns, we consider exempt sellers are already required to provide new customers with important information about the embedded network signalling the different energy selling arrangements therein. We also note the Guideline is limited to regulating exempt seller obligations to their customers, not to prospective customers.

In general, most amendments proposed in the draft Guideline have been adopted in the final Guideline, with some changes and additional amendments in response to stakeholder feedback. The Guideline also includes a few additional minor corrections to the conditions to improve clarity and remove repetition, which became evident in drafting the final Guideline.

Below is a summary of submission comments on matters other than dispute resolution, a discussion of our position and amendments made to the Guideline. A table detailing submission comments and our response to each is included at **Attachment B**.

4.1 Who should hold the exemption?

The draft Guideline

We revised **Section 5** of the draft Guideline to clarify who should (or may) hold a retail exemption. We say under the current Guideline that the seller is the person or business who will bear the financial risk of their customers' non-payment. We proposed amending this because it could include third party agents, which is not what we intended. Instead, we

proposed defining a seller as the person who buys energy from a retailer at the gate meter and then sells it to the customers at the site.

Submissions

Stakeholders supported this clarification without amendment.

Response and amendments to the Guideline

The amendment has been adopted without change.

4.2 Requesting changes to registrable exemptions

The draft Guideline

Section 6.2 of the Guideline advises exemption holders to contact the AER if their details change. It was amended to better explain the process for doing so.

Submissions

One stakeholder sought clarification on whether responsibility for contacting the AER lies with the outgoing or new owner. Otherwise, stakeholders supported the amendment.

Response and amendments to the Guideline

Any person selling energy is responsible for ensuring they comply with energy laws. When ownership of a registered property changes, the new owner must ensure they hold appropriate exemptions to sell energy at the site. This does not preclude third parties, including an outgoing owner, from registering exemptions on behalf of the new owner.

We have adopted the proposed amendment with the additional clarification that new sellers are responsible for advising the AER of any changes before the change takes effect.

4.3 Glossary

The draft Guideline

The draft Guideline introduced an embedded networks definition in the glossary. The definition stated:

> embedded network means a privately owned electricity network where a single meter (which is supplied by a retailer) provides all energy for the site. Energy is then delivered to customers via the private network. For the purposes of the retail exemption framework, a private network connected to another private network is considered an embedded network.

Submissions

Stakeholders agreed with the inclusion of a definition but noted that some embedded networks have more than one parent meter. One stakeholder also suggested we adopt the definition from the Electricity Rules, namely:

> [an embedded network means] a distribution system, connected at a parent connection point to either a distribution system or transmission system that forms part of the national

grid, and which is owned, controlled or operated by a person who is not a Network Service Provider.

Response and amendments to the Guideline

The Electricity Rules' definition of an embedded network applies only to electricity networks and contains terms that require interpretation in accordance with the Electricity Rules. The definition used in the Retail Guideline needs to apply to both gas and electricity and make sense without reference to other legislation.

The Guideline also needs to apply to private networks connected to other private networks (meaning an embedded network containing one or more meters that feed energy to another embedded network). The Electricity Rules definition does not specifically include this scenario.

We therefore propose an amended version of the definition proposed in the draft Guideline, namely:

> embedded network means a privately owned energy network, connected to the distribution network by one or more meters. Energy is delivered to customers via the private network. For the purposes of the retail exemption guideline, a private network connected to another private network is also considered an embedded network.

Stakeholders also suggested we define supply interruption and life support equipment in the Guideline. We agree and have amended the glossary accordingly.

4.4 Information requirements for applications for network conversions

The draft Guideline

The draft Guideline included additional information requirements for preparing network conversion applications (**Appendix B).** These are not new requirements but expand on the application criteria outlined in **section 7.2.1.**

We also proposed removing some of the information requirements in **Appendix B** that we do not require to assess applications, for example, information about energy rebate/concession availability, energy efficiency options, whether premises are separately metered, the frequency of meter reads, and the application of tenancy or other jurisdictional legislation.

Submissions

Submissions supported the proposed amendments.

Two stakeholders questioned the need to mitigate customer detriment—specifically, exploring options to wire out tenants or residents from an embedded network and assuming financial responsibility for double network charges.

Response and amendments to the Guideline

We note stakeholder concerns with the detriment mitigation requirements in the draft Guideline, however, we consider these necessary. Network conversions involve trade-offs

for potential customers, and applicants need to demonstrate they will take steps to ensure customers are not made worse off. This may include requiring sellers to take actions such as wiring out non-consenting tenants where possible, and taking financial responsibility for double network charges. We are not persuaded to amend or remove these requirements.

We have therefore adopted our proposed additions to **Appendix B** with a further change to the consent requirements (**see section 4.5, below**). We have also amended the introduction to **section 7.2.1** to explain that applicants need to demonstrate the steps they have taken to mitigate any potential customer detriment. We have removed **sub-section 3** (Mitigation of detriment: state or territory legislation) as it is redundant now that exempt customers can access the retail market in all jurisdictions where the exemptions framework applies.

4.5 Consent to a proposed network conversion

The draft Guideline

The draft Guideline was amended to clarify that a customer's consent to a proposed network conversion is different to their consent to join the network—namely, customers can agree to a proposed network conversion but be supplied by another retailer (**section 4.4; and Part 3, Appendix B**).

