



June 2014

## **AER Statement of approach**

**Regulation of alternative energy sellers  
under the *National Energy Retail Law***

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### **Amendment record**

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<b>Version</b>	<b>Date</b>	<b>Pages</b>
1	June 2014	31

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# 1. Executive Summary

Higher energy prices, a desire (and ability) by consumers to manage their energy use and access to renewable energy options has led to increased demand for alternative energy products. This, coupled with changing market conditions, including the reduction of jurisdictional feed in tariffs and reductions in solar panel rebates, has contributed to growth in this business sector. Consumers are now changing the way in which they participate in the energy market, and in response, a market for new and innovative business models is developing. Innovation in how energy is sold will ultimately lead to greater choice for consumers.

The *National Energy Retail Law (Retail Law)* requires any person selling energy to premises to be authorised or exempted.<sup>1</sup> It is also clear about the Australian Energy Regulator's (AER's) role in either authorising or exempting businesses selling energy and gives us broad discretion to decide whether an authorisation or exemption is appropriate.

Since the *Retail Law* commenced we have been approached by a range of businesses offering new and innovative services and products which involve the sale of energy ("alternative energy sellers").<sup>2</sup> The majority have been from solar power purchase agreement (SPPA) providers wishing to sell energy generated from solar panels installed at a customer's home or business. However, there are many other new and innovative ways for energy to be sold, for example through "wheeling" arrangements or co-generation and tri-generation.

This Statement of Approach outlines our position on regulating alternative energy sellers. It has been informed by submissions on our *Issues Paper - Regulation Of Alternative Energy Sellers* (the issues paper)<sup>3</sup> (see Appendix A for a summary of the paper, and Appendix B for a list of the submissions made).

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*.<sup>4</sup> 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 it duplicates existing regulation. These principles and factors

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<sup>1</sup> The Australian Energy Regulator (AER) administers retailer authorisations and exemptions, and has guidelines – the [Retailer Authorisation Guideline](#) and [Retail Exempt Selling Guideline](#) – which provide general guidance to new businesses engaging in the sale of energy. These guidelines have been developed in accordance with the AER's obligations under sections 118 and 117 of the *Retail Law* respectively.

<sup>2</sup> At the time of writing this paper, the *National Energy Retail Law (Retail Law)* had commenced in Tasmania, the Australian Capital Territory (ACT), South Australia and New South Wales. It had not yet commenced in Victoria or Queensland.

<sup>3</sup> AER, Regulation of alternative energy sellers under the *National Energy Retail Law*: Issues Paper, October 2013, <http://www.aer.gov.au/node/22188>

<sup>4</sup> Sections 114, 115, and 116, respectively, of the *Retail Law*.

will guide our approach on whether a business needs to be authorised or exempted to sell energy.

The AER considers that a retailer authorisation will likely be required if the seller meets the following criteria: they are the primary source of energy to the premises of a small customer and sell a particular fuel across multiple sites. Further the seller is registered in the wholesale market for the particular fuel source and is the financially responsible retailer for the particular premises. An exemption may be granted 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.

## 2. AER's approach

This statement of approach is intended to give guidance to potential applicants and others on whether they need an authorisation or exemption in order to sell energy and to explain the reasons for our approach to other interested parties.

Following our consultation on the issues paper we have revised certain aspects of our proposed approach, in particular we agree that all energy is essential—regardless of how it is sold—and we no longer intend to use the “sole supplier” test in our considerations of whether a business should be authorised.

Other issues raised during consultation were the potential competitive disadvantage and transfer of risk to retailers under the AER's approach and the need for an even playing field, and the intentions behind the exemptions framework (namely, it was not intended for non-incidental energy sales). Submissions also noted the importance of:

- ensuring that individual exemption holders have appropriate conditions, such that customer protections are consistent with those in the *Retail Law*
- ensuring that customers of alternative energy sellers are aware of their rights and are provided with clear, transparent information so that they can make an informed decisions
- ensuring customers understand that some protections may not be available in their dealings with an exempt seller (for example, access to jurisdictional ombudsman schemes), and
- maintaining flexibility in the AER's regulatory approach so that we can respond to emerging market and compliance issues and accommodate new alternative energy selling models.

A summary of the issues raised in the consultation is set out in Appendix C, along with our response to those issues. Where appropriate we have referenced these submissions (either by reference themes or arguments). However, any omission to reference a part of a submission does not mean that we did not consider it in making our decision.

### 2.1 Principles for regulating alternative energy sellers

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 related factors and customer related

factors outlined in the *Retail Law*.<sup>5</sup> These principles and factors guide our decisions on whether a business needs to be authorised or exempted to sell energy and, if an exemption is considered appropriate, the type of exemption that should apply and the conditions that should attach to them.

The *Retail Law* also enables us to consider any other exempt seller and customer related matter we consider relevant.<sup>6</sup> Other factors we consider important are:

*The nature of the service provided to the customers, that is, whether the service is optional or discretionary*

This is important because it helps determine the effect that disconnection by the energy seller will have on a customer's access to reliable energy supply. We consider that an authorisation is necessary in situations where customers need the complete set of consumer protections under the *Retail Law*, for example where a service carries the possibility that a customer's general energy supply could be disconnected. However, customers do not need the same level of protection from an energy seller where there is no risk of this happening, for instance where a seller is providing an optional, discretionary service to customers.

