



Energy & Water
Ombudsman NSW
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Rising Inequality in the Energy Market: Safeguarding Consumer Protection

Energy & Water Ombudsman NSW

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Key Recommendations

Section 114(1)(c) of the National Energy Retail Law (NERL) states that *'exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules'*.

EWON considers a number of important gaps exist between the protections afforded to customers of an authorised retailer and the customers of exempt sellers.

Recommendation 1

The NSW government work with relevant stakeholders, such as the AER and EWON, to identify and develop an effective response to the current gaps in consumer protections for customers of exempt sellers in NSW.

Whilst EWON currently has jurisdiction to accept and investigate complaints about exempt sellers in NSW, our effectiveness is limited by the fact that exempt sellers are not required to be members of our scheme.

As the number of customers with unequal consumer protection increases, it could be seen as a failure of the competitive market and there will be a loss of reputation for industry, regulators, government, and energy ombudsman schemes.

Recommendation 2

The NSW government consider developing one of the options outlined in Chapter 10 to increase EWON's effectiveness for responding to complaints about exempt sellers in NSW.

EWON also notes that it is likely that many of these customers will have little awareness about their rights or the exempt seller's obligations.

Recommendation 3

The NSW government work with EWON to promote awareness of consumer protection issues, and external dispute resolution services, to both exempt sellers operating in NSW and to customers of exempt sellers.

1. Overview

Energy customers in NSW have traditionally had access to consumer protections over and above that provided by general consumer law. Policy makers at the highest level have recognised that the essential nature of electricity and gas make this extra consumer protection essential. While fairness dictates that all customers should enjoy the same level of protection, there have always been a small number of customers – those who buy their energy through embedded networks rather than from authorised retailers – whose right to access consumer protection has been weaker than that of other customers.

The growth in the number of embedded networks in NSW means that the number of customers with this inequitable level of consumer protection is growing, both absolutely and as a percentage.

EWON believes that the conditions and concerns that led to the creation of consumer protection for energy customers are still very relevant today, and that the consumer protection that applies to customers of authorised retailers should be extended to customers of embedded networks.

This report focuses on the impact on consumers, particularly residential consumers who reside in medium to large scale embedded networks such as apartment blocks, rather than residential parks¹. It also has regard to small business consumers who trade in embedded networks in shopping centres, such as those owned and operated by Westfield. We also address the growth in the number of companies now marketing Solar Power Purchasing Agreements (SPPA) to both residential and commercial customers.

A more recent and positive development, and crucial to EWON's response to the changing energy market, is the fact that at least one licenced/authorised retailer is now offering retail services to customers within embedded networks and providing those customers with the same protections as its broader non-embedded network customers. On the other hand, licenced/authorised retailers have also obtained exemptions to offer SPPA products to their customers, therefore taking them out of the consumer protection framework.

While this report does not focus on safety related issues emerging from the introduction of new products such as solar and battery storage, in and out of embedded networks, it is raised and must also be seriously considered by relevant decision makers in this changing environment. The time for action by governments, regulators and the industry to address this is now. Changes in the energy sector framework and the emergence of new products and ways of delivering energy to consumers is changing significantly at a very fast pace.

A “wait and see” approach could see the door close on access to the consumer protection framework for a significant, growing number of customers who need it on an ongoing basis.

¹¹ The consumer protection issues for residents of caravan parks have been explored in detail by SACOSS (see page 16 of this report).

2. Summary of Key Issues

- 1.1 The number of retail exemptions for onselling energy to residential and small business consumers is increasing. In coming years this number will increase as large scale energy retailers, including current authorised retailers and organisations such as Telstra² enter this market. It follows that the number of customers living and conducting business within embedded networks where exempt sellers supply energy will continue to grow in coming years, leading to a significant number of NSW consumers falling outside of the consumer protection framework.
- 1.2 EWON is concerned at the reduced level of protection afforded to customers of exempt sellers compared to customers of authorised retailers including:
 - a. Limited information provision to customers of exempt sellers about their rights and obligations.
 - b. Limited support available to customers of exempt sellers during periods of financial hardship (including access to government payment assistance).
 - c. Fewer protections for customers of exempt sellers at risk of disconnection.
 - d. There is no requirement for exempt sellers to establish hardship programs.
 - e. Limited access for customers of exempt sellers to retail competition.
 - f. Lack of practical choice of retailer after forced conversion to being a customer of an exempt seller arising from a brownfield embedded network conversion.
- 1.3 There are a number of barriers to effective external dispute resolution for customers of exempt sellers:
 - a. While EWON has jurisdiction to handle complaints from customers of exempt sellers, exempt sellers are not required to be members of EWON and are not bound by EWON decisions.
 - b. Billing, metering, data and customer services for embedded networks are often provided by agents, sometimes referred to as embedded network operators (ENO). Whilst many of these agents provide services and manage complaints from large numbers of customers of exempt sellers, they are not the exempt seller and are not within EWON's jurisdiction. Therefore, there is less clarity for many customers of exempt sellers about who is responsible for providing their energy, and what avenues they have for external dispute resolution.
 - c. Not all exempt sellers are aware of their customers' right to access appropriate external dispute resolution.
 - d. Energy ombudsman scheme funding models structure the way their members pay for Ombudsman services on a user pays basis. These funding models are flexible and can be structured so as not to be a barrier to new entrants such as exempt sellers. This is proven by the response the Telecommunications Industry Ombudsman made to its funding model in response to the emergence of hundreds of ISP providers over the past 15 years.
- 1.4 Safety, as briefly mentioned on page 17 of this report, is an area of immediate concern and significant public interest, with the recent growth in products such as SPPA.

² <http://exchange.telstra.com.au/2016/02/05/technology-energy-opportunity/>

3. Numbers of Exempt Sellers Registered for NSW

3.1 Numbers of current and open AER retail exemptions

Increasingly, developers of new residential complexes and the owners of shopping centres are designing their buildings as embedded networks. Similarly, many existing buildings are being retrofitted as embedded networks.

As of 26 April 2016, there were 407 current retail exemptions for electricity onsellors to operate in NSW and 12 open (waiting for approval) individual exemptions. There are also 20 current retail exemptions for gas onsellors – seventeen of these exempt sellers sell both electricity and gas. This report is focused only on exempt sellers onselling electricity.

Please refer to Appendix B at the end of this document for an explanation of the types of retail exemptions.

Type of Exemption ³	Number	Percentage
Individual Exemptions ⁺	118	28.2%
Registerable Exemptions*:		
R1 - <i>small commercial/retail</i>	114	27.2%
R2 - <i>residential customers</i>	50	11.9%
R3 - <i>Retirement villages</i>	15	3.6%
R4 - <i>residential/caravan parks</i>	114	27.2%
R5 - <i>metered large customers</i>	87	20.8%
R6 - <i>small customers (adjacent site)</i>	1	0.2%
R7 - <i>unmetered small retail customers</i>	1	0.2%
R8 - <i>power purchase agreements</i>	5	1.2%

⁺ Includes individual exemptions approved by the AER and applications for individual exemptions.