Submissions

Submissions supported additional clarification on consent. However, it was clear from the submissions that there is still confusion—and some disagreement—over our requirements for the collection of consent, what consent is for, what being fully informed means, the information applicants must provide residents or tenants, and about how much consent and engagement is necessary. One stakeholder also suggested that consent should be obtained not just from tenants or residents of network conversions, but from tenants or residents entering an existing embedded network.

Response and amendments to the Guideline

A network conversion imposes significant changes on the way residents or tenants of a particular site are supplied and their supply choices. We consider residents and tenants should be consulted on the changes and have their concerns heard and addressed to the extent possible. To be able to do so, they need information about the implications of the proposed changes – both the benefits and the costs. We accept that not all tenants or residents will agree to the change, and that not all proposals will receive 100 per cent consent, but it does need to be *fully informed.*

To assess whether consent is fully informed, we consider the actions taken by the applicant to disclose all matters relevant to the conversion. Specifically, we look at whether applicants have clearly, fully and adequately disclosed all matters relevant to the customer's consent.

We consider information about price is essential to customers' decisions. It is also important that potential customers are made aware of how easy (or difficult) it is to find another energy retailer. We also consider how applicants sought to obtain consent and customers' capacities to provide consent. This information needs to be supported by evidence.

We acknowledge customers in existing embedded networks face the same practical limitations in their ability to access the competitive market as those experiencing a network

conversion. However, we believe that customers entering an existing embedded network effectively consent to the network by choosing to enter it and do not see the need to create an additional consent requirement. We note that condition 2 requires exempt sellers to provide new customers with a copy of the conditions and information about energy selling arrangements in the embedded network, which clearly establishes that energy selling arrangements in the embedded network are different.

We have amended our discussion of explicit informed consent in the Guideline to address the questions and concerns raised in the consultation and to clarify what we mean by the term. The information requirements in **Appendix B** have also been clarified.

4.6 Grounds for refusal

The draft Guideline

We outline grounds whereby the AER may refuse an application for individual exemption in **Section 7.4** of the Guideline. In the draft Guideline we proposed additional grounds, namely where an applicant did not adequately demonstrate why an exemption should be granted, or where they did not provide evidence to support their claims.

Submissions

With one exception, stakeholders endorsed the proposed amendments. One stakeholder recommended that as long as an applicant met the exemption "entry criteria", the application should be approved.

Amendments to the Guideline

We note the Retail Law does not establish entry criteria for the approval of individual exemptions, only principles to guide the AER in its assessment of applications. The principles include a range of policy principles, customer related factors and exempt seller related factors. The latter establishes that the AER may take into account any seller related matters it considers relevant.

We consider it important for applications to include evidence to support applicant's claims—we cannot assess them otherwise. The requirements for evidence are not new requirements—our amendments are intended to explain why we need certain evidence and to explain the implications for an application if it is not included. The examples included are meant to assist applicants to better understand our assessment approach.

The proposed amendments to **section 7.4** of the Guideline (grounds for refusal) have therefore been adopted.

4.7 Class variations

We have made a number of minor variations to exemption class criteria and applicable conditions (see also **section 4.8**).

D10 *(sale of metered energy by government agencies to non-residential customers)*

The draft Guideline

Under version 4 of the Guideline, eligibility for the D10 class is limited to government agencies, statutory authorities, government owned corporations and universities. The draft Guideline proposed extending eligibility to include government contractors who operate facilities on behalf of the government and for whom the sale of energy is part of the overall facility operation. In these situations the contractors are 'standing in the shoes' of the government.

Submissions

Submissions supported this amendment.

Response and amendments to the Guideline

The variation to eligibility for the D10 class has been included in the Guideline without amendment.

R8 *(sale of energy through power purchase agreements (PPAs) to customers connected to the national electricity grid)*

The draft Guideline

We propose amending the R8 class definition to include the words 'selling energy as a supplementary supply' to make it clear that the class is only open to sellers who are not a customer's sole supplier of energy. To date we have received a small (but growing) number of applications from sellers applying for the R8 class but intending to provide all of the customer's energy. It was not our intention that this type of sale be covered by a retail exemption. These types of sellers may require retailer authorisations instead.

Submissions

Submissions supported this amendment.

Response and amendments to the Guideline

The clarification to the R8 class has been included in the Guideline without amendment.

4.8 Core condition variations

Condition 1 – Obligation to supply; Condition 11 - Reconnection or re-energisation; new Condition 12 – Payment plans

The draft Guideline

We proposed amendments to strengthen sellers' obligations to supply energy—the key change being that sellers would no longer be able to withhold energy supply because a customer owes them money.

The changes aim to better align exempt customer protections with those of retail customers for whom there is a designated retailer obligated to offer supply. We consider these changes address an oversight in previous Guidelines and give effect to the Retail Law requirement

that regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers (s.114).

We proposed making changes to the reconnection condition (condition 11) to lessen the impact of these amendments on a seller's ability to recover energy debts by:

1. limiting when customers can request reconnection to 10 days after the disconnection, unless the matter that led to the disconnection is remedied earlier
2. making the obligation to reconnect or re-energise supply conditional on customers agreeing to enter into a payment plan.

The draft Guideline also introduced a new payment plan condition (condition 12) to largely mirror the payment plan requirements for customers specified in the Retail Rules.

