



# GROWING GAPS: CONSUMER PROTECTIONS AND ENERGY RE-SELLERS

A CUAC RESEARCH REPORT

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# LIST OF ABBREVIATIONS

AER	Australian Energy Regulator
ASIC	Australian Securities and Investment Commission
CALC	Consumer Action Law Centre
CUAC	Consumer Utilities Advocacy Centre
DHS	Department of Human Services
DPI	Department of Primary Industries
ESC	Essential Services Commission
EWOV	Energy and Water Ombudsman (Victoria)
OIC	Order-in-Council
MEFL	Moreland Energy Foundation Limited
NRAS	National Rental Affordability Scheme
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NERL Vic Bill	National Energy Retail Law (Victoria) Bill 2012
TUV	Tenants Union of Victoria
VCAT	Victorian Civil and Administrative Tribunal

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# ABOUT CUAC

The Consumer Utilities Advocacy Centre Ltd (CUAC) is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers.

Our work is guided by strong principles. Energy and water services are essential for health, wellbeing and social participation. Therefore, we believe that consumer interests – particularly those of low-income, disadvantaged and rural and regional consumers – must be a primary consideration in the development and implementation of energy and water policy and in service provision. CUAC's advocacy maintains a focus on the principles of affordability, accessibility, fairness and empowerment through information and education. CUAC supports informed consumer participation in energy and water markets.

CUAC's advocacy encompasses both responses to government, regulatory and business consultation processes and the proactive identification of emerging consumer issues. We take an evidence-based approach to advocacy, informed by the knowledge and expertise we have built over a decade of involvement in energy and water reform. To further develop our policy positions, each year CUAC undertakes and supports research into topical electricity, gas and water issues. We stay abreast of community needs through regular contact and work with non-government agencies, service providers and business organisations.

# EXECUTIVE SUMMARY

This report explores the growing consumer protection gaps that have arisen as a result of the growth in electricity re-selling in Victoria. Over recent years, population growth and a shift towards higher-density housing has led to a surge in the development of high-rise apartment buildings in Melbourne. In a number of these developments, electricity is supplied to residents by a re-seller, rather than by a licensed retailer. Electricity re-sellers are subject to neither the standard consumer protection requirements nor the ongoing regulatory oversight that licensed retailers are subject to. Hence, an increasing number of electricity consumers do not have access to the consumer protections that apply to most Victorian consumers of this essential service.

While we know that electricity re-selling activity is increasing, there is surprisingly little publicly available information about its extent, where it occurs, the companies involved or the experiences of re-sellers' customers. To begin to address this dearth of evidence, CUAC undertook research aimed at assessing the adequacy of consumer protections currently afforded to customers of electricity re-sellers. We reviewed the literature relating to the current Victorian as well as the national regulatory frameworks for re-selling, in order to develop a clear explanation of the current regulatory context. We also conducted a mail survey of 77 re-seller customers in four Melbourne apartment buildings, painting a picture of the experience of this group of consumers.

## Key consumer protections

Under current regulatory arrangements, a 2002 Order-in-Council (2002 OIC) sees electricity re-sellers in Victoria automatically exempted from licensing requirements, which are the mechanism by which the Essential Services Commission (ESC) imposes customer protection requirements on licensed retailers. While a condition of the automatic exemption is that re-sellers observe 'all applicable provisions of the Retail Code', these are not defined, leaving the applicability of each provision open to interpretation. At the same time, there are no monitoring or enforcement arrangements in place for re-sellers. In 2006 the ESC undertook a review which recommended significant enhancements to protections for customers of re-sellers. None of these recommendations have been implemented.

At the national level, the Australian Energy Regulator (AER) re-selling framework offers customers a substantially higher standard of protection than is currently available to Victorian consumers under the Victorian framework. In mid-2012, the ESC signalled its intention to begin harmonising its regulatory framework with the national framework, in liaison with the Department of Primary Industries. In light of this, we have recommended that the Victorian Government act immediately to extend consumer protections to re-sellers' customers by amending the 2002 OIC to incorporate both the AER re-selling framework and some additional protections that were recommended in the 2006 ESC review including, critically, the establishment of ESC monitoring and enforcement powers. While adoption of the AER re-selling framework and some of the ESC's previously

recommended reforms would substantially improve protections for customers of electricity re-sellers, a number of gaps and issues remain, and are therefore addressed in further recommendations.

### **Dispute resolution**

Customers of Victoria's licensed electricity retailers have access to dispute resolution via the Energy and Water Ombudsman (Victoria) (EWOV), but re-sellers are not members of the EWOV scheme. Instead, customers of re-sellers are able to seek resolution via the Victorian Civil and Administrative Tribunal; a more complicated and expensive process.

CUAC's consumer survey asked respondents about their experiences regarding problems, complaints and dispute resolution. Just under one-third of respondents reported experiencing some type of problem – most often relating to price, fees and charges or billing problems or errors – within the previous 12 months. Of this group, around 60 per cent made a complaint to their re-seller. Satisfaction with the outcomes of these complaints was highly variable.

Government and regulators have previously acknowledged the desirability of extending access to EWOV to residential re-seller customers. Given the critical importance of free, independent dispute resolution, particularly for vulnerable consumers and where disconnection is actual or imminent, we have recommended the immediate extension of the EWOV scheme to cover customers of re-sellers.

### **Payment difficulties, late payment fees and concessions**

Around 15 per cent of respondents to our survey reported that they had experienced payment difficulty at some point during the previous twelve months. A majority of these did not contact the re-seller for assistance, highlighting the potential pitfalls of relying solely on customer self-identification of payment difficulty or hardship. We therefore recommend a change to the AER retail exemptions framework to recognise the role re-sellers have in identifying customers experiencing payment difficulties.

In Victoria, energy retailers are prohibited from charging small customers late payment fees. This is a longstanding and crucial consumer protection and one that the ESC previously recommended be extended to customers of re-sellers. Similarly, we have recommended that re-sellers be prohibited from charging their customers late payment fees.

Like eligible customers of licensed retailers, eligible customers of electricity re-sellers are entitled to certain Victorian Government concessions, although the application process is more onerous for this group. Regulators have recognised the importance of ensuring that customers have information about their concession entitlements. However, only one respondent to CUAC's survey reported that they were receiving a concession, while one additional respondent reported having been given information about concessions by the re-seller. The recommended adoption of the AER framework, which requires re-sellers to provide certain concessions information, will help to ensure that customers are aware of and receive their concession entitlements.

### **Disconnection and re-connection**

Two respondents to CUAC's survey had been disconnected from their electricity supply, offering a glimpse of some of the potential issues surrounding disconnection and re-connection for customers

of re-sellers. The experiences of these customers, neither of which reported receiving a warning or reminder notice, suggest a need for standardised procedures surrounding disconnection and reconnection. In its 2006 review, the ESC recommended extending the wrongful disconnection protection to re-sellers' customers. We have also recommended that this consumer protection be extended to customers of re-sellers.

## **Choice and pricing**

With the introduction of Full Retail Contestability for electricity in January 2002, Victorian customers were enabled and encouraged to choose from among a number of competing retailers. In line with this wider emphasis on choice, both the Essential Services Commission (ESC) and the Australian Energy Regulator (AER) have acknowledged the desirability of re-seller customers having the option to choose an alternative supplier.

CUAC's customer survey, however, highlighted the practical barriers which make it difficult or impossible for re-seller customers to actually exercise choice. None of the respondents to CUAC's survey had successfully changed supplier, although around one third had attempted to change or made enquiries about doing so. Customers enquiring about or attempting to switch reported multiple barriers. Many were simply told by the re-seller or a third party that they could not switch, while others were told they would need to arrange or pay for a meter replacement. Faced with these barriers, a number of respondents reported feeling frustrated and considered it unfair that they could not shop around for a better offer. We have recommended that the Federal and Victorian governments further investigate these barriers to retailer choice for re-seller customers, with a view to reducing any unreasonable barriers. We have also recommended a requirement that potential buyers and renters be informed where electricity is supplied by a default re-seller.

Energy retailers are required to present their pricing information and key contractual terms in a standard template under the Victorian and national re-selling frameworks. Under both the Victorian and national frameworks, re-sellers' prices are capped at the level of the local retailer's standing offer price, which will typically be higher than market offer prices. While licensed retailers are required to publish standing offers and at least one market offer price on the ESC's YourChoice website, very little information about re-sellers' pricing is publicly available. Hence, although re-sellers typically claim to offer 'discounted rates', it is difficult for customers to access the information that would enable them to assess this claim.

CUAC's survey asked consumers how clear they found the pricing information provided by their re-seller to be. Only around half of respondents reported finding this information to be clear. We have therefore recommended that the AER introduce a requirement upon re-sellers to provide a clear, simple fact sheet detailing pricing and key contract terms to be provided in advertising and placed on the re-seller's website.

## **Other issues**

Beyond issues relating to the consumer protection framework and specific consumer protections, CUAC's research also uncovered other issues, such as the current absence of any registration

requirement on re-sellers in Victoria, and, at the national level, for re-sellers operating under a deemed exemption. Were registration required, this would enable identification of re-sellers and their customers, as well as assessment of the extent of re-selling and the experiences of consumers. Registration provides the basis for effective regulatory oversight. Hence, CUAC has recommended that the AER extend registration to all re-sellers. The ESC's 2006 review recognised that the lack of a registration system for re-sellers was a problem, and therefore recommended a simple registration system. We have also recommended that such a system be put in place in the interests of effective regulatory oversight.

Typically, contracts for the provision of electricity by a re-seller will be negotiated and agreed prior to the point at which residents move in to a new development. There is a need for processes which ensure greater transparency, scrutiny and accountability in relation to the formation and administration of such contracts, and CUAC has recommended that the Victorian government take action on this issue.

## **List of recommendations**

Some of CUAC's recommendations addressed to the ESC presume powers that it does not currently have, but would gain with the implementation of **Recommendation 1**.

### ***Recommendation 1***

That the Victorian government act immediately to ensure consumer protections are extended to re-sellers' residential customers by amending the 2002 OIC to incorporate the AER re-selling framework, and additional protections recommended by the ESC review, including additional monitoring and enforcement powers to the ESC.

### ***Recommendation 2***

That the Federal and Victorian governments investigate barriers to retailer choice for re-sellers' customers with a view to reducing any unreasonable barriers for these customers in accessing choice of energy retailer.

### ***Recommendation 3***

That energy retailers ensure that call centre staff are provided with clear and accurate policies and procedures in order to respond accurately to re-seller customer enquiries regarding:

- how to move their electricity account from a re-seller to their company;
- how to arrange an electricity connection in a residence where there is a default re-seller of electricity.

### ***Recommendation 4***

That the AER introduce amendments to the retail exemptions framework to require re-sellers to provide a clear and simple fact sheet setting out pricing and key contract terms when providing pricing information to customers. This information should also be required to be published on their website.

### ***Recommendation 5***

That the Victorian government and EWOF further progress the extension of the scheme to re-sellers immediately.

### ***Recommendation 6***

That the ESC and AER\* require re-sellers to provide clear and simple information to their customers:

- explaining what it means for their residence to be separately metered; that is, that their electricity bill is based on their household's consumption;
- about smart meters and their capabilities, where their customer has a smart meter.

\*We note that currently, the NERL does not address smart meter customer protection issues; but their future inclusion is anticipated.

### ***Recommendation 7***

That the Victorian government extend the smart meter protections which apply to energy retailers' customers with smart meters to re-sellers' customers with smart meters, and ensure that this protection continues to apply to such customers upon implementation of the Retail Law in Victoria.

### ***Recommendation 8***

That the AER introduce amendments to their retail exemptions framework to recognise the role re-sellers have in identifying customers who are experiencing payment difficulties.

### ***Recommendation 9***

That the ESC and AER require re-sellers to:

- provide customers with a range of payment methods;
- clearly communicate to customers how and when direct debit will be used and obtain their customer's explicit informed consent to the arrangement where there is a direct debit arrangement.

### ***Recommendation 10***

That the AER extend registration to all re-sellers in the interest of effective regulatory oversight.

### ***Recommendation 11***

That the Victorian government:

- examine the contractual arrangements between developers and re-sellers with a view towards ensuring greater transparency, scrutiny and accountability in the way in which these contracts are entered into; and
- ensure that the terms and conditions of these contractual arrangements are not detrimental to the re-sellers' customers.

### ***Recommendation 12***

That the Victorian government require property vendors, real estate agencies and landlords to disclose to potential property purchasers and renters, the presence of a default re-seller of electricity and its implications so that potential purchasers or renters may be able to make a more informed decision.

# 1. INTRODUCTION AND BACKGROUND

The recent surge in medium to high rise apartments in the Melbourne metropolitan area and regional centres has been accompanied by a growing trend of developers electing to install embedded networks<sup>1</sup> where electricity is purchased by residents through re-sellers (energy management companies) rather than licensed energy retailers. This report explores this trend and the consumer protection gaps that have emerged between these consumers and other Victorian energy consumers who purchase electricity from retailers.

In 2007, the Essential Services Commission of Victoria (ESC) acknowledged that there had been an increase in the number of businesses re-selling electricity to large scale residential or commercial complexes.<sup>2</sup> In May 2011, the ESC noted an increase in the number of customers obtaining their electricity supply from re-sellers; such customers are not covered by the standard consumer protections afforded to customers of licensed retailers.<sup>3</sup> In the same year, the Australian Energy Regulator (AER) noted particular growth in the re-selling of electricity within high density residential developments, such as apartment buildings, across Australia.<sup>4</sup>

CUAC's interest in this trend largely flows from the fact that currently, businesses who re-sell electricity to customers are not required to provide the same level of customer protections that licensed energy retailers are required to offer. Most people moving into a new home would arrange an electricity account with one of the 13 licensed retailers active in Victoria.<sup>5</sup> For people moving into a new residence with an embedded network,<sup>6</sup> however, the process is different. When they move in, they are invited to contact a 'default' electricity supplier for the entire residential development to sign up. The 'default' supplier is usually an energy management company which buys electricity in bulk from a licensed energy retailer and then re-sells to its customers. Re-sellers do not need to have a licence to sell electricity; they are exempted from the requirement. Hence, they are referred to as 'exempt sellers.' However, sometimes the owners' corporation appoints the re-seller as their agent and facilitator to re-sell electricity within the residential development. In that case, the owners' corporation is legally the 'exempt seller,' while the actual re-selling activities and management of customers' electricity accounts are in the hands of the re-seller.

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<sup>1</sup> See Appendix 1: What is an embedded network?

<sup>2</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 5.

<sup>3</sup> Essential Services Commission, Statement of Intent to Cease Issuing Certificates of Opinion on Exempt Electrical Activities Final Decision (May 2011), at 12: 'The Commission notes that a proliferation of embedded networks has increased the number of customers whose arrangements fall under the OIC rather than the standard consumer protections afforded to customers of licensed retailers.'

<sup>4</sup> Australian Energy Regulator, Exempt Selling Guideline (December 2011), at 3.

<sup>5</sup> Essential Services Commission, Energy Retailers Comparative Performance Report – Pricing (2011-12), at 10-12. Available at: [www.esc.vic.gov.au/getattachment/608cb704-363f-4163-ae4f-4ba5e7bcc84e/Energy-retailers-comparative-performance-report-Pr.pdf](http://www.esc.vic.gov.au/getattachment/608cb704-363f-4163-ae4f-4ba5e7bcc84e/Energy-retailers-comparative-performance-report-Pr.pdf)

<sup>6</sup> See Appendix 1: What is an embedded network?

The re-selling of electricity may occur in boarding houses, apartments, retirement villages, caravan parks, retail centres, industrial parks, and office buildings.<sup>7</sup> The focus of this research, however, is on the growing trend of re-selling in apartment buildings.

## **CUAC alerted to re-seller consumer protection issues**

CUAC was first alerted to issues around re-seller marketing in mid-2011, when we became aware of some hardcopy marketing information being distributed by a re-seller (hereinafter referred to as 'Re-seller A') which was, at that time, promoting itself to residents in a new residential apartment building in Melbourne's northern suburbs. We found that some of the marketing information had serious inaccuracies regarding customer rights. This prompted us to look at Re-seller A's website, where we found more erroneous information.

Re-seller A's customer charter<sup>8</sup> at that time, claimed to be based on the Victorian Energy Retail Code, and referred to an outdated version of the Code. Importantly, it inaccurately suggested that customers had a right to seek assistance from the Energy and Water Ombudsman (Victoria) (EWOV) to resolve a complaint. Although Victoria has had de-regulated retail electricity prices since 2009, the charter also incorrectly suggested that retail electricity prices in Victoria were subject to regulation. The hardcopy marketing material advertised discount electricity supply for apartment residents of 'up to 10% discount on your bill,'<sup>9</sup> without stating on what basis the discount was calculated, and also said that 'government charges 4%' would apply.<sup>10</sup> However, we could not find any information about tariffs, fees or charges in the marketing material or on the website.<sup>11</sup> Taken together, all the information presented gave the impression that a customer would be receiving an attractive offer together with customer protections.

CUAC alerted government and regulators about our concerns in mid July 2011 and again in mid-2012 in public submissions to the AER<sup>12</sup> and ESC<sup>13</sup> in response to an application by Re-seller A's subsidiary company for an authorisation and licence to retail electricity. These submissions are also available on CUAC's website.<sup>14</sup>

We were informed by the ESC that Re-seller A's subsidiary has since withdrawn its application to the ESC for a licence. Re-seller A has recently applied to the ESC for a licence to retail energy in its

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<sup>7</sup> Australian Energy Regulator, Electricity network Service Provider Registration Exemption Guideline (16 December 2011), at 8.

<sup>8</sup> We cited version v1.02 2006-02-02 of the customer charter, which was the current version then available on Re-seller A's website. Their charter has, since been revised to a July 2012 version.

<sup>9</sup> Re-seller A's hardcopy marketing material stated: 'Your Discount – is off the total amount of your electricity bill. The embedded network discount that [name of re-seller] can negotiate for you is likely to be significantly more than you could negotiate as an individual.'

<sup>10</sup> Re-seller A's hardcopy marketing material stated: 'Government charges – are approximately 4% of your bill and like most things government related, there are no discounts to be had here!'

<sup>11</sup> Re-seller A's new website, which was launched in October 2012, explains these 4 per cent charges as 'stationary/market charges' by government and the Australian Energy Market Operator.

<sup>12</sup> CUAC submission to the AER dated 25 June 2012.

<sup>13</sup> CUAC submission to the ESC dated 25 July 2012.

<sup>14</sup> See [www.cuac.org.au](http://www.cuac.org.au)



own right. In late October 2012, Re-seller A also launched a new website correcting the mistakes in the web content.

Based on our concerns about the potential scope of this problem and its impact on consumers, we undertook to examine re-selling of electricity in greater detail. A significant feature of the residential development mentioned above is that it integrates 110 privately owned apartments (65 owner-occupied; 45 rented out by investors), with 58 community housing apartments and 31 affordable rental apartments through the National Rental Affordability Scheme (NRAS). The 58 community housing apartments are owned by Homeground Services,<sup>15</sup> and are available to both community housing tenants and people with support needs as a result of homelessness.<sup>16</sup>

Part of our initial investigation included reviewing another re-seller's (hereinafter referred to as 'Re-seller B') contractual terms and conditions for the supply of electricity to residential customers. We found that Re-seller B's contractual terms and conditions impose an additional charge on a customer if the customer accepted a payment plan.<sup>17</sup> A payment plan is generally provided to assist a customer better manage their bill payments, or to assist a customer who is experiencing payment difficulties to manage their arrears and ongoing usage. This again signified a lower standard of customer protection compared to licensed retailers, which are required to offer payment plans at no additional cost.

Our initial investigation of this issue also revealed that despite the increase in re-selling, there was very little public information available about where this is taking place, the identity of the re-seller, customer numbers/type, or the customer experience. This problem arises because there is no licensing or registration requirement for re-sellers in Victoria, as discussed further in **Chapter 4**.

All of the above suggested to us that more research into the re-selling of electricity, and in particular the experience of customers, would be useful.

## **The social housing mix: some unintended consequences?**

It is unclear how many social and community housing developments are supplied by a re-seller, or the extent to which social and community housing have been integrated with residential developments that are supplied by a re-seller. This is due to the lack of publicly available information on the re-selling of electricity. Below, we set out the potential scope of re-selling resulting from this trend in apartment dwelling and social housing programs.

Government may also find unintended consequences arising should more consumers, particularly low income and vulnerable consumers, experience payment difficulties, find themselves in financial hardship, be unable to access lower prices, or be unable to obtain satisfactory redress when they have a complaint against their re-seller. Because re-sellers are not required to offer their customers

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<sup>15</sup> Homeground is an independent not-for-profit organisation which provides housing and support services across Melbourne.

