



7 April 2022

Ms Mila Sudarsono  
A/g Director Compliance and Enforcement Branch  
Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601

Dear Ms Sudarsono

**AER Draft Retail Exempt Selling Guideline review 2021-22**

Thank you for the opportunity to comment on the draft package of the AER's Review of the Draft Retail Exempt Selling Guideline 2021-22.

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.

You will also find attached to this submission:

- **Attachment 1:** a table of additional recommendations based on the Notice of Draft Instrument.
- **Attachment 2:** a copy of additional information EWON provided to the AER on Gas Embedded Networks in August 2021.

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**

### Chilled water and bulk hot water

The *Gas embedded networks in NSW - A recommendation for a new retailer exemption for gas on-sellers*, is Attachment 2 for clarity on EWON's position - made in the submission to the AER following the EWON facilitated stakeholder roundtable meetings about gas in embedded networks.

EWON's report was in response to the growing number of hot water embedded networks in NSW which operate without adequate and equitable consumer protections for customers who are on-sold chilled water and bulk hot water.

EWON thanks the AER for engaging with this growing consumer issue. We acknowledge the AER's draft position that the sale of bulk chilled or hot water is unlikely to constitute the sale of energy for the purposes of the retail law, and as such it does not propose to determine a new class of exemption to regulate the sale of bulk chilled or hot water in the guidelines.

EWON also understands that the AER's view that an exemption class is not required, relates to its position that bulk chilled and hot water is a manufactured or bundled product. Our understanding is that providers do not buy or sell the water that is supplied to customers within these networks, therefore bulk hot water, in our view, is neither a manufactured or bundled product. Accordingly, as outlined below, we ask that the AER further consider its position with respect to establishing an additional exemption class.

We acknowledge that the AER is currently undertaking broader work to consult on the scope of the NECF and the application of section 88(1) of the Retail Law. EWON looks forward to contributing to this process.

In the past, most hot water meters in gas embedded networks measured the gas (energy) used to heat the water used by each customer and the customer's charges were and are still based on the price of gas used by the system.

- The gas distributor, Jemena Gas Networks, and its predecessors, supplied gas to apartment buildings using hot water meters to measure energy consumption for decades. The AEMO *Gas Retail Market Procedures (NSW and ACT)* embeds an equally long-standing industry practice of using the flow through a hot water meter to measure the energy consumption of an on-market energy customer.
- The *Gas Retail Market Procedures* include hot water meters into the definition of a *meter*, and therefore incorporate hot water meters into a customer's gas delivery point. The procedures also provide networks and retailers with a methodology for using a hot water meter to measure energy consumption.<sup>1</sup>
- The growth in gas embedded networks, including bulk hot water services, in NSW is directly linked to the introduction of a boundary meter network tariff by the gas distributor, Jemena Gas Networks, in 2015.

Since then, the practice of using meters to measure the volume of cold water used in the bulk hot water system was introduced. As a result, customers are now being billed for hot water on a cents per litre basis rather than for the energy used to heat the water. These customers do not receive the consumer protections that they would if they were being charged for the energy used to heat their hot water. Additionally, in many cases, customers also receive a separate bill (from either their OC or energy seller on behalf of the OC) for the volume of cold water that is used in this process.

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<sup>1</sup> [Retail Market Procedures \(NSW and ACT\)](#)

- In November 2019, the AER's draft decision on the Jemena Access Arrangement 2020-2025 rejected Jemena's proposal to withdraw from individual hot water metering by July 2020.<sup>2</sup> The reduction in consumer protections for customers moving into gas embedded networks was a significant factor in the AER's draft decision. After the draft decision, Jemena amended their proposal which withdrew the idea of completely exiting hot water metering – this meant the AER did not need to make a final determination on this matter.
- While noting Jemena's approach to the AER draft determination in November 2019, i.e. Jemena amending its proposal, many customers living in gas embedded networks still have no access to appropriate consumer protections.

In its recent consultation paper, *Promoting innovation for NSW energy customers* the NSW Department of Planning and Environment (DPE) is considering how to enhance protections for hot water embedded network customers. The consultation is reviewing whether it is appropriate to require the sale of hot water to be treated as energy to allow hot water embedded network customers to be given similar consumer protections as those in traditional common hot water systems and exploring whether hot water embedded network operators should be required to bill customers for hot water in the underlying energy source (in cents per megajoule or kilowatt hour).