Submissions

Stakeholders' responses to these changes were mixed. In general, ombudsmen and consumer groups supported the changes, while stakeholders representing residential parks did not. For example, residential parks representatives were concerned that our proposed amendments did not provide customers with sufficient incentive to pay off debts. They suggested that exempt sellers should be able to request payment in full before reconnecting customers, and that it was difficult to determine a customer's capacity to pay when establishing payment plans.

A representative of wholesale and retail sellers queried applying the amended reconnection provisions to business customers. A jurisdictional tribunal suggested the requirement to wait 10 days before reconnection should not prevent earlier reconnection if jurisdictional arrangements allow.

Response and amendments to the Guideline

We have carefully considered stakeholder concerns and weighed up alternative options for balancing the needs of customers to continue to receive energy, and those of energy sellers to manage customer debt.

Unquestionably, energy is an essential service. We also know that customers in embedded networks can find it difficult or even impossible to enter a supply contract with another retailer. Given this, we consider exempt sellers should be obliged to supply exempt customers even when they owe money on their energy account. It is not acceptable for a customer to be without energy supply. The requirement that customers agree to a payment plan when seeking reconnection ensures they can continue to receive energy while paying off debt.

Establishing payment plans that are affordable will assist customers to adhere to the terms of the plan while continuing to receive energy. To achieve this, we suggest sellers look to the AER's Sustainable Payment Plans framework when developing payment plans.

We agree that where jurisdictional arrangements require sellers to reconnect within a shorter timeframe condition 11 should not (and does not) prevent them from doing so.

We have therefore adopted our proposed amendments to conditions 1, 11 and 12 of the Guideline, with the following refinements:

1. clarified that the requirement for exempt customers to wait 10 business days before requesting reconnection does not preclude an exempt seller from reconnecting prior to this date where it may do so under jurisdictional legislation (footnote added to condition 11)

2. reference to the AER Sustainable Payment Plans Framework added (footnote to condition 12).

Condition 3 - Billing and payment arrangements

The draft Guideline

We proposed amending condition 3 to require exempt sellers to bill supply charges as a daily amount, rather than a single charge. This was to make the pricing information for exempt customers clearer and is in line with the AER Retail Pricing Information Guideline.

Submissions

Submissions generally supported the changes. Residential park representatives suggested the proposed information should not apply to holidaymakers, and an ombudsman suggested energy bills should also specify the name of the exempt seller.

Response and amendments to the Guideline

The current Guideline requires all energy bills specify the tariffs, charges and amount of energy used – this applies to long and short stay customers. Our amendments do not impose a new obligation on sellers, but make clear what we mean by tariffs and charges. The proposed changes in the draft Guideline to condition 3.5.l (now 3.3.m) have therefore been adopted unchanged.

We note that where service providers are employed to bill customers they often include their own branding and contact information on bills. Contact information for the exemption holder is often not included. We agree it is important for customers to know who their actual seller is and to be able to contact them.

We have therefore added a new requirement (section 3.3.a) for bills to include the legal name, trading name (if relevant) and contact details for the exempt seller.

Condition 7 – Pricing

A. The draft Guideline

We proposed to amend the condition to clarify what charges may or may not be imposed on exempt customers. This information is not new but was previously contained in the footnote to the condition.

Submissions

Submissions supported this amendment.

Response and amendments to the Guideline

We have adopted the proposed change without amendment.

Condition 9 – Payment difficulties and disconnection or de-energisation

Submissions

In addition to the amendments proposed for the disconnection and payment plan conditions, stakeholders suggested a range of other changes, including:

- extending disconnection requirements for move-in and carry-over customers
- specifying minimum information requirements for reminder and disconnection warning notices
- offering payment plans to customers who advise they are unable to pay a bill
- not applying disconnection requirements where jurisdictional arrangements govern disconnection.

Response and amendments to the Guideline

In relation to move-in/carry-over customers, we note the conditions currently require sellers to provide these customers with reminder and disconnection warning notices, and consider no further changes are necessary.

We agree that reminder and disconnection warning notices should include advice on next steps for exempt customers. We have therefore added two new conditions to the Guideline (conditions 9.3 and 9.4), which specify minimum information requirements for reminder and disconnection warning notices. These conditions reflect Retail Rules 109 and 110, which apply to retail customers.

If a customer advises they are unable to pay a bill it is reasonable for the seller to offer a payment plan to enable the customer to pay the bill in instalments and avoid disconnection. We have therefore added a new condition to the Guideline (condition 9.1.a), which replaces condition 3.3 that required exempt sellers to offer flexible payment options to customers in financial difficulty.

We agree that the disconnection provisions specified in condition 9 should not apply where there are jurisdictional arrangements for disconnection. Condition 9.6 (condition 9.4 in the draft Guideline) specifies that condition 9 does not apply when jurisdictional legislation sets out processes for disconnection. We have amended this condition to broaden its application beyond tenant/landlord situations to apply to residential customers in general.

Condition 18 – Planned interruptions to supply; Condition 19 – Unplanned interruptions to supply

The draft Guideline

The current Guideline does not address planned or unplanned interruptions. We propose addressing this oversight with two new conditions that reflect retailer and distributor obligations under the Retail Rules.

Submissions

Submitters agreed with the inclusion of both conditions and suggested some amendments. Several stakeholders suggested exempt sellers could not provide four business days' notice of planned interruptions to the embedded network where they result from planned interruptions to the distribution network. This is because they often only receive four days' notice from their own retailer and/or distributor. One stakeholder also suggested the conditions should specify the form in which exempt sellers must notify customers of planned outages.

