



Notice of Draft Instrument:

AER (Retail) Exempt Selling Guideline Version 5

November 2017

© Commonwealth of Australia 2017

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication. The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the Director, Corporate Communications, Australian Competition and Consumer Commission, GPO Box 3131, Canberra ACT 2601 or publishing.unit@acc.gov.au.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: 1300 585 165
Fax: (03) 9290 1457

Email: AERInquiry@aer.gov.au

Amendment Record

Version	Date	Pages
1.0	November 2017	27

Contents

1	About this document	3
2	Purpose of this Notice	5
3.	Dispute resolution	7
4.	Other amendments	12
	Appendix A: Summary of submissions and AER response	17

1 About this document

1.1 Introduction

This Notice of Draft Instrument (Notice)¹ accompanies the Australian Energy Regulator's Draft (AER) Retail Exempt Selling Guideline (Guideline).

The National Energy Retail Law (Retail Law) provides a framework for businesses that sell energy as either an authorised retailer or 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 an exempt selling guideline (Guideline). This 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, exempt seller and customer related factors² and how these have influenced our decisions on exemption classes and conditions.

We are now consulting on a draft version 5 of the Guideline. In this draft Guideline we propose changes to reflect our position on access to dispute resolution services for exempt customers, which takes into account submissions to our June 2017 issues paper and stakeholder engagement over the first half of 2017.³ Specifically, we propose requiring those exempt sellers with residential customers to be members of, or subject to, energy ombudsman schemes where the scheme enables them to be.

We also propose a number of amendments to strengthen protections for exempt customer and to better align the exempt framework with the retail framework, and some small housekeeping amendments to help clarify aspects of the Guideline and exemption conditions.

This Notice provides details of the context in which the draft Guideline has been prepared, the issues involved, and the effects of the proposed changes.⁴ The draft Guideline and Notice have been prepared in accordance with the retail consultation procedure in rule 173 of the National Energy Retail Rules (Retail Rules).

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

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

² National Energy Retail Law, ss115 and 116.

³ 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>

⁴ 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.

The current Guideline (version 4) and information on its development is available on the AER website: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2016>.

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 inconsistencies. A number of new exemption classes were created (R6, R7 and 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 4 is the current version of the Guideline.

We are currently consulting on draft version 5 of the Guideline.

2 Purpose of this Notice

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

We propose a number of important Guideline amendments to facilitate access to energy ombudsman schemes for residential customers of exempt sellers in all jurisdictions and provide clear exempt seller obligations regarding complaints and disputes handling processes. We explain the proposed changes and their rationale in **section 3**.

Other amendments we propose will clarify aspects of the Guideline and conditions and 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.

We invite stakeholder comment on our proposed amendments and, in particular, the drafting of any amended or additional exemption conditions. We welcome submissions from exempt sellers, customers and other interested parties on these and any other matters stakeholders wish to comment on.

2.1 How to make submissions

Interested parties are invited to make written submissions on the draft Guideline by **19 December 2017**.

Submissions should be sent electronically to: AERExemptions@aer.gov.au with the subject line '*Draft AER (Retail) Exempt Selling Guideline*'. We ask that all submissions sent in an electronic format are in Microsoft Word or other text readable document form.

Alternatively, submissions can be sent to:

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

2.2 Publishing of submissions

To ensure an informed and transparent consultative process we prefer that submissions be publicly available. Unless marked confidential, we will publish all responses on our website, www.aer.gov.au. If you wish to submit confidential information you should:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

For further information about our use and disclosure of information provided to us, see the ACCC/AER Information Policy (June 2014), which is available on our website.⁵

If you have any questions about this Notice and the draft Guideline, or about lodging a submission, please send an email to: AERExemptions@aer.gov.au with the subject line '*Draft AER (Retail) Exempt Selling Guideline*'.

⁵ ACCC and AER information policy: collection and disclosure of information, June 2014, <https://www.aer.gov.au/publications/corporate-documents/accc-and-aer-information-policy-collection-and-disclosure-of-information>

3. Dispute resolution

We propose amending the Guideline to give effect to two key changes to improve exempt customers' dispute resolution options. 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 able to be accommodated by the relevant ombudsman scheme, and
- (ii) explicitly place obligations on exempt sellers to have in place appropriate complaints and dispute handling processes.

Currently, small customers of exempt energy sellers are generally unable to access energy ombudsman dispute resolution services. The ombudsman schemes, with the exception of NSW, have not been able hear complaints from exempt customers.⁶ This is because they preclude membership by exempt sellers or explicitly preclude the consideration of complaints by customers of exempt entities. The significant growth of embedded networks, alternative selling models and other forms of exempt sales is leading to an increased number of customers without recourse to free and independent dispute resolution services.

We detailed the key issues concerning access to dispute resolution services in an issues paper, published June 2017.⁷ This paper set out our work to date with the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWON) and initial thinking on expanding exempt customer access to ombudsman schemes. We detail the outcomes of that consultation in **section 3.1**.

We have considered our proposed changes to the dispute resolution requirements in the Guideline in a holistic manner. Accordingly, in addition to external dispute resolution (EDR) requirements we have considered whether current Guideline requirements concerning internal dispute resolution (IDR) and information provision are adequate.

