

15 December 2017

Ms Sarah Proudfoot
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Dear Sarah

Draft AER (Retail) Exempt Selling Guideline

Thank you for the opportunity to comment on the Draft AER (Retail) Exempt Selling Guideline Version 5.

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

Summary

In summary, EWON makes the following comments on the draft guideline:

- EWON supports the introduction of Core Exemption Condition 17 (Member of energy ombudsman schemes) for residential customers. EWON will also continue to monitor and report on the complaints we receive and their outcomes, in accordance with NSW legislation, from small business customers operating within embedded networks, in order to position the AER to further consider this sector at a later date.
- EWON recommends that a footnote is added to Core Exemption Condition 2(1)(C)(i) that contains suggested wording for referring customers to an energy ombudsman scheme, such as:

We have an easy accessible complaints process in place should something go wrong. Please note that you also have the option to contact the Energy & Water Ombudsman NSW (EWON) at any time for independent advice, assistance and review of the outcome of your complaint. EWON's contact details are below.

- EWON also recommends that a footnote be added to Core Exemption Condition 16(3)(c) clarifying that referring exempt customers to an ombudsman scheme should not be conditional on the customer **completing** the retailers initial dispute resolution process.
- We recommend increasing transparency for exempt customers by:
 - amending Core Exemption Condition 3(5) (Billing and payment arrangements) to require the name of the exempt entity to be clearly identified on all bills sent to exempt customers.

- amending Core Exemption Condition 2(1) (Information provision) to require exempt customers to be advised in writing, at the start of their agreement, of the name of the exempt entity.
- EWON supports the inclusion of consumer protections relating to planned and unplanned outages within the exempt selling guideline, and we believe that consideration should also be given as to whether these protections should be covered within the AER's Network service provider registration exemption guideline.
- EWON supports the amendments to Core Exemption Condition 1 (Obligation to supply) which means exempt sellers cannot refuse to sell energy to an exempt customer for non-payment of their account, except in accordance with relevant disconnection and reconnection provisions.
- EWON recommends that a condition equivalent to Rule 115 of the *National Energy Retail Rules* (De-energisation for non-notification by move-in or carry-over customers) should be included in version 5 of the exempt selling guideline.
- EWON recommends that a footnote is added to Core Exemption Condition 9 that contains the minimum information requirements for reminder notices and disconnection warning notices. For example, we recommend that all reminder notices and disconnection warning notices should include the contact details of the relevant energy ombudsman scheme.
- EWON also recommends that disconnection warning notices should provide the customer with information about their rights to request reconnection after ten business days, if they agree to enter into a payment plan with the exempt seller for any outstanding amount owing on their account.

Membership of ombudsman schemes

EWON supports the introduction of Core Exemption Condition 17 (Member of energy ombudsman scheme) for residential customers. We believe this condition is a considerable step towards providing exempt customers with customer protections equivalent to the protections given to retail customers under the National Energy Retail Law and the National Energy Retail Rules.

EWON's governance and funding structures are currently under review to ensure they are sufficiently flexible to accommodate a wide range of retail and network members. EWON is committed to ensuring that the cost of membership will not unreasonably burden exempt entities. EWON will not be registering exempt entities as members until these changes are completed. This is anticipated to be in place from 1 July 2018.

We note that the AER considers it did not receive evidence from the initial consultation suggesting a need to extend this protection to small business exempt customers. The AER has also stated it may revisit this issue at a later date.

EWON currently has jurisdiction, through state legislation, to accept and deal with disputes and complaints between all small customers, including small businesses, and exempt sellers.

Our position is that, as a guiding principle, all small energy and water customers should have access to energy specific external dispute resolution. EWON's ability to accept complaints about exempt sellers from small business customers in NSW will not change. EWON will also continue to monitor and report on the complaints we receive and their outcomes, in accordance with NSW legislation, from small business customers operating within embedded networks, in order to position the AER to further consider this sector at a later date.

Changes to the requirements for dispute resolution

EWON supports the amendments proposed by the AER which place obligations on exempt sellers to develop and implement appropriate complaints and dispute handling processes.

