



**public interest**  
ADVOCACY CENTRE

**Submission to the AER Updating the Network  
and Retail Exemption Guidelines  
Consultation Paper**

**30 June 2021**

## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

## Energy and Water Consumers' Advocacy Program

The Energy and Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water in New South Wales. The program develops policy and advocates in the interests of low-income and other residential consumers in the NSW energy and water markets. PIAC receives input from a community-based reference group whose members include:

- NSW Council of Social Service;
- Combined Pensioners and Superannuants Association of NSW;
- Ethnic Communities Council NSW;
- Salvation Army;
- Physical Disability Council NSW;
- St Vincent de Paul NSW;
- Good Shepherd Microfinance;
- Affiliated Residential Park Residents Association NSW;
- Tenants Union;
- Solar Citizens; and
- The Sydney Alliance.

## Contact

Thea Bray  
Public Interest Advocacy Centre  
Level 5, 175 Liverpool St  
Sydney NSW 2000

T: (02) 8898 6500

E: [tbray@piac.asn.au](mailto:tbray@piac.asn.au)

Website: [www.piac.asn.au](http://www.piac.asn.au)



Public Interest Advocacy Centre



@PIACnews

The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

# Contents

- Introduction.....3
- 1. The structure and definition of exempt entities .....3
- 2. Compliance .....5
- 3. Billing.....5
- 4. Should exempt networks be created to allow for the creation of Small Generation Aggregator schemes? .....5
- 5. Embedded Network Manager requirements .....6
- 6. Allowing unmetered supply for networks established before 2012 .....6
- 7. Disconnections for energy only customers .....6
- 8. Retrofit requirements – explicit informed consent .....7
- 9. Mandatory information disclosure by exempt sellers .....7
- 10. Hardship assistance.....7
- 11. Ombudsman membership .....9
- 12. Chilled water .....9
- Continued engagement.....10



---

**Recommendation 1**

*The use of billing agents should not result in any compromise to consumer protections.*

---

**Recommendation 2**

*Network parties must join an energy ombudsman scheme.*

---

**Recommendation 3**

*All embedded networks with residential consumers should be in the registered exemption class, not in the deemed exemption class.*

---

**Recommendation 4**

*A system of escalating penalties should be imposed on entities that do not comply with their obligations.*

---

**Recommendation 5**

*The AER's monitoring and compliance work should include collecting and maintaining details about how many people are covered by network and retail exemptions; the types of business structures that are used; and key indicators of consumer protection.*

---

**Recommendation 6**

*Embedded network consumers should, wherever possible, be provided with equivalent billing and usage information as consumers with authorised retailers. This includes aligning embedded network bills with the AER's work to develop a billing guideline under the National Energy Retail Law (NERR).*

---

**Recommendation 7**

*PIAC recommends the timeframe for the appointment of an Embedded Network Manager be no more than 90 days.*

---

**Recommendation 8**

*All consumers in embedded networks that have unmetered supply should be made aware that having a meter installed is an option for them and be provided with guidance should they choose to go ahead with the meter installation.*

---

**Recommendation 9**

*PIAC supports embedded network owners or operators providing standardised information to prospective consumers that is plain language and available in community languages.*

---

**Recommendation 10**

*A hardcopy factsheet outlining information about the structure of the embedded network with clear articulation of who is responsible for what components of the network, rights to access energy from a retailer of their choice, metering options to support this and information about exiting an embedded network should be given to prospective tenants before they sign a lease.*

**Recommendation 11**

---

*Escalating penalties should be used for entities that continuously take steps to avoid ombudsman scheme membership – or continuously ignore the requirement to join.*

**Recommendation 12**

---

*PIAC supports regulation of the energy used to heat or chill water in embedded networks.*

## Introduction

PIAC welcomes the opportunity to respond to the Updating the Network and Retail Exemption Guidelines Consultation Paper. PIAC strongly supports the AER's focus on embedded networks in its recent announcement of priorities for 2021-2022.