3.1 Issues paper consultation

Our June 2017 issues paper sought stakeholder views on the extent to which exempt sellers should be required to participate in energy ombudsman schemes. Guided by a preliminary information gathering exercise in the first half of 2017, we specifically 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 in dealing with energy disputes.

We received 24 submissions, which raised a number of issues.⁸ Key themes from the submissions are summarised below and are detailed along with our response at **Appendix A**.

⁶ For the purposes of this consultation document, we refer to the energy ombudsman schemes in Retail Law jurisdictions at 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>

⁸ Stakeholder submissions can be accessed on the AER website: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/access-to-dispute-resolution-services-for-exempt-customers-june-2017>

Stakeholders were largely supportive of expanding ombudsman schemes' jurisdictions, with the exception of some industry peak bodies representing exempt sellers. While the majority were supportive, many stakeholders noted that providing this consumer protection is not without cost, and the costs and benefits to exempt customers should be evaluated.

Ombudsman schemes were supportive of an expansion of their jurisdictions to hear complaints from exempt customers. They considered access to free, effective, independent and expert dispute resolution should be available to all energy consumers, irrespective of their supply arrangements.

Submissions from retailers and a distributor were supportive of exempt customers receiving the same consumer protections to those of authorised retailers, including access to ombudsman schemes. They were primarily concerned about cross-subsidisation and ensuring that all scheme members equitably bear the costs of funding the schemes. One retailer, while supportive of better dispute resolution, proposed the external dispute resolution (EDR) body does not have to be an ombudsman scheme.

The majority of consumer groups supported exempt customer access to ombudsman schemes. Submissions identified that many customers within embedded networks are vulnerable and in need of this consumer protection. Some balanced this by acknowledging the cost of expanding scheme access and that it is likely this would be passed onto consumers. One consumer group (SACOSS) submitted that ombudsman access is not a 'silver bullet' and should be combined with effective monitoring and compliance and information provision to exempt entities/customers to be more effective.

Submissions from peak bodies representing the caravan park industries in NSW and Queensland opposed exempt customer access to ombudsman schemes. The Caravan and Camping Industry Association NSW submitted their industry already has effective EDR and additional obligations would be unnecessary, costly and burdensome. Caravan Parks Association of Queensland said the administrative tribunal is more effective and noted many exempt sellers in Queensland cannot make a profit from selling electricity because of body corporate and housing legislation.

The Shopping Centre Council of Australia was supportive of providing consumer protections, and did not oppose expanding ombudsman schemes' jurisdictions in principle. However, they stressed there is no evidence of a compelling problem in their industry, and existing EDR is effective. They suggest we take a risk-based approach and note that residential and non-residential customers may have different consumer protection needs.

An exempt customer outlined how difficult it was for her to navigate through various internal and external dispute resolution processes when she had a problem. She supported expanding ombudsman schemes' jurisdictions.

Residential tenancy authorities in NSW and Queensland were both supportive and agreed ombudsman schemes are best placed to resolve energy disputes.

3.2 Final policy position

On balance, we consider it is appropriate to expand ombudsman access to residential exempt customers. Broadly, the reasons for this are two-fold:

- (i) we agree with the principle that exempt customers should, to the extent possible, have the same consumer protections as customers of authorised retailers, and consider access to free and independent dispute resolution services is a particularly important protection for exempt customers given their limited access to other supply options, and
- (ii) the characteristics of residential exempt customers in particular are such that we consider they are in greatest need to access ombudsman schemes, particularly in light of the higher levels of vulnerability found amongst some exempt classes (such as retirement villages and caravan parks).

All of the submissions in favour of expanding ombudsman schemes' jurisdictions supported the principle that exempt customers should not have lower levels of consumer protections as customers of authorised retailers. We agree a customer's living arrangements (in, for example, an apartment complex, caravan park or retirement village) should not determine whether they are able to access an energy ombudsman.

Submissions noted it is very difficult to quantify the extent of the problem. We agree it is likely that current complaint/dispute numbers do not capture the extent of actual complaints, owing to patchy data capture and exempt customers not seeing the utility in pursuing a complaint beyond internal dispute resolution processes. We consider the difficulty in quantifying the problem is not a sufficient argument for not expanding ombudsman schemes' jurisdictions to residential exempt customers when there is significant support and strong principle grounds for doing so.

While we acknowledge that external dispute resolution mechanisms already exist in some industries and jurisdictions, we agree that ombudsman schemes are best placed to provide expert energy dispute resolution services, given their extensive experience working with customers, retailers and distributors. Industry-specific dispute resolution services also may not provide the universal coverage offered by ombudsman schemes, as exempt sellers often have to be members of the peak body to access these services.

We acknowledge the issue of cost to exempt sellers in providing this consumer protection. We note that membership and fee structures for any new category of scheme participants are for each ombudsman scheme to decide. The ombudsman schemes have submitted they are actively considering this issue and are committed to ensuring membership and fee structures of any exempt entity participants are not overly burdensome on smaller operators, and, as far as possible, remove any cross-subsidies from other members.

We did not receive evidence from the issues paper submissions or our preliminary information gather exercise suggesting a need at this stage to extend this protection to small business exempt customers.