Response and amendments to the Guideline

Given that exempt sellers receive up to four business days' notice from distributors and retailers for planned interruptions, we agree it is reasonable to allow exempt sellers to give a shorter period of notice to exempt customers. We have therefore amended condition 18 to require exempt sellers to give 2 days' notice. We prefer not to prescribe the form of notification to enable sellers to use the most effective means of communication with their customers.

4.9 Minor consequential changes

In the course of our review, we identified other aspects of the conditions that we felt needed clarification or correction. These amendments are of a "housekeeping" nature. They are set out below.

a. **Conditions 3.3 and 3.4,** which require exempt sellers to offer flexible payment options to exempt customers experiencing payment difficulties, have been moved to the new payment condition (condition12) to remove any duplication.

b. **Condition 7.3** specifies that an exempt seller must not impose any charges that are not charged by the relevant local area retailer. In addition to examples of such charges which we introduced in the draft Guideline, we have included a further clarifying statement that:

> the amount of any allowable charge must not be greater than that charged under the relevant local area retailer's standard retail contract.

This is not a new requirement but clarifies the meaning of condition 7.3.

c. **Condition 7.4** addresses the charging of late payment fees. As this is now covered by the revised condition 7.3 we consider it redundant and are removing it.

d. **Condition 8.2.b** has been amended to include wording inadvertently omitted from the current Guideline. The condition now states that where an exempt customer is overcharged less than $25 and no longer purchases energy from the exempt seller, the seller must use its best endeavours to refund the amount within 10 business days. This wording mirrors requirements specified in condition 8.2.a relating to overcharges of $25 or more.

e. A number of new conditions have been added to the Guideline in response to the inclusion of Conditions 18 and 19 (planned and unplanned interruptions):

a. **Condition 9.7** provides that the disconnection requirements set out in Condition 9 do not apply where a disconnection is a result of a planned or unplanned interruption (as opposed to a disconnection for non-payment)

b. **Condition 10.4** qualifies the prohibitions on disconnection set out in Condition 10, to allow for disconnection where continuity of supply to the premises would be unsafe. This corrects an omission in the current Guideline.

f. **Condition 24** clarifies that the condition applies only to the sale of energy by exempt sellers to exempt customers of power purchase agreements. This corrects an omission in the current Guideline.

Attachment A: Summary of additional submissions and AER responses on dispute resolution

This table details stakeholder feedback on the draft Guideline and our responses, where we have not addressed these already in the body of the Notice.

Submissions to Draft AER (Retail) Exempt Selling Guideline Version 5 – November 2017		
Stakeholder	**Stakeholder feedback**	**AER response**
Suitability of energy ombudsman schemes in providing external dispute resolution services		
AGL[9]	AGL do not agree that it must be energy ombudsman schemes providing external dispute resolution (EDR) services. They question whether energy ombudsman schemes are best placed to deal with bundled disputes and whether (and how) energy ombudsmen should cooperate with other industry service ombudsmen.	We recognise the significant role of energy ombudsman schemes in providing expert dispute resolution services for energy issues. We consider the ombudsman schemes best placed to isolate and resolve energy-specific disputes, and to provide EDR services, as recognised by Part 4 of the Retail Law. In submissions to the June 2017 issues paper, ombudsman schemes noted that it is possible to isolate energy disputes and they have extensive experience in doing this.[10] We acknowledge that EDR mechanisms already exist in some industries and jurisdictions. However, we agree with the majority of stakeholders that ombudsman schemes are best placed to provide free, independent and expert dispute resolution services, given their extensive experience working with customers, retailers and distributors.
Ombudsman membership structures and fees		
SACOSS	How will deemed exemption holders be able to afford	We recognise that small scale operators, of which many will be

[9] See table at the end of the doucment for a list of abbreviations.

[10] EWON, issues paper submission, page 3; EWOQ, issues paper submission, page 6; EWOSA, issues paper submission, page 4; EWOV issues paper submission, page 7.

	ombudsman membership as required by condition 17? It may be that membership may also have to be 'deemed' for this class, which raises issues of cross-subsidisation.	deemed exemption holders, may experience difficulties complying with ombudsman dispute resolution requirements. With this in mind and noting the diversity of exempt sellers, the ombudsman schemes are currently reviewing membership structures and associated costs to establish appropriate arrangements for exempt sellers.
AGL	AGL considers EWOSA's proposed membership model the most appropriate to accommodate exempt sellers.[11] AGL also queries the entity that would need to become a member of a scheme and whether this would include legal entities of a business.	
Education and notification of dispute resolution changes		
SACOSS	Welcomes the AER's commitment to work with ombudsman schemes to help educate exempt sellers and customers about the new changes. Supports increasing the AER's resources to allow for greater involvement in the creation and provision of information to customers and exempt entities of these changes.	We recognise that expanding ombudsman schemes jurisdictions to residential exempt customers requires an educational campaign to ensure customers are aware of their rights and exempt sellers are aware of their new obligations. We will work with the ombudsman schemes to develop an appropriate communication strategy. We consider industry bodies are well placed to assist their members to be aware of their regulatory responsibilities, such as internal dispute resolution requirements. While the regulated entity is ultimately responsible for ensuring they comply with regulatory requirements, we will consider strategies to encourage compliance with conditions where we understand exempt sellers would benefit from further information and education.
Caravan Parks Association Queensland	The AER should work with industry bodies to educate sellers on best practice in meeting the Australian Standards for complaints handling. The AER should provide exempt sellers with the latest version of the standards and advise of any changes to the standard.	
Transitional arrangements		
Watts Energy	The AER may need to allow sufficient transitional arrangements prior to imposing this condition on exempt	We recognise that condition 17 may not have practical effect when the Guideline takes effect, given many ombudsman schemes will

