



AER (Retail) Exempt Selling Guideline

Version 4

March 2016

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Amendment Record

Version	Date	Pages
1.0 – Exempt Selling guideline	December 2011	124
2.0 – AER (Retail) Exempt Selling Guideline	July 2013	58
3.0 – AER (Retail) Exempt Selling Guideline	April 2015	56
4.0 – AER (Retail) Exempt Selling Guideline	March 2016	58

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1 About this guideline

Under the National Energy Retail Law (Retail Law), any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail exemption.^{1,2}

If energy selling is your main business, you are selling to large numbers of customers or selling in a number of states and territories, you will probably need a retailer authorisation. If you want to sell energy at a specific site, to customers you already have a relationship with, or have plans for small-scale selling activities, you may be eligible for a retail exemption. This guideline is for those energy sellers that need a retail exemption.³

This guideline will help you understand:

- whether you need an exemption or an authorisation (Section 2)
- which type of exemption you need – deemed, registrable or individual (Section 3)
- who should hold the exemption (Section 5)
- how to get an exemption (Section 6)
- how we assess individual exemption applications (Section 7)
- the conditions exemption holders must comply with (Section 8).

The guideline refers you to further information in the relevant appendices. The appendices provide detailed information to help you understand what you need to do to get an exemption and your obligations once you have it.

If you have read this guideline and are still unsure whether you need an exemption, please contact us. We can help you understand how the guideline works but you may also need your own legal advice on your specific circumstances. You can email us at AERExemptions@aer.gov.au, or phone the AER Infocentre on 1300 585 165 (leave details so we can contact you).

This guideline deals with retail exemptions under the Retail Law. For network exemptions under the National Electricity Law, please see the AER's Network Service Provider Registration Exemption Guideline.⁴

¹ Section 88 of the Retail Law. A breach of this provision attracts a civil penalty.

² The Retail Law does not apply to off-grid arrangements in states or territories that have specifically excluded these arrangements under their adopting legislation.

³ The businesses which are exempt by our class exemptions are described in our *Exempt Selling Guideline*. The *Retail Law* empowers us to develop an Exempt Selling Guideline which sets out how we regulate exempt sellers.

⁴ <http://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-august-2013>

2 Are you an energy seller?

If you sell gas or electricity to a person or business for use at **premises**, and you itemise that cost in a **separate, discrete charge**, it is likely that you are an energy seller under the Retail Law.

Energy selling covers a wide range of activities, from energy retailing by authorised retailers to households and businesses to landlords recovering energy costs from their tenants.

Energy 'sales' do not necessarily have to be for profit—even passing on energy at cost to another person is a sale. But we do not consider energy is being sold where energy costs are only one part of another fixed charge (for example, a hotel tariff or rent that includes energy costs),⁵ or where the costs are shared (for example, in a group house or a community facility).

Some examples of a sale of energy could include:

- Energy sold to a long term resident of a caravan park, based on the resident's metered consumption
- Energy sold to tenants of a residential apartment block based on each residents' metered consumption (but is not part of rent)
- Energy costs passed through—at no profit—from a landlord to a tenant
- Unmetered energy where a commercial landlord is billed and then apports the cost between tenants
- Energy sold to builders working on a construction site, even though it's on a temporary basis
- Energy sold through power purchase agreements to supplement the energy a customer buys from an authorised retailer

The Retail Law does not define 'premises'. We consider it to have a broad application and we take a pragmatic approach to interpreting it.

⁵ The sale of bulk hot water is not considered a 'sale of energy' under the Retail Law and Retail Rules.

3 Do you need an authorisation or an exemption?

If you sell energy in any state or territory where the Retail Law applies, you must hold either a retailer authorisation or an exemption (but not both).⁶ This section of the guideline will help you decide if you need an authorisation, or if you may instead seek a retail exemption. Penalties apply for sellers of energy who do not have an authorisation or an exemption.⁷

3.1 Retailer authorisation

A national retailer authorisation allows you to sell electricity or gas in all states and territories where the Retail Law applies.⁸

Retailer authorisations are normally required where:

- your main business is the sale of energy to customers⁹
- your main relationship with your customers is the sale of energy
- you plan to sell a large amount of energy across a number of sites or across a number of states and territories.¹⁰

The AER assesses and approves applications for retailer authorisation. We have developed a separate guideline for businesses that want to apply for a retailer authorisation.¹¹

3.2 Retail exemptions

The scale of the planned energy sales or the relationship between the energy seller and customer may mean that an authorisation is not necessary and an exemption is more appropriate.

You will likely be eligible for an exemption if you are planning to sell energy:

- ‘incidentally’ to your main business¹²
- as a community service or at cost or
- to a defined group of customers at one site.

Exemptions were developed to manage the practice of “on-selling” energy. On-selling (or reselling), is when a person or business purchases energy themselves from another person

⁶ In Tasmania the exemptions framework does not apply to embedded networks, such as caravan parks, shopping centres, and apartment buildings but does allow for individual exemptions, for example, for solar power purchase agreement providers (section 23, the *National Energy Retail Law (Tasmania) Act 2012*).

⁷ We may issue an infringement notice (s 308 of the Retail Law). We may also apply to the Federal Court under section 44AAG of the Competition and Consumer Act 2010 (Cth) for an order to pay a pecuniary penalty, and/or an order that the person to cease the activity that is in breach, or take action to remedy the breach, or implement a specified program for compliance with the Retail Law.

⁸ Except where limited by state or territory legislation.

⁹ For further information on what the AER considers to be ‘core’ business, please see section 9.

¹⁰ Further information on retailer authorisations is set out in the AER’s Retailer authorisation guideline (<http://www.aer.gov.au/retail-markets/retail-guidelines/retailer-authorisation-guideline-december-2014>).

¹¹ The *AER Retailer Authorisation Guideline* is available on the AER’s website: <http://www.aer.gov.au/retail-markets/authorisations>.

¹² For further information on what the AER considers to be ‘incidental’ selling, please see section 9.

or business—usually an authorised energy retailer—and then sells it to a customer through an embedded network,¹³ such as a shopping centre, apartment building, retirement village or caravan park. The main relationship the on-seller has with their customer is not the sale of energy.

Most, but not all, exemptions are held by on-sellers. A person that sells energy to customers to supplement the energy that customer buys from a retailer (for instance, energy that is generated by solar panels or other equipment they own) may also be eligible for a retail exemption.

Like an authorisation, an exemption allows you to sell energy. However unlike an authorisation, an exemption restricts your selling activity to a defined class (or classes) of customers, usually at a specific site (or sites). These restrictions will be set out in the terms of the exemption.

Exempt sellers still have to follow strict conditions and meet a range of obligations to their customers, but generally the regulatory requirements are lower than those of retailer authorisations.

The core conditions that an exempt seller must meet are based on customer protections under the Retail Law but will vary according to your particular operations. They cover things such as an obligation to supply, provision of key information to customers, billing and payment arrangements, disconnection and reconnection, and concessions and rebates.

The core conditions for exempt sellers are set out in **Appendices A-2 and A-3**.

If you hold an exemption and want to change or expand your selling activities, you must tell us. You may be able to apply for an exemption variation, but if the scale and scope of your proposed sales is significant, you may need to apply for a retailer authorisation. If you are granted an authorisation, you will need to surrender your exemption.

3.3 Examples: Authorisation or exemption?

The following examples help to demonstrate some key differences between an authorisation and an exemption. Given each case will be different, these are examples only. We consider the particular facts of each situation and encourage you to contact us and discuss your circumstances. We also recommend you get your own legal advice.

Example A

Company A plans to sell gas and electricity to residential customers and, in the longer term, to small business customers. It plans to start off on a small scale in South Australia and then to expand to New South Wales and Queensland. Its core function is the sale of energy (it doesn't provide any other services to its customers).

It would be appropriate for Company A to seek a retailer authorisation.

¹³ An embedded network is a privately owned electricity network where a single meter (which is supplied by a retailer) provides all energy for the site. Energy is then delivered to customers via the private network, and customers are billed based on privately owned sub-meters at their premises. Typically, energy distributed through embedded network is 'resold' – that is, the network owner buys energy from a retailer and then resells it to tenants or customers within the network.

Example B

Company B is a mining company based in outback Queensland. It owns and operates an electricity generator which it uses to power its mining operations. It also supplies electricity to the townspeople (most of whom it employs). Its business is mining—not the generation and sale of energy, but does so because there is no other viable source of energy to the community and it is mutually convenient for the company and its customers. Its energy generation and sales activities will be restricted to this site and will continue for as long as the company's mining operations continue (or another source of energy becomes available).

It would be appropriate for Company B to seek an exemption (specifically an 'individual exemption' – see Section 4.3 of this guideline).

4 What type of exemption do you need?

There are three types of exemptions: **deemed**, **registrable** and **individual**. The type of exemption you need will depend on the nature of your business, who you are selling energy to, and why you are selling it.

Deemed and registrable exemptions are called 'class exemptions', because they apply to certain groups (or 'classes') of people who sell energy. Generally, these are people or businesses who sell energy incidentally, meaning that the sale of energy isn't their main business and they are only selling energy to support another more significant relationship they have with the customer (for example, landlord and tenant).

We use a numbering system for class exemptions to group common types of selling activities together. This makes it easier for you to identify how we may consider your energy selling activities and the conditions that apply.

- Classes that an energy seller can hold automatically (that is, they are '**deemed**' to apply without any application process), begin with the letter 'D' (e.g. D1, D2 etc.).
- Classes that a seller must register for (by completing an online form) are known as '**registrable**' exemptions and begin with the letter 'R' (e.g. R1, R2 etc.).

If you do not fit the criteria of an established class exemption, you must apply for an **individual** exemption.

4.1 Deemed exemptions

A **deemed exemption** applies automatically to certain classes of energy sellers. A person covered by a deemed exemption does not need to apply or register with us. Deemed classes are usually for small-scale selling arrangements that need little regulatory oversight. Most, however, are still subject to conditions.

