



# **AER (Retail) Exempt Selling Guideline**

**Version 3**

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## About this guideline

This guideline is for people or businesses that sell energy under the *National Energy Retail Law* (Retail Law) and need a retail exemption. You should read this guideline if you charge another person for the cost of energy, be it for profit or simply to recover your own costs. This guideline focuses on what you need to know and what you must do to comply with the Retail Law as an exempt seller.

If you think you may need a retail exemption, this guideline will help you understand:

- what retail exemptions are and how they work
- whether or not you, or your business, need a retail exemption
- how to obtain a retail exemption and which exemption class applies to you
- the factors we will consider when assessing individual exemption applications.

This guideline deals with retail exemptions under the Retail Law. For network exemptions under the National Electricity Law, please see the [Australian Energy Regulator's Network service provider registration exemption guideline](#).<sup>1</sup>

If you are unsure whether you need an exemption or not, please contact us. You can email us at [aer inquiry@aer.gov.au](mailto:aer inquiry@aer.gov.au) with any questions, or phone the AER/ACCC Infocentre on 1300 585 165 (Australian callers) or + 612 6243 1305 (overseas callers).

## About the AER

The AER operates under Part IIIAA of the *Competition and Consumer Act 2010* and is the national regulator of energy markets and networks.<sup>2</sup> Our responsibilities include administering and regulating authorisations and exemptions (retail and network) in participating jurisdictions.

## The National Energy Retail Law framework

The Retail Law provides a national framework for the sale of energy (gas and electricity) to customers.<sup>3</sup> It includes the National Energy Retail Rules (Retail Rules) and the National Energy Regulations.

Under the Retail Law, anyone who sells energy to people for use at premises must have either a retailer authorisation, or a retail exemption.<sup>4</sup> Energy selling covers a wide range of activities, from energy retailing by authorised (licensed) retailers to landlords recovering energy costs from their tenants. Energy 'sales' do not necessarily have to be for profit—passing on energy costs to another person is considered to be a sale. Similarly, 'premises'

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<sup>1</sup> <http://www.aer.gov.au/node/983>

<sup>2</sup> The AER does not regulate the energy markets in Western Australia or the Northern Territory.

<sup>3</sup> 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.

<sup>4</sup> Section 88 of the Retail Law. A breach of this provision attracts a civil penalty.

has a broad meaning, and includes residential homes or other places of residence (for example, a caravan park where tenants reside permanently), shopping centres and commercial sites. If you sell energy and do not have an authorisation or exemption to do so, you may be fined or ordered, by a Court, to remedy the breach.<sup>5</sup>

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<sup>5</sup> We may issue an infringement notice (s 308 of the Retail Law). We may also apply to the Federal Court under section 44AAG of the Competition and Consumer Act 2010 (Cth) to order a person to cease the activity that is in breach, or take action to remedy the breach, or implement a specified program for compliance with the Retail Law.

## What is exempt selling?

Exempt selling occurs where persons, businesses or other entities are exempt from having to hold a retailer authorisation. Exempt sellers have a range of obligations to their customers as conditions of their exemption. These conditions are based on the obligations of authorised retailers and vary according to the specifics of a seller's operations.

Energy onselling is where a person buys energy from an authorised retailer and sells it to another person or business. Onselling often occurs in privately owned embedded networks, such as caravan parks, shopping centres, retirement villages, office buildings and apartment buildings. Generally, onsellors need a retail exemption.

If you (or another person or business) generate energy and sell it, for example in a remote community or through solar panels, you may need a retail exemption.<sup>6</sup>

## What is the sale of energy?

The sale of energy is the sale of gas or electricity to a person or business for use at premises, and is reflected in a separate, discrete charge for energy. A sale of energy is not taking place where energy costs are absorbed into another fixed charge (for example, rent that includes energy costs, or a hotel tariff that includes energy costs),<sup>7</sup> or where they are shared, for example, in a group house or a community facility.

Some examples of a sale of energy are illustrated below:

Energy sold to a long term resident of a caravan park, where the energy sold is based on the resident's metered consumption

Metered energy that is billed to tenants (in addition to rent) within a residential apartment block

Unmetered energy where a commercial landlord is billed and then apportions the cost between tenants

Metered energy which is generated "off-grid" and sold for use at premises

This list is not exhaustive as energy sales can take many forms. We will consider the particular facts of each situation and it may be necessary for you to take your own legal advice if you are unsure whether you are selling energy.

## Do I need a retailer authorisation or a retail exemption?

If you sell energy in the ACT, NSW, Victoria, Queensland or South Australia,<sup>8</sup> **and** the Retail Law has commenced in your state or territory, you need either a retailer authorisation or

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<sup>6</sup> The AER's exempt selling framework does not apply to off-grid arrangements in South Australia.

<sup>7</sup> The sale of bulk hot water is not considered a 'sale of energy' under the Retail Law and Retail Rules.

<sup>8</sup> This requirement is restricted to persons connected to the national grid.

retail exemption. Although the Retail Law has commenced in Tasmania, the Retail Law's exemptions framework does not apply in that jurisdiction.<sup>9</sup>

A person or business with a national retailer authorisation can sell energy to any customer, small or large, in participating jurisdictions. People or businesses whose primary business is to sell energy to customers need a retailer authorisation.

Retailer authorisations are normally required where:

- your core business is the sale of energy<sup>10</sup>
- your primary relationship with your customers is the sale of energy and you have no other, or an otherwise minor, relationship with the customer (for example, you do not also have a landlord/tenant relationship)
- you intend to sell to many customers and/or sell a large volume of energy.<sup>11</sup>

However, a retailer authorisation may be burdensome and unnecessary in some instances, and a retail exemption may be more appropriate, say, for:

- people or businesses that sell energy incidentally—for example, where a shopping centre owner rents a shopfront to tenants and also sells them essential services such as energy<sup>12</sup>
- government agencies that sell energy incidentally
- people or businesses selling energy at no profit or as a community service
- people or businesses who sell at one site or to a defined group of customers, and who have no intention of expanding their energy sales.

You should hold either an authorisation or a retail exemption, not both. If you hold a retail exemption and your energy sales warrant an authorisation we will revoke the exemption once you are granted an authorisation. If you hold an authorisation you cannot, and should not, seek to operate under any deemed or registrable classes of exemption.

## Who should hold the exemption?

Many people use a service provider to manage the sale of energy, particularly within embedded networks. A service provider may liaise with customers, organise connections and disconnections, issue bills and handle any energy related complaints. Sometimes they will also buy and sell the energy on behalf of a landlord or body corporate.

