



28 June 2021

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

Dear Ms Darwin

AER consultation – Updating the Network and Retail Exemption Guidelines

Thank you for the opportunity to comment on this consultation paper.

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 and networks.

Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

Spotlight On: Embedded networks - it's time for change

In our June 2021 Spotlight On report [Embedded networks - it's time for change](#), we noted that in 2018, the National Energy Customer Framework (NECF) was amended to require exempt sellers and networks selling and supplying to residential customers to join an Ombudsman scheme. Since that time, EWON has worked with the Australian Energy Regulator (AER) to bring existing NSW energy exempt networks and sellers into our membership.

The report outlines the insights we have obtained working with exempt entities and their customers, particularly how the existing framework can be improved to ensure clarity, transparency, accountability and ultimately, a consumer protection approach which is aligned with that of mass market energy residential and small business customers.

Recommendations

The report outlines a set of core recommendations for strengthening the exemption framework as a whole. While some of these recommendations are not within the scope of this consultation paper, this review provides an opportunity for additional actions to be taken to address the issues we have identified and those highlighted by the Australian Energy Market Commission (AEMC) in its review of the regulatory arrangements for embedded networks.

Act now to	Recommendations
Improve consistency and transparency	The AER be more proactive in collecting the numbers of customers covered by network and retail exemptions and ensuring that these numbers are reported publicly on a regular basis – or change the public register so that customer numbers are included in the details on a registered exemption.



	The network and retail exemption Guidelines are updated so that all residential customers are included in a registered class exemption.
	The AER create a registered exemption class for entities selling unmetered gas combined with hot water.
Proactively engage with exempt entities and maintain the exemption register	The AER take a more active role in engaging with exempt entities, and in reviewing existing registered and individual exemptions.
	The guideline contain stronger requirements for exempt entities to keep the information on registered exemptions up-to-date.
Increase accountability for unregulated billing agents	The published information contained on the register of exemptions be expanded to include the details of any billing agent providing retail services to the embedded network.

Spotlight On: Hot water embedded networks

In our Spotlight On report [Hot water embedded networks](#), we shine 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.

The National Energy Customer Framework (NECF) recognises energy (electricity and gas) as an essential service. Energy is needed to heat water which is an essential element of day to day life and so requires regulation and additional consumer protections. When the sale of hot water is separated from the sale of energy and water and becomes unregulated, it places the security of one of our long-standing essential energy services at risk.

In 2019, there were 13,000 customers living in hot water embedded networks. By 2021, this number increased to over 49,000. These figures demonstrate a rapid growth in consumers who do not receive energy-specific consumer regulatory protections for the supply of hot water.

EWON recognises the regulatory dilemma caused by the sale of hot water within embedded networks. This problem is linked to the current definition of energy as being 'electricity or gas or both' in the National Energy Retail Law (NERL). This definition omits hot water services from the consumer protections designed specifically for metered essential services. However, the sale of hot water has historically been part of basic energy services. For example, the Australian Energy Market Operator (AEMO) has long-standing Gas Retail Market Procedures for NSW and ACT that incorporate hot water meters into the delivery point for customers' gas supply. Industry practice is already embedded for billing customers for gas based on measured hot water consumption. However, the AER's Retail Exemption Guideline explicitly states that the sale of hot water is not the sale of energy. This inconsistency in our consumer framework has led to a rapid growth of a group of consumers without appropriate consumer protections.

In May 2021, EWON convened a Roundtable discussion on hot water embedded networks with key regulatory stakeholders. The participants included senior representatives from the following bodies:

- Australian Energy Market Commission (AEMC)
- Australian Energy Regulator (AER)
- Department of Industry, Science, Energy and Resources (Commonwealth)
- Department of Planning, Industry and Environment (NSW)

The discussion was both positive and constructive and participants agreed that the sale of hot water was a regulatory gap impacting an important consumer service.

We have invited participants back for a second round of discussions and will be reporting on the outcome. We hope the focus of this discussion will be on practical consumer protection solutions to this growing consumer issue.