Deemed exemptions apply to a range of energy selling activities, including:

- caravan parks or holidays parks that sell metered energy to people in short term holiday accommodation
- businesses that sell energy to a related business
- persons who sell metered energy to fewer than ten small businesses or residents
- businesses that sell unmetered electricity in Queensland¹⁴
- people who sell unmetered gas where gas is used for limited purposes
- government and community organisations that sell metered energy secondary to their core functions.

A full list of deemed exemption classes is set out at **Appendix A-1 (Table 2)**.

¹⁴ Unmetered onselling to residential customers is currently allowed in Queensland (provided certain conditions are met) under the Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s. 165.

4.2 Registrable exemptions

Some energy selling activities need to be registered with us. This is usually because the scale of the selling activity is larger than for a deemed exemption and therefore more regulatory oversight is warranted.

Like deemed exemptions, **registrable exemptions** apply to certain classes of energy sellers. An exemption only applies to a particular individual or entity for a particular site, and is subject to conditions.

We publish registered exemptions on our website; but do not assess or approve them.

Energy sellers that can register an exemption include:

- persons who sell metered energy to ten or more small tenants or residents within a site
- retirement villages or caravan parks who sell metered energy to permanent residents
- people or businesses selling energy to large customers.¹⁵

A full list of registrable exemptions is set out at **Appendix A-1 (Table 2)**. Two registrable classes, (R6—Persons selling metered energy to small customers at an adjacent site and R7—Persons selling unmetered energy to small business customers), are only available where sellers had these selling arrangements in place **before** 1 January 2015.

4.3 Individual exemptions

If your planned selling activity is not covered by the classes of exemption in Appendix A-1 and A-2 (deemed or registrable class exemptions), you should apply for an **individual exemption**.

An individual exemption normally applies to the sale of energy at a particular site and/or to a particular customer (or group of customers). Individual exemptions are intended for more unusual and often one-off arrangements and allow us to tailor the conditions of the exemption to the specific situation.

Conditions attached to an individual exemption are intended to balance the needs and rights of customers and the regulatory burden that meeting those conditions will place on the exemption holder.

For example, if you are planning to sell to large industrial customers, the conditions we impose are likely to be minimal. If you are planning to sell to residential customers, we will likely impose conditions that provide customer protections closer to those provided by authorised retailers under the Retail Law—for example, a requirement to offer a hardship program.

Businesses that want to sell energy on a large scale (numbers of customers and / or energy sold) will likely need a retailer authorisation.

¹⁵ The threshold for large electricity customers in New South Wales, the ACT, Queensland and Victoria is 100MWh per annum, 150MWh per annum in Tasmania and 160MWh per annum in South Australia. For gas, the threshold in all jurisdictions is 1TJ per annum.

4.4 Other situations: retrofitting

Retrofitting is the conversion of an existing site's electrical wiring into an embedded network that allows the owner or operator of the site to sell electricity directly to the residents or tenants of the site. Whether you need an individual exemption or a class exemption (that is, deemed or registrable) will depend on your customers (residential or commercial) and whether you have their explicit informed consent.

We recognise the potential for customers to benefit from a network conversion and that this may be more important to them than any loss of competition resulting from the retrofit. It is still important, however, that customers understand the implications of a network conversion on their future energy arrangements, and consent to the changed arrangements.

If you are planning to retrofit a site you will therefore first need to seek the explicit informed consent of all affected residents or tenants at the site.¹⁶

- If you are planning to retrofit a **commercial** site and have the explicit informed consent of **all** the affected tenants or customers you will be eligible for the relevant **class exemption**.
- If you are planning to retrofit a **residential** site you will need to apply for an **individual exemption**—irrespective of whether you have the full consent of affected tenants or customers or not.

Our approach to assessing retrofit applications for individual exemption, and the additional information we expect to be addressed in an application, is discussed further in Section 7 (see also **Appendix A-1, Tables 1 and 2**).

The potential customer detriment arising from a loss of retailer contestability is a key factor in our consideration of these applications. Retrofit applications must therefore pass an additional level of scrutiny. If you cannot demonstrate that you have taken satisfactory steps to mitigate customer detriment, we will not approve your application.

¹⁶ Refer to the current version of the NSP Registration Exemption Guideline for requirements concerning retrofitting and consent that must be met to be eligible for a network exemption for residential, small business and large business customers.

5 Who should hold the exemption?

As a rule, the person (or business) **selling** the energy should hold the exemption. The person (or business) selling the energy will generally have a contract with an authorised retailer and will bear the financial risk of their customers' non-payment.¹⁷

If you hold an exemption, your exemption is specific to you and applies to the activities for which you were granted, or registered, the exemption. Your exemption cannot be extended or transferred to related businesses or subsidiaries (that is, to another ACN or ABN).¹⁸ Those other businesses will need to apply or register for their own separate exemptions.

The exemption holder is responsible for ensuring compliance with all conditions of the exemption.

5.1 When you use an agent or service provider

Many people or businesses use an agent or service provider to manage the sale of energy to their customers, particularly within embedded networks. A service provider may communicate with customers, organise connections and disconnections, issue bills and handle any energy related complaints. If the service provider buys energy from a retailer and sells it directly to your residents or tenants, on your behalf, then they are the energy seller and they are the party that needs an exemption or authorisation.

We do not generally consider that class exemptions are appropriate for service providers because for them, selling energy is a core business activity. If the service provider is selling energy to only a small number of sites they may be eligible for an individual exemption for each of those sites. However, if they sell, or intend to sell, at many locations they may need to apply for a retailer authorisation (see discussion on Individual exemptions in Section 4.3).

¹⁷ That is, they will be liable for costs to the retailer, even if their customers do not pay their bills.

¹⁸ An exemption will continue to apply where a company has changed its name or ownership because an exemption is granted to the legal entity, which does not necessarily change in those circumstances.

6 How do you get an exemption?

6.1 Deemed exemptions

Deemed exemptions are automatic, provided you meet the criteria of the deemed class. This means you do not need to apply for or register an exemption, but rather are 'deemed' to be exempt.

You must comply with the conditions of the deemed exemption. The core conditions, and the exemption classes they apply to, are detailed at **Appendices A-2 and A-3**, respectively.

6.2 Registrable exemptions

Registrable exemptions are not automatic. You can register an exemption by completing the registration form available on our website.¹⁹ To register a **retail** exemption, you need to complete Parts A and C of the form.

You must provide all the information requested in the form, including:

- the legal name (and trading name) of the business or person seeking the exemption, and their ABN or ACN
- the site address for the exemption, the number of customers at that site and the class of exemption (for example, class R1), and a brief description of the normal business activities undertaken at that site²⁰
- details of a customer contact and authorised representative so that we can contact you if necessary.

Anyone on-selling electricity will likely also need a network exemption. If you do, you should also complete Part B of the registration form. The [Electricity network service provider registration exemption guideline](#) sets out the network registration process in Part C of that guideline.

Submit completed forms electronically to: AERExemptions@aer.gov.au.

There is no formal approval process for registrable exemptions. Your exemption comes into effect once you are registered on our [public register of exempt sellers](#).²¹

Conditions apply to all registered exemptions. You must comply with these conditions (see **Appendices A-2 and A-3**).

You should advise us if your details change, for instance if the site for which you have the exemption changes owners, or the nature of your energy selling activities changes (for example, you no longer sell energy to small non-residential customers, but to large customers), or you start selling energy to life support customers. You may need to apply for a different type of exemption or an authorisation.

¹⁹ A copy of our exemption registration form can be found here: <http://www.aer.gov.au/retail-markets/retail-exemptions>

²⁰ For example, retail shopping centre, residential apartment building, caravan park or retirement village.

²¹ Please note that your exemption will only appear on the AER's public register of exemptions when the Retail Law has commenced in your jurisdiction. The AER's public register of exemptions can be found here: <http://www.aer.gov.au/retail-markets/retail-exemptions/public-register-of-retail-exemptions>

6.3 Individual exemptions

We recommend that you contact us before applying for an individual exemption. This is so that we can provide information and guidance relevant to your individual circumstances, and assist you with the application process.

Appendix B sets out the information that you must provide when you apply for an individual exemption.

Providing false or misleading information (or omitting to provide relevant information) to a Commonwealth entity is a serious offence under the *Criminal Code Act 1995* (Cth).²² A court may impose a maximum penalty of \$102,000 *per offence* on a body corporate for breaches of this provision.

If your application contains confidential information, you should:

- clearly identify anything you consider confidential
- give reasons for each confidentiality claim
- advise of any potential harm that disclosing the information might cause you
- also submit a public version of your application.

The public version of your application should be detailed enough for members of the public to comment if they wish to—you should only remove genuinely sensitive information from the application.

A confidentiality claim, by itself, is not always enough to prevent disclosure. Under the Retail Law and the *Competition and Consumer Act 2010* (Cth), we may disclose confidential information in certain circumstances, for example, where disclosure would not cause detriment, or the public benefit to disclosing the information outweighs that detriment. For further information on the AER's policy on the collection, use and disclosure of information see the ACCC and AER information policy.²³

If we are considering disclosing confidential information, we will contact you and first provide you an opportunity to comment.²⁴

You can submit your application to:

AERExemptions@aer.gov.au with '*Application for individual exemption*' in the subject line.

The process for assessing an application for an individual exemption is set out in Section 7. Section 7 also explains what information must be provided in an application for an individual exemption for a retrofitted site.

²² Section 137.1 of the *Criminal Code*

²³ <http://www.aer.gov.au/publications/corporate-documents/accc-aer-information-policy-collection-and-disclosure-of-information>

²⁴ The AER may use the information for any purpose connected with the performance or exercise of its functions or powers.

7 Assessing applications for individual exemptions

7.1 Public consultation process

We will review your application and will contact you if there is any incomplete or missing information. Provided your application is complete, we will 'accept' your application and start the required public consultation process (accepting your application does not mean that the AER has approved it).