3.3 Current position under Version 4 of the Guideline

Version 4 of the Guideline recognises that in most jurisdictions, energy ombudsman schemes are unable to hear complaints from exempt customers. Accordingly, the dispute resolution requirements do not require exempt sellers to be members of or subject to ombudsman schemes. Rather, they require exempt sellers to inform exempt customers if they can access a scheme, both at the commencement of the customer's tenancy/residency/agreement with the exempt seller (see condition 2) and in the event of a

dispute (see condition 15). This recognises that while exempt customers are unable to access most ombudsman schemes there are some jurisdictional differences in scheme access – for example in NSW the ombudsman is able to hear complaints from exempt customers.⁹

Regarding internal complaints and dispute handling processes, exempt sellers must inform customers of their complaints and dispute handling processes (see condition 2), but there is no condition explicitly requiring exempt sellers to develop such processes. This contrasts with section 7.2.1 of the Guideline regarding assessing an individual exemption application involving retrofits. In this situation, the applicant is required to provide evidence of a dispute resolution process that meets the relevant Australian Standard for complaints handling in organisations.

In relation to independent dispute resolution (IDR) requirements, version 4 of the Guideline also requires an exempt seller to make reasonable endeavours to resolve a dispute concerning the sale of energy, if there is not a determination from a tenancy tribunal (see condition 15).

3.4 Proposed amendments to the Guideline

We propose amending three core exemption conditions 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 far as possible, drafting of these changes is consistent with language in used in the Retail Law. **Table 1** describes the proposed changes.

Table 1: Proposed amendments to dispute resolution conditions

Condition	Description of change	Exemption class
Condition 2 – Information provision	Minor drafting amendment to: <ul style="list-style-type: none"> refer to ‘complaints and disputes’ to be consistent with drafting of other conditions 	No change
Condition 16 – Dispute resolution (Condition 15 in version 4 of the Guideline)	Addition of new requirements to: <ul style="list-style-type: none"> put a clear obligation on an exempt seller to have a complaints handling procedure that is consistent with the relevant Australian Standard. This proposed change seeks to align IDR requirements with section 7.2.1 of the current Guideline (individual exemptions involving retrofits). oblige the exempt seller, if subject to an ombudsman scheme, to inform the exempt customer of the ombudsman’s contact details in the event of a dispute. 	No change

⁹ While the Energy and Water Ombudsman (EWON) is able to hear disputes from exempt customers, exempt sellers are not bound by its decisions as they are not members of the scheme.

Condition 17 – Member of energy ombudsman scheme

New condition to require an exempt seller to be a member of, or subject to, a relevant energy ombudsman scheme, and to comply with the requirements of that scheme.

D2, D6,
R2, R3, R4

We note ombudsman schemes may need to amend their charters, constitutions or constituting legislation in order allow exempt sellers to be participants in their schemes. The drafting therefore requires participation where the exempt seller is able to be accommodated by that scheme.

We also propose minor amendments to section 7.2.1 of the Guideline to remove references to exempt customers not having access to an energy ombudsman.

4. Other amendments

We propose a small number of amendments to the Guideline that will serve 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. These amendments are of a minor nature and do not have any policy impact.

4.1. Consent to proposed retrofit

The Guideline has been amended to clarify that a customer's agreement to a proposed network conversion is not the same as their agreement to join the network—a customer can agree to the proposed retrofit and still choose to be supplied by another retailer (**section 4.4; and Part 3, Appendix B**). For the purposes of approving an application for individual exemption, the AER is concerned only that consumers have been consulted on, and agree, to the proposed retrofit.

4.2. Who should hold the exemption?

To remove any doubt about who should (or may) hold an exemption we have revised **section 5** of the Guideline to make it clear it is the person who holds the contract with the retailer to buy energy at the gate meter and then on-sells it to the customers at the site. Under the current version of the Guideline the seller definition also states it is the person or business who will bear the financial risk of their customers' non-payment. In practice, third party agents may also assume this risk and are therefore, under the current definition, eligible to hold an exemption. As this is not our intention, we propose removing this particular definition.

4.3. Changes to registrable exemptions

Section 6.2 of the Guideline advises exemption holders to contact the AER if their details change. This section now outlines a process for doing so.

4.4. Assessing an application involving retrofits and Information requirements for planned retrofit conversions

When applying for an individual exemption involving retrofits, applicants must address the specific circumstances of the proposed retrofit and propose measures to mitigate the detriments particular to that conversion. We have sought to provide applicants with more guidance on the information they should include in their exemption applications. The additional information requirements in **Appendix B** draw on the discussion of mitigating customer detriment in **section 7.2.1** of the Guideline. We have also amended this section to provide applicants with more details on how they could mitigate customer detriment and the type of evidence they should include in their applications for individual exemption.

Applications for individual exemptions involving retrofits must address four criteria:

1) *Retail contestability and competitive offers*

Exempt sellers must provide evidence that they will ensure customers have access to competitive pricing and quality. This may mean price matching for customers in line with what would be available to them 'on grid', or providing residents or tenants of the

proposed embedded network with the option of being wired out. It may also involve ensuring customers who remain with an authorised retailer are not double-billed for network charges (this generally means that the exempt seller is required to reimburse the customer for any double-billed charges).

