



# **Exempt selling guideline**

December 2011

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### **Amendment record**

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## **Glossary**

ABN	Australian Business Number
ACN	Australian Company Number
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission
FRC	Full Retail Contestability
NEL	National Electricity Law
NEM	National Electricity Market
NMI	National Meter Identifier
Public Register	Public Register of Authorised Retailers and Exempt Sellers
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort

## Dictionary

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

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

**Disconnection or de-energisation** of premises means—

1. in the case of electricity—the opening of a connection, or
2. in the case of gas—the closing of a connection,

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

**energy** means electricity or gas.

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

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

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

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

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

**onselling** means an arrangement where a person acquires energy from a retailer following which the person acquiring the energy or a person acting on their behalf sells energy for use within the limits of premises owned, occupied or operated by the person.

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

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

**small customer** means a customer—

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

# **Part 1: Introduction**

## **1.1 Purpose of the guideline**

This guideline is designed to help applicants understand the framework for retail exemptions which are required for the sale of energy without a retailer authorisation. Attached to this guideline are the Australian Energy Regulator's (AER) retail exemption determinations which set out the categories (classes) of deemed and registrable exemptions<sup>1</sup> and the associated conditions.<sup>2</sup> These determinations are regulatory instruments with which relevant exemption holders must comply. This guideline will assist persons who wish to engage in exempt selling to assess their eligibility for the different classes of deemed and registrable exemptions set out in the determinations, and to understand the circumstances in which they may need to seek an individual exemption or a retailer authorisation.

This guideline sets out the information that an applicant must provide to the AER when seeking an individual exemption. It also describes the information that a person will be required to provide to the AER in order to register for a registrable exemption.

## **1.2 The regulatory framework**

The AER is an independent statutory authority that is part of the Australian Competition and Consumer Commission (ACCC) under Part IIIAA of the *Competition and Consumer Act 2010* (Cth).

The AER's responsibilities include the economic regulation of electricity and gas networks in the National Electricity Market (NEM) and regulatory roles for electricity and gas retail markets under the *National Energy Retail Law* (Retail Law) and *National Energy Retail Rules* (Retail Rules). The AER's responsibilities do not apply to retail energy markets in Western Australia or the Northern Territory.

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

## **1.3 The sale of energy**

A sale of energy occurs when a person passes on a charge for energy as a separate charge, as opposed to when the cost is absorbed into another charge such as rent. Passing through an undisclosed charge for energy as part of another charge (for example, a hotel tariff which will include energy costs in the charged amount) does not constitute a sale of energy. The sale of bulk hot water is not considered a 'sale of energy' under the Retail Law and Retail Rules. Other legislation, such as jurisdictional fair trading legislation, will continue to regulate bulk hot water.

When considering the requirement for a retail exemption, it is the person doing the selling who must be covered by the exemption. The Retail Law gives the AER jurisdiction over the person who is selling energy, not the person whose embedded

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<sup>1</sup> The distinction between deemed and registrable exemptions is discussed in section 1.6.

<sup>2</sup> Available the AER website at [www.aer.gov.au](http://www.aer.gov.au).

distribution network the sale of energy is occurring within. The embedded network is regulated under the *National Electricity Law* (NEL), which requires that anyone who owns, operates or controls a network connected to the NEM must either be registered with the Australian Energy Market Operator (AEMO) or be exempted by the AER (the AER's *Electricity network service provider registration exemption guideline* is discussed further below). If the person who controls the embedded distribution network also conducts the onselling, then they will require the retail exemption (even if they hire a billing agent to manage the maintenance and payment of customer accounts), because it is this person who forms a contract with an authorised retailer for the supply of energy to customers in the network.

Alternatively, the embedded network owner/operator may choose to hire a 'specialist external provider' to manage the onselling within the embedded network. This service provider would have a contract with an authorised retailer for the supply of energy, liaise with customers, organise connections and disconnections, issue bills to customers and handle any energy related complaints. This person usually interacts with the customer only in relation to the provision of energy. In this case, the network owner/operator has wholly outsourced the onselling activities to the specialist external provider. The specialist external provider is the person who requires a retail exemption (not the embedded network owner/operator).<sup>3</sup> However, as discussed further in section 1.5, the embedded network owner/operator will still require a network service provider registration exemption (if they are not registered with AEMO).

## **1.4 The requirement to be authorised or hold an exemption**

The Retail Law prohibits a person from engaging in the sale of energy unless the person has obtained a retailer authorisation or is selling energy pursuant to an exemption from the requirement to hold an authorisation.<sup>4</sup>

The AER is responsible for issuing and revoking retailer authorisations and exemptions. A retailer authorisation allows the holder to engage in the sale of the specified form of energy (electricity or gas) in all participating jurisdictions and to all classes of customers (except where limited by state or territory legislation). An exemption allows the holder to engage in the sale of the specified form of energy (electricity or gas) to a defined class of customers provided they comply with the conditions placed on the exemption.

Persons who are exempt from the requirement to hold a retailer authorisation are known as 'exempt persons' or 'exempt sellers'. Their customers are known as 'exempt customers'.

Retail exemptions are most commonly required in situations where energy is being 'onsold'. Energy onselling, also known as reselling, occurs where a person (the exempt person) makes arrangements to acquire energy from an authorised retailer and then onells that energy to persons who are within the limits of an embedded

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<sup>3</sup> In this case, the embedded network owner/operator may still require an exemption from the requirement to register as a network service provider. See section 1.5 of this guideline.

<sup>4</sup> Section 88 of the Retail Law.

distribution network (being a network that is connected to the main distribution network through a single connection point).

Examples of embedded networks where onselling occurs are shopping centre complexes, caravan parks and retirement villages. Potential applicants for exemptions are therefore likely to include the owners and operators of these sites. Other likely onsellors include bodies corporate and landlords of rooming houses.

The sale of electricity may also occur in 'off-grid' networks (that is, networks that are not connected to the main distribution network). For example, a remotely located mining company may not, for economic reasons, be connected to the national electricity grid. For this company to provide electricity to workers living in their accommodation quarters, it would be required to install the network itself. If it charges for electricity supply from this network, it would be selling energy for the purposes of the Retail Law.

The AER considers that exempt selling is often not in the long term interests of customers. We have seen particular growth in onselling within high density residential developments such as apartment buildings. We do not want onselling to be a motivating factor for developers in deciding how these developments are structured. In line with the policy principles set out in the Retail Law, we are likely to require an individual exemption for such situations, with conditions that resemble those attached to a retailer authorisation. In some situations, it may be more appropriate to require the entity to seek a retailer authorisation.

The AER will consider the financial viability of the exempt person. If an exempt person was unable to meet the contractual requirements for the purchase of energy, their customers might be disconnected regardless of whether they have paid for their own consumption. This would include energy users at the site who have elected to purchase energy from a retailer rather than the exempt person as these customers have only a deemed connection (not a physical connection) to the main distribution network. In other words, their supply is provided through the embedded distribution network even though they purchase the energy from the authorised retailer.

## **1.5 The requirement for network exemptions**

If an applicant for an exemption is selling electricity within an embedded network, and is also the owner or operator of the embedded network, it is likely they will also require an exemption from the requirement to register as a network service provider.

Section 11 of the National Electricity Law (NEL) states that:

a person may only engage in transmission or distribution activities if they are registered with AEMO or if they are exempt from that requirement.

Similar to retail exemptions, network service provider exemptions are administered by the AER, but must be applied for through a separate process.<sup>5</sup> Network exemptions apply only to networks connected to the national electricity grid, and are not required for off-grid networks.

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<sup>5</sup> For more information visit <http://www.aer.gov.au>.

The *Electricity network service provider registration exemption guideline*, which outlines the application process, can be found on the AER's website. The AER has developed a single application process for both the *Electricity network service provider registration exemption guideline*, and Exempt selling guideline to facilitate applicants seeking an exemption from both sets of requirements. Application processes for the registration of registrable exemptions, and the grant and variation of individual exemptions, are outlined below in Parts 3 and 4.

## 1.6 Types of retail exemptions

The AER can grant exemptions from the requirement to hold a retailer authorisation on an individual basis or by declaring a class of persons to whom a deemed or registrable exemption applies. A **deemed exemption** applies automatically. No application to the AER is required, and a person covered by a deemed exemption does not need to register their activities with the AER. 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. Once this occurs, the person holds a 'registered' exemption for that site. Where a person on-sells energy over a number of non-contiguous sites, they will generally need to register each site separately with the AER regardless of whether they are conducting similar operations at the various sites.

For registrable exemptions, no application to the AER is required, but certain information must be provided as part of the registration process. This information is set out in section 4.1.1. The activities which are covered by deemed and registrable exemptions are set out in section 3.1.

The AER will not provide advice as to whether a person meets the criteria for a deemed or registrable exemption. We can only provide guidance on how the classes of exemption operate. We recommend a person obtains independent legal advice before relying upon a deemed exemption or seeking registration under a registrable exemption.

A person wishing to on-sell at a site that does not meet the criteria for a deemed or registrable exemption may apply for an **individual exemption** for that site. The AER must decide whether to grant or refuse an application for an individual exemption. Persons who are considering applying for an individual exemption are encouraged to consult with the AER prior to making their application, as in some circumstances it may be more appropriate for them to seek a retailer authorisation. Exemptions will not be appropriate for conventional energy retailing activities, particularly where the person is registered with AEMO for wholesale market purposes. Further information on the retailer authorisation framework is set out in the AER's Retailer authorisation guideline, available on our website at [www.aer.gov.au](http://www.aer.gov.au).

Conditions may apply to classes of deemed and registrable exemptions and to individual exemptions. The conditions attached to individual exemptions will be tailored to the scope and nature of the activities being undertaken. Where an individual exemption is required, the conditions attached to the exemption are more likely to reflect those that apply to an authorised retailer, particularly with regard to the provision of hardship protections and formal avenues for dispute resolution. There may, however, be circumstances where it will be appropriate to attach minimal conditions to an individual exemption. For example, minimal conditions may be

appropriate in a situation where onselling in a remote area is not commercially viable but the onseller operates for the benefit of the community as the only reliable provider of energy. We are unlikely to place onerous conditions on such exempt persons, as this may discourage them from providing services and may result in customers losing access to a reliable energy supply.

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

## **1.7 Grant and variation of individual exemptions**

This guideline explains the procedures for the grant and variation of individual exemptions and the processes the AER follows when assessing applications for individual exemptions (and applications for their variation). It sets out the information that must accompany any such application. We recommend that applicants consult with us prior to and during preparation of an application for an individual exemption, so that we can provide information and guidance relevant to your individual circumstances as a potential exempt person.

## **1.8 Policy principles**

The Retail Law contains policy principles that the AER is required to take into account when performing or exercising functions and powers relevant to exempt selling.<sup>6</sup> These principles are, in part, aimed at ensuring that customers of exempt persons are not unreasonably disadvantaged as compared to customers of authorised retailers. Part 2 of this guideline sets out the AER's considerations on these policy principles. The Retail Law also sets out exempt seller related factors<sup>7</sup> and customer related factors<sup>8</sup> that the AER may take into account when making exempt selling decisions.

## **1.9 The Public Register of Authorised Retailers and Exempt Sellers**

Section 119 of the Retail Law requires the AER to maintain and publish on its website a *Public Register of Authorised Retailers and Exempt Sellers* (Public Register) containing information about these persons.

Exempt persons who hold individual exemptions or registered exemptions will appear on the Public Register. The register will also include a list of the classes of persons for whom an exemption is deemed or registrable.<sup>9</sup> We note that because exempt persons operating under a deemed exemption have no registration requirement placed on them, these exempt persons will not appear on the Public Register.

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<sup>6</sup> Section 114 of the Retail Law.

<sup>7</sup> Section 115 of the Retail Law.

<sup>8</sup> Section 116 of the Retail Law.

<sup>9</sup> Rule 164 of the Retail Rules.

## **Part 2: Guidance on the policy principles, the exempt seller related factors and the customer related factors**

The objective of the Retail Law is *to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.*<sup>10</sup>

This objective guides the AER in the exercise of its powers and functions, including administration of retail exemption provisions of the Retail Law and Retail Rules. The AER must carry out its exempt selling functions in a manner that will, or is likely to, contribute to the achievement of the national energy retail objective in a manner that is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers.<sup>11</sup>

The Retail Law sets out policy principles that we must take into account when making any decision relating to exemptions.<sup>12</sup> In addition, it sets out exempt seller related factors<sup>13</sup> and customer related factors<sup>14</sup> that we may also consider when making these decisions. These principles and factors provide more detailed considerations to guide the AER in its oversight of retail exemptions. The Retail Law requires that this guideline include guidance on each of these factors.

When making decisions relating to exemptions, the AER will not consider these factors in isolation, but rather in conjunction with the operational aspects of the proposed exempt selling arrangement, for example the number and type of customers served.

Guidance on each of the policy principles, exempt seller related factors and customer related factors, is provided below.

### **2.1 Policy Principles**

Each of the policy principles is listed below, along with guidance on how we will take the principles into account in making any decision relating to exemptions.

#### **2.1.1—Divergence in regulatory arrangements**

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

A certain level of divergence from the regulatory arrangements that apply to retailers is inevitable. The AER’s role is to strike a balance between ensuring customers are adequately protected and the need to avoid overburdening energy on-sellers with

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<sup>10</sup> Section 13 of the Retail Law.

<sup>11</sup> Section 205 of the Retail Law.

<sup>12</sup> Section 114(1) of the Retail Law.

<sup>13</sup> Section 115 of the Retail Law.

<sup>14</sup> Section 116 of the Retail Law.

regulation. When such divergence is not appropriate, it may be necessary to require the onseller to obtain a retailer authorisation.

The level of divergence from the regulatory arrangements for retailers will depend on the type of exemption held by the exempt person. Deemed and registrable exemptions may have fewer conditions attached to them, while in many cases, conditions attached to an individual exemption may more closely resemble the obligations that apply to an authorised retailer. For example, a specialist external provider<sup>15</sup> who manages onselling across a number of sites is likely to be required to comply with a range of obligations that apply to authorised retailers.