Regardless of where people live, being an essential service, consumer access to affordable energy must be robustly and consistently protected. Energy services include the energy used to heat and chill water provided in embedded networks. With the number of embedded networks growing, the Exemption Guidelines (the Guidelines) governing them are important for a significant number of consumers and their equitable access to affordable essential services. These Guidelines must ensure the rights of people in embedded networks are comparable to those who receive their energy from authorised retailers.

PIAC advocates for a system where the protections, obligations and dispute resolution procedures are commensurate to the potential harm the consumer may face should something go wrong: the more significant the impact of the potential harm, the stronger the protections should be; the less harmful, the less protection is required. Harms such as disconnection, unmanageable debt and being on uncompetitive or overpriced energy contracts are among the worst harms commonly experienced by household energy users.

As it stands, many people in embedded networks are unlikely to have the option to access their energy from a market retailer and many experience limitations in the rebates and other protections they can access as a result of residing in an embedded network. Many people in embedded networks, particularly residential parks, nursing and retirement homes and social housing developments, are likely to have lower incomes and be in vulnerable situations. The potential for harmful impacts are significantly higher for residents in embedded networks, both because of their personal circumstances and their limited access to supports and protections. This must be considered when assessing the Guidelines and imposing penalties on embedded network operators who do not comply with them.

PIAC does not see compelling evidence of material consumer benefit for residents of most embedded networks. Any benefits which do exist are not consistent or significant enough to account for the consumer impacts and potential harms most embedded network consumers experience.

The Guidelines were developed to allow for existing circumstances where the standard network and retail rules could not be practically applied. The Guidelines were not intended to facilitate or create an alternative to a robust rules framework and be exploited for the convenience or profit of networks operators and exempt entities, but this has happened, nonetheless. PIAC considers this update process to be an opportunity to ensure that equity and protection for consumer access to essential energy services is restored.

## 1. The structure and definition of exempt entities

For some exempt entities, selling energy does not sit alongside other services they provide to residents – such as tenancy services – it is their core business. The Energy and Water Ombudsman NSW (EWON) noted that the first version of the Guidelines differentiated between

specialist external providers and billing agents. EWON has documented examples of businesses that structure themselves, so they are classified as billing agents, not specialist external providers. This enables them to avoid AER authorisation or exemption. EWON found cases where there are billing issues – such as automatic payments occurring despite an account being closed – that demonstrate consumers in these situations can have little or no recourse to remedies.<sup>1</sup> Better regulation of this business model is required to ensure energy sellers cannot deliberately take advantage of the minimal consumer protections that should prevent billing agents providing unacceptable levels of service with minimal options for consumers when things go wrong.

---

### **Recommendation 1**

*The use of billing agents should not result in any compromise to consumer protections.*

EWON has also articulated that the complexity of business models with a range of contractual relationships means it is not always clear who has control of the network so that issues can be remedied when they arise. PIAC agrees with EWON that the network party must join an energy ombudsman scheme so consumers can get assistance resolving issues should they occur.<sup>2</sup> PIAC considers that ultimate responsibility for matters relating to the embedded network should align with network responsibilities more broadly. Accordingly, the entity with ownership, control or legal responsibility for the physical embedded network asset and infrastructure (or the agent contracted to act on their behalf) should be considered the responsible entity for the purposes of dispute resolution.

---

### **Recommendation 2**

*Network parties must join an energy ombudsman scheme.*

EWON has highlighted another issue where embedded networks that have fewer than 10 residential consumers, and are not retirement villages or residential parks, fall into the deemed exemption class.<sup>3</sup> PIAC is concerned these residential consumers do not have access to independent dispute resolution. All embedded networks with residential consumers should be in the registered exemption class so that all residential consumers have access to independent dispute resolution. .

---

### **Recommendation 3**

*All embedded networks with residential consumers should be in the registered exemption class, not in the deemed exemption class.*

This updating process of the Guidelines being conducted by the AER should recognise these issues and improve consumer protections for consumers in embedded networks.