<sup>16</sup> [www.homeground.org.au/what-we-do/individual-services/the-nicholson/](http://www.homeground.org.au/what-we-do/individual-services/the-nicholson/)

<sup>17</sup> 'If You have trouble paying - You must notify Us if You are experiencing difficulty in paying Your bill. We will consider any reasonable request from You for an instalment plan, and may impose an additional charge on You if We agree to offer You an instalment plan.'

the consumer protections required of energy retailers, re-sellers' customers may find themselves in difficult circumstances with little access to redress.

## **Population and demographics**

Population growth and changing demographics have resulted in a shortage of housing in Australia.<sup>18</sup> This, together with high house prices, has resulted in an increase in the number of apartments in Melbourne's metropolitan area,<sup>19</sup> which has seen a 35 per cent increase in the number of apartments compared to a 15 per cent increase in houses over the past 10 years. Forty-eight per cent of new apartments were located in inner Melbourne (62,600); the second largest increase was in the Dandenong region (6,657). Metropolitan Melbourne's population has increased by 9.7 per cent over the past five years and Victoria's population is forecast to grow by 3.2 million to 2051.<sup>20</sup>

## **Social Housing Initiative**

There is a shortage of affordable housing for lower income people in most Australian capital cities and some regional areas. Various initiatives have been introduced to address housing affordability. The Australian government's Economic Stimulus Plan provided around \$5.6 billion additional funding for social housing.<sup>21</sup> The Social Housing Initiative benefits disadvantaged Australians, particularly those who are homeless or at risk of becoming homeless, as well as current tenants, who benefit from upgrades to their social housing. More than 19,300 new social housing dwellings will be built under the Initiative with the assistance of the not-for-profit sector. Around 80,000 dwellings have already benefited from the repairs and maintenance element of the Initiative.<sup>22</sup> As a result of this initiative, in 2010-11 the number of new public and community-managed housing dwellings reached the highest level since the late 1980s, with over 13,000 new dwellings.<sup>23</sup>

## **National Rental Affordability Scheme**

The National Rental Affordability Scheme (NRAS) is a long term commitment by the Australian government, in partnership with the states and territories, to invest in affordable rental housing. The Australian government has committed to stimulating the construction of 50,000 high quality homes and apartments, providing affordable private rental properties. The NRAS aims to address the shortage of rental housing and rapidly rising rents by offering a National Rental Incentive

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<sup>18</sup> National Housing Supply Council, Media Release (14 June 2012), Release of Housing Supply and Affordability. Key Indicators 2012: Principle Findings. Available at: [www.nhsc.org.au/content/media\\_releases/2012/001.html](http://www.nhsc.org.au/content/media_releases/2012/001.html)

<sup>19</sup> Thirty-one local government areas make up the Melbourne Metropolitan Area. See [www.liveinvictoria.vic.gov.au/living-in-victoria/melbourne-and-regional-victoria/melbourne](http://www.liveinvictoria.vic.gov.au/living-in-victoria/melbourne-and-regional-victoria/melbourne)

<sup>20</sup> Urban Property Australia, Population Growth to Drive Melbourne Apartment Market: Research (29 October 2012). Available at: [www.upaaustralia.com.au/latest-news/population-growth-to-drive-melbourne-apartment-market-research](http://www.upaaustralia.com.au/latest-news/population-growth-to-drive-melbourne-apartment-market-research)

<sup>21</sup> See [www.economicstimulusplan.gov.au/housing/pages/default.aspx](http://www.economicstimulusplan.gov.au/housing/pages/default.aspx) - The Nation Building - Economic Stimulus Plan provided around \$5.6 billion additional funding for social housing. Funding of \$5.238 billion was allocated to the Social Housing Initiative over three and a half years from 2008-09 to 2011-12 for the construction of new social housing (in two stages), and a further \$400 million over two years for repairs and maintenance to existing social housing dwellings.

<sup>22</sup> See [www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/social-housing-initiative](http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/social-housing-initiative)

<sup>23</sup> National Housing Supply Council, Media Release (14 June 2012), Release of Housing Supply and Affordability. Key Indicators 2012: Principle Findings. Available at: [www.nhsc.org.au/content/media\\_releases/2012/001.html](http://www.nhsc.org.au/content/media_releases/2012/001.html)

(Incentive)<sup>24</sup> to industry and community organisations to provide new rental dwellings. The Incentive is offered on the condition that dwellings are rented to eligible low and moderate income households at a rate that is at least 20 per cent below the prevailing market rate. By requiring a reduction on market rent of at least 20 per cent, the NRAS improves affordability for tenants.<sup>25</sup> The Department of Human Services' (DHS) website lists the organisations which are participating in the NRAS Incentives for new affordable rental dwellings in Victoria.<sup>26</sup>

## **Community Housing in Victoria**

In Victoria, there are 14,000 dwellings and 16,000 tenants who live in community housing.<sup>27</sup> The eligibility criteria for community housing are generally consistent with those for public housing.<sup>28</sup> Access to social housing is prioritised by segmenting the waiting list. Segments generally reflect urgent need, homelessness, and an inability to access appropriate private market accommodation.<sup>29</sup>

A residential development with a community housing component is likely to have a higher proportion of residents who are on low incomes and/or vulnerable. They are likely to have a greater need for assistance. This includes access to affordable payment plans, flexible payment options, and hardship assistance. If a re-seller is supplying residents in community housing, consumer protections should be adequate to meet their needs. Fairness and equity requires that re-sellers' customers be entitled to equivalent consumer protections as licensed energy retailers' customers.

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<sup>24</sup> The Incentive comprises: (1) an Australian government contribution in the form of a refundable tax offset for each individual dwelling for up to 10 years (Not for Profit organisations endorsed as charities by the Australian Taxation Office (ATO) will receive the contribution in the form of a payment); and (2) a State or Territory government contribution in the form of a payment per dwelling per year for up to 10 years or other in-kind support.

<sup>25</sup> Department of Families, Housing, Community Services and Indigenous Affairs, [www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/national-rental-affordability-scheme](http://www.fahcsia.gov.au/our-responsibilities/housing-support/programs-services/national-rental-affordability-scheme) and National Rental Affordability Scheme Policy Guidelines (June 2011). Available at: [www.fahcsia.gov.au/sites/default/files/files/housing-support/NRAS\\_policy%20guidelines\\_fahcsia.pdf](http://www.fahcsia.gov.au/sites/default/files/files/housing-support/NRAS_policy%20guidelines_fahcsia.pdf)

<sup>26</sup> Department of Human Services' website, [www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/approved-national-rental-affordability-scheme-incentives-victoria](http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/approved-national-rental-affordability-scheme-incentives-victoria)

<sup>27</sup> Department of Human Services, Pathways to a Fair and Sustainable Social Housing System Public Consultation Discussion Paper (April 2012), at 7.

<sup>28</sup> Report on Government Services 2011, Chapter 16: Housing, at 16.15; Table 16A.104. Table 16A.104 specifies the income and assets limit for public housing. In Victoria the income per limit is \$459 and other asset limits, \$30,000. Rent to income ratios are 22.7 per cent of general pension income, 25 per cent of other general income and 14 per cent of Centrelink family payments.

<sup>29</sup> Report on Government Services 2011, Chapter 16: Housing, at 16.15 -16.16.

## **2. RESEARCH METHODOLOGY**

### **Research aim**

The aim of our research was to consider whether the current consumer protections applying to re-sellers' customers are adequate.

### **Literature review**

Our research methodology included a literature review on the:

1. Current regulatory framework applying to the re-selling of electricity in Victoria; and
2. National framework for the re-selling of electricity, under the Australian Energy Regulator (AER) retail exemptions framework. This will apply to Victoria upon transition to the National Energy Retail Law (Retail Law).

### **Meetings**

In undertaking this research project, CUAC met and/or spoke with key stakeholders to inform them about the project, and to discuss the re-selling regulatory framework, in particular the consumer protections that apply to residential customers of re-sellers. The stakeholders included regulators (ESC, AER), government departments (DPI, DHS), a statutory body (Places Victoria), EWOV, community organisations (Tenants Union of Victoria [TUV], Moreland Energy Foundation Limited [MEFL], Consumer Action Law Centre [CALC]). TUV, MEFL and CALC also helped to disseminate CUAC's customer survey to their clients and members.

### **Customer survey**

We were also interested in examining the experiences of customers of electricity re-sellers. Therefore, we surveyed residents of four apartment buildings where there is a default re-seller of electricity. The survey covered the customer's experience with regard to price, quality, service and their ability to move their electricity account from their re-seller to an energy retailer.

Five hundred printed surveys were mailed to residents in four apartment buildings where the re-sale of electricity occurs. The survey gave respondents the option to reply by hardcopy or online. Seventy-seven residential customers responded to the survey. Mail surveys typically have a fairly low response rate. Given the nature of the subject matter, electricity, which is not particularly engaging, we are of the view that our response rate of 15.4 per cent is good.

Concession cardholders made up a smaller than expected proportion of our sample, suggesting either a lower response rate from this subset of consumers or a small population of concession

cardholders in the buildings that CUAC surveyed, or both. Whatever the cause, this underrepresentation should be borne in mind when interpreting the survey results. There were no other indications that certain types of consumer were over or under represented. **Table 1** presents the sample characteristics of the respondents.

**Table 1: Sample characteristics of the respondents**

Re-seller	Respondents		
	No.	Per cent	Average time with re-seller (months)
WINenergy	52	67.5%	11.5
Active Utilities	14	18.2%	7.2
Energy-On	11	14.3%	8.4
Total	77	100%	10.3

N = 77 (all respondents)

More than two thirds of all survey respondents were WINenergy customers. The average length of time that respondents had been with his/her re-seller was shorter than one year. This is not surprising given that the four apartment buildings are relatively new developments. The relatively short timeframe needs to be taken into account in analysing the findings from the survey.

The research findings have revealed gaps in the consumer protections and market participation options available to these respondents. This report identifies a number of policy and regulatory recommendations to address these gaps.

Full details of the customer survey including the survey instrument are found in **Appendix 9**.

# 3. REGULATORY FRAMEWORK

In this chapter, we discuss the regulatory framework that applies to the re-selling of electricity to residential customers in Victoria. We discuss both the framework which currently applies to Victorian re-sellers, and the national framework that will apply to Victoria when it adopts that framework.

The National Energy Retail Law (Retail Law) commenced in the Australian Capital Territory (ACT) and Tasmania on 1 July 2012. South Australia, New South Wales, Queensland and Victoria plan to commence the Retail Law at a later date. The Northern Territory and Western Australia are not part of the national energy market and thus will not apply the Retail Law.

The National Energy Retail Law (Victoria) Bill 2012 (NERL VIC Bill) will apply the Retail Law in Victoria. Included in the Bill are Victoria-specific provisions which ensure that existing consumer rights and protections continue upon implementation of the Retail Law in Victoria. Until Victoria implements the Retail Law, the Victorian regulatory framework continues to apply to the retail of energy, and the ESC remains responsible for regulating the retail energy market. Once Victoria transitions to the Retail Law, re-sellers currently operating under the Victorian framework will need to ensure that they fall within the national framework set out by the Retail Law and National Energy Retail Rules (Retail Rules).

## Victorian re-selling framework

A business that sells electricity in Victoria is required to be licensed or be exempted from this requirement.<sup>30</sup> Licences provide the means by which the ESC imposes regulatory obligations on licensed businesses. Energy retailers in Victoria each hold a licence to sell energy.

### Exemption under the 2002 Order-in-Council

Re-sellers of electricity are, however, automatically exempted from the licensing requirement under a 2002 Order-in-Council<sup>31</sup> (2002 OIC), provided they fulfil the conditions listed in the OIC.<sup>32</sup> Re-sellers assess themselves against the 2002 OIC conditions and remain exempt from the licensing requirement for so long as they continue to fulfil those conditions. Re-sellers do not need to register before they sell electricity and there is no regulatory body responsible for overseeing whether they comply with the 2002 OIC conditions, either initially or on an ongoing basis. The ESC does not have any powers to enforce the 2002 OIC conditions on re-sellers. In 2002, the ESC noted that

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<sup>30</sup> Section 16, Electricity Industry Act 2000 (Vic).

<sup>31</sup> Section 17, Electricity Industry Act 2000 (Vic); Victorian Government Gazette, No. S 73 Wednesday 1 May 2002. The 2002 OIC has been amended by two subsequent Orders-in-Council. The first is an Order-in-Council made under section 17 of the Electricity Industry Act 2000 (EIA) on 25 November 2008 and published in the Victorian Government Gazette (S315) on that day. The second is an Order-in-Council made under section 17 of the EIA on 26 October 2010 and published in the Victorian Government Gazette (G43) on 28 October 2010.

<sup>32</sup> See Appendix 2, Victorian Framework for Re-sellers.

the absence of a monitoring and enforcement arrangement is a major weakness of the framework.<sup>33</sup>

An important condition of the exemption under the 2002 OIC is the requirement that re-sellers 'observe all applicable provisions of the Retail Code.' This is the same set of customer protections that licensed energy retailers are required to comply with. However, a significant omission from this condition is a definition of what 'applicable provisions' means. Without a definition, there are shades of grey as to what applies, since it is up to re-sellers to interpret which parts of the Energy Retail Code<sup>34</sup> are applicable. This problem was acknowledged by the ESC during its review of small scale licensing in 2006. The ESC recommended identifying, in a Code or Guideline, the specific clauses of the Energy Retail Code that should apply to re-sellers.<sup>35</sup> This would create the foundation for an effective compliance regime as obligations would not be subject to interpretation by the re-seller.<sup>36</sup>

## **2006 Essential Services Commission review**

The ESC's 2006 review was undertaken in response to a letter from the then Minister for Energy, Industries and Resources. The Minister noted that the use of exemptions to facilitate small scale distribution and re-selling was inconsistent with the intent of the 2002 OIC, which was intended to exempt incidental supply where choice was neither practical nor to the customers' benefit. The Minister also indicated that the government would prefer not to rely on the OIC as the primary regulatory instrument for customers in re-selling situations.<sup>37</sup>

The ESC also made other key recommendations in its review. It recommended significant amendments to the 2002 OIC to enhance the protections available to re-sellers' customers (see **Appendix 3**). The ESC also found that the self-assessment process for businesses seeking an exemption for the re-selling of electricity did not provide sufficient confidence that customers were receiving the protections they needed. In response to this, the ESC suggested:

1. a simple registration system which would over time, enable information to be collated on the extent of re-selling and the types of customers served; and
2. that it assume a monitoring and enforcement role in relation to re-sellers.

Collectively, these recommendations, which were published by the ESC more than five years ago, would have substantially improved the consumer protections under the Victorian re-selling framework. Unfortunately, none of these recommendations have been implemented. While it was thought at the time that oversight for the retail of energy would be transferred to the AER within a short time,<sup>38</sup> that did not occur, and the ESC retains responsibility for retail energy regulation. The

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<sup>33</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at X.

<sup>34</sup> Energy Retail Code, Version 10, May 2012

<sup>35</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 45.

<sup>36</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 44.

<sup>37</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at V and VI.

<sup>38</sup> Essential Services Commission, Draft Statement of Intent to Cease Issuing Certificates of Opinion on Exempt Electrical Activities paper for Consultation (March 2011), at 6.

consequence is that re-sellers' customers have been left without appropriate consumer protections for a number of years.

## AER Re-selling Framework

Upon implementation of the Retail Law, the AER re-selling framework (or retail exemptions framework) will apply in Victoria. Under this framework, a business is prohibited from selling energy unless it has obtained a retailer authorisation from the AER, or is exempted from this requirement by the AER.<sup>39</sup> Energy retailers would have received an authorisation, while re-sellers (or exempt sellers) will have an exemption. The AER may issue individual exemptions, or declare a class of persons to whom a 'deemed' or 'registrable' exemption applies.<sup>40</sup> A deemed exemption applies automatically; there is no registration requirement.<sup>41</sup> A registrable exemption is effective from the date the business is registered on the public register maintained by the AER.<sup>42</sup> Individual exemptions are also subject to public registration.<sup>43</sup>

### Exempt Selling Guideline

The AER's Exempt Selling Guideline<sup>44</sup> helps businesses assess their eligibility for the different classes of deemed and registrable exemptions, and to understand the circumstances in which they may need to seek either an individual exemption or a retailer authorisation. The categories of deemed and registrable exemptions are listed in **Appendix 5**. There are also policy principles,<sup>45</sup> 'exempt seller related facts' and 'customer related facts' which the AER considers in exercising its powers.<sup>46</sup>

### Conditions

Conditions apply to re-sellers holding deemed, registrable and individual exemptions.<sup>47</sup> Those conditions that would apply to re-sellers of electricity to residential customers are listed in **Appendix 6**.<sup>48</sup> For individual exemptions, conditions are determined on a case-by-case basis and tailored to the activities being undertaken, and more likely to reflect those applying to energy retailers. Re-sellers must comply with all the conditions imposed on them under the relevant exemption category.<sup>49</sup> Civil penalties apply if there is a breach or an attempted breach. The AER may deal with a breach of a condition as if it were a breach of the National Energy Retail Rules (NERR).<sup>50</sup>

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<sup>39</sup> Section 88, National Energy Retail Law.

<sup>40</sup> Section 110, National Energy Retail Law.

<sup>41</sup> Rule 150, National Energy Retail Rules.

<sup>42</sup> Rule 151, National Energy Retail Rules.

<sup>43</sup> Rule 149, National Energy Retail Rules.

<sup>44</sup> Australian Energy Regulator, Exempt Selling Guideline (December 2011). Available at [www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf)

<sup>45</sup> Section 114, National Energy Retail Law.

<sup>46</sup> Sections 114, 115 & 116, National Energy Retail Law.

<sup>47</sup> Section 112, National Energy Retail Law; Rule 152, National Energy Retail Rules.

<sup>48</sup> Several classes of deemed and registrable exemptions will apply to residential customers. These are classes D2, D4, D6 (applies in Queensland only), R2, R3 and R4. See Appendix 5.

<sup>49</sup> Section 112, National Energy Retail Law.

<sup>50</sup> Section 112(3), National Energy Retail Law. See also AER Exempt Selling Guideline, at 45. Available at [www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf)



Where there has been material failure by the reseller to meet the conditions of the exemption, the AER may revoke an exemption.<sup>51</sup> The AER framework therefore allows for both stronger consumer protections and a potentially effective compliance regime.

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<sup>51</sup> Section 111, National Energy Retail Law.

## 4. CONSUMER PROTECTIONS: THE FINDINGS

In **Chapter 3**, we mentioned that the gaps in the Victorian re-selling regulatory framework which had been identified by the ESC in their 2006 small scale licensing review have not been progressed. Therefore, re-sellers' customers are currently without key consumer protections in Victoria.

The AER re-selling framework offers re-sellers' customers a standard of protection that is higher than the current Victorian re-selling framework. **Appendix 7** places the recommendations made by the ESC in its 2006 review alongside conditions applying to re-sellers of electricity to residential customers under the AER re-selling framework. Most of the ESC's recommendations are met by the AER conditions.

With the deferral of the implementation of Retail Law in Victoria, the ESC issued a statement on its approach to retail compliance from 1 July 2012. The ESC stated that it 'intends to harmonise, where possible, its regulatory framework with the National Framework [and] will liaise with the Department of Primary Industries to determine the parameters of such a harmonisation process.'<sup>52</sup> Given the move to harmonisation, the most expeditious way to address the gaps in the Victorian re-selling regulatory framework is to amend the 2002 OIC to incorporate the AER re-selling framework, and add additional protections recommended by the ESC's 2006 review, including additional ESC monitoring and enforcement powers.

We strongly recommend that the Victorian government act immediately to make this change and extend protections to re-sellers' residential customers.

### ***Recommendation 1***

That the Victorian government act immediately to ensure consumer protections are extended to re-sellers' residential customers by amending the 2002 OIC to incorporate the AER re-selling framework, and additional protections recommended by the ESC review, including additional monitoring and enforcement powers to the ESC.

CUAC's research, however, has identified some gaps and outstanding matters that are not addressed by the AER re-selling framework. Thus, we have also included recommendations that the AER amend the re-selling framework to address these gaps.