[11] EWOSA issues paper submission, page 1-2.

	sellers, given ombudsman schemes need to make changes to their membership structures.	need to make changes to relevant legislation, constitutions and charters to allow schemes to hear complaints from exempt customers. We therefore consider that the time during which the ombudsmen are making changes to their schemes will effectively provide a transition period for condition 17.

Attachment B: Summary of submissions and AER responses to matters other than dispute resolution

Subject	Stakeholder	Stakeholder feedback	AER response
Who should hold the exemption	SCCA, EWOSA, PIAC[12]	Support clarification on who should hold an exemption.	
Requesting changes to registrable exemptions	PIAC	Supports amendments to processes for making changes to registrable exemptions.	
Glossary	CCIA, CPAQ, SCCA	The definition of embedded networks should recognise that some embedded networks have more than one parent meter.	Agree. The definition has been altered to account for multiple parent meters.
	WE	The definition of embedded network should align with the National Electricity Rules (NER), Retail Law and Retail Rules.	The NER defines an embedded network as: *A distribution system, connected at a parent connection point to either a distribution system or transmission system that forms part of the national grid, and which is owned, controlled or operated by a person who is not a Network Service Provider.* We have chosen to depart from the NER definition of an embedded network for several reasons. Firstly, it is necessary for the Guideline definition to be a standalone explanation of an embedded network, applicable to both gas and electricity embedded networks. The NER definition applies only to electricity networks, and is not "standalone" as it references several other NER

[12] See table at the end of the document for a list of abbreviations.

			defined terms. Secondly, the Guideline definition must include private networks connected to other private networks (meaning an embedded network containing one or more meters that feed energy to another embedded network). The NER definition does not specifically include this scenario.
		What is meant by 'connected to an embedded network'.	This refers to the situation where one or more meters in a private network supply energy to another private network. We do not consider this term requires a standalone definition.
		'Interruption' should be defined in the glossary.	Agree. The definition has been added.
		'Life support equipment' should be defined in the glossary.	Agree. The definition has been added.
	EWON, WE	Support clarifications on who can hold an exemption.	
Network conversion applications	EWOSA, SCCA, PIAC	Support additional guideline clarifications for obtaining consent to a network conversion.	
	Flow	It is unnecessary for building owners or bodies corporate to inform residents/tenants (when seeking consent to a network conversion), that an 'energy only' contract from a retailer may be difficult to obtain.	Providing information about possible detriments, including limitations on choice of retailer, is necessary to enable tenants/residents to make an informed decision about whether to give consent to a network conversion. The limited availability of energy only contracts imposes a practical limitation on customers' ability to switch retailers. We consider it important that tenants/residents are aware of this before giving consent to inclusion in a network conversion.
		It is not feasible to provide information about tariffs and charges at the time	It is important that applicants provide this information at the time consent to a network conversion is sought. Given the practical difficulties in accessing supply from a retailer of choice (particularly for small energy customers),

	consent to a network conversion is sought.	once a customer is part of an embedded network they are likely to purchase energy from the owner/body corporate. The energy price offered is therefore a key piece of information tenants/residents need when considering whether to consent to a network conversion.
	Wiring non-consenting tenants out of embedded networks adds risk and cost to the process and should not be required.	The guideline does not require wiring out; however, applicants must demonstrate they have explored the option and sought advice about its feasibility from their distributor. Any reasons why wiring out is not offered should be detailed in the application. This point has been clarified in Appendix B.
	As converting a network relates to infrastructure changes, Flow considers that only property owners, not tenants, should be consulted. Also, it proposes that the threshold of 85 per cent consent should be removed and that network conversions should be governed by strata laws alone.	The conversion of a network into an embedded network has a significant impact on energy end users, such as tenants/residents. As mentioned, tenants/residents in an embedded network may be limited in their ability to contract with a retailer of choice, in particular, because they may need to obtain an energy only contract. Consent and consultation with tenants/residents is therefore particularly important. Converting a network enables site owners and bodies corporate to sell energy. In so doing, sellers are captured by the National Energy Retail Law and must obtain a retailer authorisation or exemption. In addition, to convert an embedded network, an owner/body corporate must comply with the AER NSP Registration Exemption Guideline (network guideline) and obtain consent from all customers.[13] Removal of network conversions from these regulatory frameworks is beyond the scope of this review. The 85 per cent threshold applies to network exemptions and does not preclude applicants with less consent from applying for an individual retail exemption (although in most cases a network exemption will still be required).
EA	It is unclear what consent is for: whether the applicant must prove tenants / residents have consented to join the	Applicants must demonstrate they have sought consent to inclusion in the embedded network from tenants/residents. This consent is separate to any

[13] Network Service Provider Registration Exemption Guideline, Sections 4.1.12.1(e) and 4.9.

