

Notice of final instrument

Exempt selling guideline

December 2011

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Shortened forms

ACCC	Australian Competition and Consumer Commission
ADT	Administrative Decisions Tribunal of NSW
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
CCIA NSW	Caravan and Camping Industry Association of NSW
CUAC	Consumer Utilities Advocacy Centre
EWON	Energy and Water Ombudsman of NSW
EWOV	Energy and Water Ombudsman of Victoria
JEN	Jemena Electricity Networks
MWh	Megawatt hour
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NSP	Network service provider
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort
QCOSS	Queensland Council of Social Services
SCCA	Shopping Centre Council of Australia
VCAT	Victorian Civil and Administrative Tribunal

1 Purpose of the AER Exempt selling guideline

Under the National Energy Retail Law (Retail Law), a person who sells energy must hold either a retailer authorisation or a valid exemption. Most entities that sell energy are authorised retailers, with responsibilities set out in the Retail Law and National Energy Retail Rules (Retail Rules).

However, there are some situations where energy sold, but a retailer authorisation is not appropriate. Such situations could include, for example, the sale of energy in retirement homes or caravan parks, where an owner purchases from an authorised retailer and then ‘onsells’ to tenants. It would be overly onerous and unnecessary to compel these businesses to obtain a retailer authorisation under the Retail Law.

The exemptions regime captures such situations by exempting these types of entities from the requirement to hold a retailer authorisation. The Retail Law and Rules set out the exemptions regime, and the Australian Energy Regulator (AER) is responsible for regulating exempt persons and placing conditions on exemptions.

The AER is authorised to exempt persons or classes of persons from the requirement to hold a retailer authorisation.¹ The Retail Rules provide for three different types of exemption:

- deemed exemptions,
- registrable exemptions, and
- individual exemptions.²

Under the Retail Law, the AER must also develop and publish an exempt selling guideline (the guideline).³ This notice accompanies the guideline, to provide background and explanatory material.

When exercising its exempt selling powers, the AER must take into account the following policy principles:

- that regulatory arrangements for exempt persons should not unnecessarily diverge from those applying to authorised retailers,
- that exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right, and

¹ Section 110 of the Retail Law.

² Rules 149, 150 and 151 of the Retail Rules.

³ Section 118 of the Retail Law.

- that exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers in the Retail Law and Retail Rules.⁴

The AER may also have regard to the exempt seller related factors and the customer related factors when exercising its exempt selling functions.⁵

The AER's exempt selling guideline, in addition to providing information about exemptions, must set out:

- procedures for applying for the grant, variation or revocation of an individual exemption,
- the information that must be provided by an applicant for an individual exemption,
- requirements relating to registered exemptions,
- guidance on the application of the exempt seller related factors and the customer related factors in making any decision relating to exemptions,
- the categories of deemed and registrable exemptions, and any associated conditions of exemption that are to apply, and
- any other matters that the AER considers relevant.⁶

The AER's guideline explains how to apply for an individual exemption, and how to obtain a registrable exemption (by registering with the AER as belonging to a class of registrable exemption). It also discusses the factors that the AER will consider in assessing individual exemption applications. The guideline sets out the various classes of deemed and registrable exemptions, and the conditions attached to each class of deemed and registrable exemption.

Individual exemptions take effect when the AER issues an instrument of exemption.⁷ A registrable exemption comes into force when the person who is subject to the exemption is registered on the public register.⁸ Deemed exemptions apply automatically to those sellers who fall within one of the AER's classes of deemed exemption (that is, there is no application or registration process).

The guideline also sets out the AER's considerations on the exempt seller and customer related factors, and how these have influenced the AER's conclusions on exempt selling.

⁴ Section 114(1) of the Retail Law. The AER may also have regard to the exempt seller related factors and the customer related factors set out at sections 115 and 116 of the Retail Law.

⁵ These are set out at sections 115 and 116 of the Retail Law.

⁶ Rule 154 (1) of the Retail Rules.

⁷ Rule 149 of the Retail Rules.