2) *Customer dispute resolution services*

Exempt sellers must outline their proposed dispute resolution process to ensure this complies with the minimum Australian Standards: AS/NZS 10002:2014 Customer Satisfaction – Guidelines. In addition, exempt sellers must confirm that they will inform customers of their options in escalating a complaint to the relevant ombudsman scheme, tribunal or court.

As outlined in **section 3**, we propose a new requirement on eligible exempt sellers to be a member of, or subject to, the relevant energy ombudsman scheme in their jurisdiction.

3) *State or territory legislation*

We will take into account barriers to retail competition in particular states or territories when considering exemption applications involving retrofits. Applicants must demonstrate their awareness of any state or territory legislation that would prevent customers from accessing competitive retail offers in their exemption applications. Specifically, we look for evidence that applicants have advised residents or tenants of the potential customer impacts if they join the network, and detail how they have addressed any detriment.

4) *Efforts to obtain explicit informed consent*

We have more clearly defined what explicit informed consent means, including clarifying what information applicants for retrofit conversions must provide residents or tenants to enable them to make a decision. Applicants must confirm to the AER, at the point of application, that the applicant has provided sufficient information to consumers about the implications of retrofitting, in particular about being 'locked in' to an embedded network.

For internal consistency in the Guideline, we have also included a reference to Appendix B in section 7.2.1.

Some of the information requirements in Appendix B for exemption applications are not necessary to the AER's considerations (e.g. energy rebate/concession availability, energy efficiency options, whether premises are separately metered, frequency of meter reads, application of tenancy or other jurisdictional legislation on customers). We therefore propose deleting them.

4.5. Grounds for refusal

Section 7.4 of the Guideline gives examples of grounds for which the AER might refuse an application for individual exemption. We have added additional examples, namely applicants not demonstrating why they should be granted an exemption or not providing evidence that must be included in the application. Note, these examples are for illustrative purposes—they are not exhaustive.

4.6. Glossary

The Glossary has been amended to include a definition of ‘embedded network’. This definition is taken from the body of the Guideline.

4.7. Class variations

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

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

Under version 4 of the Guideline, eligibility for the D10 class is limited to government agencies, statutory authorities, government owned corporations and universities. We propose 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.

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

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. Given the developments in battery storage technology we anticipate more such applications in future.

4.8. Core condition variations

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

Under the current Guideline exempt sellers may disconnect customers in certain circumstances, including non-payment of energy. Exempt sellers must reconnect customers if certain conditions are met. One of the conditions is that customers must rectify the matters leading to the disconnection, such as the payment of arrears. Whilst exempt sellers have an obligation to supply, it does not apply if a customer owes money on their energy account. Given the limitations in choice of supplier, exempt customers may therefore be without supply until they pay their arrears.

The Retail Law requires that regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers (s.114). For an exempt customer, the exempt seller holds an equivalent position to the designated retailer for a retail customer. We consider that exempt sellers should also be obliged to offer supply, including if the customer owes monies on their energy account. We therefore propose deleting this qualification from the obligation to supply condition (condition 1).

To lessen the impact of this amendment on the seller’s ability to recover energy debts, we propose amending the reconnection condition (condition 11) to:

- limit when customers can request reconnection to 10 days after the disconnection, unless the matter that led to the disconnection is remedied earlier (currently there is no time restriction)
- make the obligation to reconnect or re-energise supply conditional on customers agreeing to enter into a payment plan (currently there is no such qualification).

While the Guideline currently addresses payment plans, it is in the context of exempt sellers having to offer 'flexible energy payment options' to customers who have identified themselves in financial difficulty. We propose making payment plans a stand-alone condition (new condition 12) and augmenting that condition to specify information about the payment plan that sellers must provide customers. The amendments will make the condition consistent with the requirements for establishing payment plans for customers in hardship specified in the Retail Rules.

We consider these amendments will increase customers' protections and align exempt sellers' obligations more closely with obligations on the financially responsible market participant (FRMP) under the Retail Law.

Condition 11 will apply to deemed classes D1, D2, D6, D9 and D10; and registrable classes R1, R2, R3, R4, R5, R6 and R7.

Condition 3 - Billing and payment arrangements

We have added a requirement in condition 3 for exempt sellers to present supply charges as a daily amount, rather than a single charge for the billing period. This is to ensure clarity of pricing information for exempt customers and is in line with the AER Retail Pricing Information Guideline.¹⁰

Condition 7 – Pricing

This condition has been amended to include information currently contained in the footnote to the condition about what charges may or may not be made. It is not new.

Condition 18 – Planned interruptions to supply

We have added a new condition on notifications of planned interruptions to supply. This condition reflects obligations on suppliers under the Retail Rules. It was inadvertently omitted from the current Guideline.

Condition 18 will apply to deemed classes D1, D2, D6 and D10, and registrable classes R1, R2, R3, R4, R6 and R7.

¹⁰ AER Retail Pricing Information Guidelines – August 2015, <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-pricing-information-guidelines-2015>

Condition 19 – Unplanned interruptions to supply

We have added a new condition on information requirements for unplanned interruptions to supply. This condition reflects obligations on suppliers under the Retail Rules. It was inadvertently omitted from the current Guideline.