We note that Core Exemption Condition 16 (Dispute resolution) will require exempt retailers to develop complaint handling procedures that are consistent with the Australian Standard, and provide a copy of the procedures to exempt customers. The condition also provides that in the event of a complaint, exempt sellers must advise the customer of any right to access an ombudsman scheme and provide them with the ombudsman schemes contact details.

Ombudsman schemes provide a critical service by providing energy consumers with independent information on energy issues, and by helping vulnerable consumers to engage with their energy retailer. While EWON is committed to ensuring that retailers continue to be responsible for initially responding to, and resolving, complaints from their own customers, we also note that consumers are also able to contact EWON for independent information and advice before making a complaint to their retailer. Speaking to EWON can give a customer the confidence and knowledge to be proactive and contact the retailer about their complaint, or to talk to them about payment difficulties.

EWON recommends that a footnote is added to Core Exemption Condition 2(1)(C)(i) that contains suggested wording for referring customers to an energy ombudsman scheme, such as:

We have an easy accessible complaints process in place should something go wrong. Please note that you also have the option to contact the Energy & Water Ombudsman NSW (EWON) at any time for independent advice, assistance and review of the outcome of your complaint. EWON's contact details are below.

EWON also recommends that a footnote be added to Core Exemption Condition 16(3)(c) clarifying that referring exempt customers to an ombudsman scheme should not be conditional on the customer **completing** the retailer's initial dispute resolution process.

The definition of exempt seller

EWON notes Section 5 of the Guideline has been amended to clarify that the 'exempt seller' is the person who holds the contract with a retailer to buy energy at the gate meter of an embedded network, and then on-sells it to the customers at the site. We also note that Section 5.1 makes it clearer that class exemptions are not appropriate for agents or service providers, and that an agent or service provider that services more than one site is likely to require an authorisation rather than an exemption.

EWON continues to receive complaints from exempt customers where a third party (an agent or service provider) is providing all the customer's energy retail services, the agent appears to be setting the energy prices charged to the customer, the branding of bills is in the name of the agent/service provider, and there is no reference to the details of the exempt entity (the responsible party) on any contracts, correspondence, or bills sent to that customer. In most of these cases, the agent or service provider is also servicing multiple residential buildings but does not require either an exemption, or an authorisation, because they are not buying the energy at the gate meter of the embedded network. This lack of transparency for exempt customers as to who is actually responsible for their retail services is a critical gap between the experience of embedded network customers and customers of authorised retailers.

Our experience is that this leaves customers confused about who is responsible for problems with their services or where to make a complaint. In our recent submission to the AEMC review of regulatory arrangements for embedded networks, we stated that the most critical aspect of the exemption framework is adequate transparency for exempt consumers regarding which entity is providing their energy services, and on who is responsible for ensuring their consumer rights under the framework.

Therefore, EWON recommends that:

- Core Exemption Condition 3(5) (Billing and payment arrangements) be amended to require the name of the exempt entity to be clearly identified on all bills sent to exempt customers; and
- Core Exemption Condition 2(1) (Information provision) be amended to require exempt customers to be advised, in writing, at the start of their tenancy / residency / agreement of the name of the exempt entity.

These amendments would not only ensure that customers are better informed about who is responsible for providing their energy services, but also allow greater transparency for energy ombudsman schemes to quickly identify who to contact in the event of a dispute. It will also ensure that residents can contact the exempt entity if a dispute arises about the billing agent's service.

Planned and unplanned outages

EWON supports the inclusion of consumer protections relating to planned and unplanned outages within the exempt selling guideline.

We also note that the equivalent provisions under the *National Energy Retail Rules* provide distributors (networks) with the right to interrupt the supply of energy to customers at any time, including for a planned interruption or an unplanned interruption¹, and list the requirements imposed on distributors for the notice of planned outages and communication obligations for unplanned outages².

In addition to this, the Rules also place an obligation on distributors to provide retailers with notification of both planned and unplanned outages³. We are concerned that in the event that an embedded network operator is not the same entity as the exempt seller, there appears to be no condition imposed on the network operator to notify the exempt seller of network outages.