⁸ Rule 151(2) of the Retail Rules.

The AER will accept applications for individual exemptions from 12 December 2011 and registrations for registrable exemptions from 3 January 2012.⁹ Exemptions will be valid for exempt selling activities after 1 July 2012.

The AER may amend the guideline at any time in accordance with the retail consultation procedures.¹⁰

⁹ Those wishing to obtain a registrable exemption will be able to download a registration form from the AER's website www.aer.gov.au.

¹⁰ Section 286 (4) of the Retail Law.

2 Development of the guideline

The AER commenced preliminary consultation on its approach to exempt selling with the release of an issues paper in June 2010. That paper set out the AER's initial considerations on exempt selling. It generated significant stakeholder comment, and was also the subject of a public forum, held in August 2010 in Melbourne (with video conferencing to other capital cities).

This first round of consultation informed the development of a draft guideline and notice of draft instrument. The AER published these in December 2010 for stakeholder comment, and held a second public forum in Brisbane (with video conferencing to other capital cities) also in December 2010.

In its third round of consultation, the AER published a revised draft guideline and a notice of draft instrument in June 2011, with a third and final stakeholder forum held in July 2011.

After that full round of consultation, the AER released an additional, targeted consultation paper in October 2011 to seek comment on specific additional provisions proposed by the AER for exempt customers who identify themselves as experiencing financial difficulty.

In addition to this public consultation, the AER has met with jurisdictional bodies, consumer groups and industry participants over the course of this consultation. The AER will continue to engage with industry participants after the publication of the final guideline, to ensure that exempt persons are fully aware of their new obligations under the Retail Law and Rules.

The June 2011 consultation covered both the exempt selling guideline and the AER's network service provider (NSP) registration exemption guideline. The AER's network service provider registration exemption guideline is developed under the National Electricity Law (NEL) and National Electricity Rules (NER). It sets out the arrangements for exempting person or entities from the requirement to register as a NSP with the Australian Energy Market Operator (AEMO).

The two guidelines, although developed under separate legal frameworks, share significant common themes. In many cases, persons who require an exemption from the requirement to be a registered NSP may also require an exemption from the requirement to hold a retail authorisation under the Retail Law.

The AER received submissions from 31 stakeholders on the June 2011 draft guideline. Some stakeholders made comments on both draft guidelines, and some related only the exempt selling guideline or the network service provider registration exemption guideline.

Appendix A contains a full list of issues raised in submissions and the AER's response to those issues. Submissions on the draft guideline and consultation paper have informed the AER's final positions contained in the final guideline and determinations.

Appendix B contains a full list of stakeholders who made submissions and which guideline or consultation (or guidelines) their submission related to.

Stakeholders expressed overall support for the AER's approach to exempt selling. Areas that generated significant stakeholder response are set out below.

Provisions for customers experiencing financial difficulties

Many submissions to the June 2011 disagreed with the AER's reasons for not requiring deemed and registrable exempt persons to provide hardship protections for their customers, and reiterated the need for basic hardship protections to apply. Protections for exempt customers have been a consistent theme in submissions received throughout the development of the exempt selling guideline. Stakeholders have argued that compliance with basic hardship provisions for residential customers (such as flexible payment plans and information on government concessions) would not be an unduly onerous requirement on exempt persons.

Accordingly, the AER proposed a number of new protections for residential exempt customers who identify themselves as experiencing financial difficulty (these additional provisions are set out below, and are contained in the final guideline). These are based on the principle that exempt customers should (as far as practicable) not be denied customer protections afforded to retail customers in the Retail Law and Retail Rules.¹¹ These protections come in the form of some further obligations on exempt persons if their customers identify themselves as experiencing financial difficulty.

The new protections represented a departure from the AER's previous position on this issue. Therefore, the AER engaged in a round of further, targeted consultation in October 2011.¹² Submissions on that consultation paper (a copy of which is attached at appendix C) closed on 18 November 2011. The AER received eight submissions, the majority of which indicated strong support for the additional customer protections, so they have been included in the final version of the guideline.