^{*} An exempt seller may register once for multiple exemption types. Therefore there are more types of registerable exemptions listed than the total number of electricity exemptions registered for NSW (419).

³ There were 419 exemptions to onsell electricity in NSW listed on the [AER's Public Register of Retail Exemptions](#) as at 26 April 2016.

4. Types of Exempt Sellers Registered for NSW

4.1 Exempt sellers onselling to residential customers

There are currently 50 sites within NSW with an exemption to onsell to residential customers (R2 exemptions). The number of R2 exemptions in NSW has more than doubled in the last 12 months, from 20 to 50 exemptions. The average number of units per development covered by an R2 exemption appears to be somewhere between 200 and 300 – potentially representing over 10,000 energy customers.

In addition, the exemption approved by the AER for the Central Park development in Chippendale will potentially add several thousand more units over the next several years. Due to the complexity of this site, the exempt seller, Brookfield District Energy (CP) Pty Ltd, has an individual exemption rather than a registerable exemption.

The majority of building owners contract out the billing, metering and data services to agents. In some cases, these billing agents are also contracted to respond to customer queries and complaints.

EWON Investigations Officers have already dealt with customers of several of these developments, and there is every indication that these numbers will increase as new buildings seek to incorporate energy efficient credentials into their buildings.

4.2 Exempt sellers operating residential/caravan parks

There are currently 114 residential/caravan parks with an R4 Exemption on the AER's public register for NSW.

In addition to the conditions imposed by the AER's exempt selling guideline, residential parks in NSW are also regulated through the *Residential (Land Lease) Communities Act 2013 (NSW)* and the *Residential (Land Lease) Communities Regulation 2015 (NSW)*.

Part 7 of the *Residential (Land Lease) Communities Act* covers utilities and other charges. In order for the park operator to charge residents for usage of utilities:

- there must be a site agreement;
- the use must be separately measured or metered; and
- the park operator must give the resident an itemised account and allow 21 days for payment to be made⁴.

The park operator also cannot charge more than the amount charged by the retailer to the park operator or the regulated retailer offer in that area⁵. The park operator must also provide its customers with a receipt for payment containing certain information⁶.

The park operator can charge late payment fees or dishonoured payment fees, but not an amount more than a retailer would charge⁷.

If the park operator wishes to install metering at each individual residential site, then the operator must pay for the installation⁸. The *Residential (Land Lease) Communities Regulation 2015* also

⁴ Residential (Land Lease) Communities Act 2013 (NSW), s77

⁵ Residential (Land Lease) Communities Act 2013 (NSW), s77

⁶ Residential (Land Lease) Communities Act 2013, s84

⁷ Residential (Land Lease) Communities Act 2013, s78

establishes the maximum service availability charge that a customer can be asked to pay and what discounts the customer must be given depending on the quality of supply⁹.

4.3 Exempt sellers onselling to commercial/retail customers

There are currently 24 individual exemptions, and 114 registered exemptions, for the sale of electricity to small commercial/retail customers within embedded networks listed on the AER register.

There are a number of different kinds of exempt sellers servicing small commercial/retail customers, such as shopping centres, business parks, and office towers.

4.3.1 Shopping centres

Shopping centres make up at least 41 (30%) of the 138 exempt sellers onselling to small commercial/retail customers. The average number of small retail customers within each shopping centre is around 200 – meaning that there are over 8,000 small to medium business customers currently operating within shopping centres established as embedded networks.

The three shopping centre groups (brands) with the largest share of retail exemptions, service over 5,500 business customers within their own embedded networks. Generally, these shopping centre owners contract out the billing, metering, data and customer services to agents.

Since January 2015, around a third of new applications for individual exemptions for onselling to small commercial/retail customers have been lodged due to the decision to retrofitting an existing shopping centre into an embedded network – commonly known as brownfield sites¹⁰. Some of the larger billing, metering and data agents for embedded networks also provide project management services for brownfield conversions.

Where shopping centre operators have applied to the AER for an individual exemption, the majority have nominated EWON as the primary avenue for external dispute resolution.

4.3.2 Business parks, industrial properties and office buildings

There are 75 exempt sellers that have registered for a retailer exemption with the AER that appear to manage business parks, industrial properties, office buildings and commercial spaces. The majority of these exempt sellers (53 of the 75) have registered for both an R1 and R5 exemptions and it is likely that a high proportion of the businesses operating within these embedded networks are large businesses with high levels of usage.

4.4 Onselling through Solar Power Purchase Agreements

To date 95 companies have been issued with an individual exemption to sell energy to NSW customers under a SPPA. The number of companies selling on the PPA model has also nearly doubled in the last 12 months (from 54 to 95 individual exemptions).

⁸ Residential (Land Lease) Communities Act 2013, s80

⁹ Residential (Land Lease) Communities Regulation 2015, r11, 13

¹⁰ Individual exemptions are required (for the R1 and R2 exemption types) if network retrofitted after 1 Jan 2015

A sample of the 95 individual exemptions for SPPA onsellers indicates that a large proportion of these companies are targeting small to medium businesses and large commercial customers only. However, there will still be a number of SPPA onsellers targeting residential customers.

Several EWON members have, or are applying for, individual exemptions for related companies to operate under the SPPA model: eg AGL Energy Services Pty Ltd, Origin Energy Retail No 2 Pty Ltd. As this is a relatively new energy product, new business models will continue to be established for selling through SPPAs. However, companies offering an SPPA will typically install solar panels on a customer's property free of charge, and service and maintain them at no cost to the customer. In return, the company will charge the customer for the power generated by the PV system that they use in their household, usually for a set period of time eg 15-20 years. The customer will benefit because the price offered by the company for solar electricity will usually be lower than the price offered by authorised energy retailers operating in the National Electricity Market (NEM).

The company will usually remain the owner of the solar installation. When the contract comes to an end, the customer can opt to purchase the system at the price stated in the contract; otherwise the company will remove the system and make good the site. Exit terms, such as what happens when the customer sells the house, will be in the contract. Customers will still be connected to the grid and purchase energy from an authorised retailer, who may also be the SPPA seller, for their main household use – the SPPA exemption is intended to be incidental to a customer's supply of energy through the national network.

To date, the AER has only applied two supplementary conditions on these types of exemption:

AER Exempt Selling Guideline

Condition 20 - Information provision

(1) An exempt person must provide the customer in writing a plain English notice explaining that the contract is covered by Australian consumer protection laws and is separate to the customer's contract with their retailer and distributor which are covered under the National Energy Retail Law.

Condition 21 – Exemption limited to the sale of electricity through power purchase agreements

(1) An exempt person must:

- a. refrain from registering in the wholesale market for the purposes of purchasing energy, and
- b. not be the financially responsible retailer for the premises (rather, this must be an authorised retailer).