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<sup>52</sup> Essential Services Commission, Interim Guidance Statement (27 June 2012), Retail Energy Regulation. Available at: [www.esc.vic.gov.au/getattachment/98de0ba6-b3cf-49b8-936a-526440b82eec/The-Essential-Service-Commission-s-approach-to-ret.pdf](http://www.esc.vic.gov.au/getattachment/98de0ba6-b3cf-49b8-936a-526440b82eec/The-Essential-Service-Commission-s-approach-to-ret.pdf)

## Choice of retailer

Full Retail Contestability for electricity was introduced in Victoria in January 2002. Under this regime, all residential (and small business) consumers should be able to choose their retailer. The Victorian government supports initiatives designed to make it easier for consumers to choose the best energy supplier for them, such as the provision of the ESC YourChoice comparator website.

The ESC had, in their 2006 review, recommended that re-sellers inform their customers (residential and business) that they may be able to choose who they buy their electricity from.<sup>53</sup> The AER's retail exemptions framework includes a similar requirement on re-sellers.<sup>54</sup> Further, where choice is available, a re-seller is also prohibited from preventing a customer from choosing to buy their electricity from an energy retailer.<sup>55</sup> In exercising their powers, one principle which the AER is required to consider is that customers of re-sellers 'should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable [customers of energy retailers] in the same jurisdiction have that right.'<sup>56</sup>

### Attempts to exercise choice

However, the CUAC customer survey reveals that those respondents who tried to move or made enquiries about moving their electricity account from their re-seller to an energy retailer encountered considerable barriers. Hence, none of the respondents to CUAC's customer survey were purchasing electricity from an energy retailer other than the default re-seller for their apartment.

We asked survey respondents if they had tried to move their electricity account from their re-seller to an energy retailer, or if they had made enquiries about moving (**Table 2**).

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<sup>53</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at XIV, 31.

<sup>54</sup> Condition 2(a), Appendix 6.

<sup>55</sup> Condition 12, Appendix 6.

<sup>56</sup> Section 114(1)(b), National Energy Retail Law.

Table 2: Tried to move to an energy retailer, or made enquiries about doing so

Responses	No.	Per cent
No	50	64.9%
Yes	25	32.5%
Don't know/Can't remember	2	2.6%
Total	77	100.0%

N = 77 (all respondents)

Table 2 shows that around one third of respondents had attempted to move their account or made enquiries about doing so.

### ***Reasons for not exercising choice***

The survey also asked this group of respondents with an interest in moving their electricity account to a different supplier why they did not in fact do so. Table 3 lists their responses.

Table 3: Reasons for not moving to an energy retailer

Reasons for not moving	No.	Per cent
Current re-seller said couldn't change	12	48.0%
Third party said couldn't change	7	28.0%
Need to replace meter	4	16.0%
Have to pay common property usage to current re-seller	4	16.0%
Other electricity companies wouldn't accept me as a customers	4	16.0%
Have to pay to replace meter	4	16.0%
Have to pay network charges to current re-seller	1	4.0%
Couldn't be bothered	1	4.0%
Have to pay other fees	1	4.0%

N = 25 (respondents who had tried to move or enquired about it)

\*Note: Totals to more than 100% as respondents could select multiple responses

Of particular note is that almost half of the respondents reported that the re-seller told them they could not move to another electricity supplier. Seven respondents were advised by a third party (a real estate agent, owners' corporation, property manager or an unnamed party) that they were unable to do so. Four respondents reported being told that they would need to pay for a new meter and/or to have their meter replaced. Four respondents were rejected by energy retailers as customers; four respondents also reported that they would still need to pay common property usage charges to their re-seller if they moved their electricity account to an energy retailer.

### ***Awareness and perceptions of choice***

Respondents were also invited to make written comments about their experience in trying to move or enquiring about moving their electricity account from their re-seller to an energy retailer. Fifteen of the 25 respondents took the opportunity to comment. Most comments suggested that respondents

were frustrated they could not move their electricity account to an energy retailer easily; they felt locked in and thought it was unfair that they were could not access potentially cheaper offers from energy retailers:

*I feel that my electricity is high [sic] and wanted to check. I feel like I'm locked in with no way to check that I am paying too much.*

*I have always received a concession on my energy bills and do not agree with a flat tariff charge because (1) I live alone (2) I work night shifts so I use less energy than most. When I could not change companies I attempted to pursue this with the real estate agent who gave [sic] same answer.*

*I think it is unfair to impose an electricity provider on residents and I believe this is a violation of our personal freedom to choose. WINenergy is charging a lot. I am referring to the service charge every month; it is up to nearly two dollars a day that I pay more for the service charge than for my energy consumption. This is stupidly outrageous!*

*This was the default provider; I like to shop around to make sure I have the best deal.<sup>57</sup>*

Comments from a few respondents suggested that they had been unaware of the implications of living in an apartment where there is a default electricity re-seller until they moved in and tried to arrange an electricity account with an energy retailer:

*We were very surprised to find that having purchased a new apartment we were effectively locked into using a particular energy company.*

*I enquired on first moving into the property about my choice when it came to an electricity provider and was told that WINenergy was my only option as the building has an embedded network.*

*I was [sic] signed agreement with TRUenergy at the beginning when I moved in this property. At that time no one tell [sic] me I have to use Active Utilities until Active Utilities disconnect [sic] my electricity. They are rude and not friendly to solve [sic] the problem. I have no choice, that's why I signed again [sic] agreement with Active Utilities to avoid my electricity disconnect again [sic].<sup>58</sup>*

Two respondents were deterred from moving to an energy retailer because of additional costs:

*Origin, the other retailer had difficulty dealing with my situation (as a customer in an embedded system). Their regular customer service representatives just informed me that I would be sent a letter with the new contract. When nothing arrived a couple of weeks later, I was forced to further investigate the matter, which led to the discovery of the added costs and consent from landlord (I'm a renter) that would be involved with getting a new meter, in order to switch retailers.*

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<sup>57</sup> Four respondents' reply to Question 25, Customer Survey: 'If you would like to add any comments about changing electricity company, please do so below.'

<sup>58</sup> Three respondents' reply to Question 25, Customer Survey: 'If you would like to add any comments about changing electricity company, please do so below.'

*Mine was actually at initial connection. To choose any other company would have required extra costs as I would have to install separate metering. So there's an upfront cost disadvantage that would apply at the point of changing.<sup>59</sup>*

One respondent could not move his/her electricity account to an energy retailer because of a meter accessibility issue.

*The electricity meters for all the units in our development are kept in locked units, to which we do not have access. As such I was unable to provide alternative suppliers with the meter number that they needed to take on the supply.<sup>60</sup>*

The experiences shared by these respondents illustrate what can happen when re-sellers' customers attempt to move their electricity account from their re-seller to an energy retailer of their choice. It appears that this group of consumers are limited in their ability to exercise choice and are therefore unable to seek their optimal mix of prices and services. With the growth in the re-selling of electricity in medium and high density residential developments, there is a need to examine the barriers to choice. We suggest that the Federal and Victorian governments investigate this issue further.

## **Recommendation 2**

That the Federal and Victorian governments investigate barriers to retailer choice for re-sellers' customers with a view to reducing any unreasonable barriers for these customers in accessing choice of energy retailer.

Comments from two respondents indicated that two energy retailers' call centres did not understand the intricacies of moving an electricity account from a re-seller to their company. One respondent was unfortunately disconnected because he/she apparently thought it was possible to arrange connection with the energy retailer. That same respondent described the challenges in trying to resolve the issue with the re-seller and the other electricity retailer.

*At that time I was confused with which Company I should go with and both of the Company [sic] said that they have the right to bill me. Until today 14/7/2012, I still try [sic] to solve the problem with TRUenergy in relation to the electricity account. Because they still sending an electricity bill to me and ask me to pay which the meter number is different with what is shown on Active Utilities bill [sic].<sup>61</sup>*

The experiences shared by two respondents are examples of the types of problems people living in residential developments can encounter with a default re-seller. Energy retailers must ensure that call centre staff are provided with clear and accurate policies and procedures in order to respond accurately to re-seller customer enquiries regarding how to move their electricity account from a re-seller to their company and how to arrange an electricity connection in a residence where there is

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<sup>59</sup> Two respondents' reply to Question 25, Customer Survey: 'If you would like to add any comments about changing electricity company, please do so below.'

<sup>60</sup> A respondent's reply to Question 25, Customer Survey: 'If you would like to add any comments about changing electricity company, please do so below.'

<sup>61</sup> A respondent's reply to Question 33, Customer Survey: 'If you would like to add any comments about your experience with [Re-seller], please do so below.'

a default re-seller of electricity. This includes advising the person if moving their electricity account is possible and, if it is, what that may require (for example, additional cost of having to replace the electricity meter).

This would help the consumer to make an informed decision as to whether to proceed.

### **Recommendation 3**

That energy retailers ensure that call centre staff are provided with clear and accurate policies and procedures in order to respond accurately to re-seller customer enquiries regarding:

- how to move their electricity account from a re-seller to their company;
- how to arrange an electricity connection in a residence where there is a default re-seller of electricity.

## **Pricing**

*I pay almost double now for the same (perhaps less) energy consumption.*

*Happy with the prices, service is manageable but not exceptional.*

*They have a high rate for service charges but they have no 'peak' or 'off-peak' tariff charges. It's just one flat rate.<sup>62</sup>*

Pricing has a significant impact on the overall customer experience. Twenty-four respondents commented about their overall customer experience with their respective re-sellers. Close to a third of these comments related to pricing.<sup>63</sup> Three respondents reported being satisfied with their re-seller's prices, while five respondents were unhappy with their re-seller's prices. Four of these dissatisfied respondents referred specifically to high service charges. Given the practical difficulties of moving an electricity account from a re-seller to an energy retailer, those dissatisfied with prices appear to have little option. These difficulties could de-incentivise re-sellers from improving their service standards or providing a range of options for their customers.

### **Clear pricing information**

Both the Victorian<sup>64</sup> and AER retail exemptions framework<sup>65</sup> have a price cap which prevents resellers from charging more than the standing offer price.<sup>66</sup> Standing offer prices are generally

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<sup>62</sup> Three respondents' reply to Question 33, Customer Survey: 'If you would like to add any comments about your experience with [Re-seller], please do so below.'

<sup>63</sup> Question 33, Customer Survey: 'If you would like to add any comments about your experience with [Re-seller], please do so below.' One respondent's comment which was written next to the response to question 10 was moved to respond to question 33.

<sup>64</sup> Victorian Government Gazette, No. S 315 25 November 2008. Section 1 defines 'Pricing Rule'.

<sup>65</sup> See Condition 7(1) of Appendix 6.

<sup>66</sup> A **standing offer contract** for electricity supply is a basic electricity contract with all the terms and conditions prescribed by law. In Victoria, the retailers decide on the standing offer price, not the government. Since 1 January 2009, all retailers are required to publish standing offer tariffs for supply to residential and business customers. These tariffs cannot be varied for at least six months and all variations must be published one month before the change takes effect. Standing offers are what customers of energy retailers pay, if they choose not to switch to a competitive market offer. Some customers have been on a standing offer contract since competition was introduced into the Victorian energy market in the early 2000s, while others have chosen not to take a competitive market offer. In contrast, a **market contract** has minimum terms and conditions prescribed by law. Their terms and conditions generally are different from a standing offer. Some characteristics of a market contract include

higher than market offer prices. The ESC's latest pricing report found that residential customers could make an average saving of 12 per cent by switching from a standing offer to a fully discounted market offer. On average, residential customers could save \$114 on a single rate tariff, \$166 on a two rate tariff and \$246 on a time-of-use tariff per year when they switched from a standing offer to a market offer with all the discounts included.<sup>67</sup> Re-sellers buy their electricity in bulk from an energy retailer for re-selling to their customers. While re-sellers advertise that bulk purchasing allows them to offer 'discounted rates,' it can be unclear what the basis for calculating this discount is.

Since 1 January 2009, all energy retailers have been required to publish standing offer tariffs (Victorian Government Gazette) for supply to residential and business customers. Further, as of the same date, all energy retailers with over 500 customers have been required to publish on their websites at least one market offer generally available to the majority of customers for each distribution zone and meter type. The standing offer and at least one generally available market offer are published on the ESC YourChoice comparator website.<sup>68</sup> In contrast, very little information on re-sellers' prices is publically available. Their prices, for example, are not published on their websites. It is also unclear whether the prices charged by a re-seller are the same across all residential developments in which the re-seller is supplying electricity. Unless customers seek further information from their re-seller, they generally will not understand what 'discounted rates' means in real terms.

### ***Perceptions of clarity***

In our customer survey, we asked respondents how clear the re-seller's pricing information was (Chart 1).

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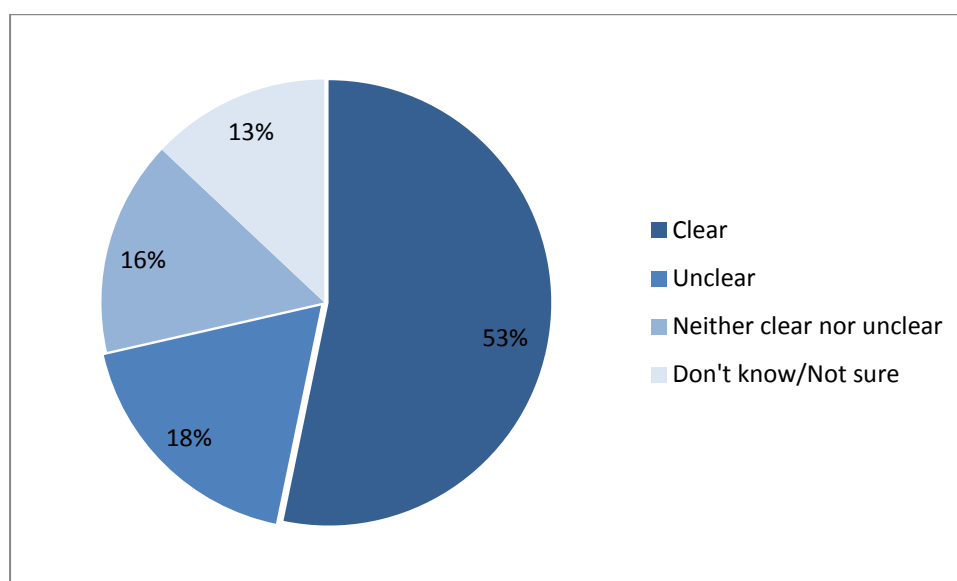
discounted prices, non-price incentives, different billing periods and payment options, fixed term periods, and fees and charges (such as fees for setting up the contract and exit fees).

<sup>67</sup> Essential Services Commission, Energy Retailers Comparative Performance Report – Pricing (2011-12), at 43. Available at: [www.esc.vic.gov.au/getattachment/608cb704-363f-4163-ae4f-4ba5e7bcc84e/Energy-retailers-comparative-performance-report-Pr.pdf](http://www.esc.vic.gov.au/getattachment/608cb704-363f-4163-ae4f-4ba5e7bcc84e/Energy-retailers-comparative-performance-report-Pr.pdf)

<sup>68</sup> Essential Services Commission, Energy Retailers Comparative Performance Report – Pricing (2011-12), at 20, 44. Available at: [www.esc.vic.gov.au/getattachment/608cb704-363f-4163-ae4f-4ba5e7bcc84e/Energy-retailers-comparative-performance-report-Pr.pdf](http://www.esc.vic.gov.au/getattachment/608cb704-363f-4163-ae4f-4ba5e7bcc84e/Energy-retailers-comparative-performance-report-Pr.pdf)



Chart 1: How clear is pricing information?



N = 77 (all respondents)

**Chart 1** reveals that just over half of all respondents indicated that the pricing information provided by their re-seller was clear. The remaining 47 per cent thought the pricing information unclear, neither clear nor unclear, or did not know or were unsure.

### ***Standardised presentation of pricing information***

The data suggests there is room for improvement in the way in which pricing information is presented by re-sellers to their customers. Re-sellers are not required to use a template for their pricing information or present pricing information in a set manner (e.g. cents per kWh), unlike energy retailers. Under the Victorian regulatory framework, energy retailers are required to provide 'Price and Product Information Statements' summarising the main contractual terms, including price, for each contract that they advertise.<sup>69</sup>

Energy retailers, under the Retail Law, are required to present pricing and other information in an 'Energy Price Fact Sheet.' The fact sheet includes information on:

1. unit price for electricity (and how this price may be varied);
2. daily supply charge;
3. key fees (for example: account establishment fees, exit fees, early termination fees, disconnection and reconnection fees, payment processing fees etc);
4. discounts and rebates (for example: pay-on-time discounts, one-off discounts, loyalty points etc);
5. contract duration;
6. the means to obtain a full set of terms and conditions of the contract; and
7. the retailer's contact details.

<sup>69</sup> Sections 35C and 36A, Electricity Industry Act 2000 (Vic); Essential Services Commission, Guideline No 19: Energy Price and Product Disclosure Issue 3 (June 2009).

These fact sheets are used when an energy retailer markets or advertises pricing information to customers.<sup>70</sup> The standardised information format, whether in a statement or a fact sheet, also helps customers to compare offers more easily.

We recommend that the AER introduce amendments to the retail exemptions framework to require re-sellers to provide a clear and simple fact sheet setting out pricing and key contract terms when providing pricing information to customers. This information should also be published on resellers' websites.

#### ***Recommendation 4***

That the AER introduce amendments to the retail exemptions framework to require re-sellers to provide a clear and simple fact sheet setting out pricing and key contract terms when providing pricing information to customers. This information should also be required to be published on their website.

## **Dispute resolution**

Re-sellers are not members of the Energy and Water Ombudsman (Victoria) (EWOV) scheme. Regulators and government have acknowledged the desirability of extending access to EWOV to residential customers of re-sellers. In their 2006 review, the ESC stated that the EWOV scheme should be extended to customers of re-sellers, and proposed a new 'fee-for-service' membership category for re-sellers.<sup>71</sup> Similarly, in a 2011 issues paper, the Department of Primary Industries (DPI) stated that extending EWOV's jurisdiction to include re-sellers of electricity would enhance consumer rights and provide some equality with customers of energy retailers,<sup>72</sup> who can approach EWOV for help.<sup>73</sup> The issues paper mentioned the possibility of DPI funding EWOV to commission an independent feasibility study regarding the extension of the scheme.<sup>74</sup> CUAC understands that the feasibility study has been completed. However, as far as we are aware, options for providing customers of re-sellers access to EWOV have not yet been made public.

## **Consumer experiences**

CUAC's survey asked respondents about their experience of problems with their electricity account, complaints and dispute resolution.

### ***Problems***

A majority of respondents (54 or 70%) did not report experiencing any problems with their electricity account within the previous 12 months. Twenty-two respondents (28.6%) had experienced problems, and one respondent was unsure.

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<sup>70</sup> Section 61, National Energy Retail Law, AER Retail Pricing Information Guideline (June 2012).

<sup>71</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at X.

<sup>72</sup> Energy retailers are: (1) 'licensed' under the Victorian regulatory framework, and (2) 'authorised' under the National Energy Retail Law.

<sup>73</sup> Department of Primary Industries, The National Energy Customer Framework in Victoria Approach to Implementation.

<sup>74</sup> Department of Primary Industries, The National Energy Customer Framework in Victoria Approach to Implementation.

Table 4 lists the types of problems respondents had experienced in the previous 12 months. Respondents could select multiple responses.

Table 4: Types of problems respondents had in the past 12 months

Types of problems	No.	Per cent
Price, fees and charges	11	50.0%
Billing problem or error	8	36.4%
Payment methods	4	18.2%
Concessions/rebates	4	18.2%
Metering issue	4	18.2%
Electricity supply interruption	2	9.1%
Customer service	2	9.1%
Payment difficulties	2	9.1%
Disconnection from electricity supply	1	4.5%
Green power	1	4.5%

N = 22 (respondents who had a problem with their electricity account in the past 12 months)

\*Note totals to more than 100% as respondents could select multiple responses to the types of problems.

Table 4 shows that problems most commonly related to price, fees and charges (50%), while more than one third of respondents experienced billing problems or errors. Equal numbers of respondents (4) had problems with payment methods; concessions/rebates; and metering. The same number of respondents (2) reported problems with electricity supply interruption; customer service and payment difficulties.

### ***Complaints***

Of the 22 respondents who had experienced a problem with their electricity account, nearly 60 per cent made a complaint about it, while approximately 40 per cent did not. All complaints were directed at the respondents' respective re-sellers, but two respondents also complained to a real estate agent.

It is unclear why nine respondents did not lodge a complaint, but possible that respondents did not know who to complain to, or simply did not bother to proceed with complaining. The AER retail exemptions framework requires re-sellers to inform customers about dispute resolution procedures, to make reasonable endeavours to resolve complaints, and to include in bills a telephone number for complaints. This would potentially increase customer awareness of what to do and who to contact when re-sellers' customers have a complaint.<sup>75</sup>

Table 5 lists the nature of respondents' most recent complaints. Since a single complaint may relate to several issues, multiple responses were allowed.