PIAC does note, however, that sometimes embedded networks may be able to provide benefits for consumers, such as facilitating access to renewable energy and storage. In these instances,

---

<sup>1</sup> Energy and Water Ombudsman NSW (EWON), Embedded networks – it's time for change, <https://www.ewon.com.au/page/publications-and-submissions/spotlight-on/embedded-networks>

<sup>2</sup> ibid

<sup>3</sup> ibid



the Guidelines must ensure fit-for-purpose consumer protections without removing access to innovative consumer focussed arrangements.

## 2. Compliance

Exemption holders must comply with their obligations, and a system of escalating penalties be used to penalise and discourage non-compliance.

### ***Recommendation 4***

---

*A system of escalating penalties should be imposed on entities that do not comply with their obligations.*

The AER's monitoring and compliance work should include collecting and maintaining details about how many people are covered by network and retail exemptions and the types of business structures that are used. The AER should also develop systems capable of monitoring key indicators for consumer protection, such as disconnection and the availability of basic retail protections, such as payment plans and access to government assistance.

### ***Recommendation 5***

---

*The AER's monitoring and compliance work should include collecting and maintaining details about how many people are covered by network and retail exemptions; the types of business structures that are used; and key indicators of consumer protection.*

## 3. Billing

Billing information helps consumers understand their usage and be confident the amount they are charged is correct. Embedded network consumers should, wherever possible, be provided with equivalent billing and usage information as consumers with authorised retailers. This includes aligning embedded network bills with the AER's work to develop a billing guideline under the National Energy Retail Law (NERR).

### ***Recommendation 6***

---

*Embedded network consumers should, wherever possible, be provided with equivalent billing and usage information as consumers with authorised retailers. This includes aligning embedded network bills with the AER's work to develop a billing guideline under the National Energy Retail Law (NERR).*

## 4. Should exempt networks be created to allow for the creation of Small Generation Aggregator schemes?

PIAC agrees with the AER's view on this issue, that is that Small Generation Aggregators (SGA) do not need to be brought under the network exemption framework but are better placed where the regulation is fit for purpose.

## 5. Embedded Network Manager requirements

PIAC is concerned an embedded network operator can thwart attempts by consumers to enter a retail market contract by not appointing an Embedded Network Manager. PIAC supports the AER's proposal to include a condition in the network exemption guideline that a timeframe be implemented for the appointment of an Embedded Network Manager in instances where an Embedded Network Manager must be appointed. PIAC recommends this timeframe be no more than 90 days, being ample time to procure these services.

### ***Recommendation 7***

---

*PIAC recommends the timeframe for the appointment of an Embedded Network Manager be no more than 90 days.*

## 6. Allowing unmetered supply for networks established before 2012

PIAC is concerned that residents in embedded networks that have unmetered supply cannot reduce their usage in order to reduce their energy costs, and their charges may increase as a result of others sharing their supply. PIAC supports the AER's proposal that a meter must be installed if requested by a consumer. The actual cost of this meter should only be passed to the consumer if the consumer is told at the time of the request how much the meter installation will cost and agrees to bear this cost. The AER should also consider creating guidance and a schedule for acceptable metering costs, and alternatives to upfront recovery of those costs.

All consumers in these circumstances should be made aware having a meter installed is an option for them, and the guidelines should provide an avenue and incentive for the option to be taken up where the consumer chooses to do so.

### ***Recommendation 8***

---

*All consumers in embedded networks that have unmetered supply should be made aware that having a meter installed is an option for them and be provided with guidance should they choose to go ahead with the meter installation.*

## 7. Disconnections for energy only customers

PIAC supports the AER's view that network operator disconnection protections should be the same for on-market and off-market consumers. PIAC supports the AER's proposed change to amend the network exemption guideline to include retail exemption guideline's disconnection obligations.

PIAC supports consistency between the Retail Exemption Guidelines and the NERR with the use of the term 'explicit informed consent' and that evidence of consent must be written, except where precluded for accessibility reasons.

## 8. Retrofit requirements – explicit informed consent

PIAC supports embedded network owners or operators providing standardised information to prospective consumers. This information must be plain language, available in community languages and be provided in a way that is free from coercion. PIAC would be happy to provide feedback to the AER on draft information.