We will then publish a notice on our website:

- stating that the application has been received and
- seeking written submissions on the application from interested stakeholders.

The consultation period will be at least 20 business days.²⁵

7.2 Assessing an application

When considering applications for individual exemptions, we will be guided by the Retail Law objective, which is:

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

We will also consider the policy principles, exempt seller related factors and customer related factors specified in the Retail Law when considering your application.²⁶

Guidance on how we consider these principles and factors is provided in **Appendix E**. We encourage anyone applying for an individual exemption to familiarise themselves with those policy principles and factors before making an application.

7.2.1 Assessing an application involving retrofits

1. Mitigation of detriment: Retail contestability and competitive offers

Customers in an embedded network can experience practical difficulties in accessing market retailers. An application for an exemption involving a retrofit must attempt to remove barriers for customers to purchasing energy from a retailer of their choice. A successful applicant must also limit the customer detriment that can result from it potentially being a monopoly supplier, by offering an attractive product to customers 'as if' in a more competitive market.

In addressing this criterion, we will look for evidence of:

- advice sought from the distributor whether (and how) non-consenting energy customers can be left out of the network conversion
- ongoing cooperation with retailers and distributors to facilitate access to competition

²⁵ The Retail Consultation Procedures (set out at Rule 173 of the Retail Rules) states that the AER must consult for a minimum of 20 business days.

²⁶ Our exemption decisions are subject to judicial review (covering questions of law only) under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)*.

- processes to ensure customers who choose to purchase from an authorised retailer do not pay double network charges and acknowledging that responsibility lies with the exempt seller (i.e. the applicant) and
- maintenance of consumer price and service quality at a level that would be competitive in the market. This may involve options around price matching for affected customers.

2. Mitigation of detriment: Customer dispute resolution services

Authorised energy retailers must be a member of all relevant state and territory energy ombudsman schemes. This is so customers of retailers have access to a dispute resolution body where they cannot resolve a complaint with their retailer. Our concern is that generally exempt customers do not have access to an energy ombudsman and cannot easily switch sellers if they have a problem.²⁷

In addressing this criterion, we will look for evidence of:

- a dispute resolution process that meets (as a minimum) Australian Standards: AS/NZS 10002:2014 Customer Satisfaction – Guidelines for complaints handling in organisations and
- a process for informing customers of whether they can access an ombudsman or tribunal if unsatisfied with internal dispute resolution.

3. Mitigation of detriment: state or territory legislation

Customers in embedded networks may be subject to different protections and limitations depending on the state or territory where they live. Successful applicants must demonstrate an awareness of potential impacts for customers joining an embedded network in that site's state or territory and must attempt to mitigate them.

In addressing this criterion, we will consider:

- any known adverse consequences for energy customers in particular states or territories joining embedded networks and the applicant's efforts in countering these. For customers in Queensland, for example, child meters are not accessible to market retailers and this alone, may be enough to reject an application.

4. Efforts to obtain explicit informed consent

Customers in embedded networks do not have the full range of rights and protections available to them under the Retail Law (as they would have had the retrofit not taken place).

Therefore, applicants must communicate with these customers to inform them about the implications of being a customer in an embedded network; their voluntary consent to the retrofit must be sought; and any concerns they raise must be formally recorded with attempts made to resolve them.

Successful applications must demonstrate a principled approach to the facilitation and collection of explicit informed consent. A successful application must also demonstrate a willingness to identify and mitigate the concerns of consumers at the site.

²⁷ With the exception of small customers in New South Wales and small customers of exempt sellers who have joined the South Australian ombudsman scheme,

In addressing this criterion, we will look for evidence of:

- clear communication with customers, including about their rights, protections and obligations, to allow them to make an informed decision about entering into an embedded network
- opportunities for customers to raise concerns, including that you have specifically advised them of the AER's formal public consultation process, and any attempts made by the applicant to discuss and/or mitigate those concerns²⁸
- regard for the capacity of affected customers to provide voluntary informed consent, for example, English literacy skills, physical or intellectual disability may affect a person's capacity to provide consent and
- a process that demonstrates collection of voluntary consent from customers.

We may request evidence of collection of explicit informed consent at any time. Applicants should retain relevant documents.

7.3 Making a decision

Unlike deemed and registrable exemptions, the AER must approve individual exemptions. Once we have considered your application we will advise you, in writing, of our decision.²⁹ If your application is approved, we will also advise you of any conditions that may be attached to the exemption.³⁰ You will need to formally accept those conditions in writing before your exemption takes effect. If you do not accept the conditions within the specified time period, your exemption will be taken to be refused.

7.3.1 Coverage or scope of exemption

Most individual exemptions will be issued for a particular site or area, and will limit the sale of energy to a certain class or classes of customers. We will only grant an individual exemption that covers multiple sites where it is consistent with the Retail Law objective.

The Retail Law does not place a limit on the duration of an exemption. However, we may impose a time limit on an individual exemption if we consider it appropriate. This will be determined on a case by case basis.

If we do not impose a time limit, it will continue until it is cancelled or revoked.

7.3.2 Change of circumstances

Your exemption will specify the form of energy you may sell and the scope of your sales: it cannot be varied to sell another or an additional form of energy, or to additional sites.³¹ You

²⁸ Customers should be advised that the AER consults on individual exemption applications and provided with information about how to make a submission to the AER's consultation process (this information can be found on the AER website <https://www.aer.gov.au/retail-markets/retail-exemptions/making-a-submission-to-an-individual-retail-exemption-application>)

²⁹ Rule 160 (approval) and rule 163 (refusal) of the Retail Rules.

³⁰ Rule 160 of the Retail Rules.

³¹ Unless your exemption specifically allows you to sell across multiple sites, for example, solar power purchase agreement sellers.

will need to apply for an exemption variation or possibly a new or separate individual exemption to do this. You should also contact us if your details change in any other way. Simple changes, like a change in contact details, generally only mean updating the public register. However in some cases, for example if the entity selling the energy changes, that is the ACN or ABN changes, you will need to register or apply for a new exemption.

7.4 Grounds for refusal

We may refuse an application for an individual exemption if, for example:

- we do not consider it will contribute to the achievement of the national energy retail objective³²
- we do not consider that it will not effect to the policy principles or is inconsistent with our considerations under the exempt seller related factors or the customer related factors
- we consider you should apply for a retailer authorisation, given the scale and scope of your energy sales
- you have provided us with false or misleading information.

³² We will consider whether or not the granting of the exemption is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers, as required by section 205 of the Retail Law.

8 Exemption conditions and compliance

8.1 Exemption conditions

Most exemptions—registrable, deemed and individual—have conditions that you must meet. Conditions are designed to protect customers without being an unreasonable burden on exempt sellers, and the general conditions are modelled on the protections that authorised retailers must provide their customers.

The conditions vary according to the nature of the energy sale (including scale and scope) and the seller-customer relationship. For example, we would likely apply minimal conditions where the energy sale is to commercial or large customers, as large customers are unlikely to need a high level of consumer protection. However, we would likely apply conditions that are similar to the obligations placed on an authorised retailer for sellers who sell to residential customers.

A full list of core conditions is at **Appendix A-2**. **Appendix A-3** shows which conditions apply to each exemption class.

If you cannot meet all the conditions attached to your exemption you should contact us immediately.

8.2 Breaches of conditions

A breach of an exemption condition is a breach of the Retail Law, and is a civil penalty provision.³³ Possible enforcement responses to breaches of the Retail Law or Rules can generally involve:

- an administrative resolution (an agreement between the parties and does not rely on any particular provision of the Retail Law or Rules. For example voluntary undertakings, revisions to internal processes or improved compliance training); or
- a statutory enforcement action (can include issuing infringement notices of \$4,000 for a natural person or \$20,000 for a body corporate,³⁴ enforceable undertakings and court proceedings or a combination of these options).

The AER also has the power, in limited circumstances, to revoke a retail exemption.

If an exempt seller is a corporation it may be held responsible for any actions of its officers and employees that result in a breach.³⁵ In addition, if a corporation contravenes a breach

³³ Section 112 of the Retail Law.

³⁴ Section 308 of the Retail Law. The term 'body corporate' is not defined in the Retail Law but encompasses any office or group of people recognised at law as having separate legal personality. Corporates, whether incorporated under the Corporations Act 2001 or by special statute, come within the definition. This is in contrast to the use of this term as defined in the Glossary to this guideline.

³⁵ Section 305 of the Retail Law.

provision,³⁶ each officer who knowingly authorised or permitted the contravention is deemed to have committed the breach.³⁷

Depending on the facts and circumstances, an exempt seller may also be held responsible for the actions of their agents. Agents of exempt sellers may be liable under the Retail Law if they aid, abet, counsel or procure a breach of a civil penalty provision, or are in any way knowingly concerned in a breach by the exempt seller.

For further information on our approach to exemption breaches see the AER's [Compliance and Enforcement Statement of Approach](#).³⁸

In addition to complying with your obligations under the Retail Law and this guideline, you must comply with relevant legislation, including the competition provisions of the *Competition and Consumer Act 2010*.

³⁶ A breach provision is defined by section 303 of the Retail Law as 'an offence provision, a civil penalty provision or a conduct provision'. These terms are further defined in the Retail Law.

³⁷ Section 304 of the Retail Law.

³⁸ Also see the AER's *Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Retail Regulations*, which is available on the AER website - <http://www.aer.gov.au/retail-markets/compliance/enforcement-matters>.

9 Cancelling and revoking exemptions

9.1 Cancelling an exemption

If your circumstances change and you no longer need an exemption you may apply to the AER to cancel your exemption. The process for cancelling an exemption is the reverse of the process for creating it.³⁹ In the case of a registrable exemption this will simply mean removing your exemption from the public register of exemptions. However, the process for cancelling an individual exemption will mean public consultation and a decision making process.