<sup>75</sup> Conditions 2(c), 3(4)(p) and 14, Appendix 6.

Table 5: Types of complaints respondents had in the past 12 months

Types of complaints	No.	Per cent
Price, fees and charges	9	69.2%
Billing problem or error	6	46.2%
Metering issue	4	30.8%
Payment methods	2	15.4%
Concessions/rebates	1	7.7%
Disconnection from electricity supply	1	7.7%

N = 13 (respondents who had a problem with their electricity account, and who complained about it, in the past 12 months)

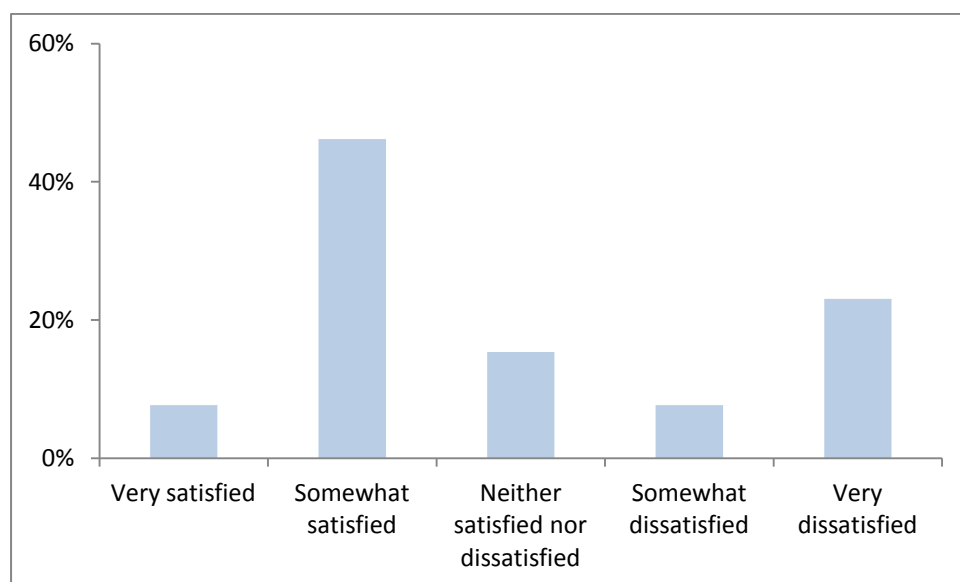
\*Note totals to more than 100% as respondents could select multiple responses.

The top three complaints categories were price, fees and charges, billing problem or error, and metering. Unsurprisingly, this aligns with the top three problem areas listed in Table 4.

The types of problems and complaints reported by respondents are similar to those customers raise with their energy retailers, and subsequently to EWOV if they believe that their complaints were not satisfactorily resolved by their energy retailer. Billing, for example, ranks as the second highest complaints category for customers of energy retailers, accounting for 41 per cent of electricity complaints raised with energy retailers in 2010–2011.<sup>76</sup> For the January to March 2012 period, billing accounted for 56 per cent of EWOV complaints.<sup>77</sup>

Chart 2 shows satisfaction with complaint outcome.

Chart 2: Satisfaction with complaint outcome



N = 13 (respondents who had a complaint with their electricity account and who had made a complaint in the past 12 months)

<sup>76</sup> Essential Services Commission, Energy Retailers Comparative Performance Report: Customer Service (2010-2011), at 48. Available at: [www.esc.vic.gov.au/getattachment/c4a6ee04-f9bc-4eb9-98fa-0bd4c58e7aa5/Energy-Retail-Performance-Report-2010-11-Customer.pdf](http://www.esc.vic.gov.au/getattachment/c4a6ee04-f9bc-4eb9-98fa-0bd4c58e7aa5/Energy-Retail-Performance-Report-2010-11-Customer.pdf)

<sup>77</sup> Energy and Water Ombudsman (Victoria), Res Online: Available at: [www.ewov.com.au/publications-and-media/res-online-new2/overall](http://www.ewov.com.au/publications-and-media/res-online-new2/overall)

**Chart 2** shows that just under half of re-sellers' customers who complained to their re-seller were not really satisfied with the resolution provided by their re-seller. There is room to improve this satisfaction. This may be achieved with access to a free, independent and impartial external dispute resolution body such as EWOV. Access to EWOV is especially important in situations where a customer is facing imminent disconnection, and where the customer is vulnerable.

At present, re-sellers' customers have the option of going to the Victorian Civil and Administrative Tribunal (VCAT) if they have an unresolved issue with their re-seller. For small claims, the customer must self-represent at VCAT, which may deter some customers from this avenue. There is also a fee (for the civil division it is \$38.80 where the amount sought is under \$10,000).<sup>78</sup> EWOV is a free service for consumers, and with its industry knowledge and non-adversarial process, it would be a better and more accessible avenue for dispute resolution. We recommend that the Victorian government extend the EWOV scheme to re-sellers as soon as is practicable.

#### ***Recommendation 5***

That the Victorian government and EWOV further progress the extension of the scheme to re-sellers immediately.

## **Smart Meters**

A mandated roll-out of smart meters to all Victorian residential and small business customers began in 2009 and is due for completion by the end of 2013. Smart meters measure and record (at 30 minute intervals) how much electricity a household or business is using. Smart meters communicate meter readings directly to electricity distributors, eliminating the need for someone to be onsite to read the meter. They also enable remote connection, disconnection and reconnection of electricity supply. By using a web portal or an in-home display connected to their smart meter, people will be able to access more detailed information about their electricity usage. Smart meters can notify electricity distributors when power is out, in real-time. Energy retailers' customers with smart meters are covered by the smart meter protections which have been incorporated into the Victorian Energy Retail Code.

The Victorian government has included a number of important consumer protections relating to smart meters in the NERL Vic Bill which seeks to implement the Retail Law in Victoria.<sup>79</sup> Time-of-use pricing is also due to be introduced in 2013, albeit in a voluntary capacity. Smart meters, portals and in-home devices will play an increasingly important role in assisting consumers to manage energy pricing. While embedded networks<sup>80</sup> may be able to provide other innovative options, it is important that consumers, particularly low-income consumers, are not disadvantaged by a lack of access to technologies or services that allow them to manage their energy use and costs.

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<sup>78</sup> VCAT Fees (from 1 July 2012). Available at: [www.vcat.vic.gov.au/sites/default/files/vcat\\_fees\\_July\\_2012.pdf](http://www.vcat.vic.gov.au/sites/default/files/vcat_fees_July_2012.pdf)

<sup>79</sup> Section 100, National Energy Retail Law (Victoria) Bill 2012, substitutes section 46D of the Electricity Industry Act 2000 (Vic). The new section re-enacts the power for the Governor in Council to make an Order relating to AMI, retains the current heads of power and includes several new heads of power to ensure Orders made under section 46D can provide appropriate consumer protections for smart meter customers. These protections currently exist in the Victorian regulatory regime, but are lacking in the national framework for AMI which is still under development.

<sup>80</sup> See Appendix 1: What is an embedded network?

In order to ascertain whether smart meter protections should be extended to them, CUAC's survey asked respondents what type of meter they have. Overall, respondents appeared to have limited knowledge about their metering arrangements. Forty-one respondents (53.2%) indicated that they do not know, or were unsure whether they had a separate meter for their home; 25 respondents (32.7%) reported that they had a separate meter; and 11 respondents (14.3%) indicated that they do not have a separate meter. Within the group of 25 respondents who reported having a separate meter, 14 indicated that they did not know, or were unsure whether they had an accumulation meter or a smart meter. Ten respondents reported having a smart meter, and one reported that he/she has an accumulation meter.

The results show that many respondents believe that they are not separately metered, or are unsure. As the four apartment buildings which were surveyed are relatively new developments, it is highly unlikely that each unit is not separately metered. Customers who wrongly believe that they do not have a separate meter will not understand that their bills are based on their own household's consumption. Re-sellers should be required to inform customers whether their residence is separately metered and what this actually means for their household.

The results also indicate that few respondents know what type of meter they have. In light of the functionalities of smart meters, it is important that re-sellers be required to inform customers who have smart meters about their capabilities.

#### ***Recommendation 6***

That the ESC and AER\* require re-sellers to provide clear and simple information to their customers:

- explaining what it means for their residence to be separately metered; that is, that their electricity bill is based on their household's consumption;
- about smart meters and their capabilities, where their customer has a smart meter.

\*We note that currently, the NERL does not address smart meter customer protection issues; but their future inclusion is anticipated.

Given that some respondents have a smart meter, and the greater likelihood that newer residential developments will have smart meters, it is a concern that there are no smart meter specific protections which apply to re-sellers' customers. As a matter of principle, we believe that the Victorian smart meter protections, which apply to energy retailers' customers with smart meters, should likewise apply to re-sellers' customers with smart meters. This is a recommendation which we believe the Victorian government should implement immediately.

#### ***Recommendation 7***

That the Victorian government extend the smart meter protections which apply to energy retailers' customers with smart meters to re-sellers' customers with smart meters, and ensure that this protection continues to apply to such customers upon implementation of the Retail Law in Victoria.

In addition, the considerable challenges re-sellers' customers face in choosing an energy retailer means that they may be unable to obtain some of the benefits from smart meters that might potentially be realised by customers of energy retailers who have smart meters. Residents in one of the apartments that we surveyed, The Nicholson, have access to an online energy portal developed by the Moreland Energy Foundation Limited. Residents using the web portal can monitor their day-

to-day consumption, compare usage with comparable households, and obtain tips on energy efficiency. This is a useful initiative, and mirrors similar tools developed by Origin Energy and Jemena for the general market. It would be unfortunate if similar tools were not made available to customers of re-sellers with smart meters in other residential developments.

## Payment difficulties

### Payment assistance

Energy retailers have an obligation to offer payment plans and hardship assistance to their customers who are experiencing payment difficulties or financial hardship. Access to assistance is by customer self-identification, identification by the energy retailer or by a third party such as a financial counsellor, that the customer is experiencing financial difficulties.<sup>81</sup> When experiencing payment difficulty, re-sellers' customers do not receive the same forms of assistance as customers of licensed providers.

### *Victorian framework*

During the 2006 review, the ESC decided to consider the issue of payment arrangements for re-sellers' customers who are in financial difficulty in conjunction with the development of a code for re-selling.<sup>82</sup> Because it was thought that oversight for the retail of energy would move to the AER within a short time, none of the recommendations made in the review were actioned.<sup>83</sup>

### *AER retail exemptions framework*

Under the AER retail exemptions framework, re-sellers must inform customers at the start of their tenancy or residency that assistance is available if they are experiencing financial difficulty, and they must also describe the process customers should follow to inform the re-seller of their financial difficulty.<sup>84</sup> Re-sellers are required to include in a reminder notice, information about flexible payment options and other assistance that may be available to the customer.<sup>85</sup> The AER has further clarified that a reminder notice should contain:

1. a statement advising that flexible payment options are available for those experiencing financial difficulty;
2. a statement that rebates and concessions may be available; and
3. a contact number for the customer to call to discuss the above.<sup>86</sup>

These are positive initiatives which we support.

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<sup>81</sup> Section 44, 50, National Energy Retail Law; Rule 33, National Energy Retail Rules; clauses 11-12, Energy Retail Code (Version 10, May 2012), Essential Services Commission, Guideline 21: Energy Retailers' Financial Hardship Policies (January 2011).

<sup>82</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 45.

<sup>83</sup> Essential Services Commission, Draft Statement of Intent to Cease Issuing Certificates of Opinion on Exempt Electrical Activities paper for Consultation (March 2011), at 6.

<sup>84</sup> Condition 2(f), Appendix 6.

<sup>85</sup> Condition 8(2), Appendix 6.

<sup>86</sup> Australian Energy Regulator, Notice of Final Instrument Exempt Selling Guideline (December 2011), at 11. Available at [www.aer.gov.au/sites/www.aer.gov.au/files/AER%20Exempt%20Selling%20Guideline%20-%20Notice%20of%20Final%20Instrument.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/AER%20Exempt%20Selling%20Guideline%20-%20Notice%20of%20Final%20Instrument.pdf)

## ***Self-identification***

The AER retail exemptions framework, however, requires re-sellers' customers to self-identify their payment difficulty to the re-seller before they are entitled to: flexible payment terms; energy efficiency advice; and the provision of information on energy rebates, concession and relief schemes.<sup>87</sup> Customers who self-identify are also protected from the application of late payment fees and security deposits. There is no obligation on re-sellers to identify customers who are experiencing payment difficulty.

In our customer survey, we asked respondents what forms of assistance their re-sellers provided when they could not pay their bill by the due date. Sixty-seven respondents did not have any problems paying their bills by the due date, while ten did. Of the 10 respondents who reported a payment problem, six did not contact their re-seller about it and four did. One WINenergy respondent was offered more time to pay; another WINenergy respondent was offered an instalment plan. The two Energy-On respondents could not pay on time because they were away and the bills had been mailed to their respective addresses rather than emailed, as requested. This suggests that their issues were caused by billing problems rather than payment difficulties.

While the numbers are small, the results suggest that not everyone will contact their re-seller when they have trouble paying their bill by the deadline. One respondent did not do so because the payment was directly debited on the due date.<sup>88</sup> For the rest, it is unclear why they did not self-identify. Fortunately, none of the six respondents were disconnected. The data suggests that not everyone will self-identify to their re-seller that they are unable to pay their bill by the due date. The incorporation of community housing into a residential development means the greater likelihood of having a higher percentage of residents who are on low incomes and/or vulnerable. While these residents may need more payment assistance, they may find it difficult to self-identify for a range of reasons.

The risk of granting access to payment assistance solely on the basis of customer self-identification (as required under the AER retail exemptions framework) could result in vulnerable consumers being disconnected due to an inability to pay. Access to payment assistance should not be based solely on customer self-identification. We recommend that the AER introduce changes to their retail exemptions framework to recognise the role re-sellers have in identifying customers who are experiencing payment difficulties. Where a customer has missed payments, re-sellers should be proactive, initiate contact, and offer help to the customer. It is in the re-seller's interest to identify payment difficulty cases early and to offer assistance before the customer accrues substantial debt.

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<sup>87</sup> Australian Energy Regulator, Notice of Final Instrument Exempt Selling Guideline (December 2011), at 11. Available at [www.aer.gov.au/sites/www.aer.gov.au/files/AER%20Exempt%20Selling%20Guideline%20-%20Notice%20of%20Final%20Instrument.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/AER%20Exempt%20Selling%20Guideline%20-%20Notice%20of%20Final%20Instrument.pdf)

<sup>88</sup> Question 33 of the customer survey.



### **Recommendation 8**

That the AER introduce amendments to their retail exemptions framework to recognise the role re-sellers have in identifying customers who are experiencing payment difficulties.

### **Late payment fees**

In Victoria, energy retailers are prohibited from charging small customers late payment fees on their bills.<sup>89</sup> The ESC recommended extending a similar prohibition to re-sellers in its 2006 review. In contrast, energy retailers can charge late payment fees under the Retail Law and Rules unless the customer is experiencing hardship, in which case they must waive the fees.<sup>90</sup> The NERL VIC Bill, however, maintains the ban on late payment fees for all Victorian customers of energy retailers.<sup>91</sup>

Under the AER retail exemptions framework, residential customers of re-sellers can be charged late payment fees, subject to the following qualifications:

- (a) There is a limit to the amount of late payment fees that a re-seller can charge.<sup>92</sup>
- (b) Customers who inform their re-seller that they are unable to pay their bill due to financial difficulty cannot be charged late payment fees.<sup>93</sup>

Customers of re-sellers, regardless of whether they are experiencing payment difficulty or not, should be protected from late payment fees. This has been a longstanding consumer protection for energy consumers in Victoria and re-sellers' customers should be entitled to the same protection. This is one of the additional protections recommended by the ESC's 2006 review, and referred to in **Recommendation 1**, that should be included in the amendments to the 2002 OIC. This protection should continue to apply to re-sellers' customers upon implementation of the Retail Law in Victoria.

### **Concessions**

Energy retailers are required to enter into agreements with the Department of Human Services (DHS) for the provision of community services.<sup>94</sup> These agreements ensure that there are proper mechanisms in place for the delivery of concession programs to eligible customers of energy retailers. When Victoria moves to the Retail Law, Victorian energy retailers would still be required to have these agreements with DHS.<sup>95</sup>

This obligation does not extend to re-sellers. Nevertheless, the Non-mains Energy Concession, Life Support Concession, Medical Cooling Concession and the Non-Mains Utility Relief Grant apply to

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<sup>89</sup> Section 40C, Electricity Industry Act 2000.

<sup>90</sup> Clause 10.4, Schedule 1 (Model terms and conditions for standard retail contracts), National Energy Retail Rules; Rule 73 of the National Energy Retail Rules.

<sup>91</sup> For the purposes of this clause, a 'specified customer retail contract' means a customer retail contract under which a customer consumes either or both of the following - not more than 20MWh of electricity each year; not more than 150GJ of gas each year. Section 14, National Energy Retail Law (Victoria) Bill 2012.

<sup>92</sup> See S/N 8 at Appendix 7; see condition 7(4) of Appendix 6; AER Notice of Final Instrument (December 2011) at 15. The amount is limited to 'a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.' This would include, for example: a recovery of any late payment fees charged by an authorised retailer to the exempt person, or the cost of contacting the customer for follow up or reminder, for example, phone calls or letters.

<sup>93</sup> See S/N 8, Appendix 7; see condition 8(1)(c) of Appendix 6.

<sup>94</sup> Section 47, 21(f), Electricity Industry Act 2000 (Vic).

<sup>95</sup> Section 47AA, National Energy Retail Law (Victoria) Bill 2012.

customers of re-sellers who are eligible concession cardholders provided they meet the eligibility criteria (described in **Appendix 8**). These customers need to apply directly to DHS to receive the relevant concession, which is provided as a direct rebate. Compared to the process for customers of licensed retailers (who have concession amounts automatically applied to bills), this is a somewhat onerous process.

### ***Concessions information***

Regulators recognise the importance of ensuring that customers are informed about their entitlements. The ESC's 2006 review recommended that re-sellers provide customers with information on concessions as provided by DHS.<sup>96</sup> Similarly, under the AER retail exemptions framework, re-sellers are required to:

- Advise customers at the start of their tenancy or residency (and at any time upon request) about the availability of energy rebates, concessions and relief schemes;<sup>97</sup>
- Not hinder a customer's attempt to establish eligibility;
- Use best endeavours to claim the rebate, concession or assistance on their customer's behalf if the claim can only be made by the re-seller, and apply that to the customer's bill if the claim is successful;<sup>98</sup>
- Issue bills which show any amount deducted, credited or received under a rebate, concession or relief scheme, or under a payment arrangement;<sup>99</sup>
- Ensure that a customer is aware of energy rebates, concessions and relief schemes if a customer informs them they are experiencing payment difficulty;
- Include in reminder notices a statement about the availability of rebates, concessions, and relief schemes.<sup>100</sup>

The AER conditions have the potential to better direct re-sellers' customers to the forms of assistance which may be available to them.

### ***Receipt of concessions and concessions information or assistance***

To ascertain if respondents were receiving their concession, and whether they were aware of their entitlements, we asked respondents if they currently received a concession on their bill, and whether they had received concession information or assistance in applying for a concession. More than three quarters of all respondents were non-concession cardholders; just over 20 per cent (16 respondents) held a concession card. The proportion of non-concession cardholders is less than the general population, of which approximately 30 per cent are concession cardholders. The 16 respondents who identified themselves as concession cardholders were WINenergy customers from two apartment buildings.

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<sup>96</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 43.

<sup>97</sup> See Condition 2(e) of Appendix 6.

<sup>98</sup> See Condition 11 of Appendix 6.

<sup>99</sup> See Condition 3(4)(n) of Appendix 6

<sup>100</sup> See Conditions 8(1)(b), 8(2) of Appendix 6.

The low numbers of respondents who are concession cardholders may be attributed to a lower response rate to the survey from concession cardholders, or the demographics of the four apartments which were surveyed. Nearly 45 per cent of the units in one apartment building are community housing and affordable rental units. It is therefore likely that some of these residents are concession cardholders. We do not know the extent to which these residents participated in the survey.

Of the 16 respondents who identified themselves as concession cardholders, only one indicated that he/she currently received a concession. Thirteen said that they did not, while two were unsure. Similarly, only one respondent reported that the re-seller had provided concession information, or had given assistance in applying for a concession.