Recommendation

Any response to the growth of hot water embedded networks will require a coordinated effort between State governments and national bodies. We believe that the first critical step in extending appropriate consumer protections to hot water customers in embedded networks would be to create a new registrable class exemption in the AER's Exempt Selling Guideline.

We recognise that the AER does not currently consider the sale of hot water to be the sale of energy. However, AEMO's Gas Retail Market Procedures shows that it is possible to incorporate hot water meters into a gas delivery point and allow customers to be billed for the energy used to heat the water, thus providing customers with appropriate consumer protections.

We recommend that the AER create a registered exemption class for entities selling unmetered gas combined with a hot water service. This class would only apply to entities that bill customers for the energy (gas) used to heat the hot water, not entities that bill for litres of hot water used.

This action would provide State jurisdictions with the opportunity to create regulations requiring hot water embedded networks operators to bill customers for the energy used to heat water and register an exemption with the AER.

Again, the AER's review of the guidelines provides an opportunity for consumer protection equity for all energy customers.

Updating the Network and Retail Exemption Guidelines

EWON welcomes the changes proposed by the AER in the consultation paper. EWON supports the AER's following proposed initiatives:

- Amending the network exemption guideline to require a single registrant.
- Amending the network exemption guideline to include the retail exemption guideline disconnection obligations.
- Amending the retail exemption guideline to require exempt sellers to provide residents with a hard copy or a link to a factsheet (developed by the AER) at the start of their tenancy, residency or supply agreement, when the customer requests this information and following an enquiry from a customer to leave an embedded network.
- Amend the retail exemptions guideline to require exempt sellers to adopt affordability / hardship programs.
- Requiring individual exemption applicants to provide evidence of the steps they have taken to obtain Ombudsman membership in the jurisdictions in which they intend to sell energy to residential customers.

Our detailed response to each of the consultation questions is attached below.



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". The signature is fluid and cursive, with the first name "Janine" and the last name "Young" clearly distinguishable.

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

EWON's response to the consultation paper questions

Issue	Question	EWON response
What does it mean to own, control or operate an embedded network?	Question 1	<p>Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller?</p> <p>EWON agrees that responsibility for meeting certain network exemption conditions should be restricted to one person / entity.</p> <p>If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?</p> <p>EWON agrees with the AER view that a single party should be responsible for overall compliance and that this party should have the authority and capacity to resolve customers' complaints.</p> <p>The commercial arrangements between the parties operating within embedded networks vary from site to site. We believe that it is critical that the entity designated as the sole registrant must have the legal power to make decisions and directions about matters relating to the conditions and general requirements outlined in the guideline. For example, the person or entity that is designated as the sole registrant must have the power to ensure that the requirements for safety, metering, charges and information disclosure are met.</p> <p>The person or entity that should be the sole registrant will depend on how the definitions of 'controlling' and 'operating' an embedded network are clarified in the guideline. Please see below for our response to the definitions of 'controlling' and 'operating' a network.</p> <p>Based on our response to question 3, we consider that it would be appropriate for the network controller to be the sole registrant.</p>