The customer protections that the AER considers relevant for each class of exemption are based on the protections that apply to small customers who purchase from an authorised retailer. Under the Retail Law, retail customer protections are not generally extended to large business customers.<sup>16</sup> The AER distinguishes between small customers and large business customers who purchase energy from an exempt person, and will not extend retail customer protections designed for small customers to large exempt customers.

The AER has not extended all protections that apply to retail customers to exempt customers, as we consider that some divergence is necessary. Retailers achieve economies of scale by having a large customer base, which allows them to spread the cost of regulation over the large number of customers. Exempt persons tend to serve a smaller number of customers and therefore will not usually achieve comparable economies of scale. This makes certain requirements under the Retail Law and Retail Rules more burdensome and less appropriate for exempt persons. In formulating the classes of deemed and registrable exemptions, and the conditions attached to them, the AER has considered where divergence in regulatory obligations is necessary to ensure that the costs imposed on onsellers (and consequently on their customers) do not exceed the benefits.

In some situations, regulatory divergence is necessary to reflect the different circumstances of onselling. Some requirements of the Retail Law and Retail Rules are entirely inappropriate for exempt persons. For example, the price disclosure requirements for retailers' standing offer and market offer prices are irrelevant to exempt selling.<sup>17</sup> Requirements placed on certain authorised retailers under the Retailer of Last Resort (RoLR) scheme in Part 6 of the Retail Law are also irrelevant to exempt persons.

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<sup>15</sup> A specialist external provider onselling energy as a core business function. They often have no relationship with the customer other than for the provision of energy. Functions undertaken by these providers will usually include contracting with an authorised retailer for the supply of energy, liaising with customers, organising connections and disconnections, issuing bills to customers and handling any energy related complaints received. Where an embedded network operator engages such a person, the AER may consider that the onselling activities have been wholly outsourced. In these circumstances, it will be the specialist external provider (not the embedded network owner/operator) who will require an exemption. Note that this differs from a billing agent who simply issues and receives payment of customer accounts.

<sup>16</sup> Large customers do have access to a retailer of last resort if their retailer fails under the Retail Law.

<sup>17</sup> These requirements are set out in Division 11 of Part 2 of the Retail Law.

### 2.1.2—Choice of retailer

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

Affording customers of exempt persons the right to retailer choice is a complex issue. The ability of customers to choose their own retailer in the competitive energy market depends on network configuration and the type of meter (if any) in place at their premises. These factors are usually determined at the time a building is constructed, and reconfiguration may be expensive and therefore uneconomic.

The most effective way of affording customers the right to a choice of retailer is to ensure that network configuration and metering arrangements for new developments and redevelopments facilitate customer choice of retailer going forward. Building regulations, such as the *Building Code of Australia* and jurisdictional development legislation, state that all future multi-unit residential and office building developments must have electricity sub-meters installed. Depending on each individual building’s development approval, sub-meters are required for each individual unit, or on each storey of the building.

Exemptions will not be granted to new developments on the basis of infrastructure issues. For example, we would not issue an exemption where individual meters were not installed.<sup>18</sup> Meters should be installed in each individual dwelling in that building, and each tenant must have a meter for their own consumption. We encourage developers who are contemplating an onselling arrangement to consider the requirements of doing so in the initial planning stage of a development to minimise the risk of putting in place infrastructure that would not fit with the exemptions framework.

The AER considers that the distinction between electricity and gas is important when establishing whether it is practicable to afford customers the right to a choice of retailer.

Table 1 outlines the availability of access to retailer of choice or ‘full retail contestability’ (FRC) currently available for embedded networks in each jurisdiction. The AER considers that in jurisdictions where governments have determined that choice of retailer should be available in embedded networks, the onseller must not seek to undermine that choice.

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<sup>18</sup> In a multi-storey building, we do not consider a single meter on each storey to be adequate.

**Table 1: Current availability of FRC in embedded networks**

Jurisdiction	Energy type	FRC available within embedded networks?
NSW	Gas	No
	Electricity	Yes
SA	Gas	No
	Electricity	Yes, except for ‘transitional inset consumers’—customers whose lease commenced prior to 1 January 2003
TAS	Gas	No
	Electricity	No
VIC	Gas	No
	Electricity	Yes
ACT	Gas	No
	Electricity	No
QLD	Gas	No
	Electricity	Yes, except for ‘small customers’—customers who consume less than 100 megawatt hours per year <sup>19</sup>

While access to choice of retailer will not be the sole determinant when deciding to grant an exemption, it is a relevant factor to consider since exempt customers may not receive the same protections as customers of authorised retailers.

### *Electricity choice of retailer*

Subject to the availability of FRC in a jurisdiction (as shown above in table 1), for electricity, each customer within an embedded network can, in theory, be assigned a national meter identifier (NMI), which is one means to allow access to choice of retailer.

In the short term, the AER considers that for electricity, it is only practicable to allow access to choice of retailer to customers in certain jurisdictions. As outlined in the table above, access to retailer of choice is restricted in the following jurisdictions:

- the Australian Capital Territory and Tasmanian arrangements do not allow choice of retailer for customers supplied by embedded networks in those jurisdictions
- Queensland does not allow choice for ‘small’ consumers supplied by embedded networks
- in South Australia, consumers defined as ‘transitional inset consumers’<sup>20</sup> generally do not have access to the retail market. This definition covers customers whose lease commenced prior to 1 January 2003 and therefore is unlikely to apply to many customers today.

<sup>19</sup> While technically available, the practicability of this is unclear

<sup>20</sup> See [http://www.escosa.sa.gov.au/library/100630-ResellingAdvisoryBulletinNo\\_1.pdf](http://www.escosa.sa.gov.au/library/100630-ResellingAdvisoryBulletinNo_1.pdf).

We will take these jurisdictional provisions into account when applying this policy principle. That is, access to an electricity retailer of choice in the short term is unlikely to be practicable for customers in the Australian Capital Territory, Tasmania, Queensland or for certain South Australian customers.

There are instances where providing customers with access to electricity retailer of choice may create logistical difficulties for the exempt person. For example, if an authorised retailer serviced tenants in a caravan park, they may wish to disconnect a customer's supply at the end of their tenancy. Any delays in obtaining reconnection (by the authorised retailer) may prevent the caravan park owner from being able to immediately lease the premises to another customer. However, an immediate connection could be guaranteed if the caravan park owner was the energy provider. While smart meters can be used to address this issue, the AER notes that this will not always be economic. We appreciate the rationale for the onseller being the exclusive source of energy in situations like this, as it is the only cost effective means for the accommodation provider to ensure immediate connection for tenants.

### *Gas choice of retailer*

Requiring onsellors to provide customers with access to retailer of choice may not be practical for gas, particularly where only small quantities of gas are consumed. Where gas is used only for cook tops and ovens, as is often the case in multi-tenanted situations such as apartment buildings, the amount of gas consumed by individual residences would generally not justify the expense of gas metering of each residence's consumption. It follows that it would not be practical to require the exempt person to ensure that these customers had access to retailer of choice.

Even where individual residences are separately metered for their gas usage, and where gas usage may be significant, there are currently no AEMO guidelines to underpin full retail competition in gas embedded networks. The AER therefore considers that access to full retail competition is not currently practicable in the gas onselling/embedded network context.

### *Hindering customers' access to retailer of choice*

While the AER's ability to impose conditions ensuring access to retailer of choice is limited, for the reasons set out above, we have imposed conditions on deemed and registrable exemptions to ensure that where customers have access to retailer of choice, the exempt person must advise them that this choice is available and must not hinder this choice. We may also choose to impose similar conditions in the case of individual exemptions.

### **2.1.3—Access to customer protections**

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

The concept of 'practicable' in this policy principle will take into account the compliance burden on the onseller of providing the same set of customer protections as a retailer must provide under the Retail Law and Retail Rules. This issue is also considered under the exempt seller related factors.

The protections given to retail customers under the Retail Law are not automatically extended to customers of exempt persons. We recognise that these customers can be some of the most vulnerable in society and aim to ensure that they receive appropriate protections through the imposition of conditions on exempt persons selling to small customers. The AER has developed a set of general conditions for exempt persons operating under deemed and registrable classes of exemption. While not all of these general conditions apply to all classes of exemption, they reflect the AER's considerations on the core protections that should be afforded to small exempt customers supplied under a class exemption. These protections will complement the protections available to customers under jurisdictional tenancy and other relevant legislation.

Exempt persons servicing residential customers under a deemed or registrable exemption will be required to provide protections, including flexible payment plans, for customers who identify themselves as experiencing financial difficulty. The AER encourages all other exempt persons operating under a class exemption to provide such protections, where appropriate.

The AER will consider whether the provision of hardship protections, flexible payment options and other customer protections is appropriate for individual exemptions on a case by case basis.

The AER's considerations on the arrangements that may apply to larger exempt persons operating under an individual exemption are set out elsewhere in this section of the guideline.

Authorised retailers are required to develop complaints handling arrangements based on *Australian Standard ISO 10002-2006 Customer satisfaction – guidelines for complaints handling in organisations* (the Standard). Where there is no conflict between the standard and any specific legislation that an onseller operates under, such as tenancy or retirement village legislation, the AER may require the onseller to develop complaints handling arrangements based on the Standard. For example, it may be appropriate to impose this requirement on landlords onselling to commercial or retail tenants. This would not conflict with commercial tenancy legislation under which these landlords operate.

While it is likely that the standard will be applied to most individual exempt persons, there are some situations where minimal conditions will be attached to an individual exemption. The AER will consider the application of the Standard to exempt persons seeking an individual exemption on a case by case basis.

## **2.2 Exempt seller related factors**

The exempt seller related factors are set out in section 115 of the Retail Law. Each of these factors is listed below, along with guidance on how we will take these factors into account in making any decision relating to exemptions.

### **2.2.1—Core versus incidental business**

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

In establishing whether selling energy will be a core part of, or incidental to, the exempt person's business, the AER will consider the relationship between the exempt person and its customers. This will depend on whether the exempt person sells energy to the customer as part of the provision of other services, or whether selling energy is the only interaction the exempt person has with the customer. In other words, in the absence of the energy onselling arrangement, would the exempt person and its customers have another commercial relationship?

Where selling energy is the sole basis for the relationship, this is a strong indication that selling energy is a core part of the exempt person's business. For example, a specialist external provider's only relationship with the customer relates to the provision of energy.

Where the exempt person sells energy as part of another relationship and the sale of energy does not constitute a significant aspect of the relationship, it would generally be considered to be incidental to the exempt person's business. For example, a landlord who sells their tenant energy will have also entered into a lease with the tenant for the provision of accommodation. The sale of energy would not be contemplated if the customer was not a tenant of the landlord.

Onselling may be considered to be incidental even where it occurs over multiple sites. For example, although a shopping centre owner/operator onselling energy across a number of shopping centres, energy is not the only service it provides to its customers (the shopping centre tenants) and therefore the onselling is unlikely to be considered its core business.

The AER will also consider the value of energy provided relative to the value of other services provided by the exempt person. For example, in an industrial park, high energy usage tenants may pay a landlord onseller more for their energy use than for rental. In such a situation, it may be difficult to demonstrate that onselling is only 'incidental' to the relationship. Where energy charges form a relatively low proportion of overall accommodation costs, for example, in a retirement village, the argument that energy onselling is 'incidental' will be much stronger.

### **2.2.2—Characteristics of the exempt seller**

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

The exempt person's circumstances may relate to the number of customers served, the total volume supplied or the way in which the exempt person operates. Where the exempt person serves only a small number of customers, for example within a small strata title dwelling, it may not be practicable to require them to carry out the application process for a retailer authorisation, or to adhere to the various compliance and performance reporting requirements placed on retailers.

The way in which an exempt person operates is also likely to indicate whether their circumstances warrant exemption. A landlord who must sell energy due to the way energy infrastructure is set up at their property (for example, at a caravan park) may warrant an exemption, particularly when the energy is provided in addition to another

service and the energy component makes up a small component of the total cost of all services provided to the customer.

The AER considers that projects involving decentralised energy, whereby energy is generated on or near a site to reduce transmission requirements and losses from transportation, will potentially be suitable candidates for exemptions. Since each situation is likely to be unique, these situations are best addressed through an application for individual exemption, allowing the AER to assess each on a case by case basis and attach conditions as appropriate.

The AER recognises that in some situations, the exempt person is the only person who is able to supply energy to its intended customers. This might be the case in remote areas which are not connected to the main distribution network (off-grid networks) in states or territories which have elected to bring off-grid networks under this exemptions framework. We will endeavour to not disadvantage such customers by refusing an exemption, or by issuing an exemption in a way that makes it uneconomic for the exempt person to continue to supply the customers with energy. Where onselling carried out in an off-grid network does not fall under one of the deemed or registrable classes of exemption, an individual exemption will be required. It is not appropriate to have a class exemption covering all off-grid networks as this would likely cover a range of onselling activities and could be contrary to the principles underpinning the concept of a class exemption.

### **2.2.3—Profit intentions of the exempt seller**

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

The AER has taken this exempt seller factor into account in distinguishing between situations where onsellors are specialist providers, and situations where the onselling is part of a suite of services provided to a customer. Where the onselling activities (and therefore the anticipated profits) are significant, an individual exemption will generally be required.

It is to be expected that an exempt person will only operate if it is going to at least cover its costs. The AER considers that it is acceptable for an exempt person to earn a profit, provided that there are pricing protections in place for eligible customers (that is, residential exempt customers) to ensure that they are not disadvantaged. Provided that pricing conditions are imposed to restrict the prices that the exempt person can charge these customers, the AER should not need to place much weight on this particular exempt seller factor insofar as residential customers are concerned. Earning a profit from onselling to residential customers will therefore not be a barrier in itself to eligibility for an exemption.

As noted above, the AER does not want onselling to be a motivating factor for developers deciding how a high density residential development should be structured, or when deciding on the wiring arrangements within the development. Where onselling in these situations is undertaken as a profit making venture, the AER is likely to place conditions similar to those that apply to authorised retailers on the exempt person, or require the person to obtain a retailer authorisation.