### ***Recommendation 9***

---

*PIAC supports embedded network owners or operators providing standardised information to prospective consumers that is plain language and available in community languages.*

## 9. Mandatory information disclosure by exempt sellers

PIAC supports providing prospective tenants with a hardcopy factsheet outlining information about the structure of the embedded network with clear articulation of who is responsible for what components of the network, rights to access energy from a retailer of their choice, metering options to support this and information about exiting an embedded network. This must be provided in advance of lease signing, so tenants are aware of their rights before agreeing to the tenancy and able to use this information to make informed choices. This information should also be provided to consumers on request and at the time of an inquiry to leave an embedded network. Ideally, factsheets should be easily available on the AER's website so consumers can research this issue without raising it with their embedded network operator.

### ***Recommendation 10***

---

*A hardcopy factsheet outlining information about the structure of the embedded network with clear articulation of who is responsible for what components of the network, rights to access energy from a retailer of their choice, metering options to support this and information about exiting an embedded network should be given to prospective tenants before they sign a lease.*

## 10. Hardship assistance

PIAC agrees that greater risks and likelihood of consumer vulnerability in embedded networks require robust hardship supports be provided.

Exempt entities may have complex relationships with their consumers because of the range of services they provide – landlord, gas, water, internet, and property services etc. This can create a fear (real or imagined) for consumers that seeking assistance (or complaining) may put their tenancy or other services at risk. Hardship assistance must be a right and provided without prejudice.

PIAC supports requiring exempt sellers to adopt hardship plans. This would stipulate clear ways for exempt sellers to provide support for their consumers experiencing payment difficulties. It would also provide consumers with clarity on what supports they are entitled to.

PIAC supports the AER developing a template hardship plan to assist exempt entities to provide appropriate support, reduce the cost of creating the plan themselves (the cost of which might be

passed on to consumers), ensure the plans created meet the AER's expectation and speed up the process to implement hardship supports.

There may need to be nuance between what larger and smaller entities are capable of providing. When considering the capabilities of exempt entities to provide hardship assistance, the AER should bear in mind that some exempt entities operate multiple networks, and while each network may have only a small number of consumers, the exempt entity may collectively provide energy services to a many consumers. PIAC understands some exempt entities have more consumers than some non-exempt retailers.

Larger exempt entities should be required to have supports that mirror those required of market retailers, including:

- Processes to identify residential consumers experiencing payment difficulties due to hardship. This could be as simple as having a debt amount that triggers a response from the exempt entity. Given the generally low income of people in residential parks, this amount should be set reasonably low.
- Processes for the early response to consumers experiencing payment difficulties due to hardship.
- Processes to identify appropriate financial counselling services and to notify hardship consumers of those programs and services.
- An outline of a range of programs that the retailer may use to assist hardship consumers. Simple options could include assistance to obtain rebates they are eligible for and payment plans.
- Processes to review the appropriateness of a hardship consumer's contract – if options exist - in accordance with the purpose of the consumer hardship policy.
- Processes or programs to assist consumers with strategies to reduce or manage their energy usage. Larger entities should be able to adapt existing energy saving information (for example information that is provided on government websites) that is relevant to their consumers – for example modified so that it is relevant for consumers whether they live in an apartment or a residential park.

Smaller entities may not have the capacity to develop and implement a complete set of hardship assistance, but there are a range of supports they could provide which could be implemented with little or no costs such as:

- Processes to identify residential consumers experiencing payment difficulties due to hardship. This could be as simple as having a debt amount that triggers a response from the exempt entity. Given generally low income of people in residential parks, this amount should be set reasonably low.
- Processes for the early response to consumers experiencing payment difficulties due to hardship. Smaller entities are more likely to know their consumers/residents and their situations and be able to offer assistance.
- Processes to identify appropriate financial counselling services and to notify hardship consumers of those programs and services. The AER might be able to help with a list of organisations that can provide this type of assistance, including local services.

