



Updating the Network and Retail Exemption Guidelines

Consultation Paper

May 2021

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Request for submissions

Interested parties are invited to make written submissions to the Australian Energy Regulator (**AER**) regarding this paper by the close of business, **30 June 2021**.

Submissions should be sent electronically to: AERexemptions@aer.gov.au

Alternatively, submissions can be mailed to:

General Manager, Compliance and Enforcement
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

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Shortened forms

Shortened Form	Extended Form
ACCC	Australian Competition and Consumer Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
DER	Distributed Energy Resource
DNSP	Distribution Network Service Provider
ESB	Energy Security Board
EWON	Energy and Water Ombudsman Scheme NSW
MSATS	Market Settlement and Transfer Solutions
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
network exemption guideline	<i>AER Electricity Network Service Provider – Registration Exemption Guideline</i>
NMI	National Metering Identifier
NSP	Network Service Provider
retail exemption guideline	<i>AER (Retail) Exempt Selling Guideline</i>
SGA	Small Generation Aggregator
SGU	Small Generating Unit

1 Introduction

The network and retail exemption frameworks apply to small private (embedded) network operators and incidental sellers of energy. Most, but not all, are energy onsellers operating in embedded networks. (Other sellers are, for example, businesses selling electricity through power purchase agreements.) The exemption frameworks are administered under the National Electricity Law (NEL) and National Energy Retail Law (NERL), respectively.

The NERL requires us to develop and maintain an exempt selling guideline¹. We may amend the guideline in accordance with the retail consultation procedure set out in Rule 173 of the National Energy Retail Rules (NERR).

The National Electricity Rules (NER) require us to develop and issue guidelines for network exemptions in accordance with the Rules consultation procedures and in consultation with Registered Participants and relevant jurisdictional regulators.²

The *AER Electricity Network Service Provider – Registration Exemption Guideline* (the network exemption guideline) and the *AER (Retail) Exempt Selling Guideline* (the retail exemption guideline) set out the processes for registering and applying for exemptions, and outline the various exemption classes, their eligibility criteria and exemption conditions. They also detail our policy considerations when making decisions on exemption applications and on exemption classes and conditions. The guidelines were last revised in 2018.

The exemption frameworks, and the obligations that derive from these frameworks, are based on the obligations that apply to distribution network businesses and authorised retailers, but are a lighter, less prescriptive form of regulation. Not all retailer and network business obligations translate to an embedded network environment and, as a result, there are a number of regulatory gaps and fewer consumer protections.

In this paper, we discuss a range of issues that we intend to address and seek stakeholders' views on network and retail exemption guideline improvements. The network exemption guideline, in particular, is technical and difficult to follow and could benefit from simplifying and fine tuning. This is the first step in a broader review of the guidelines, which we discuss in more detail in Chapter 2.

¹ NERL, section 118

² NER, section 2.5.1(e)

1.1 The AER's remit

The retail and network exemptions frameworks aim to give exempt customers protections comparable to those of customers who are supplied directly by an energy retailer ('on-market' customers).

The NERL includes policy principles that the AER must take into account when exercising its exemption functions and powers in relation to energy sellers.³ For example, regulatory arrangements for exempt sellers should not unnecessarily diverge from retailers' obligations, and exempt customers should, as far as practicable, have the same right to choose a retailer as a market customer. The NERL also provides guidance on the exempt seller⁴ and customer-related⁵ factors the AER may wish to consider in granting or declining an exemption, including whether the sale of energy is a core or incidental part of a business, the costs and benefits of obtaining a retailer authorisation, and the characteristics of the exempt customers.

The NEL and NER do not specify the use and form of exemptions, merely that the AER can exempt a person or class of persons in accordance with the AER's guidelines, and that the AER must consult with the relevant jurisdictional regulator in granting exemptions.

The purpose of the guidelines is to assist people or businesses that sell or supply energy and consider they are eligible for, or require, a retail or network exemption. The guidelines set out the requirements to comply with the energy laws as an exempt seller or network operator.

Exemption classes

The guidelines provide for three categories of retail and network exemptions:

- *Deemed* – usually for small-scale supply arrangements where the costs associated with exemption registration would outweigh the benefits of increased regulation. For example, the selling or supplying of energy to short-term accommodation in a caravan park. Deemed exemptions do not need to be registered with the AER.
- *Registered* – usually for energy supply activities that we consider need greater transparency and regulatory oversight. For example, the sale and supply of energy to permanent residents of a caravan park. Registered exemptions are not automatic and require registration through an online form on our website. We do not approve registrable exemptions, except where they relate to sites undergoing an embedded network conversion (brownfield conversion).
- *Individual exemptions* – required in circumstances where an applicant is unable to conform to all of the conditions applicable to any relevant class of registered

³ NERL, section 114

⁴ NERL, section 115

⁵ NERL, section 116

exemption, or where there is no applicable class. The AER reviews and approves individual exemption applications on a case-by-case basis.

The guidelines determine who, and what types of energy sale or supply activities, can be exempt, and any conditions that apply to the exemptions. They do not address issues relating to the broader regulatory framework, the energy market structure, or matters controlled or regulated by other market or government bodies.

2 Review of the exemption guidelines - proposed approach

2.1 Consultation paper

The paper aims to engage stakeholders on key issues ahead of any guideline amendments. Stakeholder feedback and views gathered from submissions will be collated and used to inform a draft network exemption guideline and draft retail exemption guideline, which will be published in mid-2021.

In particular we are seeking to revise the guidelines to:

- Improve the clarity and readability of exemption requirements.
- Streamline the network exemption guideline and remove redundancies.
- Clarify concepts such as the issue of the ownership, control, and operation of embedded networks in the network exemption guideline.
- Introduce standardised statements in both guidelines where information requirements need to be met, e.g. for exemption applications that require applicants to obtain explicit informed consent to network conversion proposals.
- Improve consistency between the two guidelines.