Issue	Question	EWON response
	Question 2	<p>Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?</p> <p>In our Spotlight On Embedded networks - it's time for change report we discuss our experience engaging with exempt entities, including our observations on how exempt entities comply with the requirements of the exemption Guidelines.</p> <p>We have found that many exempt entities have limited awareness of the conditions and obligations that come with a registered or deemed exemption. This is particularly true for residential park operators and strata corporations that can lack an understanding of the compliance obligations placed on exemption holders. Where the exemption holder has failed to proactively join an Ombudsman scheme, we have found that other compliance obligations like adopting appropriate complaint handling procedures have often not been met. In the case of strata corporations, this is sometimes because the strata committee considered it had contracted out these responsibilities to a specialist third-party provider.</p> <p>Based on our experience, clearly designating one person or entity as responsible for the network registration will help to increase compliance with all the requirements of the guideline. We also hope that designating responsibility to one person or entity will help strata corporations navigate the complex commercial arrangements for the networks within their buildings.</p>
	Question 3	<p>Should we clarify the meaning of controlling and operating an embedded network?</p> <p>It is critical for the Guidelines to clarify the meaning of controlling and operating an embedded network.</p> <p>The exempt network guideline currently outlines five basic requirements for exempt networks. An exempt person must:</p> <ul style="list-style-type: none"> • ensure that their network is safe • have a dispute resolution mechanism • ensure that network pricing is in accordance with this Network Exemption Guideline • ensure that electricity meters comply with the relevant standards • provide ready access to retail competition where it is available in a jurisdiction. <p>The conditions in the guideline fit broadly under these five requirements. There are also specific conditions relating to:</p> <ul style="list-style-type: none"> • life support customers • information provision to customers • explicit informed consent for brownfield conversions.

Issue	Question	EWON response
		<p>As noted in our response to question 1, it is critical that the entity designated as the sole registrant must have the legal power to make decisions and directions about matters relating to the conditions and general requirements in the guideline. Therefore, the definition of ‘controlling’ and ‘operating’ an embedded network must relate directly to the delivery of these critical consumer protections.</p> <p>Based on the definitions of ‘control’ and ‘operate’ provided in the consultation paper, we consider that:</p> <ul style="list-style-type: none"> the network operator should be defined as the party that delivers the network services directly to the customer the network controller should possess the legal power to ensure compliance with the requirements and conditions of the guideline, and have the capacity to give directions about how network services are delivered to customers. <p>The network controller’s power to give directions must include the power to ultimately determine the outcome to consumer complaints and ensure delivery of complaint resolutions.</p>
Should exempt networks be created to allow for the creation of Small Generation Aggregator schemes?	Question 4	<p>Do stakeholders consider there is a need to regulate SGAs under the network exemption Guidelines?</p> <p>No comment</p>
	Question 5	<p>Do stakeholder interpret SGAs as being captured under the NER?</p> <p>No comment</p>
Embedded Network Manager requirements	Question 6	<p>What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?</p> <p>No comment</p>
	Question 7	<p>Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?</p> <p>No comment</p>
	Question 8	<p>Do stakeholders agree that the appointment of Embedded Network Managers be deferred if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?</p> <p>No comment</p>

Issue	Question	EWON response
	Question 9	<p>Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?</p> <p>No comment</p>
Retrofit requirements - explicit informed consent	Question 10	<p>Should the information embedded network owners / operators provide prospective customers be standardised?</p> <p>EWON has received complaints from small business customers about being pressured into providing consent to be transitioned into an embedded network as part of a brownfield conversion. These customers often express frustration at being asked to provide consent when the decision to undertake a brownfield conversion appears to have already been made and they have not been presented with any information about the alternatives.</p> <p>Providing customers with an appropriate level of information is critical to allow customers to provide consent. EWON supports standardising the information embedded network owners or operators must provide prospective customers.</p>
	Question 11	<p>Should the network exemption guideline's term 'express written consent' be replaced with 'explicit informed consent', and be provided in writing?</p> <p>EWON supports applying the retail exemption guideline term 'explicit informed consent' to the network exemption guideline. We also propose specifying (in both Guidelines) that evidence of consent must be written (a signed consent form) rather than verbal.</p>
	Question 12	<p>Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail Guidelines?</p> <p>EWON supports applying the consent gathering and record keeping requirements to all situations where consent is required under the Guidelines.</p>
	Question 13	<p>Do stakeholders support proposed clarifications to the retail and network exemption Guidelines' retrofit requirements? If not, what are reasons for not supporting the changes?</p> <p>No comment</p>
	Question 14	<p>Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions Guidelines?</p> <p>[Exempt network Guidelines] Residential embedded network customers with solar PV systems</p>