EWON therefore continues to recommend that the AER create a registerable class exemption for gas on-selling when its purpose is to heat water. This exemption class would need to apply to situations where the residential customer's *energy consumption* is measured by a hot water meter, consistent with the current Gas Retail Market Procedures. To encourage innovation for exemption holders and to ensure consistency with the current wording of the *Gas Retail Market Procedures*, the exemption class could be silent on how the hot water is billed to customers. This would allow for different metering technologies, products and services to be captured without further need to expand or change the definition in the future.

### AER Factsheet - How to access retailers for your energy needs if you live in an embedded network - March 2022

EWON supports the AER's approach to addressing the issue that previous versions of the exempt selling guidelines did not provide an exempt customer with information on the process and requirements they must follow to be able to access retail competition, beyond metering options.

The process to exit an embedded network is complex and technical and is often a barrier to customers engaging in this process. The AER draft factsheet – *How to access retailers for your energy needs if you live in an embedded network* assists customers in navigating this process. A factsheet alone may present challenges for consumer understanding, due to the density of information. EWON acknowledges that this level of detail is required. However, a more readily accessible factsheet that is simple and easy to understand will assist customers who seek to understand the concept, without the technicalities in the draft factsheet.

EWON produced its own factsheet '[Living in an embedded network](#)' which provides a simple and clear explanation of embedded networks and details leaving an embedded network. The AER could consider publishing a simpler version of the fact sheet for customers who only seek conceptual information. This can then be supported by the more complex factsheet, which includes technical

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<sup>2</sup> [DRAFT DECISION, Jemena Gas Networks \(NSW\) Access Arrangement 2020 to 2025, Attachment 1, November 2019](#)

information, for customers who seek more guidance on making a more considered decision. This is a similar approach to what the AER is taking with the Better Bills Guideline.

### Hardship

EWON believes that the word 'affordability' should replace 'hardship' wherever possible. Noting that it may be necessary to use the term 'hardship' at specific points in the retail exempt selling guidelines, or the Exempt Seller Hardship Policy template in order to draw comparisons and to provide consistency to the NERL or the NERR. The term 'in hardship' is a stigmatising label. If the retail exempt selling guidelines refer exempt sellers to use words such as 'affordability' or financial vulnerability' a greater number of customers who experience may self-identify. It may also open the door to initiating easier conversations between exempt seller staff and customers who need assistance.

### Condition 26 Hardship Policy and the AER Exempt Seller Hardship Policy template - March 2022

EWON strongly supports the inclusion of affordability support in the Exempt Selling Guidelines and the AER's development of an Exempt Seller Hardship Policy template.

#### **The Standardised Statements must reference the customer's right to access energy ombudsman schemes**

When customers complain to EWON about energy affordability or disconnection for non-payment, they are often not aware of assistance available to them or have been unable to negotiate an affordable payment plan with their exempt seller.

Condition 26 (6) states that 'If an exempt seller deems a residential exempt customer to be ineligible for hardship assistance, the exempt seller must provide the residential exempt customer the reasons why', EWON recommends that that this be extended to 'and advise the customer of their right to seek advice from or complain to an energy ombudsman scheme'.

EWON supported a similar recommendation in its submission to the AER regarding *Standardised Statements for use in customer hardship policies* on 7 December 2018. The addition of this to condition 26 would provide increased benefit to both the exempt customer in navigating their needs during a time of financial vulnerability and the exempt seller in providing additional assistance in negotiating a fair and reasonable outcome – suiting both parties.

#### **Language**

The use of clear and simple language whenever possible is vital for ensuring understanding from the exempt seller and exempt customers.

Condition 2 (g) states that 'the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty' and Condition 9 (1) states that 'where an exempt customer informs the exempt seller that they are unable to pay energy bills due to financial difficulty'; the term 'unable to pay' may create ambiguity and may lead to multiple interpretations of its meaning.

Many customers who approach EWON are unable to pay their entire bill but can make partial payment or instalments towards their debt.

EWON suggests the wording be updated to mirror Rule 33 of the National Energy Retail Rules, to Condition 2 (g) 'the forms of assistance available if the exempt customer is experiencing payment difficulties' and Condition 9 (1) to 'where an exempt customer informs the exempt seller that they are experiencing payment difficulties'.

### Payment Options

There is also an added benefit of reminding exempt sellers of their obligations under the guidelines and providing customers with additional information about how they can pay their energy bills. The draft template currently states that:

‘Once we agree to a payment plan, we will send you information including:

- how long the payment plan will go for
- the amount you will pay each time
- how many payments you need to make
- when you need to make your payments (this is also called the frequency of the payments)
- how we worked out your payments.’