The AER does not support the concept of exempt persons passing on to their customers an ‘administration’ or similar fee in an attempt to circumvent the requirement that residential customers are charged no more than the relevant standing offer prices. The AER considers that exempt persons should only be able to charge eligible customers (residential exempt customers) charges for energy that are charged by the local area retailer. The AER considers that any late payment fees payable should be limited to a recovery of reasonable costs incurred by the exempt person (if any) due to the customer’s late payment. The AER has imposed a condition to this effect (condition 7).

The Retail Law and Retail Rules do not enable the AER to regulate the prices that exempt persons charge non-residential customers. However, the AER must consider the long term interests of these customers when issuing exemptions. We will be concerned to ensure that onsellers are not exploiting exempt customers, in particular small business customers and exempt customers that do not have access to choice of retailer.

For this reason, registrable class R1 which covers small customers in a commercial or retail tenancy situation, will be closed off to new entrants in 2015 (note however that persons operating under this class prior to 2015 are able to continue operating unless the exemption is revoked by the AER). Onsellers wishing to commence selling to these small business customers from 2015 will be required to apply for an individual exemption, at which time we will scrutinise the onselling situation and consider whether the prices to be charged are in the long term interests of these customers, as per the objective of the Retail Law.

#### **2.2.4—Amount of energy likely to be sold**

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

The AER may compare the size of an exempt person to the smaller retailers operating within national energy markets when considering this exempt seller related factor. As the significance of the selling operations increases, it may be more appropriate for the seller to obtain a retailer authorisation. However, if an exemption is granted for ‘significant’ operations, it is likely that the conditions placed on the exempt person will be similar to those that apply to authorised retailers.

The amount of energy sold may become significant where an exempt person is involved in onselling at multiple sites. Where an onseller is not covered under a deemed or registrable exemption and intends to operate at multiple sites, we will consider the particular situation and grant either an individual exemption for each site, or require the onseller to obtain a retailer authorisation. We will not usually grant an individual exemption covering multiple sites.

#### **2.2.5—Appropriate obligations governing the applicant’s behaviour**

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

Some state or territory tenancy legislation regulates energy onselling. This legislation may govern aspects of onselling in some situations, for example in a simple tenant/landlord situation where the applicable jurisdictional residential tenancies legislation would outline who is responsible for the cost of utilities and how the costs of these must be administered. However, this legislation is designed to address tenancy matters and tends to provide only very basic energy-specific protections to exempt customers who are tenants. The AER has considered the requirements of other legislation both when establishing classes of exemption, and when imposing conditions on class exemption categories.

We will use conditions to complement any relevant jurisdictional legislation which on its own does not provide sufficient energy-specific protections for exempt customers to ensure that the Retail Law's objective of promoting the long term interests of consumers is met.

In general, the closer an onseller's operations are in scale and scope to those of an authorised retailer, the more that general retailer obligations will apply to them. Where the onseller's obligations largely replicate those applying to a retailer, we would need to be satisfied that an exemption is in fact appropriate, rather than requiring the onseller to apply for a retailer authorisation.

#### **2.2.6—Costs and benefits of obtaining a retailer authorisation**

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

To obtain a retailer authorisation, a person needs to meet three entry criteria specified in the Retail Law.<sup>21</sup> These entry criteria are:

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

The process of obtaining a retailer authorisation is relatively intensive, and a range of information must be provided to the AER to demonstrate that the person meets the entry criteria. For electricity, one of the costs involved with obtaining a retailer authorisation is the requirement to be registered with AEMO as a participant in the wholesale electricity market. Most onsellors will not participate in the wholesale market (that is, purchase energy directly from the wholesale pool), but rather purchase energy from an authorised retailer and onsell to their customers. For gas, one of the costs of obtaining a retailer authorisation is the requirement to be registered in relation to the relevant gas market in the state or territory in which they are operating.

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<sup>21</sup> Section 90 of the Retail Law.

In addition, authorised retailers must comply with all relevant regulatory obligations in the Retail Law and the Retail Rules.

It is likely that the costs associated with the onseller obtaining a retailer authorisation rather than an exemption would be passed on to the onseller's customers. Energy charges to residential exempt customers are capped under the AER's conditions of exemption but the cost may flow through in charges these customers pay for other services supplied by the onseller (for example, through accommodation charges). The AER recognises that ultimately the cost to smaller onsellors of obtaining a retailer authorisation will generally exceed the benefits to their customers, particularly where customers are offered a number of protections through the conditions imposed under an exemption.

The Retail Law requires that customer protections for exempt customers should be, as far as practicable, comparable to those afforded to retail customers. This guideline aims to minimise the 'gap' in the protections provided to these two types of customers. We recognise, however, that it will not always be practicable to require an exempt person to provide the hardship and other protections that retailers must have in place.

### **2.2.7—Other relevant seller related matters**

Section 115(1)(g) of the Retail Law enables the AER to consider 'any other seller related matter the AER considers relevant'. The AER considers that unmetered supply, and co-generation, tri-generation or other sustainable energy arrangements, are additional relevant matters.

#### ***Unmetered supply***

Metering requirements are determined at a jurisdictional level under state or territory legislation. The Retail Rules stipulate that the AER can impose conditions on exempt persons for or with respect to installing, maintaining and reading of meters of exempt customers in accordance with jurisdictional energy legislation.<sup>22</sup>

There are some onselling situations where customers are not individually metered and therefore do not have access to retailer of choice. The AER will give consideration to situations where customers are not metered, and will allow an exemption for selling energy through existing unmetered arrangements only where this is permitted under jurisdictional legislation. Many jurisdictions prohibit energy charges being passed on to tenants unless consumption is separately metered. The AER will ensure that onselling arrangements are consistent with these protections.

The AER may refuse to provide individual exemptions in future developments or redevelopments where electricity consumption is unmetered. This is to ensure both adequate consumer protection arrangements and also to ensure that consumers receive appropriate price signals for their energy usage.

As noted, the AER acknowledges that a requirement for individual gas metering of dwellings may not always be practicable or efficient. This is why we have included a class of exemption for unmetered supply. For example, some apartment complexes

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<sup>22</sup> Rule 152(5) of the Retail Rules.

have gas cook tops, but are not configured to enable the use of other gas appliances. An exemption is provided for situations where gas has a very limited use (see class D5).

### ***Co-generation, tri-generation and sustainable energy***

Although the classes of exemption do not explicitly cover co-generation, tri-generation or sustainability initiatives, the AER does not intend to discourage them. Decentralised energy refers to the onsite generation of energy, which can be adopted for numerous reasons, such as being ‘clean’ energy, taking advantage of waste heat, or avoiding transportation costs.

Decentralised energy is becoming increasingly common. Because each situation will be unique, it is challenging to develop a class of exemption to capture these activities. We consider it more appropriate, at least in the short term, for these situations to be covered by individual exemptions, and will grant exemptions in these situations where the initiative is in the long term interests of energy consumers having regard to all of the criteria and factors we are required to assess.

The AER recognises that some embedded networks may involve minimal capital outlay from the network owner. However, the costs associated with developing other embedded networks, such as those involving co-generation or tri-generation, can be significant. Such investments may not be easily recouped through charging distribution charges alone, so it may be necessary for the network operator to sell energy to recover its costs. Network development and maintenance costs will be taken into account as an exempt seller related factor.

## **2.3 Customer related factors**

Section 116 of the Retail Law sets out the customer related factors. Each of these factors is listed below, along with guidance on how the AER will take these factors into account in making any decision relating to exemptions.

### **2.3.1—Characteristics of the exempt customers**

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

The consideration of this customer related factor depends largely on the type of exempt customer. For example, large commercial tenants of an industrial park are in very different circumstances to small residential customers in a retirement village.

Where a jurisdiction defines a consumption threshold to distinguish between small customers and large customers, the AER will consider customers in terms of that threshold. Where a jurisdiction does not define such a threshold, the AER will consider customers in terms of the thresholds set out in the National Energy Retail Regulations. Under the Retail Law, all residential customers and business customers consuming less than 100 megawatt hours of electricity or 1 terajoule of gas annually are classified as ‘small customers’ and ‘large customers’ are business customers who consume at least 100 megawatt hours of electricity or 1 terajoule of gas annually. Retailers and distributors are required to develop and publish procedures for handling

small customer complaints and disputes; no such requirement is in place for large customers. A number of other protections in the Retail Law and Retail Rules apply only to residential customers, for example the requirement for retailers to provide customers with access to flexible payment options.

Large customers in onselling situations will generally be commercial/industrial customers who consume a considerable amount of energy. Given the potential magnitude of their energy costs, it is likely they will have given consideration to the onselling arrangements as part of their lease negotiation. Therefore the AER has taken the view that where an exemption is granted for the onselling of energy to large customers, very limited conditions will be imposed.

Another relevant customer characteristic that the AER will take into account is whether the energy is being onsold under a contract negotiated on behalf of a group of customers under a collective agreement. In this situation, it will be important for the AER to ascertain that all customers comprising the group have given their explicit informed consent.

A ‘brownfield’ site is a site that is established and serviceable by a retailer but later retrofitted to allow onselling. For the AER to allow an exemption for a brownfield site, we must be convinced that the majority of customers within the network have agreed to take supply from the onseller rather than a retailer. We will not grant an individual exemption where the onseller appears to override its customers’ preferences for purchasing from a retailer. A further consideration for the AER will be the ability of customers to continue to purchase energy from a retailer of their choice after the retrofit. Where choice of retailer is maintained, the AER may allow an exemption for the brownfield site, provided that we can see a customer benefit in the proposed arrangement. Exemptions classes D2, D3 and D4 apply only to those brownfield sites which are retrofitted with the appropriate metering before 1 January 2015. After this time, any person wishing to onsell energy at a retrofitted brownfield site will be required to apply for an individual exemption.

### **2.3.2—Access to appropriate rights and protections**

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

Customers of exempt persons do not automatically receive the same protections as customers of authorised retailers. The AER can, however, impose conditions on exempt persons to provide an appropriate level of protection for customers. The conditions that apply to most deemed and registrable exemptions are outlined above, and conditions for individual exemptions will be decided on a case by case basis.

Most residential and small business customers are afforded protections by the tenancy legislation under which the tenancy relationship is governed. These protections, when complemented by conditions imposed by the AER, will go some way to matching the protections afforded to equivalent retail customers under the Retail Law. It is also likely that the conditions placed on individual exemptions for large onsellers and specialist onsellers will closely resemble those that apply to retailers.

### **2.3.3—Other relevant customer related matters**

Section 116 of the Retail Law enables the AER to consider ‘any other customer related matter the AER considers relevant’.

The AER will consider the customers involved in each onselling situation on a case by case basis. Onselling may present consumer protection issues, in particular for residential consumers. In some jurisdictions, the rebates, social programs and energy efficiency programs that offset the impact of rising energy prices are not available to customers of onsellors. The AER’s key concern is to ensure that these customers are not denied the protections received by residential customers purchasing from an authorised retailer. The AER will therefore consider matters such as small customer access to full retail competition, energy Ombudsman schemes, rebates, social programs and energy efficiency measures when considering whether to grant an individual exemption for an onselling activity.

## **Part 3: Deemed and registrable classes of exemption**

The Retail Law and Retail Rules do not provide specific guidance on which onselling activities may be appropriate for exemption, nor which activities are appropriate for each type of exemption. The AER has considered the policy principles, exempt seller related factors and customer related factors in developing the deemed and registrable classes of exemption. Guidance on the principles and factors is set out above in Part 2 of this guideline.

### **3.1 Proposed classes of exemption**

Through its consideration of the policy principles, exempt seller related factors and customer related factors, the AER has identified a range of activities where it is appropriate for exempt selling arrangements to be in place. The AER has developed classes of exemption for these activities which can be clearly defined, involve a relatively straightforward onselling of energy within an embedded network and are, or are likely to be, widespread.

Class exemptions reduce the regulatory burden of the exemptions regime by removing the need for a large number of individual exemption applications for similar onselling arrangements.

Class exemptions also ensure consistency in the obligations imposed under these arrangements and the protections offered to customers. Where an onseller does not consider the class exemption conditions to be appropriate for its circumstances, it must apply to the AER for an individual exemption.

Where the primary justification for creating a class of exemption is the reduction in regulatory burden for the person selling energy, the AER has created a registrable class. This includes most circumstances where the onselling resembles an arrangement between an authorised retailer and its customers (that is, the provision of metered energy to discrete premises). For example, there are registrable classes of exemption for the sale of energy to residents of retirement villages, caravan parks and manufactured homes. In these circumstances, registration is necessary to ensure sufficient transparency to allow for effective monitoring and enforcement of the obligations imposed.

Separate registrable classes of exemption have been developed for large customers. These classes have fewer obligations than other classes, reflecting the limited obligations on authorised retailers in respect of such customers in the Retail Law and Retail Rules.

Most of the registrable classes of exemption are only open to new onsellors until 1 January 2015. This will permit existing developments to proceed as planned. However, onselling operations that commence after this date will require an individual exemption. This will provide the AER with a greater opportunity to scrutinise a proposed onselling arrangement and impose conditions that reflect the needs of the onseller and its customers.

Deemed exemptions have been created for those onselling activities where a direct arrangement between customers and an authorised retailer would not be possible or practicable. This includes where customers are charged for unmetered supply of

energy, charges related to energy used on common property, and charges imposed for energy used in holiday accommodation. Deemed classes also apply to (generally small) onselling arrangements where the costs associated with requiring registration outweigh the benefits of increased transparency. These include the sale of energy to tenants within a site that contains less than 20 premises and the sale of energy in premises that are not covered by residential tenancies legislation.

A further deemed class has been created for the sale of energy to related companies, where consumer protection issues are not relevant.

There are some situations where unmetered supply is appropriate. We acknowledge that a requirement for individual gas metering of dwellings may not always be practicable or efficient (see section 2.2.7), and have therefore included a class exemption for unmetered gas supply (class D5).