As the AER now proposes to impose these responsibilities on exempt sellers through the core conditions within the guideline, we believe that consideration also be given on whether these protections should also be covered within the AER's Network service provider registration exemption guideline.

The obligation to supply

EWON supports the amendments to Core Exemption Condition 1 (Obligation to supply) which means exempt sellers cannot refuse to sell energy to an exempt customer for non-payment of their account, except in accordance with relevant disconnection and reconnection provisions.

¹ National Energy Retail Rules , Rule 89

² National Energy Retail Rules , Rule 90 & 91

³ National Energy Retail Rules , Rule 99 & 100

Disconnection of move-in customers

Rule 115 of the *National Energy Retail Rules* (De-energisation for non-notification by move-in or carry-over customers) requires at least two notices to be sent to a move-in customer's or carry-over customer's premises prior to disconnection.

The recent case study below highlights that the current exempt selling guidelines do not have an equivalent protection:

Case Study: Disconnection of a move-in customer to an embedded network

The AER exempt selling guideline does not contain specific protections for the disconnection of move-in customers. An authorised retailer could not have disconnected this customer with so little warning.

A customer moved into a new apartment and contacted a preferred energy retailer to establish an energy account. The retailer that the customer contacted was not able to locate the supply address and was unable to establish an account at that time. The customer was unaware they had moved into an embedded network.

On 6 April 2017, the customer received a letter from an embedded network operator dated 28 March 2017 which stated their company supplied the electricity to the building and that the customer must either complete their online agreement or contact them by telephone, or the electricity supply would be disconnected on 6 April 2017. The registered retail exemption holder was the building owner's corporation, but this was not mentioned in the letter to the customer.

The customer called the embedded network operator directly and was advised that the electricity supply would be disconnected that day, even though she had contacted it as requested. The embedded network operator also told the customer that if a reconnection fee of \$96 was paid, reconnection could occur the next day. The customer complained to EWON that they were asked to provide their personal information, but were not provided any further information such as the terms and conditions that would apply to their energy contract.

EWON contacted the embedded network operator, and obtained information about the establishment of the account and the fees that had been charged to the customer. The embedded network operator clarified that the only fee that had been charged to the customer was a priority reconnection fee of \$106.00. EWON gave this information to the customer and provided her with more information about living within an embedded network.

EWON recommends that a condition equivalent to Rule 115 of the *National Energy Retail Rules* should be included in version 5 of the exempt selling guideline.

Payment plans, disconnection and reconnection

EWON supports the amendment of Core Exemption Condition 11 (Reconnection or re-energisation) and the introduction of Core Exemption Condition 12 (Payment plans).

The *National Energy Retail Rules* require certain particulars to be included on disconnection warning notices sent by authorised retailers, including the contact details of the relevant energy ombudsman scheme⁴.

⁴ National Energy Retail Rules, Rule 110(2)(f)

In NSW, an additional notice must be issued to the customer when the distributor de-energises a customer's premises at the request of a retailer⁵. The notice must contain the following information:

- the reason for the disconnection;
- the telephone number for the retailer;
- the arrangements that are required to be made by the small customer for re-energisation of the premises, including any related costs payable by the customer; and
- the dispute resolution procedures available to the small customer, including contact details for the energy ombudsman.

The proposed version of the Exempt Selling Guideline does not contain requirements on the basic content of disconnection warning notices.

EWON recommends that a footnote is added to Core Exemption Condition 9 that contains the minimum information requirements for reminder notices and disconnection warning notices. For example, we recommend that all reminder notices and disconnection warning notices should include the contact details of the relevant energy ombudsman scheme.

EWON also recommends that disconnection warning notices should provide the customer with information about their rights to request reconnection after ten business days, if they agree to enter into a payment plan with the exempt seller for any outstanding amount owing on their account.

EWON also recommends the inclusion of a condition similar to Clause 9 of the *Electricity Supply (General) Regulation 2014* (NSW). This would require the exempt seller notify the customer post-disconnection that includes the basis for disconnection, what is required for reconnection and include the contact details for the relevant energy ombudsman scheme.

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



Janine Young
Ombudsman
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⁵ Electricity Supply (General) Regulation 2014 (NSW), Clause 9