2.2 Consultation

The consultation requirements for the network and retail exemptions guidelines are slightly different.

The consultation process for the retail exemption guideline is prescribed under the NERR retail consultation procedure (r 173). It requires us to:

- Publish a draft instrument together with a notice that states why the instrument is required, provide context around some of the issues involved and the possible effects of the instrument, and invite submissions.
- Provide at least 20 business days for submissions.
- Consider submissions.
- Prepare a written notice stating the reasons for making the instrument in its final form.

The consultation process for the network exemption guideline review is prescribed under the NER Rules Consultation Procedures (r 8.9). It requires us to:

- Publish and invite submissions on an initiating notice that gives particulars of the matter under consultation.
- Consider submissions, and hold meetings regarding submissions if desired.

- Publish a draft guideline including the reasons for our conclusions, the procedure we followed in considering the matter, summaries of the material issues and an invitation to make further submissions.
- Consider those submissions and publish a final guideline and reasons for our final decision.

We intend to run the processes together so that we can ensure consistency between the guidelines and reduce the burden on stakeholders having to make separate submissions.

2.2.1 In scope

The issues presented in this paper are ones that stakeholders have raised with us or that we have identified through queries or complaints. They are more than simple drafting amendments, with many requiring a shift in policy and discussion before doing so. We have made suggestions in some instances and, where we do not have a particular view, have sought stakeholders' suggestions.

We have identified these issues as the most pressing, but welcome feedback on other issues or matters of clarification that we have not covered in this paper or any other aspects of the guidelines, including the format, language, definitions and exemption holder obligations.

2.2.2 Out of scope

We are conscious that there is a broad range of issues relating to embedded networks and that many are beyond the scope of our guidelines. In its review of embedded networks the Australian Energy Market Commission (AEMC) argued the need for a comprehensive reform of the legislation governing embedded networks, of which the AER's exemption guidelines were a part.^{6,7}

The AER's retail and network exemptions frameworks cannot address all of the issues facing embedded network customers, but the review can help improve outcomes for this group of customers. Our focus in this review is to ensure that the guidelines are as effective and relevant as they can be and is restricted to improving the guidelines themselves.

Although changes to the broader energy laws may be beneficial, they are outside of the scope of this review, as are changes to the functions and responsibilities of other energy agencies and energy market bodies. However, feedback provided through stakeholder submissions might influence future proposals for legislative changes to energy laws.

⁶ Australian Energy Market Commission, *Updating the Regulatory Frameworks for Embedded Networks, Final Report*, 20 June 2019.

⁷ National energy Ministers have yet to formally respond to the AEMC's recommendations.

2.3 What do we want to know from stakeholders?

We seek stakeholder views on a number of issues. To assist stakeholders, we have included questions throughout this paper, which are summarised in the table below.

Table 1. Summary of consultation questions

Questions	
Question 1	Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?
Question 2	Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?
Question 3	Should we clarify the meaning of controlling and operating an embedded network?
Question 4	Do stakeholders consider there is a need to regulate small generator aggregators under the network exemption guidelines?
Question 5	Do stakeholders interpret small generator aggregators as being captured under the NER?
Question 6	What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?
Question 7	Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?
Question 8	Do stakeholders agree that the appointment of Embedded Network Managers be deferred if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?
Question 9	Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?
Question 10	Should the information embedded network owners/operators provide prospective customers be standardised?
Question 11	Should the network exemption guideline's term 'express written consent' be replaced with 'explicit informed consent', and be provided in writing?
Question 12	Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail guidelines?

Questions

- Question 13 Do stakeholders support proposed clarifications to the retail and network exemption guidelines' retrofit requirements? If not, what are reasons for not supporting the changes?
- Question 14 Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions guidelines?
- Question 15 Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?
- Question 16 Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?
- Question 17 What key protections should be included in a hardship policy template for exempt sellers?
- Question 18 What additional obligations should the core exemption conditions include?
- Question 19 Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?
- Question 20 Do stakeholders support regulation of the sale of energy to chill water?
- Question 21 What are the main issues for this type of energy sale and what sorts of conditions should apply?

3 Network exemption guideline: What does it mean to own, control or operate an embedded network?

3.1 The issue(s)

The NEL requires anyone who owns, controls or operates a distribution system to register with the Australian Energy Market Operator (AEMO) as a Network Service Provider (NSP) or otherwise be subject to an AER network exemption.⁸

This gives rise to a number of issues for distribution networks and private, embedded networks alike in terms of the parties' respective compliance obligations and accountability. In the case of embedded networks it means there may be several different exemption holders for one site, for example the owner, a body corporate and a managing agent. This is in contrast to retail exemptions, which can be held by only one person—the person or business selling the energy (this is generally the person who has a contract with an authorised retailer to buy energy at the site's gate meter).

Furthermore, the NEL does not determine an order or priority for embedded network owners, controllers and operators. Nor does it define what controlling or operating a network actually means. The Macquarie Dictionary defines control as *exercising restraint or direction over; dominating; or commanding*. It defines operate as *to work or run*. Applying these concepts to embedded networks, someone who controls a network influences or determines how it works, while someone who operates it is applying the directions of the controller and making it work.

The multiplicity of exemption holders, and lack of clarity over priority and what it is to control or operate an embedded network, make it difficult for parties to assess their own compliance obligations. The potential breadth of parties within the scope of the provision can also lead to diffused responsibility and a lack of clear accountability.

Each party who owns, controls or operates an embedded network must hold a network exemption and comply with all relevant exemption conditions. Pragmatically, it is not logical for every party to join an ombudsman scheme, for example, or to appoint an Embedded Network Manager.⁹ The network exemption guideline does not specify who should do so.

Using the example of ombudsman membership, one view is that the person who has ultimate responsibility for the network, be it the owner, body corporate or strata plan, should join the ombudsman scheme. Another view is that if an existing member operates the network, then they should be able to represent the owner, body corporate

⁸ National Electricity Law, s11 (2), National Electricity Rules, r 2.5.1.