Issue	Question	EWON response
		<p>We have noted emerging complaints from customers living in embedded networks who have installed rooftop solar systems. This trend may reflect an increased up take of behind the meter products by embedded network customers.</p> <p>Some of these complaints are driven by the customers asking for access to solar export tariffs. However, complaints are also about the problems encountered by customers and the embedded network operators when the aggregated capacity of the solar energy export at the parent connection point passes a threshold set by the licenced distributor.</p> <p>Case studies about these issues can be found in our EWON Insights 1 April 2020 - 30 June 2020 report (pages 43-44).</p> <p>The key issues for these embedded network operators and customers include:</p> <ul style="list-style-type: none"> • metering upgrades (type, cost and payment) • who pays for network upgrades (and what proportion of the costs) that are required for an embedded network due to the installation of solar PV systems behind one or more child connection points • availability of information for embedded network customers about the rules for the installation of solar PV systems at child connection points within the embedded network. <p>Recommendation: EWON believes that it will help customers and operators if the exempt network Guidelines include guidance about charging embedded network customers for the cost of metering and network upgrades resulting from solar PV system installations.</p>
Mandatory information disclosure by exempt sellers	Question 15	<p>Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?</p> <p>EWON has received complaints from customers that want to transfer away from the exempt seller or authorised retailer that services their embedded network.</p> <p>We have found that customers are frequently confused about the process for accessing retail competition and that customers are concerned about the possible costs associated with the process.</p> <p>We strongly support the proposal to develop a factsheet that describes the process embedded network customers must follow to enter into a market retail contract. We also support the proposal to amend the Retail Exemption Guideline to require exempt sellers to provide a hard copy or a link to the factsheet at the start of their tenancy, residency or supply agreement, when the customer requests this information, or following an enquiry to leave an embedded network.</p>

Issue	Question	EWON response
Hardship assistance	Question 16	<p>Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?</p> <p>EWON agrees with the AER’s initial view that it is appropriate to provide hardship support for customers of exempt sellers and recommends that the AER amend the retail exemptions guideline to require exempt sellers to adopt hardship plans.</p> <p>We would also support the AER developing a template hardship plan for exempt sellers to use. As noted in our Spotlight On Embedded networks - it's time for change report, we have developed two complaint handling templates we provide to new members to help them meet the dispute resolution requirements for exempt sellers and authorised retailers. Most new exempt members have adopted our complaint policy template in full, particularly residential parks. We have also found new authorised members adopt the template or use it as a basis to develop their own. Based on this experience, we consider that if the AER template was appropriately tailored for small entities, any burden in adopting the template would be outweighed by the benefit it would deliver to vulnerable embedded network customers.</p>
	Question 17	<p>What key protections should be included in a hardship policy template for exempt sellers?</p> <p>All requirements of retailer hardship plans are important for customers facing affordability issues. While we understand that smaller exempt entities may not have the same resources as authorised retailers, in most cases the number of customers that they service will also be smaller. Therefore, it is not unreasonable to expect a small exempt seller should have processes for identifying residential customers experiencing payment difficulties due to hardship and early response to customers experiencing payment difficulties due to hardship.</p> <p>We believe that any energy seller should have a hardship policy that includes:</p> <ul style="list-style-type: none"> flexible payment options (including a payment plan and Centrepay) for the payment of energy bills by hardship customers processes to identify appropriate financial counselling services and to notify hardship customers of those programs and services. <p>Promoting the AER’s Sustainable Payment Plans Framework would also assist small entities develop their approach to responding to affordability issues faced by their customers.</p>
	Question 18	<p>What additional obligations should the core exemption conditions include?</p> <p>[Exempt selling and exempt network guideline] extending to external dispute resolution for small business customers</p>