Since various types of activities and customers are covered by the deemed and registrable classes of exemption, the AER recognises that there may be situations when the customers served by the onseller fall under more than one class. For example, the owner/operator of a caravan park's customer base may be comprised of holiday makers and permanent residents. The holiday makers will be covered by the deemed exemption for holiday accommodation (class D3) and the permanent residents will be covered by the registrable exemption for caravan parks providing residential accommodation (class R4). The exempt person would need to register with the AER as belonging to class R4 for its permanent residents and comply with the conditions stipulated for each class for the relevant customers.

Tables 2 and 3 summarise the various onselling activities that are covered by classes of exemption. The classes are defined in full in the attached determinations of deemed and registrable exemptions.

**Table 2: Classes of deemed exemptions**

<b>Activity</b>	<b>Deemed Exemption</b>	<b>Application for individual exemption required</b>
<p><i>Class D1</i></p> <p>Bodies corporate that pass on the cost of (metered or unmetered) energy for common areas through body corporate fees.</p>	<p>Deemed exemption for current and future onsellers.</p>	<p>N/A</p>
<p><i>Class D2</i></p> <p>Metered energy onselling by residential landlords or lessors operating under jurisdictional residential tenancy legislation to less than 20 residences.</p>	<p>Deemed exemption for current and future onsellers.</p> <p>Brownfield sites<sup>23</sup> must be retrofitted with the appropriate metering. Such sites will only be eligible for this exemption if retrofitting is completed by 1 January 2015.</p>	<p>N/A</p>
<p><i>Class D3</i></p> <p>Metered energy onselling to short term residents in holiday accommodation.</p>	<p>Deemed exemption for current and future onsellers.</p> <p>Brownfield sites must be retrofitted with the appropriate metering. Such sites will only be eligible for this exemption if retrofitting is completed by 1 January 2015.</p>	<p>N/A</p>
<p><i>Class D4</i></p> <p>Metered energy onselling in residential situations not covered under jurisdictional residential tenancy legislation.</p>	<p>Deemed exemption for current and future onsellers.</p> <p>Brownfield sites must be retrofitted with the appropriate metering. Such sites will only be eligible for this exemption if retrofitting is completed by 1 January 2015.</p>	<p>N/A</p>

<sup>23</sup> A discussion of brownfield sites is above in Section 2.3.1.

<b>Activity</b>	<b>Deemed Exemption</b>	<b>Application for individual exemption required</b>
<i>Class D5</i> Unmetered gas onselling to individual premises where gas is used for limited purposes.	Deemed exemption for current and future onsellers.	N/A
<i>Class D6</i> Unmetered electricity onselling in Queensland to small customers.	Deemed exemption for current onsellers and those who commence onselling before 1 January 2015. For those persons, the exemption continues unless it is revoked by the AER.	Individual exemption for those who commence onselling on or after 1 January 2015.
<i>Class D7</i> Landlords or lessors passing on common area energy costs to premises in commercial developments.	Deemed exemption for current and future onsellers.	N/A
<i>Class D8</i> Exemption for persons engaged in the onselling of energy to a related company.	Deemed exemption for current and future onsellers.	N/A

**Table 3: Classes of registrable exemptions**

<b>Activity</b>	<b>Registrable Exemption</b>	<b>Application for individual exemption required</b>
<i>Class R1</i> Metered energy onselling by commercial/retail landlords or lessors to small customers.	Registrable exemption for current onsellers and those who commence onselling before 1 January 2015. For those persons, the exemption continues unless revoked by the AER.	Individual exemption for those who commence onselling on or after 1 January 2015.

<b>Activity</b>	<b>Registrable Exemption</b>	<b>Application for individual exemption required</b>
<p><i>Class R2</i></p> <p>Metered energy onselling to residents where the relationship with the person is governed by state or territory body corporate legislation</p>	<p>Registrable exemption for current onsellers and those who commence onselling before 1 January 2015. For those persons, the exemption continues unless revoked by the AER.</p>	<p>Individual exemption for those who commence onselling on or after 1 January 2015.</p>
<p><i>Class R3</i></p> <p>Retirement villages operating under state or territory retirement village legislation and onselling metered energy.</p>	<p>Registrable exemption for current onsellers and those who commence onselling before 1 January 2015. For those persons, the exemption continues unless revoked by the AER.</p>	<p>Individual exemption for those who commence onselling on or after 1 January 2015.</p>
<p><i>Class R4</i></p> <p>Metered energy onselling in caravan parks, residential parks and manufactured home estates to residents who principally reside there.</p>	<p>Registrable exemption for current and future onsellers.</p>	<p>Individual exemption only where exempt person believes conditions of exemption are not appropriate for their situation.</p>
<p><i>Class R5</i></p> <p>Metered energy onselling to large customers.</p>	<p>Registrable exemption for current and future onsellers.</p>	<p>N/A</p>

### **3.2 Conditions of exemption for deemed and registrable class exemptions**

The AER can impose conditions on an exempt person or a class of exempt persons.<sup>24</sup> These conditions may include requirements to abide by obligations based on those that would apply to an authorised retailer under energy laws.<sup>25</sup> The AER may modify the obligations to reflect that the exempt person is not a retailer and the exempt customers are not retail customers.

An exempt person must comply with all conditions imposed on them under the relevant exemption.<sup>26</sup> Civil penalties, as described in Part 6 of this guideline, apply if

<sup>24</sup> Section 112 of the Retail Law.

<sup>25</sup> Rule 152 of the Retail Rules.

<sup>26</sup> Section 112 of the Retail Law requires an exempt person to comply with conditions imposed on them or on a class of exempt persons to which they belong.

this provision is breached or if there is an attempted breach.<sup>27</sup> Section 112(3) of the Retail Law states that the AER may deal with a breach of a condition as if it were a breach of the Retail Rules.

### **3.2.1—Metering related conditions**

Rule 152(5) of the Retail Rules enables the AER to impose conditions on exempt persons for or with respect to installing, maintaining and reading of meters of exempt customers in accordance with jurisdictional energy legislation.

Separate customer metering will be required for the majority of the classes of exemption. In determining which classes of exemption are subject to metering requirements, the AER has weighed up the benefits and costs of requiring metering. The AER considers that there is no net benefit in requiring metering for common area energy use, nor where gas is used in apartment buildings for limited purposes such as cook tops.

### **3.2.2—General conditions for class exemptions for selling to small customers**

The following is a summary of the ‘core’ conditions which apply to exempt persons operating under deemed and registrable classes of exemption. Not all conditions apply to all classes of exemption. As the number of conditions varies with different exemption classes, the numbering below reflects the numbering of the class D2 exemption category. Section 3.2.3 sets out which conditions apply to each class and the reasons those conditions apply. Generally, the full set of conditions applies to exempt persons selling to residential customers.

#### *Condition 1—Obligation to supply*

This condition is intended to ensure that in jurisdictions where embedded network customers do not have access to choice of retailer, or where the cost of accessing choice of retailer is prohibitively expensive, the customers can obtain energy supply. This will protect customers where the exempt person is their only accessible energy provider.

#### *Condition 2—Information provision*

This condition is intended to provide exempt customers with detailed information at the time they enter into the energy purchase agreement with the exempt person (or at any other time, by request). Where choice of retailer is available, customers can use this information to decide whether they will purchase energy from the exempt person, or from an authorised retailer.

This condition also requires the exempt person to inform the customer explicitly that they are not an authorised retailer and that the customer will therefore not receive the same protections received by customers purchasing from an authorised retailer. This will ensure that the customer is aware of the distinction between the two arrangements. The onseller is required to inform the customer of the conditions applicable to the exemption with which the onseller must comply and information on any available dispute resolution bodies.

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<sup>27</sup> Section 299 of the Retail Law.

This condition will ensure that customers are informed of all tariffs, fees and charges to allow them to make informed decisions regarding their energy consumption. This condition requires the exempt person to provide customers with information on the available payment plans and hardship protections, including the process customers should follow to notify the exempt person that they are experiencing financial difficulties and may be unable to pay their energy bills.

#### *Condition 3—Billing and payment arrangements*

This condition is intended to ensure that customers receive bills at regular intervals. The requirement to bill customers at least every three months is taken from the Retail Rules requirements placed on authorised retailers.<sup>28</sup> This helps reduce the risk of a customer being presented with a large bill that covers a long time period.

This condition requires exempt persons to offer flexible payment options to customers who identify themselves as experiencing financial difficulty.

This condition also sets out what information must be included in a bill for an exempt customer to replicate some of the requirements that apply to authorised retailers.<sup>29</sup> The information requirements are intended to provide customers with consumption information and allow them to make informed decisions about their consumption. The detailed metering information will also assist the exempt customer to identify metering or billing errors.

#### *Condition 4—Estimation as basis for bills*

This condition addresses situations where bills based on actual meter reads are not possible, for example due to meter failure. This condition is intended to ensure that customers who are separately metered are, where possible, billed according to their metered consumption rather than a consumption estimate. The requirement on exempt persons to base estimates on historical metering data or, where this is not available, average usage by a comparable customer is equivalent to the requirement that applies to authorised retailers.<sup>30</sup>

This condition requires exempt persons to read a customer's meter at the start and end of their tenancy/residency ensures that the customer is only responsible for consumption at the premises during their tenancy/residency.

#### *Condition 5—Pay-by date*

This condition is intended to allow customers enough time after receiving their bill to organise payment. This is particularly necessary for customers who are on a fixed or low income. The timeframe for payment (13 business days) reflects the requirements that apply to authorised retailers.<sup>31</sup>

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<sup>28</sup> Rule 24 of the Retail Rules.

<sup>29</sup> Rule 25 of the Retail Rules.

<sup>30</sup> Rule 21 of the Retail Rules.

<sup>31</sup> Rule 26 of the Retail Rules.

### *Condition 6—Receipts*

This condition will ensure that exempt persons and their customers both have a record of any amount paid for energy. This condition is particularly important where customers are making payments to the onseller for more than one service, for example, for both energy and accommodation.

### *Condition 7—Pricing*

This condition ensures that residential exempt customers are charged no more than the standing offer price of the local area retailer for equivalent customers, and are not subject to any charges that cannot be charged by the relevant local area retailer. Local area retailer prices are published on the local area retailer's website.<sup>32</sup>

This condition is designed to ensure that in pricing terms, residential customers of onsellors are not disadvantaged relative to residential customers of an authorised retailer, and is permitted by rule 152(4) of the Retail Rules.

This condition includes provisions around undercharging and overcharging. It also includes provisions around the charging of late payment fees.

### *Condition 8—Payment difficulties and disconnection or cessation of supply*

This condition is intended to ensure that customers of exempt persons cannot be disconnected without due cause. Customers who inform the exempt person that they are experiencing payment difficulties must be provided with information on energy efficiency and must not be charged fees for late payments.

The condition sets out the process the exempt person must follow before proceeding with disconnection of a customer.

Further it allows for disconnection where the supply of energy would be unsafe, with reconnection required once the safety issue has been rectified.

### *Condition 9—When disconnection or cessation of supply is prohibited*

This condition is intended to protect customers against being disconnected in a number of situations, including when someone at the residence is dependent on life support. It also ensures that customers are not disconnected at a time when reconnection could not occur within a reasonable time, when a complaint relating to the disconnection remains unresolved, or on a day when a retail customer would not be disconnected due to extreme weather restrictions being in place.

### *Condition 10—Reconnection of supply*

This condition ensures that any customer who has been disconnected is reconnected if any outstanding matters such as payments are resolved within 10 business days of the disconnection, and any reconnection charge has been paid. The exempt person must reconnect the customer as soon as practicable.

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<sup>32</sup> Section 23 of the Retail Law.

#### *Condition 11—Concessions and rebates*

This condition ensures that customers who are eligible to receive any government or non-government energy rebate, concession or assistance under a relief scheme are able to access this and use it towards energy bills issued by the exempt person. This condition is necessary because an exempt customer may not be able to claim a rebate, concession or assistance without the cooperation of the exempt person.

#### *Condition 12—Choice of retailer*

This condition ensures that where a customer is eligible to purchase energy from a retailer of their choice, the exempt person will not hinder them from doing so.

#### *Condition 13—Contact details*

This condition ensures that exempt persons are readily accessible to customers should they wish to make inquiries or complaints.

#### *Condition 14—Dispute resolution*

This condition ensures that exempt persons will make reasonable endeavours to resolve customer disputes, and advise affected customers of any relevant external complaint hearing bodies that may assist with their dispute.

#### *Condition 15—Life support customers*

This condition ensures that exempt persons inform the embedded distribution network operator, and the exempt person's own retailer and distributor, if they service any customer who is dependent on life support equipment. Records of life support customers must be kept.

#### *Condition 16—Continuity of supply*

This condition ensures that the exempt person informs customers and the AER of any discontinuance of their supply triggered by the disconnection of the exempt person and more generally, where there is any likelihood that they will be unable to continue onselling energy.

#### *Condition 17 – Termination of energy supply agreement*

This condition ensures that the energy supply arrangements between the exempt person and its customers are only terminated if particular requirements are met.

#### *Condition 18—Maintaining records*

This condition ensures that exempt persons maintain billing information about their customers so that this information can be accessed at a later date if required.

### **3.2.3—Application of general conditions to particular classes of exemption**

Not all of the general conditions outlined above apply to all classes of exemption. This section covers, for each class of exemption, a summary of the conditions that do not apply and the reason for this.

*Class D1—Bodies corporate recouping from their members, through body corporate fees, the cost of energy used in common areas within the land affected by that body corporate*

There are no conditions attached to this class, because the allocation of energy charges by bodies corporate and other protections are adequately covered by the legislation under which they operate.

*Class D2—Persons onselling metered energy to premises 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*

All of the general conditions apply to this class of exemption. However, the disconnection conditions (conditions 8 and 9) will not apply where state or territory tenancy legislation sets out a process for the disconnection of a customer.

*Class D3—Persons onselling metered energy to short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate*

As the customers covered by this class of exemption are short term residents of holiday accommodation, a number of the core conditions are not relevant. These include conditions related to customer choice of retailer and concessions. Customers are also less vulnerable and so it is unnecessary to impose all protections available to long term residents. Conditions have been limited to requiring that customers are fully informed of the charges they will be liable for and are billed at appropriate intervals.

