



**Notice of draft  
instrument:  
Amendments to the Retail  
Exempt Selling Guideline  
- Version 3**

December 2014

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## Amendment Record

Version	Date	Pages
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## Shortened forms

Shortened form	Long form
AER	Australian Energy Regulator
guideline	AER (Retail) Exempt selling guideline
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules

# Nature and authority

## Introduction

This Notice of draft instrument and the accompanying consultation draft of the AER's Exempt Selling Guideline version 3.0 present proposed amendments to version 2.0 of the AER's (Retail) Exempt Selling Guideline.

The consultation draft proposes to reopen a number of registrable exemption classes that were to close to new entrants on 1 January 2015 while maintaining the closing date for two classes and for retrofitted embedded network sites.

The nature and purpose of the proposed amendments, and their possible effects, are explained in this notice.

## Authority

The National Energy Retail Law (Retail Law) allows us to make and amend the AER's (Retail) Exempt Selling guideline in accordance with the retail consultation procedure.

## Role and purpose of the guideline

The Retail Law requires anyone who is selling energy to hold a retailer authorisation or to be exempt from the requirement to hold an authorisation. Energy selling covers a wide range of activities, from energy retailing by authorised 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.

Under the Retail Law, we can exempt people or businesses (sometimes referred to as exempt sellers, on-sellers, or non-authorised sellers) from the requirement to hold a retailer authorisation.<sup>1</sup> We allow exemptions for situations where energy is sold but a retailer authorisation may not be appropriate – for example, the sale of energy in retirement homes or caravan parks, or where an owner buys energy from an authorised retailer and then sells it to tenants.

The Retail Law and National Energy Retail Rules (Retail Rules) set out the exemptions framework, and the AER is responsible for regulating this framework. 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. Often they have a pre-existing relationship with the customer (e.g. landlord-tenant) and sell energy for a variety of reasons—as a matter of convenience, or incidentally, or simply in order to pass on energy costs. It would be burdensome and unnecessary to compel these businesses to obtain a retailer authorisation.

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<sup>1</sup> National Energy Retail Law, section 110.

There are three kinds of exemptions provided for in the Retail Rules,<sup>2</sup> being:

- deemed exemptions (which apply automatically)
- registrable exemptions (which apply when an eligible person registers with the AER)<sup>3</sup> and
- individual exemptions (which are granted by the AER on a case by case basis, on application).

As part our role, we must develop and maintain an exempt selling guideline.<sup>4</sup> The guideline, which accompanies this notice, sets out our approach to regulating exempt sellers. It also details the various exemption classes and the conditions attached to those exemptions.

The purpose of the guideline is to assist people or businesses that sell energy under the Retail Law and need a retail exemption. It should be read by those that charge another person for the cost of energy, be it for profit or simply to recover their own costs. This guideline focuses on what these sellers need to know and what they must do to comply with the Retail Law as an exempt seller.

When performing our exempt selling functions, we must have regard to the exempt selling policy principles set out in the Retail Law.<sup>5</sup> We may also consider the exempt seller factors, and the customer related factors, also set out in the Retail Law.<sup>6</sup> These factors and principles have guided us in the development and amendment of the guideline.

## Definitions and interpretation

In this Notice, key words and phrases have the meaning given to them in:

- the shortened forms or
- if not defined in the shortened forms, the Retail Law and National Energy Retail Rules (Retail Rules).

## Version history and effective date

This draft notice has been prepared for consultation purposes only.

The current version of the guideline is version 2.0 (July 2013).

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<sup>2</sup> National Energy Retail Rules, rules 149 – 151.

<sup>3</sup> And appear on the AER's [Public Register of Retail Exemptions](http://www.aer.gov.au/node/11037) (<http://www.aer.gov.au/node/11037>)

<sup>4</sup> National Energy Retail Law, section 118.

<sup>5</sup> National Energy Retail Law, section 114.

<sup>6</sup> National Energy Retail Law, section 115 (exempt seller factors) and section 116 (customer related factors).

## How to make submissions

This notice and the accompanying consultation draft of the Exempt Selling guideline have been prepared in accordance with the retail consultation procedure set out in rule 173 of the Retail Rules.

Interested parties are invited to make written submissions on the draft guideline by close of business, **16 February 2015**. Late submissions may not be taken into account.

Submissions should be sent electronically to: [aer inquiry@aer.gov.au](mailto:aer inquiry@aer.gov.au) and should be in Microsoft Word or other text readable document form.

Alternatively, submissions can be sent to:

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

Submissions provided by email do not need to be provided separately by mail.

### PLEASE NOTE:

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website ([www.aer.gov.au](http://www.aer.gov.au)). Parties wishing to submit confidential information are asked to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission for publication, in addition to the confidential one.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided. Such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available.