As a general rule, whether it is you or your service provider who needs an exemption depends on who is selling the energy. The person selling the energy will generally have a contract with an authorised retailer and will bear the financial risk of their customers' non

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<sup>9</sup> The Retail Law commenced in the ACT and Tasmania on 1 July 2012, in South Australia on 1 February 2013, and in New South Wales on 1 July 2013. See the AER's website (<http://www.aer.gov.au/retail-markets>) for updates on Retail Law commencement in Victoria and Queensland.

<sup>10</sup> For further information on what the AER considers to be 'core' business, please see section 9.

<sup>11</sup> Further information on retailer authorisations is set out in the AER's Retailer authorisation guideline (<http://www.aer.gov.au/node/345>).

<sup>12</sup> For further information on what the AER considers to be 'incidental' selling, please see section 9.

payment.<sup>13</sup> If the service provider buys energy from a retailer and sells it directly to your residents or tenants, they are selling energy and need an exemption (or authorisation). If you, your business or your organisation buy the energy, then you will need the exemption. You should look at the list of deemed and registrable exemptions in Appendix A (Table 2) to see if you fall into any of the categories. If you fall into a registrable class you will need to register with us. If you fall into either a deemed or registrable exemption class you are required to abide by any conditions that may apply.

Exemption classes apply only to persons or businesses that own or manage a site containing a private network. Service providers are not eligible for class exemptions and will need an individual exemption or authorisation where they are selling energy. If the service provider is selling energy to only a small number of sites they can apply for an individual exemption for specified sites. However, as we generally do not issue individual exemptions that cover multiple sites (see discussion on Individual exemptions below) the service provider may need to apply for a retailer authorisation if they sell, or intend to sell, at many locations.

The examples below help illustrate when an authorisation is more appropriate than an exemption, and vice-versa. We stress, however, that given the potential differences between apparently similar scenarios it is not possible to apply a blanket approach. We will therefore consider the particular facts of each situation and encourage you to contact us and discuss your circumstances. We also recommend that you take your own legal advice.

#### **Example A**

A body corporate wishes to onsell energy to residential tenants within an apartment block. The body corporate decides to outsource billing services, connections and complaints handling to a service provider. The service provider also negotiates a market contract for the body corporate to buy energy. The body corporate's name is on the contract with the retailer, and if tenants fail to pay their bills on time, the body corporate is liable for the charges to the retailer.

In this case, the body corporate is selling energy and would be eligible for a class exemption. The body corporate will also be responsible for meeting the exemption conditions, even if it outsources certain aspects of its energy sales to a service provider.

#### **Example B**

A body corporate in a new development decides to create an embedded network and engages a service provider to wire its building for the sale of energy. As part of that contract, the body corporate will wholly outsource the sale of energy to the service provider. The body corporate does not enter into a contract with a retailer – rather, the service provider buys the energy and sells it to the building residents / tenants. Because the service provider must pay the retailer's bill, it bears the financial risk of non payment. It also provides all the energy related services to the residents / tenants within the building.

In this case, the service provider is selling the energy and would need to obtain an exemption (or a retailer authorisation).

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<sup>13</sup> That is, they will be liable for costs to the retailer, even if their customers do not pay their bills.

## Which type of exemption applies to me?

There are three types of exemption: deemed, registrable and individual. The type of exemption you may be eligible for will depend mainly on the nature of your business, who you are selling energy to, and why you are doing it.

Deemed and registrable exemptions are class exemptions that apply to certain groups of people—or classes—who sell energy. Generally, these are people or businesses who sell energy incidentally, meaning that energy sales are not their primary business or part of their business model, and are generally motivated by considerations other than profit.

A deemed exemption is an exemption that applies automatically to certain classes of people. A person covered by a deemed exemption does not need to either apply or register with us (however, conditions will generally apply). Deemed classes are usually for small-scale selling arrangements where the costs associated with registration would outweigh the benefits of increased regulation.

Entities that deemed exemptions apply to include:

- businesses that sell energy to a related company
- persons who sell metered energy to fewer than 10 small tenants or residents
- caravan parks or holidays parks that sell metered energy to people in short term holiday accommodation
- businesses that sell unmetered electricity in Queensland<sup>14</sup>
- people who sell unmetered gas where gas is used for limited purposes
- telecommunications companies that sell energy to business customers for use at, for example, a data centre
- government agencies that sell metered energy ancillary to their core functions.

A full list of deemed exemptions is set out at Appendix A (Table 2).

A registrable exemption applies to certain classes of people and must be registered with us. It only applies to a particular individual or entity for a particular site, and is subject to conditions. Registrable classes are for energy selling activities that we consider need greater transparency and regulatory oversight, usually because the scale of the activities is larger and the impact on the market greater.

Entities that registrable exemptions apply to include:

- persons who sell metered energy to 10 or more small tenants or residents within a site, or who sell to sites adjacent to their own
- retirement villages or caravan parks who sell metered energy to permanent residents
- people or businesses selling energy to large customers.<sup>15</sup>
- some long-standing unmetered energy supply arrangements.<sup>16</sup>

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

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

<sup>16</sup> This class will be closed from 1 January 2015.

A full list of registrable exemptions is set out at Appendix A (Table 2).

An individual exemption is required where a sale of energy is not covered by a class exemption and the party undertaking that sale does not hold a retailer authorisation. An individual exemption normally applies to a specific person or business for the sale of energy at a particular site and/or to a particular customer (or group of customers). Individual exemptions are tailored to the specific situation of the person or business seeking the exemption and their customer(s). Conditions attached to an individual exemption are generally applied with a view to balancing the needs and rights of customers and the regulatory burden that meeting those conditions will place on the exemption holder. For example, if you are proposing to sell to large industrial customers, we will likely impose less onerous or minimal conditions on your exemption. For those wishing to sell to small residential customers, we will likely impose conditions that provide customer protections that are similar to those provided under the Retail Law—for example, a requirement to offer hardship programs. Businesses that wish to sell mainly to small customers on an ongoing basis may need a retailer authorisation.

If your activities do not fall within one of our class exemptions you should contact us in the first instance. We can then discuss the most appropriate regulatory instrument for you—a retailer authorisation or an individual exemption, depending on your circumstances.

## How do I obtain an exemption?

### Deemed exemptions

Deemed exemptions are automatic. Provided you meet any criteria or conditions attached to the deemed class, you do not need to apply for one, but rather are ‘deemed’ to be exempt.

### Registrable exemptions

These exemptions are not automatic. You can register an exemption by completing our registration form, which is available on our website.<sup>17</sup> To obtain a retail exemption, you need to complete Parts A and C of the form.<sup>18</sup>

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

- the legal name (and trading name) of the business or person seeking the exemption, and their Australian Business Number (ABN) or Australian Company Number (ACN)
- the site address for the exemption, the number of customers at that site and the class of exemption (for example, class R1), and a brief description of the normal business activities undertaken at that site<sup>19</sup>
- details of a customer contact and authorised representative for the exempt seller so that we can contact you if necessary.