Condition 19 will apply to deemed classes D1, D2, D6 and D10, and registrable classes R1, R2, R3, R4, R6 and R7.

Appendix A: Summary of submissions and AER response

Submissions to AER issues paper: access to dispute resolution for exempt customers – June 2017

Stakeholder	Stakeholder response	AER response
Question 1: Do you agree with our approach to external dispute resolution? What are the barriers to pursuing this approach and how might these be overcome?		
Caravan & Camping Industry Association NSW (CCIAN) Caravanning Queensland Care FCS Energy and Water Ombudsman NSW (EWON) Energy and Water Ombudsman SA (EWOSA) Energy and Water Ombudsman Queensland (EWOQ) Energy and Water Ombudsman Victoria (EWOV) Meter2Cash [Name withheld] PIAC QCOSS SACOSS Shopping Centre Council of	<p>The majority of stakeholders agreed in-principle with our approach to external dispute resolution. Many respondents agreed with the principle that exempt customers should, to the extent possible, have the same protections as customers of authorised retailers.</p> <p>Stakeholders also raised that low cost/free access to ombudsman services must be balanced with the cost to the exempt seller. Caravanning Queensland stressed this point in relation to Queensland, where residential parks cannot profit from the sale of energy. CCIAN also submitted that the regulation of exempt sellers should be proportionate and not overly burdensome.</p> <p>Barriers to this approach include:</p> <ul style="list-style-type: none"> the diversity of exempt sellers means that some may have limited capacity to pay the fees associated with being a member of an ombudsman scheme (EWOQ) exempt sellers are not familiar with the requirements of membership of ombudsman schemes and sellers' complaints handling capacity may be limited (EWOV) operational impacts on ombudsman schemes (EWOV). <p>Ombudsman schemes did note that these barriers are not</p>	<p>As per our policy position in detailed in section 3.2, we agree with the principle that exempt customers should not be denied the same consumer protections as customers of authorised retailers, and consider access to free and independent dispute resolution services is an important protection for exempt customers given their limited access to other supply options.</p> <p>We have considered where need for this protection is greatest, and have decided to expand ombudsman access to residential exempt customers at this stage.</p> <p>We acknowledge that providing this consumer protection is not costless, and particularly note the situation in Queensland where jurisdictional legislation prevents caravan parks from charging the tenant more than the amount charged by the relevant supply authority and residential park operators from making a profit on the sale of energy. We note that the ombudsman schemes are actively considering the issue of cost to exempt sellers.</p>

Australia (SCCA)	insurmountable.
Tenants' Union NSW	

Question 2: Noting the different approaches to dispute resolution in the Retail and Network Guidelines, what considerations should we be aware of if we align the two Guidelines?

Ausgrid	Overall, stakeholders supported aligning the Retail and Network Guidelines. Stakeholders considered that alignment would result in better consumer outcomes through reduced confusion for exempt entities regarding their obligations.	We intend to align as far as possible the dispute resolution conditions of the Retail and Network Guidelines to reduce complexity for exempt sellers and improve customer protections by clarifying seller obligations.
COTA Australia		
EWON	EWOQ and EWOSA also raised that ombudsman schemes should be the primary EDR mechanism for exempt customers.	
EWOQ		
EWOSA		
Meter2Cash		
Tenants' Union NSW		

Question 3: Are there any issues specific to small scale operators to which we should have regard?

Ausgrid	Stakeholders noted the difficulty for small scale operators, which often have limited resources, knowledge, capacity and ability to understand complex regulatory frameworks. SACOSS noted that small scale operators often experience these limitations while also having customers who are very vulnerable.	We recognise that small scale sellers may experience difficulties complying with ombudsman dispute resolution requirements. With this in mind, the ombudsman schemes are currently reviewing membership structures and associated costs to establish appropriate arrangements for exempt sellers.
CCIAN		
EWOQ	Many stakeholders (Ausgrid, EWOSA, Tenants' Union NSW) noted that the cost of providing ombudsman scheme access should not have a large impact on small scale operators while CCIAN strongly opposed any amendments that would increase regulatory burden and costs.	
EWOSA		
Meter2Cash		
[Name withheld]		
QCOSS		
SACOSS		
Tenants' Union NSW		

Question 4: Are there any other considerations we should balance when forming a position on this issue?

CCIAN	Other issues raised include:	We note the other considerations raised by stakeholders and have considered these in our final policy position where they have directly impacted on the issue of exempt customer access to ombudsman schemes.
COTA Australia	<ul style="list-style-type: none"> the AER should consider that existing dispute resolution mechanisms are effective in NSW holiday parks and residential land lease communities and any additional requirements would merely impose an additional cost burden on businesses (CCIAN) 	
EWOQ		We have submitted the need for more appropriate compliance and enforcement options to the Australian Energy Market Commission’s review of regulatory arrangements for embedded networks. ¹¹
EWOSA		
Manufactured Home Owners Association (Qld) Inc (MHOA)	<ul style="list-style-type: none"> COTA Australia has observed a low level of compliance with information provision conditions by exempt entities. The AER should consider adopting arrangements that will result in increased compliance with this condition. 	Regarding forum shopping, we understand this is a low risk issue as ombudsman decisions bind both parties where the customer accepts the decision. Where the customer chooses not to accept the ombudsman’s decision, the provider is released from any obligation imposed by the decision and the customer may take other actions, including legal proceedings against the provider.
Meter2Cash		
PIAC		
SCCA		
Tenants’ Union NSW	<ul style="list-style-type: none"> SCCA notes that expanding ombudsman schemes’ jurisdictions could lead to forum shopping and confusion over established dispute resolution mechanisms. 	