*Regulation fit for purpose*

The AER has a range of tools available to regulate energy sellers—from retailer authorisations (which have a full application process and full range of obligations attached) through to deemed exemptions (which carry very little regulatory risk and reflect a lesser need for regulatory oversight)—depending on the sellers' circumstances. Of these, an authorisation provides the greatest level of protection for customers but is clearly the most onerous for sellers. If the full range of consumer protections is not necessary for customers receiving a particular type of service, a lesser level of regulation may be appropriate and an exemption may be sufficient.

*Flexibility*

The alternative energy market is evolving rapidly and our regulatory approach should support—not hinder—market innovation. Our approach to regulation should be flexible and pragmatic and the level of regulation applied to a business (obligations, as well as entry criteria) need to be appropriate for the type of energy selling undertaken.

*Not duplicating existing legislation*

Conditions under an individual exemption can be tailored to complement protections under other relevant legislative frameworks but should not duplicate them. We

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<sup>5</sup> Sections 114, 115, and 116, respectively, of the *Retail Law*.

<sup>6</sup> Sections 115 (1)(g) and 116 (c), respectively, of the *Retail Law*

consider that uniform protections for customers are retained where a customer continues to purchase energy from an authorised retailer. We also note that customers have access to broad protections under other regulatory frameworks such as:

- the *Consumer and Competition Act 2010*, which deals with misleading, deceptive or unconscionable conduct
- the Australian Consumer Law which deals with unfair contract terms, marketing, warranties and guarantees
- State and territory fair trading legislation, which provides jurisdictional agencies with a role in dispute resolution and complaints.

The *Retail Law* enables us to give such weight to any aspect of the principles and factors as we consider appropriate in the circumstances.<sup>7</sup> The principles and factors, including those outlined above, should be read in conjunction with one another and not in isolation—no one principle or factor is a defining principle or factor in all instances, but may be in others. Applications are considered on a case-by-case basis and while we aim to be consistent, we are not bound by precedent.

## 2.2 Application of principles for regulating alternative energy sellers

A retailer authorisation will *likely* be required where the seller meets the following criteria:

- the seller is the primary source of energy to the premises of a small customer for a particular fuel
- the seller is selling energy to premises 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.

We *may* issue retail exemptions where, for example, the energy seller is:

- providing an “add-on” or supplementary service to a customer who also buys energy from an authorised retailer
- providing a bundled contract for a service that includes the sale of energy, but where the sale of energy is a small or insignificant component of that contract.<sup>8</sup>

### 2.2.1 Approach to regulating SPPA businesses

An SPPA is a financial arrangement in which a business provides, installs and maintains, at no initial cost, a solar panel system to a customer and in exchange, the

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<sup>7</sup> Section 114 (3) of the *Retail Law*

<sup>8</sup> Note that in this situation, a sale of energy is only taking place where it is charged for separately – for example, metered energy supplied to premises and charged as a separate component of a bill.



customer buys the energy provided by the solar panels for an agreed price (usually below that which would be charged by an electricity retailer) for an agreed period. Any electricity that is not used is exported into the local electricity network and the customer will usually get the benefit of any feed-in tariff.

The AER considers that energy sold through SPPAs is discretionary and additional to the energy sold to customers by an authorised retailer. 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 that disconnection of energy services would have on a customer. Disconnection by a retailer means discontinuing network distributed energy to that customer 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.

The AER's view is that when an SPPA provider contracts with a customer to provide an additional service, an authorisation is not practical or warranted. Several *Retail Law* retailer obligations are inappropriate, for example participation in the Retailer of Last Resort scheme, and obligations to provide standing offers. Exemptions, on the other hand, can be tailor-made to suit the specifics of the energy sale and are therefore a better regulatory fit for many kinds of alternative energy selling, including the sale of energy through SPPAs.

### **2.2.2 Exemption conditions for SPPA businesses**

Our view is that a customer who buys electricity through an SPPA does not need the same level of protection for that 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 is excessive and not justified. The ACL, in particular, provides robust protections for residential customers who buy electricity through SPPAs.

We consider it important, however, that customers understand the nature of the service that they are buying through an SPPA and the protections they are entitled to (and from whom). Accordingly, we have placed obligations on SPPA providers that customers be informed, in plain English, that:

- their seller is not an authorised retailer
- the SPPA seller is not bound by obligations under the *Retail Law* that apply to an authorised seller
- the SPPA seller is bound by all other relevant customer protection legislation, for example, the ACL.

Exemptions are granted on the basis of an entity’s business model (that is, the business model does not necessitate a full retailer authorisation). In other words, it is a seller’s business model that is exempted, not the seller per se. If an energy seller wants to change the way they sell energy or to expand their energy selling activities they will need to apply for an authorisation or another exemption, as appropriate. We have therefore placed an obligation on SPPA providers’ exemptions that states that they are conditional upon the exempt seller:

- refraining from registering in the wholesale market for the purposes of purchasing energy
- not being the financially responsible market participant for the premises (rather, this must be an authorised retailer).

## **2.3 Interaction with current Exempt Selling Guideline and Retailer Authorisation Guideline**

Our approach to regulating alternative energy sellers will operate in parallel with our *Exempt Selling Guideline* and *Retailer Authorisation Guideline*, which we encourage all potential energy sellers to read.<sup>9</sup> Appendices D and E summarise the *Retail Law* authorisations and exemptions frameworks, respectively. Our guidelines explain how to apply for a retailer authorisation or a retail exemption, and the process we follow in assessing and approving applications (including the factors we consider). The guidelines set out the procedures for applying for an exemption or authorisation and specify the information that such an application should include.<sup>10</sup> We also encourage any potential sellers to contact us to discuss their business model further.