Once you’ve completed your registration form you can submit it electronically to: [aerexemptions@aer.gov.au](mailto:aerexemptions@aer.gov.au).

There is no formal approval process for registrable exemptions; your exemption comes into effect when it appears on our [public register of exempt sellers](#).<sup>20</sup> Once the exemption appears on the register, it becomes a “registered exemption”. Conditions apply to all registered exemptions.

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

### Closure of class exemptions to new entrants

From 1 January 2015 the R6 and R7 classes closed to new entrants, as these were intended to cover legacy arrangements. Also, any businesses that retrofit embedded networks from this date will need to apply for an individual exemption (further details are at Appendix A, Table 2).

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<sup>17</sup> A copy of our exemption registration form can be found here: <http://www.aer.gov.au/node/471>

<sup>18</sup> If you also own, operate or control the network used to sell the energy—for example, a private or embedded network—you may also need a network exemption (which can be obtained by completing Part B of the form). For further information on network exemptions, please see section 8 below.

<sup>19</sup> For example, retail shopping centre, residential apartment building, caravan park or retirement village.

<sup>20</sup> **Please note that your exemption will only appear on the AER’s public register of exemptions when the Retail Law has commenced in your jurisdiction.** The AER’s public register of exemptions can be found here: <http://www.aer.gov.au/node/11037>

## Individual exemptions

We recommend that you contact us before applying for an individual exemption or if you are planning a development that would rely on an individual exemption (or retailer authorisation) to sell energy. This is so that we can provide information and guidance relevant to your individual circumstances, and assist you with the application process.

Appendix B sets out the information that you must provide when you apply for an individual exemption. Please contact us if you cannot provide any of this information.<sup>21</sup>

Please be aware that 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.

Once you have completed your application please send it to:

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

Or email it to: [AERExemptions@aer.gov.au](mailto:AERExemptions@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.

## Public consultation process

Once we have received and accepted your application for an individual exemption, we will publish a notice on our website:

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

The consultation period will run for at least 20 business days.<sup>22</sup>

## Confidentiality

We understand that you may provide us with confidential information as part of your application. If you do, we ask that you clearly identify and mark anything you consider confidential and give reasons for each confidentiality claim. Please also advise us of any potential disadvantage that disclosing the information might cause you. If your application contains confidential information, you should submit both a public and confidential version of the information. You should only remove or black out information in the public version that you consider confidential.

A confidentiality claim, by itself, is not always enough to prevent disclosure. Under the Retail Law and the *Competition and Consumer Act 2010* (Cth), we may disclose confidential

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<sup>21</sup> We will generally not commence processing your application until we have received all required information.

<sup>22</sup> The Retail Consultation Procedures (set out at Rule 173 of the Retail Rules) states that the AER must consult for a minimum of 20 business days.

information in certain circumstances, for example, where disclosure would not cause detriment, or the public benefit in disclosing the information outweighs that detriment.

We will let you know if we are considering disclosing this information, and give you an opportunity to comment.<sup>23</sup>

## Decision making process

We will advise you, in writing, of our decision.<sup>24</sup> If your application is approved, we will also advise you of any conditions that may be attached to the exemption.<sup>25</sup> You will need to formally accept those conditions before your exemption takes effect.

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

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

We will also consider the policy principles, exempt seller related factors and customer related factors specified in the Retail Law when considering your application.<sup>26</sup> Guidance on how we consider these principles and factors is provided in the Policy principles section of this guideline. We encourage anyone applying for an individual exemption to familiarise themselves with those policy principles and factors before making an application.

## Grounds for refusal

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

- we consider that granting an exemption may not contribute to the achievement of the national energy retail objective<sup>27</sup>
- we consider that granting an exemption will not give effect to the policy principles or is inconsistent with our considerations under the exempt seller related factors or the customer related factors;
- we consider you should apply for a retailer authorisation, given the scale and scope of your energy sales;
- you have provided us with false or misleading information.

## Location and length of exemption

Most individual exemptions will be issued for a particular site or area, and will limit the sale of energy to a certain class or classes of customers. Generally, we will not issue individual

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<sup>23</sup> The AER may use the information for any purpose connected with the performance or exercise of its functions or powers.

<sup>24</sup> Rule 160 (approval) and rule 163 (refusal) of the Retail Rules.

<sup>25</sup> Rule 160 of the Retail Rules.

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

<sup>27</sup> We will consider whether or not the granting of the exemption is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers, as required by section 205 of the Retail Law.

exemptions for multiple sites and only issue them where we consider that doing so is consistent with the Retail Law objective.

The Retail Law does not place a limit on the duration or validity of an exemption. However, we may impose a time limit on the grant or variation of an individual exemption. This will be determined on a case by case basis.

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.

### **Change of circumstances**

Your exemption will specify the form of energy you may sell and the scope of your sales: it cannot be varied to sell another or additional form of energy, or to more entities. You will need to apply for a new or separate individual exemption to do this. Also, if your details change in any other way, for example if there is a change in ownership, you should contact us so that we can vary your exemption.

### **When a retailer authorisation may be more appropriate than an individual exemption**

If you are planning to:

- sell energy to a large number of customers
- sell energy across a number of sites or jurisdictions
- sell a large amount of energy

then a retailer authorisation may be more appropriate for you. A retailer authorisation allows you to sell a specified form of energy (electricity or gas) in all participating jurisdictions and to all classes of customers.<sup>28</sup> Authorised retailers are subject to the Retail Law and must do certain things as a condition of their authorisation.

An individual exemption also allows the holder to sell a specified form of energy (electricity or gas) but, unlike authorisations, only to a defined class or classes of customer at a specific site or sites. Exempt sellers, like authorised retailers, have a number of obligations that they must meet. In other words, an authorised retailer's energy sales are unrestricted whereas an exempt seller's sales are limited to the terms of their exemption.

If you plan to expand the activities specified in your exemption you must notify us. You may be able to apply for an exemption variation; otherwise, if the scale and scope of your proposed sales is too great, you may need a retailer authorisation.

The two examples below demonstrate the difference between an authorisation and an individual exemption.

#### **Example A**

Company A plans to sell gas and electricity to residential customers and, in the longer term, to small business customers. It plans to start off on a small scale in Victoria and then to

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<sup>28</sup> Except where limited by state or territory legislation.

expand its business to New South Wales and Queensland. Its core function is the sale of energy (it doesn't provide any other services to its customers).

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

### ***Example B***

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

It would be appropriate for Company B to seek an individual exemption.