⁹ National Electricity Rules, r 2.5.1(d1)

or strata plan. This view is particularly prevalent in situations where the bodies corporate or strata plans are small and juggling additional work commitments.

Another problem is confusion over the meaning of controlling or operating an embedded network. Some professional embedded network specialists such as on-sellers with retailer authorisations and billing agents do not consider themselves to be engaged in the activity of owning, controlling or operating an embedded network. The owner of the network, who has engaged a professional embedded network specialist, may be unaware of his or her own compliance obligations and assumes the professional specialist carries all responsibility for regulatory compliance. This may result in networks being operated without the required exemption and in a manner not permitted by the network exemption guideline. For example, we are aware of instances where embedded networks have been retrofitted without the network owner, operator or controller first seeking the explicit informed consent of residents or tenants. This is a prerequisite to obtaining a network exemption under the current network guideline.

Case study 1

A Strata Plan holds a registerable network exemption for a residential embedded network in New South Wales. As part of their exemption conditions, the Strata Plan (as owner of the embedded network) is required to obtain membership from the Energy and Water Ombudsman Scheme New South Wales (EWON). The Strata Plan has engaged an authorised retailer to sell electricity to residents. The retailer also operates the embedded network on behalf of the Strata Plan and is a member of EWON.

The Strata Plan argues that, as a small group of individuals uninvolved with the day-to-day operation of the embedded network, the retailer is best placed to handle customer disputes, particularly as it is a member of EWON. The Strata Plan is also concerned about the administrative burden and fees associated with joining the ombudsman scheme.

Uncertainty over which person should obtain ombudsman membership can deprive customers of an important avenue for resolving their energy disputes, as would have occurred in this case study.

Our view

In our view, a single party should be responsible for overall compliance. This party should have the authority and capacity to resolve customers' complaints. This could be either the embedded network owner or controller.

Proposed changes

We propose amending the network exemption guideline to require there be one registrant. Any other parties would be subject to deemed exemptions.

We also propose amending the network exemption guideline to clarify the types of parties that may control or operate a network.

Question 1: Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?

Question 2: Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?

Question 3: Should we clarify the meaning of controlling and operating an embedded network?

4 Network exemption guideline: Should exempt networks be created to allow for the creation of Small Generation Aggregator schemes?

4.1 The issue(s)

The Small Generation Aggregator (SGA) framework allows one or more small generators (Small Generating Units or SGUs),¹⁰ such as small solar or wind farms or multiple biogas generators run by a shire council, to aggregate their energy to sell into the National Electricity Market (NEM).

The SGA is the financially responsible market participant for each small generator within its aggregation portfolio,¹¹ and each of these generators must have its own connection point to the NEM and National Metering Identifier (NMI).¹² This connection point must be separate to the connection point through which electricity is supplied to a premises or site.

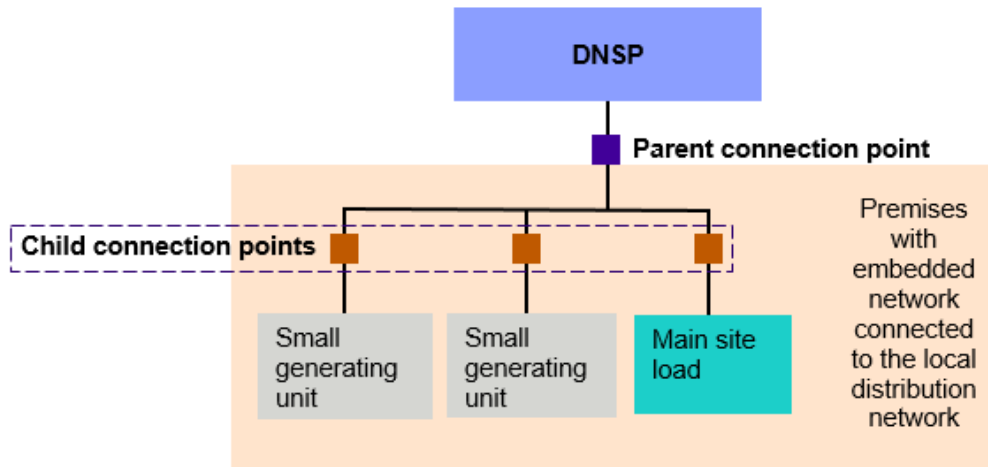
Single premises may have multiple connection points to the local distribution network, although many Distribution Network Service Providers (DNSPs) require the creation of an embedded network, with a parent connection point and child connection points. The parent connection point marks the boundary between the DNSP's network and multiple child connection points for each of the small generator participating in the SGA scheme (as illustrated in Figure 2 below).

¹⁰ Defined as a generating unit having a nameplate capacity of less than 30MW and which is owned, controlled or operated by a person that AEMO has exempted from the requirement to register as a Generator in respect of that generating unit in accordance with clause 2.2.1(c) (NER Chapter 10, 'Small Generating Unit').

¹¹ NER clause 2.3A.1(g).

¹² NER clause 2.3A.1(b).

Figure 2 – Network diagram: embedded network with Small Generating Units in an SGA scheme



The NER permits the establishment of an embedded network with child connection points and allows each small generator to have its own dedicated connection point and NMI, enabling participation in an SGA scheme. However, this type of arrangement was not factored into the design of the network exemptions framework. Neither the NER, nor the network exemption guideline provide for an arrangement whereby an embedded network is both the network operator *and* customer. Under the NER, a network is defined as *the apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity to customers*. The network exemption guideline reflects the NER definition.

4.1.1 Should SGAs be regulated under the network exemptions framework?

In order to participate in an SGA scheme, small generators need their own dedicated connection points with their own dedicated NMIs, which can only be assigned to parties connecting to a network.