## **2.4 Conclusion**

Submissions made by stakeholders were valuable in assisting the AER finalise its approach to regulating alternate energy selling models. Given the evolving nature of the alternative energy selling market and potential changes to the broader regulatory framework we will continue to monitor developments in this market and will revise our approach, if necessary.

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<sup>9</sup> See footnote 1 for links to the AER’s guidelines.

<sup>10</sup> For businesses seeking to sell energy under SPPA business models, our information requirements are slightly different to those set out in the *Exempt Selling Guideline*. In addition to the information required by the guideline, we also ask several questions which are specific to the SPPA business model. These are outlined in Appendix F of this paper.

## Shortened forms

<b>ACL</b>	Australian Consumer Law
<b>AER</b>	Australian Energy Regulator
<b>AEMC</b>	Australian Energy Market Commission
<b>CALC</b>	Consumer Action Law Centre
<b>CUAC</b>	Consumer Utility Advocacy Centre
<b>DSDBI</b>	Department of State Development, Business and Innovation
<b>EWON</b>	Energy and Water Ombudsman of New South Wales
<b>EWOV</b>	Energy and Water Ombudsman of Victoria
<b>EV</b>	Electric vehicle
<b>FRMP</b>	Financially Responsible Market Participant
<b>PV</b>	photovoltaic
<b><i>Retail Law</i></b>	<i>National Energy Retail Law</i>
<b>retailer</b>	a retailer authorised under the <i>National Energy Retail Law</i>
<b>RoLR</b>	Retailer of Last Resort
<b>SPPA</b>	Solar Power Purchase Agreement
<b>SSRoC</b>	Southern Sydney Regional Organisation of Councils

## Appendix A: Summary of AER's issues paper

Our issues paper noted that the sale of energy is defined under the *Retail Law* as 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. The issues paper further noted that emerging business models deviate from “typical” energy retail models under the *Retail Law*, where the energy retailer:

- is the sole supplier of a particular fuel type (gas or electricity, or both) to a customer's premises
- sells energy as an essential service
- is registered with Australian Energy Market Operator (AEMO) to purchase from the wholesale market for gas and/or electricity, and is financially responsible in the wholesale market for the premises.<sup>11</sup>

The paper discussed new types of businesses that sell energy under different models from ‘typical’ energy retailers. The paper noted a range of alternative energy selling models such as:

- solar power purchase agreements (SPPA), under which a customer agrees to purchase energy generated from solar panels owned by a third party (installed at the customer's home or business) for a specified period (for example, 15 years)
- companies selling energy to customers for a specific purpose at a premises, for example, to charge an electric vehicle (EV) at the customer's home. This model involves the installation of separate meters at the premises, with the energy being sold to the customer by an EV company. This is an example of the sale of energy, and therefore, requires an exemption or an authorisation
- businesses whose energy sales include other energy related goods or services, for example, demand management or energy efficiency products or services.

There are a range of features that alternative energy suppliers may have in common:

- they have previously limited their activities to other energy related services (for example, the installation of photovoltaic (PV) infrastructure) and are new entrants to the energy retail market
- they sell energy through a medium to long term contract

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<sup>11</sup> The *National Energy Retail Law* does not require wholesale market registration as a precondition to obtaining a retailer authorisation; however, the majority of authorised retailers are registered as market participants with the Australian Energy Market Operator (AEMO).

- energy is provided as an add-on or supplementary service. In some situations, the customer purchases energy from the alternative energy seller for a specified use at a premises (for example, EV charging) or to supplement energy purchased from a retailer (for example, the installation of solar panels which comes with an obligation to purchase energy generated by the solar panels in addition to the customer's regular energy supply from its retailer).

The paper then identified factors that should be taken into account in regulating such businesses, being whether:

- the customer has access to an authorised retailer
- the energy is being sold as an essential service, and
- the customer retains their right to access the energy retail market and engage a retailer of their choice.

The issues paper also noted that the Australian Energy Market Commission (AEMC) considered the evolution of energy services and products in its Power of Choice review. That review identified three principles for developing a compliance framework for such energy service providers. These are:

- 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
- 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.<sup>12</sup>

We proposed that we consider these factors when assessing whether an alternative energy seller required an authorisation or a retail exemption. The issues paper suggested that a retailer authorisation would be necessary where:

- an alternative energy seller is the sole supplier of gas or electricity at a premises
- the alternative energy seller requires customers to enter into a contract with a specified retailer

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<sup>12</sup> AEMC, *Power of choice review - giving consumers options in the way they use electricity*, Final report, November 2012, p.41, <http://www.aemc.gov.au/market-reviews/open/power-of-choice-update-page.html>, page 43

- the alternative energy seller is registered with AEMO in the wholesale market for the particular fuel source, and is the financially responsible retailer for the particular premises.