5. Embedded Network Operators

5.1 Agents providing billing, metering and data services to customers within embedded networks

The billing, metering and data services provided to customers of exempt sellers within embedded networks are often contracted out to agents, sometimes referred to as embedded network operators (ENO). In some instances, these agents also have the primary responsibility for dealing with customer enquiries and complaints.

An ENO providing billing, metering and data services to customers within an embedded network on behalf of an exempt seller is not engaging in the retail sale of energy and is not required to hold either a retailer authorisation or a retail exemption. Therefore, EWON's ability to accept complaints about billing agents for embedded networks is challenging.

Some of these companies have applied for a retail authorisation with the AER and have considered EWON membership.

ENOs will often be providing billing, metering and data services to a large number of customers (both business and residential) over many embedded networks across multiple state jurisdictions. For example, WINenergy, a company specialising in the establishment and operation of embedded networks for electricity, operates over 140 sites across Victoria, Queensland and NSW¹¹.

EWON considers that when third parties, such as an ENO, are providing such services to large numbers of customers, there is the potential for the existing consumer protections for customers of exempt sellers to be further diluted.

5.2 Authorised retailers providing billing, metering and data services

EWON also notes that some authorised retailers, for example Origin Energy, are also now offering retail services, specialised billing, metering and data services to embedded networks. This development clearly indicates that there will continue to be a significant growth in the number of customers living and working within embedded networks.

EWON considers that where an authorised retailer is providing these services to customers within an embedded network, customers will have the same access to EWON as an avenue for dispute resolution as their ordinary retail customers, and the retailers will pay for the service accordingly.

¹¹ <https://www.winenergy.com.au/about/about> accessed 13 May 2016

6. Jurisdiction of EWON

6.1 Jurisdiction of EWON

Unlike all other jurisdictional energy ombudsman schemes in Australia, EWON has jurisdiction to investigate complaints from customers of exempt sellers under the following provisions:

NSW Electricity Supply Act 1995	
96B	<p>...</p> <p>(1A) The scheme may provide for the appointment of an energy ombudsman to deal with the following:</p> <p>...</p> <p style="padding-left: 40px;">(b) disputes and complaints between small customers and exempt sellers or other persons exempted from the <i>National Energy Retail Law (NSW)</i>, this Act or the <i>Gas Supply Act 1996</i> in relation to the supply of electricity or gas,</p>
96D	<p>(1) This section applies to the following decisions by an energy ombudsman under an approved energy ombudsman scheme of which a retailer or other exempt person is a member:</p> <p style="padding-left: 40px;">(a) a decision relating to a matter concerning the retailer's or exempt person's functions under this Act or the Gas Supply Act 1996, or under any instrument under those Acts,</p> <p style="padding-left: 40px;">(b) a decision relating to a dispute or complaint involving the retailer or exempt person and a small customer or regulated offer customer, if that dispute or complaint arises under any such Act or instrument.</p> <p>...</p> <p>(3) In this section:</p> <p>exempt person means an exempt seller under the <i>National Energy Retail Law (NSW)</i> or a person exempted (under section 3B of that Law) from the requirement to hold a retailer authorisation.</p>
NSW Electricity Supply (General) Regulation 2014	
11	<p>(1) For the purposes of section 96A (1) of the Act, the following persons may apply to an energy ombudsman under an approved energy ombudsman scheme for a review of a decision:</p> <p style="padding-left: 40px;">(a) a small customer in respect of a matter arising between the customer and an exempt person concerning a contract for the supply of electricity or gas (including charges for electricity or gas) or any other matter relating to the supply of electricity or gas by the exempt person to the customer</p>
18	<p>(1) The exemption of a person (the exempt person) from section 13 of the Act (under clause 14) is subject to the conditions set out in this clause...</p> <p>...</p> <p style="padding-left: 40px;">(2) (b) the exempt person is bound by, and must comply with, any decision of the energy ombudsman in relation to a complaint or dispute relating to the provision of connection services.</p>

6.2 Exempt sellers are not required to be members of EWON

Generally, EWON aims to resolve complaints by negotiating outcomes with customers and providers based on what is fair and reasonable having regard to laws and codes and good industry practice.

If a matter is not resolved through negotiation, the Ombudsman may make a determination ('binding decision') to resolve a case. The complainant can choose whether or not to accept the determination. If it is accepted, then EWON's member is bound by the determination.

The Ombudsman's ability to make binding decisions underpins the scheme's effectiveness for providing negotiated outcomes to thousands of consumers in NSW each year.

Members of the scheme are also required to comply with EWON's investigations processes and to make information available to EWON for the purpose of resolving complaints.

The above NSW regulations do provide EWON with the power to accept and investigate complaints about exempt sellers. However, exempt sellers are not required to be members of EWON and are therefore not bound by Ombudsman determinations and may choose to not participate in any or all of EWON's investigation processes.

The fact that exempt sellers are not required to become members of the EWON scheme imposes a significant limit on EWON's ability to provide fair and reasonable complaint outcomes to this group of energy consumers.

6.3 How does EWON manage complaints from customers of exempt sellers?

Exempt sellers are not required to be members of the EWON scheme and so do not pay for EWON's services.

The cost of complaints to EWON about exempt sellers is spread across the whole EWON membership, including water members. This decision was made by EWON's Board and supported by members historically in relation to exempt sellers for residential parks. The importance of providing a dispute resolution scheme to potentially vulnerable members of the community was acknowledged and the costs of administering a membership scheme for small parks, when complaint numbers were potentially, and over the years actually, very low, was not considered to be cost effective.

Over recent years, the number of retail exemptions registered or approved by the AER for companies onselling through SPPAs, and for onselling to residential and business customers within embedded networks, has increased. The entry into the market of new players, such as a Telstra, will see this growth continue.

Some EWON members (who are authorised retailers) have also:

- applied for individual exemptions for related companies to operate under the SPPA model: eg AGL Energy Services Pty Ltd, Origin Energy Retail No 2 Pty Ltd.
- started offering retail services to customers within embedded networks.

The NSW government established formal external dispute resolution, in the form of EWON, in response to privatisation of the NSW energy industry. The growth of exempt retailers and embedded networks is the next step in increasing competition within the NEM. Due to the ever changing nature of the energy market, EWON considers that all energy customers, including customers of exempt sellers, will continue to need access to effective consumer protections and external dispute resolution.

EWON's governance framework was effectively changed after second tier retailers entered the NEM and can be further modified to meet the changing needs of the evolving market.