The only parties currently able to assign NMIs are:

- AEMO registered NSPs for connections to their transmission or distribution networks; or
- Embedded Network Managers appointed for connections to embedded networks.

By creating an embedded network, small generators obtain a second connection point and can therefore access the NEM relatively easily.

Typically, however, an embedded network is a private network through which an on-seller supplies electricity to its customers. The current network exemption framework reflects this type of on-selling arrangement.

An embedded network created for the purposes of establishing a second connection point to enable a small generator to export electricity to the NEM is not a network and does not have customers. Chapter 10 of the NER defines a network as:

The apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail) excluding any connection assets. In relation to a Network Service Provider, a network owned, operated or controlled by that Network Service Provider.¹³

The Energy Security Board (ESB) is currently considering this issue as part of its Post 2025 Electricity Market Design project.¹⁴ As part of this project, the ESB will consider potential revisions to the SGA framework to support the integration of Distributed Energy Resource (DER) assets into the NEM. For example:

- Enabling different end users for each connection point (a landlord and tenant, or long-term lease arrangement for provision of generation plus storage), or
- Allowing additional traders to provide services from a single site by establishing a connection point within the boundaries of an end user's electrical installation (i.e. behind the existing meter).

The ESB is currently consulting on these proposals and they may form part of the ESB's recommendations to Ministers in mid-2021. Implementation timelines for any agreed reforms would follow, pending Minister approval.

Our view

SGAs that create an embedded network to access the NEM do so solely for this purpose. There are no customers in this type of arrangement and therefore no potential customer detriment requiring regulation. Nor is there any apparent risk to the market that needs to be regulated. Indeed, regulating them may have other implications for the market, for example small generator visibility to the market.

In our view, they do not need to be brought under the network exemptions framework and regulated as an embedded network. We will interpret the NER and apply the network exemption guideline on this basis.

Proposed changes

In our view, a better option than accommodating SGAs in the network exemption guideline would be for regulation of SGUs through separate regulation, possibly as being considered under the Post 2025 Electricity Market Design project. Despite being a longer-term solution than any guideline amendments, it is important that regulation be fit for purpose and appropriate for the activities or arrangements being regulated.

¹³ NER Chapter 10, 'Network'. Emphasis added.

¹⁴ Pages 72-75, <https://esb-post2025-market-design.aemc.gov.au/32572/1609802925-p2025-january-directions-paper.pdf>

We do not have any evidence of consumer or market harm to support amending the network exemption guideline at this time.

Question 4: Do stakeholders consider there is a need to regulate SGAs under the network exemption guidelines?

Question 5: Do stakeholder interpret SGAs as being captured under the NER?

5 Network exemption guideline: Embedded Network Manager requirements

An Embedded Network Manager is a service provider accredited by AEMO to help embedded network customers access retailers of their choice, (this is referred to as going 'on-market'). It is a condition of exemption under the NER that network exemption holders either become an Embedded Network Manager or appoint one in certain situations. For example, all network exemption holders must appoint or become an Embedded Network Manager when a customer within an embedded network enters into a retail market contract or if they are over a certain size. In most cases, the costs of appointing or becoming an Embedded Network Manager cannot be charged to customers directly.

The Embedded Network Manager is responsible, amongst other things, for assigning NMIs to embedded network customers and ensuring the NMI details are accurately entered into Market Settlement and Transfer Solutions (MSATS).

Without an NMI, a customer cannot receive electricity from a market retailer outside of an embedded network. They cannot become on-market customers.

The requirement to appoint an Embedded Network Manager applies only to embedded networks in jurisdictions that allow embedded network customers access to competition. Embedded network operators of certain types of embedded network, for example small networks (under 30 customers), caravan parks and holiday accommodation, may delay the Embedded Network Manager appointment until a customer enters into a contract with a market retailer.

5.1 The issue(s)

5.1.1 Embedded Network Manager appointment – time frame

The network exemption guideline does not specify when an Embedded Network Manager must be appointed. We have received a number of complaints about the time that some embedded network operators are taking to appoint an Embedded Network Manager. As the embedded network operator is often the entity that on-sells electricity to customers, there are strong incentives to frustrate embedded network customers' efforts to switch retailers by delaying the appointment of an Embedded Network Manager.

Our view

The AEMC's original rule change determination on Embedded Network Manager appointment anticipated that the AER would specify a timeframe for appointment:

...where the requirement to appoint an embedded network manager will be triggered by a customer exercising its right to access to a choice of retailer, it is

expected the AER will specify the timeframe for the appointment of an embedded network manager to occur in its conditions to the network exemption.¹⁵

Proposed changes

We propose adding a condition to the network exemption guideline stating that in instances where an Embedded Network Manager must be appointed, the exemption holder must do so within a specified number of business days. While the customer's transfer should not be unduly delayed, there should be enough time for the exemption holder to run a procurement process.

5.1.2 Embedded Network Manager appointments in regional Queensland

Up until a few years ago, Queensland legislation prevented embedded network customers from contracting with alternative retailers. Despite opening up competition for embedded network customers in 2018, access to competition for these customers (and market customers, generally) is effectively non-existent in regional Queensland as prices are regulated and the local area retailer, Ergon Retail, subsidised to compensate for the higher network costs of a large and sparsely populated network distribution zone. We are aware of only one (large) embedded network customer successfully entering into a contract with an alternative retailer in regional Queensland.

Our view

Despite the change to Queensland legislation enabling embedded network customers to access a retailer of choice, market conditions in regional Queensland mean embedded network customers are highly unlikely to contract with an alternative retailer or require the services of an Embedded Network Manager.

Proposed changes

To avoid unnecessary costs we propose amending the network exemption guideline to defer the appointment of Embedded Network Managers in regional Queensland.