The AER may wish to include an additional comment regarding how an exempt customer can make a payment. EWON recommends the addition of:

‘We will review your payment history and see if another payment method may help you maintain a payment plan with us. We offer the following payment methods:’ followed by a list of payment methods offered by the exempt seller to meet their obligation to the core condition 3.2.

### Family Violence

In its recent consultation paper; [Protecting Customers Affected by Family Violence](#), the AEMC noted its interest in ‘exploring the regulatory avenues to apply family violence protections in embedded networks’. It further noted that additional consultation would be required, meaning that any protections for family violence customers may take even longer come to fruition.

Noting the timeframe for any review on this aspect by the AEMC, and any future review of the Exempt Seller Guidelines, the AER has the opportunity to explore ways to include protections for customers experiencing family violence during the current review of the Exempt Seller Guidelines. It can also determine if drafting can be included to easily include any recommendations pending the outcome of the AEMC review.

### Ombudsman scheme requirements

#### Applying for an Individual exemption (Appendix B)

EWON strongly supports the new requirement that individual exemption applicants must provide evidence, as part of their individual exemption application, of the steps they have taken to obtain ombudsman membership in the jurisdiction/s in which they intend to sell energy to residential customers.

This practical approach will increase compliance with the condition under the guidelines and increase awareness of exempt sellers’ obligations from the outset of their application process.

EWON recognises the difficulty in applying a proportional response to non-compliance by an exempt entity. Many exempt entities are small businesses such as independent residential park operators. Some also operate on a not-for-profit basis such as strata plans, community title and some retirement village operators. Exempt entities such as strata committees may also be locked into long term contracts with authorised retailers and/or billing agents, making them both the customer and the regulated entity (network and/or retail).

There is still a gap in increasing awareness and ensuring compliance within the deemed and registerable exemptions class, as well as ensuring ongoing compliance with individual exemption holders.



EWON acknowledges the AER's position that any changes to civil penalties and enforcement require a legislative change and cannot be addressed as part of this review. However, EWON supports the AER in acquiring the capacity to take a more proportional response to breaches by small exempt entities and would welcome any consultation on how this may be achieved.

### Enquiries

Enquiries about this submission should be directed to Janine Young, Ombudsman on (02) 8218 5256 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

## Attachment 1: EWON response to Notice of Draft Instrument.

Section of Notice of Draft Instrument	Issue	AER Draft Position	Recommended EWON response
6 Additional amendments	6.2 Who should hold the exemption?	<p>Changes include:</p> <ul style="list-style-type: none"> <li>• provided additional information in section 5 of the Guideline to clarify that only legal persons may hold an exemption.</li> <li>• where a change of ownership occurs in relation to a site, the new owner should notify us within 20 business days of the change in ownership taking effect.</li> <li>• expect exempt sellers to advise the AER of any significant change in circumstances relating to an existing exemption.</li> <li>• exempt seller to advise the AER if the contact details for their authorised representative changes in any way</li> </ul>	<p>We strongly support for these draft amendments.</p> <p>EWON suggests that the AER consider</p> <ul style="list-style-type: none"> <li>• adding an additional requirement for exempt sellers to update the ombudsman scheme of any changes in circumstances. Up to date information is critical in EWON's role of dispute resolution and safeguarding consumer protections for vulnerable customers. Such a requirement would provide an additional layer of assurance to consumers that</li> <li>• adding an additional requirement that if an exempt seller has a significant change in circumstances or operations that they must consider and seek guidance from the AER as to whether their current exemption is appropriate. EWON is aware of an exempt seller that has acquired a significant amount of embedded network sites, and we believe that the exempt seller may need to apply for a retail authorisation. This requirement, will ensure that exempt sellers continue to engage with the AER, providing up to date information across different sectors, while ensuring that appropriate exemptions are in place, thus ensuring the adequate level of consumer protections.</li> </ul>
6 Additional amendments	6.6 Ombudsman scheme requirements	<ul style="list-style-type: none"> <li>• a new requirement that individual exemption applicants must provide evidence of the steps they have taken to</li> </ul>	<p>We strongly support these draft amendments. This requirement will increase awareness of obligations</p>