Issue	Question	EWON response
		<p>Our Spotlight On Embedded networks - it's time for change report notes that, 'many of the conditions in the Guidelines apply to both small business and residential customers, however the dispute resolution requirements, including the requirement to join EWON, do not.</p> <p><i>This has led to inconsistencies in the options available for small businesses. The NSW Electricity Supply Act gives all residential and small business customers the right to complain to EWON, but because operators are not required to be EWON members, our dispute resolution powers are limited to at best, negotiating an outcome if the operator is open to engaging with EWON.</i></p> <p><i>We cannot compel the operator to work with us, provide information or comply with our decisions. We engage with them to assist customers, but for many complaints, we are unable to achieve a fair and reasonable outcome, as we do for small business customers of EWON members.</i></p> <p><i>There is an additional complication in embedded networks, where not all customers in the same building will be extended the same consumer protections. Many embedded networks are built with a mix of residential and commercial properties, usually an apartment complex with shops on the ground floor. In these networks, residential customers enjoy higher standards of consumer protection than the small businesses they frequent.'</i></p> <p>Recommendation: EWON recommends that the AER consider the benefits of expanding access to external dispute resolution to small business customers in embedded networks.</p> <p>[Exempt Selling Guideline] comparison of energy offers by exempt sellers to the reference price</p> <p>Many embedded network customers that complain to EWON are frustrated that they do not have access to other competitive energy offers. These customers often perceive that the energy rates and standing charges offered by their exempt seller are higher than the offers available if they had access to the retail energy market.</p> <p>Condition 7(1) of the Exempt Selling Guideline states that 'an exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer. EWON investigations rarely, if ever, identify that exempt sellers have breached this rule.</p> <p>Recommendation: EWON believes that the frustrations and trust in their exempt seller of some embedded network customers could be addressed if they were provided access to clear and easy to understand information which compares</p>

Issue	Question	EWON response
		<p>their existing embedded network contract with the standing offer price that would be charged by the relevant local area retailer for new connections.</p> <p>This information could be provided to the customer at the start of their contract or on their monthly bills.</p> <p>[Exempt Selling Guideline] opening accounts and disconnection of move-in customers</p> <p>Embedded network customers have complained to EWON about their experiences moving into the residential building and getting connected. They often tell us that they did not know they were moving into an embedded network and did not know they had to open an energy account with an exempt seller. Some of these customers then find their energy supply suddenly disconnected, leaving them without energy for days or being required to pay additional charges to obtain an out of hours reconnection.</p> <p>In our 2017 submission to the AER's consultation on the draft AER (Retail) Exempt Selling Guideline (Version 5), we noted that the current Guidelines do not provide procedures for the disconnection of move-in customers.</p> <p>The structure of the energy retail services offered within embedded networks vary from site to site. The experience for a customer moving in to embedded network regularly varies from network to network. Exempt sellers have unique sign-up methods, account structures, and procedures for closing accounts, such as whether or not the electricity supply is disconnected when the account is closed. For many customers, it is the first time they have been introduced to the concept of embedded networks and it is not unreasonable that they may take time to work out where and how to open an energy account. For example, some customers have informed us they have called a number of energy retailers to open an electricity account before being told by building management that they are living in an embedded network.</p> <p>The NERL and the NERR provide a framework for how retailers need to manage customers who:</p> <ul style="list-style-type: none"> • start consuming energy at premises without first applying to a retailer for the provision of customer retail service (move-in customers) • continue consuming energy at premises after the customer's previously current customer retail contract expires or terminates (carry-over customers). <p>These rules are written to apply to the energy retailer that is the Financially Responsible Market Participant (FRMP) for the premises. In embedded networks, the exempt seller is essentially the equivalent of the FRMP in the retail market.</p>

