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## Updating the Network and Retail Exemption Guidelines - Consultation Paper

Dear Sir/Madam,

We thank the AER for consulting with stakeholders in relation to the Updating of the Network and Retail Exemption Guidelines.

Energy Intelligence shares many of the views provided by the AER with further feedback to the questions in the Consultation Paper. We hope that future changes to the guidelines are aligned with the AEMC Embedded Network Framework to ensure consistency and unnecessary rework for all stakeholders, and that rules are harmonised through other non NECF states.

Please feel free to contact myself or Mussan if you have any further queries or would like to discuss our submission further.

Yours sincerely,



**Mardi Trezise**  
Managing Director



**Mussan Larnach**  
Compliance Manager



## A little bit about Energy Intelligence

Energy Intelligence is an independent, family owned and 100% Australian owned and based energy management specialist consultancy. We offer bespoke innovative energy embedded network solutions designed for our clients who own/operate embedded networks (embedded network owner/controller). Our services include implementation, compliance reviews, renewable solutions, Embedded Network Manager (ENM) services and ongoing management of embedded networks. We work cooperatively with the AEMC, AER, AEMO, ESC and EWOV.

As a specialist boutique energy management consultancy, we are selective with the people we partner with and choice is a two-way street when establishing working relationships. We pride ourselves on the service we provide to both our clients and customers with our collaborative, transparent and honest approach. We are strongly committed to supporting better practice approaches when it comes to compliance regardless of the minimum requirements of the jurisdiction. Our teams have a broad depth of knowledge and experience in the energy industry and our embedded networks are operated just as a full-service energy retailer would - with the extra care. Since the introduction of EWOV, our assisted referral cases equate to 0.15 % of our customer base in Victoria with 0 cases escalated to complaints. We strive to set the benchmark in excellence when it comes to implementing and operating our embedded networks.

## Consultation Questions

1. Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?

Energy Intelligence supports the AER's view that a single party should be responsible for overall compliance. In our view, with the AER's application of the Macquarie Dictionary definition, the embedded network controller may influence how the embedded network operates, however, may or may not have the capacity to resolve customers' complaints. Our view is that the controller would be best suited, however, this may differ for some embedded network arrangements.

Defining the role of the owner, controller and operator as well as including where an agent is appointed, would provide clarity and differentiate the roles held by each exempt holder. In some cases, the agent may hold the same role as the operator/controller and manage the embedded network entirely.

2. Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?

We do not agree with the statement that the Ombudsman membership is an example where designating responsibility is helpful. Many of these entities are not involved with the embedded network operations nor are they able to resolve customers' complaints. Many exempt network owners have minimal involvement with the embedded network as they are held by a trustee for a trust fund or an Owners Corporation.

The exempt person that has the capacity to resolve customers' complaints should be the sole registrant. This role should be the entity that influences how the customer complaint is resolved. Membership should also be applied only to the exempt person once if they share the role as exempt owner/ controller/ operator and exempt seller.

In NSW, the ombudsman membership fees for network exemption and retail exemption are charged separately, even if they are held by the same entity. For example, if there are 51 tenants in "Sample embedded network", EWON would charge membership for 102 tenants; 51 network tenants and 51 retail tenants.

In VIC, the ombudsman membership requires all exempt network and retail entities be a member. This is also outlined in the General Exemption Order (Part 2, clause 11). The membership fee is charged to each entity that holds an exemption for the site, regardless if that entity holds multiple roles.

3. Should we clarify the meaning of controlling and operating an embedded network?

Yes. See comments in Question 1 above.

4. Do stakeholders consider there is a need to regulate small generator aggregators under the network exemption guidelines?

We do not see a need to bring SGAs under the network exemption framework.

5. Do stakeholders interpret small generator aggregators as being captured under the NER?

Yes, Energy Intelligence considers small generator aggregators as being captured under the NER.

6. What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?

The requirement for an of embedded network (where trigger conditions are met) to appoint an ENM is vital to promoting retail competition, however there are many variables that may hinder the immediate appointment of an ENM such as:

- where legacy embedded networks (pre 1 Dec 2017) may require technical work to allow the site to be appointment ready such as Embedded Network Code application.
- appointment is required for a future date and may sit outside of the required timeframe.