# Exemption conditions and compliance

## Exemption conditions

Most exemptions—class exemptions as well as individual exemptions—have conditions that you must meet to be covered by that exemption. Conditions are designed to provide protections for customers without overburdening exempt sellers, and are modelled on the protections that authorised retailers must provide their customers. If you cannot meet all the conditions attached to your exemption you should contact us immediately.

If you are applying for an individual exemption, we will discuss conditions with you as part of the application process. For example, we would likely apply minimal conditions where the energy sale is:

- provided as a community service
- to customers in remote areas and is the only viable supply of energy
- to large customers only.

We are unlikely to place onerous conditions in these situations, as this may discourage sellers from providing services and may result in customers losing access to a reliable energy supply. Similarly, where a person is selling energy to large commercial customers we would assume that extensive customer protections are unnecessary.

However, some situations warrant more extensive exemption conditions. For example, we would likely apply conditions that are similar to the obligations placed on an authorised retailer for sellers who sell to:

- small residential customers
- vulnerable customers
- customers who cannot take supply from a retailer of their choice.

A full list of core conditions can be found at Appendix A-2. Appendix A-3 shows which conditions apply to each exemption class.

Appendix C summarises the rights of exempt customers, including how those rights may differ from those offered by the Retail Law.

## Compliance

If you do not meet your exemption conditions we will, in the first instance, work with you to ensure your customers continue to receive energy and ensure that any breaches are rectified as soon as possible.

If the non-compliance is serious (for example, if there has been a material failure) we may decide to revoke your exemption.<sup>29</sup> We will consider what constitutes a ‘material failure’ on a case by case basis. In general, where an exempt person has not complied with their exemption conditions and this has had a significant or widespread impact on their customers, we would consider that there has been a material failure.

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<sup>29</sup> Section 111 of the Retail Law empowers the AER to revoke exemptions.

When revoking an exemption we must:

- give notice that we intend to revoke the exemption, and our reasons for revocation
- give the exempt person an opportunity to respond, in writing, showing why the exemption should not be revoked and proposing what they will do to rectify the problem.<sup>30</sup>

If we are not satisfied with your response we may set a time for the revocation to take effect and will inform you of any conditions you must comply with. We will publish our revocation decision on our website.

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<sup>30</sup> Section 120 of the Retail Law.

## Network exemptions

If you are selling electricity from a private embedded network that you own or operate,<sup>31</sup> you will need to either register the network with the Australian Energy Market Operator (AEMO) or apply to us to have it exempted from that requirement if the network is not in a deemed category.<sup>32</sup>

We administer both the network and retail exemption processes. Although the processes are separate, registration for either or both a retail exemption and network exemption can be made through [one form](#).<sup>33</sup>

The [Electricity network service provider registration exemption guideline](#)<sup>34</sup> sets out further information on network exemptions, including classes of exemption and how to apply for a network exemption.

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<sup>31</sup> Network exemptions apply only to networks connected to the national electricity grid, and are not required for off-grid networks.

<sup>32</sup> Section 11 of the National Electricity Law.

<sup>33</sup> A copy of our exemption registration form can be found at: <http://www.aer.gov.au/node/471>.

<sup>34</sup> A copy of this guideline is available at <http://www.aer.gov.au/node/983>.

## Policy principles

Our exemption decisions are informed by the policy principles outlined in the Retail Law. These principles have influenced our decisions on the need for certain exemption classes, the conditions that should attach to them, and whether or not to close these classes to future entrants. They are also the factors that we consider when assessing individual exemption applications.

These principles are, in part, aimed at ensuring that exempt customers are not unreasonably disadvantaged compared to customers of authorised retailers. The Retail Law also sets out exempt seller related factors<sup>35</sup> and customer related factors<sup>36</sup> that we may consider when making exemption decisions. These factors should be read in conjunction with one another and not in isolation, and should be taken as a guide only. For example, there may be reasons not specified in the guideline that might cause us to refuse an application for an individual exemption.

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>37</sup>

This objective guides us in the exercise of our powers and functions.<sup>38</sup> It means, for example, that we may refuse an exemption application if we consider that the proposed arrangements are not in the long term interests of the affected consumers in terms of price, quality or anything else specified in the objective.

## Exempt selling policy principles

The exempt selling policy principles<sup>39</sup> and how they inform our exemption decisions are outlined below.

### Divergence in regulatory arrangements

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

The retail exemptions framework is aimed at giving exempt customers protections comparable to those of retail customers. However, exempt sellers differ from authorised retailers in that they usually lack the economies of scale and scope from which retailers benefit and mostly do not sell energy as their core business. Exempt sellers sell energy for a variety of reasons—as a matter of convenience, or incidentally, or simply in order to pass on energy costs.

Consequently, certain requirements under the Retail Law and Retail Rules may be more onerous or inappropriate for exempt persons—the price disclosure requirements for retailers'

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<sup>35</sup> Section 115 of the Retail Law.

<sup>36</sup> Section 116 of the Retail Law.

<sup>37</sup> Section 13 of the Retail Law.

<sup>38</sup> Section 205 of the Retail Law.

<sup>39</sup> Section 114 of the Retail Law.

standing offer and market offer prices,<sup>40</sup> for example. Regulatory divergence is therefore necessary to reflect the different circumstances of exempt sellers.

An exempt seller whose energy sales are significant in terms of scale and/or scope should be subject to additional regulatory requirements (see 9.2.4). This is because energy is an essential service and the full suite of customer protections under the Retail Law should be afforded wherever possible.

## 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'*.

In principle, all customers should be able to choose their energy retailer. We therefore do not support the creation of infrastructure that deliberately reduces a customer's ability to exercise choice.

Choice can be limited in embedded networks where access to retailers depends largely on network configuration, access to individual meters (meaning that the customer has its own meter that can be read by a retailer other than the exempt seller), and the type of meters in place at the premises. These factors are usually determined at the time a building is constructed, and reconfiguration may be expensive and therefore uneconomic.

Ideally restrictions on customer choice will not continue in new developments and redevelopments. Network configuration and metering arrangements should be designed to facilitate customers' cost-effective access to choice of retailer wherever possible.

Our ability to impose conditions to give exempt customers access to a retailer of choice is limited as not all jurisdictions require access to retailer of choice in embedded networks. The ACT and Tasmania do not require it for electricity and Queensland allows it only for large customers (and with the landlord's agreement). No jurisdiction requires it for gas. Where, however, customers have access to a retailer of choice, the exempt person must advise them that they have a choice and must not prevent them from exercising their choice. We may also impose similar conditions on individual exemptions.