We proposed that an exemption might be appropriate, where the alternative energy seller is:

- providing an “add-on” service to the customer – for example, where the customer can buy energy from an authorised retailer
- providing a bundled contract for a service which includes the sale of energy, but where the sale of energy is a small or insignificant component of that contract.<sup>13</sup>

Each alternative energy selling model is different, and creating a class exemption which covers all alternative energy selling models may not be possible while the market is still developing. The paper noted that where these sales of energy were not covered by a class exemption, an individual exemption may be more appropriate.

We sought stakeholder response on 6 specific questions, being;

- 1. What, if any, other alternative energy selling business models are stakeholders aware of, and what future business models do stakeholders consider could emerge?**
- 2. What are stakeholders’ views on the AER’s proposed policy considerations?**
- 3. What are stakeholders’ views on the AER’s proposed approach to granting exemptions and authorisations for alternative energy sellers?**
- 4. What, if any, other considerations should the AER take into account to regulate the sale of energy under alternative energy selling models?**
- 5. What implications, or future implications, could arise for the regulation of alternative energy sellers under the *Retail Law*, or other consumer protection legislative frameworks?**
- 6. What, if any, conditions should be placed on an individual exemption for an alternative energy seller?**

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<sup>13</sup> Note that in this situation, a sale of energy is only taking place where it is charged for separately – for example, metered energy supplied to premises and charged as a separate component of a bill.

## Appendix B: Submissions received

AGL

Alinta Energy

Australian Clean Energy Finance Fund

Australian PV Institute

City of Sydney

Clayton Utz

Clean Energy Council

Consumer Action Law Centre

Consumer Utilities Advocacy Centre

Department of State Development, Business and Innovation (Victoria)

Diamond Energy

Energy and Water Ombudsman of New South Wales

Energy and Water Ombudsman of Victoria

EnergyAustralia

Energy Matters

Energy Retailers Association of Australia

Ergon Energy

ERM Power

Origin Energy

Simply Energy

Solar Citizens

SunEdison

Southern Sydney Regional Organisation of Councils

Sustainable Northern Rivers Energy Working Group

Tasmanian Renewable Energy Alliance

Total Environment Centre

United Energy

## Appendix C: Summary of submissions

What other alternative energy selling business models are stakeholders aware of and what future business models do stakeholders consider could emerge?		
Stakeholder	Stakeholder response	AER response
Total Environment Centre AGL Energy Matters Simply Energy Australian PV Institute Clean Energy Council SSRoC Tasmanian Renewable Energy Alliance DSDBI Sustain Northern Rivers City of Sydney	Stakeholders noted the emergence of other energy selling models, including: <ul style="list-style-type: none"> <li>• cogeneration and tri-generation projects within multi-premise business or residential properties</li> <li>• embedded generation/battery and export sub-metering</li> <li>• demand management, network support agreements</li> <li>• load shedding</li> <li>• community owned de-centralised renewable energy</li> <li>• energy sold between consumers on the same distribution network (wheeling arrangements, or micro grids)</li> <li>• solar energy sold in land sharing community arrangements between strata owners, strata corporations and tenants</li> <li>• energy sold through urban-regional council partnerships</li> <li>• energy sold via smart meters (which will offer possibilities for third parties to be involved in providing a range of smart meter services)</li> <li>• off-grid energy sales</li> <li>• groups of investors who generate renewable energy to sell for their own use</li> <li>• electric vehicles</li> </ul>	This list confirms the dynamic and evolving nature of the energy retail market and the need for a responsive and flexible approach to regulation. We consider our proposed approach to be sufficiently responsive and flexible to deal with the sorts of business models identified by stakeholders.  Any business considering selling energy under these (or other) business models should contact the AER so that we can advise if it needs an authorisation or an exemption and, if the latter, what sort of conditions or protections might be attached to the exemption.



What are stakeholder’s views on the AER’s proposed policy considerations?		
Stakeholder	Stakeholder response	AER response
AGL Energy Australia ERM Power Simply Energy	<p><i>Appropriate regulatory framework for alternative energy sellers</i></p> <p>Many retailers submitted that the current retailer authorisation framework can regulate alternative energy sellers, and that exemptions were not appropriate or necessary to accommodate new sellers. They considered the AER’s proposed approach unfair, and some felt that in the absence of market failure, no further regulatory intervention was necessary.</p> <p>Retailers submitted that, because alternative energy sellers are selling energy, they should be authorised. Some retailers accepted that a limited or tailored authorisation may be appropriate, whilst most argued that alternative energy sellers—even those with exemptions—should be required to provide customers with the full suite of protections under the <i>Retail Law</i>. They considered barriers to entry were not overly onerous, with some arguing that higher barriers are necessary to protect the integrity of the market.</p>	<p>Regulatory risks faced by an energy seller vary according to the nature, scale and scope of the energy services that a seller is providing. We see little value in applying the same entry and regulatory requirements on all energy sellers. Several <i>Retail Law</i> obligations may not be appropriate or practical for a secondary supplier of a particular fuel. We also see difficulties in requiring businesses to obtain a retailer authorisation when that business is not registered in the wholesale market as the financially responsible market participant (FRMP) for the site. The “one size fits all” authorisations framework is not appropriate for many types of energy sellers and a more tailored approach may be a better option.</p> <p>The policy principles and exempt seller and customer related factors specified in the <i>Retail Law</i> help us determine whether an authorisation or exemption is appropriate for an energy seller. These principles and factors have also informed the class exemptions that we have created for certain types of energy sellers.</p>
AGL Ergon Energy Simply Energy ERAA Alinta Origin Energy	<p><i>Competitive disadvantage and transfer of risk</i></p> <p>Some retailers argued that the AER’s approach creates an uneven playing field and places energy retailers at a competitive disadvantage. Their view is that alternative energy sellers are able to compete for consumer business at a lower regulatory cost than retailers. Retailers were also concerned that they may eventually wear additional costs as risks would be transferred to them, for example, the risk of bearing customers in hardship and bad debts.</p>	<p>Our view is that the level of regulation should be proportionate to the level of protection energy customers need. These needs vary according to the type of service they are receiving and their relationship with their energy seller.</p> <p>We do not agree that our approach places retailers at a competitive disadvantage or that individual exemptions are too light handed to regulate alternative energy sellers. Individual exemptions require more regulatory oversight than class exemptions, and involve formal approval from the AER through a process akin to that for retailer authorisations. The process of granting individual exemptions allows us</p>