Case study 2

In 2019, the AER received a request to refrain from taking enforcement action in relation to a breach of the Embedded Network Manager appointment requirement for a retirement village in far north Queensland. There were 80 residents at this site. The network owner / operator was therefore required to appoint an Embedded Network Manager.

Retail competition in regional Queensland is limited as only the local area retailer, Ergon Retail, receives a government subsidy to offset network costs. As other retailers are not

¹⁵ [AEMC, Rule Determination: National Electricity Amendment \(Embedded Networks\) Rule 2015, 17 December 2015, p.49](#)

eligible for the subsidy they cannot afford to compete with Ergon Retail. Furthermore, Ergon Retail can only charge 'notified prices' as set by the Queensland Competition Authority. It cannot offer 'energy only' contracts (i.e. an electricity bill without network charges), which embedded network customers need to avoid double payment of network charges if they go 'on-market.'

The retirement village submitted that residents would be unlikely to find a viable alternative retailer in the near future. It further argued that the expected costs of compliance (appointment of an Embedded Network Manager) would likely outweigh any benefits to customers due to a deficiency of market competition in regional Queensland.

The AER did not take enforcement action against the retirement village for not appointing an Embedded Network Manager because doing so would have increased residents' electricity costs without a reciprocal benefit.

5.1.3 Embedded Network Manager appointments for unmetered sites

Exempt networks have been required to meter electricity supply since January 2012. Older embedded networks are not required to meter the supply of electricity to their customers and many remain un-metered.

Our view

Embedded Network Managers appointed to embedded networks without meters cannot perform their function of assigning NMIs and updating NMI standing data. Where there are no customer meters, there is no reason to appoint an Embedded Network Manager.

Proposed changes

We consider that where an embedded network has no customer meters, the requirement to appoint an Embedded Network Manager should not apply.

5.1.4 When an Embedded Network Manager is no longer required

When establishing the role of the Embedded Network Manager the AEMC recommended a number of Embedded Network Manager appointment conditions that the AER could potentially add to the network exemption guideline. One such condition relates to the situation where an Embedded Network Manager's services are no longer required, for example, where all of the embedded network customers that are on-market revert to off-market.¹⁶

¹⁶ AEMC, Rule Determination, op cit, p 50.

Our view

We consider there is merit in deferring the appointment of Embedded Network Managers where to do so would incur costs to customers, and no benefit. For example, where all customers are 'off-market', and have taken no steps to sign with a retailer of their choice.

Proposed changes

We propose allowing embedded network operators who hold an exemption from any of the deferred Embedded Network Manager appointment classes (ie for small embedded networks (under 30 customers) and for caravan parks and holiday accommodation) to revert to deferred appointment if they previously appointed an Embedded Network Manager and there are no longer any on-market customers in their network. However, an embedded network operator must re-appoint an Embedded Network Manager in accordance with the guideline if the conditions for such an appointment are satisfied.

5.1.5 Simplifying the Embedded Network Manager appointment trigger

Eligible communities

The network exemption guideline generally does not allow embedded network operators to recover the costs of appointing an Embedded Network Manager from customers. There is one exception, namely where an 'eligible community' has formed to share the costs and benefits of bulk purchasing across all community members. An embedded network operator must apply to the AER to be eligible. To date we have not received any applications.

Counter offers

As previously noted, the network exemption guideline designates exemption classes that may defer appointment of an Embedded Network Manager until an embedded network customer enters a contract with a market retailer and the cooling off period expires. The guideline also contemplates exempt embedded network operators making a counter offer to any customer wishing to leave the network. If no counter offer is made, or if a counter offer is not accepted, an Embedded Network Manager must be appointed once the cooling off period has expired.

Our view

The provisions for 'eligible communities' and counter offers further complicate and potentially draw out an already complicated process.

The lack of applications from embedded network operators would suggest embedded network operators are not interested in forming 'eligible communities'.

Deferring the appointment of an Embedded Network Manager until after a counter offer is *not* made or is rejected seems unnecessary given the requirements for a customer to enter into a market contract and the expiry of the cooling off period still need to be met.

Proposed changes

We recommend deleting these provisions from the network exemption guideline.

Question 6: What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?

Question 7: Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?

Question 8: Do stakeholders agree that the appointment of Embedded Network Managers should be deferred in if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?

Question 9: Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?

6 Network exemption guideline: Allowing unmetered supply for networks established before 2012

6.1 The issue(s)

We consider it to be in a customer's best interests to have their consumption metered to ensure they only pay for the electricity they use and allow them to lower costs by reducing usage. A NEM compliant meter is also necessary to access retail competition.

The network exemption guideline first required supply to be metered in 2012. Any embedded networks created before then are not captured by this requirement—we do not require existing unmetered embedded networks to be upgraded.

We understand there are some older embedded networks that are unmetered, for example where energy is supplied at no cost or by agreement between commercial entities. Street lighting is also unmetered. We note that Queensland does not require energy to be metered in certain circumstances under the Residential Tenancies and Rooming Accommodation Act.¹⁷

Our view

We are concerned not to impose large additional costs on embedded networks that were compliant before 2012 by requiring the installation of meters for every customer within the network. However, customers should not be prevented from having metered supply.

Proposed changes

We propose clarifying that unmetered connections in embedded networks that existed before 2012 may continue to be unmetered unless a customer requests a meter be installed. If a customer requests a meter be installed, the (actual) cost may be passed directly to that customer provided they were informed what this cost is and that they would bear this cost at the time of their request.

¹⁷ Residential Tenancies and Rooming Accommodation Act (Qld) 2008, s.165.

7 Network exemption guideline: Disconnections for energy only customers

7.1 The issue(s)

The NERR places a number of disconnection obligations on DNSPs.¹⁸ These set out the circumstances when disconnections can occur, the requirements prior to disconnection and circumstances when disconnection may not occur.