6.4 Numbers of complaints about exempt sellers received by EWON

The number of complaints EWON receives from customers of exempt retailers has remained relatively consistent over the last four years:

Complaint Source	Case Subject	2012/13	2013/14	2014/15	2015/16*
Exempt Retailer	Dual Fuel			1	
Exempt Retailer	Electricity	18	20	23	24
Exempt Retailer	Gas		2	4	5
Residential Park Operators	Electricity	83	56	56	41
Residential Park Operators	Gas			1	2
Exempt Seller EWON member	Electricity			11	13
Total		101	78	96	85

* as reported on 26 April 2016

EWON recognises that the number of complaints received about exempt retailers has remained consistently low over recent years. The number of complaints received by EWON is not consistent with the increase in the number of retail exemptions that have been approved or registered by the AER for onselling to residential and small business customers.

The number of complaints received suggests that exempt sellers are not promoting EWON to their customers as an avenue for external dispute resolution, as authorised retailers are required to do, and as some exempt sellers have included in their applications to the AER.

6.5 Complaint issues raised by customers of exempt sellers

The issues brought to EWON by customers of exempt sellers are primarily about billing. Other issues include payment difficulty, poor customer service, and requests for information (often from residential park operators) about the regulations and rules for supplying and billing residents.

The table below provides a summary of the main issues raised by complaints to EWON about exempt sellers for the 2014/15 financial year (please note that each complaint may raise more than one issue).

Complaint Issues 2014/15	General Enquiry	Residential Park	Exempt Seller EWON member	TOTAL
Billing	23	62	9	94
Credit	8	1		9
Customer service	3	4	5	12
General	4	4	1	9
Provision	2	1		3
Supply	1			1
Total	41	72	15	128

6.6 Dispute resolution conditions for retail exemptions

Onsellers with a deemed, individual or registrable exemption must comply with the following core consumer protection conditions:

AER Exempt Selling Guideline

Condition 15 - Dispute resolution

In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:

- a. make reasonable endeavours to resolve the dispute, and
- b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

As part of an application for an individual exemption, onsellers are asked to explain what process they have developed to respond to customer disputes.

In their applications, some applicants nominate an appropriate avenue for external dispute resolution, such as Fair Trading NSW, the Australian Commercial Dispute Centre, or the relevant energy ombudsman scheme. Some exempt sellers also identify as a member of the Clean Energy Council and/or that they have adopted the Council's Solar Retailer Code of Conduct. The code provides a complaint handling standard which states that (at 2.4.5(f)) consumers dissatisfied with a response to a complaint must be referred by the exempt retailer to the applicable industry ombudsman or consumer affairs body.

7. Consumer Protection Issues for Customers of Exempt Sellers in NSW

Table: Consumer protections for residential customers of authorised retailers versus exempt sellers.

Residential customers		
Number of Exempt Sellers	50	
Average number of customers in each residential building	200 to 300	
Current number of customers in NSW	10,000	
Future projection	This type of retail exemption has more than doubled in the last year and it is likely that the number of embedded networks will continue to grow	
Consumer Protections	Residential customers of authorised retailers	Residential Customers of exempt sellers
Access to a hardship policy approved by the AER	✓	✗
Access to hardship programs	✓	✗
Protection under AER Sustainable Payment Plan Framework	✓	✗
Access to Centrepay payment arrangements	✓	✗
Access to Energy Accounts Payment Assistance (EAPA)	✓	✗
Adequate information about external dispute resolution	✓	?
Must be provided with contact details of EWON before, and at the time of, disconnection	✓	✗
Access to justice through EWON binding decisions	✓	✗
Independent monitoring by regulators	✓	✗
Practical access to retail competition ¹²	✓	?

¹² See Section 7 for a discussion on the AEMC rule change to improve access retail competition for customers of exempt sellers

Table: Consumer protections for small business customers of authorised retailers versus exempt sellers.

Small business customers of shopping centres		
Number of Exemptions (sites)	41+	
Average number of customers in each retail complex	200	
Current number of small business customers in NSW	8,000	
Future projection	Applications for individual exemptions received by the AER in 2015/16 indicate that shopping centres will increasingly be established or retrofitted as embedded networks.	
Consumer Protections	Business customers of authorised retailers	Business Customers of exempt sellers
Access to a hardship policy approved by the AER	n/a	n/a
Access to hardship programs	n/a	n/a
Protection under AER Sustainable Payment Plan Framework	✓	✗
Access to Centrepay payment arrangements	n/a	n/a
Access to Energy Accounts Payment Assistance (EAPA)	n/a	n/a
Adequate information about external dispute resolution	✓	?
Must be provided with contact details of EWON before, and at the time of, disconnection	✓	✗
Access to justice through EWON binding decisions	✓	✗
Independent monitoring by regulators	✓	✗
Practical access to retail competition ¹³	✓	?

¹³ See Section 7 for a discussion on the AEMC rule change to improve access retail competition for customers of exempt sellers

Table: Consumer protections for customers of residential parks established as embedded networks versus residential customers of authorised retailers.

Customers of residential parks		
Number of residential parks registered as exempt sellers	114	
Consumer Protections	Park residents with authorised retailers	Park residents with exempt sellers
Access to a hardship policy approved by the AER	✓	✗
Access to hardship programs	✓	✗
Protection under AER Sustainable Payment Plan Framework	✓	✗
Access to Centrepay payment arrangements	✓	✗
Access to Energy Accounts Payment Assistance (EAPA)	✓	✗
Adequate information about external dispute resolution	✓	?
Must be provided with contact details of EWON before, and at the time of, disconnection	✓	✗
Access to justice through EWON binding decisions	✓	✗
Independent monitoring by regulators	✓	✗
Practical access to retail competition ¹⁴	✓	?

¹⁴ See Section 7 for a discussion on the AEMC rule change to improve access retail competition for customers of exempt sellers

Table: Consumer protections for customers of residential parks established as embedded networks versus residential customers of authorised retailers.

Retirement villages		
Number of retirement villages registered as exempt sellers	15	
Future projection	It is accepted that the number of facilities for retirement living will increase with Australia’s aging population. Trends in the development of residential and commercial buildings in NSW indicates that more retirement villages will be established as embedded networks.	
Consumer Protections	Customers of authorised retailers	Customers of exempt sellers
Access to a hardship policy approved by the AER	✓	✗
Access to hardship programs	✓	✗
Protection under AER Sustainable Payment Plan Framework	✓	✗
Access to Centrepay payment arrangements	✓	✗
Access to Energy Accounts Payment Assistance (EAPA)	✓	✗
Adequate information about external dispute resolution	✓	?
Must be provided with contact details of EWON before, and at the time of, disconnection	✓	✗
Access to justice through EWON binding decisions	✓	✗
Independent monitoring by regulators	✓	✗
Practical access to retail competition ¹⁵	✓	?

¹⁵ See Section 7 for a discussion on the AEMC rule change to improve access retail competition for customers of exempt sellers

Table: Consumer protections for customers of residential parks established as embedded networks versus residential customers of authorised retailers.