In the final guideline, we have included an overarching requirement that an exempt person must give effect to the general principle that disconnection of customer experiencing financial difficulties due to inability to pay energy bills should be a last resort. This is similar to the broad principle contained in the Retail Law for retail hardship customers. We consider that this requirement provides further protection to exempt customers and will safeguard them against immediate or short term disconnection.

These additional requirements recognise that energy is an essential service. In some cases, the exempt person is the only party able to provide energy to the exempt customer (for example, in off-grid networks or where access to retail contestability is not available).

¹¹ Section 114(1) of the Retail Law. The AER may also have regard to the exempt seller related factors and the customer related factors set out at sections 115 and 116 of the Retail Law.

¹² This consultation was limited to comments only on the additional customer protection provisions.

The AER has also included a number of other requirements for exempt persons dealing with customers who experience financial difficulty. In doing so, the AER considered the types of exempt customers who may experience financial difficulty. Large sophisticated customers (such as industrial customers) are unlikely to require regulatory protection in the event of financial difficulty. Large customers are also not entitled to hardship protections afforded under the Retail Law (the Retail Law hardship provisions apply only to residential customers). Hardship protection for these types of customers would place a regulatory burden on exempt persons that outweighs the commensurate benefits to customers.

However, there are several classes of deemed and registrable exemptions which will apply to residential customers. These are classes D2, D4, D6, R2, R3 and R4.¹³ Residential customers are more likely to require protection in the event of financial difficulty than large customers. In some cases residential customers can only take supply from their exempt seller and are therefore unable to access retail contestability. Further, there is significant uncertainty about whether these exempt customers can access ombudsmen schemes in the event of billing and payment issues.

For these reasons, the AER considers that the revised conditions are necessary to provide further protections to exempt customers. These provisions do not unduly increase the regulatory burden on exempt persons. We consider that the provisions are commensurate with the reasonable steps that an exempt person would take when one of its customers experiences financial difficulty.

Rather than placing a positive obligation on exempt persons to seek out customers experiencing financial difficulty, we support customer self identification. We consider that this will reduce the regulatory burden on exempt persons.¹⁴

On this basis, the AER has made amendments to condition 3 (billing and payment arrangements) and condition 8 (payment difficulties and disconnection or cessation of supply). These conditions do not replicate or mirror the hardship provisions contained in the Retail Law, but provide a degree of protection to exempt customers experiencing financial difficulty.

Condition 3 now requires the exempt person to offer flexible payment terms to customers experiencing financial difficulty, having regard to:

- the customer's capacity to pay,
- any arrears owing by the customer, and
- the customer's expected energy consumption needs over the following 12 month period.

¹³ Class D6 may apply to residential and small business customers; however the hardship protections will apply only to the residential customers.

¹⁴ Some examples of how customers may self-identify are set out in appendix A.

In order to provide a degree of protection to exempt persons, the AER has included certain provisions from the Retail Law that apply to authorised retailers when dealing with customers experiencing financial difficulty. Specifically, an exempt person is not required to offer flexible payment options to an exempt customer who:

- has had 2 payment plans cancelled by the exempt person in the previous 12 months due to non-payment; or
- has been convicted of an offence involving illegal use of energy in the previous 2 years.

In condition 8, we have included a requirement that where an exempt customer identifies themselves as experiencing financial difficulty, the exempt person must:

- provide the exempt customer with energy efficiency advice by directing them to the Australian government energy efficiency website or other energy efficiency resource(s)
- ensure that the customer is aware of the availability of relevant government or non-government energy rebates, concession and relief schemes¹⁵
- not charge the exempt customer late payment fees
- not charge the exempt customer a security deposit.

Life support customers

Several stakeholders raised concerns with the guideline's conditions for life support customers. Stakeholders stated that life support provisions need to be clearer, and should more closely mirror the provisions that apply to authorised retailers under the Retail Law. The AER agrees, and has sought to align the life support requirements in the exempt selling guideline with those contained in the Retail Law and Retail Rules.