These obligations are not replicated in the network exemption guideline. As the embedded network owner or operator is usually also the onseller, embedded network customers are generally protected by onseller obligations under the retail exemption guideline. On-market customers, however, cannot rely on these protections. This means a network owner or operator could disconnect someone in their embedded network who is purchasing electricity from a retailer, if they felt the customer was not paying their share of the network tariff.

Our view

In our view, network operator disconnection protections should be the same for on-market customers as for off-market customers.

Proposed changes

We propose amending the network exemption guideline to include the retail exemption guideline's disconnection obligations (conditions 9-11). These obligations derive from the NEERL and NERR.

¹⁸ NERR, Part 6.

8 Retail and network exemptions guidelines: Retrofit requirements - explicit informed consent

8.1 The issue(s)

The cost savings embedded networks customers may receive can come at a price, notably in terms of access to competition and consumer protections. Cost savings are not always realised and sometimes embedded network customers pay more for electricity than comparable market customers.

Given the significant impact network conversions ('retrofits') have on customers' electricity supply arrangements and customer protections, the network and retail exemption guidelines impose requirements on owners or operators intending to retrofit a site to mitigate those detriments. Requirements include:

- Providing residents or tenants with information about what it means to be an embedded network customer and the advantages and disadvantages of embedded networks.
- Obtaining residents' and tenants' explicit informed consent to the proposed retrofit before proceeding.
- A range of pricing requirements.

Generally, a person wanting to retrofit a site must apply to the AER for an individual retail exemption to onsell electricity and to be eligible to register a network exemption. The only exception is where the person has the consent of all of the prospective customers and the site is a commercial site, in which case the person can simply register the exemptions.

8.1.1 Obtaining consent

The network and retail exemption guidelines detail the information that must be given to prospective customers to enable them to provide their explicit informed consent for a proposed retrofit. A copy of this information is submitted to the AER as evidence that the requirements have been met.

Applications that do not provide the specified information may be refused.

Our view

In our experience, the information provided to prospective customers often fails to clearly and adequately disclose the information customers need to make an informed decision about joining an embedded network, for example about accessing a retailer of

choice, and proposed tariffs, and calls into question the validity of the explicit informed consent obtained.

Case study 3

Examples of individual exemption application customer information:

1. Access to retailer of choice

a) *'The introduction of an Embedded Network **will not restrain you** from exercising your right to select your preferred electricity retailer; it will only provide **additional** services and the option to purchase your electricity directly from [network operator].'* (emphasis added)

b) *'Q: Do I have the right to choose my retailer?*

*A: Yes. A connection to the embedded network **will not prevent you** from purchasing electricity from a retailer of your choice, even once the embedded network is installed.'* (emphasis added)

What we say:

While you will still have the ability to seek a retailer of choice, as an embedded network customer, it is possible that you will have *difficulty securing energy supply from a retailer.*¹⁹

2. Explicit informed consent

'We may refuse to supply you in the event that you do not complete and return this application form or provide insufficient information on the form.'

What we say:

Obtaining consent – general principles

Consent is voluntary

The customer is provided with a genuine opportunity to provide or withhold their consent to taking up any energy offer.

When making an offer to a customer, it is free from pressure, undue influence or duress.²⁰

3. Consumer protections

*'With the changes to electrical arrangements at your shopping centre your dispute resolution process **will change slightly.**'* (emphasis added)

What we say:

Becoming part of an embedded network is a considerable change to your current electricity supply arrangement and will have **pros** and **cons**.

If you buy your energy from the owner/manager, you will not have the same rights and protections as you would if you bought energy from a retailer.²¹

Note, small business customers lose access to ombudsman schemes when they join an embedded network as only exemption holders who supply energy to residential customers must join an ombudsman scheme.

¹⁹ AER, *Embedded Network Conversions (retrofits) – Exempt sellers and residential sites*, unpublished.

²⁰ AER, *Compliance check – National Energy Retail Law: Explicit informed consent*, November 2015

²¹ AER, *Embedded Network Conversions (retrofits)*, op cit

Proposed changes

We propose standardising the information embedded network owners or operators must provide prospective customers. The standardised statements will provide essential information to customers about proposed changes to their supply arrangements and how this will affect them. They will explain the benefits of joining an embedded network, as well as the disadvantages. They will provide clear guidance to customers as to their protections and rights, and on-sellers'/embedded network operators' responsibilities under the network and retail exemption guidelines.

8.1.2 Inconsistencies in the terms used in the network and retail guidelines

The network and retail exemption guidelines use different terms to convey the concept of explicit informed consent. The network exemption guideline refers to 'express written consent' whereas the retail exemption guideline refers to 'explicit informed consent'. This term is drawn from the Retail Law and means a person has clearly, fully and adequately disclosed all matters relevant to the consent of the customer, including each specific purpose or use of the consent. Consent must be given in writing or verbally, as long as the verbal consent can be evidenced in a way that can be verified and recorded, or by electronic communication generated by the customer.²²

Our view

To ensure consistency and clarity, we consider the requirements for consent should be the same in the network and retail exemption guidelines. The term 'explicit informed consent' is preferable in our view as it will ensure that all matters relevant to the transaction will be disclosed. Further, we consider that the requirement that consent be provided in writing is critical and propose incorporating this requirement into both guidelines.

Proposed changes

We propose applying the retail exemption guideline term, 'explicit informed consent', to the network exemption guideline. We further propose specifying (in both guidelines) that evidence of consent will need to be written (a signed consent form) rather than verbal.

8.1.3 Evidence of meeting the explicit informed consent requirement

Our expectation is that anyone intending to retrofit an embedded network would seek the explicit informed consent of tenants or residents first and also retain records of

²² NERL, section 39.

consent. Currently, both the network and retail exemption guidelines only require persons needing to apply for an individual retail exemption or to apply to register a network exemption²³ to meet the explicit informed consent gathering and record keeping requirements. A person does not need to apply for either if the customers are commercial and all of the affected customers have given consent to the proposed retrofit.