		embedded network, or that tenants / residents have agreed that the embedded network may proceed.	consent to purchase energy from the owner/body corporate.
	SCCA	Sellers who convert a network should not be required to take financial responsibility for double network charges, or if they are, should be given the power to ensure retailers who collect network charges from exempt customers pass these on to exempt sellers.	While we acknowledge there is no regulatory requirement for retailers to pass on network charges to exempt sellers, introducing such a requirement is beyond the AER's jurisdiction. The AEMC has recently completed a review of regulatory arrangements for embedded networks, and has made recommendations to COAG to address this particular matter.[14] As the possibility of double network charging arises due to the network conversion, we consider it reasonable for the applicant to take responsibility for this.
		The requirement that customers must be 'fully informed' is subjective.	Applicants must demonstrate they have clearly, fully and adequately disclosed all matters relevant to the customer's consent to a network conversion. This obligation mirrors that on retailers to obtain explicit informed consent from new customers. Matters for disclosure include information about associated benefits and possible detriments.
	SCCA, EA	SCCA is concerned that some tenants are difficult to engage and 100 per cent consent is not achievable in all instances. It argues it should be able to provide details of actions taken where consent is not obtained. EA says it is unclear whether the AER requires 100 per cent consent from every tenant/resident affected by the network conversion, and that application	An application to sell energy through a converted network must demonstrate it has given every tenant/resident the **opportunity** to provide consent. We recognise that not all tenants/residents may consent to a proposed network conversion. Requirements for applicants who have gained less than 100 per cent consent are specified in section 7.2.1 and Appendix B. Specifically, applicants with less than 100 per cent consent should outline whether non-consenting tenants/residents raised particular concerns and what these were. The application should also detail what actions the applicant took or offered to take to address tenant/resident concerns and

[14] See the AEMC final report, recommendation 4, section 7.6.3, p. 81: http://www.aemc.gov.au/getattachment/1ea5e816-c74b-4840-b615-740ba61bc195/Final-Report.aspx

		instructions should clearly specify what applications must address to receive approval if they have less than 100 per cent consent.	lessen the potential detriments of the network conversion. Further clarification of these requirements has been added to Appendix B.
		SCCA is concerned that the AER may refuse an application if it does not meet the requirements for evidence stated in Appendix B, or demonstrate why the exemption should be granted. It suggests that the exemption should be granted if it satisfies criteria specified in the Retail Law, notwithstanding the fact that it may not meet requirements for evidence specified in the Guideline.	In regulating exempt selling, the Retail Law provides a principles based approach to assessing individual exemption applications, and specifies 'factors' not 'criteria' for the AER to apply. They include customer related factors and exempt seller related factors. The latter provides that the AER may take into account any seller related matters it considers relevant (Retail Law section 115). We consider it essential that applications include evidence to support applicants' claims and to verify the information provided in the application. Without evidence we are unable to establish whether an application should be granted. Accordingly, we have specified evidence requirements in Appendix B. Applications that do not provide the information specified in Appendix B may be refused.
	PIAC	Explicit informed consent should be obtained from customers entering an existing embedded network.	We acknowledge that customers in existing embedded networks face the same practical limitations in accessing the competitive market as those within a retrofitted embedded network. However, we draw a distinction between when a person chooses to move into a building with an existing embedded network, and having an embedded network introduced into a building where a customer is already living/running a business. In the former, the customer is aware that their access to the competitive market may be limited when they move into the building, in the latter, the customer has chosen to live/run a business in a building where they manage their own energy supply, and thus consent to any change is important. We note that condition 2 Of the Guideline requires all exempt sellers to provide new customers with a copy of the exemption conditions and information about energy selling arrangements in the embedded network, including:

			• that exempt customers do not receive the same protections as retail customers • details of tariffs, fees and charges, and customer rights to access a retailer of choice • details of dispute resolution options. We consider this information clearly informs customers that energy selling arrangements in an embedded network are different.
Class variations:			
1	CCIA, VCPA, CPAQ	Do not support the introduction of an obligation to supply energy for exempt sellers.	Given energy is an essential service and that customers in embedded networks may find it difficult or even impossible to enter into a supply contract with another retailer, we consider exempt sellers should ensure exempt customers have access to energy supply, even when a customer owes money on their energy account. This requirement provides exempt customers with a similar level of protection to retail customers who are entitled to receive supply from a designated retailer.
	SACOSS, EWOSA, EWON	Support obligation to supply even where customers owe money on their account.	
	SACOSS	Condition 1.1.b and 1.1.c should be divided by 'and' not 'or'.	Agree. We consider it reasonable that an exempt seller be obliged to supply an exempt customer except where the seller follows disconnection requirements in the Guideline (condition 1.1.b) ***and*** where an exempt customer has been disconnected for a matter other than failure to pay a bill, and the matter leading to the disconnection has not been rectified (condition 1.1.c) This amendment has been added to the Guideline.
2	CPAQ, VCPA	Supports drafting change.	