We are wary that some embedded network operators may purposefully delay the appointment as an anti-competition tactic. As such, we feel that a timeframe condition of no longer than 30 business days should provide sufficient time for the exempt entity to source and work through commercial agreements with an ENM.

7. Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?

Energy Intelligence does not agree with the AER. There needs to be a drive for economic efficient prices by opening competition to these regions that have no/limited market. An appointment of an ENM will also ensure that customers are appropriately served in terms of outage notifications and life support registration.

8. 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?

We disagree that the appointment should be deferred if there are no on-market customers. The appointment of an ENM facilitates tenants to be able to exercise their choice of retailers with less delay and hurdles. The role of the ENM is also greater than just managing the on-market arrangements; the ENM is required to ensure that standards are met within the operation of the embedded network such as record keeping of assets and SLDs, life support registration and outage notifications. An ENM acts as a safety net for these embedded networks. If an ENM is only required to be appointed on an adhoc basis this may mean an increase in cost as ENM compliance checks may be necessary before appointment is possible, resulting in further delay. Energy Intelligence provides ENM services at no additional cost to our embedded network clients to ensure that they do not fall behind in regulatory compliance obligations, regardless of whether they have on-market customers or not.

If the deferral of appointing an ENM was enforced where there are no on-market customers, this would reverse the progression of compliance for residential buildings given that currently, it is almost impossible for residential customers to purchase from a retailer of choice. This change in rules would mean most residential buildings would not require an ENM and the management of life support registration may be overlooked. We note that the barriers to retailer competition will reduce greatly once the AEMC framework is effective.

Appointment of an ENM will ensure only qualified and trained accredited organisations operate with exempt entities.

9. Do stakeholders agree to removing the 'eligible communities' and counteroffer provisions from the network exemption guideline?

We agree with the AER's view of removing 'eligible communities'.

Where a counter offer is within the timeframe of an energy offer cooling off period, this should not complicate the process further or draw out the process for any stakeholders. Providing the ENO an opportunity to counter offer, will also give the ENO the chance to match and/or better the offer and retain the customer. The ENM can also provide advice of any limitations they may experience purchasing from their retailer of choice such as legacy asset arrangements, especially where the customer may be penalised for contractual arrangement breaches as they are unable to fulfil the contract request.

10. Should the information embedded network owners/operators provide prospective customers be standardised?

Energy Intelligence partly support the AER's view; though this would provide guidance and a minimum expectation and confidence to prospective customers that are affected by a retrofit, our concern is that unqualified embedded network operators may attempt a conversion poorly affecting many stakeholders; not just tenants within the embedded network. Unlike a greenfield, the process to retrofit a site is extremely intricate.

If the AER provides standardised statements, this should not impede the embedded network operator providing their own materials as long as all the information required is provided.

Energy Intelligence views that greater policing, monitoring and adhoc compliance audits of registrations that have obtained 100% retrofit consent or performed by authorised retailers will declutter the industry of unqualified participants.

11. Should the network exemption guideline's term 'express written consent' be replaced with 'explicit informed consent', and be provided in writing?

We supports the AER's view to update the network exemption guidelines to align it with the retail guidelines as well as the General Exemption Order. We do not have an opinion or preference to the way the agreed consent is provided ie. written or verbal.

12. Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail guidelines?

Energy Intelligence supports the AER's view, that for retrofits, all records are kept for a minimum of two years as noted in the network guidelines (network guidelines 4.9.2.2e). This must be applied even if 100% consent is obtained.

Note; an ENM and all rule participants must retain any information or documents for a period of at least seven years; and Shopping Centres that operates an embedded network must provide a disclosure statement as part of their leasing agreement.

13. Do stakeholders support proposed clarifications to the retail and network exemption guidelines' retrofit requirements? If not, what are reasons for not supporting the changes?

We support the AER's view in providing guidance to the exemption guidelines. We believe that the % provided should be NMI based. We are indifferent to whether this includes the exempt entity or not, if consistency is carried out.

A typical shopping centre operator (supplied via either an embedded network or traditional set up) would require an account for electricity for a vacant store, pop up or casual lease. They are as much a customer as a tenant who has an account for one or multiple stores and should not be discounted. Not all shopping centre management are the exempt entity.