Our view

We consider consent gathering and record keeping requirements should apply to all situations where consent is required under the guidelines, including where exempt sellers and network operators have obtained 100% consent.

Proposed changes

We propose applying the consent gathering and record keeping requirements to all situations where consent is required under the guidelines. We do not propose to have registrants submit evidence as we do for situations of less than 100% consent, but can ask for it. Registrants would continue to be required to confirm that they have obtained 100% consent in accordance with the guideline requirements when they submit exemption registrations.

8.1.4 Clarifying a number of retrofit requirements

Our views

One of the reasons for reviewing the network and retail exemption guidelines is to clarify exemption holders' compliance obligations. We are aware of ambiguities relating to network operators' and onsellers' retrofit requirements that we want to address, in particular:

- a) The network exemption guideline requires exempt network operators to provide 'an undertaking to observe' certain retrofit-specific exemption conditions. The term 'undertaking' could easily be confused with a formal administrative or enforceable undertaking. There also seems little need to ask for confirmation of an exempt network operator's adherence to specific compliance obligations.
- b) The network exemption guideline provides that a person must achieve the consent of at least 85% of residents or tenants in order to meet the section 4.9 assessment requirements (and therefore be eligible to register a network exemption). Applicants have indicated it is unclear how we calculate consent levels.

²³ Under condition 4.9 of the network exemption guideline a person seeking to convert an electricity network system to an embedded network must apply to the AER for approval to register an exemption, unless they have the consent of every resident or tenant.

- c) Network and retail exemptions are site specific. We take a site to mean an address. In some instances there may be several buildings on a site, particularly in the case of shopping centres. Some, but not all, of these buildings may have embedded networks. The retail exemption guideline is silent on whether the network operator/onseller would need to apply for an individual exemption if they wanted to retrofit other buildings on a site that is already subject to a retail exemption.

Proposed changes

- d) We propose removing the requirement to provide 'an undertaking to observe' exemption conditions from the network exemption guideline.
- e) We propose providing more guidance in the network exemption guideline on the calculation of retrofit consent figures. For example, can tenants with multiple premises at a site provide consent more than once? Do vacant lots or communal areas count in calculating consent numbers? If the owner/embedded network operator has a metered connection for their onsite office, are they included in the calculation of consent numbers?
- f) We propose providing more guidance in the network and retail exemption guidelines on whether additional exemptions are required for any buildings retrofitted on a site already subject to a retail exemption.

Question 10: Should the information embedded network owners / operators provide prospective customers be standardised?

Question 11: Should the network exemption guideline's term 'express written consent' be replaced with 'explicit informed consent', and be provided in writing?

Question 12: Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail guidelines?

Question 13: Do stakeholders support proposed clarifications to the retail and network exemption guidelines' retrofit requirements? If not, what are reasons for not supporting the changes?

Question 14: Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions guidelines?

9 Retail exemption guideline: Mandatory information disclosure by exempt sellers

The retail exemption guideline requires exempt sellers to advise customers, in writing, at the start of their tenancy, residency or supply agreement of any right they have under state or territory laws to purchase energy from a retailer of their choice and to provide information on metering options to support this choice. Exempt sellers must also provide customers with this information at any time they request it.

9.1 The issue(s)

The current obligation stops short of providing the customer with information on the process and requirements they must follow to be able to access retail competition, beyond options for metering. The process to exit an embedded network is complex and technical, and can act as a barrier to customers engaging in the process.

Our view

The provision of clear guidance on how to exit an embedded network could assist customers to better understand the process required to exit an embedded network.

Proposed changes

We propose developing a factsheet that describes the process that an embedded customer must follow to enter into a market retail contract, similar to the factsheet currently available to retailers.²⁴

We propose amending the retail exemption guideline to require exempt sellers to provide a hard copy or a link to the factsheet at the start of their tenancy, residency or supply agreement, when the customer requests this information, and following an enquiry from a customer to leave an embedded network.

Question 15: Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?

²⁴ AER, Making offers to embedded network customers: The process and role of retailers, <https://www.aer.gov.au/system/files/AER%20Factsheet%20-%20Making%20offers%20to%20embedded%20network%20customers%20-%20The%20process%20and%20role%20of%20retailers%20-%20May%202018.pdf>.

10 Retail exemption guideline: hardship assistance

The NERL requires retailers to maintain and implement an AER-approved customer hardship policy to identify and assist residential customers experiencing payment difficulties to better manage their energy bills on an ongoing basis.

Hardship policies must include certain requirements, including:

- Processes to identify residential customers experiencing payment difficulties due to hardship.
- Processes for the early response to customers experiencing payment difficulties due to hardship.
- Flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers.
- Processes to identify appropriate government concession programs and appropriate financial counselling services and to notify hardship customers of those programs and services.
- An outline of a range of programs that the retailer may use to assist hardship customers.
- Processes to review the appropriateness of a hardship customer's retail contract in accordance with the purpose of the customer hardship policy.
- Processes or programs to assist customers with strategies to improve their energy efficiency, where a local instrument requires such processes or program.

10.1 The issue(s)

The NERL states that 'exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under [the] Law and the Rules'. The retail exemption guideline does not require exempt sellers to provide the full suite of hardship protections to embedded network customers. Exemption conditions are currently limited to a requirement to offer customers in financial difficulty the option of flexible payment plans and to assist them access government concessions. It does not require exempt sellers to develop and offer hardship programs.

Our view

Given the greater levels of vulnerability in embedded networks, and reduced access to retail competition, we consider it appropriate to provide hardship supports for customers of exempt sellers to the extent possible. At the same time, we are mindful of the practicalities of requiring exempt sellers, particularly small ones, to provide such support. We nonetheless consider there is scope to do more and are keen to explore the options.

Proposed changes

One option is to broaden the current range of exemption conditions to include some additional hardship obligations. For example, the need to identify appropriate financial counselling services.