These results suggest that a significant proportion of concession cardholders may be missing out on their concession entitlement. Another possibility is that, as the Non-Mains Energy Concession application form has to include all invoices or receipts for the calendar year, some respondents may not yet have submitted their DHS application. The data also indicates that a large proportion of concession cardholders have not received any concession information, or assistance in applying for a concession, from their re-seller. Thus, it is possible too that they may not know about their entitlements and therefore, have not applied for them. The AER conditions on re-sellers could potentially close the gap and re-sellers' customers awareness of concessions.

With **Recommendation 1**, we recommended that the 2002 OIC be amended to incorporate the AER re-selling framework and additional protections recommended by the ESC review. As mentioned above, the AER re-selling framework has obligations on re-sellers to provide concession information to their customers.

## **Disconnection & re-connection**

Customer protections should ensure that disconnection should only ever arise as a last resort and that no person is disconnected solely due to their inability to pay. CUAC's customer survey asked respondents about their experience with disconnection and reconnection. Two of 77 respondents had been disconnected from their electricity supply by their re-seller. Although the number of affected respondents is small, their experiences offer some insight into the issues that can arise regarding disconnection. There is a need for more research and monitoring to ascertain whether the trends are similar across a wider range of apartments where the re-selling of electricity occurs.

### **Standard disconnection and re-connection procedures**

Both respondents who were disconnected were supplied by Active Utilities. One customer reported that he/she was disconnected while setting up a new connection; the other reported the disconnection resulted from an administrative error. Both stated that they were re-connected within 24 hours. The respondents' experiences suggest that there is a need for standardised procedures around disconnection. In both cases where disconnection occurred, neither customer was contacted or issued any reminder notices. Although both customers had the same re-seller, one customer reported having to pay the whole overdue amount, while the other did not have to pay the overdue amount or a fee prior to re-connection. Such variations in process should not happen under the AER

retail exemptions framework with the standardised disconnection and reconnections conditions<sup>101</sup> re-sellers are obliged to follow.

## **Wrongful disconnection compensation**

One of the customers who had been disconnected described his/her customer experience in these terms.

*We moved into our rented property in [month/year].<sup>102</sup> The property is a new building and as such our letting agent explained that it was easier for her to set up the electricity account on our behalf. Accepting this we filled in the forms that were provided to us and returned them to the letting agents. In [month/year] I contacted the letting agent to find out why we had not yet received a bill, and was told not to worry as the bills are only sent every 3 months. One day in [month/year] we returned home to find we had no electricity supply. It was only after calling an electrician we discovered that Active Utilities had cut off our connection. They did so without any attempt whatsoever to contact us, or even indicate what they had done.*

*We had no information on what had happening [sic] and were unable to find out anything until the next day, as Active Utilities have no contact point outside of office hours. The next day we discovered there had been an administrative error with the initial forms we had filled in. Rather than contacting us to tell us this however Active Utilities had simply done nothing until the bills built up, and then disconnected us without any warning. The next day we were able to provide them with the details they required and the supply was reconnected. However, we lost a freezer full of food as a result and suffered significant inconvenience.<sup>103</sup>*

Currently, residential and small business customers of energy retailers in Victoria are entitled to compensation if they are disconnected and their energy retailer did not comply with the terms and conditions of the electricity contract specifying the circumstances in which electricity can be disconnected. The compensation amount is regulated.<sup>104</sup> The NERL VIC Bill maintains this protection for customers of energy retailers.<sup>105</sup> Thus, upon implementation of the Retail Law in Victoria, energy retailers will be required to compensate specified small customers<sup>106</sup> who have been wrongfully disconnected. In their 2006 review, the ESC had recommended extending the wrongful disconnection compensation obligations to re-sellers.<sup>107</sup> This recommendation has not been implemented.

The consequences of disconnection are equally severe for customers of re-sellers and customers of energy retailers. Both groups of consumers should be appropriately compensated if they are

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<sup>101</sup> Conditions 8-10 of Appendix 6.

<sup>102</sup> De-identified.

<sup>103</sup> A respondent's reply to Question 33, Customer Survey: 'If you would like to add any comments about your experience with [Re-seller], please do so below.'

<sup>104</sup> \$250 for each whole day that the supply of electricity is disconnected and a pro rata amount for any part of a day that the supply of electricity is disconnected; Section 40B Electricity Industry Act 2000 (Vic). Further, if the customer does not notify their energy retailer of the disconnection within 14 days after the disconnection, the maximum payment is the prescribed capped amount. Capped at \$3,500; Section 40B Electricity Industry Act 2000 (Vic).

<sup>105</sup> Section 13, National Energy Retail Law (Victoria) Bill 2012.

<sup>106</sup> For the purposes of this clause, and taking into account the definitions in the National Energy Retail Law, 'specified small customer' means - a residential customer; or a business customer who consumes less than 40 megawatt hours (MWh) of electricity each year; or a business customer who consumes less than 1,000 gigajoules (GJ) of gas each year. Section 13, National Energy Retail Law (Victoria) Bill 2012.

<sup>107</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 45.

wrongfully disconnected. Customers of re-sellers do not have access to EWOV and are perhaps more vulnerable to imminent disconnection. If they are disconnected wrongly, there is no guarantee that the re-seller will compensate them. The respondent's comments in this case study suggested that he/she was not compensated for what may have been a wrongful disconnection.

Extending the wrongful disconnection protection to re-sellers' customers is one of the additional protections recommended by the ESC's 2006 review and referred to in **Recommendation 1** that should be included in the amendments to the 2002 OIC. This protection should continue to apply to re-sellers' customers upon implementation of the Retail Law in Victoria.

## Billing & payment options

We wanted to determine what billing and payment options are available to re-sellers' customers. Our survey included questions on the respondents' experience with billing and payment.

### Billing format

More than 90 per cent of all respondents receive their electricity bill every month. Most respondents have a preference either for an email or a hardcopy bill. Nearly an even number of respondents expressed a preference for hardcopy bills and email bills. This pattern was similar across all three re-sellers.

**Table 6** indicates that nearly half the respondents who had a preferred billing format were given the option of receiving their bill in that preferred format.

Table 6: Option to receive bill in preferred format

Did respondents have the option?	No.	Per cent
Yes	34	47.2%
Don't know/Not sure	19	26.4%
No	19	26.4%
Total	72	100.0%

N = 72 (respondents with a preferred bill format; one missing data)

Around one quarter of respondents did not know if they had the option of receiving their bill in their preferred format, while another 26.4 per cent believed they did not have that option. The survey results suggest that Active Utilities and Energy-On appear to offer only hardcopy bills while WINenergy offers email or hardcopy bills. 40 per cent of WINenergy's customers, however, are unaware of this option or believe that their preferred bill format is unavailable.

The results suggest that most respondents do have a preference for a particular bill format. Re-sellers should therefore provide customers with the option of receiving their bill by email or hardcopy. This option needs to be clearly communicated to customers when they sign up to the contract, so that customers can select the format which suits them best. Email bills, may not, as suggested by the respondent below, suit everyone:

*We can't read the bills as they are online. We don't have internet at home.* <sup>108</sup>

Re-sellers should note and give effect to the preferences their customers have with regard to how they would like to receive their bills.

## Preferred payment method

Fifty-four respondents (70.1%) indicated they had a preferred payment method for their electricity bills; 20 (26%) did not. **Table 7** provides a breakdown of respondents' preferred payment methods. BPay and direct debit are the top two preferred payment methods.

Table 7: Preferred payment methods

Preferred payment method	No.	Per cent
BPay	18	32.1%
Direct Debit	17	30.4%
Post Office	6	10.7%
Online bank	5	8.9%
Other methods**	11	19.6%
Don't know/Not sure	2	3.6%

N= 56 (respondents with a preferred payment method, or who did not know, or were unsure)

\* Answers total to more than 100% because respondents could select multiple preferred payment methods.

\*\* Other methods refer to: Credit card online; credit card over the phone; EFT; not direct debit; unspecified payment method.

**Table 8**, below, reveals that close to 80 per cent of respondents were able to pay their electricity bills using their preferred payment method.

Table 8: Ability of respondents to pay by their preferred payment method

Responses	No.	Per cent
Yes	43	79.6%
No	10	18.5%
Don't know/Not sure	1	1.9%
Total	54	100.0%

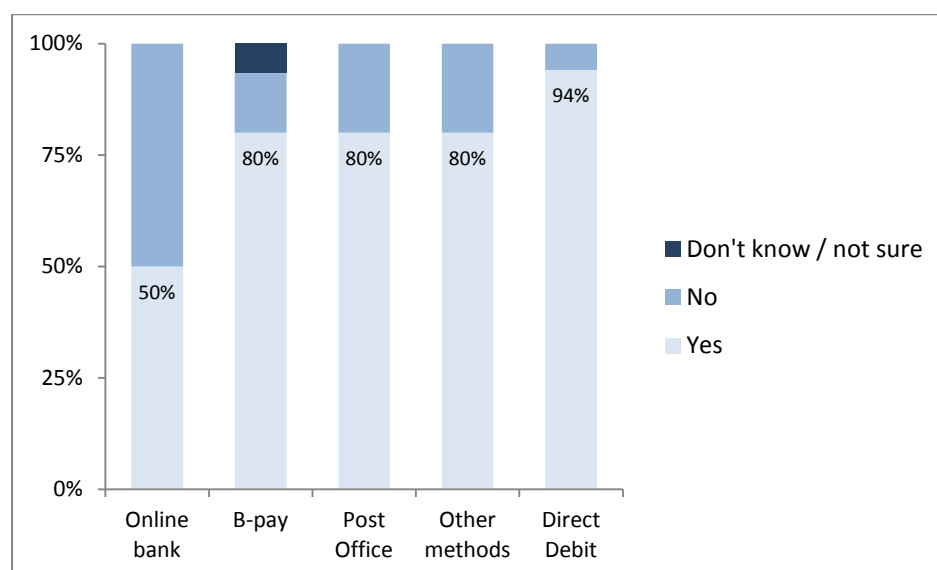
N = 54 (respondents with a preferred payment method; one missing data)

**Chart 3** provides a further breakdown of the proportion of respondents (by payment method) who are able to use their preferred payment method to pay their bills.

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<sup>108</sup> A respondent's reply to Question 33, Customer Survey: 'If you would like to add any comments about your experience with [Re-seller], please do so below.'

Chart 3: Ability of respondents to use their preferred payment method, by payment method



N= 51 (respondents with a preference for payment method, minus three respondents with multiple payment preferences)

\*Other methods refer to: Credit card online; credit card over the phone; EFT; not direct debit; unspecified payment method.

Chart 3 shows that 80 per cent of respondents who had indicated a preference to pay their bills by B-Pay, Post Office, or other methods could do so. Ninety per cent of respondents who preferred to make direct debit payments could also do so. Since most respondents have a preferred payment method, re-sellers should continue providing customers with a range of payment methods.

Two WINenergy respondents commented negatively about their experience with direct debit while giving feedback on their overall customer experience:

*I disliked that direct debit from my account was the only payment method available to me despite the fact that the bill mailed to me each month has 'alternative payment options' listed at the bottom of the bill.*

*I also don't recall setting up direct debit which is how the bills are currently paid. Very annoying!*<sup>109</sup>

These observations suggest some confusion regarding the direct debit arrangements with WINenergy. Where there is a direct debit arrangement, re-sellers need to:

1. clearly communicate to customers how and when direct debit will be used; and
2. obtain their customer's explicit informed consent to the arrangement.

<sup>109</sup> Two respondents' reply to Question 33, Customer Survey: 'If you would like to add any comments about your experience with [Re-seller], please do so below.'

### **Recommendation 9**

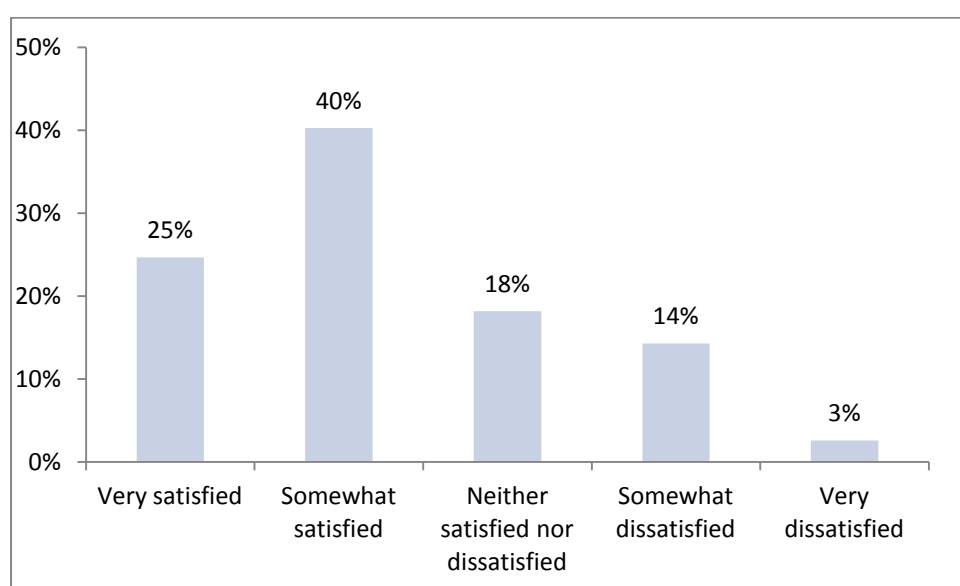
That the ESC and AER require re-sellers to:

- provide customers with a range of payment methods;
- clearly communicate to customers how and when direct debit will be used and obtain their customer's explicit informed consent to the arrangement where there is a direct debit arrangement.

## **Overall customer experience**

We asked respondents what their overall experience with their re-seller was (**Chart 4**).

Chart 4: Customer's overall experience with their re-seller



N = 77 (all respondents)

**Chart 4** reveals that more than two thirds of all respondents reported being very satisfied or satisfied with their experience with their re-seller. WINenergy respondents were more likely to report that they were satisfied overall. It is noteworthy that, regardless of some of the problems identified with re-selling, a majority of respondents reported being satisfied with their re-seller.



## 4. OTHER ISSUES

There are some wider regulatory issues arising from re-selling which we have not discussed previously, including registration, owners corporations and re-selling and disclosure.

### Registration

Re-sellers of electricity in Victoria are currently not registered. The ESC's 2006 review recommended a simple registration system for all re-sellers of electricity;<sup>110</sup> this, however, has not been implemented. Under the AER retail exemptions framework, re-sellers operating under a registrable or individual exemption are subject to registration, while those under a deemed exemption, are not. The AER's view is that the value of the information gained from universal registration would not outweigh the costs for deemed exemption holders (who have smaller operations).<sup>111</sup> The extent of re-selling, who the re-sellers are, where re-selling is occurring, and how re-sellers' customers are faring will not be fully known if there is no requirement for all re-sellers to be registered. An information gap would also make monitoring and enforcement of re-sellers who are not registered very difficult.

As of 28 May 2012, businesses are required to register their name and details with the national business names register, managed by the Australian Securities & Investments Commission (ASIC). This replaced state and territory business name registers.<sup>112</sup> It is also a requirement for companies to register with ASIC.<sup>113</sup> As small businesses are expected to be aware of their obligation to register with ASIC, it is not unreasonable to require them to register with the AER if they intend to re-sell electricity to households. As part of the registration process with ASIC, the applicant could be directed to register with the AER if it intends to re-sell electricity to residential customers.

We recommend that the AER extend registration to all re-sellers in the interests of effective regulatory oversight. This is also one of the additional protections recommended by the ESC's 2006 review and referred to in **Recommendation 1** which should be included in the amendments to the 2002 OIC.

#### **Recommendation 10**

That the AER extend registration to all re-sellers in the interest of effective regulatory oversight.

<sup>110</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at VII-VIII.

<sup>111</sup> Australian Energy Regulator, Notice of Final Instrument Exempt Selling Guideline (December 2011), at 8.

<sup>112</sup> [www.asic.gov.au/asic/asic.nsf/byheadline/Registering+a+business+name?openDocument](http://www.asic.gov.au/asic/asic.nsf/byheadline/Registering+a+business+name?openDocument)

<sup>113</sup> [www.asic.gov.au/asic/asic.nsf/byheadline/Starting+a+company+or+business?openDocument](http://www.asic.gov.au/asic/asic.nsf/byheadline/Starting+a+company+or+business?openDocument)

## Owners' corporations & re-selling

An owners' corporation may engage in the actual re-sale of electricity in some apartments. Alternatively, an owners' corporation may appoint an 'agent' or 'facilitator' to supply electricity for and on behalf of the owners' corporation. There are legal implications relating to an owners' corporation holding the exemption and formal 'exempt seller' status. An owners' corporation would be obliged to comply with the conditions applicable to the exemption and would be liable in the event of non-compliance. This could have implications, on each individual member of the owners' corporation.

Typically, in the case of new apartments where re-selling of electricity is to occur, the arrangements relating to the provision of electricity would have been negotiated and agreed upon before residents move in, and before an owners' corporation has been constituted. Usually, the developer (acting on behalf of the owners' corporation) appoints and contracts with the re-seller to supply electricity for the building. It is unclear what prescribed procedures (if any), a developer is required to comply with when selecting a re-seller on behalf of the owner's corporation. Similarly, the terms and conditions of the contract between the developer and the re-seller are not known to potential residents or members of the owners' corporation. An owners' corporation may find itself locked into a contract which they consider unfavourable for a few years. More information about the contractual arrangements between developer and re-seller is needed. Processes should be put in place to ensure greater transparency, scrutiny and accountability in the way these contracts are entered into and administered. This is an area which we believe the Victorian government should investigate further.

### ***Recommendation 11***

That the Victorian government:

- examine the contractual arrangements between developers and re-sellers with a view towards ensuring greater transparency, scrutiny and accountability in the way in the in which these contracts are entered into; and
- ensure that the terms and conditions of these contractual arrangements are not detrimental to the re-sellers' customers.

## Disclosure

One of the consequences of residing in an apartment where there is a default re-seller of electricity is the difficulty of switching one's electricity account from the re-seller to an energy retailer. This impacts the residents' ability to reduce their electricity costs by moving to an energy retailer with a cheaper offer. **Chapter 3** of the report discusses the difficulties in accessing retailer choice in detail.

Generally, people will not be informed about re-selling or its implications for them when they buy into or sign a lease for a unit in the development. Instead, consumers often find out about the re-seller while setting up their electricity account. They may receive a marketing brochure requesting them to contact the re-seller to set up their electricity account. They may learn about the implications

of having their electricity supplied by a re-seller when they attempt to switch from their re-seller to an energy retailer and encounter difficulties doing so.

The existence of a default re-seller is a matter potential buyers and renters should be made aware of prior to their purchase or tenancy, because it might affect their decision as to whether they buy or rent a unit in the development. Hence, these are matters which should be disclosed to a potential buyer by the vendor and to a potential renter by the real estate agent or landlord. The information provided to potential buyers and renters should clearly explain the implications of having one's electricity provided by a re-seller, including the difficulties of accessing choice. We recommend that the Victorian government require such disclosure requirements of vendors, real estate agents and landlords, so that potential purchasers and renters are able to make a more informed decision where there is a default re-seller of electricity in the residential development.

***Recommendation 12***

That the Victorian government require property vendors, real estate agencies and landlords to disclose to potential property purchasers and renters, the presence of a default re-seller of electricity and its implications so that potential purchasers or renters may be able to make a more informed decision.

## **Growth in re-selling – root cause?**

The proliferation of re-sellers and embedded networks<sup>114</sup> raises questions about the robustness of our energy market regulatory framework. It is appropriate to consider the reasons why property developers and investors are choosing to install embedded networks rather than provide a grid connection to each residence within a development. Cost is the most immediate possible explanation that comes to mind. Property developers operate under tight budget constraints and need to maximise the value of their investments. The choice of an embedded network is most likely proving to be a lower cost option for the developer at the time that a property is being built. If this is the case, the AER should consider the robustness of the current economic regulatory framework applying to grid connection charges by the distributor, and whether the charges for these services are, in fact, efficient. If these grid connection charges are weakly regulated, the market frameworks may be providing an inappropriate incentive for the choice of embedded networks.

This would be problematic because this research has shown that re-sellers' customers are not afforded the same rights and protections as energy retailers' customers. They are not offered equivalent protection if in hardship, access to concession support is more difficult, and they are not afforded choice in the retail market. There is a further question, therefore, as to whether there is a split incentive leading to outcomes that are less than optimal. It is likely that property developers and other investors are choosing embedded networks because it offers them a cost saving which is desirable when developing and selling a property. In other words, the choice of an embedded network offers short term gains which align with the developer's interests. However, the developer may be making such a choice with little regard to the long term interests of consumers who, as

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<sup>114</sup> See Appendix 1: What is an embedded network?

highlighted in this research, may be disadvantaged by the choice of an embedded network. This raises the question as to whether it is appropriate to consider regulation or other incentives to overcome such a split incentive if it exists.