Section of Notice of Draft Instrument	Issue	AER Draft Position	Recommended EWON response
		<p>obtain ombudsman membership in the jurisdiction/s in which they intend to sell energy to residential customers</p> <ul style="list-style-type: none"> <li>noting that if we determine an exempt seller is required to join an ombudsman scheme, the exempt seller must provide this evidence as part of their individual exemption application</li> </ul>	and compliance for individual exemption applicants.
6 Additional amendments	6.7 Condition variation	<ul style="list-style-type: none"> <li>Section 9 in the Guideline outlining the different processes the AER will follow when varying existing deemed and registered exemption conditions, as well as conditions attached to existing individual exemptions.</li> <li>clarified in Appendix D that exempt sellers need to request a variation to an existing individual exemption where the nature of the exempt seller's energy on-selling arrangement has changed at the relevant exempt sit</li> </ul>	We support these draft amendments as it works towards providing transparent and clear information on processes
6 Additional amendments	6.8 Cancelling and revoking exemptions	<ul style="list-style-type: none"> <li>updated process for cancelling a registrable exemption to recognise that, when an exempt seller requests their exemption be cancelled, the AER will amend the exemption to reflect in the public register of exemptions that it is no longer effective.</li> </ul>	We support this draft amendment as it works towards providing transparent and clear information on processes
6 Additional amendments	6.10 Core condition variations - Condition 13 – Concessions and rebates	added a clarifying timeframe to when an exempt seller must apply an issued rebate, concession, or assistance to an exempt customer's bill.	<p>We support this draft amendment.</p> <p>The availability of some government relief schemes is not yet available to exempt customers in NSW that are on-sold power. The Department of Planning and Environment (DPE) is currently undertaking the Energy Accounts Payment Assistance (EAPA) Scheme Review which has indicated that ease of access by vulnerable customers, including those in embedded networks will be addressed. It is likely that EAPA will be available to customers in the future.</p> <p>While the Standardised Statements within the Exempt Seller Hardship Policy template provides</p>



Section of Notice of Draft Instrument	Issue	AER Draft Position	Recommended EWON response
			<p>that the exempt seller refers customers to websites that tell the exempt customer about government relief schemes, it is not likely that any NSW state government relief scheme will be available at the time of an exempt seller drafting its hardship policy.</p>
6 Additional amendments	6.10 Core condition variations - Condition 16 – Dispute resolution	<ul style="list-style-type: none"> <li><i>The procedures must be consistent with the Australian Standard <a href="#">AS/NZS 10002:2014 Guidelines for complaint management in organizations</a> as amended and updated from time to time.</i></li> <li>In the event of a complaint or dispute concerning the sale of energy to an exempt customer, <del>and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant,</del> the exempt <del>seller person</del> must:</li> </ul>	<p>We recommend that the name of the Australian Standard remain, to ensure clarity for exempt sellers, however it should be amended as below.</p> <p><i>The procedures must be consistent with the Australian Standard <a href="#">AS10002/2022 Guidelines for complaint management in organizations (and subsequent versions)</a> as amended and updated from time to time.</i></p>
6 Additional amendments	6.10 Core condition variations - Condition 21 – Continuity of supply	revised to specify that exempt sellers, if they are unable to continue selling energy, they must notify their exempt customers and the AER immediately and advise of the steps they are taking to arrange an alternative supply.	<p>We support the draft amendment for an exempt seller to take steps to arrange an alternative supply of energy.</p> <p>While these circumstances are rare, the objective of the guidelines is to ensure that exempt customers have consumer protections. In the event that this was to occur, to ensure that an exempt customer continues to receive supply and ongoing consumer protections, we suggest the AER consider expanding this to include ‘to arrange alternate supply and ensure the continuation of other requirements and protections under the guidelines.’</p>



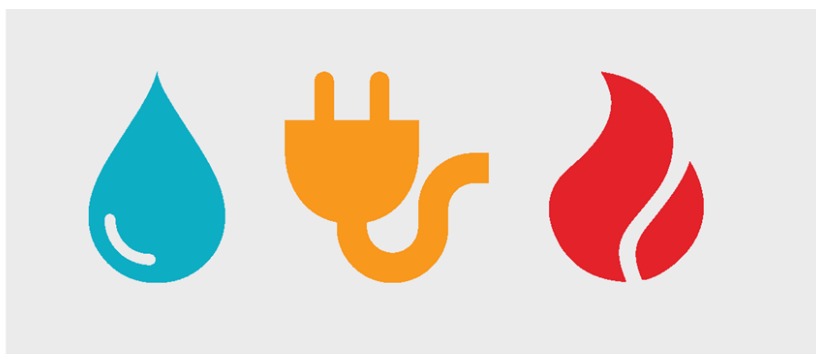
# Attachment 2: Copy of information provided to the AER in August 2021