Question 5: How many energy disputes do exempt entities encounter per year?

CCIAN	Stakeholders noted that in their experience and from available data, the number of energy disputes encountered per year is very low (CCIAN, Caravanning Queensland, MHOA). SCCA noted that energy related disputes in their industry were generally not disputes but rather questions and clarifications.	We note the information provided by stakeholders regarding numbers of energy disputes experienced.
Caravanning Queensland		
COTA Australia		We agree it is likely current complaint/dispute numbers do not capture the extent of actual complaints, owing to patchy data capture and exempt customers not seeing the utility in pursuing a complaint beyond internal dispute resolution processes.
EWON		
EWOQ		As outlined in our policy position in section 3.2 , on balance we consider the difficulty in quantifying the problem is not a
EWOSA	Others submitted that while complaint and dispute numbers captured are low, this may be due to exempt customers not challenging exempt seller practices, or	

¹¹ See AER submission to AEMC review of regulatory arrangements for embedded networks consultation paper, <http://aemc.gov.au/getattachment/a70483e9-1a6e-4929-be1d-444143d3a160/Australian-Energy-Regulator.aspx>

EWOV	because customers are unaware of their rights, who to complain to, or have fears for their ongoing tenure if they complain (COTA Australia, Residential Tenancies Authority Queensland, [Name withheld]).	sufficient argument for not expanding ombudsman schemes' jurisdictions to residential exempt customers when there is significant support and strong principles for doing so.
Manufactured Home Owners Association (Qld) Inc (MHOA)		
Meter2Cash	Several stakeholders (EWOQ, EWOSA, EWOV, QCOSS, SACOSS) noted the difficulty in quantifying the energy disputes encountered due to lack of data.	
[Name withheld]		
PIAC		
QCOSS		
SACOSS		
SCCA		
Tenants' Union NSW		

Question 6: What measures can assist in quantifying the scale of energy disputes concerning exempt customers? What weight should we place on being able to quantify the scale of the issue?

CCIAN	Stakeholders again noted the difficulty in quantifying energy disputes concerning exempt customers, with some suggesting that jurisdictional departments may be able to provide an indication of numbers (Caravanning Queensland) or a survey seeking data could be provided to exempt customers (QCOSS).	See AER response to question 5
Caravanning Queensland		
COTA Australia		
EWON		
EWOQ	EWOSA, SACOSS and QCOSS suggested that formal complaints monitoring be put in place, which could be via AER reporting requirements.	
EWOSA		
Manufactured Home Owners Association (Qld) Inc (MHOA)	Some stakeholders agreed that quantifying energy disputes is less important a factor than the principle that exempt customers should have access to ombudsman schemes (EWON, EWOQ, Tenants' Union NSW).	
Meter2Cash		
PIAC		
QCOSS	COTA Australia submitted we should consider the seriousness and impact of the disputes encountered, not	
SACOSS		

Tenants' Union NSW	<p>just the numbers of complaints.</p> <p>CCIAN submitted that it is important to quantify scale of disputes to ensure that regulation is imposed when it offers net benefits to consumers.</p>
--------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Question 7: Do you agree with our characterisation of energy disputes experienced by exempt customers? Is bundling of complaints with other issues common?

AGL	Broadly, stakeholders agreed with our characterisation of energy disputes.	We note the information provided by stakeholders on the nature of energy disputes experienced by exempt customers.
CCIAN		
Caravanning Queensland	Billing (double billing, billing arrangements including late payment fees and payments for maintenance and repairs, transparency of bills) was the most common issue experienced by exempt customers (CCIAN, Caravanning Queensland, COTA Australia, EWON, EWOQ, EWOV, QCOSS, Residential Tenancies Authority Queensland, SACOSS, SCCA, Tenants' Union NSW).	
Care FCS		
COTA Australia		
EWON		
EWOQ		
EWOVA	SACOSS and PIAC noted the bundling of services means that issues with one service can significantly impact the provision of other services.	
EWOV		
Manufactured Home Owners Association (Qld) Inc	Respondents provided additional sources of energy complaints/disputes:	
Meter2Cash	<ul style="list-style-type: none"> inability to switch retailers as an exempt customers (EWOV) 	
[Name withheld]	<ul style="list-style-type: none"> customers are unable to find out what amps are supplied to their sites and therefore what their usage is (CCIAN, Tenants' Union NSW) 	
PIAC		
QCOSS		
Residential Tenancies Authority Queensland	<ul style="list-style-type: none"> information on invoice or receipts (CCIAN) electrical standards (CCIAN) 	
SACOSS	<ul style="list-style-type: none"> inability for customers to access concessions, despite being on Centrelink payments (Care FCS, EWOQ, 	

SCCA QCOSS)

Tenants' Union NSW

Question 8: Is it possible to isolate and resolve energy-specific disputes where there are a number of issues raised by exempt customers?