## 5. CONCLUSION

The current gaps in consumer protections for Victorian customers of re-sellers are not in dispute. They have been acknowledged by the ESC in 2006. Delays in the implementation of their recommendations to close this gap appear to have resulted from the anticipated timing of Victoria's transition to the Retail Law. This has seen re-sellers' customers without critical protections for a number of years. The AER's Guidelines on Exempt Selling could go a long way to addressing these gaps, but they do not go far enough, and fall short in some critical areas. A Victorian jurisdictional response is therefore necessary to provide, for example, commensurate dispute resolution through EWOV.

CUAC's research has revealed additional issues. Our survey highlighted the barriers that prevent re-sellers' customers from choosing a retailer, as well as just how much this ability to choose means to consumers who have absorbed messages about the availability of choice in the competitive retail energy market. Little is known about the meter installations of re-sellers' customers and whether they will have commensurate capacity to access information about their energy consumption to provide them with options for energy efficiency and bill reduction. In addition, the research has uncovered further issues that need to be addressed including the need for increased transparency in contractual arrangements and disclosure between developers, property vendors, real estate agents, purchasers and renters. Finally, the growth in developers choosing embedded networks raises questions about whether the economic framework that underpins grid connection charges is sufficient to prevent developers taking economic decisions that are not in the best long term interests of consumers. What is required now is urgent action to ensure that re-sellers' customers are brought in from the cold and offered immediate protections.

## **APPENDIX 1. WHAT IS AN EMBEDDED NETWORK?**

While most residential consumers buy their electricity directly from a licensed energy retailer, some instead live in sites with an embedded electricity network. An embedded electricity network is a privately owned network in which a resident is supplied and sold electricity through the infrastructure of a person other than one of the five licensed electricity distributors in Victoria. An embedded electricity network usually involves the intermediary supply or re-selling of electricity, bulk-purchased from a licensed energy retailer, to residents within the site. A distributor will supply electricity up to the entry point (gate) of a property, and infrastructure installed by another person (embedded network owner or operator), will convey the electricity to residents' individual premises.

## APPENDIX 2. VICTORIAN FRAMEWORK FOR RE-SELLERS

### Exemptions from licensing requirements

Section 16 of the *Electricity Industry Act 2000* (EIA Act) requires a business which sells electricity in Victoria to hold a licence (licensed retailer) or to be exempted from this requirement (exempt seller). The Essential Services Commission of Victoria (ESC) licenses businesses having regard to its legislative objectives under the *Essential Services Commission Act 2001* and the licensing requirements set out in the EIA Act.

Licences provide the means by which the ESC imposes regulatory obligations on licensed businesses. In Victoria, a number of important regulatory obligations take the form of conditions incorporated into licences. This includes obligations on the licence holder to: contract with the State for the provision of community services at concessional rates; observe industry codes, standards, rules and guidelines as may be specified by the ESC; develop, issue and comply with customer-related standards and practices, and join the Energy and Water Ombudsman (Victoria) (EWOV) scheme.<sup>115</sup> The ESC's broader regulatory framework derives its authority as a licence condition. Non-compliance with ESC orders, codes and guidelines may result in ESC enforcement action, with the ultimate sanction being licence revocation.

Section 17 of the EIA empowers the Governor in Council to exempt a person from the requirement to hold a licence in respect of the activity specified in the Order-in-Council. A 2002 Order-in-Council<sup>116</sup> as amended,<sup>117</sup> (2002 OIC) provides an automatic exemption to anyone undertaking the re-selling of electricity in an embedded network, provided that they fulfil the conditions listed in the OIC. Persons undertaking the re-selling of electricity self-assess themselves against the 2002 OIC conditions, and while they continue to fulfil the conditions, they remain exempt from a licence requirement.

### Regulatory powers

There are no powers of regulation or registration of embedded networks in the EIA or the 2002 OIC. Hence, as the ESC has noted, 'embedded networks can be established and operated legally without their operators having to approach the Commission at any stage.'<sup>118</sup> The ESC does not have any monitoring or compliance role in relation to embedded networks and the electricity re-sold within these networks. No regulatory body is responsible for overseeing whether the re-seller is

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<sup>115</sup> Sections 21, 47, 28, Electricity Industry Act 2000.

<sup>116</sup> Victorian Government Gazette, No. S 73 Wednesday 1 May 2002.

<sup>117</sup> The 2002 OIC has been amended by two subsequent Orders-in-Council. The first is an Order-in-Council made under section 17 of the Electricity Industry Act 2000 (EIA) on 25 November 2008 and published in the Victorian Government Gazette (S315) on that day. The second is an Order-in-Council made under section 17 of the EIA on 26 October 2010 and published in the Victorian Government Gazette (G43) on 28 October 2010.

<sup>118</sup> Essential Services Commission, Statement of Intent to Cease Issuing Certificates of Opinion on Exempt Electrical Activities Final Decision (May 2011), at 12.

compliant with the OIC requirements initially agreed to, nor whether they continue to meet these requirements.

Despite this lack of regulatory powers, until mid-2011, the ESC issued Certificates of Opinion<sup>119</sup> as to whether an activity such as the re-selling of electricity fell within an exempted class of activity under the 2002 OIC. A res-seller whose interests were affected could seek a Certificate of Opinion from the ESC. Under the OIC, Certificates of Opinion were not a form of regulation, nor could they be relied upon as an endorsement of the activity.<sup>120</sup> Further, certification did not constitute registration (given that there was no obligation to approach the ESC), and the information gathered from applications for certification was summary and not comprehensive. In view of this and following a public consultation process, the ESC ceased issuing Certificates of Opinion on 30 June 2011.<sup>121</sup>

Section 17 of the EIA allows the making of an exemption order but does not provide for enforcement. Hence, enforcement is difficult. While section 17(4) allows functions and powers to be conferred on the ESC, the 2002 OIC did not confer any enforcement powers on them.<sup>122</sup> In 2002, the ESC noted that the absence of any monitoring and enforcement arrangement is a major weakness of the current exemption framework.<sup>123</sup>

## Conditions

The 2002 OIC and its Schedule outline the conditions for re-sellers. These conditions are different and less comprehensive than licensed retailers' obligations. Re-sellers are required to meet the following conditions:

- Observe all applicable provisions of the Retail Code
- Observe all applicable provisions of any Pricing Rule in the sale of electricity to a short term resident, long term resident or small business customer
- Inform large business customers and small business customers in writing of their right to purchase from a licensed retailer of their choice, when it commences selling electricity to them
- Must not, by reason only that the exempt person has changed its licensed retailer, cease to sell electricity to any resident or business customer unless the customer has elected to purchase electricity from a licensed retailer
- Make reasonable endeavours to resolve disputes with 'residents ' or small business customers and advise them of their right to have a dispute heard by the Victorian Civil and Administrative Tribunal (VCAT)

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<sup>119</sup> Victorian Government Gazette, No. S 73 Wednesday 1 May 2002, Section 5.

<sup>120</sup> Essential Services Commission, Statement of Intent to Cease Issuing Certificates of Opinion on Exempt Electrical Activities Final Decision (May 2011), at 11.

<sup>121</sup> Essential Services Commission, Statement of Intent to Cease Issuing Certificates of Opinion on Exempt Electrical Activities Final Decision (May 2011).

<sup>122</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at 47.

<sup>123</sup> Essential Services Commission, Small Scale Licensing Framework Final Recommendations (March 2007), at X.



The reference to 'applicable provisions of the Retail Code' is vague and leaves room for subjective interpretation by the exempt person. In the case of retailers, they are obliged to meet all the obligations in their licence including the Energy Retail Code.<sup>124</sup>

Pricing is particularly important where a customer does not have access to retailer choice. Exempt sellers are required to observe the 'Pricing Rule',<sup>125</sup> which states that the re-seller cannot charge 'residents' and 'small business customers'<sup>126</sup> more than standing offer price<sup>127</sup> for electricity and related services. However, the 'Pricing Rule' has limited application because the reference to 'residents'<sup>128</sup> suggests that property owners who purchase their electricity from an exempt seller are excluded from this protection. Moreover, the Pricing Rule does not guarantee that the price charged by an exempt seller will be a competitive one – only that it will not be higher than the standing offer price.

Further, the obligation to inform customers about their right to purchase electricity from a retailer is limited to business customers only. Exempt customers do not have access to EWOV. The OIC identifies the Victorian Civil and Administrative Tribunal (VCAT) as the appropriate body for resolving disputes. In contrast, customers of retailers can approach EWOV if a dispute with their retailer arises.

## **Individual exemptions**

In Victoria, a person may also apply for a specific or individual exemption, which is issued by the Governor in Council.<sup>129</sup> The Department of Primary Industries (DPI) has a role in recommending formal exemptions to the licensing regime through preparing orders to be made by the Governor in Council under the EIA. Individual exemptions have tailored requirements. CUAC understands that the individual exemptions that have been issued to date deal with commercial sites.

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<sup>124</sup> The current version is the Energy Retail Code (Version 10, May 2012)

<sup>125</sup> Victorian Government Gazette, No. S 73 Wednesday 1 May 2002, Section 7.

<sup>126</sup> Victorian Government Gazette, No. S 73 Wednesday 1 May 2002, Section 4: 'Small business customer' means a person to whom peak demand of less than 500Va, and consumption of less than 160MhW per annum is distributed, supplied or sold for commercial or industrial purposes.

<sup>127</sup> Section 35, Electricity Industry Act 2000.

<sup>128</sup> 'Long term resident' has the same meaning as 'resident' in the *Residential Tenancies Act 1997* and the *Retirement Villages Act 1986*, but does not include a person who was a resident of a retirement village but who has left the retirement village or who had died, or their legal representative. 'Short term resident' means any person, other than a person who is a long term resident, who resides in a premise used for residential purposes only (such as a retirement village, a rooming house or a site in a caravan park) whether or not on a temporary or intermittent basis.

<sup>129</sup> Section 17, Electricity Industry Act 2000.

## APPENDIX 3. ESC RECOMMENDATIONS FOR CHANGES TO THE 2002 ORDER IN COUNCIL

The ESC's 2007 *Small Scale Licensing Framework Final Recommendations* were as follows:

- Extend the requirement to inform business customers of their right to retail choice to residential customers.
- In the event that section 35 of the Electricity Industry Act 2000 (EIA) ceases to have effect, provide the Commission (or responsible agency) with the power to reference or establish an alternative reference tariff to which the Pricing Rule will apply.
- Include a requirement to be members of the Energy and Water Ombudsman (Victoria) (EWOV) scheme and inform customers of their right to access the services of EWOV's dispute resolution mechanism.
- Remove the requirement to advise the customer of his or her right to apply to have the matter heard by the Victorian Civil and Administrative Tribunal (VCAT).
- Include a requirement to provide customers with information on concession entitlement rebates as provided by the relevant authority.
- Include a requirement to observe all applicable provisions of the Electricity Customer Metering Code.
- Include a requirement to observe the ESC's Wrongful Disconnection Procedure.
- Include a requirement that late payment fees must not be imposed on customers consuming less than 20 MWh per year.
- Include a requirement for the operator to provide each of its customers with current details on who to contact if the customer has any questions or concerns in relation to their network.
- Observe any code or guideline that the ESC may issue in relation to embedded networks.<sup>130</sup>

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<sup>130</sup> Essential Services Commission, *Small Scale Licensing Framework Final Recommendations* (March 2007), at IX.

## APPENDIX 4. AER EXEMPTIONS FRAMEWORK

Part 5, Divisions 6 and 7 of the *National Energy Retail Law* (NERL) and Part 9 of the *National Energy Retail Rules* (NERR), outline the retail exemptions framework applying to jurisdictions which have implemented the NERL. Section 88 of the NERL prohibits a person from engaging in the sale of energy unless the person has obtained a retailer authorisation (authorised retailer) or is exempted from the requirement to hold an authorisation (exempt seller). The AER is responsible for regulating exempt sellers and placing conditions on exemptions. Section 110 of the NERL empowers the AER to issue exemptions either on an individual basis, or by declaring a class of persons to whom a deemed or registrable exemption applies.

### Types of exemption

A 'deemed exemption' applies automatically, meaning that no application to the AER is required. Neither is there a need for a person covered by a deemed exemption to register their activities with the AER.<sup>131</sup>

A 'registrable exemption' is only effective for a particular individual for a particular site from the date the eligible person is registered for that site on the public register of authorised retailers and exempt sellers by the AER. No application to the AER is required. However, the person needs to provide certain information for the registration process.<sup>132</sup> An individual exemption will be required for some classes of re-selling activities commencing on or after 1 January 2012, instead of a registrable exemption.<sup>133</sup>

Where a person does not meet the criteria for a deemed or registrable exemption, they may apply for an 'individual exemption' for that site. Individual exemptions are subject to public registration.<sup>134</sup>

### Policy principles for retail exemptions

In performing or exercising their exempt selling regulatory function or power, the AER must take into account the following policy principles:

- Regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to authorised retailers
- Exempt customers should, as far as practicable, be afforded retailer choice in the same way as comparable customers of authorised retailers in the same jurisdiction have that right
- Exempt customers should, as far as practicable, not be denied customer protections afforded to customers of authorised retailers under the NERL and NERR<sup>135</sup>

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<sup>131</sup> Rule 150, National Energy Retail Rules.

<sup>132</sup> Rule 151, National Energy Retail Rules.

<sup>133</sup> See Chapter 5, class R2, R3.

<sup>134</sup> Rule 149, National Energy Retail Rules.

<sup>135</sup> Section 114, National Energy Retail Law.

There are also exempt seller related facts and customer related facts which the AER may take into account.<sup>136</sup> The exempt seller related factors are:

- a. whether selling energy is or will be a core part of the exempt seller's business or incidental to that business;
- b. whether the exempt seller's circumstances demonstrate specific characteristics that may warrant exemption;
- c. whether the exempt seller is intending to profit from the arrangement;
- d. whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets;
- e. 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;
- f. the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller;
- g. any other seller related matter the AER considers relevant.<sup>137</sup>

The customer related factors are:

- a. 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;
- b. 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;
- c. any other customer related matter the AER considers relevant.<sup>138</sup>

## **Exempt selling guideline**

The AER's Exempt Selling Guideline<sup>139</sup> helps persons who wish to engage in exempt selling to assess their eligibility for the different classes of deemed and registrable exemptions, and to understand the circumstances in which they may need to seek an individual exemption or a retailer authorisation. The guideline includes the categories of deemed and registrable exemptions, and the associated conditions that apply to the exemption. **Appendix 5** lists the categories of deemed and registrable exemptions.

Conditions apply to classes of deemed and registrable exemptions for residential re-selling, and to individual exemptions.<sup>140</sup> However, these conditions are not equivalent to the consumer protections extended to customers of authorised retailers. In the case of individual exemptions, the conditions will be assessed on a case-by-case basis and tailored to the scope and nature of the activities

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<sup>136</sup> Sections 114, 115 & 116, National Energy Retail Law.

<sup>137</sup> Section 115, National Energy Retail Law.

<sup>138</sup> Section 116, National Energy Retail Law.

<sup>139</sup> Australian Energy Regulator, Exempt Selling Guideline (December 2011). Available at [www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf)

<sup>140</sup> Section 112, National Energy Retail Law; Rule 152, National Energy Retail Rules.

being undertaken. The conditions attached to an individual exemption are more likely to reflect those that apply to an authorised retailer.

An exempt seller must comply with all the conditions imposed on them under the relevant exemption.<sup>141</sup> Civil penalties apply if there is a breach or an attempted breach. The AER may deal with a breach of a condition as if it were a breach of the NERR.<sup>142</sup> Where there has been material failure by the exempt seller to meet the conditions of the exemption, the AER may revoke an exemption.<sup>143</sup>

## **Exemption classes and conditions**

There are various classes of both deemed and registrable exemptions categories, each with different conditions. **Appendix 6** summarises the conditions that apply to persons re-selling electricity to residential customers under a deemed or registrable exemption.<sup>144</sup>

### ***Conditions relating to assistance to customers experiencing financial difficulty***

The conditions relate to matters including assistance to residential customers who self-identify themselves as experiencing financial difficulty. Where a customer self-identifies as experiencing financial difficulty, an exempt seller is required to:

- Offer flexible payment terms having regard to the customer's capacity to pay, any arrears outstanding, and the customer's expected electricity usage needs over the following 12 months;<sup>145</sup>
- Provide the customer with energy efficiency advice by directing them to the Australian government energy efficiency website or other energy efficiency resources;
- Ensure that the customer is aware of the availability of relevant government or non-government energy rebates, concession and relief schemes;
- Not charge late payment fees;
- Not charge a security deposit.<sup>146</sup>

Exempt sellers are not obliged to identify residential customers who are experiencing payment difficulties. Customers have to self-identify themselves as experiencing financial difficulty before an exempt seller is obliged to extend the forms of assistance referred to above. The AER has stated that self-identification will reduce the regulatory burden on exempt sellers who operate on a smaller scale than authorised retailers.

### ***Other conditions***

Other conditions that exempt sellers must meet relate to information provision, payment and billing arrangements, pricing cap, payment difficulties, disconnection and reconnection process,

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<sup>141</sup> Section 112, National Energy Retail Law.

<sup>142</sup> Section 112(3), National Energy Retail Law. See also AER Exempt Selling Guideline, at 45. Available at [www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/20110914%20Exempt%20selling%20guideline%20final.pdf)

<sup>143</sup> Section 111, National Energy Retail Law.

<sup>144</sup> Several classes of deemed and registrable exemptions will apply to residential customers. These are classes D2, D4, D6 (applies in Queensland only), R2, R3 and R4. See Chapter 5.

<sup>145</sup> Condition 3 (see Chapter 6).

<sup>146</sup> Condition 8 (see Chapter 6).

concessions and rebates, dispute resolution and life support, among other matters.<sup>147</sup> Customers, however, do not have a right to access the services of EWOV.

## **Network exemptions**

In addition to a retail exemption to re-sell electricity, re-sellers who operate or own the embedded network, are also required to obtain an exemption from the AER for the transmission and distribution network activity (a 'network exemption'). Under the *National Electricity Law* (NEL) and the *National Electricity Rules* (NER), a person that engages in an electricity distribution activity must either be registered with the Australian Energy Market Operator (AEMO) as an electricity distributor, or gain an exemption from this requirement from the AER. With an exemption, a network owner or operator may be relieved from the requirement to comply with the technical details set out in Chapter 5 of the NER, but not the safety-related requirements. Most small embedded network owners and operators will seek to avoid the onerous and costly requirements to register with AEMO as a distributor.

The AER has published a guideline on network exemptions,<sup>148</sup> setting out, for eligible classes of distribution activity, the requirements that must be met for an exemption to apply. The Electricity Network Service Provider Registration Exemption Guideline (Network Exemption Guideline) is closely aligned with the approach taken in the AER Retail Exemptions Guideline with regard to classification. Because retail customer protections are the focus of network exemptions are not discussed in detail.

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<sup>147</sup> See Chapter 2.

<sup>148</sup> Australian Energy Regulator, Electricity Network Service Provider Registration Exemption Guideline (16 December 2011). Available at: [www.aer.gov.au/sites/www.aer.gov.au/files/Electricity%20NSP%20registration%20exemption%20guideline%20Dec%2011.pdf](http://www.aer.gov.au/sites/www.aer.gov.au/files/Electricity%20NSP%20registration%20exemption%20guideline%20Dec%2011.pdf)

## APPENDIX 5. AER DEEMED AND REGISTRABLE EXEMPTIONS

Deemed classes of exemption	
D1	Bodies corporate recouping from their members, through body corporate fees, the cost of (metered or unmetered) energy used in common areas within the land affected by that body corporate.
D2* <sup>149</sup>	Persons on-selling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is governed by residential tenancy legislation and there are less than 20 residential premises at the site.
D3	Persons on-selling metered energy to short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate.
D4*	Persons on-selling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is not governed by residential tenancy legislation.
D5	Persons on-selling unmetered gas for use in premises within the limits of a site that they own, occupy or operate, where gas is used for limited purposes.
D6*	Persons on-selling unmetered electricity in Queensland to small customers for use within the limits of a site that they own, occupy or operate. An individual exemption for those who commence onselling on or after 1 January 2015.
D7	Persons recouping the cost of energy used in common areas of a site that they own, occupy or operate, from tenants in commercial or retail premises, where the relationship between the person and the tenant is governed by commercial or retail tenancy legislation.
D8	Persons on-selling energy to a related company within the limits of a site that they own, occupy or operate.
Registrable exemption classes	
R1	Persons on-selling metered energy to small customers within the limits of a site that they own, occupy or operate, where the relationship between the person and the small customer is governed by commercial or retail tenancy legislation. An individual exemption is required for those who commence onselling on or after 1 January 2015.
R2*	Bodies corporate on-selling metered energy to residents for use in premises within the limits of a site affected by that body corporate. An individual exemption is required for those who commence onselling on or after 1 January 2015.
R3*	Persons onselling metered energy to residents for use within the limits of a retirement village that they own, occupy or operate, where the relationship between the person and the resident is governed by retirement village legislation. An individual exemption is required for those who commence onselling on or after 1 January 2015.
R4*	Persons on-selling metered energy to residents for use in premises within the limits of a caravan park, residential park or manufactured home estate site that they own, occupy or operate, where the premises are the principal place of residence for the resident. An individual exemption is required only where an exempt person believes that the conditions of the R4 exemption are inappropriate for their situation.
R5	Persons on-selling metered energy to large customers.