*Class D4—Persons onselling 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*

All of the general conditions apply to this class of exemption.

*Class D5—Persons onselling 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*

A number of conditions cannot apply to this class of exemption (for example, life support) as they are specific to electricity customers, or are dependent on customers being separately metered. These include conditions related to obligation to supply, choice of retailer, concessions and disconnection/reconnection. Billing and bill estimation conditions have also been adjusted to reflect that customers are not separately metered. Additionally, customer protection conditions relating to continuity of supply and maintenance of records have been removed, reflecting that gas supply in these circumstances is not an essential service.

*Class D6 (this class will be closed to new entrants from 1 January 2015)—Persons onselling unmetered electricity in Queensland to small customers for use within the limits of a site that they own, occupy or operate*

All of the general conditions apply to this class of exemption, however a number of these conditions have been adjusted to account for the fact that customers are not separately metered.

*Class 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*

There are no conditions attached to this class, because the allocation of energy charges by commercial or retail landlords and other protections are adequately covered by the legislation under which they operate.

*Class D8—Persons onselling energy to a related company within the limits of a site that they own, occupy or operate*

There are no conditions attached to this class.

*Class R1 (this class will be closed to new entrants from 1 January 2015)—Persons onselling 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*

A number of conditions cannot apply to this class of exemption as they are specific to residential customers (for example, life support and concessions).

*Class R2 (this class will be closed to new entrants from 1 January 2015)—Bodies corporate onselling metered energy to residents for use in premises within the limits of a site affected by that body corporate*

All of the general conditions apply to this class of exemption.

*Class R3 (this class will be closed to new entrants from 1 January 2015)—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*

All of the general conditions apply to this class of exemption.

*Class R4—Persons onselling 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*

All of the general conditions apply to this class of exemption.

*Class R5—Persons onselling metered energy to large customers*

Large retail customers do not receive customer protections under the Retail Law and Retail Rules, so for consistency, only minimal protections are extended to large customers of exempt persons. Conditions include a requirement that customers have access to a choice of retailer, and are made aware that they will not have a RoLR automatically appointed if the exempt person fails.

### **3.3 Process for revoking exemptions where exempt persons are operating under a class exemption**

Under sections 111(1)(b) and 111(1)(c) of the Retail Law, the AER has the power to revoke an exemption for an exempt person operating under a deemed exemption, and can also revoke a registered exemption. To revoke an exemption, the AER must be satisfied that there has been a material failure by the exempt person to meet the conditions imposed on them. We will consider what constitutes a ‘material failure’ on a case by case basis as matters come to our attention. In general, the AER will conclude there to have been a material failure by an exempt person where they have not complied with conditions imposed on them as part of their exemption and as a result, there has been a significant or widespread impact on their customers.

Section 120 of the Retail Law outlines a process for revocation that the AER must follow. This includes the following steps:

- The AER must notify (in writing) the exempt person of its intention to revoke the exemption, and the reasons why the AER considers that grounds for revocation exist.
- The exempt person must respond to the notice (in writing) during the time specified by the AER (but not less than 10 business days), providing reasons why the exemption should not be revoked and proposing actions the exempt person will take to rectify the problem that gave rise to the notice.

If we are not satisfied with the exempt person’s response, we may fix a time for the revocation to take effect and inform the exempt person of any conditions we will impose on the transfer of customers. Where an exemption under a class exemption is revoked, the exempt person is no longer eligible to operate under that class. If they continue to sell energy, they will be in breach of section 88 of the Retail Law, which prohibits the sale of energy without a retailer authorisation or exemption.

## **Part 4: Requirements relating to registrable exemptions**

Registrable exemptions cover onselling activities that must be registered with the AER. Following registration on the Public Register of a person's onselling activities at a particular site, the registrable exemption becomes a registered exemption in respect of that person for that site. The registered exemption applies to a person for a particular site from the time they are entered on the Public Register.

The classes of registrable exemptions represent reasonably common onselling activities. The AER considers that it is appropriate for those activities to be covered under a class exemption both because of the nature of the activities, and because the activities may have commenced under state or territory class exemptions prior to the AER assuming responsibility for exemptions. The requirement for registration increases our awareness of the extent of onselling activities being carried out under these exemptions. This assists with compliance monitoring and allows us to refine the categories of deemed and registrable exemptions over time, as we obtain more information on the nature and scale of onselling activities.

### **4.1 Process for registering under a registrable class exemption**

Registrations must be submitted both in writing and electronically via email.

Registrations should be posted to:

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

And emailed to: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au) with 'Registration under a registrable class exemption' in the subject line.

The AER will acknowledge all registrations with a reply email and provide details of a contact person within the AER who will respond to any inquiries regarding the registration.

If any of the information provided to the AER for the purposes of registration changes during or after registration, you may no longer meet the requirements for registration. You should notify the AER of these changes by submitting amended information to the address above to ensure that your registered exemption remains valid.

If you will no longer meet the requirements for registration, and you wish to continue to sell energy, you may need to apply for an individual exemption (or a retailer authorisation).

#### **4.1.1—Information required to accompany the registration**

The Retail Rules specify a number of particulars that must be included on the Public Register and give the AER discretion to include other particulars it deems to be

relevant.<sup>33</sup> These particulars must be provided as part of the registration. The AER has created a template with the following information requirements for registrants to use. This template is available on our website [www.aer.gov.au](http://www.aer.gov.au) from 1 January 2012.

The following particulars must be provided to the AER (note that only those which are stated as such will be published on the Public Register):

- 1 Your legal name. If you are a body corporate or community corporation, please indicate this (this information will be published on the Public Register).
- 2 Your trading name if different to your legal name (this information will be published on the Public Register).
- 3 Australian Business Number (ABN) or Australian Company Number (ACN) (this information will be published on the Public Register).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 The address of the physical site you wish to register. Please provide a map of the site. Please also include a brief description of this site and its current and intended future use/s (a summary of this information will be published on the Public Register).
- 7 The form of energy for which the registrable exemption is sought (electricity or gas). For electricity, please state whether the network you propose to sell within is directly or indirectly connected to the main grid or is an off-grid network (this information will be published on the Public Register).
- 8 A description of your onselling situation and suitability for the applicable registrable class.
- 9 Please indicate whether you are establishing, or have established, energy supply in an area that was not previously serviced such that you will be the only reliable energy supplier for the site.
- 10 The date from which you intend to commence selling energy, whether upon registration or at some later date (this information will be published on the Public Register).
- 11 Do you have any experience in selling energy? If so, please provide a brief summary including:
  - date/s and location/s of previous operations
  - form/s of energy sold

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<sup>33</sup> Rule 164 of the Retail Rules.

- scale of operations (that is, the number and size/type of customers)
  - an explanation of which activities were conducted in-house and which were contracted out to third parties.
- 12 Do you currently hold, or have you previously held or been subject to, an individual energy selling exemption, a class energy selling exemption or a retail licence/authorisation in any state or territory? If so, please provide details of this.
  - 13 Have you formed, or do you intend to form, a bulk purchase contract with an energy retailer, and how far into the future does this, or will this, contract apply? Please provide a brief summary of this arrangement.
  - 14 The number of premises at the site for which registration is sought, with a breakdown between residential, small business and large business customers, as defined for the jurisdiction in which you intend to operate (this information will be published on the Public Register).
  - 15 Addresses of any other sites where you are seeking or currently hold a registered or individual exemption (this information will be published on the Public Register).
  - 16 Are the metering arrangements at the site such that your customers can elect to purchase energy from a retailer of their choice? If so and if you are currently onselling energy at the site, how many customers purchase from a retailer; or for future onselling at the site, do you expect that customers will exercise this right?
  - 17 If you are currently onselling energy at the site, whether any customers are reliant on any energy powered life support equipment; or for future onselling at the site, any expectation that customers will be reliant on this equipment.
  - 18 If you are currently onselling energy at the site, the total quantity of energy (electricity, gas or both as applicable) supplied annually; or for future onselling at the site, an approximation of the total quantity to be supplied annually.
  - 19 What energy rebates or concessions are available for your customers? Please indicate the process involved for the customer to claim these.

As noted above, once registered, it is the exempt person's responsibility to inform the AER of any changes that may affect their eligibility for exemption under a registrable exemption or compliance with the applicable conditions. We expect exempt persons to inform us of any such changes within 10 business days of them coming into effect.

## **Part 5: Individual exemptions**

Energy selling activities which are not covered by a class of deemed or registrable exemption will require an individual exemption or a retailer authorisation. The AER encourages persons who wish to obtain an individual exemption to contact us for further discussion before submitting an application.

Any person who falls under a deemed or registrable exemptions class may instead seek an individual exemption. This may be desirable where the person does not consider that the conditions attached to a deemed or registrable exemptions class are appropriate for their particular circumstances.

Some exempt persons may hold an exemption that was originally issued following application to a state or territory regulator or department, and was transitioned by the state or territory's application legislation to an individual exemption overseen by the AER. In this case, the exempt person must comply with any conditions imposed in the application legislation.

An individual exemption will be granted on the basis of the information provided at the time of application. The exemption will only remain valid as long as those circumstances remain current. Where an exempt person's circumstances change, they will need to seek a variation of the exemption from the AER. An exempt person may also seek a variation (or revocation) of a condition; for example, where a condition imposed under an individual exemption is no longer relevant to the exempt person's situation. The AER encourages exempt persons to contact us to discuss any potential variations to their individual exemption prior to submitting an application.

### **5.1 Procedures for applying for the grant or variation of an individual exemption**

The following procedures should be followed when applying for the grant or variation of an individual exemption.

Applications for the grant or variation of an individual exemption must be submitted both in writing and electronically via email.

Please post applications to:

General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

And email to: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au) with 'Application for individual exemption' in the subject line.

Applications for an electricity network service provider exemption may be lodged together with an application for an individual retail exemption.

We will acknowledge your application by email.

### **5.1.1—Form of energy**

You must specify whether you are seeking the grant or variation of an individual exemption for the sale of electricity or gas.

Once granted for a specific form of energy, an individual exemption cannot be varied to change or add to the form of energy to which the exemption relates. This does not prevent an application for, or the grant of, another exemption.

### **5.1.2—Contacts within the AER**

Upon application for a retail exemption, you will be assigned a contact person at the AER. We may also assign you a separate contact person at the AER who will respond to any inquiries regarding network service provider exemption applications. Further details on the information requirements for applications for electricity network service provider exemptions are available on our website at <http://www.aer.gov.au>.

### **5.1.3—Public consultation process**

Once we have received your compliant application for the grant or variation of an individual exemption, we will publish a notice on our website:

- stating that the application has been received
- seeking written submissions on the application by a specified date.

The notice may contain the application in its entirety or only some parts of it. Any matters you identify as confidential will not be published if we agree that such information is confidential. In accordance with the consultation process, we will consider all submissions received within the consultation period before a decision is made on the application. The consultation period will run for at least 20 business days from the date set out in the notice.

During the consultation period we may consult with industry participants, organisations and individuals with regard to your application. This may include persons residing at, or leasing, premises at the site for which the exemption is being sought. We may ask questions and seek documents from third parties relating to the application. Where required, we may also request advice from external experts and consultants.

Please refer to the *ACCC–AER information policy: the collection, use and disclosure of information* under ‘Publications’ on our website for further information on our treatment of information provided to us.

### 5.1.4—Conditions

We may impose conditions in relation to the grant, variation or revocation of an individual exemption.<sup>34</sup> We may also impose conditions while an exemption (as granted or varied) is in force.

Conditions will generally relate to the sale of energy to exempt customers. Some conditions may require compliance with certain obligations that apply to retailers under the Retail Law and Retail Rules and other energy legislation with which retailers are required to comply.<sup>35</sup> These obligations may be modified to recognise differences between exempt persons/exempt customers, and authorised retailers/retail customers.

We may also impose a condition that an exempt person's prices can be no more than the standing offer price of the local area retailer.<sup>36</sup> Upon commencement of the Retail Law and Retail Rules, the standing offer price of each local area retailer will be published on the AER's website.<sup>37</sup>

Exempt persons that operate an embedded electricity network will be required to comply with any conditions imposed under the *Network service provider exemptions guideline* relating to electricity metering. We may impose additional conditions in relation to the installation, maintenance and reading of exempt customers' meters in accordance with jurisdictional energy legislation.<sup>38</sup>

Conditions may be imposed when the individual exemption is granted or varied or at any time while the exemption is on foot.<sup>39</sup> The AER may vary or revoke a condition.<sup>40</sup>

If we impose conditions when your individual exemption is granted or varied, you will be given notice of this.<sup>41</sup> You will need to give the AER a notice of acceptance of the conditions imposed within 20 business days (or that period as extended by the AER). A failure to give the AER a notice of acceptance of imposed conditions will result in your application being refused (see 'grounds for refusal' below).<sup>42</sup> Details on the appropriate format for the formal acceptance of conditions will be provided to you if we impose conditions on the grant of your exemption.

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<sup>34</sup> Rule 158(2) (grant or variation) of the Retail Rules and sub-sections 120(7) and (11) (revocation) of the Retail Law.

<sup>35</sup> Rule 152(3) of the Retail Rules.

<sup>36</sup> Rule 152(4) of the Retail Rules.

<sup>37</sup> Section 23(7) of the Retail Law.

<sup>38</sup> Rule 152(5) of the Retail Rules.

<sup>39</sup> Rule 158(2) of the Retail Rules.

<sup>40</sup> Rule 158(3) of the Retail Rules.

<sup>41</sup> Rule 160 of the Retail Rules (read together with rule 158(4)).

<sup>42</sup> Rule 161(2) of the Retail Rules.

### **5.1.5—Consequences of a failure to meet conditions**

Under section 111 of the Retail Law, the AER may decide to revoke an individual exemption on the grounds that we are satisfied that there has been a material failure by the exempt person to meet the conditions imposed as part of its exemption. As with class exemptions, we will consider what constitutes a ‘material failure’ on a case by case basis as matters come to our attention. In general, the AER will conclude there to have been a material failure by an exempt person where they have not complied with conditions imposed on them as part of their exemption and as a result, there has been a significant or widespread impact on their customers.

