



Issues paper

Regulating innovative energy selling business models under the National Energy Retail Law

November 2014

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PURPOSE OF THIS ISSUES PAPER

Under the National Energy Retail Law (Retail Law), any person or business selling electricity or gas must hold a retailer authorisation or be exempt from this requirement (that is, hold an exemption). The Australian Energy Regulator (AER) is responsible for assessing and approving authorisations and administering the exemptions framework under the Retail Law.

On 2 July 2014 the AER published its statement of approach for energy selling by alternative energy sellers. This followed consultation on an issues paper which set out our proposed approach to regulating alternative energy selling models under the Retail Law. Our focus at the time was largely on businesses selling electricity through solar power purchase agreements (SPPAs). Although these alternative energy selling models were not explicitly contemplated at the time the Retail Law was drafted the AER concluded that the current Retail Law retailer authorisations and exemptions framework provided appropriate regulatory oversight for these sellers.

The energy market is continuing to evolve and advances in technology are creating new ways for businesses to sell energy. For the purposes of this paper, we have focused on the electricity market as many of the new sources of technology offer alternatives to grid-sourced electricity, while there are few alternative sources of gas. New products and services are emerging that allow customers to, amongst other things, generate and store their own electricity. This capacity, along with likely innovations in the distribution/network markets and tariff structures, is likely to result in a dynamic two way relationship between energy users and energy sellers. These technological developments change how customers are able to interact with their retailer(s), shifting a passive relationship into one where the customer more actively manages their use of energy. Electric storage and 'smart grids'¹ are likely to be key components to this dynamic and evolving relationship. Our regulatory approach will need to keep up with these changes and we are seeking views and further information from you to assist us in refining our approach to regulating alternative energy sellers.

We are not intending through this paper to regulate storage or the storage mechanism. Our aim is to ensure that we continue to regulate the sale of energy, including where storage is involved, in an appropriate and flexible way.

This paper sets out a summary of the current regulatory framework in relation to market entry for alternative energy sellers. It then deals with some of the changes to business models of alternative energy sellers, specifically those brought about by technological innovation, and the impacts that these may have on how energy is retailed to customers. The next section of the paper covers the policy implications for our regulation of this segment of the market and discusses two potential options for future regulation. The final section seeks stakeholder views and sets out the AER's next steps.

¹ IEC, Electricity Energy Storage White Paper, pp.2-13 available at: <http://www.iec.ch/whitepaper/energystorage/> (last accessed 17 October 2014). The IEC notes that "Smart Grid has no universally accepted definition but in general refers to modernizing the electricity grid... Through the addition of Smart Grid technologies the grid becomes more flexible and interactive and can provide real-time feedback", p.2

Issues for stakeholder consideration

What difference, if any, should storage and/or other emerging technologies have on how the AER proposes to regulate SPPA and other alternative energy selling models?

What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

In relation to Option 2 (exemption, rather than authorisation), what, if any, conditions should be placed on an individual exemption for an alternative energy seller?

Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option 2?

CURRENT RETAIL REGULATORY FRAMEWORK

As noted above, under the Retail Law a person or business selling electricity or gas to a person for premises must hold a retailer authorisation (or be exempt from the requirement to hold a retailer authorisation). Authorised retailers currently operating in the National Energy Market (NEM) have historically operated under a business model that the AER has described as a ‘typical’ energy retailer model.² Under this model the retailer buys the energy from the wholesale energy market and supplies it, via a distribution network, to the end-user. The retailer is the sole provider of a customer’s energy (gas or electricity) and energy is sold as an essential service. Once a business is authorised, it is bound by a range of obligations under the Retail Law.

The guiding principle for energy regulation under the Retail Law is if a person sells energy they should be authorised. However, not all energy sellers require a retailer authorisation and a retail exemption may be granted, for example, to businesses where the sale of energy is incidental to the business’s core activity. There are many and substantial differences in the scale, scope and nature of the services energy sellers provide and this should be reflected in the way businesses are regulated. While authorisations are appropriate for many types of energy selling there are others where the costs of authorisation outweigh any benefits to customers and cannot be justified. In these instances exemptions may be appropriate.