Issue	Question	EWON response
		<p>Rule 115 of the National Energy Retail Rules (De-energisation for non-notification by move-in or carry-over customers) requires the FRMP to send at least two notices to a move-in customer's or carry-over customer's premises prior to disconnection. This consumer protection ensures customers are given warning of the disconnection and to stop the disconnection by opening an energy account.</p> <p>Recommendation: EWON recommends that a condition equivalent to Rule 115 of the National Energy Retail Rules should be included in version 6 of the Exempt Selling Guideline.</p> <p>[Exempt Selling Guideline] reference to the NERL and NERR where the Guidelines are silent Embedded network customers occasionally complain to EWON about issues not specifically referenced in the Guidelines such as the application of account establishment fees and procedures around security deposits. Section 8.1 of the Guidelines makes reference to the conditions applicable to exempt sellers selling to residential customers being comparable to those applicable to authorised retailers and condition 7 on pricing refers to allowable charges under a standard customer contract in line with the NERR. However, we consider this is not a strong enough connection to the NERL in order protect consumers.</p> <p>We have worked with an exempt entity member to interpret the Guidelines in relation to security deposits and advised the exempt entity to adhere to the relevant provisions of the NERR. While this ultimately led to a positive outcome for customers in that embedded network, it also identified that the guideline could more clearly link to the NERL and NERR.</p> <p>Recommendation: EWON recommends the guideline clearly state that exempt sellers are to adhere to the NERL and NERR where the conditions are silent.</p>
Ombudsman membership	Question 19	<p>Are there other measures that would facilitate exemption holders' taking up membership of Ombudsman schemes?</p> <p>We note that the AER is currently working with EWON to better engage with exempt entities about Ombudsman scheme membership. The below recommendations may include some initiatives that we know the AER has already identified and is currently working on.</p> <p>Online registration form on the up AER website EWON recommends amending the current online registration forms on the AER website to place more onus on registrants to provide details of their application for membership with an Ombudsman scheme.</p>

Issue	Question	EWON response
		<p>As a new exempt seller or network completes the registration form on the AER website, they are currently asked to provide information on the dispute resolution process offered to customers:</p> <p><i>What is the applicable dispute resolution procedure?:</i></p> <ul style="list-style-type: none"> • <i>Ombudsman scheme</i> • <i>Written agreement with customer (consistent with Australia Standards: AS/NZS 10002:2014)</i> • <i>External dispute resolution mechanism or Tribunal with authority to settle disputes that include energy matters</i> <p>If the exemption class ticked by the registrant is relevant to residential customers (eg R2 or NR2), the registration form also provides the following advice:</p> <p><i>Exemption holders registering in the classes you have selected must now join their state's energy Ombudsman scheme if the scheme permits it. Please contact your energy Ombudsman scheme to check if you can join.</i></p> <p>This information is already helpful and makes it clear to registrants that they may be required to join an Ombudsman scheme. This information also reflects the varying jurisdictional requirements. However, EWON recommends that the online registration form be amended to require the registrant to input details of their application to join an Ombudsman scheme or provide reasons why they are not required to join a scheme. EWON is also able to provide exempt entities with unique application numbers that could be used as part of the online registration process.</p> <p>The compliance and enforcement priorities for 2021-22 and better engagement with exempt entities</p> <p>EWON supports the AER including embedded networks and compliance with the Exemption Guidelines as an AER compliance and enforcement priority for 2021-22.</p> <p>We believe the focus of this enforcement priority should include compliance with the requirements and core conditions of the exemption Guidelines, as well as the completeness of the information contained on the public register.</p> <p>EWON also recommends that the AER consider the following compliance and engagement activities with embedded network operators:</p> <ol style="list-style-type: none"> 1. Commence a communications campaign after version 6 of the Exempt Selling Guideline and version 7 of the exempt network guideline are published to ensure that exempt entities are aware of their compliance obligations under the Guidelines.