From 1 January 2015 anyone retrofitting an embedded network within a site will need to apply for an individual exemption for the energy that they sell at the site. For an exemption to be approved we would expect to see evidence that customers have provided their fully informed consent and that customers continue to have cost-effective access to a retailer of choice.

## 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'*.

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<sup>40</sup> These requirements are set out in Division 11 of Part 2 of the Retail Law.

Ideally, exempt customers should be given a similar level of protection as customers of authorised retailers. This is not just a matter of equity, but recognises that these customers can be some of the most vulnerable in society and in need of appropriate protections.

However, as noted above, requiring exempt sellers to provide these protections can be burdensome and not practicable in all instances. The customer protections provided under the Retail Law therefore do not automatically extend to all exempt customers.

We have developed a set of general conditions for exempt persons based on the retail customer protections. The extent to which these apply to a particular class exemption depends largely on the nature of the energy sales and the customer type. For example, residential exempt customers will receive the greatest level of protection and should receive such protections as flexible payment plans if they identify themselves as experiencing financial difficulty.

Under the Retail Law, retail customer protections are not generally extended to large business customers, and similarly, have mostly not been extended to large exempt customers under the exemptions framework.

Conditions attached to an individual exemption may more closely resemble the obligations that apply to an authorised retailer, although the inclusion of hardship protections, flexible payment options and other customer protections will be considered on a case by case basis.<sup>41</sup>

Authorised retailers are required to develop complaints handling arrangements based on Australian Standard ISO 10002-2006 Customer satisfaction – guidelines for complaints handling in organisations. For individual exemptions, we may require the exempt seller to develop complaints handling arrangements based on this standard.

## Exempt seller related factors

Exempt seller related factors<sup>42</sup> are outlined below. This section also provides guidance on how these factors inform our exemption decisions, and on whether an exemption or a retailer authorisation would be more appropriate for an energy seller under various scenarios.

### Core versus incidental business

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

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

A sale of energy is not incidental where the seller's sole or primary relationship with the customer is the sale of energy.<sup>43</sup> Rather, in this situation, selling energy is fundamental to the exempt person's business. Conversely, a sale of energy may be incidental to a person's

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<sup>41</sup> For example, an agent who manages energy sales across a number of sites is likely to have similar obligations as authorised retailers, or may even be required to obtain a retailer authorisation.

<sup>42</sup> Section 115 of the Retail Law.

<sup>43</sup> An exception might be where a person sells energy to an adjacent site for the sake of convenience or for legacy reasons.

business where the exempt person sells energy as part of a suite of services, and/or has another primary relationship with the customer. For example, a landlord who sells energy to a small tenant also provides the tenant with accommodation. Energy sales are a secondary component of the relationship and the landlord would not be selling energy in this instance if the customer were not a tenant.

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

## 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 of energy supplied or the way in which the exempt person operates. An exemption is more appropriate for someone who sells energy on a small scale – both in terms of customer numbers and the volume of energy sold. The way in which an exempt person operates can also be a determining factor. Thus an exemption is likely to be appropriate:

- for someone who has to sell energy to their tenants or residents because of the way the energy infrastructure is set up at their property (for example, at a caravan park)
- where someone generates energy on or near a site to reduce transmission requirements and losses through transportation.

However, some energy selling arrangements will not fall into an existing exemption class and will need an individual exemption. We will assess such arrangements on a case by case basis and attach conditions as appropriate, taking into account the needs of customers as well as the effect any obligations would have on the seller—in particular, we do not want to impose conditions that will make it uneconomic for the exempt person to continue to supply energy to customers.

## Profit intentions of the exempt seller

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

An energy seller's profit motive can help determine whether energy selling is incidental or not, but is not a defining feature. Where someone sells energy to make a profit rather than to recover costs, the sale is less likely to be incidental. Depending on the scale of the energy sold, a retailer authorisation may be more appropriate for the seller than an exemption.

Where an exempt person is intending to profit from selling energy we will need to be satisfied that there are appropriate pricing protections in place for exempt customers, particularly where they do not have a cost-effective choice of retailer. It is acceptable for an exempt person to earn a profit from selling energy. However, it is our expectation that they would charge their customers fair and reasonable energy costs and not take advantage of the lesser bargaining power of exempt customers who are caught in an embedded network.

We have determined that an exempt seller must not charge a small residential customer more than the local area retailer's standing offer.<sup>44</sup> Similarly, the exempt person should only be able to recover the reasonable costs that they incurred as a result of a customer's late payment (see condition 7).

Exempt sellers who are selling to small, commercial or retail customers in embedded networks who do not have cost-effective access to choice of retailer are also not permitted to charge those customers more than the local area retailer's standing offer.

Exempt sellers should not pass on an 'administration' or similar fee to their customers to circumvent any capping of energy charges required under an exemption condition.

## Amount of energy likely to be sold

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

We may compare the amount of energy that an exempt person sells to the amount sold by comparable authorised retailers. When the scale of a person's energy sales increases (and the more their operations resemble those of an authorised retailer), they may be required to obtain a retailer authorisation. If an individual exemption is granted for 'significant' operations, the conditions placed on the exempt person will likely be similar to those applying to authorised retailers.

## Appropriate obligations governing the applicant's behaviour

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

In general, the closer an energy seller's operations are in scale and scope to those of an authorised retailer, the more closely their exemption conditions will mirror the general retailer obligations. Where an exempt seller's obligations largely replicate those applying to a retailer, a retailer authorisation may actually be more appropriate.

We have also considered the requirements of state or territory tenancy and equivalent legislation in developing exemption classes and conditions. Some jurisdictional legislation regulates aspects of energy selling, for example the cost of utilities and how a landlord can recover these costs. Exemption conditions are intended to supplement jurisdictional legislation, which on its own does not provide energy-specific protections for exempt customers. However, where there are inconsistencies, we will work with the relevant regulator or agency to ensure the best outcomes for consumers is achieved.

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<sup>44</sup> A local area retailer is a retailer designated by a particular jurisdiction to take responsibility for new connections in that jurisdiction—for parts of, or the whole, jurisdiction; for specified premises or classes of premises; and specified customers or classes of customers.

## Costs and benefits of obtaining a retailer authorisation

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

To obtain a retailer authorisation, a person needs to meet three entry criteria specified in the Retail Law.<sup>45</sup> These 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 applying for a retailer authorisation is rigorous and includes extensive information requirements. In addition, authorised retailers must comply with all relevant regulatory obligations under the Retail Law and the Retail Rules. The regulatory costs for a small energy seller that lacks the economies of scale and scope of an authorised retailer can be substantial. An individual exemption may therefore be preferable to an authorisation where these costs are likely to exceed the customer benefits, particularly if the exempt customers receive protections similar to those that retail customers receive as a condition of the exemption.