Before we begin the process of cancelling an exemption we will want to be satisfied that all energy selling has ceased, or if energy is still being sold, that it is being sold by someone holding the appropriate regulatory instrument such as an exemption or authorisation.

We must follow a number of formal steps when we receive an application to cancel an individual exemption. These include:

- publishing a notice on our website stating that the application for cancellation has been received and seeking written submissions on the application from interested parties
- allowing a period of at least 20 business days for written submissions to be made
- considering all written submissions made during that period before deciding whether to cancel your exemption
- providing you with a written notice of our decision and, if we decide to refuse your application for cancellation, providing you with a notice setting out the reasons for our decision
- publishing the details of our decision on our website.

The cancellation of an individual exemption will normally be a straightforward process.

9.2 Revoking an exemption

If you do not comply with the conditions of your exemption and, after looking into the matter, we consider the non-compliance is serious (for example, if there has been a material failure) we may decide to revoke your exemption.⁴⁰ An example of a 'material failure' is where an exempt person has not complied with their exemption conditions and this has had a significant or widespread impact on their customers.

³⁹ The power to repeal an exemption is contained in section 20 of the National Gas Law, as applied to the Retail Law by section 8 of the Retail Law

⁴⁰ Section 111 of the Retail Law empowers the AER to revoke exemptions

Before we revoke your exemption we must:

- give you notice that we intend to revoke your exemption, and our reasons for revoking it
- give you an opportunity to respond, in writing, showing why the exemption should not be revoked and proposing what you will do to rectify the problem.⁴¹

If we are not satisfied with your response we may set a time for the revocation to take effect and will inform you of any conditions you must comply with. For example, you may need to comply with certain requirements of the Retail Law and / or Rules that may continue to apply after the revocation.⁴² We will publish our revocation decision on our website.

⁴¹ Section 120 of the Retail Law.

⁴² Section 120(8) of the Retail Law

10 Network exemptions

If you are selling electricity from a private embedded network that you own or operate,⁴³ you will need to either register the network with the Australian Energy Market Operator (AEMO) or register an exemption with us if the network is not in a deemed exemption category.⁴⁴

In most cases, if you are eligible for a deemed or registrable retail exemption you will also need a network exemption. Some, but not all, individual exemption holders will also need a network exemption (sellers of power purchase agreements, for example, will not).

We administer both the network and retail exemption processes. Although the exemptions are separate, you can register either or both a retail exemption and network exemption on the [one form](#).⁴⁵ If you have already been granted an individual retail exemption you will need to register your network exemption separately.

The [Electricity network service provider registration exemption guideline](#)⁴⁶ sets out further information on network exemptions, including classes of exemption and how to apply for a network exemption.

⁴³ Network exemptions apply only to networks connected to the national electricity grid, and are not required for off-grid networks.

⁴⁴ Section 11 of the National Electricity Law.

⁴⁵ A copy of our exemption registration form can be found at: <https://www.aer.gov.au/forms/exemption-registration-application>.

⁴⁶ A copy of this guideline is available at <http://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-august-2013>.

11 Glossary

body corporate means a controlling body of a scheme constituted under state or territory strata titles legislation, the members of which are lot owners (or their representatives), and includes an owners' corporation but is not a body corporate for the purposes of the Corporations Act 2001 (Cth).

brownfield site means a site that is established and serviceable by a retailer but later retrofitted to allow onselling.

disconnection or **de-energisation** of premises means:

- in the case of electricity—the opening of a connection or
- in the case of gas—the closing of a connection

in order to prevent the flow of energy to the premises.

energy means electricity or gas.

energy ombudsman scheme means a scheme associated with the energy ombudsman for the relevant jurisdiction as prescribed in the National Energy Retail Regulations.

exempt customer means a person to whom an exempt person sells energy and who would be a retail customer of the seller if the seller were a retailer.

exempt person or **exempt seller** means a person who is exempted by the AER under a deemed, registered or individual exemption from the requirement to hold a retailer authorisation.

explicit informed consent means consent is given by a customer to an exempt seller where the exempt seller has clearly, fully and adequately disclosed all matters relevant to the consent of the customer, including each specific purpose or use of the consent; and the customer gives the consent to the transaction:

- in writing signed by the customer or
- verbally, so long as the verbal consent is evidenced in such a way that it can be verified and recorded or
- by electronic communication generated by the customer.

long term resident of a caravan park, residential park or manufactured home estate / park is a person whose premises is the resident's principal place of residence, that is, it is where the person lives most of the time and / or the person has no other place of residence.

large customer means a business customer who consumes energy at business premises at or above the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined – 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas, as per the National Energy Retail Regulations SA 2012.

on-market customer means customer of an authorised energy retailer.

meter means any device that measures the quantity of energy passing through it or records the consumption of energy at the customer's premises.

off-grid means not physically connected to the distribution or transmission systems that make up the national electricity power system.

onselling means an arrangement where a person acquires energy from another person, and they, or a person acting on their behalf, sells energy for use within the limits of a site.

PPA means a power purchase agreement, which is a financial arrangement in which a business provides, installs and maintains, at no initial cost, an electricity generation system at a customer's premises and in exchange, the customer buys the energy generated for an agreed period.

public register means the AER's Public Register of Exempt Sellers under r. 164 of the National Energy Retail Rules. It includes a list of all holders of registered exemptions and individual exemptions.

reconnection or **re-energisation** of premises means the energisation of the premises after their de-energisation.

residential customer means a customer who buys energy principally for personal, household or domestic use at premises.

retailer means a person who is the holder of a retailer authorisation for the purposes of section 88 of the National Energy Retail Law.

retrofitting means installing a private electricity network into a site that was established and serviceable by a retailer to allow onselling.

small customer means a customer—

- who is a residential customer, or
- who is a business customer who consumes energy at business premises below the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined – 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas, as per the National Energy Retail Regulations.

SPPA means a solar power purchase agreement.

Appendix A-1: Classes of deemed and registerable exemptions and conditions

Table 1 – Deemed classes of exemption

Deemed exemption class	Application	Class criteria	Class restrictions
<p>Class D1</p> <p>Persons selling metered energy to fewer than ten small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<p>Applies (but is not limited to) bodies corporate, landlords, lessors or property managers who sell energy in commercial or retail developments such as shopping centres, office buildings, airports and industrial parks.</p> <p>Customers are commercial or retail customers.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has fewer than 10 commercial or retail premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015 and the applicant is unable to obtain the explicit informed consent of all affected customers.</p> <p>Individual exemptions will be required if explicit informed consent cannot be obtained.</p>
<p>Class D2</p> <p>Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Applies (but is not limited to) bodies corporate, landlords, owners and operators of rooming houses, lessors, or property managers who sell energy to residential dwellings such as units, standard apartments, flats and purpose built off-site student accommodation.</p> <p>Customers include tenants, occupants and owner-occupants.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has fewer than 10 residential premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p>Individual exemptions are required from that date.</p>

Deemed exemption class	Application	Class criteria	Class restrictions
<p>Class D3</p> <p>Persons selling metered energy to occupants of holiday accommodation on a short-term basis.</p>	<p>Customers are short term occupants of holiday accommodation including (but not limited to) hotels, motels, inns, holiday flats, holiday cabins, campsites, caravan parks and marinas.</p> <p>Customers do not include residents of caravan parks, residential parks and manufactured home estates who principally reside there. Persons selling to these customers are covered by registrable exemption R4.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The occupancy is short-term, that is, the resident does not principally reside there and</p> <p>There is a separate itemised item for the sale of energy.</p>	<p>Class remains open.</p>
<p>Class D4</p> <p>Persons temporarily selling energy on construction sites.</p>	<p>Temporary supply for the construction and commissioning phase of building, civil, construction, industrial, transport, mining or other projects</p>	<p>Incidental supply to facilitate bona fide construction and commissioning of new facilities on the same or an adjoin site</p>	<p>Class remains open</p>
<p>Class D5</p> <p>Persons selling unmetered gas to individual premises where gas is used for limited purposes.</p>	<p>Gas that is sold for limited purposes, for example, for use in cooking appliances. It does not include gas used in the production of bulk or stored hot water.</p>	<p>Gas is used for premises within the limits of a site owned, occupied or operated by the person and</p> <p>The premises are not separately metered for gas consumption, and</p> <p>There is a separate itemised charge for the gas sold, and</p> <p>Gas is not used for space heating.</p>	<p>Class remains open.</p>

Deemed exemption class	Application	Class criteria	Class restrictions
<p>Class D6</p> <p>Persons selling unmetered electricity to residential customers in Queensland.</p>		<p>Electricity is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Premises are not separately metered, and</p> <p>The relationship between the seller and customer is covered by the Residential Tenancies and Rooming Accommodation Act 2008 (Qld).</p>	<p>Class remains open until Queensland legislation no longer permits this type of selling.</p>
<p>Class D7 - DELETED</p>			<p>This exemption class has been revoked</p>
<p>Class D8</p> <p>Persons selling energy to a related company.</p>	<p>Persons or companies who sell energy to a related company where the person or company controls, or is controlled by, another company including where:</p> <ul style="list-style-type: none"> • a company is a subsidiary of another company, or • two companies have a common holding company. 		<p>Class remains open.</p>
<p>Class D9</p> <p>Persons selling energy to customers in conjunction with, or ancillary to, the provision of telecommunications/information services.</p>	<p>Applies to (but is not limited to) telecommunications companies and data centre operators.</p>	<p>Energy is sold on or within the person's premises, and</p> <p>The energy is used in conjunction with, or ancillary to, the provision of telecommunications or information services.</p>	<p>Class remains open.</p>