Our approach to regulating energy sellers (“traditional” and “non-traditional”) is informed by the policy principles, exempt seller and customer related factors outlined in the Retail Law.³ We will also consider such factors as the nature of the service provided to the customer, whether the form of regulation is appropriate and fit for purpose, and whether existing regulation is duplicated. These principles and factors will guide our approach on whether a business needs to be authorised or exempted to sell energy.⁴

To date the AER’s position has been that a retailer authorisation will likely be required if the seller meets the following criteria: they provide the primary source of energy to the premises of a small customer and sell a particular fuel across multiple sites; the seller is registered in the wholesale market for the particular fuel source and is the financially responsible retailer for the particular premises.

Similarly, the AER has considered that an exemption may be appropriate if the seller is providing a supplementary or add-on service to customers who are purchasing energy from an authorised retailer or the energy provided by the seller is part of bundled service and forms an insignificant part of that contract, for example a provider of solar power purchase agreements (SPPAs).⁵ Both retailer and SPPA provider sell energy, but the nature of the service is different, as is the relationship between these energy sellers and their customers. A key difference is the impact disconnection of energy services would have on a customer. Disconnection by a retailer means discontinuing network distributed energy to that customer

² See discussion in section 2 of the AER, Final statement of approach for energy selling by alternative energy sellers, 2 July 2014 pp.4-5 available at: <https://www.aer.gov.au/node/22188> (Final Statement)

³ Sections 114, 115, and 116, respectively, of the Retail Law

⁴ AER, Final Statement, pp.4-5

⁵ AER Final Statement, p.5

and leaving them without energy supply. In contrast, a customer whose supply from an SPPA provider is disconnected will still have access to network distributed energy and hence, will still have reliable energy supply.⁶

Our approach to the issue of regulating alternative energy sellers has taken into account the AEMC's Power of Choice review and the principles that AEMC identified for developing a compliance regime for such energy service providers. The three principles identified were:

- facilitating new entry to the electricity demand management market, to stimulate competition for the benefit of consumers
- ensuring that (residential and small business) consumers are effectively and adequately protected and
- ensuring that barriers to entry are not created by requiring potential new entrants (many of whom may be small businesses) to meet onerous and unnecessary compliance and accreditation requirements.⁷

We consider these principles continue to be important to regulating retail energy selling, especially in the context of alternative energy sellers.

⁶ AER Final Statement, p. 9

⁷ AEMC, Power of choice review - giving consumers options in the way they use electricity, Final report, November 2012, p.43, <http://www.aemc.gov.au/market-reviews/open/power-of-choice-update-page.html>.

DEVELOPMENTS IN TECHNOLOGY AND ENERGY SELLING BUSINESS MODELS

Since the Retail Law commenced we have been approached by a range of businesses offering new and innovative energy products that involve the sale of energy. Many of these new energy sellers do not sell energy under a 'typical' energy retailer model and are also different from typical exempt sellers. These models often rely on advances in technology which are rapidly evolving.

As noted above, electrical energy storage and smart grids are likely to be two key components in the move to a more dynamic two-way trade in energy, in particular electricity. The IEC has identified three essential roles storage would play in the development of smart grids:

- Storage installed in customer-side substations can control power flow and mitigate congestion, or maintain voltage in the appropriate range.
- Storage can support the electrification of existing equipment so as to integrate it into the Smart Grid – the IEC refers to electric vehicles as an example.
- Storage can become the energy storage medium for energy management systems in homes and buildings. With a home energy management system, for example, residential customers will become actively involved in modifying their energy spending patterns by monitoring their actual consumption in real time.⁸

The Victorian Government's recent Energy Statement refers to modelling undertaken for the Climate Change Authority in 2012 that show:

... there has been substantial growth in intermittent energy from rooftop solar PV from virtually zero across Australia in 2007 to almost 3,000 gigawatt hours (GWh) in 2012-13. This is forecast to increase to 10,000 GWh by 2020.⁹