Applying to the AER for an exemption or retailer authorisation is free. There are no ongoing fees for either exemptions or authorisations.

## Customer related factors

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

### 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*’.

Small exempt customers need a higher level of protection than large exempt customers (who can be assumed to have more bargaining power and therefore a greater ability to protect their own interests). We consider that, where energy is sold to large customers, few conditions are necessary.

Where energy is being sold under a contract negotiated on behalf of a group of customers, we will expect evidence that all customers have given their explicit informed consent to the arrangement.

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<sup>45</sup> Section 90 of the Retail Law.

A 'brownfield' site is a site that is established and serviced by an authorised retailer but later retrofitted as an embedded network. We consider the removal of customers' contestability in this manner a retrograde step and would therefore closely scrutinise any exemption applications for brownfield sites. In particular, we will consider what protections are available to customers, whether customers can access a retailer of choice in a cost-effective way, the arrangements that would apply if the seller were to fail or otherwise cease to sell energy to exempt customers, and whether customers have given explicit informed consent to taking supply from an exempt seller rather than a retailer. Thus, we are unlikely to grant an individual exemption where the customers' preference is to buy energy from an authorised retailer, or where there is no cost-effective access to a retailer of choice. We may allow an exemption where choice of retailer is maintained and customers are expected to benefit from the proposed arrangement.

Exemption classes D1 and D2 apply only to embedded networks where energy selling commenced before 1 January 2015. After this time, any person wishing to sell energy at a retrofitted brownfield site will need to apply for an individual exemption. A similar limitation will be imposed on R1 and R2 but these classes will otherwise remain open.

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

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

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

Most residential and small business customers have some protections under their respective tenancy or equivalent legislation or agreements. These protections, when complemented by exemption conditions, will go some way to matching the customer protections provided by the Retail Law. The conditions placed on individual exemptions for large and external service providers will likely also resemble those that apply to authorised retailers.

From 1 January 2015, we will consider metering and wiring arrangements in retrofitted sites that have not yet registered with the AER, and whether customers have consented to the network conversion and whether they are conducive to retail competition when assessing individual applications for exemption. Where they are not, an individual exemption may be refused.

## **Other relevant customer related matters**

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

Where possible, exempt customers should not be denied the protections received by customers of an authorised retailer. However, in some jurisdictions, energy rebates, social programs and energy efficiency programs are not available to exempt customers. Therefore, when imposing conditions on individual exemptions we may take into account:

- small customer access to full retail competition
- relevant energy Ombudsman schemes' membership and jurisdiction
- access to rebates, social programs and energy efficiency measures.

## 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*'.

We consider that unmetered supply, and co-generation, tri-generation or other sustainable energy arrangements, are additional relevant matters. These are discussed below.

### Unmetered supply

Some metering requirements are determined by state or territory legislation. The Retail Rules stipulate that we can impose conditions on exempt persons for, or with respect to, installing, maintaining and reading meters of exempt customers in accordance with jurisdictional energy legislation.<sup>46</sup>

Although we do not support unmetered energy selling, we will allow exemptions in some circumstances where, for example, it is permitted under jurisdictional legislation,<sup>47</sup> or where, in the case of gas, it is for negligible and specific use such as for gas cook tops, or in "legacy" arrangements.<sup>48</sup>

Registrable class (R7) is for persons currently selling unmetered energy to retail or commercial tenants.<sup>49</sup> This class will close to new entrants from 1 January 2015. All subsequent unmetered energy that is sold to non-residential tenants will need appropriate sub-metering in order to obtain an exemption. The option of obtaining an individual exemption will remain open to people selling unmetered energy. Before approving such an application we would need to be satisfied that adequate consumer protections are in place.

### Decentralised energy: co-generation, tri-generation and sustainable energy

There has been a growth in various forms of "decentralised energy" in recent years. Decentralised energy refers to energy that is generated onsite: for example, to produce 'clean' energy, to utilise waste heat, or to avoid or minimise transportation costs. Co-generation, tri-generation and sustainable energy are all forms of decentralised energy.

The costs associated with developing embedded networks to support co-generation or tri-generation can be significant. In these instances the network operator may not be able to

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<sup>46</sup> Rule 152(5) of the Retail Rules.

<sup>47</sup> Most jurisdictions prohibit energy charges being passed on to residential tenants unless consumption is separately metered.

<sup>48</sup> Legacy arrangements are arrangements that were made before the National Energy Retail Law and Rules commenced in a particular jurisdiction. That is, the AER will only support these arrangements where they are long-standing arrangements that are mutually convenient to the parties.

<sup>49</sup> For example, where the cost of energy is split between tenants.

recoup their investment costs through distribution charges alone and may need to sell energy to help offset these costs.

It is challenging to develop a class of exemption to capture these diverse activities and the guideline does not explicitly address co-generation, tri-generation or sustainability initiatives. Because of their uniqueness we consider it more appropriate, at least in the short term, for decentralised energy selling—provided it is in the long term interests of energy consumers—to be covered by individual exemptions.

Solar energy is another form of decentralised energy. Mostly, people buy solar panels for their own use and feed any surplus into the grid. But where a business installs panels at residential or commercial premises and retains ownership of the panels,<sup>50</sup> that business is effectively selling electricity.

Again, because of the diversity of the business models, we have not developed a specific exemption class for any solar panel related sale of energy. People or businesses who sell energy through solar panels may still be eligible for a generic class exemption (for example, a commercial landlord who sells electricity to small retail tenants where some of the electricity is sourced through solar panels may register under the R1 class exemption). If a general exemption does not apply, the person or business will need to apply for an individual exemption or retailer authorisation.

We will consider the following factors when assessing applications for individual exemptions for the sale of energy to residential customers:

- contract length: we do not consider it appropriate to lock customers into long term contracts
- access to consumer protections: where a person sells energy to small or vulnerable customers we will closely scrutinise the protections they provide to customers, for example,
- metering arrangements: we would expect any sale of energy to be metered so that there is a direct relationship between a customer's consumption and the costs and charges they face.

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<sup>50</sup> These arrangements allow people to avoid having to pay the upfront installation costs and instead, to lease the panels over a long period of time.

**Table 1 – Glossary**

<b>Shortened form</b>	<b>Extended form</b>
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
MWh	Megawatt Hour
Public Register	Public Register of Authorised Retailers and Exempt Sellers
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
TJ	Terajoule

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

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

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

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

**onselling** means an arrangement where a person acquires energy from 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.