Deemed exemption class	Application	Class criteria	Class restrictions
<p>Class D10 Government and similar agencies selling metered energy to non-residential customers.</p>	<p>Applies (but is not limited to) Federal, State and Local Government departments, statutory authorities or government owned corporations established under legislation of the Commonwealth or States and Territories and universities.</p> <p>Does not include housing authorities and student accommodation.</p>	<p>The entity has been established for purposes other than the sale, supply or generation of energy, or the supply of housing or residential accommodation to tenants, and</p> <p>The entity sells energy for purposes that are ancillary to its primary functions or objectives under its establishment legislation, and</p> <p>Each premises is separately metered.</p>	<p>Class remains open.</p>

Table 2 - Registrable classes of exemption

Registrable exemption class	Application	Class criteria	Class Restrictions
<p>Class R1</p> <p>Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<p>Applies (but is not limited to) bodies corporate, landlords, lessors or management corporations who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered and</p> <p>The site has 10 or more commercial or retail premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015 and the applicant is unable to obtain the explicit informed consent of all affected customers.</p> <p>Individual exemptions will be required if explicit informed consent cannot be obtained.</p>
<p>Class R2</p> <p>Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Applies (but is not limited to) bodies corporate, landlords, lessors, rooming houses or management corporations who sell energy to residential dwellings such as units, standard apartments, flats and purpose built student accommodation.</p> <p>Customers include tenants, occupants and owner-occupants.</p> <p>Customers do not include retirement village residents, or residents of caravan parks, residential parks and manufactured home estates who permanently reside there. Energy sales to these customers are covered by registrable classes R3 and R4, respectively.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has 10 or more premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015. Individual exemptions are required from that date.</p>

Registrable exemption class	Application	Class criteria	Class Restrictions
<p>Class R3</p> <p>Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Owners or operators of retirement villages.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015. Individual exemptions are required from that date.</p>
<p>Class R4</p> <p>Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (ie <i>long term residents</i>)</p>	<p>Owners or operators of caravan parks, residential parks and manufactured home estates.</p>	<p>Energy is used for premises within the limits of a caravan park, residential park or manufactured home estate site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The premises are the residents' principal place of residence, that is, it is where the person lives most of the time and / or the person has no other place of residence.</p>	<p>Class remains open</p>
<p>Class R5</p> <p>Persons selling metered energy to large customers.</p>	<p>Site specific</p>	<p>Each premises is separately metered (unless the customer has agreed otherwise), and</p> <p>The customers are large (ie for electricity, customers consume 100 MWh pa or more in New South Wales, the ACT, Queensland and Victoria, 150 MWh pa in Tasmania, and 160MWh pa in South Australia; and for gas, customers consume 1TJ pa or more).</p>	<p>Class remains open.</p>

Registrable exemption class	Application	Class criteria	Class Restrictions
<p>Class R6</p> <p>Persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate</p>	<p>Sellers who commenced selling prior to 1 January 2015.</p> <p>Legacy arrangements.</p>	<p>Energy is used for premises adjacent to the site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>Energy sales across site boundaries are permitted by the relevant jurisdiction.</p>	<p>Sellers who commenced selling after 1 January 2015 must apply for individual exemptions.</p>
<p>Class R7</p> <p>Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or management corporations (and similar entities) who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks.</p> <p>Sellers who commenced selling prior to 1 January 2015.</p> <p>Legacy arrangements.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Premises are not separately metered.</p>	<p>Sellers who commenced selling after 1 January 2015 must apply for individual exemptions.</p>
<p>Class R8</p> <p>Persons selling electricity through power purchase agreements (PPAs) to customers who are connected to the national electricity grid</p>		<p>Energy is sold to:</p> <ul style="list-style-type: none"> residential customers where the duration of the PPA is less than 10 years and the customer is able to terminate the agreement early and / or commercial customers. 	<p>Class remains open</p>

Appendix A-2: Core exemption conditions

The following conditions apply under rule 153 of the Retail Rules to the sale of energy to exempt customers by exempt persons. These are core conditions based on the retail customer protections provided under the National Energy Retail Law (Retail Law).

Not all of these conditions apply to all exemption classes. The specific obligations under each condition will vary from class to class and will depend on whether the class relates to residential or commercial/retail customers. Sellers should refer to the table at Appendix A-3 for the full list of conditions for their particular class in order to confirm their obligations.

Condition 1 – Obligation to supply

- 1 An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
- 2 Subject to condition 10, an exempt person can refuse to sell energy to an exempt customer where:
 - a. the outstanding amounts are owed under the exempt customer's ongoing energy account
 - b. the exempt customer's premises have been disconnected by the exempt person for a reason other than the failure to pay a bill and the exempt customer has not within 10 business days of disconnection rectified the matter that gave rise to the disconnection. The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

Condition 2 - Information provision

- 1 The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency/agreement of the following:
 - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
 - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if it were purchasing from an authorised retailer
 - c. the exempt customer's rights in relation to dispute resolution including:
 - i. the exempt person's procedures for handling disputes and complaints, and
 - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
 - d. the conditions applicable to the exemption that the exempt person is operating under
 - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes
 - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance

- g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
 - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
 - i. contact numbers in the event of a gas or electricity fault or emergency.
- 2 In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency/agreement, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 - 3 Once the Retail Law commences in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the Retail Law commences in the relevant state or territory.

Condition 3 - Billing and payment arrangements

- 1 An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
- 2 An exempt person must offer at least two payment methods to an exempt customer. However, if an exempt person offers direct debit as one payment method, they must also offer at least two other payment methods to an exempt customer (that is, at least three methods in total). In each case, at least one of the payment methods offered must be able to be effected without internet access. For example:
 - a. in person;
 - b. by telephone;
 - c. by mail;
 - d. by direct deposit into a bank account.
- 3 An exempt person must offer flexible energy payment options to an exempt customer who has identified themselves as being in financial difficulty. Flexible payment options may include arrangements for payment by periodic instalments having regard to:
 - a. the customer's capacity to pay,
 - b. any arrears owing by the customer, and
 - c. the customer's expected energy consumption needs over the following 12 month period, or the duration of their tenancy/residency/agreement if the tenancy/residency/agreement is less than 12 months.
- 4 The requirements in paragraph 3 do not apply where the exempt customer has:
 - a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
 - b. been convicted of an offence involving illegal use of energy in the previous two years.
- 5 An exempt person must include the following particulars in a bill for an exempt customer:

- a. The name of the exempt customer.
- b. The address of the exempt customer's premises.
- c. Date that the account was issued.
- d. The identifier of the meter for the exempt customer's premises.
- e. The pay-by date for the bill.
- f. Date of the current meter reading or estimate, as applicable.
- g. The dates to which the meter reading or estimate applies (billing period).
- h. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- i. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- j. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- k. Tariffs, fees and charges applicable to the exempt customer.
- l. The basis on which tariffs, fees and charges are calculated.
- m. Any amount deducted, credited or received under a government or non-government funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- n. Details of the available payment methods.
- o. A telephone number for account inquiries and complaints.

Condition 4 - Estimation as basis for bills

- 1 An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
- 2 An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
- 3 An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
- 4 Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the exempt customer reasonably available to the exempt person or
 - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.

- 5 If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 5 - Pay-by date

- 1 The pay-by date for a bill must not be less than 13 business days from the date on which the exempt person issues the bill.

Condition 6 - Receipts

- 1 An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
 - a. direct debit, or
 - b. credit card over the phone and the customer is provided with a receipt number.
- 2 An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

Condition 7 - Pricing

- 1 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.
- 2 An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable and no later than the exempt customer's next bill.
- 3 An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.⁴⁷
- 4 An exempt person must limit any fee charged to a customer for late payment to a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.⁴⁸

Condition 8 – Undercharging and overcharging

- 1 Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
 - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.

⁴⁷ For clarification, a "charge" includes, but is not limited to, account establishment fees, late payment fees, debt collection fees, service charges, and security deposits. The fees and charges allowable under a standard retail contract are governed by Division 6 of the National Energy Retail Rules (which sets out the requirements for charging a security deposit under a standard retail contract) and may also be governed by jurisdictional legislation.

⁴⁸ For clarification, a late payment fee can only be charged where it has not been excluded by jurisdictional legislation.

- b. The exempt person cannot charge interest on the undercharged amount.
 - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
- 2 Where an exempt customer has been overcharged, an exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
- a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
 - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
 - c. No interest is payable on the overcharged amount.
 - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

Condition 9 - Payment difficulties and disconnection or de-energisation

- 1 Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
- a. direct the exempt customer to the Australian government energy efficiency website or another information resource with energy efficiency advice and
 - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes and
 - c. not charge the exempt customer a late payment fee and
 - d. not charge the exempt customer a security deposit.
- 2 Subject to Condition 10, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
- a. the exempt customer has requested disconnection or
 - b. continuity of supply to the premises would be unsafe or
 - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises or
 - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:
 - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, and, in the case of residential exempt customers, has offered the exempt customer more flexible

- payment terms to pay any amount outstanding and has restated the forms of assistance available if the non-payment is due to financial difficulty, and
- ii. following non-payment by the date specified in the reminder notice, or, in the case of residential customers, the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
 - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
 - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
- 3 Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
- 4 This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

Condition 10 - When disconnection or de-energisation is prohibited

- 1 An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
- a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government or non-government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint directly related to the proposed reason for disconnection or de-energisation, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. the disconnection or de-energisation would occur on:
 - i. a business day before 8am or after 3pm or
 - ii. a Friday or the day before a public holiday or
 - iii. a weekend or a public holiday or
 - iv. the days between 20 December and 31 December (inclusive) in any year.
- 2 For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the

disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.

- 3 This condition does not apply where the exempt customer has requested disconnection.
- 4 This condition does not apply where the energy supply agreement between the exempt person and exempt customer has been terminated.

Condition 11 - Reconnection or re-energisation

- 1 Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection and
 - b. made a request for reconnection and
 - c. paid any charge for reconnection

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable, and no later than two days from when the request was made.