Another option is to amend the retail exemptions guideline to require exempt sellers to adopt hardship plans. To reduce the administrative burden of such a requirement on exempt sellers, the AER could develop a template hardship plan for exempt sellers to use.

Question 16: Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?

Question 17: What key protections should be included in a hardship policy template for exempt sellers?

Question 18: What additional obligations should the core exemption conditions include?

11 Retail exemption guideline: ombudsman membership

The network and retail exemption guidelines require exempt entities to have dispute resolution processes for small customers. They also require exemption holders with residential customers to join the energy ombudsman in their state or territory if membership is available.

11.1 The issue(s)

Feedback from our ombudsman stakeholders suggests that despite the existing ombudsman scheme requirement outlined above, many exempt entities are failing to follow through on their membership requirements. Non-compliance with this requirement deprives residential customers of an important customer protection – access to independent dispute resolution.

Case study 4

The AER received a complaint from a residential customer of an embedded network within a jurisdiction where exempt network operators and sellers may join the energy ombudsman scheme. The complaint concerned a lack of billing transparency and meter access.

The embedded network owner registered the relevant class exemptions, which require them to join the relevant ombudsman scheme, but they failed to do so. When the customer contacted the ombudsman they were unable to help. The customer had no other practical means of resolving their dispute with the embedded network operator.

Our view

Ensuring compliance with network and retail exemption conditions require an effective compliance model, which includes proactive and reactive measures. In the case of ombudsman membership we are exploring ways of encouraging potential exemption holders to contact their respective ombudsman *before* they are exempted, for example, by requiring exemption registrants and individual exemption applicants to confirm they have taken steps to obtain ombudsman membership at the time of registration / application.²⁵ This amendment formalises our current practice of asking individual exemption applicants to confirm they have contacted their respective energy ombudsman.

We note that businesses must provide evidence of steps taken to obtain ombudsman scheme membership in the jurisdiction/s in which they intend to retail energy to small customers when applying for retailer authorisation.²⁶

²⁵ Exemption conditions, for example the obligation to join an ombudsman scheme, do not apply until *after* a person has registered, or been granted, an exemption.

²⁶ AER Retailer Authorisation Guideline, version 2, December 2014, p 14.

Proposed changes

We propose requiring individual exemption applicants to provide evidence of the steps they have taken to obtain ombudsman membership in the jurisdiction/s in which they intend to sell energy to residential customers, which they now provide voluntarily.

Question 19: Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?

12 Retail exemption guideline: chilled water

Energy sales cover a range of activities. We have sought to limit the scope of our regulation in the retail exemption guideline by defining energy sales as comprising itemised, separate and discrete charges.²⁷ We note that 'sales' do not necessarily have to be for profit, and can include the passing on of energy costs, but we do not consider energy is being sold where energy costs are only one part of another fixed charge (for example, a hotel tariff or rent that includes energy costs), or where the costs are shared (for example, in a group house or a community facility).

12.1 The issue(s)

We have excluded the sale of gas used to heat water from our remit because under 'bulk hot water' arrangements, customers are generally charged for the water they consume, rather than the gas.

Recently we have become aware that customers are being charged separately for chilled water. We understand that, unlike bulk hot water, customers are being charged for the energy used to chill water for air-conditioning systems. The unit of measure used to calculate the charge is kWhs (bulk hot water is typically charged by the litre).

Since 2017, the AER has received a number of complaints from residential customers living within embedded networks about air conditioning charges, in particular that they are opaque and do not reflect the complainants' actual energy usage.

Case study 5

The AER received a complaint from a residential customer of an embedded network about air conditioning charges.

The customer was concerned that their air conditioning usage seemed significantly higher than in their previous accommodation and over 50 times higher than their average daily consumption for all household electricity usage in their current accommodation. The customer was unable to confirm their air conditioning consumption because it was unclear how the air conditioning charges were calculated.

Our view

In our view, if the product is sold in kWh (rather than litres) and is billed in the same way as electricity usage it represents the sale of energy for the purposes of the NERL and should be regulated accordingly. There remains the question of how best to regulate this form of energy sale.

The NERL enables the AER to consider 'the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow

²⁷ [AER Exempt Seller Guideline](#), p 4.

appropriate obligations to govern the applicant's behaviour rather than requiring the applicant to obtain a retailer authorisation'.²⁸ In other words, a decision to grant a retail exemption should take account of the ability of exemption conditions, together with existing laws, to substitute for an authorisation.

The sale of energy to chill water is very specific and, in terms of a customer's overall energy consumption, relatively small. It would therefore not need the full suite of customer protections and potentially could be limited to cost and billing requirements. Deemed exemption class D5, is similarly intended for relatively small and limited sales of energy, in this case the sale of gas for cooking appliances for example. A small number of conditions apply to this exemption class, namely obligation to supply, billing and dispute resolution.

Proposed changes

We propose regulating the sale of energy to chill water through a deemed exemption.

Question 20: Do stakeholders support regulation of the sale of energy to chill water?

Question 21: What are the main issues for this type of energy sale and what sorts of conditions should apply.

²⁸ NERL, s 115(1)(e)

13 Next steps

We are very interested in the input of stakeholders on the issues above and feedback will inform our decision-making process when drafting amendments to the network and retail exemption guidelines.

We will follow up this consultation paper with proposed amendments to the guidelines and further consultation.

13.1 What is the timing for the review?

The timeline below sets out the estimated timeframes for reviewing both the retail and network exemption guidelines. The review will be comprised of three overarching stages:

- Stage 1** – Publication of consultation paper, outlining our main concerns with the existing guidelines and seeking stakeholder submissions.
- Stage 2** – Publication of draft retail and network guidelines for public consultation.
- Stage 3** – Publication of final retail and network guidelines.

Figure 1. Retail and network exemption guidelines review timeline

