



6 December 2022

Ms Rowena Park
General Manager, Compliance and Enforcement Branch
Australian Energy Regulator
GPO Box 3130
Canberra ACT 2601

Dear Ms Park

AER Draft Network Exemption Guideline review

Thank you for the opportunity to comment on the draft package of the AER's Review of the Draft Network Exemption Guideline 2022-23

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to the points in the draft guideline that further clarify our comments from the Issues Paper and those that align with issues customers raise with EWON, or with our organisation's operations as they relate to this review.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Draft Network Exemption Guidelines (Version 7)

Primary registrant

In our submission to the consultation paper¹, we agreed with the AER's view that a single party should be responsible for overall compliance and that this party should have authority and capacity to resolve customers' complaints. We also outlined our view that the Guidelines should clarify the meaning of controlling or operating an embedded network and that the definitions must relate directly to the delivery of these critical consumer protections.

The AER has proposed a primary registrant model, whereby each party to an exempt network must register for an exemption (and comply with the required conditions), but they may opt to nominate a primary registrant between them to perform certain conditions on behalf of the other parties.

The Guideline will specify which conditions the primary registrant may perform on behalf of the other parties, however while the primary registrant will be responsible for performing the condition, if no parties comply, all will be held responsible for the failure and will be in breach of the condition in their exemption. The AER has also provided guidance as to the meaning of 'owner, controller and operator'.

EWON supports the primary registrant model outlined by the AER with the additional guidance provided in the draft Guidelines as to the meaning of owning, controlling or operating an embedded network. The primary registrant model is a good compromise, which will streamline the process of membership with an ombudsman's office.

We believe that it is critical that the entity designated as the primary registrant must have the legal power to make decisions and directions about matters relating to the conditions. It is imperative that the designated primary registrant be able to fulfil the objective of the ombudsman's office, in being able to appropriately respond to and action any outcomes of a complaint (including an Ombudsman binding decision) to ensure that customers receive free, fair and independent dispute resolution services.

EWON recommends that the AER provide guidance in the Guidelines around who the primary registrant should be. For example, if one party is authorised in the market in some other way, then it should be recognised as the primary registrant as they would have the best ability to be able to comply with conditions under the exemption, may already be a member of EWON (and other energy ombudsman schemes) and are familiar with how to operate in the space, including compliance obligations.

We acknowledge the risks in recognising one party, in a scenario where multiple parties are involved, but consider these risks can be mitigated by clear wording in the guideline, including recommending that authorised entities be recognised as primary registrants, as they already operate as active participants in the market. We also note the risk to EWON (and other energy ombudsman schemes), in having only one party as an EWON member, but consider these risks are mitigated by the strong working relationship we have with members, conditions of membership under the EWON Constitution and Membership Agreement, and the current low level of complaints we receive about network issues in embedded networks.

¹ EWON submission – [AER consultation – Updating the Network and Retail Exemption Guidelines](#) June 2021



Compliance

EWON acknowledges the work that the AER has already done with exempt entities as part of its compliance and enforcement priorities for 2021-22.

We continue to recommend that the AER consider the following compliance and engagement activities with embedded network operators:

1. Commence a communications campaign after version 6 of the Exempt Selling Guideline and version 7 of the exempt network guideline are published to ensure that exempt entities are aware of their compliance obligations under the Guidelines.
2. Running webinars or workshops for exempt entities as part of the AER communication campaign following publication of the new Guidelines.
3. Surveying or auditing exempt entities to assess general compliance with the Guidelines and the current accuracy of the exemption register. This could be a risk-based project based on:
 - publicly available information from Ombudsman schemes (for example membership lists), and
 - current retail and network exemptions on the register that have incomplete data (for example no customer numbers).

Similarly to the approach that was taken in providing our members with correspondence from the AER relating to changes to the Exempt Retail Guidelines, EWON would welcome the opportunity to work with the AER to assist in any activities that will further the understanding and knowledge of the changes to the Network Guidelines of our members.

Disconnection protections for energy only customers

EWON supports the proposed changes in the draft Guidelines that requires embedded network operators to provide on-market customers within an embedded network with additional consumer protections. This includes the requirement to offer a payment plan for network tariff costs if the customer faces financial difficulty, and protections around disconnection.

In practice, due to the difficulties and potential costs faced in 'leaving an embedded network and buying electricity from an authorised retailer' it is rare that customers would be faced with these circumstances. However, EWON supports protections being aligned with the NERR, wherever possible.

Explicit informed consent

EWON supports the proposed changes in the draft Guidelines to replace the term 'express written consent' with 'explicit written consent' and the additional requirements regarding evidence and record keeping and notes that it aligns with the requirements of the NERL, NERR and Retail Exempt Selling Guideline.

Residential embedded network customers with solar PV systems

In our submission to the consultation paper² we noted an emerging category of complaints from customers living in embedded networks who have installed rooftop solar systems. From a network perspective, the complaints are focussed on customers that encounter problems in installation when the aggregated capacity of the solar energy export at the parent connection point passes a threshold set by the licensed distributor.

² Ibid.



There has also been instances of the parent connection point needing upgrading to facilitate additional load. The key issues for these embedded network operators and customers include:

- Understanding the need for metering upgrades, i.e. why, what type and who pays.
- Understanding the need for network upgrades and who pays for it or how it is apportioned within the embedded network. For example, in an embedded network where there are multiple child connection points with solar PV installed and where a licensed distributor requires network upgrades at the parent connection point, determining whether this should be paid for by the network, embedded network operator, apportioned to all customers within the embedded network, or only those with solar PV installed.
- The lack of availability of information for embedded network customers about the rules for the installation of solar PV systems at child connection points (i.e. for individual customers) within the embedded network.

Case studies about these issues can be found in our [EWON Insights 1 April 2020 - 30 June 2020](#) report (pages 43-44).³

With the continued growth in new energy technologies and business models that integrate solar and batteries within embedded networks, there is a growing fragmentation of traditional energy services which is evidenced by the continual increase in complaints to EWON. -

We therefore reiterate our recommendation that it will help customers and operators if the exempt network guidelines include guidance about charging embedded network customers for the cost of metering and network upgrades associated with solar PV system installations.

We note that the draft Guidelines and Notice of Instrument remain silent on any guidance, and if this is not addressed, there will be a growing lack of consumer protections. Should the AER consider that the guidelines is not the appropriate place for this information, we strongly suggest that this be addressed with the inclusion of a statement to the effect that embedded network operators are required to provide residents with information on cost recovery for network upgrades. To support this, we recommend the AER publish a fact sheet for embedded network customers and operators that provides guidance on rights and responsibilities associated with solar PV installations.

Layout

EWON supports the significant changes that the AER has made to the structure and display of content in the draft Guidelines. The draft Guidelines are streamlined, easier to understand and in line with the Exempt Selling Guidelines.

Enquiries

Enquiries about this submission should be directed to Dr Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

³ [EWON Insights Public apr-jun2020.pdf](#)