		<p>to scrutinise applications and also requires us to seek public comment on each application.</p> <p>We also do not consider that retailers will bear any additional risk of hardship customers and other costs. The obligations that an authorised retailer has to customers under the <i>Retail Law</i> apply regardless of whether a customer also buys energy or energy services from a secondary supplier. Although the secondary supplier is not equally sharing this regulatory risk, the primary seller’s risk is not increased as a result of this secondary relationship. The fact that a customer is also supplied by a secondary seller does not increase the likelihood of that customer experiencing financial difficulty and, if anything, will decrease this likelihood (as a result of the lower energy costs).</p>
<p>Alinta ERAA ERM Power Simply Energy CUAC CALC</p>	<p><i>Energy as an essential service</i></p> <p>Several stakeholders objected to the AER attempting to delineate energy supply as essential and non-essential as <i>all</i> energy is essential, regardless of how it is supplied, or for what purpose.</p> <p>Many stakeholders also submitted that alternative energy sellers could feasibly become the “main” or primary energy provider at premises (and hence the supplier of an essential service). Energy sold through SPPAs was considered to be a case in point as PV systems installed at premises are designed to generate most or all of a customer’s energy needs.</p>	<p>We agree that energy is an essential service, regardless of how it is sold. There is nonetheless a difference in the services provided by an authorised energy retailer and a secondary energy seller (like an SPPA provider), and therefore in the relationship between these providers and their customers.</p> <p>A key difference between the two relationships is the impact that disconnection of energy services would have on a customer, in particular whether the customer will still have access to network distributed energy if an energy seller disconnects them. Even though both types of energy seller provide an essential service, where a customer retains access to reliable energy supply, the energy provided by the other seller is additional and optional.</p>
<p>AGL Alinta</p>	<p><i>Incidental v core sales of energy and embedded networks</i></p> <p>Retailers contended that the National Energy Customer Framework exemptions framework was conceived under a different, more simplistic policy framework that was only intended to regulate retailers and distribution companies and did</p>	<p>We acknowledge that under jurisdictional regimes, exemptions were intended for incidental energy sales, mostly in embedded networks, and that authorisations (licences) were only required for core energy sales. However, we also note that most jurisdictional regimes offered ‘limited’ or restricted licences which were tailored for businesses that did not require, or were unable to comply with, a full retail licence. No</p>

	<p>not contemplate alternative energy selling models. The retail exemptions framework was developed to manage a limited number of exceptions to the usual retailer business model, for example, through embedded networks and caravan parks where there was no traditional retailer. Retailers are concerned that alternative energy sellers are effectively competing with existing retailers yet not required to meet the same level of obligations as a retailer is.</p>	<p>such option is available under the <i>Retail Law</i>, but would arguably be appropriate for some emerging alternative energy selling models.</p> <p>A retailer authorisation is a blunt regulatory tool, with little scope for variation to accommodate different business models. By contrast, individual exemptions can be tailored to a particular business model and the types of customers being sold to. In this sense, individual exemptions serve much the same purpose as restricted retail licences under the former state and territory regulatory frameworks.</p> <p>In the issues paper we introduced the concept of a sole supplier, suggesting that a retailer authorisation would be necessary if an alternative energy seller was the customer's only reliable supplier of gas or electricity. However, as a number of stakeholders have pointed out, this test does not stand up as holders of class exemptions are typically sole suppliers. A better test is whether the energy is network supplied energy sold by a FRMP.</p>
<p>AGL Simply Energy Alinta Energy Origin Energy</p>	<p><i>Customer protections</i></p> <p>Retailers were concerned that customers were sacrificing protections for the sake of cheaper electricity from exempt sellers. Some suggested that customers of exempt alternative energy sellers would forego such protections as access to jurisdictional ombudsman schemes, billing protections under the <i>Retail Law</i>, disconnection and reconnection provisions under the Retail Rules, and RoLR schemes.</p>	<p>We acknowledge that exempt customers do not receive the protections provided for customers under the <i>Retail Law</i> and that customers buying electricity through, for example, SPPAs receive fewer energy-specific protections from that provider. However, we consider that this type of seller has a fundamentally different relationship with the customer than with a retailer or even with an exempt onseller in that the product offered is discretionary. Unless a retailer authorisation is necessary to ensure the full suite of customer protections, an authorisation may not be necessary. We note that consumer protections are available under other legislative frameworks. We do not wish to duplicate those protections or to place additional obligations on sellers who are already bound by other legislative frameworks.</p>