3	EWOSA, EWON, CPAQ, CCIA	Support change to 3.5.l. CPAQ and CCIA only support change for residential customers but not holiday makers (see below).	
	CCIA, CPAQ	Bills for holidaymakers in short stay accommodation should not specify tariffs, charges and amount of energy used.	The additional wording in condition 3.3.m (previously 3.5.l), which states that bills should list tariffs, charges and the amount of energy used, clarifies what is meant by 'the basis on which tariffs, fees and charges are calculated'. This condition has always applied to energy bills for both short stay and residential customers and we do not intend to remove this protection for short stay customers. We note that most short stay customers pay for energy in the accommodation cost or as a fixed charge fee, and would not therefore receive an energy bill. We also note that not all short stay customers are holidaymakers. Some may spend significant time at a park and consider it their principal place of residence. For this reason we consider it reasonable for short stay customers' energy bills to specify tariffs, fees and charges.
	EWON	Bills should specify the name of the exempt entity, not just the billing company.	Agree. We acknowledge that where agents are employed to bill customers they often include their own branding and contact information on bills and do not include contact information for the exemption holder. Exempt customers may need to contact exemption holders from time to time, and can experience difficulty obtaining contact information. To ensure exempt customers have this information to hand, we consider it reasonable that it be included on bills. A new condition 3.3.a has been created to specify this requirement.
7	CCIA	Supports drafting amendment.	
9	EWON	Sellers should be required to send at least two notices to move-in or carry-over customers before they can disconnect	A customer who moves into an embedded network becomes an exempt customer and receives the protections of the exemption conditions. These include conditions 9 and 10 that specify when an exempt seller may and

		them, which corresponds to retailer obligations specified in rule 115 of the Retail Rules.	may not disconnect, and require the seller to issue reminder and disconnection warning notices before disconnecting the customer. Hence, requirements for move-in and carry-over customers to receive reminder and disconnection warning notices are already in place and we do not consider additional changes are required.
		Condition 9 regarding disconnection should specify minimum requirements for reminder and disconnection warning notices, including a reference to the energy ombudsman.	Agree. We consider customers receiving a reminder or disconnection warning notice should be given all relevant information, including information about reconnection. New conditions 9.3 and 9.4 have been added specifying minimum requirements for reminder and disconnection warning notices, and reflect Retail Rules 109 and 110.
	ACAT	A new section 9.1.e should be inserted stating where an exempt customer informs a seller they are unable to pay due to financial difficulty, the seller 'consider a reasonable payment plan'.	Agree. If a residential customer advises they are unable to pay a bill, the seller should be required to offer a payment plan enabling the customer to pay the bill in instalments. A new section 9.1.a has been added specifying this.
	CCIA	Condition 9 specifying requirements for disconnection should not apply where there are jurisdictional arrangements covering disconnection.	Agree. We are aware of arrangements in some jurisdictions where exempt sellers, such as park owners/bodies corporate, may apply to a tribunal for an order to disconnect a customer. Where a seller obtains such an order to disconnect, condition 9 does not apply. Condition 9.6 (formerly 9.4) has also been amended to state this.
11	SACOSS, EWOSA	Supports requirement to reconnect after 10 days	
	CCIA, VCPA, CPAQ	The requirement to agree to enter into a payment plan does not guarantee tenants will meet the requirements of the plan. CCIA considers customers' ability to continue to receive energy and pay off debt via a payment plan will result in the	Because of the practical limitations on exempt customers accessing supply from a retailer of choice, if an exempt seller does not reconnect a customer after disconnection for outstanding debt that customer may be left without supply. As energy is an essential service we consider this unsatisfactory, and that exempt sellers should be required to reconnect customers after

	accumulation of debt. VCPA says sellers should be able to request the debt be paid in full before energy is reconnected. CCIA suggests amending the wording to require 'compliance' with a payment plan.	disconnection for non-payment. To lessen the impact of this amendment on a seller's ability to recover energy debts, we have amended the reconnection condition (condition 11) in the Guideline to: 1. limit when customers can request reconnection to 10 days after the disconnection, unless the matter that led to the disconnection is remedied earlier 2. make the obligation to reconnect or re-energise supply conditional on customers agreeing to enter into a payment plan. The terminology of a customer "agreeing" to a payment plan comes from the Retail Rules. After agreeing to a payment plan, if a customer does not adhere to its terms the seller would be able to disconnect them again subject to conditions 9 and 10. We consider the requirement that a disconnected customer wait 10 days before being able to request reconnection, which can then take an additional 2 days to complete, is a considerable disincentive to disconnection and an incentive to adhere to an agreed payment plan. We also consider that establishing payment plans that are affordable for exempt customers will assist them to meet the terms of the plan. To assist with this we recommend that sellers apply the AER Sustainable Payment Plans Framework when establishing payment plans (see discussion in condition 12 below).
AEC	The requirement to enter a payment plan to pay outstanding debt to enable reconnection after disconnection should not apply to business customers. This is because other options, such as an incentive to pay off debt upfront in one lump sum, may be preferable.	Condition 11 enables exempt customers to continue to receive energy and pay off debt via a payment plan if they wish to be reconnected. We consider this a minimum protection that should apply to both residential and business customers. The condition does not prevent sellers from offering other payment incentives to assist customers to pay off debt. We note the requirement to wait 10 business days before requesting reconnection will provide an incentive to avoid disconnection and pay