Solar Power Purchase Agreements		
Number of companies approved to sell SPPAs in NSW	95	
Future Projection	The number of companies selling on the SPPA model has also nearly doubled in the last year. It is generally accepted that business models based on emerging technologies will continue to grow.	
Consumer Protections	Residential customers of authorised retailers	Residential Customers of exempt sellers
Access to a hardship policy approved by the AER	✓	✗
Access to hardship programs	✓	✗
Protection under AER Sustainable Payment Plan Framework	✓	✗
Access to Centrepay payment arrangements	✓	✗
Access to Energy Accounts Payment Assistance (EAPA)	✓	✗
Adequate information about external dispute resolution	✓	?
Must be provided with contact details of EWON before, and at the time of, disconnection	✓	✗
Access to justice through EWON binding decisions	✓	✗
Independent monitoring by regulators	✓	✗
Practical access to retail competition ¹⁶	✓	?

¹⁶ See Section 7 for a discussion on the AEMC rule change to improve access retail competition for customers of exempt sellers

7.1 Financial hardship

The 2011-12 ABS data suggest that around 2.6 million Australians live under the poverty line¹⁷. The overall rate of poverty has increased from around 10.2 per cent in 2000-01 to 11.8 per cent in 2011-12¹⁸. Similarly, ACOSS reports that around 14% of Australians are living in poverty¹⁹. Over the next 10 years, lower income households are also projected to have the lowest growth in living standards²⁰. Based on these trends, the need for mechanisms to assist customers in hardship becomes even more important.

Authorised retailers are required to publish a hardship policy, approved by the AER, that establishes how they will identify residential customers experiencing payment difficulties and how they will assist those customers to better manage their energy bills on an ongoing basis²¹. The authorised retailer's hardship policy must include:

- processes to identify customers experiencing payment difficulties due to hardship, including identification by the retailer and self-identification by the customer;
- processes for the early response by the retailer to customers in hardship;
- flexible payment options (including payment plans and Centrepay) for the payment of energy bills by hardship customers;
- processes to identify, and to notify customers of, appropriate government concession programs and appropriate financial counselling services;
- an outline of programs that the retailer may use to assist hardship customers;
- processes to review the appropriateness of a hardship customer's market retail contract against the retailer's hardship policy; and
- processes or programs to assist customers with strategies to improve their energy efficiency, where relevant²².

The AER has also recently undertaken a review of retailer hardship policies and will soon be publishing a Sustainable Payment Plan Framework, which will provide retailers with a set of good practice principles and processes for negotiating payment plans.

In contrast, an exempt seller is also not required adopt a hardship policy or operate a hardship program in the same way that authorised retailers are²³. Condition 3(3) of the AER Exempt Selling Guideline stipulates that an exempt person must offer flexible energy payment options to an exempt customer who has identified themselves as being in financial difficulty²⁴. Flexible payment options may include arrangements for payment by periodic instalments having regard to the customer's capacity to pay, any arrears owing by the customer, and the customer's expected energy consumption needs over the following 12 month period, or the duration of their occupancy²⁵. However, the Guideline does not require that the customer have access to Centrepay agreements.

¹⁷ NATSEM University of Canberra, Poverty, Social Exclusion and Disadvantage in Australia: Report for Anglicare Australia, p8

¹⁸ *ibid.*

¹⁹ ACOSS, Poverty in Australia 2014, p9

²⁰ NATSEM University of Canberra, Living Standard Trends in Australia: Report for Anglicare Australia, Sep 2015, p4, p27

²¹ NERL, s43-49

²² National Energy Retail Rules (NERR), r74

²³ NERL, s44(e)

²⁴ AER (Retail) Exempt Selling Guideline – version 4 – March 2016, p33

²⁵ AER (Retail) Exempt Selling Guideline – version 4 – March 2016, p33

If a customer informs their exempt sellers that they are unable to pay their energy bills due to financial difficulty, the exempt sellers must refer the customer to an energy efficiency website, and provide the customer with information on energy rebates, concessions and relief schemes. In these circumstances, the exempt customer cannot be charged a late payment fee or a security deposit²⁶.

EWON notes that authorised retailers have much clearer requirements for responding to customers in financial hardship than exempt sellers. However, in our experience, customers of authorised retailers still regularly require help from EWON in negotiating affordable payment plans. The requirement for exempt sellers to provide flexible payment arrangements is much less clear – and these customers do not have an obvious avenue for external dispute resolution. This means there is a clear inequality between the customers of exempt sellers and customers of authorised retailers.

7.2 Information about dispute resolution

Authorised retailers and distributors must inform small customers who are not satisfied with the outcome of a complaint, that the customer may make a complaint to the energy ombudsman²⁷. Authorised retailers and distributors must also provide, as a minimum requirement in relation to the terms and conditions of their contract, that the customer has a right to refer an unresolved complaint or dispute to the energy ombudsman²⁸. Authorised retailers and distributors must also publish certain information on their website, including:

- the retailer's standard complaints and dispute resolution procedure; and
- the contact details for the relevant energy ombudsman²⁹.
-

Authorised retailers carrying out energy marketing activities must provide customers entering into a new contract with information on their right to complain to the energy ombudsman³⁰.

Exempt sellers must also advise their customers, in writing, at the start of their tenancy/residency/agreement of:

- the exempt seller's procedures for handling disputes and complaints; and
- any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located³¹.

As noted above, in event of a dispute concerning the sale of energy, exempt sellers must also advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable³².

However, exempt sellers are not required to provide the customer, as a minimum requirement in relation to the terms and conditions of their energy contract, with information on the energy ombudsman or other alternative dispute resolution options. Exempt sellers are also not required to provide information about EWON on their website. For this reason, customers of exempt sellers who want to complain about their energy accounts are not starting from a level playing field.

²⁶ *ibid*, conditions 9(1)

²⁷ NERL, s82(5), s29(7)

²⁸ NERR, r50(1)(d), 82(1)(d)

²⁹ NERR, r56(1); NERR, r80

³⁰ NERR, r64(1)(e)

³¹ AER (Retail) Exempt Selling Guideline – version 4 – March 2016, condition 2(1)(c)

³² *ibid*, condition 15

It is unclear, in practice, whether exempt sellers are providing their customers with adequate information about their rights to complain to the energy ombudsman, as is their right under NSW law. There is also currently no monitoring of the practices of exempt sellers, or their agents, to ensure that their customers are being given the required information.

The information available in the community can also be confusing. For example, while residential park operators are required to provide residents with information about their right to complain to EWON and/or NSW Fair Trading, some tenancy organisations in NSW suggest instead that residents refer their dispute about electricity charges directly to the AER³³.

7.3 Disconnection/reconnection

The AER exempt selling guidelines require exempt sellers to follow a process for disconnecting a customer for non-payment which is similar to the requirements under NECF³⁴. The guideline also provides explicit prohibitions on disconnecting supply in specific circumstances, such as where the customer relies on life support equipment or a complaint has been made to the energy ombudsman. However, the guideline also allows jurisdictional tenancy legislation to override these consumer protections where there are provisions for the disconnection of tenants³⁵. Without independent monitoring of the practices of exempt sellers – it is unknown whether these conditions are being complied with.