EWON	The ombudsman schemes submitted that it is possible to isolate energy disputes and they have extensive experience in doing this (EWON, EWOQ, EWOSA, EWOV). Tenants' Union NSW was of a similar view regarding complaints in their sector.	We recognise the significant role of ombudsman schemes in providing industry 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.
EWOQ		
EWOSA		
EWOV		
SCCA	SCCA submitted that in their industry it can be difficult to isolate energy from other issues. They noted that if there is an approach to isolate disputes, there is a strong need to avoid forum shopping.	See AER response to question 4 regarding forum shopping.
Tenants' Union NSW		

Question 9: What other external dispute resolution mechanisms exist to resolve energy disputes? Do they effectively deal with energy disputes?

Ausgrid	Stakeholders raised other EDR mechanisms consistent with the issues paper. These included:	We note the information provided by stakeholders on the nature of energy disputes experienced by exempt customers.
CCIAN		
EWON	<ul style="list-style-type: none">• jurisdictional civil and administrative tribunals• tenancy tribunals• advocacy groups• consumer affairs regulators• jurisdictional departments• other ombudsman schemes• mediation and dispute resolution services provided by industry groups or peak bodies.	While we acknowledge that dispute resolution mechanisms already exist in some industries and jurisdictions, 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.
EWOQ		
EWOSA		
EWOV		
Manufactured Home Owners Association (Qld) Inc (MHOA)		
Meter2Cash		
QCOSS		
Residential Tenancies Authority Queensland	CCIAN, Caravanning Queensland and MHOA submitted that existing EDR is effective and low cost.	We also understand that industry-specific dispute resolution services may not provide the universal coverage offered by ombudsman schemes, as exempt sellers often have to be members of the peak body to access these services.
	Others noted that the civil and administrative tribunals in	

SACOSS Tenants' Union NSW	particular are time consuming and complex to navigate (Ausgrid, EWON, EWOQ, Residential Tenancies Authority Queensland ,Tenants' Union NSW). QCOSS submitted that some EDR mechanisms, for example residential tenancy authorities, may not have specialised energy knowledge.
------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Question 10: How many energy disputes encountered by exempt entities are escalated beyond internal dispute resolution processes?

EWOQ EWOSA Meter2Cash SACOSS Tenants' Union NSW	Stakeholders submitted that from the data available, very low numbers of disputes progress beyond IDR. SACOSS submitted that while number of energy disputes taken to EDR is low, they believe this is more a reflection of the complex and risky nature of taking disputes to EDR bodies.	We note the information provided by stakeholders regarding numbers of energy disputes escalated beyond IDR processes. See also AER response to question 5 .
-------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Question 11: Do exempt customers have a clear understanding of the external avenues to resolve energy disputes? What are exempt customers' experiences of using these avenues?

CCIAN COTA Australia EWON EWOQ EWOSA EWOV Manufactured Home Owners Association (Qld) Inc Meter2Cash [Name withheld] QCOSS	Many stakeholders submitted that EDR avenues are not well understood by exempt customers. EWOSA, QCOSS and an exempt customer believe this is because of the lack of information provided to exempt customers about the EDR options available. Some stakeholders noted the costs involved with accessing these EDR avenues, such as civil and administrative tribunals, can be prohibitive and lead to customers abandoning their dispute (COTA Australia, EWON, EWOQ, SACOSS). MHOA also submitted that the tribunal process can be daunting and therefore off-putting. Tenants' Union NSW noted customers have a spectrum of awareness of EDR avenues and their purposes.	See AER response to question 9 . We recognise that our final position to expand ombudsman schemes jurisdictions to residential exempt customers must also come with 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 regarding the information to be provided to both consumers and industry regarding this change.
------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SACOSS Tenants' Union NSW	In contrast to the majority of respondents, CCIAN submitted that in their industry, exempt customers are well aware of EDR mechanisms.
------------------------------	----------------------------------------------------------------------------------------------------------------------------------------

Question 12: Do stakeholders have comments on these additional considerations?

AGL Alinta Energy Ausgrid EWON EWOQ Manufactured Home Owners Association (Qld) inc Meter2Cash QCOSS Red Energy Lumo Energy Tenants Union NSW SCCA	<p>Two stakeholders commented that a transitional approach to the EDR condition should be taken – it should be imposed first in relation to residential customers and then small business customers.</p> <p>Two stakeholders commented that a two-tiered approach to dispute resolution should be taken, with EDR required only after IDR has failed.</p> <p>One stakeholder commented that a targeted information campaign in relation to regulatory obligations is needed. Another stakeholder suggested that greater education of sellers and customers, in relation to rights and obligations, might better protect vulnerable customer than the imposition of additional EDR obligations. A further stakeholder stated that outreach work can reduce the number of customer complaints.</p> <p>One stakeholder suggested that if a new EDR obligation is imposed, there should be a minimum threshold for applicability. However, another stakeholder was concerned that a threshold might leave the most vulnerable customers excluded from EDR.</p> <p>A number of stakeholders raised the issue of forum shopping and the need for prevention, for example, an ombudsman should not accept a referral that has already been decided by another dispute resolution body, and customers need to be bound by EDR decisions as well as sellers. However, one stakeholder stated that forum</p>	<p>The EDR condition will be imposed initially only on residential customers. We may revisit at a later date whether the condition should be applied to small business customers.</p> <p>The proposed condition envisages that EDR will only be required after an attempt at IDR has been made.</p> <p>We agree that greater education of both exempt customers and sellers in relation to regulatory obligations is desirable. For the new dispute resolution requirements, we will work with the ombudsman schemes the information to be provided to both consumer and industry regarding this change.</p> <p>The proposed condition will apply to the majority of residential exempt customers. We consider that most vulnerable customers will receive the protections of the new condition.</p> <p>We agree that potential forum shopping should not prevent access to EDR. See also AER response to question 4 regarding forum shopping.</p> <p>The proposed new condition will still allow exempt sellers flexibility in how to resolve disputes.</p> <p>Matters relating to ombudsman funding and Board composition are outside the authority of the AER.</p> <p>We may consider EDR obligations for exempt embedded network operators when the Network Guideline is next reviewed, and intend to align dispute resolution obligations in the Retail and Network Guidelines as far as possible.</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