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

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

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

**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.

## APPENDIX A: DETERMINATION OF CLASSES OF DEEEMED AND REGISTERABLE EXEMPTIONS AND CONDITIONS

Table 2 – Classes of exemption

Deemed exemption class	Application	Class criteria	Future sellers
<p><b>Class D1</b></p> <p>Persons selling metered energy to fewer than ten small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or property managers (and similar entities) who sell energy in commercial or retail developments such as shopping centres, office buildings, airports and industrial parks.</p> <p>Current and future sellers (excludes persons retrofitting embedded networks from 1 January 2015).</p> <p>Does not apply to external service providers.</p> <p>Does not apply to authorised retailers.</p> <p>Customers are commercial or retail customers.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has fewer than 10 commercial or retail premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p>Individual exemptions will be required from that date.</p>
<p><b>Class D2</b></p> <p>Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, owners and operators of rooming houses, lessors, or property managers (and similar entities) who sell energy to residential dwellings such as units, standard apartments, flats and purpose built off-site student accommodation.</p> <p>Current and future sellers (excludes persons retrofitting embedded networks from 1 January 2015).</p> <p>Does not apply to external service providers.</p> <p>Does not apply to</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has fewer than 10 residential premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p>Individual exemptions will be required from that date.</p>

	authorised retailers. Customers include tenants, occupants and owner-occupants.		
<b>Class D3</b> Persons selling metered energy to occupants of holiday accommodation on a short-term basis.	Current and future sellers. Customers are short term occupants of holiday accommodation including hotels, motels, inns, holiday flats, holiday cabins, campsites, caravan parks and marinas. Customers do not include long-term residents of caravan parks, residential parks and manufactured home estates. Persons selling to long-term residents are covered by registrable exemption R4.  Does not apply to authorised retailers.	Energy is used for premises within the limits of a site owned, occupied or operated by the person, and  Each premises is separately metered, and  The occupancy is short-term, that is, it is not the resident's principal residence, and  There is a separate itemised item for the sale of energy.	Class remains open.
<b>Class D4 - DELETED</b>			This exemption class has been revoked, and has been incorporated into class D2
<b>Class D5</b> Persons selling unmetered gas to individual premises where gas is used for limited purposes.	Gas that is sold for limited purposes, for example, for use in cooking appliances. It does not include gas used in the production of bulk or stored hot water.  Current and future sellers.  Does not apply to external service providers.  Does not apply to authorised retailers.	Gas is used for premises within the limits of a site owned, occupied or operated by the person and  The premises are not separately metered for gas consumption, and  There is a separate itemised charge for the gas sold, and  Gas is not used for space heating.	Class remains open.
<b>Class D6</b> Persons selling unmetered electricity to small customers in Queensland.	Current and future sellers. Does not apply to authorised retailers	Electricity is used for premises within the limits of a site owned, occupied or operated by the person, and  Premises are not	Class remains open until Queensland legislation no longer permits this type of selling.

		separately metered, and  The relationship between the seller and customer is covered by the Residential Tenancies and Rooming Accommodation Act 2008 (Qld).	
<b>Class D7 - DELETED</b>			This exemption class has been revoked
<b>Class D8</b> Persons selling energy to a related company.	Persons or companies who sell energy to a related company where the person or company controls, or is controlled by, another company including where:  o a company is a subsidiary of another company, or  o two companies have a common holding company, or  o the two companies are related and will qualify to operate under this class of exemption.  Current and future sellers.  Does not apply to authorised retailers.		Class remains open.
<b>Class D9</b> Persons selling energy to customers in conjunction with, or ancillary to, the provision of telecommunications information services.	Telecommunications companies.  Current and future sellers.  Does not apply to authorised retailers.	Energy is sold on or within the person's premises, and  The energy is used in conjunction with, or ancillary to, the provision of telecommunications or information services.	Class remains open.
<b>Class D10</b> Government agencies, other than housing authorities, selling metered energy to non-residential customers.	Federal, State and Local Government departments, statutory authorities or government owned corporations established under legislation of the	The department, authority or corporation has been established for purposes other than the sale, supply or generation of energy, or the supply of housing or residential	Class remains open.

Commonwealth or States and Territories (but excludes housing authorities).

Current and future sellers.

Does not apply to authorised retailers

accommodation to tenants, and

The department, authority or corporation sells energy for purposes that are ancillary to its primary functions or objectives under its establishment legislation, and

Each premises is separately metered.

Registrable exemption class	Application	Class criteria	Future sellers
<p><b>Class R1</b></p> <p>Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or management corporations (and similar entities) who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks.</p> <p>Current sellers.</p> <p>Does not apply to external service providers.</p> <p>Does not apply to authorised retailers.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has 10 or more commercial or retail premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015. Individual exemptions will be required from that date.</p>
<p><b>Class R2</b></p> <p>Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors, rooming houses or management corporations (and similar entities) who sell energy to residential dwellings such as units, standard apartments, flats and purpose built off-site student accommodation.</p> <p>Current sellers.</p> <p>Does not apply to external service providers.</p> <p>Does not apply to authorised retailers.</p> <p>Customers include tenants, occupants and owner-occupants.</p> <p>Customers do not include retirement village residents, or long-term residents of caravan parks, residential parks and manufactured home estates. Energy sales to these customers are covered by registrable</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has 10 or more premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015. Individual exemptions will be required from that date.</p>

	classes R3 and R4, respectively.		
<b>Class R3</b> Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.	Owners or operators of retirement villages. Current sellers. Does not apply to external service providers. Does not apply to authorised retailers.	Energy is used for premises within the limits of a site owned, occupied or operated by the person, and  Each premises is separately metered.	Class remains open except for sites where embedded networks are retrofitted after 1 January 2015. Individual exemptions will be required from that date.
<b>Class R4</b> Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there	Owners or operators of caravan parks, residential parks and manufactured home estates. Current and future sellers. Does not apply to authorised retailers	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  Each premises is separately metered, and  The premises are the residents' principal place of residence, that is, it is where the person lives most of the time.	Class remains open
<b>Class R5</b> Persons selling metered energy to large customers.	Bodies corporate, landlords, lessors or management corporations (and similar entities) who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks. Current and future sellers. Does not apply to external service providers. Does not apply to authorised retailers.	Energy is used for premises within the limits of a site owned, occupied or operated by the person, and  Each premises is separately metered, and  The customers are large (ie for electricity, customers consume 100 MWh pa or more in New South Wales, the ACT, Queensland and Victoria, and 160MWh pa in South Australia; and for gas, customers consume 1TJ pa or more).	Class remains open
<b>Class R6</b> Persons selling metered energy to small customers at a site or premises	Current sellers. Legacy arrangements. Does not apply to authorised retailers	Energy is used for premises adjacent to the site owned, occupied or operated by the person, and	Class will be closed to new entrants from 1 January 2015. Individual exemptions will be required from

<p><b>adjacent</b> to a site that they own, occupy or operate</p>		<p>Each premises is separately metered, and</p> <p>Energy sales across site boundaries is permitted by the relevant jurisdiction.</p>	<p>that date.</p>
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<p><b>Class R7</b></p> <p>Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or management corporations (and similar entities) who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks.</p> <p>Current sellers.</p> <p>Does not apply to external service providers.</p> <p>Legacy arrangements.</p> <p>Does not apply to authorised retailers.</p> <p>Does not apply if the relationship between the seller and customer is covered by tenancy legislation that requires energy sales to be metered.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Premises are not separately metered.</p>	<p>Class will be closed to new entrants from 1 January 2015. Individual exemptions will be required from that date.</p>
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## **Appendix A-2: Core exemption conditions**

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

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

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

- 1 An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
- 2 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/agreement of the following:
  - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if 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/agreement, the information set out in paragraph 1

of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.