<p>CUAC CALC ERM Power Alinta Energy EnergyAustralia</p>	<p><i>Changes to regulatory framework and future-proofing NECF</i></p> <p>All stakeholders noted the rapidly changing nature of the energy market. All agreed that the AER should be proactive and should discourage poor practice and resulting consumer detriment.</p> <p>Many retailers submitted that the <i>Retail Law</i> was not designed to accommodate alternative energy sellers. Some were concerned that the AER’s approach was ad hoc and that we should regulate energy sellers in a consistent manner. Others suggested that our approach was too narrow and did not take account of such other legislation as the ACL. Retailers suggested that business models should be objectively assessed and that the Energy Retailers Association of Australia’s (ERAA) conceptual framework could help in this assessment.</p> <p>Several stakeholders argued that, given the changing nature of the energy market, a broader policy debate is required. They noted the need to “future proof” the <i>Retail Law</i> and argued that there should be explicit consideration of the sorts of energy services that should be regulated under the <i>Retail Law</i>.</p>	<p>We agree the market for alternative energy products and services will likely continue to evolve and that broader regulatory changes may occur. However, we do not know when this might happen or what sorts of changes will occur. We do not consider it in consumers’ interests to impede market innovation by preventing these businesses from operating.</p> <p>Notwithstanding this, we will continue to monitor developments in the energy supply market and will review our approach to regulating alternative energy sellers to address any changes in the regulatory environment.</p>
<p>Total Environment Centre</p>	<p><i>Broader policy/practical considerations</i></p> <p>The Total Environment Centre argued that proposed policy considerations are too prescriptive for small scale energy selling and are suited only to commercial SPPAs. It suggested that the AER should consider whether the consumer has a financial or legal interest in the energy generation and whether the project is for profit. If the seller is not profit making the AER should grant an exemption even where they are the sole supplier.</p>	<p>We agree that a person’s or a business’ financial interests may be relevant in determining whether an applicant needs an authorisation or exemption, as are their profit intentions. However, this is one of several factors that we must consider.</p>

What are stakeholders' views on the AER's proposed approach to granting exemptions and authorisations for alternative energy sellers		
Stakeholder	Stakeholder response	AER response
Angeleno Group City of Sydney Solar Citizens Total Environment Centre Energy Matters Australian PV Institute Sun Edison DSDBI Ergon Energy	<p>Many stakeholders expressed broad support for the AER's proposed approach. They also agreed that a multi-site exemption is appropriate for many alternative energy sellers.</p>	<p>We will consider applications on a case-by-case basis to determine whether an authorisation or individual exemption is more appropriate. In some cases a multiple site exemption may be appropriate, for example, in the case of SPPA sellers.</p>
Total Environment Centre Energy Matters	<p><i>Class exemptions</i></p> <p>Some stakeholders advocated for the creation of class exemptions for alternative energy sellers. For instance, the Total Environment Centre noted that there are over 50 community energy groups in various stages of development across Australia. It suggested that given the number of these projects, their broad similarities, their not-for-profit nature and the commercial nature of the SPPAs, the AER should consider creating a separate exemption class for them.</p> <p>Ergon Energy recommended that the AER should not create a class exemption for SPPA providers until this market is more developed. It argued that a designated class exemption would not provide the requisite level of flexibility needed by the market at this time but that once the market is clearly developed, it may be appropriate to revisit class exemptions.</p>	<p>It is premature to create a class exemption for SPPA providers at this time. We will continue to monitor the market and revisit this issue, together with our approach to regulating alternative energy sellers. We may consider creating a class exemption for SPPA providers who sell electricity only to commercial customers in future.</p>

What if any, other considerations should the AER take into account to regulate the sale of energy under the alternative energy selling model?		
Stakeholder	Stakeholder response	AER response
Clean Energy Council Tasmanian Renewable Energy Alliance Energy Matters	<p><i>Emerging models</i></p> <p>The Clean Energy Council and the Tasmanian Renewable Energy Alliance sought clarification on the AER’s proposed regulation of electricity that is sold by an entity that generates surplus energy to a neighbouring person or company (sometimes referred to as ‘wheeling’ arrangements). Energy Matters encouraged the AER to act in the interests of consumers by regulating in a way that allowed new business models to emerge.</p>	<p>We consider that our approach can be applied to other new models of selling energy. Business models such as wheeling arrangements are not expressly prohibited by the <i>Retail Law</i>, and therefore, could be considered for an individual exemption or authorisation, as appropriate.</p> <p>Our approach is intended to encourage consumer choice and market innovation.</p>
Sun Edison	<p><i>Entry criteria</i></p> <p>Sun Edison suggested that the AER impose entry criteria for exemptions.</p>	<p>The diverse nature of “non-traditional” energy sales makes it difficult to develop entry criteria for exemptions. The <i>Retail Law</i> establishes policy factors that we must consider in making any decision on exemptions. We also have regard to the <i>National Energy Retail Objective</i> (s.13 of the <i>Retail Law</i>) when granting exemptions (or authorisations), that is “to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.”</p>