## Gas embedded networks in NSW

**A recommendation for a new retail class exemption for gas on-sellers**

July 2021 | Energy & Water Ombudsman NSW



**Energy & Water  
Ombudsman NSW**

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## Summary: Gas embedded networks in NSW

1. EWON has produced this document after a recently completed roundtable at which attendees, including from the AER, requested more detailed background information.
2. NSW is currently observing a growth in residential gas embedded networks, a process which commenced in 2015 when the gas distributor, Jemena Gas Networks, introduced a network tariff designed for boundary metering. EWON was alerted to this trend through complaints from gas embedded network customers.
3. In NSW, gas and hot water embedded networks are frequently designed to provide the following services to customers:
  - an unmetered gas supply (referred to as a 'cooktop service')
  - a hot water heating service (where the energy consumption is measured with a hot water meter).
4. In NSW there are already at least 252,841 retail gas customers:
  - that have their gas consumption measured using a hot water meter owned, maintained and operated by Jemena.
  - their hot water meter forms part of the gas delivery point as per the Gas Retail Market Procedures and the customer is allocated a MIRN.
  - their energy consumption is calculated using a methodology set by the Gas Retail Market Procedures and based on the flow of water through the hot water.
  - they are billed for their energy consumption by an authorised energy retailer and receive the full set of consumer protections under NECF.
5. In NSW there are now also over 49,025 customers in gas embedded networks. These customers are billed for an unmetered gas supply and metered hot water. EWON notes that the only practical differences between the 49,025 gas embedded network customers and the 252,841 retail gas customers (see above), is that:
  - In embedded networks, a entity, other than Jemena, owns, maintains, and operates, the individual hot water meters.
  - the embedded network provider bills the customer for \$/litre of hot water used. However, the price of hot water per litre is solely based on the price of gas used to heat the hot water.
6. EWON acknowledges and understands that the long-term AER position in the Exempt Selling Guideline is that hot water does not meet the definition of energy under the NERL.
7. From our discussions with the AER, we understand that some industry stakeholders argue that bulk hot water is not an energy product but a separate bundled product which combines energy and water.

8. EWON is not suggesting that *hot water = energy*. However, we don't accept that gas embedded networks in NSW are legitimately selling hot water as a bundled product. Instead, we believe that these providers are on-selling gas only and measuring each individual customer's energy consumption using a hot water meter. The use of hot water meters to measure energy consumption is a long-standing practice supported by the AEMO Gas Retail Market procedures. We consider the practice of billing customers for litres of hot water used is an exercise in regulatory arbitrage and does not reflect the actual service provided to these customers – the on-sale of gas.
  
9. EWON does not accept that hot water, in NSW, is a bundled product (water + energy) that is separate from the sale of energy. We have seen no evidence that the embedded network operator is buying or selling the water that is used in the centralised hot water system. Further information that supports this position is:
  - In NSW, accounts with the licenced water provider are opened with the transfer of property titles, and new connections form part of the development approval process. Therefore, only individuals and businesses that own a property, or an owner's corporation, will hold a water account with the licenced water provider.
  - For example, the Sydney Water [Multi-level individual metering guide](#) outlines how the usage for centralised hot water systems within residential buildings is charged to owner's corporations. This document explains that the owner's corporation is charged for the total amount of water used in the centralised hot water system and these charges are typically then apportioned to individual owners through strata levies.
  - This means only an owner's corporation could be on-selling the water used in the centralised hot water system.
  - We know that many residents living in embedded networks are required to open a gas account and pay for water heating services. We also know that water heating services in embedded networks are managed by for-profit energy companies. However, due to basic structure of retail services from licenced water providers, it is unlikely the charges include the cost of the water used in the system.
  
10. EWON has engaged with a wide range of regulatory and government bodies including the NSW Department of Planning, Industry and Environment (DPIE), the Australian Energy Market Commission (AEMC), the Independent Pricing and Regulatory Tribunal (IPART), the Australian Energy Regulator (AER) and the Commonwealth Department of Industry, Science, Energy and Resources through two Roundtable workshops. At the second workshop, participants identified that the most viable regulatory solution would rely on regulatory changes introduced by the NSW Government, and the creation of a new exemption class for individuals on-selling gas in embedded networks. This exemption would need to include situations where the customer's energy consumption is measured with a hot water meter in line with the existing AEMO Gas Retail Market Procedures.
  