- 3 Once the 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, or the duration of their tenancy/residency/agreement if the tenancy/residency/agreement is less than 12 months.
- 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. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - i. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - j. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
  - k. Tariffs, fees and charges applicable to the exempt customer.
  - l. The basis on which tariffs, fees and charges are calculated.
  - m. Any amount deducted, credited or received under a government or non-government funded energy charge rebate, concession or relief scheme or under a payment arrangement.
  - n. Details of the available payment methods.
  - o. A telephone number for account inquiries and complaints.

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

- 1 An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
- 2 An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
- 3 An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
- 4 Where an estimation is used as the basis for 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, or estimated quantity, of energy directly to the premises of the exempt customer.
- 2 An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
- 3 An exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.
- 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 The requirements in paragraph 1 only apply to small commercial/retail customers (classes D1, R1 and R7) if access to choice of retailer is not available to a customer, or is not cost-effective. Otherwise the requirements in paragraphs 2–5 do not apply to small commercial/retail customers (classes D1, R1 and R7).

#### **Condition 8 – Undercharging and overcharging**

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

#### **Condition 9 - Payment difficulties and disconnection or 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 resource with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
- 2 Subject to Condition 10, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises, or

- d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:
  - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, 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 10 - 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:
  - e. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
  - f. 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
  - g. 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
  - h. 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 (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 11 - 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 12 - Concessions and rebates**

- 1 Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2 If the government or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the 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 13 - Choice of retailer**

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

#### **Condition 14 - Contact details**

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

#### **Condition 15 - Dispute resolution**

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

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

#### **Condition 16 - Life support customers**

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

#### **Condition 17 - Continuity of supply**

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

#### **Condition 18– Termination of energy supply agreement**

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

#### **Condition 19 - Maintaining records**

- 1 An exempt person must maintain records of the following for each of its exempt customers:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.

- c. The identifier of the meter for the exempt customer's premises (if applicable).
- d. The date that the customer account was created.
- e. Copies of any bills issued for the previous 12 months.
- f. The date of the most recent meter read for the customer (if applicable).
- g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

### Appendix A-3: Exemption class conditions

**Table 2 – Exemption class conditions**

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

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

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

Conditions	Class: Registrable						
	R1	R2	R3	R4	R5	R6	R7
17	✓	✓	✓	✓	✓	✓	✓
18	✓	✓	✓	✓	✓	✓	✓
19	✓	✓	✓	✓	N/A	✓	✓

## **Appendix B: Information required for individual exemption applications**

### ***General information requirements***

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

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

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

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

- 1 Will your customers be your tenants? If so, are they residential or commercial/retail? Are they covered by residential or retail tenancy, or other legislation governing accommodation that is a person's principal place of residence (for example, retirement

- village legislation, residential parks or manufactured home estates legislation) in your state or territory?
- 2 Are you providing other services (for example, accommodation/leasing of property) to persons on the site who you intend to sell energy to? Or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please specify what these services are, and the contractual or leasing arrangements under which these services are being provided.
  - 3 What is the total number of dwellings/premises at the site? Please provide a breakdown between residential and business customers (and whether they are small or large as defined for the jurisdiction in which you intend to operate).
  - 4 Will you be onselling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?
  - 5 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 you have formed, or intend to form, a contract, please provide a brief summary of this arrangement.
  - 6 What is the estimated aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and mega joules or gigajoules for gas) and the average expected consumption of customers for each type of customer you service (that is, residential customers and retail or commercial customers)?
  - 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 is for 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 change retailers (i.e. not source their energy from you)?
  - 10 What accuracy standards apply to the meters? Do the meters comply with Australian Standards? If so, specify which Standard or Standards. For electricity meters, will the meters comply with National Measurement Act 1960 (Cth) requirements for electricity meters installed from 1 January 2013?
  - 11 If customer dwellings/premises are separately metered, how often do you propose the meters to be read and by whom?
  - 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 and, if applicable, how can customers 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? If so, will you use gross or net metering?
  - 17 Please provide any further information that you consider would assist us to assess your application.

### **Application for the variation of an individual exemption**

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

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

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

## Appendix C: Information for customers of exempt sellers

If you buy your electricity or gas from an exempt seller, you have protections and rights. These may be different to those of an authorised retailer's customers.

If you are a residential customer (for example, a long term resident in a caravan park, a resident in a retirement village or apartment building, or a tenant), your customer protections will include:

- flexible payment options if you are experiencing financial difficulty
- clear and set time frames for receiving and paying bills
- complaints handling arrangements
- energy charges that are no greater than the standing offer prices a local area retailer can charge contracted customers
- clear and reasonable disconnection procedures.

If you are a tenant you may also have energy related rights and obligations under your tenancy agreement.

Retail or commercial customers' rights will include:

- clear and reasonable disconnection procedures
- clear and set time frames for receiving and paying bills
- energy charges that are no greater than the standing offer prices a local area retailer can, in certain circumstances,<sup>51</sup> charge contracted customers (small retail and commercial customers only)
- complaints handling requirements.

Exempt sellers must provide information to customers about their rights at the beginning of the contract or agreement. Your exempt seller must also give you a copy of their exemption conditions and explain their obligations to you. A list of conditions is available on our [website](#) along with further information about your rights as a customer.<sup>52</sup>

If you feel that your exempt seller is not meeting their conditions, or you would like more information about exempt selling generally, you should contact us. You can email us at [AERExemptions@aer.gov.au](mailto:AERExemptions@aer.gov.au) with any questions, or phone the AER Infoline on 1300 585 165 (Australian callers) or + 612 6243 1305 (overseas callers).

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<sup>51</sup> This applies where exempt customers do not have cost-effective access to a choice of retailer.

<sup>52</sup> Or see: <http://www.aer.gov.au/node/9804>.