Many of the innovative products emerging in the electricity supply market involve on-site generation and may combine this with storage. On-site generation, storage and advances in technology open the way for consumers to more actively manage their use of energy. While this has broader implications for all levels of the energy market it is already impacting on the way that energy is being retailed to customers. We understand that electrical energy storage, smart technologies and other types of innovative products are increasingly likely to be offered to customers and specifically small customers, as the technology behind the products becomes more cost effective. It is increasingly likely that a customer's energy supply will be drawn from various sources, including energy sold through alternative energy selling. As noted, we are not intending to regulate storage in and of itself but are seeking to understand how storage and other innovative products and services may impact on the sale of energy.

⁸ IEC, EES White Paper, p.13

⁹ Victorian Government, Victoria's energy statement, 13 October 2014, p.13 and footnote 2 – available at: <http://www.energyandresources.vic.gov.au/about-us/publications/victorias-energy-statement>

A key consideration is how the current framework can be applied to these new products and services, many of which were not envisaged at the time the framework was developed. The AER is seeking to avoid an approach that may limit innovation or result in an inflexible application of the Retail Law and National Energy Retail Rules (Retail Rules) when assessing such models. We are conscious of the need to have regard to the changing technological landscape and to consider how this will impact our assessments under the authorisation or exemptions framework. That flexibility, however, must also be balanced with providing regulatory certainty in relation to retail market entry. This is true for the generation and distribution of energy as well, although these areas are not the focus of this paper. We also consider that businesses need to start thinking about how these changes impact all levels of energy supply and in the context of this paper, specifically how they impact energy retailing.

All SPPA providers who have sought and been granted individual exemptions will be able sell electricity over multiple sites and some are intending to sell to a large number of customers. As we indicated in our Statement of Approach, we considered an individual exemption may be appropriate for this type of business model. One factor that may change this assessment is the inclusion of storage technology in this form of energy selling. Not only could this change the relationship between the SPPA seller and their customers, but also the relationship between the seller, distributor and ultimately generator. We understand energy storage may eventually be a financially feasible option for energy retail customers and that they could meet up to 60-70% of their energy needs through solar PVs and storage. Therefore, where an SPPA provider is also providing storage they could ostensibly become a customer's primary energy supplier. Storage however is likely to remain sensitive to cost.¹⁰

While the AER has used the exemptions framework to regulate businesses selling energy through SPPAs, we are concerned that the Retail Law is not equipped to deal with many emerging energy retail models. As such, there are significant challenges in applying the authorisation/exemption distinction in those cases and it may be timely to revisit the framework more generally.

¹⁰ IEC, EES White Paper, p.78. However the IEC notes on page 72 that certain studies have concluded that "if further cost reductions and technology improvement can be achieved, EES systems will be widely deployed, for example, to shift the demand, smooth renewable energy output and improve the efficiency of existing power generation."

POLICY CONSIDERATIONS AND OPTIONS

Market innovation can provide energy consumers with greater variety and choice in how they purchase energy services. However this must be balanced against ensuring customers are adequately protected. The AER's approach to regulating alternative energy sellers, including innovations arising within already authorised or exempted business models, needs to balance these objectives.

How do we appropriately regulate emerging and innovative business models?

As a regulator it is important that we understand the situations in which activities will be regulated and the effect that our decisions have on businesses and consumers. In the face of rapid technological developments, good regulatory practice should be 'principles-based' rather than 'destination-based' and allow the market to decide which technology or solution is preferable, rather than having the regulator try to pick winners.¹¹

We need to ensure that our assessment of non-traditional business models is transparent, consistent with the underlying objectives/ principles of the Retail Law, flexible and does not inhibit innovation. We need to balance this with ensuring that customers are appropriately protected with the relevant level of protection depending on the needs of the customer and nature of the energy sold.