<b>What implications, or future implications, could arise for the regulation of alternative energy sellers under the <i>Retail Law</i>, or other consumer protection legislative frameworks?</b>		
<b>Stakeholder</b>	<b>Stakeholder response</b>	<b>AER response</b>
City of Sydney SSRoC United Energy	<p><i>Metering and data</i></p> <p>Several stakeholders raised concerns about metering systems, in particular the need for robust and reliable systems and the need to advise distributors of potential network impacts of energy sales.</p>	The AER's <i>Electricity Network Service Provider Registration Exemption Guideline</i> regulates metering and other technical aspects of private networks. It sets out requirements for metering accuracy in these networks, and includes information on the management of metering disputes.
Sun Edison DSDBI	<p><i>Compliance and future reviews</i></p> <p>Sun Edison recommended that the AER monitor exemption holders' compliance with their exemption conditions. It also suggested an annual self-certification process with penalties for non-compliance.</p> <p>DSDBI asked that the AER commit to reviewing its arrangements by a specific date.</p>	We will work with alternative energy sellers—as we do with exempt sellers more generally—to ensure compliance with the <i>Retail Law</i> and sellers' exemption conditions. We intend to continue to review our approach to regulating alternative energy sellers, and can vary existing exemption holders' exemption conditions if necessary.
<b>What, if any, conditions should be placed on an individual exemption for an alternative energy seller?</b>		
<b>Stakeholder</b>	<b>Stakeholder response</b>	<b>AER response</b>
CALC CUAC  Tasmanian Renewable Energy Alliance	CALC argued the need for strong consumer protections for customers of alternative energy sellers, especially around dispute resolution. It stated that it had received a number of complaints that highlighted the complexity of dispute resolution where a number of parties are involved, particularly where at least one of these parties is not an authorised retailer.	<p>Exemption conditions must be appropriate for the energy selling activities and reflect customers' need for protection. These vary according to the nature of the energy sale and the seller-customer relationship.</p> <p>We agree that information disclosure and clear, informed consent is important where customers are contracting with “non-</p>

	<p>CUAC suggested that exemption conditions should include:</p> <ul style="list-style-type: none"> <li>• information on billing frequency</li> <li>• disclosure of information</li> <li>• access to ombudsman</li> <li>• access to payment plans</li> <li>• provision of reminder and disconnection notices</li> <li>• choice of retailer should have to be provided</li> </ul> <p>The Tasmanian Renewable Energy Alliance suggested the AER set the minimum conditions to ensure consumer protection while encouraging innovative arrangements. Further that these conditions should take into account both the size and nature of the proposed arrangement. For example if a group of people voluntarily decide to provide most or all of their own electricity from local generation under non-profit arrangements they should not be required to meet all the same regulatory requirements and consumer protections that apply to commercial retailing.</p> <p>AGL expressed concerns that conditions were ad hoc. DSDBI suggested that the AER consult on any proposed conditions.</p>	<p>traditional” suppliers of energy. Clear information is a key factor in allowing the customer to make an informed decision on whether to contract for an additional energy service. We have placed obligations on SPPA providers, for example, to clearly explain to customers the type of service they are receiving and the protections they are entitled to, and from whom.</p>
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Other issues		
Stakeholder	Stakeholder response	AER response
EWON EWOV CALC	<p><i>Dispute resolution and access to ombudsman schemes</i></p> <p>EWOV recommended that customer protections for exempt customers should be consistent with those provided under the <i>Retail Law</i>, and that they should include a requirement for internal dispute resolution procedures to adhere to the Australian Standard AS ISO 10002-2006.</p> <p>CALC also argued that the AER should require alternative energy sellers to provide strong consumer protections. It considered dispute resolution between multiple parties complex and recommended that the AER establish a dispute resolution process and provide clear advice to consumers. It added that all businesses involved in energy supply, including finance companies financing energy equipment, should assist customers to resolve disputes. EWOV advised that it did not intend to extend its jurisdiction to include alternative energy sellers. EWON noted that the NSW Fair Trading would be the most appropriate body for customer complaints against alternative energy sellers.</p>	<p>We agree with the importance of effective dispute resolution processes for exempt customers but consider this outside our remit to establish. We note that state and territory fair trading legislation, which provides jurisdictional agencies with a role in dispute resolution and complaints, may be the preliminary dispute resolution body for these types of sellers. If a customer believes their alternative energy seller is breaching any conditions imposed by the AER, they should contact us in the first instance.</p> <p>We also note that customers of alternative energy sellers will not have access to jurisdictional ombudsman schemes.</p>

## Appendix D: *Retail Law* authorisations framework

A retailer authorisation allows a business to sell a specific form of energy (gas or electricity) to all classes of customer, in all jurisdictions where the *Retail Law* has commenced. The *Retail Law* does not provide for a “limited” retailer authorisation. Authorisations cannot be restricted to particular states or territories, nor to a particular class of customer.

To obtain a retailer authorisation, a business must apply to the AER and demonstrate:

- the necessary organisational and technical capacity to operate as a retailer
- the necessary financial resources, or access to resources, to operate as a retailer
- that it is a suitable person to hold a retailer authorisation.<sup>14</sup>

This recognises that a retailer must have the appropriate financial and organisational capacity to provide energy to customers and to meet all compliance and regulatory obligations under the *Retail Law*, regardless of their business model.

The *Retail Law* and *National Energy Retail Rules* set out energy specific regulation including obligations on retailers 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
- to have dispute resolution mechanisms for small residential customers, and to participate in jurisdictional Ombudsman schemes

In addition, authorised retailers must:

- participate in the AER’s *Retailer of Last Resort* (RoLR) scheme which ensures continuity of supply in the event of retailer insolvency or failure<sup>15</sup>
- report to the AER on their performance against defined indicators and on certain breaches of the *Retail Law* and *Retail Rules*.