Condition 12 - Concessions and rebates

- 1 Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2 If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the eligible exempt customer, then, assuming there is no legal impediment, the exempt person must make that claim and, if successful, must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 13 - Choice of retailer

- 1 Where an exempt customer is eligible under state or territory legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by:
 - a. requiring the exempt customer to waive their ability to choose a retailer
 - b. unreasonably hindering their efforts to find another retailer or
 - c. unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 14 - Contact details

- 1 An exempt person must provide a means of contact for account inquiries and complaints that can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

Condition 15 - Dispute resolution

- 1 In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:

- a. make reasonable endeavours to resolve the dispute, and
- b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

Condition 16 - Life support customers

- 1 Where an exempt customer provides an exempt person with confirmation from a registered medical practitioner that a person residing at the exempt customer's premises requires life support equipment, the exempt person must:
 - a. advise the person whose embedded distribution network the sale of energy is occurring within (if different from the exempt person) that a person residing at the premises requires life support equipment, and
 - b. advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment, and
 - c. provide the exempt person's authorised retailer and distributor with any relevant information about the premises for the purposes of updating their records and registers.
- 2 An exempt person must maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.

Condition 17 - Continuity of supply

- 1 An exempt person must notify the exempt customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

Condition 18– Termination of energy supply agreement

- 1 An energy supply agreement between the exempt person and an exempt customer will terminate:
 - a. on a date agreed by the exempt person and exempt customer or
 - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice or
 - c. at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied or
 - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person or
 - e. when a different exempt customer starts receiving customer retail services for the premises or
 - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
- 2 Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

Condition 19 - Maintaining records

- 1 An exempt person must maintain records of the following for each of its exempt customers:
 - a. The name of the exempt customer.
 - b. The address of the exempt customer's premises.
 - c. The identifier of the meter for the exempt customer's premises (if applicable).
 - d. The date that the customer account was created.
 - e. Copies of any bills issued for the previous 12 months.
 - f. The date of the most recent meter read for the customer (if applicable).
 - g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

Supplementary exemption conditions

Condition 20 – Information provision

1. An exempt person must provide the customer in writing a plain English notice explaining that the contract is covered by Australian consumer protection laws and is separate to the customer's contract with their retailer and distributor which are covered under the National Energy Retail Law.

Condition 21 – Exemption limited to the sale of electricity through power purchase agreements

1. An exempt person must:
 - a. refrain from registering in the wholesale market for the purposes of purchasing energy, and
 - b. not be the financially responsible retailer for the premises (rather, this must be an authorised retailer).

Appendix A-3: Exemption class conditions

Table 3 – Exemption class conditions

Conditions	Class: Deemed									
	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10
1	✓	✓	✓	N/A	✓	✓		N/A	✓	✓
2	N/A: 1 (e), (f), (h)	✓	N/A: 1 (a)-(f), (h)	N/A	N/A: 1 (a), (b), (e), (f)	✓		N/A	N/A: 1(a), (c), (e), (f), (h)	N/A: 1 (e), (f), (h)
3	N/A: 3, 4, 5m	✓	N/A: 3, 4, 5 (a)-(d), (f), (h), (i), (m)	N/A	N/A: 3, 4, 5 (d), (h), -(i), (m)	N/A: 5 (d), (h), (i)		N/A	N/A	N/A: 3, 4, 5m
4	✓	✓	✓	N/A	N/A	N/A		N/A	N/A	✓
5	✓	✓	N/A	N/A	✓	✓		N/A	N/A	✓
6	✓	✓	✓	N/A	✓	✓		N/A	✓	✓
7	✓	✓	✓	N/A	✓	✓		N/A	N/A	✓
8	✓	✓	N/A	N/A	✓	✓		N/A	N/A	✓
9	N/A: 1	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A: 1
10	N/A: 1 (a), (b)	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A: 1 (a), (b)
11	✓	✓	N/A	N/A	N/A	✓		N/A	✓	✓
12	N/A	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A
13	✓	✓	N/A	N/A	N/A	✓		N/A	N/A	✓
14	✓	✓	N/A	N/A	✓	✓		N/A	✓	✓

Conditions	Class: Deemed									
	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10
15	✓	✓	N/A	N/A	✓	✓		N/A	✓	✓
16	N/A	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A
17	✓	✓	N/A	N/A	N/A	✓		N/A	N/A	✓
18	✓	✓	N/A	N/A	✓	✓		N/A	✓	✓
19	✓	✓	N/A	N/A	N/A	✓		N/A	N/A	✓
20	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A
21	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A

Conditions	Class: Registrable							
	R1	R2	R3	R4	R5	R6	R7	R8
1	✓	✓	✓	✓	✓	✓	✓	N/A
2	N/A: 1 (e), (f), (h)	✓	✓	✓	N/A	N/A: 1 (e), (f), (h)	N/A: 1 (e), (f), (h)	N/A
3	N/A: 3, 4, 5 (m)	✓	✓	✓	N/A	N/A: 3, 4, 5(m)	N/A: 3, 4, 5 (m)	N/A
4	✓	✓	✓	✓	N/A	✓	N/A	N/A
5	✓	✓	✓	✓	N/A	✓	✓	N/A
6	✓	✓	✓	✓	N/A	N/A: 2	✓	N/A
7	✓	✓	✓	✓	N/A	✓	✓	N/A
8	✓	✓	✓	✓	N/A	✓	✓	N/A
9	N/A: 1	✓	✓	✓	N/A	N/A: 1	N/A: 1	N/A
10	N/A: 1 (a), (b)	✓	✓	✓	N/A	N/A: 1 (a), (b)	N/A: 1 (a), (b)	N/A
11	✓	✓	✓	✓	✓	✓	✓	N/A
12	N/A	✓	✓	✓	N/A	N/A	N/A	N/A
13	✓	✓	✓	✓	✓	✓	✓	N/A
14	✓	✓	✓	✓	N/A	✓	✓	N/A
15	✓	✓	✓	✓	N/A	✓	✓	N/A
16	N/A	✓	✓	✓	N/A	N/A	N/A	N/A
17	✓	✓	✓	✓	✓	✓	✓	N/A

Conditions	Class: Registrable							
	R1	R2	R3	R4	R5	R6	R7	R8
18	✓	✓	✓	✓	N/A	✓	✓	N/A
19	✓	✓	✓	✓	N/A	✓	✓	N/A
20	N/A	N/A	N/A	N/A	N/A	N/A	N/A	✓
21	N/A	N/A	N/A	N/A	N/A	N/A	N/A	✓

Appendix B: Applying for an individual exemption application (other than PPA providers)

General information requirements

Please provide the following information in your application for an individual exemption:

- 1 Your legal name. If you are a body corporate or community corporation, please indicate this.
- 2 Your trading name if different to your legal name.
- 3 Australian Business Number (ABN) or Australian Company Number (ACN).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 Why you are seeking an individual exemption, and why you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances.
- 7 The address of the site at which you intend to sell energy, including a map of the site and a brief description of this site and its current and future use/s.
- 8 The primary activity of your business (for example, managing a shopping centre).
- 9 The form of energy for which you are seeking the individual exemption (electricity or gas). For electricity, please state whether the network you propose to sell is directly or indirectly connected to the main grid or is (or will be) an off-grid network.
- 10 Are you establishing, or have you established, energy supply in an area where there are no other viable energy supply arrangements available?
- 11 The date from which you intend to commence selling energy.
- 12 Mailing addresses for premises at the site (where applicable). We may use this information to ensure that potential customers are able to participate in our consultation process.
- 13 Details of any experience in selling energy, for example:
 - date/s and location/s of previous operations
 - form/s of energy sold
 - scale of operations (that is, the number, size and type of customers)
 - an explanation of which activities will be conducted in-house and which will be contracted out to third parties.
- 14 Whether you currently hold, or have previously held or been subject to, an energy selling exemption or a retail licence (retailer authorisation) in any state or territory. If so, please provide details.
- 15 What arrangements you have made in the event that you can no longer continue supplying energy (e.g., has the retailer that sells to you agreed that they will service the customers).

Particulars relating to the nature and scope of the proposed operations

To determine whether it is appropriate to exempt you from the requirement to hold a retailer authorisation, we need information on the nature and scope of the operations you propose to conduct. Please answer the following questions:

- 1 Will your customers be your tenants? If so, are they residential or commercial/retail? Are they covered by residential or retail tenancy, or other legislation governing accommodation that is a person's principal place of residence (for example, retirement village legislation, residential parks or manufactured home estates legislation) in your state or territory?
- 2 Are you providing other services (for example, accommodation/leasing of property) to persons on the site who you intend to sell energy to? Or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please specify what these services are, and the contractual or leasing arrangements under which these services are being provided.
- 3 What is the total number of customers at the site? Please provide a breakdown between residential and business customers (and whether they are small or large as defined for the jurisdiction in which you intend to operate).
- 4 Will you be onselling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?
- 5 What is the estimated aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and mega joules or gigajoules for gas) and the average expected consumption of customers for each type of customer you service (that is, residential customers and retail or commercial customers)?
- 6 Will your customers be wholly contained within a site owned, controlled or operated by you? (For the purposes of this question, a body corporate may be taken to 'operate' premises it oversees).
- 7 Will each premises/dwelling be separately metered? If the application is for a new development or a redevelopment and customers will not be separately metered, please explain why not.
- 8 What types of meters will be used? For example, basic/accumulation meters, manually read interval meters or remotely read interval meters? Will these meters allow your customers to change retailers (i.e. not source their energy from you)?
- 9 If customer dwellings/premises are separately metered, how often do you propose the meters to be read and by whom?
- 10 How will you determine energy charges if customers are not separately metered?
- 11 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 12 What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues?
- 13 What energy rebates or concessions are available for your customers and, if applicable, how can customers claim these?

- 14 Will you make energy efficiency options available to your customers? Will your network incorporate solar or other generation options for sustainability purposes? If so, will you use gross or net metering?
- 15 Please provide any further information that you consider would assist us to assess your application.