11. In November 2019, the AER draft decision on the Jemena Access Arrangement 2020-2025 rejected Jemena's proposal to withdraw from individual hot water metering by July 2020<sup>3</sup>.

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<sup>3</sup> [DRAFT DECISION, Jemena Gas Networks \(NSW\) Access Arrangement 2020 to 2025, Attachment 1, November 2019](#)

The reduction in consumer protections for customers moving into gas embedded networks was a significant factor in the AER's draft decision.

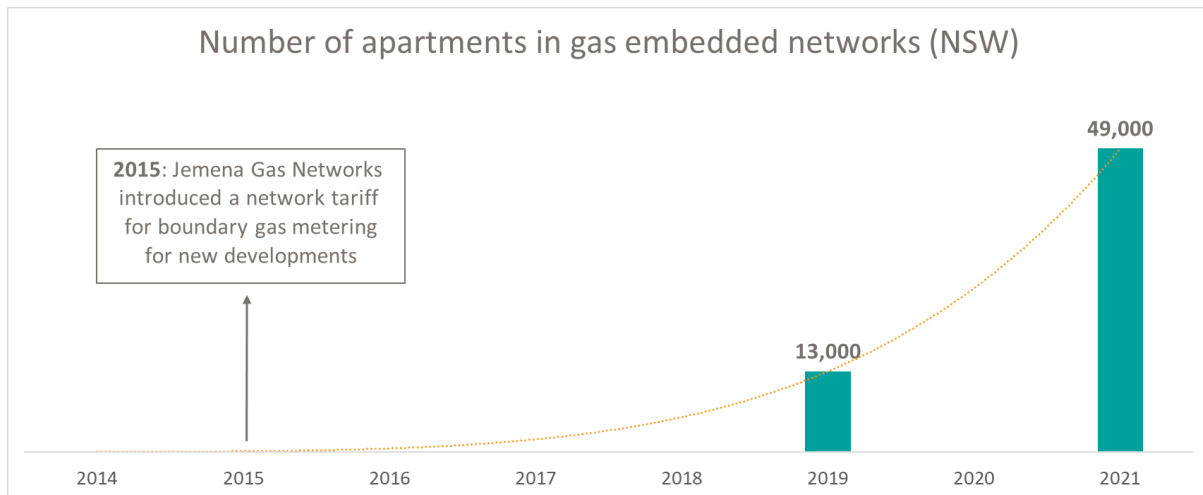
In February 2021, the AER commenced a review of the current AER (Retail) Exempt Selling Guideline. This review presents an opportunity for the AER to address the reduction in consumer protections for gas embedded network customers, as identified in its 2019 draft determination. The first step in extending appropriate consumer protections to gas embedded network customers could be achieved by creating a retail exemption class for on-sellers of gas in embedded networks.

12. EWON recommends that the AER consider amending the Exempt Selling Guideline to include a retail exemption class for gas on-selling. This exemption class would need to include situations where the residential customer's *energy consumption* is measured by a hot water meter (consistent with the current Gas Retail Market Procedures)

# The growth of gas embedded networks in NSW

EWON’s recent report [Spotlight On Hot water embedded networks](#) shone a light on the importance of hot water as an essential service, its regulation in NSW, the need for residents to be covered by energy specific consumer protections, and why residents living in hot water embedded networks across Australia need access to Energy & Water Ombudsman schemes now and in the future.

Our report is a response to the growing number of hot water embedded networks in NSW:



The growth in gas embedded networks in NSW commenced in 2015:

- 2015** • **Network tariff for gas embedded networks:** Jemena Gas Networks introduces a network tariff for boundary gas metering for new developments.
- 2019** • **Access Arrangement for 2020-25 (proposal):** Jemena outlined its boundary metering strategy to withdraw from individual hot water metering from 1 July 2020. There are already 13,000 households in embedded gas networks.
- 2019** • **Access Arrangement for 2020-25 (draft determination):** the AER rejects Jemena’s proposed withdrawal from individual hot water metering services, citing concerns for consumer protections.
- 2021** • **49,025 households in gas embedded networks in NSW:** in 2019, Jemena forecasted there would be 105,000 apartments in embedded networks by 2025. Despite the change in Jemena's access arrangement proposal, there has been rapid growth of embedded gas networks.