The process for revocation that we must follow is outlined in section 120 of the Retail Law, and includes the following steps:

- The AER must give the exempt person a notice that it intends to revoke the exemption, and the reasons why the AER considers that grounds for revocation exist.
- The exempt person may respond to the notice in writing during the time specified by the AER, showing why the exemption should not be revoked and proposing actions the exempt person will take to rectify the problem.

If we are not satisfied with the exempt person’s response, we may fix a time for the revocation to take effect and inform the exempt person of any conditions they must comply with. We must then publish a copy of the decision to revoke the exemption on our website and advise AEMO and the relevant distributor of the revocation. We will also advise the exempt person’s retailer of the revocation.

### **5.1.6—AER decision making**

Our decision to grant or refuse your application for an individual exemption, or the variation of an individual exemption, will be made by assessing your application against the relevant provisions of the Retail Law. In assessing the application, we will be guided by the Retail Law objective, that is:

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

Where your application relates to onselling to small customers, we are required to perform our functions in a manner that is compatible with the development and application of consumer protections for small customers under the Retail Law and Retail Rules, including (but not limited to) protections relating to hardship customers.<sup>43</sup>

The AER will consider the Retail Law objective, the policy principles, exempt seller related factors and customer related factors when granting and varying individual exemptions. Guidance on the policy principles and factors is provided in Part 2 of this guideline.

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<sup>43</sup> Section 205 of the Retail Law.

We will not generally commence processing your application until all required information has been received.<sup>44</sup>

You will be given notice of the AER's decision regarding your application for the grant or variation of the individual exemption.<sup>45</sup> As noted above, if your application is approved, you will also be given notice of any conditions which may be attached to the exemption, as well as any other matter relevant to the decision.<sup>46</sup>

When you are given notice of the grant or variation of your individual exemption, the notice will specify which form of energy (electricity or gas) the grant or variation of exemption relates to. If you subsequently wish to sell a form of energy not covered by the individual exemption, you must apply for a further individual exemption. Your individual exemption cannot be varied to add to, or change, the form of energy to which the exemption relates.<sup>47</sup>

### **5.1.7—Grounds for refusal**

We may refuse an application for an individual exemption. Some reasons for which we may refuse an application include:

- We do not believe that granting an exemption will or is likely to contribute to the achievement of the national energy retail objective or is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers, as required by section 205 of the Retail Law;
- We consider that granting an exemption will not give effect to the policy principles or is not consistent with the exempt seller related factors or the customer related factors;
- We believe that the person should apply for a retailer authorisation, given the scale and scope of the selling of energy being undertaken;
- You have provided us with false or misleading information.

Providing false or misleading information in an application for the grant or variation of an individual exemption is a serious offence under the *Criminal Code Act 1995* (Cth). The maximum penalty for such an offence is 12 months imprisonment.

### **5.1.8—Issue and public notice of individual exemption**

If the AER decides to grant your individual exemption, and you have accepted any conditions imposed on the exemption, we must, as soon as practicable, issue you with an instrument of exemption. Similarly, once the AER has made a decision to vary your exemption, and you have accepted any conditions imposed on the variation, we must, as soon as practicable, issue you with an instrument of variation (or an

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<sup>44</sup> Rule 155(2) of the Retail Rules.

<sup>45</sup> Rule 160 (approval) and rule 163 (refusal) of the Retail Rules.

<sup>46</sup> Rule 160 of the Retail Rules.

<sup>47</sup> Rule 159 of the Retail Rules.

instrument containing the exemption as varied). We must also publish the terms of the exemption or variation on our website.

### **5.1.9—Withdrawal of application**

You may withdraw your application by submitting a written request to the AER any time before we approve it. Any withdrawn application will be removed from the AER's website as soon as practicable. If you subsequently change your mind, you must submit a new application.

### **5.1.10—Duration of exemption**

The Retail Law and Retail Rules do not specify any limit on the duration or validity of an exemption. However, the AER may impose a time limit on the grant or variation of an individual exemption. Any time limit will depend partly on the capital investment required to engage in the proposed exempt selling.

Where the investment in the embedded network has been fairly minimal, we consider a five year term to be generally appropriate for individual exemptions.

A significant distributed energy project may only be viable if a retail exemption is granted, and it may take a number of years to recoup the investment in the network and generation facilities. The expiry date for individual exemptions related to such projects is likely to be significantly longer than five years.

If no expiry date is stated as a condition of exemption, the grant or variation of the individual exemption will continue indefinitely unless it is revoked, in accordance with the Retail Law and Retail Rules.

Where a state or territory has elected to bring its off-grid networks under this exemptions framework, the AER will not generally set expiry dates for exemptions for any off-grid networks. However, if there is a material change in circumstances, the AER may seek to impose further conditions on the exemption or, if necessary, seek to revoke the exemption.

### **5.1.11—Procedures for the surrender of an individual exemption**

The Retail Law and Retail Rules do not provide a procedure for the (voluntary) surrender of an individual exemption.

Any exempt person who has been granted an individual exemption and no longer intends to onsell energy, is encouraged to inform the AER. We will remove details relating to the exempt person and their site from the Public Register.

## **5.2 Information requirements on application for the grant of an individual exemption**

We recommend that you communicate with us prior to submitting an application for the grant of an individual exemption. The provision of some of the information set out below may not be necessary in all circumstances. The information requirements may vary from case to case because many exempt selling situations are unique.

Discussions prior to the submission of your application may therefore avoid time being spent on the provision of unnecessary or irrelevant information.

Please note that we may request further information from you to allow us to better assess your application against the policy principles, exempt seller related factors and customer related factors.

### **5.2.1—General particulars**

The AER requires the following general information to be provided in your application for the grant of an individual exemption:

- 1 Your legal name. If you are a, body corporate or community corporation, please indicate this.
- 2 Your trading name if different to your legal name.
- 3 Australian Business Number (ABN) or Australian Company Number (ACN).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 Why are you seeking an individual exemption, and why do you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances?
- 7 The address of the physical site at which you intend to sell energy. Please provide a map of the site. Please also include a brief description of this site and its current and future use/s.
- 8 Please indicate the nature of the activities you will be undertaking (the characteristics of your business).
- 9 The form of energy for which the individual exemption is sought (electricity or gas). For electricity, please state whether the network you propose to sell within is directly or indirectly connected to the main grid or is (or will be) an off-grid network (where the off-grid network is located in a state or territory that has elected to bring off-grid networks under this exemptions framework).
- 10 Please indicate whether you are establishing, or have established, energy supply in an area where there are no other viable energy supply arrangements available.
- 11 The date from which you intend to commence selling energy, whether upon registration or at some later date.
- 12 Mailing addresses for residences at the site (where applicable). The AER may use this information to ensure that potential customers are able to participate in its consultation process.

- 13 Do you have any experience in selling energy? If so, please provide a brief summary including:
- date/s and location/s of previous operations
  - form/s of energy sold
  - scale of operations (that is, the number, size and type of customers)
  - an explanation of which activities were conducted in-house and which were contracted out to third parties.
- 14 Do you currently hold, or have you previously held or been subject to, an energy selling exemption, a class energy selling exemption or a retail licence (authorisation) in any state or territory? If so, please provide details of this.

### **5.2.2—Particulars relating to the nature and scope of the proposed operations**

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

- 1 Will your customers be your tenants? Please outline whether the tenancies are of a residential or commercial nature. Are they covered by residential or retail tenancy, or other legislation governing accommodation that is a person's principal place of residence (for example, retirement villages legislation, residential parks or manufactured home estates legislation) in your state or territory?
- 2 Are you providing other services (for example, accommodation/leasing of property) to persons on the site, to whom you intend to sell energy, or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please outline what these services are, and the contractual or leasing arrangements under which these services are being provided.
- 3 The total number of dwellings/premises at the site, with a breakdown between residential, small business and large business customers, as defined for the jurisdiction in which you intend to operate. Please also indicate the number of these dwellings/premises you anticipate selling energy to.
- 4 Will you be onselling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?
- 5 If purchasing from an authorised retailer, have you formed, or do you intend to form, a bulk purchase contract with the energy retailer, and how far into the future does this, or will this, contract apply? If so, please provide a brief summary of this arrangement.
- 6 An estimation of the aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and mega joules or gigajoules for gas) and the average expected consumption of customers for each type of

customer you service (that is, residential customers and retail or commercial tenancy customers).

- 7 Will your customers be wholly contained within a site owned, controlled or operated by you? (For the purposes of this question, a body corporate may be taken to 'operate' premises it oversees).
- 8 Will each premises/dwelling be separately metered? If the application concerns a new development or a redevelopment and customers will not be separately metered, please explain why not.
- 9 What types of meters will be used? For example, basic/accumulation meters, manually read interval meters or remotely read interval meters? Will these meters allow your customers to purchase energy from a retailer of their choice?
- 10 What accuracy standards apply to the meters? Do the meters comply with Australian Standards? If so, specify which Standard or Standards.
- 11 If customer dwellings/premises are separately metered, how often and by whom do you propose the meters are read?
- 12 How will you determine energy charges if customers are not separately metered?
- 13 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 14 What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues?
- 15 What energy rebates or concessions are available for your customers? Please indicate the process involved for the customer to claim these.
- 16 Will you make energy efficiency options available to your customers? Will your network incorporate solar or other generation options for sustainability purposes?
- 17 Please provide any further information that you consider would assist the AER to process your application.

### **5.3 Information requirements on application for the variation of an individual exemption**

We recommend that you communicate with us prior to submitting an application for the variation of an individual exemption. The information required to support this application revolves around changes to the information provided to the AER when the original application was made (where the exemption was granted by the AER rather than under state or territory application legislation for the transition to this exemptions framework), and reasons for the variation. Discussions prior to the submission of your application may therefore avoid time being spent on the provision of unnecessary or irrelevant information.

Please note that we may request further information from you to allow us to better assess your application for variation of exemption against the objective of the Retail Law, the policy principles, exempt seller related factors and customer related factors.

### **5.3.1—Particulars required for the variation of an individual exemption**

The AER requires the following information to be provided in your application for the variation of an individual exemption:

- 1 An explanation of why you are seeking a variation to your individual exemption and an explanation of why you believe an exemption remains appropriate for your changed circumstances, rather than requiring a retailer authorisation.
- 2 Where relevant, a list of the conditions of exemption that you believe need to be varied.
- 3 A list of changes to any of the information requirements in Section 5.2 that were provided to the AER when the original application for the individual exemption was submitted. If you have retained an electronic copy of the information requirements submitted with your original application, we encourage you to submit a version of this with tracked changes. If your individual exemption was not issued by the AER (i.e., it is a continuation of an exemption issued by a state or territory and transitioned to the AER through application legislation), we will advise you whether you also need to address the information requirements set out in section 5.2. We will provide this advice following receipt of the information required for the variation of your exemption, as set out in this section.

## Part 6: Enforcement

Under the Retail Law, a person must not engage in the sale of energy without obtaining a retailer authorisation or an exemption from that requirement.<sup>48</sup> Civil penalties apply if this provision is breached or if there is an attempted breach. Under section 299 of the Retail Law, an attempted breach is considered an actual breach. If the AER considers that a provision has been breached, we may commence proceedings under section 289. If the court finds there has been a breach, a civil penalty may be ordered under section 291. Section 308 of the Retail Law allows the AER to issue an infringement notice for breach of a civil penalty provision.

The Federal Court also has powers to make orders on application by the AER under section 44AAG of the *Competition and Consumer Act 2010* (Cth), including orders requiring a person to do one or more of the following:

- cease the activity that is in breach
- take action to remedy the breach
- implement a specified program for compliance with the Retail Law.

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<sup>48</sup> Section 88 of the Retail Law.

## **Attachment 1 – Determination of Deemed Exemptions**

### **Deemed classes of exemption**

The AER determines the following classes of persons as classes of persons in respect of whom a deemed exemption is taken to be in force for the purposes of section 110 of the National Energy Retail Law and rule 150 of the National Energy Retail Rules.

**Class 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 47**

**Class D2—Persons onselling 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 48**

**Class D3—Persons onselling metered energy to short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate 58**

**Class D4—Persons onselling 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 61**

**Class D5—Persons onselling 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 71**

**Class D6—Persons onselling unmetered electricity in Queensland to small customers for use within the limits of a site that they own, occupy or operate 76**

**Class 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 85**

**Class D8—Persons onselling energy to a related company within the limits of a site that they own, occupy or operate 86**

**Class 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**

A deemed exemption is in force for persons falling within the following class:

Bodies corporate who:

1. supply energy to common areas within the limits of land affected by that body corporate, and
2. recoup from members, through body corporate fees, the cost of (metered or unmetered) energy supplied to common areas.

**Conditions**

No conditions are attached to this class of exemption.

**Class D2—Persons onselling 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**

**Note**—This class is intended to apply to the onselling of energy by landlords, lessors or property managers (and similar entities) to residential dwellings such as units, standard apartments, flats and purpose built off-site student accommodation.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is for use in residential premises located within the limits of a site owned, occupied or operated by that person,
2. the site includes fewer than 20 residential premises,
3. the premises are separately metered, and
4. the person selling the energy is a landlord, lessor or property manager (or similar entity) and the relationship between the person and the residents is governed by residential tenancy legislation.

Brownfield sites (sites that required retrofitting with the appropriate metering prior to onselling commencing) will only be eligible for this exemption if retrofitting is completed by 1 January 2015.

## **Conditions**

The following conditions apply under rule 153 to the sale of energy to residential customers by persons covered by the Class D2 deemed exemption.

### **Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

### **Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:

- a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes
  - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
  - i. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
  3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.

2. An exempt person must offer 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:
  - a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected energy consumption needs over the following 12 month period.
3. The requirements in paragraph 2 do not apply where the exempt customer has:
  - a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - b. been convicted of an offence involving illegal use of energy in the previous two years
4. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.
  - e. The pay-by date for the bill.
  - f. Date of the current meter reading or estimate, as applicable.
  - g. The dates to which the meter reading or estimate applies (billing period).
  - h. Days in the billing period.
  - i. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - j. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - 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. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).