			energy debt.
	ACAT	A footnote to condition 11 should be added advising that ACAT may be able to order a seller to restore the power sooner than 10 business days for customers in the ACT.	In our view, if there are jurisdictional arrangements for reconnection within 10 days, sellers should not be precluded from complying with these requirements. A footnote to this effect has been added.
12	EWOSA	Supports creation of a payment plan condition	
	CCIA, CPAQ,	Having regard to a customer's capacity to pay requires the seller to have sufficient information when establishing a payment plan.	We recommend payment plans be established in accordance with the AER's Sustainable Payment Plans Framework. The framework encourages energy sellers to be responsive to a customer's situation and to work with the customer to establish a payment amount and frequency that is manageable for the customer and allows them to pay off energy debt. A footnote specifying this recommendation has been added to condition 11.
	SACOSS, EWON,	Payment plans should balance affordability and enable customers to pay off arrears. SACOSS says customers should not be pressured into payment plans they cannot afford. It suggests the need to educate sellers on determining capacity to pay.	The AER's Sustainable Payment Plans Framework assists sellers to establish affordable payment plans that take into account a customer's capacity to pay whilst allowing customers to pay off energy debt and continue to receive energy. See response above.
18	SACOSS, EWOSA, EWON	Support this condition.	
	EA, WE	It is impractical to require exempt sellers to provide four days notice of planned outages when they are initiated by the distributor. This is because distributors provide exempt sellers with four days notice, and exempt sellers may not be	Agree. While exempt sellers will have advance knowledge of planned outages they initiate, they may only receive four days notice of distribution and transmission system outages and may not be able to pass on this information immediately. We consider two days notice notification of planned outages is reasonable. This has been reflected in condition 18.

		able to pass this information to their customers immediately. EA suggests two days notice is a reasonable time frame for advising exempt customers of outages initiated by the distributor.	
	CPAQ	In what form should notification of interruptions be provided?	The form in which notification of interruptions be provided has not been specified to enable sellers to elect the most effective means of communicating with their customers.
19	SACOSS, EWOSA, EWON	Support this condition.	
	CPAQ	In what form should notification of interruptions be provided?	See response above.
	EWON	Conditions 18 and 19 should be adopted in the network guideline to apply to exempt embedded network owners/operators/controllers.	This matter has been addressed in the AER Reasons for Decision to the Electricity Network Service Provider (NSP) Registration Exemption Guideline version 6 (network guideline).
Class variations	EWOSA	Supports changes to D10 and R8 classes.	
Other amendments suggested in submissions	Private individual	Energy sold as fixed charge should be captured by the requirements of the Retail Law.	This matter is outside the scope of the current review.
		The sale of LPG should be captured by	The AER exempt selling framework is made under the Retail Law. Gas is

		the Retail Law.	defined in the Retail Law as “natural gas within the meaning of the National Gas Law” (NGL).[15] LPG does not meet the definition of “natural gas” set out in the NGL and so the AER has no jurisdiction over its sale.
	Private individual, SACOSS	The private individual suggested deemed exempt sellers should be required to register so the AER can notify them of their obligations. SACOSS suggested deemed exemption classes should be removed as the AER has little oversight over sellers’ activities.	These matters are outside the scope of the current review.
	SACOSS	The AER should be resourced to monitor compliance with guideline requirements.	The AER will be working with ombudsman schemes and other stakeholders to make exempt sellers aware of their obligations under the revised guideline. We have also identified protection of vulnerable customers as a compliance priority in 2017-18, and will undertake compliance and enforcement activity in accordance with the AER Statement of Approach - Compliance and enforcement.
	CCIA	Whose responsibility is it to advise the AER of change of ownership?	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).
		The R4 class only applies to long term residents of a caravan park and may exclude sub-lessees who rent a caravan from an owner/tenant but do not have an agreement with the park owner and are therefore not considered a customer of the park.	The R4 class applies to energy sales to park residents of caravan parks, residential parks and manufactured home estates who ‘principally reside there’. We consider the definition is broad enough to include sub-lessees residing at the park and does not require amendment.

[15] Section 2, Schedule – National Energy Retail Law

	EWOSA	All sellers with individual exemptions should be required to seek membership of an ombudsman scheme.	Individual exemptions are required for selling arrangements that do not correspond with defined exemption classes or for sellers who cannot meet exemption class conditions. While we support the proposal in principle, it is important that we retain flexibility in determining which conditions are appropriate to a particular selling situation and best protect customers. While we envisage requiring ombudsman membership in most situations, it may not always be appropriate, such as for individual exemptions granted for the sale of energy to large customers.
	EWOQ, ENA	Supports all proposed changes additional to those relating to dispute resolution, without amendments.	

List of abbreviations

Abbreviation	Full name	Abbreviation	Full name
ACAT	ACT Civil and Administrative Tribunal	**EWOQ**	Energy and Water Ombudsman of Queensland
AEC	Australian Energy Council	**EWOSA**	Energy and Water Ombudsman of South Australia
AGL	AGL Energy	**EWOV**	Energy and Water Ombudsman of Victoria
CCIA	Caravan, Camping and Tourism Industry and Manufactured Housing Industry Association of NSW	**Flow**	Flow Systems
CEC	Clean Energy Council	**PIAC**	Public Interest Advocacy Centre
CLC	Caxton Legal Service	**SACOSS**	South Australian Council of Social Services
CPAQ	Caravan Parks Association of Queensland	**SCCA**	Shopping Centre Council of Australia
EA	Energy Australia	**VCPA**	Victorian Caravan Parks Association
ENA	Energy Networks Association	**WE**	Watts Energy
EWON	Energy and Water Ombudsman of New South Wales		