In all NECF jurisdictions, authorised energy retailers are required to include information on the existence and operation of the energy ombudsman, including contact details, on disconnection notices³⁶. In NSW, gas and electricity distributors who carry out disconnections are also required to leave behind a notice advising the customer that their supply has been de-energised. The notice must be in writing and contain the following information:

- contain the reason for the de-energisation;
- include the phone number for the retailer;
- state what is required for reconnection; and
- include contact details for EWON³⁷.

Customers within embedded networks are clearly not offered this same level of protection. Exempt sellers are not required to provide customers with information about the energy ombudsman on disconnection warning notices, and are not required to leave post-disconnection notices.

Where a customer of an authorised retailer complains to EWON about being disconnected, EWON can make a binding decision about reconnecting that customer's energy supply. As exempt sellers are not bound by EWON decisions, their customers who do bring a disconnection complaint to EWON will not have the same safety net, and are therefore less likely to be reconnected in a timely manner. This represents the lack of an important protection for customers of exempt sellers. This is explored further in Section 7.5 below.

7.4 Residential/caravan park exempt sellers

³³ Tenants' Union NSW, Factsheet: Electricity charges

(<http://files.thenoticeboard.org.au/factsheets/electricity.pdf>)

³⁴ AER (Retail) Exempt Selling Guideline – version 4 – March 2016, conditions 9 & 10

³⁵ *ibid*, conditions 9(4) & 10(4)

³⁶ NERR, r110(2)(f)

³⁷ *Electricity Supply (General) Regulation 2014* (NSW), c9; *Gas Supply (Natural Gas Retail) Regulation 2014*, c11

In EWON's experience, permanent residents of residential parks are among the most vulnerable in the community.

The South Australian Council of Social Service (SACOSS) recently published a report on the growing concern with consumer protection arrangements for exempt consumers. The report provides a detailed review of the emerging issues for customers of exempt sellers, particularly those of residential parks.

The SACOSS report *The Retail and Exemption Framework: Emerging Issues for Consumers* can be accessed here:

<https://www.sacoss.org.au/retail-and-exemption-framework-emerging-issues-consumers>

7.5 External dispute resolution for customers of exempt sellers

Customers of exempt sellers can make a complaint to EWON but exempt sellers are not required to join the EWON scheme.

This means that while EWON has jurisdiction to handle complaints about exempt sellers and while we can generally resolve these complaints, those sellers who are not members of EWON are not bound to any decision by EWON.

We are concerned that EWON's ability to exercise its jurisdiction is constrained by lack of scheme membership. As the majority of exempt sellers in NSW are not members of the EWON scheme, their customers are not afforded the same level of access to dispute resolution as other customers whose providers are members of EWON. This can result in inequitable outcomes for energy customers essentially receiving the same product.

Customers of exempt sellers also have the option of complaining to NSW Fair Trading about breaches of the Australian Consumer Law (ACL) by the exempt seller. However, the ACL does not provide the same level of protection to customers of exempt retailers as is provided to customers of authorised retailers that are connected directly to the NEM.

There are also additional concerns about access to external dispute resolution for customers of exempt sellers operating as a residential/caravan park. Residents of parks with genuine concerns about some aspect of their electricity supply are often reluctant to raise these with the park operator for fear of retaliation. Any ill-feeling between the park operator and a resident can have a profound effect on the day-to-day living conditions of the resident, and this can act as a deterrent to pursuing genuine complaints. As a result, when customers approach EWON, they often ask to remain anonymous. Our role is often limited to providing advice, and we will only approach the park operator in relation to a complaint with the customer's express permission.

7.6 Government rebates and payment assistance programs for customers of exempt sellers

As noted above, some customers of exempt sellers, such as permanent residents of residential parks, are among the most vulnerable in our communities.

Currently, customers of exempt sellers can apply directly to the NSW Department of Industry, Resources & Energy, to receive the Low Income Household Rebate. However, in EWON's experience, it is often the case that customers who are eligible for rebates and concessions are unaware of their right to this kind of assistance. As there is no independent monitoring of the

services provided by exempt sellers, it is unclear whether adequate information is provided to their customers about the available rebates and concessions.

The NSW Government's Energy Accounts Payment Assistance (EAPA) Scheme is designed to help customers who are experiencing financial crisis or emergency to pay their home electricity and/or natural gas (energy) bills. EAPA is delivered by providing vouchers to customers. Currently each voucher has a face value of \$50³⁸.

However, to be eligible for EAPA, the customer must hold an energy account with a licensed energy retailer³⁹. This means that customers of exempt sellers, some who are particularly vulnerable, do not have access to this vital emergency assistance.

7.7 Safety

In EWON's experience, the introduction of the NSW Solar Bonus Scheme in 2010 saw a rise in the number of complaints relating to electrical fault issues. These were often due to faulty installation or the quality of the inverter.

As SPPA offerings become more common place and storage batteries are introduced, the potential for severe injury and/or fatal accidents may increase. At a minimum, a similar surge in complaints about safety and poor quality products is likely. EWON urges the NSW Department of Industry to consider whether a regulatory response is required to prevent the type of situation that occurred with home insulation ceiling batts nationally in 2009.

³⁸ NSW Department of Industry, Energy Accounts Payment Assistance Scheme, 1.1, 1.2

³⁹ *ibid*, 2.1(a)

8. Choice of Retailer for Customers of Exempt Sellers

8.1 Access to retail competition for customers of exempt sellers

Section 114(1)(b) of the NERL states that *'exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right'*. The AER exempt selling guidelines contain the following conditions relating to an exempt customer's access to retail competition:

AER Exempt Selling Guideline
Condition 2 - Information provision
(1) The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency/agreement of the following: <ul style="list-style-type: none">a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
Condition 13 - Choice of retailer
(1) Where an exempt customer is eligible under state or territory legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by: <ul style="list-style-type: none">c. requiring the exempt customer to waive their ability to choose a retailerd. unreasonably hindering their efforts to find another retailer ore. unreasonably hindering any metering or network changes required to enable choice of retailer.

However, the AER recognises that an exempt customer's choice can be limited due to a number of factors, such as:

- issues arising at the time a building is constructed, for example, network configuration, access to individual meters;
- the type of meters in place at the premises; and
- the availability of "energy-only" offers from authorised retailers operating in the national energy market.

In EWON's experience, even where an exempt customer wants to transfer from the exempt seller to an authorised retailer, the cost of a new metering installation, and any changes that may be required to the embedded network, are prohibitive and the authorised retailer of choice may not have the resources to manage this change.

8.2 The National Electricity Amendment (Embedded Networks) Rule 2015

The AEMC has now released the National Electricity Amendment (Embedded Networks) Rule 2015 which will take effect on 1 December 2017. The AEMC has designed the new amended rules to reduce the barriers for an exempt customer to move from an exempt seller to an authorised retailer of their own choice. The rule seeks to achieve this change through the introduction of a new market participant called Embedded Network Managers, who will have the responsibility of managing the transfer of the exempt customer's connection point from the exempt seller to the authorised retailer.