- l. Tariffs, fees and charges applicable to the exempt customer.
- m. The basis on which tariffs, fees and charges are calculated.
- 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.
- o. Details of the available payment methods.
- p. A telephone number for account inquiries and complaints.

**Condition 4 - Estimation as basis for bills**

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

**Condition 5 - Pay-by date**

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

**Condition 6 - Receipts**

- 1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
  - a. direct debit, or
  - b. credit card over the phone and the customer is provided with a receipt number.

2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

### **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer's tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
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:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.

- c. No interest is payable on the overcharged amount.
- d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

#### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - c. not charge the exempt customer a security deposit.
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:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - 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:
    - 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
    - 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
    - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and

- iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
3. Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
4. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

### **Condition 9 - When disconnection or cessation of supply is prohibited**

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

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

#### **Condition 10 - Reconnection of supply**

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

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

#### **Condition 11 - Concessions and rebates**

1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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.

#### **Condition 12 - Choice of retailer**

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.

#### **Condition 13 - Contact details**

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.

### **Condition 14 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

### **Condition 15 - Life support customers**

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

### **Condition 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 onselling energy.

### **Condition 17 – Termination of energy supply agreement**

1. An energy supply agreement between the exempt person and exempt customer terminates:
  - a. on a date agreed by the exempt person and exempt customer, or
  - 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
  - c. at the conclusion of the exempt customer's lease for the premises to which the energy is supplied, or

- d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
  - e. when a different exempt customer starts receiving customer retail services for the premises, or
  - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are de-energised, where the conditions for re-energisation have not been met.
2. Termination of an energy supply agreement does not affect any rights or obligations that have already accrued under the agreement.

### **Condition 18 - Maintaining records**

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

## **Class D3—Persons onselling metered energy to short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate**

Note—This class is intended to apply to the onselling of energy to short term residents in holiday accommodation including hotels, motels, inns, holiday flats, holiday cabins, campsites, non-residential caravan parks and marinas.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is for use in premises located within the limits of a site owned, occupied or operated by that person,
2. the person provides holiday accommodation at the site,
3. the premises are separately metered, and
4. the resident is short term.

For the purposes of this exemption, a reference to a ‘short term’ resident is a reference to a person who is using the accommodation, where the accommodation is not the person’s regular home or dwelling.

Brownfield sites (sites that required retrofitting with the appropriate metering prior to onselling commencing) will only be eligible for this exemption if retrofitting is completed by 1 January 2015.

### **Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by persons covered by the Class D3 deemed exemption.

#### **Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

#### **Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
3. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The period covered by the bill.
  - b. The amount of energy consumed, or estimated to be consumed, in the billing period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
  - c. Tariffs, fees and charges applicable to the exempt customer.
  - d. The pay-by date for the bill.
  - e. The basis on which tariffs, fees and charges are calculated.

### **Condition 4 - Estimation as basis for bills**

1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
2. 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.
3. Where an estimation is used as the basis for a exempt customer's bill, the estimation must be based on:
  - a. historical metering data for the exempt customer reasonably available to the exempt person, or
  - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

### **Condition 5 - Receipts**

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:

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

**Condition 6 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.

**Condition 7 - Contact details**

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.

## **Class D4—Persons onselling 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**

Note—The forms of residential accommodation that are not covered by residential tenancy legislation (and are therefore covered by this class of exemption) vary across states and territories, but may include hostels, rooming houses, boarding houses, and on-site student accommodation.

Where a more specific exemption class also applies—for example, the exemptions for holiday accommodation (class D3), caravan parks, residential parks and manufactured home estates (classes R4) or retirement villages (class R3)—the onseller will be subject to, and required to comply with the conditions applying to the more specific exemption.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is for use within the limits of a site owned, occupied or operated by that person,
2. the person provides residential accommodation at the site,
3. the person selling the energy is a landlord, lessor or property manager (or similar entity) and the relationship between the person and the residents is not governed by residential tenancy legislation in the relevant state or territory,
4. the residential accommodation is separately metered, and
5. the sale of energy does not satisfy the criteria for deemed exemption class D3, or registrable exemption classes R3 or R4.

Brownfield sites (sites that required retrofitting with the appropriate metering prior to onselling commencing) will only be eligible for this exemption if retrofitting is completed by 1 January 2015.

### **Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class D4 deemed exemption.

#### **Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

## **Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
  - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes
  - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
  - i. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must offer 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:
  - a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected energy consumption needs over the following 12 month period.
3. The requirements in paragraph 2 do not apply where the exempt customer has:
  - d. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - e. been convicted of an offence involving illegal use of energy in the previous two years
4. An exempt person must include the following particulars in a bill for an exempt customer:
  - d. The name of the exempt customer.
  - e. The address of the exempt customer's premises.
  - f. Date that the account was issued.
  - g. The identifier of the meter for the exempt customer's premises.
  - h. The pay-by date for the bill.
  - i. Date of the current meter reading or estimate, as applicable.
  - j. The dates to which the meter reading or estimate applies (billing period).
  - k. Days in the billing period.
  - l. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - m. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - n. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours.

For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).

- o. Tariffs, fees and charges applicable to the exempt customer.
- p. The basis on which tariffs, fees and charges are calculated.
- q. 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.
- r. Details of the available payment methods.
- s. A telephone number for account inquiries and complaints.

#### **Condition 4 - Estimation as basis for bills**

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

#### **Condition 5 - Pay-by date**

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

#### **Condition 6 - Receipts**

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
  - a. direct debit, or

- b. credit card over the phone and the customer is provided with a receipt number.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

### **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer's tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
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:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.

- b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
- c. No interest is payable on the overcharged amount.
- d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

#### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
2. Subject to Condition 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:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - 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:
  - d. 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
  - e. 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

- f. 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
  - g. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
3. Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.

### **Condition 9 - When disconnection or cessation of supply is prohibited**

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

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

#### **Condition 10 - Reconnection of supply**

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:

- a. if relevant, rectified the matter that led to the disconnection, and
- b. made a request for reconnection, and
- c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

#### **Condition 11 - Concessions and rebates**

1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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.

#### **Condition 12 - Choice of retailer**

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.

#### **Condition 13 - Contact details**

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.

#### **Condition 14 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and

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

#### **Condition 15 - Life support customers**

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

#### **Condition 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 onselling energy.

#### **Condition 17 – Termination of energy supply agreement**

1. An energy supply agreement between the exempt person and exempt customer terminates:
  - a. on a date agreed by the exempt person and exempt customer, or
  - 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
  - c. at the conclusion of the exempt customer's lease for the premises to which the energy is supplied, or
  - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
  - e. when a different exempt customer starts receiving customer retail services for the premises, or

- f. at the end of a period of 10 business days commencing on the day the exempt customers premises are de-energised, where the conditions for re-energisation have not been met.
2. Termination of an energy supply agreement does not affect any rights or obligations that have already accrued under the agreement.

**Condition 18 - Maintaining records**

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

## **Class D5—Persons onselling 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**

Note—This exemption will only apply where gas is used for limited purposes, that is, for use in cooking appliances but does not include gas used in the production of bulk hot water.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of gas where:

1. the gas is for use in premises within the limits of a site owned, occupied or operated by the person or, in the case of a body corporate, on land affected by that body corporate, and
2. the premises are not separately metered for gas consumption, and
3. there is a separate itemised charge for the gas (or, in the case of a body corporate, the cost is recouped through body corporate fees), and
4. the gas is not used for space heating.

### **Conditions**

No conditions apply where a body corporate recoups the cost of gas through body corporate fees.

For the sale of unmetered gas to exempt customers by exempt persons (other than bodies corporate) under the Class D5 deemed exemption, the following conditions apply under rule 153.

#### **Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

#### **Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
  - a. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and

- ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - b. the conditions applicable to the exemption that the exempt person is operating under
  - c. the gas tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of gas
  - d. any flexible payment options for gas provided by the exempt person for exempt customers, including alternative payment arrangements for payment by periodic instalments (bill smoothing)
  - e. contact numbers in the event of a gas fault or emergency.
2. The information set out in paragraph 1 of this condition must be provided by the exempt person at the request of the exempt customer or the AER.
  3. The information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable (and at least within three months) after the determination is in force.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The pay-by date for the bill.
  - e. Date of the meter reading or estimate on which the bill is based, as applicable.
  - f. The dates to which the meter reading or estimate applies (billing period).
  - g. Days in the billing period.
  - h. The amount of gas deemed to be consumed by the exempt customer in the meter reading or estimate period, including the basis of allocation of the deemed amount. Gas consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied
  - i. Tariffs, fees and charges applicable to the exempt customer.

- j. Details of the available payment methods.
- k. A telephone number for account inquiries and complaints.

#### **Condition 4 - Estimation as basis for bills**

1. An exempt person must use best endeavours to ensure that the site's gas meter is read and used as the basis for any bill issued.
2. An exempt person may base an exempt customer's bill on an estimation of the site's gas consumption where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
3. Where an estimation of gas consumption for the site is used as the basis for a exempt customer's bill, the estimation must be based on:
  - a. historical metering data for the site reasonably available to the exempt person, or
  - b. where this is not available, the average usage of gas by a comparable site over the corresponding period.
4. If a bill is based on an estimation of gas consumption for the site, this must be clearly stated on the exempt customer's bill.

#### **Condition 5 - Pay-by date**

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

#### **Condition 6 - Receipts**

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

#### **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of gas directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.

3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
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:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.
  - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

#### **Condition 8 - Contact details**

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.

### **Condition 9 - Dispute resolution**

1. In the event of a dispute concerning the sale of gas to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

### **Condition 10 – Termination of contract**

1. An energy supply agreement between the exempt person and exempt customer terminates:
  - a. on a date agreed by the exempt person and exempt customer, or
  - 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
  - c. at the conclusion of the exempt customer's lease for the premises to which the energy is supplied, or
  - d. when a different exempt customer starts receiving customer retail services for the premises.
2. Termination of an energy supply agreement does not affect any rights or obligations that have already accrued under the agreement.

## **Class D6—Persons onselling unmetered electricity in Queensland to small customers for use within the limits of a site that they own, occupy or operate**

*[This class will be closed to new entrants from 1 January 2015]*

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of electricity to small customers where:

1. the electricity is used for premises within the limits of a site owned, occupied or operated by the person, and
2. the site is in Queensland, and
3. the premises are not separately metered, and
4. the sale of electricity commenced prior to 1 January 2015.

### **Conditions**

The following conditions apply under rule 153 to the sale of electricity to exempt customers by exempt persons covered by the Class D6 deemed exemption.

#### **Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell electricity to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. An exempt person cannot refuse to sell electricity 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).

#### **Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
  - a. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - b. the conditions applicable to the exemption that the exempt person is operating under

- c. the availability of relevant government or non-government energy rebates, concessions and relief schemes
  - d. the forms of assistance available if the exempt customer is unable to pay electricity bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - e. the electricity tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of electricity
  - f. the flexible payment options that are available to the exempt customer in relation to the sale of electricity, such as arrangements for payment by periodic instalments (bill smoothing)
  - g. contact numbers in the event of an electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
  3. Once the determination comes into force in Queensland, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in Queensland.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must offer flexible payment options (in relation to the sale of electricity) to a residential 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:
  - a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected electricity consumption needs over the following 12 month period.
3. The requirements in paragraph 2 do not apply where the exempt customer has:
  - a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - b. been convicted of an offence involving illegal use of electricity in the previous two years
4. An exempt person must include the following particulars in a bill for an exempt customer:

- a. The name of the exempt customer.
- b. The address of the exempt customer's premises.
- c. Date that the account was issued.
- d. The pay-by date for the bill.
- e. Date of the meter reading or estimate on which the bill is based, as applicable.
- f. The dates to which the meter reading or estimate applies (billing period).
- g. Days in the billing period.
- h. The amount of electricity consumed, or estimated to be consumed, by the site in the meter reading or estimate period. Electricity consumption must be shown in kilowatt hours.
- i. The amount of electricity deemed to be consumed by the exempt customer in the billing period, including the basis of allocation of the deemed amount.
- j. Tariffs, fees and charges applicable to the exempt customer.
- k. Details of the available payment methods.
- l. A telephone number for account inquiries and complaints.

**Condition 4 - Estimation as basis for bills**

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

### **Condition 5 - Pay-by date**

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

### **Condition 6 - Receipts**

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

### **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of electricity directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).

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:
  - 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 electricity from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.
  - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

#### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. Where a residential exempt customer informs the exempt person that it is unable to pay an electricity bill due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
2. Subject to Condition 9, an exempt person must not proceed with disconnection or cessation of electricity supply to an exempt customer unless the following requirements have been met:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - c. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:
    - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, has offered the residential exempt customer more flexible payment terms to

pay any amount outstanding and has restated the forms of assistance available if the non-payment is due to financial difficulty, and

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

#### **Condition 9 - When disconnection or cessation of supply is prohibited**

1. An exempt person must not disconnect or cease electricity supply to an exempt customer's premises where:
  - a. a person residing at the exempt customer's premises requires life support equipment that depends on electricity for its operation, or
  - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government or non-government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
  - c. the exempt customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
  - d. the disconnection or cessation of supply would occur on:
    - i. a business day before 8am or after 3pm, or
    - ii. a Friday or the day before a public holiday, or
    - iii. a weekend or a public holiday, or

- iv. the days between 20 December and 31 December (both inclusive) in any year.
2. The exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
3. This condition does not apply where the exempt customer has requested disconnection.
4. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of electricity supply by the exempt person on the basis that they are a landlord.
5. This condition does not apply where the electricity supply agreement between the exempt person and exempt customer has been terminated.

#### **Condition 10 - Reconnection of supply**

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

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

#### **Condition 11 - Concessions and rebates**

1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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.

#### **Condition 12 - Contact details**

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.