shopping is not an excuse not to expand access to EDR.

Other points raised include:

- exempt entities should be allowed flexibility in how they resolve disputes as long as certain standards are met
- certain exempt customers (eg larger business customers) should be able to waive their right to EDR
- ombudsman funding and Board composition will need to be revised if membership changes – one stakeholder stated this need not be a barrier to expanding jurisdiction
- suggestion of a user pays model with lower membership fees and higher case management fees
- exempt networks should be bound by ombudsman schemes and EDR should be extended to network issues
- case workers may be needed to guide some people through the EDR process
- it is unfair that debt should be allowed to accrue whilst an account is in dispute – such debts lead to increased costs for other customers

The requirement that an exempt customer cannot be disconnected where a complaint directly related to the proposed reason for disconnection has been made is also an obligation that exists on authorised retailers under the Retail Law. We do not consider that exempt customers should receive lesser protections or that exempt sellers should be entitled to greater protection from debt than authorised retailers.

Question 13: What other issues should be considered?

AGL

Alinta Energy

CCIAN

Caravanning Queensland

COTA

ECA

A number of other issues were raised:

- EDR should be limited to non-price disputes, such as billing, disconnection or credit collection, not issues where customers have other external avenues of assistance
- ombudsmen should clarify how bundled service disputes will be addressed
- creation of a national energy specific ombudsman

We do not have authority over the establishment of ombudsman schemes or how they are organised.

The retail exemption framework has been in place for over five years. We consider a review of dispute resolution arrangements is appropriate.

Exempt sellers are already required under the current Guideline to provide exempt customers with information about

Energy Australia	should be considered and the AER should consult on the ongoing need for energy specific ombudsman schemes	their dispute resolution rights. We investigate all allegations that an exempt seller has not met their information provision obligations.
ERM Power		
EWON	<ul style="list-style-type: none"> the regulatory framework is new – should wait longer before reviewing dispute resolution arrangements 	Energy agents are captured by the aiding and abetting provisions of the Retail Law. The AEMC is currently conducting a review of the regulatory arrangements for embedded networks, which considers this issue. ¹²
EWOQ		
EWOSA	<ul style="list-style-type: none"> older customers are a significant proportion of embedded network customers. Allegations were made of serious misconduct by embedded network managers toward elderly customers 	
EWOV		We cannot provide advice that the provisions of the Guideline will always take priority over other legislative provisions – this will depend on the particular laws at issue.
Manufactured Home Owners Association (Qld) inc	<ul style="list-style-type: none"> because the AER cannot control whether or not a seller can be a member of an ombudsman scheme, the dispute resolution condition should require that the exempt seller participate in an approved EDR scheme and be bound by its decisions 	
Meter2Cash		
[Name withheld]		
QCOSS	<ul style="list-style-type: none"> monitoring of whether exempt sellers are providing customers with information about dispute resolution procedures may be required. The information provided may also need to be improved 	
Residential Tenancies Authority Queensland	<ul style="list-style-type: none"> a new condition should be included requiring the exempt seller to inform customers in writing at the time the customer enters into the energy sale agreement, of their right to access the ombudsman. This is already included in condition 2(1)(c). Another submission suggested the Guideline was unclear as to whether there was such a requirement where exempt sellers are not allowed to sell for profit, they may not have the financial ability to contribute to an ombudsman scheme the exemptions framework also needs to capture energy agents the guideline should clarify that the retail guideline maximum pricing requirements take precedence over 	

¹² See the AEMC project page: Review of regulatory arrangements for embedded networks, <http://aemc.gov.au/Markets-Reviews-Advice/Review-of-regulatory-arrangements-for-embedded-net>

other legislation

- amending certain tenancy legislation might provide an opportunity to clarify rights and responsibilities of exempt customers and sellers
- need to be aware of potential conflicts between AER guidelines and jurisdictional tenancy legislation
- no operating/reporting burdens should be placed on owners or bodies corporate
- current regulatory arrangements under the NERL are no longer fit for purpose. The energy service should be regulated, rather than the service provider
- solar disputes should also come under the Ombudsman jurisdiction
- exempt customers are very varied – the needs of residential and vulnerable customers are not the needs of all exempt customers.