Issue	Question	EWON response
		<ol style="list-style-type: none"> 2. The AER could run webinars or workshops for exempt entities as part of any communication campaign following publication of the new Guidelines. 3. The AER could consider surveying or auditing exempt entities to assess general compliance with the Guidelines and the current accuracy of the exemption register. This could be a risk-based project based on: <ul style="list-style-type: none"> ○ publicly available information from Ombudsman schemes (for example membership lists) ○ current retail and network exemptions that have incomplete data (for example no customer numbers). <p>Update the AER Compliance & Enforcement Policy</p> <p>We recommend that the AER Compliance & Enforcement Policy be updated to include current enforcement options that the AER has for responding to non-compliance by exempt entities.</p> <p>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).</p> <p>Currently, the Compliance & Enforcement Policy outlines four main enforcement options:</p> <ol style="list-style-type: none"> 1. Administrative resolutions 2. Infringement Notices 3. Court Enforceable Undertakings 4. Civil Proceedings <p>Under the Policy, the penalty payable notice under an infringement notice for a breach is currently \$4,000 for a natural person or \$20,000 for a body corporate (these amounts may not yet reflect changes to the National Gas Law). We also recognise that the AER has the power to revoke exemptions in situations of serious non-compliance.</p> <p>The current options outlined in the Compliance & Enforcement Policy, and the exemption Guidelines, may not allow the AER to easily respond to the minor breaches by small exempt entities that EWON frequently observes when engaging with new members.</p> <p>EWON would support the AER in acquiring the capacity to take a more proportional response to breaches by small exempt entities. This might include the ability to impose smaller infringement notice penalties for breaches of the conditions and</p>

Issue	Question	EWON response
		requirements of the Guidelines. This would enable the AER to send a message to small embedded network operators about the seriousness of the exemption framework and allow the operators to take corrective action.
Chilled water		Do stakeholders support regulation of the sale of energy to chill water? EWON supports the regulation of the sale of energy to chill or heat water. The AER proposes regulating the sale of energy to chill water through a deemed exemption. However, as recommended in our Spotlight On Embedded networks - it's time for change report, we note all residential customers should be covered by a registered class exemption and not deemed exemptions. We believe that requiring all exempt sellers and networks that supply residential customers to obtain registered exemptions promotes consistency across the exemption framework and increases accountability of the energy services provided to small residential customers. Residential customers paying for metered air conditioning (or chilled water) are locked into a single provider and the requirement to open an account for air conditioning is typically linked to the other centralised services within the building customers need such as electricity, gas and hot water. These customers face the same general consumer issues faced by embedded network customers. Therefore, we believe that there should be public transparency and accountability for these services. We also repeat our recommendation that the AER create a registered exemption class for entities selling unmetered gas combined with hot water. We understand the AER's position that the sale of hot water is not the sale of energy. However, there is little practical difference between the sale of hot water and chilled water. While a hot water bill in an embedded network is frequently based on cents/litre, the hot water seller is unlikely to buy and own the water that enters the common hot water system as water accounts in NSW are opened and closed based on the transfer of the property title. This means that while the customer is billed for hot water – the reality is that they are being charged solely based on the energy used to heat the water. We believe the first step to addressing this inconsistency is to create a registered exemption class for hot water sellers (combined with unmetered gas as optional). This would provide options for State governments to regulate the sale of hot water.
	Question 20	
	Question 21	What are the main issues for this type of energy sale and what sorts of conditions should apply? The billing of metered air conditioning will raise same consumer issues as other traditional utilities, such as metered electricity, gas and water. Based on the complaints EWON has received about metered air conditioning, customers are most often disputing high bills or questioning the affordability of having an air conditioning charge that is separated out from their

Issue	Question	EWON response
		<p>energy supply. We have also received complaints from customers with a centralised air conditioning service about opening and closing accounts, a common issue for both on-market energy customers and embedded network customers alike.</p> <p>As with any other metered energy service, customers will need protections related to customer service, billing and payment difficulties. These include:</p> <ul style="list-style-type: none"> • high bill disputes • estimated bills • backbilling • customer service issues • opening and closing accounts • disconnections and reconnections • external dispute resolution • credit issues, including affordability. <p>EWON is concerned about the growing fragmentation of our traditional energy services. Over the last decade, new energy technologies and business models such as solar, battery storage and centralised utility services within embedded networks have meant energy is increasingly sold outside of the regulatory framework designed to protect consumers. We urge the AER to not underestimate the potential consumer detriment as alternative energy products are separated away from traditional energy accounts as this will result in the appropriate consumer protections applying to a decreasing portion of the household energy budget.</p>