The AEMC has also recommended that changes be made in South Australia, Victoria and New South Wales to align the jurisdictional regulations that allow embedded network customers access to retail market offers. The AEMC has also noted that consideration of changes to the National Energy Retail Rules is needed to clarify the relationships between, and obligations on, authorised retailers, embedded network customers and embedded network operators. The AEMC has requested the COAG Energy Council to submit a further rule change request to achieve this.

Retail contestability was introduced in NSW with effect from January 2002 through the *Electricity Supply Amendment Act 2000 (NSW)* by addressing arrangements for metering and customer transfers. However, the *Electricity Supply Act 1995 (NSW)* does not explicitly regulate embedded networks. Clause 2.5.1 of the AEMO Metrology Procedure: Part A National Electricity does allow for retail contestability in an embedded network by outlining the responsible person's metering obligations for customers (at the customer's cost), in the event the customer elects to purchase electricity from a retailer other than the exempt network's retailer.

Whilst EWON welcomes a rule change that will make it easier for customers of exempt sellers to access retail competition, our concern is that there are a number of issues still to be addressed, such as:

- the billing arrangements, such as network costs, for a customer of an embedded network that has chosen to transfer to an authorised retailer; and
- the potentially prohibitive cost of the metering and network alterations that may be required before an exempt customer can access retail competition.

9. The Australian Consumer Law

The current consumer protection framework for energy consumers was developed under the assumption that purchasing energy was through a retail contract and that the energy was supplied from the source of generation via a regulated network.

The focus of this report has been on customers who purchase their energy from within embedded networks. However, as the growth of SPPAs indicates, there is a wave of technological change sweeping across the energy sector creating new markets in energy supply, demand management and energy information.

In a major report provided by the COAG Energy Council on new products and services in the electricity market, it was concluded that the ACL and the Privacy Act provided an appropriate level of consumer protection for many of these new markets⁴⁰. The report, however, also identified that the different levels of consumer protection between the NECF and the ACL could provide incentives to structure consumer offerings to avoid energy consumer protections.

The report identified the following issues:

- "customers could see different protections in relation to their supply of these products and services, depending on who their supplier is;
- customers may have different protections for different products and services they receive from the same supplier; and
- businesses could face different paths to market entry, and different regulatory obligations, which could distort outcomes in the market"⁴¹.

The report went on to identify some key aspects of consumer protection provided by the NECF that were not currently available through the ACL provisions. The NECF framework requires a high level of information provision about energy contracts, with strong explicit informed consent provisions, that are not included in the ACL.

Dispute resolution procedures are another aspect of the NECF that provides stronger protections. Under the ACL, dispute resolution occurs through state and territory fair trading / consumer affairs offices where customers bear more of the costs and normally have to represent themselves. Under the NECF, energy consumers have access to free and independent, external dispute resolution through ombudsman schemes funded by energy market participants.

EWON considers that a useful guiding principle for the division of consumer protections between the ACL and energy specific legislation is the one proposed in a COAG Energy Council consultation paper:

*"Energy-specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high-quality supply of energy on fair and reasonable terms"*⁴²

⁴⁰ *New Products and Services in the Electricity Market. Advice to the COAG Energy Council.* Energy Working Group July 2015, p3

⁴¹ *ibid*, p3

⁴² *New Products and Services in the Electricity Market: Consultation on regulatory implications* COAG Energy Market Reform Working Group May 2016, p8

10. Options to Address Current Consumer Protection Gaps

EWON believes there are a number of options that could be implemented by government, regulators and industry to address the gaps in consumer protection between customers of exempt sellers and customers of authorised retailers.

Outlined below are four options which were drawn from the initiatives of other energy jurisdictions and other industries.

Option 1: Introduction of an industry code for exempt sellers and embedded networks in NSW

The NSW government work with industry and other stakeholders to develop a voluntary industry code for exempt sellers and embedded networks.

The code would:

- provide best practice guidance for supporting vulnerable customers and customers experiencing payment difficulties or financial hardship (e.g. AER Sustainable Payment Plan Framework);
- provide a best practice complaint handling procedure which would comply with the current Australian standard;
- explain that the exempt seller is covered by EWON's jurisdiction and recommend exempt sellers to become members of EWON;
- explain the responsibility of exempt sellers to promote EWON's services to consumers in NSW;
- be aimed primarily at medium to large entities; and
- would supplement the existing AER Guidelines.

Advantages	Disadvantages
Does not require changes to the jurisdiction of EWON	A voluntary industry code is not enforceable by EWON
Does not require legislative change	Membership of EWON for exempt sellers would still be voluntary and therefore exempt sellers would not necessarily be bound by EWON decisions
EWON's governance and membership structure can be changed to better accommodate exempt sellers	Exempt sellers would need to be made aware of the code
Would provide reputation boost to industry	

Option 2: Deemed membership of EWON for all exempt sellers in NSW

The NSW government could introduce regulatory changes to make all exempt sellers and networks deemed members of the EWON scheme.

Deemed membership of EWON for any exempt seller or embedded network in NSW would require:

- regulatory change to make any exempt seller or embedded network in NSW a deemed member of EWON; and
- a change to EWON's constitution, charter and membership structure to allow for deemed members.

Advantages	Disadvantages
All exempt sellers of a certain class in NSW would be members of EWON and bound by EWON decisions	Would require regulatory change to make all exempt sellers deemed members of EWON
EWON's governance, membership and/or fee structure can be changed to better accommodate exempt sellers	Possible red tape burden for small exempt entities
Exempt sellers could incur no costs unless EWON received complaints about their services	Increased complexity and administration costs for EWON
Creates a level playing field for all exempt sellers and does not disadvantage authorised retailers	
Does not discourage innovation – as business models based on new technologies only incur costs when consumers need to access EDR	
Could be implemented in conjunction with an industry code	

Option 3: All exempt sellers of a certain class be required to become members of EWON

The NSW government could introduce regulatory changes to make all exempt sellers above a certain threshold be required to become members of the EWON scheme.

For example, the threshold for an exempt seller to be required to join the EWON scheme may be:

- an exempt seller selling energy to over 50 small business business customers within a single embedded network; or
- an exempt seller selling energy to over 200 residential customers within a single embedded network.

Updating the requirement of a certain class of exempt sellers to become would require:

- regulatory change to make any exempt sellers operating in NSW above a certain threshold be required to become members of the EWON scheme.