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<sup>14</sup> *National Energy Retail Law*, section 90.

<sup>15</sup> 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.

## Appendix E: *Retail Law* exemptions framework

When considering whether an exemption or an authorisation is appropriate, we consider:

- whether the sale of energy is core, or incidental, to the entity's core business
- whether the entity has a pre-existing relationship with their customers
- whether the entity is selling energy for a profit
- the type of customers the entity is selling to (for example, small residential customer(s))
- the scale and scope of the energy sold.

Generally, applicants fall clearly into either the authorisations or exemptions framework. For example, if an energy retail business sells energy:

- to small residential customers for a profit
- across multiple states or territories
- as part of its core business,

then we will generally require the entity to seek a retailer authorisation.

Conversely, where an entity is selling energy incidentally to customers with whom they have a pre-existing relationship (for example, a landlord/tenant relationship), an exemption is usually more appropriate. The requirements on exemption holders are less onerous than requirements on authorised retailers.

The *Retail Law* prescribes the following policy considerations for the AER when performing its role in exempt selling. For example, the AER must, in performing or exercising an AER 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 this Law and the Rules.<sup>16</sup>

The AER may also have regard to the exempt seller and exempt customer factors, which are set below.

#### **Exempt seller related factors**

- whether selling energy is or will be a core part of the exempt seller's business or incidental to that business
- whether the exempt seller's circumstances demonstrate specific characteristics that may warrant exemption
- whether the exempt seller is intending to profit from the arrangement
- whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets
- 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
- the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller
- any other matter the AER considers relevant.<sup>17</sup>

#### **Customer related factors**

- whether the characteristics of the exempt customers or the circumstances in which energy is to be sold to them by the applicant are such as to warrant exemption
- the 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
- any other customer related matter the AER considers relevant.<sup>18</sup>

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<sup>16</sup> *National Energy Retail Law*, section 114.

<sup>17</sup> *National Energy Retail Law*, section 115.

There are two types of class exemptions: deemed and registrable. These exemptions are collectively known as “class exemptions” and are designed to cover groups of people who sell energy. Our *Exempt Selling Guideline* details who is covered by class exemptions, for example:

- residential and commercial landlords selling to tenants within a site they own (for example, a high rise apartment building, shopping centre, or office building)
- caravan park or retirement village owner/operators selling to residents within the park or village
- building owners selling to properties adjacent to their own
- businesses selling energy to large customers.

Generally, class exemptions call for less regulatory oversight than individual exemptions. A standard set of conditions apply to each of the classes, and conditions are tailored to reflect the types of customers being sold to (for example, businesses selling to small residential customers have more extensive conditions than those selling to business or large customers). Conditions are aligned with *Retail Law* obligations for authorised retailers, to the extent possible.

Occasionally, a business may approach us that sells energy, but does not fall within one of our class exemptions. They may be eligible for an individual exemption, which are intended for the sale of energy in more unique or unusual circumstances. Conditions attached to individual exemptions are specific to the circumstances of a business and reflect the needs of their customers.

Individual exemptions involve a formal decision process whereby:

- the applicant submits an application to the AER
- we consult on applications
- we make a decision to grant or not grant an exemption, including any conditions attached to that exemption
- the applicant must accept the conditions attached to the exemption
- an instrument of exemption is issued.

In deciding whether to grant or refuse individual exemptions, we are guided by the *Retail Law* objective.

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<sup>18</sup> *National Energy Retail Law*, section 116.

For individual exemptions, we have discretion to set conditions as we see fit. We tailor conditions on a case-by-case basis for each exemption holder after considering its energy selling activities and the type of customer the business sells energy to. For example, where an individual exemption holder is selling to small residential customers, conditions which closely match retailer obligations under the *Retail Law* may be appropriate. Conversely, extensive customer protections may not be necessary where someone is intending to sell energy to large or industrial energy customers.

## Appendix F: Additional information requirements for SPPA individual exemption applicants

The *AER's (Retail) Energy Exempt Selling Guideline* sets out the AER's approach to retail exemptions and provides information on applying for an individual exemption. Appendix B of the Guideline contains details of the information that must be provided when applying for an individual exemption. However, these information requirements are not entirely appropriate to the selling of energy via Solar Power Purchase Agreements (SPPAs). Therefore, when applying for an individual exemption, applicants should note that the following requirements (as set out on pp 54 -57 of the Guideline) are not relevant to this type of energy selling:

- general requirements – 7, 10, 12 and 15
- particulars relating to the nature and scope of the proposed operations – 1, 3, 4, 5, 6, 7, 8, 11, 12 and 15.

Applicants also need to answer the following additional questions:

- What is your strategic direction and what are your objectives, for example, please describe your business model in some detail, noting jurisdictions where you will be operating, and customer number forecasts for the first year, and within 3-5 years.
- What is your pricing structure – will you charge for energy only or are there other fees? Will you charge for all energy generated or only the energy consumed?
- Are there related companies and what is their function? Do you intend to transfer any functions to any other related companies and, if so, what are they?
- Do you intend to sell to residential or commercial customers and what size systems will you install?
- Under what circumstances can the customer terminate the agreement and at what cost?
- What happens when the contract ends? Who owns the system?