In NSW, gas and hot water embedded networks are most commonly designed to provide the following services to customers:

- an unmetered gas supply (frequently referred to as a ‘cooktop service’)
- a hot water heating service (metered hot water).

The rapid growth of gas and hot water embedded networks has led to an emergence of two classes of gas consumer in NSW:

### Consumer group 1: Common hot water systems

**252,841** customers in NSW:

- the hot water meter is owned and maintained by Jemena Gas Networks.
- the customer is billed for the gas (\$/MJ) by an authorised energy retailer
- each customer’s hot water meter is allocated a Delivery Point Identifier (DPI) on the gas retail market.
- AEMO sets Gas Retail Market Procedures that define a hot water meter as part of the gas delivery point.
- customer receives full consumer protections under NECF

### Consumer group 2: Hot water embedded networks

**49,025 (*Rapidly growing*)** customers in NSW:

- hot water meters are owned, operated, and billed by a third-party.
- the customer is billed for the hot water (\$/litre) by the embedded network operator
- the prices is based on the gas used to heat the water and usually rely on the formulas set out by the AEMO Gas Retail Market procedures.
- only protected by the Australian Consumer Law (ACL)

# Recommendation for the AER to create an exemption class for on-selling gas in embedded networks

## Roundtable workshops with the NSW government and energy market bodies

Since the publication of our Spotlight On report, EWON has hosted two Roundtable workshops, one in May and one in July, about the growth of hot water embedded networks in NSW and growing number of energy consumers without energy specific consumer protections.

The following organisations have participated in at least one of our workshop discussions:

- NSW Department of Planning, Industry and Environment (DPIE)
- Australian Energy Market Commission (AEMC)
- Australian Energy Regulator (AER)
- Commonwealth Department of Industry, Science, Energy and Resources
- Independent Pricing and Regulatory Tribunal (IPART)
- Energy & Water Ombudsman NSW (EWON)

At the first workshop, participants explored four possible regulatory solutions to centralised hot water systems in embedded networks, including:

- expanding the definition of ‘energy’ in the NERL to include the sale of hot water.
- the state government regulating gas embedded networks by setting a requirement that any customer with a hot water meter must be billed in the underlying energy source.
- expanding the Water Industry Competition Act 2006 (NSW) and regulations to require hot water sellers to obtain a water licence.
- amend NERL/NERR billing requirements to have hot water billed as energy.

## The recommended regulatory solution that includes creating a retail exemption class for gas on-sellers

At the second workshop, and based on presentations of further detailed research carried out by participants, it was agreed that there appeared to be only one viable solution for appropriately regulating gas embedded networks selling metered hot water:

- **A national framework for gas on-selling:** AER would need to amend the Exempt Selling Guideline to include a retail exemption class for gas on-selling. This exemption class would need to include situations where the residential customer’s *energy consumption* is measured by a hot water meter (consistent with the current Gas Retail Market Procedures)
- **State jurisdictions opting-in:** state governments opting into the solution by creating legislation or regulations to require hot water providers to bill customers for the underlying energy source, using the methodology set out by the AEMO market procedures, and obtain an exemption or authorisation from the AER.

## Attachment 2: Copy of information provided to the AER in August 2021

### Key issues about the current status of hot water customers in NSW

#### 1. Hot water as a bundled product and the AEMO Gas Retail Market Procedures that allow for a hot water meter to be used to record *energy consumption*

EWON notes that the AER Exempt selling Guideline clearly states that the sale of bulk hot water is not the 'sale of energy' under the Retail Law and Retail Rules.

However, the AEMO Gas Retail Market Procedures embed an equally long-standing industry practice of using the flow through a hot water meter to measure the *energy consumption* of an on-market energy customer.

The Gas Retail Market Procedures include hot water meters into the definition of a *meter*, and therefore incorporate hot water meters into a customer's gas delivery point. The procedures also provide networks and retailers with a methodology for using a hot water meter to measure energy consumption<sup>4</sup>.

Whilst we understand that embedded network operators are billing customers for the hot water used (\$/L) rather than the gas consumed (\$/MJ), EWON considers this to be an exercise in regulatory arbitrage and not an accurate representation of the service provided to customers.