Advantages	Disadvantages
Exempt sellers of a certain class in NSW would be members of EWON and bound by EWON decisions	Would require regulatory change to make all exempt sellers members of EWON
Some customers of exempt sellers would benefit from EWON binding decisions	This change would require all exempt sellers to be aware of the requirements and self identify as being required to become a member of EWON
Small entities not required to become members thus not discouraging market entry	Difficult to enforce and identify the individual exempt sellers that should be members of EWON
Could be implemented in conjunction with an industry code	Does not create a level playing field for all exempt sellers

Option 4: Updating the Retail Exempt Selling Guideline to require exempt sellers to be members of an energy ombudsman scheme

The AER could update their Retail Exempt Selling Guideline to require exempt sellers to be members of a jurisdictional energy ombudsman scheme.

For example, the threshold for an exempt seller to be required to join the EWON scheme may be:

- an exempt seller selling energy to over 50 small business business customers within a single embedded network; or
- an exempt seller selling energy to over 200 residential customers within a single embedded network.

Advantages	Disadvantages
All exempt sellers in NSW would be members of EWON and bound by EWON decisions	Requires the AER to make changes to the conditions imposed by the Retail Exempt Selling Guideline
EWON's governance, membership and/or fee structure can be changed to better accommodate exempt sellers	To be most effective, would require COAG and ANZEWON involvement
This would mean a level playing field for all exempt sellers across all jurisdictions	
This option could be tailored by the AE to specific types of exempt seller. E.g. the condition could apply to operators of embedded networks but not to companies selling SPPAs	
Could be implemented in conjunction with a modified industry code – focusing on hardship and complaint best practice	

We understand that the AER is investigating this approach. We welcome this move and it is our intention to support the AER in its endeavours.

Appendix A: Definitions

AEMC: Australian Energy Market Commission

AEMO: Australian Energy Market Operator

AER: Australian Energy Regulator

Authorised Retailer: a person (or organisation) engaging in the retail sale of energy (electricity or gas) that holds a retailer authorisation from the AER.

Embedded network: a network that is connected to the National Electricity Market, or an islanded network subject to regulation under the National Energy Rules, which is supplying electrical energy to a third party, but is not a transmission or distribution network registered with AEMO⁴³.

Exempt seller: means a person, selling energy to a person for premises, who is exempted by the AER under Division 6 of Part 5 (NERL) from the requirement to hold a retailer authorisation⁴⁴.

Exempt customer: means a person to whom an exempt seller sells energy and who would be a retail customer of the seller if the seller were a retailer⁴⁵.

NECF: National Energy Customer Framework

NEM: National Electricity Market

NERL: National Energy Retail Law

NERR: National Energy Retail Rules

Onselling: an arrangement where a person acquires energy from another person and they, or a person acting on their behalf, sells energy for use within the limits of a site⁴⁶.

Solar Power Purchase Agreements (SPPA): means a power purchase agreement, which is a financial arrangement in which a business provides, installs and maintains, at no initial cost, a solar electricity generation system at a customer's premises and in exchange, the customer buys the energy generated for an agreed period⁴⁷.

⁴³ National Electricity Rules (NER) Chapter 10 – Glossary: A *distribution system*, connected at a *parent connection point* to either a *distribution system* or *transmission system* that forms part of the *national grid*, and which is owned, controlled or operated by a person who is not a *Network Service Provider*.

⁴⁴ National Energy Retail Law (NERL), s33

⁴⁵ NER, r148

⁴⁶ AER (Retail) Exempt Selling Guideline Version 4 – March 2016

⁴⁷ a Power Purchase Agreement (PPA) may also involve other forms of local electricity generation – other than solar – however, in practice the majority of companies selling energy based on this model are focused on solar power generation

Appendix B: Types of Retail Exemptions and Consumer Protections

B.1 Requirements of a person selling energy in NSW

A person or business is prohibited from "selling energy to a person for premises" unless they:

- hold a current retailer authorisation or
- obtain an exemption from the Australian Energy Regulator (AER)⁴⁸.

B.2 Types of energy retail exemptions

<p>1 - Registrable</p>	<p>Where the onselling resembles the arrangement between a customer and an authorised retailer:</p> <p>R1 – Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate⁴⁹</p> <p>R2 – Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate⁵⁰</p> <p>R3 – Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate⁵¹</p> <p>R4 – Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (ie long term residents)</p> <p>R5 – Persons selling metered energy to large customers</p> <p>R6 – Persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate⁵²</p> <p>R7 – Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate⁵³</p> <p>R8 – Persons selling electricity through power purchase agreements (PPAs) to customers who are connected to the national electricity grid.</p>
<p>2 - Deemed</p>	<p>Generally for small scale selling arrangements where the costs or registration would outweigh the benefits e.g. holiday accommodation, sales to less than 10 residents. These do not need to register with the AER, but conditions automatically apply.</p>
<p>3 - Individual</p>	<p>For individual situations tailored to a specific customer and a specific site. The AER can impose conditions on a case by case basis. For example, solar companies installing panels on a customer’s roof free of charge, and selling the energy generated back to the customer. This type of exemption is increasingly common due to the applications made for companies selling solar power purchase agreements and retail buildings undergoing brownfield conversions.</p>

⁴⁸ NERL, s88. A breach of this provision attracts a civil penalty

⁴⁹ Individual exemptions required if network retrofitted after 1 Jan 2015 and if applicant cannot obtain explicit informed consent of all customers

⁵⁰ Individual exemptions required if network retrofitted after 1 Jan 2015

⁵¹ Individual exemptions required if network retrofitted after 1 Jan 2015

⁵² Only available where sellers had these selling arrangements in place before 1 January 2015

⁵³ Only available where sellers had these selling arrangements in place before 1 January 2015

B.3 Consumer protections for customers of exempt sellers

The AER's [Exempt Selling Guideline](#) contains 19 core conditions, and two supplementary conditions, which give customers of exempt sellers similar protections to those afforded to customers of authorised retailers.

The conditions contained in the guideline apply to the sale of energy to customers by exempt persons (deemed and registerable)⁵⁴. The supplementary conditions relate only to the sale of energy through power purchase agreements. If the AER approves an individual exemption, it will list the relevant conditions that apply to the site⁵⁵.

Core exemption conditions	
Condition 1 - Obligation to supply	Condition 11 - Reconnection or re-energisation
Condition 2 - Information provision	Condition 12 - Concessions and rebates
Condition 3 - Billing and payment arrangements	Condition 13 - Choice of retailer
Condition 4 - Estimation as basis for bills	Condition 14 - Contact details
Condition 5 - Pay-by date	Condition 15 - Dispute resolution
Condition 6 - Receipts	Condition 16 - Life support customers
Condition 7 - Pricing	Condition 17 - Continuity of supply
Condition 8 - Undercharging and overcharging	Condition 18 - Termination of energy supply agreement
Condition 9 - Payment difficulties and disconnection or de-energisation	Condition 19 - Maintaining records
Condition 10 - When disconnection or de-energisation is prohibited	
Supplementary exemption conditions (SPPA only)	
Condition 20 – Information provision	
Condition 21 – Exemption limited to the sale of electricity through power purchase agreements	

⁵⁴ NERR, r153

⁵⁵ NERR, r158