<sup>149</sup> The asterisks \* refer to those classes of deemed and registrable exemptions that will apply to residential customers obtaining their electricity supply from an on-seller (re-seller).

## APPENDIX 6. CONDITIONS APPLICABLE TO RESIDENTIAL RE-SELLING OF ELECTRICITY UNDER THE AER'S DEEMED OR REGISTRABLE EXEMPTIONS<sup>150</sup>

	Condition	Description	Explanation
1	Obligation to supply	<p>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.</p> <p>2. An exempt person cannot refuse to sell energy to a customer on the basis that the customer owes the exempt person outstanding amounts from a previous account. The exempt person can include in a new account any outstanding amounts owed on a previous account (except where the unpaid amounts are for other premises for which the customer has an ongoing contract with the exempt person).</p>	This ensures that where embedded network customers do not have access to choice of retailer, or where the cost of accessing choice of retailer is costly, customers can obtain electricity supply from re-seller.
2	Information provision	<p>The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency (and at any time on request) of the following:</p> <ul style="list-style-type: none"> <li>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</li> <li>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 they were purchasing from an authorised retailer</li> <li>c. the exempt customer's rights in relation to dispute resolution including: <ul style="list-style-type: none"> <li>i. the exempt person's procedures for handling disputes and complaints, and</li> <li>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</li> </ul> </li> <li>d. the conditions applicable to the exemption that the exempt person is operating under</li> <li>e. the availability of relevant government or non-government energy rebates, concessions and relief schemes</li> <li>f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well</li> </ul>	Where retailer choice is available, customers can use this information to decide whether they will purchase energy from the re-seller, or from an authorised retailer.

<sup>150</sup> The numbering of the conditions reflects the numbering of the class D2 exemption category in the AER Exempt Selling Guideline (December 2012).



	Condition	Description	Explanation
		<p>as the process the exempt customer should follow to seek these forms of assistance</p> <p>g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy</p> <p>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)</p> <p>i. contact numbers in the event of a gas or electricity fault or emergency.</p>	
3	Billing & payment arrangements	<p>1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.</p> <p>2. An exempt person must offer flexible payment options (in relation to the sale of energy) to an exempt customer who has identified themselves as being in financial difficulty. Flexible payment options may include arrangements for payment by periodic instalments (bill smoothing) having regard to:</p> <ul style="list-style-type: none"> <li>a. the customer's capacity to pay,</li> <li>b. any arrears owing by the customer, and</li> <li>c. the customer's expected energy consumption needs over the following 12 month period.</li> </ul> <p>3. The requirements in paragraph 2 do not apply where the exempt customer has:</p> <ul style="list-style-type: none"> <li>a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or</li> <li>b. been convicted of an offence involving illegal use of energy in the previous two years.</li> </ul> <p>4. An exempt person must include the following particulars in a bill for an exempt customer:</p> <ul style="list-style-type: none"> <li>a. Name of the exempt customer.</li> <li>b. Address of the exempt customer's premises.</li> <li>c. Date that the account was issued.</li> <li>d. Meter identifier.</li> <li>e. Pay-by date for the bill.</li> <li>f. Date of the current meter reading or estimate, as applicable.</li> <li>g. Dates to which the meter reading or estimate applies (billing period).</li> <li>h. Days in the billing period.</li> <li>i. Current meter reading or estimate in kilowatt hours. Where the amount is an estimate, this must be clearly stated on the bill.</li> <li>j. Previous meter reading or estimate in kilowatt hours, as</li> </ul>	<p>The requirement to bill customers at least every three months is similar to the obligations placed on authorised retailers.</p> <p>Re-sellers have to offer flexible payment options to customers who identify themselves as experiencing financial difficulty (self-identify). There is no positive obligation on re-sellers to identify customers experiencing payment difficulties.</p> <p>The content that must be included in a bill replicates some of the requirements that apply to authorised retailers.</p>

	Condition	Description	Explanation
		<p>applicable. Where the amount is an estimate, this must be clearly stated on the bill.</p> <p>k. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours.</p> <p>l. Tariffs, fees and charges.</p> <p>m. Basis on which tariffs, fees and charges are calculated.</p> <p>n. 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.</p> <p>o. Available payment methods.</p> <p>p. Telephone number for account inquiries and complaints.</p>	
4	Estimation as basis for bills	<p>1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.</p> <p>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.</p> <p>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.</p> <p>4. Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:</p> <ul style="list-style-type: none"> <li>a. historical metering data for the exempt customer reasonably available to the exempt person, or</li> <li>b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.</li> </ul> <p>5. If a customer's bill is based on an estimate, this must be clearly stated on the exempt customer's bill.</p>	<p>This condition addresses situations where bills based on actual meter reads are not possible, for example due to meter failure.</p> <p>Point 2 ensures that the customer is only responsible for consumption at the premises during their tenancy/residency.</p> <p>Point 4 is equivalent to the requirement that applies to authorised retailers.</p>
5	Pay-by date	<p>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.</p>	<p>13 business days reflects the requirements that apply to authorised retailers.</p>
6	Receipts	<p>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:</p> <ul style="list-style-type: none"> <li>a. direct debit, or</li> <li>b. credit card over the phone and the customer is provided with a receipt number.</li> </ul> <p>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</p>	

	Condition	Description	Explanation
		receipt.	
7	Pricing	<p>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 of energy directly to the premises of the exempt customer.</p> <p>2. An exempt person must provide notice to the exempt customer of any change in the exempt customer's tariff as soon as practicable, and no later than the exempt customer's next bill.</p> <p>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.</p> <p>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.</p> <p>5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.</p> <p>6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:</p> <ul style="list-style-type: none"> <li>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.</li> <li>b. The exempt person cannot charge interest on the undercharged amount.</li> <li>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).</li> </ul> <p>7. 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:</p> <ul style="list-style-type: none"> <li>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.</li> <li>b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.</li> <li>c. No interest is payable on the overcharged amount.</li> <li>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</li> </ul>	<p>Residential customers cannot be charged more than the standing offer price of the energy retailer in the locality where the customer resides.</p> <p>Point 2 is similar to the requirements that apply to authorised retailer.</p> <p>Points 6 and 7 are similar principles that apply to an authorised retailer. However, the overcharge threshold for authorised retailers is set at \$50.</p>

	Condition	Description	Explanation
		12 months before the date on which the error was discovered.	
8	Payment difficulties & disconnection or cessation of supply	<p>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:</p> <ul style="list-style-type: none"> <li>a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and</li> <li>b. ensure that the exempt customer is aware of relevant government or nongovernment energy rebates, concessions and relief schemes, and</li> <li>c. not charge the exempt customer a late payment fee, and</li> <li>d. not charge the exempt customer a security deposit.</li> </ul> <p>2. Subject to Condition 9, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:</p> <ul style="list-style-type: none"> <li>a. the exempt customer has requested disconnection, or</li> <li>b. continuity of supply to the premises would be unsafe, or</li> <li>c. 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: <ul style="list-style-type: none"> <li>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, 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</li> <li>ii. following non-payment by the date specified in the reminder notice, and failure to comply with 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</li> <li>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</li> <li>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.</li> </ul> </li> </ul> <p>3. Where an exempt customer is disconnected in accordance with</p>	<p>Point 1 requires the customers to self-identify as experiencing payment difficulty. No positive obligation has been placed on re-sellers to seek out customers in financial difficulty.</p> <p>The disconnection process is drawn from the requirements that are imposed on an authorised retailer.</p>

	Condition	Description	Explanation
		<p>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.</p> <p>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.</p>	
9	When disconnection or cessation of supply is prohibited	<p>1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:</p> <ul style="list-style-type: none"> <li>a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or</li> <li>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</li> <li>c. the exempt customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or</li> <li>d. the exempt customer is adhering to a payment plan agreed to by the exempt person, or</li> <li>e. the disconnection or cessation of supply would occur on: <ul style="list-style-type: none"> <li>i. a business day before 8am or after 3pm, or</li> <li>ii. a Friday or the day before a public holiday, or</li> <li>iii. a weekend or a public holiday, or</li> <li>iv. the days between 20 December and 31 December (both inclusive) in any year.</li> </ul> </li> </ul> <p>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.</p> <p>3. This condition does not apply where the exempt customer has requested disconnection.</p> <p>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.</p> <p>5. This condition does not apply where the energy supply agreement between the exempt person and exempt customer has been terminated.</p>	Similar to the obligations of an authorised retailer.

	Condition	Description	Explanation
10	Reconnection of supply	<p>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:</p> <ul style="list-style-type: none"> <li>a. if relevant, rectified the matter that led to the disconnection, and</li> <li>b. made a request for reconnection, and</li> <li>c. paid any charge for reconnection,</li> </ul> <p>the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.</p>	Replicates the obligation on an authorised retailer.
11	Concessions and rebates	<p>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.</p> <p>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 exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.</p>	
12	Choice of retailer	<p>1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.</p>	
13	Contact details	<p>1. An exempt person must provide a means of contact for account inquiries and complaints which 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.</p>	
14	Dispute resolution	<p>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, the exempt person must:</p> <ul style="list-style-type: none"> <li>a. make reasonable endeavours to resolve the dispute, and</li> <li>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.</li> </ul>	This condition does not mean that customers of re-sellers have a right to access the energy ombudsman. Re-sellers need to inform customers about any relevant external complaint hearing bodies.
15	Life support customers	<p>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:</p> <ul style="list-style-type: none"> <li>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</li> </ul>	These requirements are aligned with the obligations imposed on authorised retailers in the NERL and NERR.

	Condition	Description	Explanation
		<p>the premises requires life support equipment, and</p> <p>b. advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment, and</p> <p>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.</p> <p>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.</p>	
16	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 on-selling energy.	
17	Termination of energy supply agreement	<p>1. An energy supply agreement between the exempt person and exempt customer terminates:</p> <p>a. on a date agreed by the exempt person and exempt customer, or</p> <p>b. when the exempt customer gives the exempt person a termination notice, five business days from the date of the notice (or a different time agreed by the exempt person and exempt customer), or</p> <p>c. at the conclusion of the exempt customer's lease for the premises to which the energy is supplied, or</p> <p>d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or</p> <p>e. when a different exempt customer starts receiving customer retail services for the premises, or</p> <p>f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are de-energised, where the conditions for re-energisation have not been met.</p> <p>2. Termination of an energy supply agreement does not affect any rights or obligations that have already accrued under the agreement.</p>	
18	Maintaining records	<p>1. An exempt person must maintain records of the following for each of its exempt customers:</p> <p>a. The name of the exempt customer.</p> <p>b. The address of the exempt customer's premises.</p> <p>c. The identifier of the meter for the exempt customer's premises.</p> <p>d. The date that the customer account was created.</p> <p>e. Copies of any bills issued for the previous 12 months.</p> <p>f. The date of the most recent meter read for the customer.</p> <p>g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be</p>	

	Condition	Description	Explanation
		obtained.	



## APPENDIX 7. COMPARISON OF AER CONDITIONS AND 2007 ESC RECOMMENDATIONS

S/N	ESC recommendations following 2007 small scale licensing review	AER Conditions for residential re-selling of electricity (deemed & registrable exemptions)
1	Extend the requirements to inform business customers of their right to retail choice to residential customers.	<p><i>Condition 2</i></p> <p>The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency (and at any time on request) 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.</p> <p><i>Condition 12</i></p> <p>1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.</p>
2	In the event that section 35 of the Electricity Industry Act 2000 (EIA) ceases to have effect, provide the Commission (or responsible agency) with the power to reference or establish an alternative reference tariff to which the Pricing Rule will apply.	<p><i>Condition 7</i></p> <p>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 of energy directly to the premises of the exempt customer.</p> <p>2. An exempt person must provide notice to the exempt customer of any change in the exempt customer's tariff as soon as practicable, and no later than the exempt customer's next bill.</p> <p>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.</p>
3	Include a requirement to be members of the Energy and Water Ombudsman (Victoria) (EWOV) scheme and inform customers of their right to access the services of EWOV's dispute resolution mechanism.	<p><i>Condition 2</i></p> <p>The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency (and at any time on request) of the following:</p> <p>(c) the exempt customer's rights in relation to dispute resolution including:</p> <p>i. the exempt person's procedures for handling</p>

		<p>disputes and complaints, and</p> <p>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.</p> <p><i>Condition 14</i></p> <p>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, the exempt person must:</p> <p>a. make reasonable endeavours to resolve the dispute, and</p> <p>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.</p>
4	Remove the requirement to advise the customer of his or her right to apply to have the matter heard by the Victorian Civil and Administrative Tribunal (VCAT).	See above.
5	Include a requirement to provide customers with information on concession entitlement rebates as provided by the relevant authority.	<p><i>Condition 2</i></p> <p>The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency (and at any time on request) of the following...(e) the availability of relevant government or non-government energy rebates, concessions and relief schemes.</p> <p><i>Condition 11</i></p> <p>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.</p> <p>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 exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.</p>
6	Include a requirement to observe all applicable provisions of the Electricity Customer Metering Code.	See AER Network Service Provider Registration Exemption Guideline (16 December 2011).
7	Include a requirement to observe the ESC's Wrongful Disconnection Procedure.	Not a condition.

8	Include a requirement that late payment fees must not be imposed on customers consuming less than 20 MWh per year.	<p><i>Condition 7</i></p> <p>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.</p> <p><i>Condition 8</i></p> <p>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: ...</p> <p>c. not charge the exempt customer a late payment fee;</p>
9	Include a requirement for the operator to provide each of its customers with current details on who to contact if the customer has any questions or concerns in relation to their network.	<p><i>Condition 13</i></p> <p>1. An exempt person must provide a means of contact for account inquiries and complaints which 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.</p>
10	Observe any code or guideline that the ESC may issue in relation to embedded network.	<p>The AER Exempt Selling Guideline (December 2011) outlines the framework for retail exemptions which are required for the sale of energy without a retailer authorisation. The AER retail exemption determinations (which are attached to the guideline) sets out the categories (classes) of deemed and registrable exemptions and the associated conditions. These determinations are regulatory instruments with which relevant exemption holders must comply.</p>

## APPENDIX 8. CONCESSIONS AND GRANTS FOR ELIGIBLE RE-SELLER CUSTOMERS

Applicable concessions & grants	Description	Eligibility
<b>Non-Mains Utility Relief Grants (NURGS)</b>	NURGS provides assistance to households experiencing a sudden or temporary financial crisis and who are therefore unable to pay their current bill, and are at risk of restriction or disconnection of supply. If the application is successful, the grant will generally be capped at 6 months worth of usage up to a maximum of \$500. Eligible exempt customers should contact the Concessions Information Line on 1800 658 521 to obtain an application form. <sup>151</sup>	Eligible concession cards: <ul style="list-style-type: none"> <li>• Pensioner Concession Card – Issued by Centrelink or Department of Veterans' Affairs</li> <li>• Centrelink Health Care Card</li> <li>• Department of Veterans' Affairs Gold Card (cards marked 'Dependent' are not eligible)</li> </ul>
<b>Non-Mains Energy Concession</b>	<p>Between 1 January 2012 and 31 December 2012, the applicant must have paid for:</p> <ul style="list-style-type: none"> <li>• Non-mains electricity (as part of an embedded network)</li> <li>• Fuel to run a generator (for households not connected to any electricity network)</li> <li>• Liquefied Petroleum Gas (LPG)</li> <li>• Heating oil</li> <li>• Firewood.</li> </ul> <p>The rebate is for the applicant's principle place of residence. The application form should include all invoices or receipts from 1 January 2012 to 31 December 2012.<sup>152</sup></p> <p>The amount of the rebate depends on the annual amount of non-mains energy purchased and the rebate amount is increased annually in line with inflation. Rebate amounts for 2012 are:</p> <ul style="list-style-type: none"> <li>• \$43 for eligible cardholders who spend from \$100 to \$242.99;</li> <li>• \$128 rebate for eligible cardholders who spend from \$243 to \$729.99;</li> <li>• \$213 rebate for eligible cardholders who spend from \$730 to \$1,214.99;</li> <li>• \$304 rebate for eligible cardholders who spend \$1,215 or more.</li> </ul>	Eligible concession cards: <ul style="list-style-type: none"> <li>• Pensioner Concession Card – Issued by Centrelink or Department of Veterans' Affairs</li> <li>• Centrelink Health Care Card</li> <li>• Department of Veterans' Affairs Gold Card (cards marked 'Dependent' are not eligible)</li> </ul>

<sup>151</sup> See Department of Human Service's website, [www.dhs.vic.gov.au/for-individuals/financial-support/concessions/hardship/utility-relief-and-non-mains-utility-grant-scheme](http://www.dhs.vic.gov.au/for-individuals/financial-support/concessions/hardship/utility-relief-and-non-mains-utility-grant-scheme); Department of Human Services, Victorian Concessions: A Guide to Discounts and Services for Applicable Households in Victoria, at 21 [www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0005/669227/concessions\\_vic\\_concessions\\_2012-2013\\_0712.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0005/669227/concessions_vic_concessions_2012-2013_0712.pdf)

<sup>152</sup> See Department of Human Service's website, [www.dhs.vic.gov.au/for-individuals/financial-support/concessions/energy/non-mains-energy](http://www.dhs.vic.gov.au/for-individuals/financial-support/concessions/energy/non-mains-energy); [www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0010/616438/concessions\\_non\\_mains\\_energy\\_concession\\_application\\_form\\_2012.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0010/616438/concessions_non_mains_energy_concession_application_form_2012.pdf)

	<p>Application forms are available from LPG suppliers, local councils, caravan park proprietors or by contacting the Concessions Information Line on 1800 658 521. The application form is also available on DHS's website.<sup>153</sup> Applications close 31 January 2013, DHS may accept late applications.</p>	
<b>Life Support Concession (Non-Mains)</b>	<p>Assists Victorian households who hold a valid concession card with electricity costs where a member of the household uses an eligible life support machine.<sup>154</sup></p> <p>CUAC understands from DHS that the annual rebate amount for the non-mains life support concession for 2013 is \$283. Eligible exempt customers should contact the Concessions Information Line on 1800 658 521 to obtain an application form and discuss their application.</p>	<p>Eligible concession cards:</p> <ul style="list-style-type: none"> <li>• Pensioner Concession Card – Issued by Centrelink or Department of Veterans' Affairs</li> <li>• Centrelink Health Care Card</li> <li>• Department of Veterans' Affairs Gold Card (cards marked 'Dependent' are not eligible)</li> </ul>
<b>Medical Cooling Concession (Non-Mains)</b>	<p>Assists Victorian households with summer electricity costs for medically required cooling. The concession is available to households where the electricity account holder has an eligible concession card and a member of the household has a medical condition that affects the body's ability to regulate temperature.</p> <p>This concession provides a discount of 17.5 per cent off electricity costs between 1 November and 30 April each year.<sup>155</sup> Eligible exempt customers should contact the Concessions Information Line on 1800 658 521 to obtain an application form and discuss their application.</p>	<p>Eligible concession cards:</p> <ul style="list-style-type: none"> <li>• Pensioner Concession Card – Issued by Centrelink or Department of Veterans' Affairs</li> <li>• Centrelink Health Care Card</li> <li>• Department of Veterans' Affairs Gold Card (cards marked 'Dependent' are not eligible)</li> </ul>

<sup>153</sup> See Department of Human Service's website, [www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0010/616438/concessions\\_non\\_mains\\_energy\\_concession\\_application\\_form\\_2012.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0010/616438/concessions_non_mains_energy_concession_application_form_2012.pdf)

<sup>154</sup> See Department of Human Service's website, [www.dhs.vic.gov.au/for-individuals/financial-support/concessions/energy/life-support-machine-electricity-concession](http://www.dhs.vic.gov.au/for-individuals/financial-support/concessions/energy/life-support-machine-electricity-concession)

<sup>155</sup> See Department of Human Service's website, [www.dhs.vic.gov.au/for-individuals/financial-support/concessions/energy/medical-cooling-concession](http://www.dhs.vic.gov.au/for-individuals/financial-support/concessions/energy/medical-cooling-concession)

## **APPENDIX 9. CUSTOMER SURVEY**

The main objective of this research was to discover, by means of a customer survey, the exempt customers' experience with regard to price, quality, service and their ability to change electricity companies. Information about the customer experience was collected through a survey of customers residing at premises with an embedded network and who currently obtain (or had obtained) their electricity supply from a reseller.