Until now the AER has dealt with SPPA providers through the individual exemption framework. The Retail Law prescribes that the AER must, in performing or exercising its exempt selling regulatory function or power, take into account the following policy principles:

- regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers
- 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, and
- exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under the Retail Law and Retail Rules.¹²

We have previously indicated that a customer who buys electricity through a SPPA and who remains contracted to an authorised retailer does not need the same level of protection for that (solar) service as a customer who buys electricity from an authorised retailer and that applying the same or a comparable level of customer protections through the exemption conditions would be excessive and not justified.¹³

¹¹ Michelle Groves, Perspectives on regulation in a changing environment, Speech delivered to the Annual Energy Users Association of Australia Conference in Melbourne on 13 October 2014, p.4. A copy of the transcript of the speech is also available at: <http://www.aer.gov.au/node/27697>.

¹² Section 114 of the Retail Law

¹³ AER Final Statement, p.9

However, we placed a number of conditions on SPPA individual exemptions which require the seller to clearly inform its customers that their seller is not an authorised retailer. This includes explaining it is not bound by obligations under the Retail Law that apply to an authorised seller, but is bound by all other relevant customer protection legislation, for example, the Australian Consumer Law (ACL). Conditions also require the SPPA seller to refrain from registering in the wholesale market for the purposes of purchasing energy and do not allow it to be the financially responsible retailer for the premises (rather, this must be an authorised retailer). These conditions exist to prevent the SPPA provider from retailing electricity “by stealth”.

Until now energy supplied by an alternative energy seller under a SPPA has been discretionary and additional to the energy sold to customers by an authorised retailer. However when storage is included as part of a SPPA and the SPPA provider is able to meet a significantly greater part of the customer’s energy needs the nature of the relationship between seller and customer changes. The AER is seeking views on whether storage has the potential to make the SPPA the primary source of energy to the premises, and therefore more closely reflecting the role of a retailer, particularly as the SPPA provider is able to sell energy across multiple sites? Or does it not make a material difference compared to a SPPA that does not include storage? For example, does it simply make energy generation for the customer more efficient?

If a SPPA provider is exempted from having to hold a retailer authorisation they will generally face less regulatory risk and cost¹⁴ than a retailer that is obliged to comply with all the customer protections, compliance and reporting obligations under the Retail Law. If the customer remains connected to the grid through a contract with a separate authorised retailer, that retailer will incur all relevant costs and risks but is likely to see reduced financial return from that customer who is able to store and then use energy generated through its SPPA. It is arguable that this imbalance has the potential to result in an uneven playing field between authorised retailers and alternative energy sellers. This was certainly the view expressed by retailers during the 2013 consultation on regulating alternative energy sellers.¹⁵

As customers’ ability to manage the periods and frequency with which they source energy from their storage unit, the grid or export energy into the grid change, the traditional relationship between energy consumer and energy retailer becomes even more blurred.

We recognise that these developments are part of a broader transformation in the way energy is produced and consumed. The current retail market entry framework (authorisations and exemptions) was not designed with these dynamic relationships in mind. Consequently there is a potential regulatory gap in the way the retailer authorisation and exempt selling regimes can be applied to what was previously a relatively small and dispersed sale of energy outside of traditional energy sales (i.e. from on-seller to end user).

¹⁴ The AER notes that this will depend on the extent to which any conditions imposed on the exemption mirror the authorised retailer obligations.

¹⁵ AER, Final Statement, Appendix C, p.17

Authorisation or individual exemption?

We would like your views on two potential options for regulating innovative business models:

- Option 1 – requiring an alternative energy seller whose business model includes storage or other innovative component to apply for authorisation
 - This option does not necessarily mean changing our current approach to regulating SPPA providers who do not include storage/ other technology that permits two way trade as part of their business model.
 - Alternatively it could require all alternative energy sellers to be authorised, if the scale and scope of the business warranted it.
- Option 2 – assessing the market entry of an alternative energy seller whose business model includes storage or other innovative component through the individual exemption framework. This option could include a review trigger point that would allow us to assess whether an exemption remained the most appropriate mechanism for regulating a specific party's activities.