EWON does not accept that hot water is a bundled product (water + energy) that is separate from the sale of energy. We have seen no evidence that the embedded network operator is buying or selling the water that is used in the centralised hot water system. Further information that supports this position is:

- In NSW, accounts with the licenced water provider are opened with the transfer of property titles, and new connections form part of the development approval process. Therefore, only individuals and businesses that own a property, or an owner's corporation, will hold a water account with the licenced water provider.
- For example, the Sydney Water [Multi-level individual metering guide](#) outlines how the usage for centralised hot water systems within residential buildings are charged to owner's corporations. This document explains that the owner's corporation is charged for the total amount of water used in the centralised hot water system and these charges are typically then apportioned individual owners through strata levies.
- This means only an owner's corporation could be on-selling the water used in the centralised hot water system.

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<sup>4</sup> [RETAIL MARKET PROCEDURES RETAIL MARKET PROCEDURES \(NSW AND ACT\)](#)

- We know that many residents living in embedded networks are required to open a gas account and pay for water heating services. We also know that water heating services in embedded networks are managed by for-profit energy companies. However, due to basic structure of retail services from licenced water providers, and the limitations imposed by tenancy legislation, it is unlikely the charges include the cost of the water used in the system.

The list of embedded network providers, which are mostly authorised energy retailers, provided<sup>5</sup> by Jemena reflects the position that this is an energy product only:

Hot water embedded Network Provider	Authorised Energy retailer?	EWON member?
Origin Energy	✓	✓
OC Energy	✓	✓
Energy Trade	✗	✓
WINConnect	✓	✓
Arc Energy	✓	✓
Renewable Intelligence	✗	✗
Sustainable Future Group	✗	✗
The Embedded Networks Company	✓	✓
iGENO *	✓	✗
Australian Utilities Company	✗	✗
Evergy	✓	✓
LEP	✓	✓
Energy On	✗	✗
Savant Energy	✓	✓
Real Utilities	✓	✓
Active Utilities	✗	✗

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<sup>5</sup> [Developers - Jemena](#)

## 2. The status of the 252,841 NSW retail gas customers with a hot water meter, owned and managed by Jemena

In NSW there is a group of at least 252,841 retail gas customers:

- that have their gas consumption measured using a hot water meter owned, maintained and operated by Jemena.
- their hot water meter forms part of the gas delivery point as per the Gas Retail Market Procedures and the customer is allocated a MIRN.
- their energy consumption is calculated using a methodology set by the Gas Retail Market Procedures and based on the flow of water through the hot water.
- they are billed for their energy consumption by an authorised energy retailer and have traditionally received the full set of consumer protections under NECF.

This group of customers existed long before Jemena introduced boundary metering in 2015 and prior to the growth of gas embedded networks in NSW. This group of customers also predates the AER exempt selling guideline.

If the AER has determined that hot water is a bundled product, EWON is seeking clarification on the legal status of the 252,841 retail gas customers in NSW with a hot water meter, owned and managed by Jemena.

## 3. The AER's draft decision on the Jemena Gas Networks (NSW) - Access arrangement 2020-25

The provision in the current AER Exempt Selling Guideline that the sale of bulk hot water is not the 'sale of energy' under the Retail Law and Retail Rules, appears inconsistent with the AER draft decision on the Jemena Access Arrangement 2020-2025:

### *"1.4.1.1 Boundary metering strategy*

*We consider JGN should continue to offer the individual hot water metering service to new high rises in its reference service in the 2020–25 access arrangement period. We therefore consider that JGN's reference service is not wholly appropriate having regard to the reference service factors."*

....

### *"Facilitating embedded networks and consumer protection*

*JGN considers its boundary metering strategy would facilitate gas embedded networks, who it believes are better placed to improve customer experience in new high-rise buildings.*

*However, there is concern such apparent improvements to customer experience may be offset by a reduction in customer protection. Where JGN does not own and operate the meter, there are concerns such customers would not fall under the protection of the National Energy Customer Framework (NECF)."*

The AER draft determination carries a statement of concern about the reduction in consumer protections for customers moving into gas embedded networks.

In February 2021, the AER commenced a review of the current AER (Retail) Exempt Selling Guideline.

This review presents an opportunity for the AER to address the reduction in consumer protections for gas embedded network customers, as identified in its 2019 draft determination. The first step in extending appropriate consumer protections to gas embedded network customers could be achieved by creating a retail exemption class for on-sellers of gas in embedded networks. This exemption class would need to include situations where the residential customer's energy consumption is measured by a hot water meter (consistent with the current Gas Retail Market Procedures).