### **Condition 13 - Dispute resolution**

1. In the event of a dispute concerning the sale of electricity to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

### **Condition 15 - Life support customers**

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

### **Condition 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 onselling electricity.

### **Condition 17 – Termination of electricity supply agreement**

1. An electricity supply agreement between the exempt person and exempt customer terminates:
  - a. on a date agreed by the exempt person and exempt customer, or
  - 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
  - c. at the conclusion of the exempt customer's lease for the premises to which the electricity is supplied, or

- d. when the exempt customer starts receiving electricity retail services from a different retailer or exempt person, or
  - e. when a different exempt customer starts receiving customer retail services for the premises, or
  - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are de-energised, where the conditions for re-energisation have not been met.
2. Termination of an electricity supply agreement does not affect any rights or obligations that have already accrued under the agreement.

**Condition 18 - Maintaining records**

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

**Class 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**

Note—This class is intended to apply where landlords, lessors or management corporations (and similar entities) recoup common area energy costs from tenants of premises in commercial or retail developments such as shopping centres, office buildings, airports and industrial parks.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to tenants where:

1. the energy is used within the limits of a site owned, occupied or operated by the person, and
2. the energy is used within common areas of that site, and
3. the relationship between the person and the tenant is governed by commercial or retail tenancy legislation, and
4. the cost of the energy is recouped in accordance with the terms of a lease between the person and the tenant.

**Conditions**

No conditions are attached to this class of exemption.

## **Class D8—Persons onselling energy to a related company within the limits of a site that they own, occupy or operate**

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to a related company, where the energy is used within the limits of a site owned, occupied or operated by the person.

For the avoidance of doubt, where a company controls or is controlled by another company including where:

1. a company is a subsidiary of another company, or
2. two companies have a common holding company,

the two companies are related and will qualify to operate under this class of exemption.

### **Conditions**

No conditions are attached to this class of exemption.

## **Attachment 2 –Determination of Registrable Exemptions**

### **Registrable exemption classes**

The AER determines the following classes of persons as classes of persons in respect of whom an exemption is registrable for the purposes of section 110 of the National Energy Retail Law and rule 151 of the National Energy Retail Rules.

**Class R1—Persons onselling 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 88**

**Class R2—Bodies corporate onselling metered energy to residents for use in premises within the limits of a site affected by that body corporate 96**

**Class 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 106**

**Class R4—Persons onselling 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 115**

**Class R5—Persons onselling metered energy to large customers 124**

**Class R1—Persons onselling 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**

*[This class will be closed to new entrants from 1 January 2015]*

Note—This class applies to the onselling of energy by landlords, lessors or management corporations (and similar entities) in commercial developments such as shopping centres, office buildings, airports and industrial parks.

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to small customers where:

1. the energy is used for premises within the limits of a site owned, occupied or operated by the person, and
2. the premises are separately metered, and
3. the person selling the energy is a landlord, lessor or management corporation (or similar entity) and the relationship between the person and the small customers is governed by commercial or retail tenancy legislation, and
4. the cost of the energy is recouped in accordance with the terms of the lease between the small customer and the person,
5. the sale of energy commenced prior to 1 January 2015.

**Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class R1 registrable exemption.

**Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

**Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/occupancy of the following:

- a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer may not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - f. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/occupancy, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
  3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.
  - e. The pay-by date for the bill.

- f. Date of the current meter reading or estimate, as applicable.
- g. The dates to which the meter reading or estimate applies (billing period).
- h. Days in the billing period.
- i. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- j. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- 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. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- l. Tariffs, fees and charges applicable to the exempt customer.
- m. The basis on which tariffs, fees and charges are calculated.
- n. Details of the available payment methods.
- o. A telephone number for account inquiries and complaints.

**Condition 4 - Estimation as basis for bills**

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

### **Condition 5 - Pay-by date**

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

### **Condition 6 - Receipts**

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

### **Condition 7 – Undercharging and overcharging**

1. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
2. Where an exempt customer has been overcharged, an exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.
  - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount

overcharged in the 12 months before the date on which the error was discovered.

### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. 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:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - c. the exempt customer's lease has expired and the exempt customer is vacating the premises, or
  - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and
    - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice and advising the exempt customer that the exempt person may offer them more flexible payment terms to pay any amount outstanding, and
    - ii. following non-payment by the date specified in the reminder notice, or the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
    - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
    - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
2. Where an exempt customer is disconnected in accordance with paragraph 1(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.
3. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

### **Condition 9 - When disconnection or cessation of supply is prohibited**

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:

- a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
  - b. 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
  - c. the disconnection or cessation of supply would occur on:
    - i. a business day before 8am or after 3pm, or
    - ii. a Friday or the day before a public holiday, or
    - iii. a weekend or a public holiday, or
    - iv. the days between 20 December and 31 December (both inclusive) in any year.
2. For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
  3. This condition does not apply where the exempt customer has requested disconnection.
  4. This condition does not apply where 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.
  5. This condition does not apply where the exempt customer's lease has expired.

#### **Condition 10 - Reconnection of supply**

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

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

#### **Condition 11 - Choice of retailer**

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.

#### **Condition 12 - Contact details**

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.

#### **Condition 13 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

#### **Condition 14 - 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 onselling energy.

#### **Condition 15 – Termination of contract**

1. Need to include the relevant grounds for termination from clause 70 of the Retail Rules

#### **Condition 16 - Maintaining records**

1. An exempt person must maintain records of the following for each of its exempt customers:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. The identifier of the meter for the exempt customer's premises.
  - d. The date that the customer account was created.
  - e. Copies of any bills issued for the previous 12 months.
  - f. The date of the most recent meter read for the customer.

- g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

## **Class R2—Bodies corporate onselling metered energy to residents for use in premises within the limits of a site affected by that body corporate**

*[This class will be closed to new entrants from 1 January 2015]*

Note—This exemption is not intended to apply to retirement villages. Onselling activities within retirement villages which might otherwise fall within this exemption class will be subject to, and required to comply with the conditions applying to class R3.

An exemption is registrable for persons falling within the following class:

Bodies corporate engaged in the onselling of energy to residents where:

1. the energy is used for premises within the limits of a site affected by that body corporate, and
2. the premises are separately metered, and
3. the sale of energy does not satisfy the criteria for registrable exemption class R3, and
4. the sale of energy commenced prior to 1 January 2015.

### **Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class R2 registrable exemption.

#### **Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

#### **Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
  - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice

- b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes
  - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
  - i. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
  3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must offer 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:

- a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected energy consumption needs over the following 12 month period.
3. The requirements in paragraph 2 do not apply where the exempt customer has:
- a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - b. been convicted of an offence involving illegal use of energy in the previous two years
4. An exempt person must include the following particulars in a bill for an exempt customer:
- a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.
  - e. The pay-by date for the bill.
  - f. Date of the current meter reading or estimate, as applicable.
  - g. The dates to which the meter reading or estimate applies (billing period).
  - h. Days in the billing period.
  - i. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - j. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - 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. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
  - l. Tariffs, fees and charges applicable to the exempt customer.
  - m. The basis on which tariffs, fees and charges are calculated.

- 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.
- o. Details of the available payment methods.
- p. A telephone number for account inquiries and complaints.

#### **Condition 4 - Estimation as basis for bills**

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

#### **Condition 5 - Pay-by date**

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

#### **Condition 6 - Receipts**

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

## Condition 7 - Pricing

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
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:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.

- d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
2. Subject to Condition 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:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - 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:
    - 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
    - ii. following non-payment by the date specified in the reminder notice, or the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
    - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
    - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.

3. Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
4. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

#### **Condition 9 - When disconnection or cessation of supply is prohibited**

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

5. This condition does not apply where the energy supply agreement between the exempt person and exempt customer has been terminated.

#### **Condition 10 - Reconnection of supply**

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

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

#### **Condition 11 - Concessions and rebates**

1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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.

#### **Condition 12 - Choice of retailer**

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.

#### **Condition 13 - Contact details**

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.

#### **Condition 14 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and

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

#### **Condition 15 - Life support customers**

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

#### **Condition 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 onselling energy.

#### **Condition 17 – Termination of energy supply agreement**

1. The arrangement through which an exempt person supplies energy to an exempt customer will terminate:
  - a. on a date agreed by the exempt person and exempt customer, or
  - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice, or
  - c. at the conclusion of the exempt customer's lease for the premises to which the energy is supplied, or
  - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
  - e. when a different exempt customer starts receiving customer retail services for the premises, or

- f. at the end of a period of 10 business days commencing on the day the exempt customers premises are disconnected, where the conditions for reconnection have not been met.
2. Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

**Condition 18 - Maintaining records**

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

**Class 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**

*[This class will be closed to new entrants from 1 January 2015]*

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is used for premises within the limits of a site owned, occupied or operated by the person, and
2. the premises are separately metered, and
3. the relationship between the person and the resident is governed by retirement village legislation, and
4. the sale of energy commenced prior to 1 January 2015.

**Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class R3 registrable exemption.

**Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

**Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
  - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer’s rights in relation to dispute resolution including:

- i. the exempt person's procedures for handling disputes and complaints, and
  - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
- d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes
  - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
  - i. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
  3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must offer 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:
  - a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected energy consumption needs over the following 12 month period.

3. The requirements in paragraph 2 do not apply where the exempt customer has:
  - a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - b. been convicted of an offence involving illegal use of energy in the previous two years
4. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.
  - e. The pay-by date for the bill.
  - f. Date of the current meter reading or estimate, as applicable.
  - g. The dates to which the meter reading or estimate applies (billing period).
  - h. Days in the billing period.
  - i. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - j. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - 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. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
  - l. Tariffs, fees and charges applicable to the exempt customer.
  - m. The basis on which tariffs, fees and charges are calculated.
  - 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.
  - o. Details of the available payment methods.
  - p. A telephone number for account inquiries and complaints.

#### **Condition 4 - Estimation as basis for bills**

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

#### **Condition 5 - Pay-by date**

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

#### **Condition 6 - Receipts**

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

#### **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.

3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
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:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.
  - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

#### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and

- b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
2. Subject to Condition 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:
- a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - 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:
  - d. 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
  - e. 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
  - f. 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
  - g. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
3. Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
4. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

**Condition 9 - When disconnection or cessation of supply is prohibited**

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:

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

#### **Condition 10 - Reconnection of supply**

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

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

### **Condition 11 - Concessions and rebates**

1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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.

### **Condition 12 - Choice of retailer**

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.

### **Condition 13 - Contact details**

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.

### **Condition 14 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

### **Condition 15 - Life support customers**

1. Where an exempt customer provides an exempt person with confirmation from a registered medical practitioner that a person residing at the exempt customer's premises requires life support equipment, the exempt person must:
  - a. advise the person whose embedded distribution network the sale of energy is occurring within (if different from the exempt person) that a person residing at the premises requires life support equipment, and
  - b. advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment, and

- c. provide the exempt person's authorised retailer and distributor with any relevant information about the premises for the purposes of updating their records and registers.
2. An exempt person must maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.

**Condition 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 onselling energy.

**Condition 17 – Termination of energy supply agreement**

1. Need to include the relevant grounds for termination from clause 70 of the Retail Rules

**Condition 18 - Maintaining records**

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

**Class R4—Persons onselling 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**

Note—In practice, persons operating these sites may onsell energy to both short term holidaymakers and residents whose principal place of residence is within the site. Where this occurs, Class D3 will apply to the sale of energy to short term holidaymakers, and Class R4 will apply to the sale of energy to residents whose principal place of residence is within the site.

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is used for premises within the limits of a caravan park, residential park or manufactured home estate site owned, occupied or operated by the person, and
2. the premises are separately metered, and
3. the premises are the resident’s principal place of residence.

For the purposes of this exemption, a reference to a ‘principal place of residence’ means the primary premises that a person inhabits. It does not matter what kind of dwelling it is, as long as it is where the person lives most of the time.

**Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class R4 registrable exemption.

**Condition 1 – Obligation to supply**

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. 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).

**Condition 2 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:

- a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, and
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the availability of relevant government or non-government energy rebates, concessions and relief schemes
  - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
  - i. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
  3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

### **Condition 3 - Billing and payment arrangements**

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must offer 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:

- a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected energy consumption needs over the following 12 month period.
3. The requirements in paragraph 2 do not apply where the exempt customer has:
- a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - b. been convicted of an offence involving illegal use of energy in the previous two years
4. An exempt person must include the following particulars in a bill for an exempt customer:
- a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.
  - e. The pay-by date for the bill.
  - f. Date of the current meter reading or estimate, as applicable.
  - g. The dates to which the meter reading or estimate applies (billing period).
  - h. Days in the billing period.
  - i. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - j. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - 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. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
  - l. Tariffs, fees and charges applicable to the exempt customer.

- m. The basis on which tariffs, fees and charges are calculated.
- 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.
- o. Details of the available payment methods.
- p. A telephone number for account inquiries and complaints.

**Condition 4 - Estimation as basis for bills**

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

**Condition 5 - Pay-by date**

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

**Condition 6 - Receipts**

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

## **Condition 7 - Pricing**

1. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
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.
5. The requirements in paragraphs 1–4 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
6. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
  - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging.
  - b. The exempt person cannot charge interest on the undercharged amount.
  - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
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:
  - a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. No interest is payable on the overcharged amount.

- d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

### **Condition 8 - Payment difficulties and disconnection or cessation of supply**

1. Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resources with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
2. Subject to Condition 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:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - 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:
  - d. 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
  - e. 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
  - f. 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
  - g. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.

3. Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
4. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

#### **Condition 9 - When disconnection or cessation of supply is prohibited**

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

### **Condition 10 - Reconnection of supply**

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

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

### **Condition 11 - Concessions and rebates**

1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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.

### **Condition 12 - Choice of retailer**

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.

### **Condition 13 - Contact details**

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.

### **Condition 14 - Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute

resolution body in the state or territory in which the exempt customer is located, if applicable.

#### **Condition 15 - Life support customers**

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

#### **Condition 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 onselling energy.

#### **Condition 17 – Termination of energy supply agreement**

1. Need to include the relevant grounds for termination from clause 70 of the Retail Rules

#### **Condition 18 - Maintaining records**

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

## **Class R5—Persons onselling metered energy to large customers**

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of metered energy to large customers.

### **Conditions**

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class R5 registrable exemption.

#### **Condition 1 - Information provision**

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy that a retailer of last resort will not be automatically appointed for the customer if the onseller ceases to supply energy.

#### **Condition 2 - Choice of retailer**

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.