We are also interested in any other potential options that you consider may be appropriate.

Option 1 – authorisation

There are sound policy reasons why we may choose to regulate emerging, innovative business models through the authorisation framework. To do so would be consistent with the principle that authorisation is the starting point for market entry and the exempt selling framework should not unnecessarily diverge from the requirements applying to retailers.¹⁶ Authorisation of an energy seller provides customers with strong protections and has the added benefit of having robust and existing performance reporting and compliance frameworks in place. Under the authorisation framework, retailers are obliged to:

- develop and implement AER approved customer hardship policies to assist customers experiencing financial hardship and provide customers experiencing financial difficulty with flexible payment options
- keep a register of customers who require energy-related life support equipment and to provide them with added protections for disconnection of energy services
- provide timely bills based on metered consumption, and to ensure that customers are provided with at least 13 business days to pay bills
- have dispute resolution mechanisms for small residential customers, and to participate in jurisdictional Ombudsman schemes.

In addition, authorised retailers must:

¹⁶ Section 114 of the Retail Law

- participate in the AER's Retailer of Last Resort (RoLR) scheme which ensures continuity of supply in the event of retailer insolvency or failure¹⁷
- report to the AER on their performance against defined indicators and on certain breaches of the Retail Law and Retail Rules.

However, as noted above and as we previously indicated in relation to alternative energy sellers, authorisation may not always be practical or warranted. Authorisation can impose entry and ongoing costs on an energy seller that may not be necessary given the type of arrangement with the customer. This includes the fact that the customer retains its right to buy energy from a retailer, to choose its authorised retailer, to access the full suite of Retail Law protections and is protected by the AER's RoLR scheme if the retailer fails. A customer may not need the level of protection an authorisation would require a retailer to offer in relation to its customers. In addition, there are customer protections under other laws such as the ACL and duplication through the retailer authorisation protections may be unnecessary.

Further, the AER is not able to impose performance conditions on an authorisation, other than conditions that relate to satisfaction of the entry criteria¹⁸ and cannot impose an expiry date on an authorisation. Accordingly once an authorisation is granted it is held by the retailer until it is revoked or surrendered and can be used in any jurisdiction where the Retail Law has commenced to sell the type of energy authorised. In this regard, it is a relatively inflexible regulatory instrument. A retailer authorisation may also be less appropriate where the alternative energy seller is not registered in the wholesale market as the financially responsible market participant.

A central consideration as to the appropriateness of authorisation for these emerging business models is whether the changes to the types of business models that we are seeing, including storage, push the alternative energy seller closer to a retailer such that they should be authorised.

Stakeholders should have regard to first principles in considering this option, that is, if an alternative energy seller is the primary source of the customer's energy and if they are selling energy across multiple sites, particularly if they are a significant number of sites, it would be consistent with the objectives of the Retail Law and Retail Rules if we were to require an energy seller to hold a retail authorisation.

Option 2 – individual exemptions with robust conditions

Consistent with its earlier regulatory approach, the AER may decide that individual exemptions provide an appropriate regulatory mechanism for dealing with alternative energy sellers where their business models include new and innovative technologies.

One of the benefits of the exemptions framework is its relative flexibility and adaptability. We can impose conditions on the exempt seller that are specific to the circumstances of the

¹⁷ The AER's Retailer of Last Resort (RoLR) scheme provides 'last resort' retailers for each customer connected to the grid. This 'last resort' retailer automatically takes over the supply of premises if a customer's retailer becomes insolvent or otherwise fails.

¹⁸ Section 93 of the Retail Law

business and reflect the needs of the business's customers. With storage and with changes on the supply side such as smart meters and other smart grid technologies the way in which energy will be purchased by customers will not resemble the current model. It appears the market and technologies in the market will continue to evolve. Any position the AER reaches will need to be flexible enough to deal with these changes while still ensuring that the level of regulation is appropriate. In light of the rapid rate of technological developments and the impacts these developments could have on how customers purchase energy, flexibility is an important policy consideration for us.