This section includes an explanation of the process used in designing, developing and administering the customer survey and analysing survey data, and a copy of the survey instrument and survey letter.

### **Design & development**

The survey had eight sections which covered:

- Your electricity company (Section A)
- Billing and payment (Section B)
- Disconnection and reconnection (Section C)
- Price and consumption (Section D)
- Changing electricity company (Section E)
- Problems and complaints (Section F)
- Overall experience (Section G)
- Customers of other electricity companies (Section H - designed only for participants who obtain their electricity supply from one of Victoria's licensed electricity retailer.

The survey had a total of 39 questions, comprising closed-ended questions, space for participants who choose a response of 'other (please specify)' to elaborate further and three open ended questions.

### **Respondent understanding & pilot testing**

The survey was carefully written in clear, easy-to-understand language to maximise respondent understanding, thereby enhancing response rates, reliability and validity.

We tested the survey with five persons prior to full launch. We reviewed the pilot test data for indications of respondent misunderstanding (such as logical inconsistencies in responses) and non-exhaustive response formats (such as a higher proportion of 'other' responses). We considered suggestions made by testers and included changes to the survey to enhance participant understanding of the survey questions. We excluded the pilot test responses from the overall sample.

## Minimising bias

To minimise bias, the survey avoided emotive or normative language and used balanced response formats (with an even number of ‘positive’ and ‘negative’ responses).

## Sampling approach

Four apartment buildings and the re-seller for each of these apartments were identified. 500 hardcopies of the customer survey were dispatched to residents at these apartments in July 2012, in two separate mail-outs. See **Table 9** below.

**Table 9: Apartments sent a customer survey (hardcopy)**

Name of building	Electricity provider	Number of units surveyed
Lochmore Apartments	WINenergy	91
The Nicholson	WINenergy	197
Eden	Active Utilities	82
Micasa 8 (student accommodation)	Energy-On	130
		<b>Total = 500</b>

## Survey administration

With each customer survey mailed out, we included a letter signed by CUAC’s Executive Officer (survey letter). The survey letter explained the research project (i.e. why we were writing to the resident) and how they could contribute to CUAC’s research by participating in the survey. The survey letter included a contact number in case the resident had queries or concerns about the project.

The deadline for residents to respond to the customer survey was 18 July 2012 for the first mail-out and 25 July 2012 for the second mail-out. Residents could respond by hardcopy. A stamped envelope addressed to CUAC was enclosed with each hardcopy of the customer survey mailed to residents. The hardcopy of the survey provided a link to an online customer survey which residents could access if they preferred to respond to the survey online. The survey is anonymous; the personal details of the respondent are not collected. However, each customer survey has a unique code for data collection purposes. We sent postcards to households who had not responded to the survey one week before each of the deadlines to encourage responses.

To reach as wide an audience as possible, we also launched a generic online customer survey for people living in premises with an embedded electricity network, other than the four apartment buildings listed in **Table 9**. We advertised the launch of the customer survey on CUAC’s website and by Tweeting. CUAC stakeholders supported the launch by publishing and/or tweeting the online survey link to their membership.<sup>156</sup>

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<sup>156</sup> Consumer Action Law Centre, Moreland Energy Foundation Limited, Tenants Union of Victoria, Victorian Council of Social Service.

## Respondent compensation

To provide an incentive for participation, we offered participants the opportunity to enter a random prize draw for one of 10 \$50 Coles Myer vouchers. The use of such incentives has been a topic of debate with regard to research ethics. However, its use today is fairly widespread and accepted practice in survey research, and one that has been demonstrated to increase participation rates. We also sought advice from the Victorian Commission for Gambling and Liquor Regulation which advised that permits are not required for prize draws of under \$500.

The terms of the prize draw were clearly communicated to potential participants in the survey letter. Participants who wanted to be placed in the prize draw were asked to tick a box in the survey. There was a transparent and appropriate draw process. Two non-CUAC persons drew the 10 winning households out of the pool of participants who indicated that they wanted to be placed in the prize draw.

## Data analysis

### Cleaning

'Data cleaning' refers to the process of 'detecting, diagnosing, and editing faulty data' in a dataset.<sup>157</sup> Out-of-range answers were apparent in the hardcopy survey. Direct entry of responses into the programmed online survey meant that out-of-range answers were not possible. However, there still remains room for respondent error in the survey.

CUAC conducted a small amount of data cleaning to identify and correct errors. Corrections were made where a respondent had selected an 'other' response but their written explanation fit within one of the response options provided, with the response re-coded within the appropriate response.<sup>158</sup> We excluded one hardcopy survey received because there were multiple mistakes and inconsistencies which demonstrated that the respondent had not read the survey or did not understand the questions asked.<sup>159</sup>

### Analysis

For each survey question, we inputted the responses into an excel sheet for data analysis.

## Respondent characteristics

The population for the survey was persons in the households identified in **Table 9** who were responsible for the electricity account. A total of 77 respondents (15.4 per cent of the number of surveys mailed out) completed the survey. Fifty-one were hardcopy responses and 26 were online responses.

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<sup>157</sup> Van de Broeck J, Argeseanu Cunningham S, Eeckels R, Herbst K (2005), Data Cleaning: Detecting, Diagnosing, and Editing Data Abnormalities. *PLoS Med* 2(10).

<sup>158</sup> Record 112 – Question 29, move bill frequency from 'Other (please specify)' to 'Bill problem or error.' Record 89 – Question 29, move connection from 'Other (please specify)' to 'Electricity supply interruption.'

<sup>159</sup> Record 85.



# Survey instrument


Below is the full text (but differently formatted) of the 'Electricity consumer rights survey' (with Energy-On as the re-seller) administered, annotated with skip logic. Each copy sent to the households in Table 10 had the specific re-seller's name (WINenergy, Active Utilities or Energy-On) mentioned in the survey.

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## Instructions

- This survey should be completed by the person in the household who is responsible for the electricity account. To complete the survey, they will need to know which company supplies your electricity.
- Please complete and post the survey by [date]
- If you prefer, you can do this survey online instead of on paper. Go to [website link] and enter the code XXXX

## Filling out this survey

- Mark boxes with an X
- Use either a pen or a pencil
- An arrow  next to an answer tells you to continue to the next question. Written instructions in italics next to an answer tell you if you need to skip ahead to a later question.
- Some questions ask for optional written comments in the white box. If you need more space you can write on another piece of paper and attach it to the survey.
- If you are not comfortable answering any particular question, you can leave it blank.

## Section A: Your electricity company

Q1. Do you currently buy electricity for your home from Energy-On?

- Yes
- No I buy from a different company (*Go to Section H on Page 9*)

→Q2

Q2. For how long have you been buying electricity from Energy-On?

Approximately \_\_\_\_\_ year/s and \_\_\_\_\_ months

→Q3

## Section B: Billing and payment

*It may be helpful for you to have one of your electricity bills to refer to while completing this section of the survey.*

- Q3. Have you received at least one electricity bill from Energy-On?
- Yes →Q4
  - No *(Go to Section C on Page 3)*
  - Don't know / Not sure *(Go to Section C on Page 3)*
- Q4. How often do you receive an electricity bill from Energy-On?
- Every month →Q5
  - Every two months →Q5
  - Every quarter (three months) →Q5
  - Other *(Please specify)* →Q5
  - Don't know / Not sure →Q5
- Q5. In what way would you prefer to receive your Energy-On electricity bills?
- By email →Q6
  - In hard copy through the post →Q6
  - Other *(Please specify)* →Q6
  - No preference *(Go to Question 7 on Page 2)*
  - Don't know / Not sure *(Go to Question 7 on Page 2)*
- Q6. Does Energy-On give you the option of receiving your electricity bill in your preferred manner?
- Yes →Q7
  - No →Q7
  - Don't know / Not sure →Q7
- Q7. Do you have a preferred payment method by which you would like to pay your Energy-on electricity bills?
- Yes *(Please specify)* →Q8
  - No preference *(Go to Question 9 on this page)*
  - Don't know / Not sure *(Go to Question 9 on this page)*
- Q8. Does Energy-On allow you to pay your electricity bills using your preferred payment method?
- Yes →Q9
  - No →Q9
  - Don't know / Not sure →Q9
- Q9. Have you ever had trouble paying a Energy-On electricity bill by the due date?
- Yes →Q10
  - No *(Go to Question 12 on Page 3)*
- Q10. Have you ever contacted Energy-On because of trouble paying a bill by the due date?
- Yes →Q11
  - No *(Go to Question 12 on Page 3)*
- Q11. What help did Energy-On offer to you, if any? Please select **all that apply**.
- More time to pay →Q12
  - A plan to pay off the amount owed in instalments →Q12
  - Arrangements to pay for my electricity use with smaller, more frequent bills →Q11

- Information about government concessions (discounts) and / or grants →Q11
- Help to apply for government concessions (discounts) and / or grants →Q11
- Information about how to use less electricity →Q11
- Referral to a financial counsellor →Q11
- Waiver of all or part of the amount owed →Q11
- Other *(Please specify)*  →Q11
- Energy-On did not offer me any help →Q11
- Don't know / Can't remember →Q11

Q12. Do you currently hold any of the following government concession cards?

- Pensioner Concession Card
  - Veteran Affairs Pensioner Card
  - Health Care Card
  - DVA Gold Card
  - DVA White Card
  - Victorian Seniors Card
  - Commonwealth Seniors Health Card
- 
- Yes →Q13
  - No (Go to Section C on this page)
  - Don't know / Not sure →Q13

Q13. Are you currently receiving a government concession (discount) on your electricity bills?

- Yes →Q14
- No →Q14
- Don't know / Not sure →Q14

Q14. Has Energy-On given you information about, or helped you to apply for, any government concession (discount)?

- Yes →Q15
- No →Q15
- Don't know / Not sure →Q15

### Section C: Disconnection and reconnection

Q15. Has Energy-On ever disconnected your electricity because you did not pay a bill by the due date?

- Yes →Q16
- No *(Go to Section D on page 4)*

*If you have been disconnected more than once, Questions 16 – 18 refer to the most recent time Energy-On disconnected your electricity for non-payment.*

Q16. Did you receive a reminder notice before Energy-On disconnected your electricity?

- Yes – one reminder →Q17
- Yes – more than one reminder →Q17
- No →Q17
- Don't know / Can't remember →Q17

Q17. Before Energy-On would reconnect your electricity, did you have to do any of the following?  
Please select all that apply.

- Pay the whole overdue amount →Q18
- Pay part of the overdue amount →Q18
- Pay a reconnection fee →Q18
- None of the above →Q18
- Don't know / Can't remember →Q18

Q18. After you had met any reconnection requirements, how long did Energy-On take to reconnect your electricity?

- Less than 24 hours →Q19
- Between 24 hours and 2 days →Q18
- More than 2 days →Q18
- Don't know / Can't remember →Q18

#### Section D: Price and consumption

Q19. Do you have an electricity meter that is for your home only, separate from your neighbours' meters?

- Yes →Q20
- No (*Go to Question 21 on this page*)
- Don't know / Not sure (*Go to Question 21 on this page*)

Q20. To your knowledge, is your home's electricity meter an 'accumulation meter' or a 'Smart Meter'?

- Accumulation meter →Q21
- Smart Meter →Q21
- Don't know / Not sure →Q21

Q21. In your opinion, how clear is the information Energy-On gives about its electricity prices?

- Very clear →Q22
- Somewhat clear →Q22
- Neither clear nor unclear →Q22
- Somewhat unclear →Q22
- Very unclear →Q22
- Don't know / Not sure →Q22

#### Section E: Changing electricity company

Q22. Have you ever tried to move your electricity account from Energy-On to a different company?

- Yes (*Go to Question 24 on Page 5*)
- No →Q23
- Don't know / Can't remember →Q23

Q23. Have you ever made enquiries about moving your current electricity account from Energy-On to a different company?

- Yes →Q24
- No (*Go to Section F on page 5*)
- Don't know / Can't remember (*Go to Section F on Page 5*)

Q24. What was the reason/s you did not change to a different electricity company? Please select all that apply.

- The other company/companies would not accept me as a customer →Q25
- Energy-On told me that I could not change →Q25
- I was told I would have to arrange to have my electricity meter changed →Q25
  - I was told I would have to pay for my electricity meter to be changed →Q25
  - I was told I would have to pay a disconnection fee →Q25
- I was told I would have to continue to pay Energy-On for electricity use in building common areas →Q25
- I was told I would have to continue to pay Energy-On 'network charges' →Q25
- I couldn't be bothered →Q25
- I changed my mind →Q25
- I couldn't find a better offer →Q25
- Other (*Please specify*) →Q25
- Don't know / Not sure →Q25

Q25. If you would like to add any comments about changing electricity company, please do so below.

## Section F: Problems and complaints

Q26. In the past 12 months, have you had any problems with your Energy-On electricity account?

- Yes →Q27
- No (*Go to Section G on Page 7*)
- Don't know / Not sure (*Go to Section G on Page 7*)

Q27. Thinking about the most recent problem with your Energy-On electricity account, what was it in relation to? Please select up to three issues.

- Billing problem or error →Q28
- Metering issue →Q28
- Price, fees and charges →Q28
- Electricity supply interruption →Q28
- Disconnection from electricity supply →Q28
- Payment difficulties →Q28
- Payment methods →Q28


- Concession/rebates →Q28
- Customer service →Q28
- Other *(Please specify)* 

Q28. In the past 12 months, have you made any complaints regarding your Energy-On electricity account, either to Energy-On or to someone else?

- Yes →Q29
- No *(Go to Section G on Page 7)*
- Don't know / Not sure *(Go to Section G on Page 7)*

*If you have made more than one complaint, Questions 29-31 refer to the most recent complaint about your Energy-On electricity account.*

Q29. What was your complaint in relation to? Please select up to three issues.

- Billing problem or error →Q30
- Metering issue →Q30
- Price, fees and charges →Q30
- Electricity supply interruption →Q30
- Disconnection from electricity supply →Q30
- Payment difficulties →Q30
- Payment methods →Q30
- Concession/rebates →Q30
- Customer service →Q30
- Other *(Please specify)* 
- Don't know / Can't remember →Q30

Q30. Who did you contact to make the complaint? Please select all that apply.

- Energy-On →Q31
- Consumer Affairs Victoria →Q31
- Energy and Water Ombudsman (Victoria) →Q31
- Victorian Civil and Administrative Tribunal (VCAT) →Q31
- Member of Parliament →Q31
- Lawyer →Q31
- Other *(Please specify)* →Q31
- Don't know / Can't remember →Q31

Q31. How satisfied or dissatisfied were you with the outcome of your complaint?

- Very satisfied →Q32
- Somewhat satisfied →Q32
- Neither satisfied nor dissatisfied →Q32
- Somewhat dissatisfied →Q32
- Very dissatisfied →Q32

## Section G: Overall experience

Q32. Overall, how satisfied or dissatisfied have you been with Energy-On as your electricity supplier?

- Very satisfied →Q33

- Somewhat satisfied →Q33
- Neither satisfied or dissatisfied →Q33
- Somewhat dissatisfied →Q33
- Very dissatisfied →Q33

Q33. If you would like to add any comments about your experience with Energy-On, please do so below.

You have finished the survey (the remaining pages are for a different group of respondents – please leave them blank).

Thank you for your time.

*Please enter me into the draw to receive one of ten \$50 Coles / Myer vouchers  
(tick box)*

☐

*Please return the survey in the enclosed envelop by [date]*

#### Section H: Customers of other electricity companies

Q34. Which company do you currently buy your electricity for your home from?

- AGL →Q35
- Australian Power and Gas →Q35
- Click Energy →Q35
- Country Energy →Q35
- Dodo Power and Gas →Q35
- Energy Australia →Q35
- Lumo Energy →Q35
- Momentum Energy →Q35
- Neighbourhood Energy →Q35
- Origin Energy →Q35
- Powerdirect →Q35
- Red Energy →Q35
- Simply Energy →Q35
- TRUenergy →Q35
- Don't know / Not sure →Q35
- Other (Please specify) →Q35

Q35. Before moving to your current electricity company, did you have an electricity account with Energy-On?

- Yes →Q36
- No (You have finished the survey. Please read the instructions at the bottom of Page 10)

- Don't know *(You have finished the survey. Please read the instructions at the bottom of Page 10)*

Q36. What was your most important reason for moving your electricity account from Energy-On to your current electricity company?

- To get a lower price →Q37
- To combine your gas and electricity bills →Q37
- To get 'green power' →Q37
- To get a rebate, discount or special offer →Q37
- To get free lightbulbs or other energy saving devices →Q37
- To get better customer service →Q37
- Unhappy with Energy-On →Q37
- Responded to a telephone or door-to-door salesperson →Q37
- Other *(Please specify)*  →Q37
- Don't know / Can't remember →Q37

Q37. In order to move your electricity account from Energy-On to your current company, did you have to do any of the following? Please select all that apply.

- Pay a disconnection fee →Q38
- Range for my electricity meter to be changed →Q38
- Pay for my electricity meter to be changed →Q38
- Continue to pay Energy-On for electricity use in building common areas →Q38
- Continue to pay Energy-On for 'network charges' →Q38
- Contact more than one company before finding one that would accept as a customer →Q38
- Don't know / Can't remember →Q38

Q38. Overall, how easy or difficult was it to move your electricity account from Energy-On to your current company?

- Very easy →Q39
- Easy →Q39
- Neither easy nor difficult →Q39
- Difficult →Q39
- Very difficult →Q39
- Don't know / Can't remember →Q39

Q39. If you would like to add any comments about Energy-On or about your experience moving your electricity account from Energy-On to your current company, please do so below.

You have finished the survey. Thank you for your time.

Please enter me into the draw to receive one of ten \$50 Coles / Myer vouchers

☐



*(tick box)*

*Please return the survey in the enclosed envelope by [date]*

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## Survey letter

<date>

«Address\_line\_1»

«Address\_Line\_2»

Dear householder,

The Consumer Utilities Advocacy Centre Ltd (CUAC) is a not-for-profit specialist consumer organisation that advocates for fairer outcomes for energy and water consumers in Victoria.

### **Why we are writing to you**

The building in which you live has an ‘embedded network,’ which means that electricity is bought in bulk for the whole site and then ‘on-sold’ to the site’s residents. In contrast, residential consumers outside of these networks – that is, most consumers - buy electricity from one of Victoria’s 14 energy retailers. This can be important for consumers because different rules apply to on-sellers and to retailers.

Embedded networks are becoming more and more common in residential buildings, but very little is known about the experiences of consumers in these networks. So that we can better advocate on behalf of this growing group of electricity consumers, CUAC is conducting research on embedded networks. Based on what consumers tell us in our research, we will write a report to government with recommendations about protecting the rights of consumers living in buildings with embedded networks.

### **How you can contribute**

We want to hear about your experiences and views – whether positive or negative – and we invite the electricity account holder in your home to fill out the enclosed survey. The survey should take around 5-10 minutes to complete. Please return the survey using the enclosed self-addressed, stamped envelope by **Wednesday, July 18**. Alternatively, you can complete the survey online at «URL». Please enter the unique code «Code» to begin the online survey version. Participation in the survey is voluntary and confidential.

**Prize draw**

As an incentive to participate, survey respondents will go into the draw to receive one of ten \$50 Coles/Myer vouchers. If you wish to be entered in the prize draw, please check the box at the end of the survey. Entry details will not be linked to your survey responses and will be destroyed following the draw.

**Further information**

For more information about the project, to obtain a copy of the project report when it is complete, or if you have any questions or concerns, please contact Jo Benvenuti, Executive Officer, on (03) 9639 7600 or by email to [jo.benvenuti@cuac.org.au](mailto:jo.benvenuti@cuac.org.au).

Thank you for contributing to our work on behalf of Victorian consumers.

Yours sincerely,

**Jo Benvenuti**