If you are planning to convert a site to an embedded network

Your application needs to address all of the questions above as well as the following:

Sections 4.4 and 7.2.1 of the guideline set out our approach to assessing individual applications involving brownfield embedded networks. As part of your application to sell energy through a planned brownfield embedded network, you should clearly address the four criteria described in Section 7.2.1 and provide supporting documentation as necessary.

16 In addition, please confirm that:

- a) You have advised tenants /customers that you are planning to retrofit the site as an embedded network.
- b) You have informed tenants / customers that the AER consults on individual exemption applications and provided them with information about how to make a submission to the AER's consultation process (this information can be found on the AER website <https://www.aer.gov.au/retail-markets/retail-exemptions/making-a-submission-to-an-individual-retail-exemption-application>).
- c) You will advise tenants / customers when the application is published for consultation and when the consultation period ends.

17 You must include a copy of the advice you gave tenants / customers about the proposed retrofit in your application. This advice must include details about how the conversion will affect the tenants' / customers' ability to access a retailer of choice. We may also require you to provide evidence of tenants' / customers' explicit informed consent to the proposed retrofit.

Appendix C: Applying for an individual exemption for power purchase providers only

General information requirements

Please provide the following information in your application for the grant of an individual exemption:

- 1 Your legal name. If you are a body corporate or community corporation, please indicate this.
- 2 Your trading name if different to your legal name.
- 3 Australian Business Number (ABN) or Australian Company Number (ACN).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 Why you are seeking an individual exemption, and why you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances.
- 7 The primary activity of your business (for example, managing a shopping centre).
- 8 Whether you intend to sell electricity to customers connected to the grid or who are off-grid.
- 9 The date from which you intend to commence selling energy.
- 10 Details of any experience in selling energy, for example:
 - date/s and location/s of previous operations
 - scale of operations (that is, the number, size and type of customers)
 - an explanation of which activities will be conducted in-house and which will be contracted out to third parties.
- 11 Whether you currently hold, or have previously held or been subject to, an energy selling exemption or a retail licence (retailer authorisation) in any state or territory. If so, please provide details.

Particulars relating to the nature and scope of the proposed operations

To determine whether it is appropriate to exempt you from the requirement to hold a retailer authorisation, we need information on the nature and scope of the operations you propose to conduct. Please answer the following questions:

- 1 Are you providing other services (for example, accommodation/leasing of property) to persons on the site who you intend to sell energy to? Or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please specify what these services are, and the contractual or leasing arrangements under which these services are being provided.

- 2 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 3 What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues?
- 4 Please provide any further information that you consider would assist us to assess your application.
- 5 Please describe your business model in some detail, noting jurisdictions where you will be operating, and customer number forecasts for the first 3 years.
- 6 What is your pricing structure - will you charge for energy only or are there other fees? Will you charge only for energy consumed or for all energy generated?
- 7 Are there related companies and what is their function? Do you intend to transfer any functions to any other related companies and, if so, what are they?
- 8 Do you intend to use fixed term contracts and, if so, how long will they be?
- 9 Under what circumstances can the customer terminate the agreement and at what cost?
- 10 What happens when the contract ends? Who owns the system?
- 11 Who will own any green energy certificates or rebates, including feed-in tariffs, which apply to the generation system?

Appendix D: Applicants seeking to vary an individual exemption

We recommend that you contact us before you submit an application for the variation of an individual exemption to help ensure that the information you include in your application is relevant and necessary.

Please provide the following information in your application for the variation of an individual exemption:

- 1 An explanation of why you are seeking a variation to your individual exemption and an explanation of why you believe an exemption—rather than a retailer authorisation—remains appropriate for your changed circumstances.
- 2 Where relevant, a list of the conditions of exemption that you believe need to be varied.
- 3 A list of changes to any of the information that you provided us when you applied for your individual exemption. If you have an electronic copy of your original application, you may submit this with tracked changes. If your exemption was transitioned, a list of changes to the circumstances on which the exemption was based.

Appendix E: How we assess individual exemption applications

Our assessment of applications for exemptions, and the conditions that should be attached to them, are guided by:

- The objective of the Retail Law⁴⁹
- The exempt policy principles outlined in the Retail Law⁵⁰
- The exempt seller related factors outlined in the Retail Law⁵¹ and
- The customer related factors outlined in the Retail Law.⁵²

We discuss these considerations below. Our considerations are a guide only. In practice, we will take into account all the circumstances of each individual application and no single principle or factor is a defining consideration in all instances.

We will also consider the nature of the service provided to the customer, whether the form of regulation is appropriate and fit for purpose, and whether it duplicates existing regulation.

Whilst applications are considered on a case-by-case basis, we aim for consistency to the extent reasonable. There may also be reasons not specified in the guideline that might cause us to refuse an application for an individual exemption or to treat two seemingly similar applications differently.

1. The objective of the Retail Law

Our decisions, and the way we exercise our powers and functions, are guided by objective of the Retail Law⁵³:

*to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.*⁵⁴

It means, for example, that we may refuse an exemption application if we consider that the proposed arrangements are not in the long term interests of the affected consumers in terms of price, quality or anything else specified in the objective.

2. Exempt selling policy principles

The exempt selling policy principles help ensure that customers of exempt sellers are not unreasonably disadvantaged compared to customers of authorised retailers. These principles, and how they inform our exemption decisions, are outlined below.

⁴⁹ Section 13 of the Retail Law

⁵⁰ Section 114 of the Retail Law

⁵¹ Section 115 of the Retail Law

⁵² Section 116 of the Retail Law

⁵⁴ Section 13 of the Retail Law.

2.1. Divergence in regulatory arrangements

Section 114(1)(a) of the Retail Law states that ‘*regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers*’.

The retail exemptions framework aims to give exempt customers protections equivalent to those of retail customers.

However, unlike authorised retailers, exempt sellers generally do not sell energy as their core business and may lack the economies of scale and scope from which retailers benefit.

Consequently, certain requirements under the Retail Law and Retail Rules may be more onerous or inappropriate for exempt persons (for example price disclosure requirements for retailers’ standing and market offer prices) and a degree of regulatory divergence is unavoidable.⁵⁵

An exempt seller whose energy sales are significant in terms of scale and/or scope should be subject to additional regulatory requirements (see below **3.4 Amount of energy likely to be sold**).

2.2. Choice of retailer

Section 114(1)(b) of the Retail Law states that ‘*exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right*’.

Access to retail competition is the best way to empower and protect electricity consumers.

We recognise choice can be limited in embedded networks and that this may be due to factors arising at the time a building is constructed—for example, network configuration, access to individual meters (where the customer has its own meter that can be read by a retailer other than the exempt seller), the type of meters in place at the premises, and the availability of “energy-only” offers. Reconfiguration may be unfeasible, meaning customers have little real choice.

In addition, not all jurisdictions permit competition for embedded networks. In Queensland and Tasmania, embedded network customers can usually only access retail market offers if they have a direct connection to the local distribution network (that is, if they “leave” the embedded network.) This may require significant changes to the wiring within the network, the costs of which would normally be borne by the customer. No jurisdiction requires retail competition for gas.

In jurisdictions that do allow choice, it is a condition of both deemed and registrable exemptions that the exempt person must advise customers that they have a choice and must not prevent them from exercising their choice. We may impose similar conditions on individual exemptions.

We note the recent growth in network conversions. In principle we do not support the creation of infrastructure that deliberately reduces a customer’s ability to exercise choice. However we recognise the potential for customers to benefit from selling arrangements in embedded networks and to be able to join an embedded network if they choose to.

⁵⁵ These requirements are set out in Division 11 of Part 2 of the Retail Law.

Property owners seeking to retrofit embedded networks into an existing retail development will therefore only be eligible for deemed or registrable exemptions (classes D1 and R1) if **all** affected customers give explicit informed consent to the network conversion. Otherwise the property owner must apply for an individual exemption. Similarly, property owners who want to retrofit an embedded network in a residential development must apply for an individual exemption.

2.3. Access to customer protections

Section 114(1)(c) of the Retail Law states that '*exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules*'.

As a matter of principle, exempt customers should receive the same protections as customers of authorised retailers.

However, requiring exempt sellers to provide the full suite of protections may not always be practicable. We have therefore developed a set of general conditions for exempt persons based on the customer protections in the Retail Law.

The extent to which these apply to a particular class exemption depends largely on the nature of the energy sale and the customer type.

For example, residential exempt customers will receive the greatest level of protection and should receive such protections as flexible payment plans if they identify themselves as experiencing financial difficulty.

Conditions attached to an individual exemption may more closely resemble the obligations that apply to an authorised retailer, although the inclusion of hardship protections, flexible payment options and other customer protections will be considered on a case by case basis.⁵⁶

Under the Retail Law, retail customer protections are not generally extended to large business customers and this has been reflected in the exemptions framework.

3. Exempt seller related factors

Exempt seller related factors⁵⁷ are outlined below. This section also provides guidance on how these factors inform our exemption decisions, and on whether an exemption or a retailer authorisation would be more appropriate for an energy seller under various scenarios.

3.1. Core versus incidental business

Section 115(1)(a) of the Retail Law enables the AER to consider '*whether selling energy is or will be a core part of the exempt seller's business or incidental to that business*'.

Whether the sale of energy is incidental to an energy seller's business will largely depend on the nature of the seller's business and their relationship with customers.

⁵⁶ For example, an agent who manages energy sales across a number of sites is likely to have similar obligations as authorised retailers, or may even be required to obtain a retailer authorisation.

⁵⁷ Section 115 of the Retail Law.

- A sale of energy is not incidental where the seller's sole or primary relationship with the customer is the sale of energy.⁵⁸
- A sale of energy may be incidental where the seller sells energy as part of a suite of services, and/or has another primary relationship with the customer. For example, a landlord who has a tenancy relationship with a small tenant (primary relationship) who also sells energy as a secondary component of the relationship.

If the energy sale is incidental, the seller is likely to be eligible for an exemption. Where it is not incidental an authorisation may be more appropriate.