- Processes or programs to assist consumers with strategies to improve their energy efficiency. For a small exempt entity, this could be as simple as directing consumers to a website, such as a jurisdictional government website<sup>4</sup>, or providing a flier, such as one printed by a government department, with energy saving tips<sup>5</sup>.

## 11. Ombudsman membership

PIAC supports the requirement for exempt entities to be members of ombudsman schemes because it provides a way for consumers to resolve issues should they occur. EWON explained that “[s]ome embedded network operators have responded to the requirement to join an Ombudsman scheme by delaying their application indefinitely, disengaging from the discussion, or simply refusing to join.”<sup>6</sup> PIAC also supports the AER’s proposed change that would make it a requirement that individual exemption applicants provide evidence of the steps they have taken to obtain ombudsman membership in the jurisdiction/s in which they intend to sell energy to residential consumers.

Escalating penalties should be used for entities that continuously take steps to avoid ombudsman scheme membership – or continuously ignore the requirement to join. These penalties should take into account the number of consumers the entity services across the jurisdiction, not just in the individual embedded network.

### ***Recommendation 11***

---

*Escalating penalties should be used for entities that continuously take steps to avoid ombudsman scheme membership – or continuously ignore the requirement to join.*

The steps taken to obtain ombudsman membership could be confirmed with the ombudsman scheme in the jurisdiction they intend to sell in.

## 12. Chilled water

PIAC supports regulation of energy used to chill or heat water. Although hot water is usually sold in litres, not kWhs, heating water and having access to hot water is part of energy supply and is an essential service. As such, PIAC also supports finding a way to better regulate the sale of hot water.

### ***Recommendation 12***

---

*PIAC supports regulation of the energy used to heat or chill water in embedded networks.*

PIAC is concerned that there are numerous consumer issues with the sale of chilled and hot water in embedded networks.

Loopholes should not prevent people’s access to appropriate consumer protections including billing and access to ombudsman services.

---

<sup>4</sup> Such as <https://energysaver.nsw.gov.au/households>

<sup>5</sup> Such as NSW Government’s Top Tips to Save You Energy and Money flier, downloadable from <https://energysaver.nsw.gov.au/households/fine-tune-your-home/free-ways-save-energy-and-money>

<sup>6</sup> *ibid*

In 2021, at least 49,000 households in NSW received their hot water through an embedded network.<sup>7</sup> This is a significant – and growing – number of consumers who are not receiving the same consumer protections that other consumers receive. The current regulatory framework means that the embedded network operator can choose which regulatory framework they operate in and, understandably from a business perspective, choose the framework which has the least regulation and consumer protections.

Chilled water used for air conditioning can be extremely important for health, particularly in apartments which lack cross ventilation or other means to cool. It is also vital for people who have medical conditions which means they need to maintain room temperatures within a certain range. PIAC does not have access to the figures for the number of consumers in chilled water embedded networks, but some issues facing both chilled water and hot water embedded networks are similar. Consumers in these networks might not:

- Get clear billing information which shows them how much they use and what they are being charged for.
- Have access to retail competition to enable them to look for a cheaper deal.
- Have a right to access payment plans or hardship assistance should they need it.
- Have certain disconnection protections.
- Get access to an ombudsman service should an issue arise.

For hot water embedded networks, EWON identified the following common complaints:

- high bill disputes
- estimated bills
- customer service issues
- opening and closing accounts
- credit issues, including affordability.<sup>8</sup>

These sorts of complaints are likely to also apply to chilled water. It is unfair that consumers with these problems in embedded networks cannot get assistance from a jurisdictional ombudsman as consumers outside of these arrangements can.

Protections for hot and chilled water must be brought up to the standards that those outside of embedded networks receive. For hot water, this means not being able to operate outside of energy regulations, for example, not being able to charge for hot water in litres.

## Continued engagement

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth.

---

<sup>7</sup> EWON, Spotlight On: Hot water embedded networks, <https://www.ewon.com.au/page/publications-and-submissions/spotlight-on/hot-water-embedded-networks>

<sup>8</sup> ibid