With an individual exemption we will be able to tailor conditions that ensure the principles of the Retail Law continue to be reflected in how these businesses are being regulated.

One option proposed is the inclusion of a condition for review of an exemption at a particular trigger point to assess whether an exemption remains the appropriate tool for regulating that seller. This would allow us to take stock of the exemptions granted under this approach and provide some transparency around exempt sellers' activities. Examples of when a trigger might arise include:

- when the exempt seller reaches a particular kWh sale volume or customer base
- where the exempt seller has a certain storage capacity being used as part of its customers' SPPAs or
- a simple time triggered review, for example, after five years.

Once triggered the AER could consider if an exemption remains appropriate or if the seller should apply for a retailer authorisation for its selling activities. We would like your views on the inclusion of a review point trigger within an individual exemption and what form such a trigger might take (with a view to promoting regulatory certainty) should Option 2 be preferred.

As noted above, stakeholders have previously expressed concerns that the AER's approach to regulating alternative energy sellers created an uneven playing field, namely that although both retailers and exempt sellers were competing for the same customers, retailers were having to bear the bulk of the regulatory costs. We seek stakeholder views on whether Option 2 would exacerbate this imbalance, if one exists. In responding to this issue, we remind stakeholders Option 2 would involve conditions being imposed on an exempt seller that would largely mirror the obligations on a retailer when size or scale makes this appropriate.

We have wide discretion in relation to the types of conditions we can impose on an individual exemption and we seek stakeholder views on the range of conditions that might be appropriate under Option 2. A non-exhaustive list of potential conditions is at **Attachment A** to this paper.

CONCLUSION AND NEXT STEPS

The alternative energy retail market is evolving quickly and in ways not entirely understood or anticipated. The Retail Law and Retail Rules were not designed with alternative energy selling models in mind and so we are seeking views from stakeholders and the market more broadly about this issue in order to provide the appropriate level regulation and regulatory certainty.

We consider this consultation process will assist us in forming an approach that encourages innovation while providing the appropriate level of regulation and regulatory certainty. We also wish to highlight to businesses that these changes have implications beyond the retailing of energy and businesses will need to be aware of regulatory obligations they may have at the generation and distribution levels of the market.

We are seeking stakeholder submissions until **15 January 2015**. Stakeholders are invited to provide any relevant feedback, however we are seeking specific input on the following questions.

Questions for stakeholders

What difference, if any, should storage and/or other emerging technologies have on how the AER proposes to regulate SPPA and other alternative energy selling models?

What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

In relation to Option 2 (exemption, rather than authorisation), what, if any, conditions should be placed on an individual exemption for an alternative energy seller?

Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option 2?

We will publish our final position by Quarter 2 2015.

We invite submissions from interested parties on the issues raised in this paper by close of business, **15 January 2015**.

Submissions should be emailed "Attention: Sarah Proudfoot, General Manager, Retail Markets Branch" at AERInquiry@aer.gov.au with the following title in the email: Refining our regulation of alternative energy sellers – Issues Paper.

We may, in future, make alterations to our *Exempt Selling Guideline* (including setting appropriate conditions) and *Retailer Authorisation Guideline* to further explain our treatment of alternative energy sellers under the Retail Law.

Attachment A – potential conditions for Option 2

Without being exhaustive, conditions could include:

- a requirement that the exempt seller can only sell energy under the business model in relation to which the entity applied for the exemption
- an obligation to obtain explicit informed consent from customers
- an obligation to sell energy that is metered
- an obligation to provide clear, accurate billing information
- an obligation to report to the AER on a quarterly basis in relation to customer service and complaints, the handling of customers experiencing payment difficulties, prepayment meters, security deposits, concessions, disconnections and reconnections
- an obligation to report to the AER on an annual basis in relation to compliance with the conditions of the exemption
- potentially an obligation to report to the AER when the entity satisfies the review trigger point (if one is imposed).
- Where appropriate the Core exemption conditions, namely:

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.