In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked out'.

For further information regarding the AER's use and disclosure of information provided to it, please refer to the ACCC–AER information policy: the collection, use and disclosure of information, which is available on the AER website under 'Publications'.

Please direct enquiries about this notice and the draft guidelines, or about lodging a submission, to the Retail Markets Branch of the AER through [aer inquiry@aer.gov.au](mailto:aer inquiry@aer.gov.au).

## Proposed amendments

Our proposed amendments to the guideline are summarised below. These amendments are included in the consultation draft guideline which is also available on our website at [www.aer.gov.au](http://www.aer.gov.au).

We are proposing to amend the guideline to deal with the closure of certain classes of registrable exemption which were to close on 1 January 2015 under the current guideline. In light of the imminent closure of these classes we considered that a targeted revision was appropriate. As a consequence, there are only minimal revisions to the guideline with the introductory section being the only other section that we propose to amend.

### Introductory section

We propose to simplify the introductory section of the guideline and to bring the language of this section in line with the recently published [AER's revised Retailer authorisation guideline v2](#). The proposed changes to this section seek to make the descriptions of AER's authorisation and exempt selling frameworks consistent.

### Registrable exemptions and new entrants

Under the current version of the guideline a number of registrable class exemption categories would close to new entrants on 1 January 2015. It is now proposed that all but two of these classes remain open. We propose to:

- close the R6<sup>7</sup> and R7<sup>8</sup> classes to new entrants
- close R1<sup>9</sup> and R2<sup>10</sup> to new entrants where the site has been retrofitted as an embedded network
- otherwise keep open classes R1, R2, and R3.<sup>11</sup>

We are proposing to close R6 and R7 because these classes cover legacy arrangements. We consider it appropriate that they close to new entrants from 1 January 2015 as these classes were not intended to cover new arrangements but rather residual arrangements that were put in place before the Retail Law and Retail Rules commenced. Sellers who would previously have been eligible under these classes can still apply for an individual exemption for these types of arrangements.

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<sup>7</sup> R6: persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate. This class was intended to cover legacy arrangements.

<sup>8</sup> R7: persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate. This class was intended to cover legacy arrangements.

<sup>9</sup> R1: persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.

<sup>10</sup> R2: persons selling metered energy to ten or more residential customers within the limits of a sit that they own, occupy or operate.

<sup>11</sup> R3: retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.



In relation to classes that cover the sale of energy in an embedded network, we are proposing to close those classes to new entrants from 1 January 2015 where the site has been retrofitted as an embedded network. We consider that all customers should be able to choose their energy retailer and therefore do not support the creation of infrastructure that deliberately reduces a customer's ability to exercise choice.

We consider that keeping open R1, R2 (other than for retrofitted embedded networks) and R3 will enable new sellers who would have been eligible under these classes to still register their selling activities, thus ensuring a level playing field between existing and new exempt sellers. It will also provide new exempt sellers in jurisdictions where the Retail Law is yet to commence with an opportunity to register for one of these class exemptions. In reaching this view the AER had regard to the need for regulation to be fit for purpose. In particular, these classes are subject to conditions that the exempt seller 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. The extent to which these conditions apply to a particular class exemption depends largely on the nature of the energy sales and the customer type. For example, residential exempt customers (R2) will receive the greatest level of protection and should receive such protections as flexible payment plans if they identify themselves as experiencing financial difficulty.

Keeping classes R1, R2 and R3 open will not lessen customer protections as individual exemption conditions are generally based on those of comparable class exemptions, but will reduce the administrative load of sellers and the AER. We therefore consider that a registrable exemption remains the right level of regulation given the low risk associated with the types of selling arrangements captured by these classes and in light of our increased familiarity with these types of arrangements. We have received few complaints from exempt customers covered by these arrangements<sup>12</sup> even though registrations for these types of exemptions remain steady. This may indicate that the class conditions currently provide appropriate levels of customer protection. Exempt customers covered by R1, R2 and R3 arrangements are also covered by all other relevant customer protection legislation, for example, the Australian Consumer Law.

## Further amendments

We may make additional revisions to the guideline following our consultation on regulating innovative energy selling business models under the Retail Law.<sup>13</sup> There are a number of other changes that we consider necessary to clarify how the guideline applies, for example, including further clarification on the meaning of 'premises' and explicitly dealing with the surrender of an exemption. We also consider further refinements to a number of the deemed and registrable classes would be appropriate but have not proposed them at this time for the sake of expediency and to keep the consultation targeted.

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<sup>12</sup> Customers that have complained about onselling arrangements have largely been exempt customers that are part of an embedded network.

<sup>13</sup> This consultation commenced on 18 November 2014 and will close on 16 February 2015. Further information is available on our website at: <https://www.aer.gov.au/node/28414>