An exception to this principle is where the energy sold is discretionary or supplementary (as opposed to energy supplied by an authorised retailer, which we consider primary). Energy sold through solar power purchase agreements (SPPAs) is a good example. Many of the Retail Law obligations are inappropriate in this instance, for example participation in the Retailer of Last Resort scheme, and obligations to provide standing offers. Exemptions, which can be tailor-made to suit the specifics of an energy sale, are therefore a better regulatory fit for the sale of energy through SPPAs (and possibly other kinds of alternative energy selling).

3.2. Characteristics of the exempt seller

Section 115(1)(b) of the Retail Law enables the AER to consider '*whether the exempt seller's circumstances demonstrate specific characteristics that may warrant exemption*'.

Exemption classes have common features, which are shared by many sellers. Even if we do not consider a person needs an authorisation to sell energy, they may not fall into a defined exemption class either. Where a person proposes to sell energy in a new or different way they may need to apply for an individual exemption, so that the exemption can be tailored to suit the particulars of the arrangement. We will assess applications on a case by case basis and attach conditions as appropriate, taking into account the needs of customers as well as the effect any obligations would have on the seller.

3.3. Profit intentions of the exempt seller

Section 115(1)(c) of the Retail Law enables the AER to consider '*whether the exempt seller is intending to profit from the exempt selling arrangement*'.

An energy seller's profit motive can help determine whether energy selling is incidental, but it is not a defining feature and there is no prohibition on exempt sellers making a profit.

To ensure that small customers receive some price protection, condition 7 provides that an exempt seller must not charge small customers more than the local area retailer's standing offer tariff rate for similar supply.⁵⁹ This applies separately to all components of the tariff. For example, the supply charge imposed by the exempt seller must not exceed the supply charge imposed by the local area retailer, and same for the usage charge.

⁵⁸ An exception might be where a person sells energy to an adjacent site for the sake of convenience or for legacy reasons.

⁵⁹ A local area retailer is a retailer designated by a particular jurisdiction to take responsibility for new connections in that jurisdiction—for parts of, or the whole, jurisdiction; for specified premises or classes of premises; and specified customers or classes of customers.

The exempt person may not charge any other “administration” fees and may only recover the costs they incur as a result of a customer’s late payment (see condition 7).⁶⁰

3.4. Amount of energy likely to be sold

Section 115(1)(d) of the Retail Law enables the AER to consider ‘*whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets*’.

Exemptions are generally appropriate for energy sellers who sell on a small scale and/or to one or a small number of sites.

If the scale of a person’s energy sales increases (and their operations begin to resemble those of an authorised retailer), we may require them to obtain a retailer authorisation. If an individual exemption is granted for ‘significant’ operations, the conditions attached will likely be similar to those of an authorised retailer.

3.5. Appropriate obligations governing the applicant’s behaviour

Section 115(1)(e) of the Retail Law enables the AER to consider ‘*the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow appropriate obligations to govern the applicant’s behaviour rather than requiring the applicant to obtain a retailer authorisation*’.

The level of regulation should be proportionate to the level of protection energy customers need. These needs vary according to the type of service they are receiving and their relationship with their energy seller.

In general, the closer an energy seller’s operations are in scale and scope to those of an authorised retailer, the more closely their exemption conditions will resemble an authorised retailer’s obligations.

Consumer protections may also be available under other legislative frameworks, for example the Australian Consumer Law and state or territory tenancy legislation. Exemption conditions are intended to provide energy-specific protections for exempt customers and not to duplicate protections provided through other legislation or to place additional obligations on sellers who are already bound by other legislation.

3.6. Costs and benefits of obtaining a retailer authorisation

Section 115(1)(f) of the Retail Law enables the AER to consider ‘*the likely cost of obtaining a retailer authorisation and of complying with this Law and Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller*’.

The AER has a range of tools available to regulate energy sellers—from retailer authorisations, to tailored (individual) exemptions and class exemptions. Our regulatory approach will depend on the particular circumstances of each seller.

Applying for a retailer authorisation can be onerous. A person needs to meet three entry criteria:⁶¹

⁶⁰ There may be specific requirements in each jurisdiction that limit what the local area retailer can charge under a standard retail contract.

⁶¹ Section 90 of the Retail Law.

- organisational and technical capacity—the person must have the necessary organisational and technical capacity to meet the obligations of a retailer
- financial resources—the person must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer
- suitability criterion—the person must be a suitable person to hold a retailer authorisation.

Authorised retailers must comply with all relevant regulatory obligations under the Retail Law and the Retail Rules. The regulatory costs of complying with the Retail Law and Rules can be substantial and could be prohibitive for some small energy sellers. Where we consider that the additional regulatory costs that would be imposed on an energy seller by an authorisation outweigh the costs to customers of receiving a lesser level of regulation, an exemption may be sufficient.

4. Customer related factors

Section 116 of the Retail Law sets out a number of customer related factors. These are outlined below, along with guidance on how we will apply these factors in our exemption decisions.

4.1. Characteristics of the exempt customers

Section 116(a) of the Retail Law enables the AER to consider '*whether the characteristics of the exempt customers or the circumstances in which energy is to be sold to them by the applicant are such as to warrant exemption*'.

Residential customers need more protection than business customers, and for the same reasons, small exempt customers need a higher level of protection than large exempt customers (who we reasonably assume to have more bargaining power and a greater ability to protect their own interests). We consider that where energy is sold to large customers few conditions are necessary.

Another characteristic we consider is whether the customer has access to another source of energy supply. In our view, a customer needs a greater level of protection where there is a possibility that a customer's energy supply could be disconnected. In this case the seller will need to either be authorised, or if exempted, will be subject to conditions that mirror a retailer's obligations. However, customers do not need the same level of protection where there is no risk of them being disconnected from network distributed energy, for example where the seller is providing a supplementary, discretionary source of energy (as in the case of SPPA providers).

4.2. Access to appropriate rights and protections

Section 116(b) of the Retail Law enables the AER to consider '*the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow the exempt customers access to appropriate rights and protections rather than requiring the applicant to obtain a retailer authorisation*'.

We can impose conditions on exempt persons to provide an appropriate level of protection for customers. The conditions that apply to most deemed and registrable exemptions are outlined at Appendix A-1. Conditions for individual exemptions will be based on retail customer protections but determined on a case by case basis.

Many residential and small business customers also have protections under their respective tenancy or equivalent legislation or agreements. These protections, when complemented by exemption conditions, will go some way to matching the customer protections provided by the Retail Law.

5. Other relevant customer related matters

Section 116(c) of the Retail Law enables the AER to consider '*any other customer related matter the AER considers relevant*'.

5.1. The nature of the service provided to customers

Energy is an essential service, regardless of its source or how it is supplied. However, this does not mean that all energy supply should be regulated the same way and, as noted earlier, regulation should be fit for purpose.

When determining how best to regulate energy supply, one of the questions we consider is whether a service is discretionary or non-discretionary and the effect disconnection would have on a customer's ongoing energy supply. The impact on a customer of the disconnection of their primary source of energy supply (that is through the grid) is far greater than disconnection of a secondary source of supply. If a secondary source were disconnected the customer would still have access to network distributed energy and would still be supplied.

Primary providers should be required to provide customers with the full suite of energy retail protections and therefore should be authorised. Where a customer is supplied by an energy source that is secondary to grid-distributed energy (for example, through an SPPA) the customer does not need the same level of protection for that service as for the primary source of electricity. In addition, the seller does not need to be as heavily regulated as an authorised retailer. An exemption may be appropriate in this instance and the conditions tailored to the nature of the energy sale. These will be considered on a case-by-case basis.

6. Other relevant seller related matters

Section 115(1)(g) of the Retail Law enables the AER to consider '*any other seller related matter the AER considers relevant*'.

6.1. Unmetered supply

Some metering requirements are determined by state or territory legislation. The Retail Rules state that we can impose conditions on exempt persons for, or with respect to, installing, maintaining and reading meters of exempt customers in accordance with jurisdictional energy legislation.⁶²

Although we do not support unmetered energy selling, we will allow exemptions in some circumstances where, for example, it is permitted under jurisdictional legislation,⁶³ or where it

⁶² Rule 152(5) of the Retail Rules.

⁶³ Most jurisdictions prohibit energy charges being passed on to residential tenants unless consumption is separately metered.

is for negligible and specific use such as for gas cook tops, or in “legacy” arrangements,⁶⁴ or, in the case of large customers, where the parties have agreed to it.

6.2. Decentralised energy and the need for flexibility

The way energy is supplied to customers is changing with the emergence of new products and services that allow customers greater control over how their electricity is delivered and consumed. This has resulted in a range of distributed generation and storage options, demand management services and new business models for selling energy. Many of these new energy sellers do not sell energy under a ‘typical’ energy retailer model and are different from typical exempt sellers.

Many of the new products emerging in the electricity supply market involve on-site generation which may be combined with storage. While this has broader implications for all levels of the energy market, it is already impacting on the way that energy is being retailed to customers. Increasingly, a customer’s energy supply will be drawn from various sources, including from alternative energy sellers. Not all new technologies involve the sale of energy (for example, battery storage) but where they do (for example, SPPAs) they fall under the Retail Law.

The alternative energy market is evolving rapidly and our regulatory approach aims to support—not hinder—market innovation. Our approach to regulation will be flexible and pragmatic and the level of regulation applied to a business (obligations, as well as entry criteria) needs to be appropriate for the type of energy selling undertaken.

We will seek to ensure that a customer has appropriate consumer protections under the conditions of their exemption. However we will not impose conditions on alternative energy sellers where another supplier already guarantees these protections or where they duplicate protections available through other legislation (for example, the Australian Consumer Law).

⁶⁴ Legacy arrangements are arrangements that were made before the National Energy Retail Law and Rules commenced in a particular jurisdiction. That is, the AER will only support these arrangements where they are long-standing arrangements that are mutually convenient to the parties.