In addition, it is not uncommon to see shopping centre's drive to meet their sustainability objectives by investing in solar, battery and other sustainable incentives. An embedded network would allow them to achieve their goal of decarbonising their asset portfolio including tenancy usage. Charges to the guidelines should support innovation or environmental initiatives.

14. Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions guidelines?

We would like to see further clarification as to what the ENM/ENO obligations are when a tenant has indicated that they would like to remain with their retailer of choice, however their retailer fails to initiate works and submit their standing data in a timely fashion given a retrofit live date is time sensitive. This clarification should include time-based obligation requirements for retailers, and an expansion in investigating and auditing of retailers' obligation to on-market customers.

Our view is that the exempt entity needs to ensure that the tenant has continuous supply through a POC meter and would act as the designated ROLR by defaulting them to off-market with terms and conditions confirmed prior to customers appointment. Tenants should also not be penalised for exiting their contracts early if the retailer does not action the customer's request (we understand the retailer may need to roll-over the new NMI).

15. Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?

We support the AER's proposed changes and do not feel there is any other information required.

We are noticing an increase in (large and boutique) retailers choosing not to offer embedded network customers 'energy only' offers where they had previously been able to. This seems to be dependent on the retailers' personnel at the time of the on-market request. We would like to see pressure placed on retailers, and at a bare minimum the big 3's obligation to offer 'energy only' offers.

16. Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?

It would be ideal if exempt sellers have the option to either adopt the broader set of hardship assistance conditions or the exempt seller hardship plan. We would presume the broader set of hardship assistance conditions would be included in the hardship plan and would be seen as the minimum requirement for exempt sellers. This may be better suited for the smaller exempt sellers as it is less onerous.

Embedded network hardship conditions should shadow that of retailer obligations.

## 17. What key protections should be included in a hardship policy template for exempt sellers?

Key protections that should be included in a hardship policy template for exempt sellers are;

- Processes to identify residential customers experiencing payment difficulties due to hardship.
- Flexible payment options.
- Processes to identify appropriate government concession programs and appropriate financial counselling services.
- Processes or programs to assist customers with strategies to improve their energy efficiency.

## 18. What additional obligations should the core exemption conditions include?

Other additions for considerations could be the exempt seller obligation to supply. This would exclude retailer-initiated disconnection as per part 6, NERR.

## 19. Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?

Victoria has given embedded network business and residential customers access to EWOV in 2017. This has been beneficial and harmonious to both customers and exempt sellers. This right should be extended in other states.

The ombudsman membership should be similar to that of an ENM appointment trigger condition where embedded networks that have fewer than 10 customers are exempt from become a member unless a complaint is made or are classed as a deemed exemption.

There needs to be a distinction on the effective start date of the embedded network and when the embedded network intends to sell energy to customers. In the case of a greenfield development, the exemption is applied early in the construction as this is a requirement by many LNSPs when an application for power is submitted and throughout planning. This "start" date may be years prior to when the energy is ready to be sold to tenants. It would be practical if the exempt seller could provide to EWON, a future date and staged customer numbers as many new developments adopts a staged approach to completion. One example is a new residential development was registered in October 2019 with a capacity of 51 dwelling. The development achieved the first stage of completion in September 2020 with only 10 dwellings in use. This categorises the exempt seller in a EWON category 3 fee instead of category 1 as the membership is billed at full capacity and the cost can be onerous for the exempt seller. The scheme needs to provide flexibility.

A 'nice to have' would be where the embedded network operator and/or agent could self-manage their exemptions in a portal; similar to that of the ESC portal – this would place the onus on the exempt entities to maintain their registration updates including an update on when ombudsman membership is completed and any other exemption ID such as ESC exemption ID. This would then cater for scenarios where the sell date differs to that of the EN live date.

## 20. Do stakeholders support regulation of the sale of energy to chill water?

We do not entirely support the AER in their views to expand the sale of energy to include chilled water. The requirement to do so would enforce additional compliance and reporting obligations for minimal customer value however consumer complaints should be treated fairly without the requirements to take up ombudsman membership.

## 21. What are the main issues for this type of energy sale and what sorts of conditions should apply?

Outside of the already named obligation to supply, billing and dispute resolution, we do not see any other conditions except the expectation of self-regulation and cooperation with an external resolution body when compliance issues arise as good practice. This should apply for all other energy sales.