The life support provisions in condition 15 now state that 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:

- 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,
- advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment, and

¹⁵ Exempt persons are also required to notify customers about availability of concessions, relief schemes and energy rebates when they commence selling to that customer.

- 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.

Universal registration

Stakeholders argued for universal registration of all exempt persons, stating that this would lead to:

- greater transparency for consumers and industry,
- better regulatory oversight,
- an indication of electricity load being supplied by exempt persons, and
- an accurate record of where exempt customers are situated (in the case of a RoLR event).

The AER has maintained its views on universal registration, as set out in the June 2011 notice of draft instrument. When developing regulatory obligations, the AER considers the cost of compliance against the benefits derived for customers and the market at large.

We consider that the value of the information gained from universal registration would not outweigh the consequential costs for these types of exempt persons. Larger scale exempt selling operations will be covered by a registrable or individual exemption, both of which are subject to public registration. The AER believes that this will provide the necessary level of regulatory oversight and transparency into the growth and extent of exempt selling.

A. Summary of issues raised in submissions

Issue	AER response
Customers experiencing financial difficulty	
<p>In response to the 2011 draft guideline, stakeholders disagreed with the lack of protections for exempt customers experiencing financial difficulty, and stated that compliance with a basic hardship policy was not overly onerous for exempt persons. These stakeholders argued that at least some protections should exist for exempt customers experiencing hardship.</p> <p>An ombudsman scheme suggested that the following options would be helpful:</p> <ul style="list-style-type: none"> ▪ flexible payment plans ▪ information on government concessions ▪ referrals to financial counsellors ▪ energy efficiency advice. <p>Several stakeholders also disagreed with the AER’s assertion (in the June 2011 draft guideline) that such support may not be effective when the exempt person is also charging the exempt customer for</p>	<p>Protections for customers experiencing financial difficulty has been an ongoing theme throughout consultation on retail exemptions. In response to the level of stakeholder concern on this issue, the AER has amended several conditions on some deemed and registrable classes of exemption. We consider this will provide protection for customers experiencing financial difficulty.</p> <p>Some classes of exemption (D1, D3, D5, D7, D8, R1 and R5) relate to less significant exempt selling operations (e.g. recovery of common area energy charges) or the sale of energy to large customers, commercial customers or related companies. Classes D2, D4, D6, R2, R3 and R4 are likely to include residential customers, and would capture customers who are particularly vulnerable. The AER has amended conditions 3 (billing and payment) and 8 (disconnection and financial difficulty) for classes D2, D4, D6, R2, R3 and R4.</p> <p>Condition 8 now notes that where an exempt customer informs the exempt person that it are unable to pay energy bills due to financial difficulty, the exempt person must:</p> <ul style="list-style-type: none"> ▪ provide the exempt customer with energy efficiency advice by

rent. Stakeholders noted that there are several ways in which a customer can manage their energy costs, however, a liability to pay rent cannot be avoided or reduced.

On this, stakeholders made the following points:

- where energy is billed separately, exempt customers should have the opportunity to request a payment plan for energy costs; and
- rent is paid at regular time intervals and has a relatively fixed cost where as energy bills are less frequent and can be more difficult to budget for customers (especially those who may have energy debts but not necessarily rental arrears).

directing them to the Australian government energy efficiency website or other energy efficiency resource, and

- ensure that the exempt customer is aware of the available relevant government or non-government energy rebates, concessions and relief schemes, and
- not charge the exempt customer a late payment fee, and
- not charge the exempt customer a security deposit.

Exempt persons who have previously charged an exempt customer a security deposit are not required to refund the deposit if the exempt customer subsequently identifies themselves as experiencing financial difficulty.

We consider that the customer will be able to more accurately assess eligibility for and complete applications for concessions and rebates (rather than the exempt seller) and therefore have not created an obligation on the exempt person to assist in these processes.

Condition 3 for classes D2, D4, D6, R2, R3 and R4 has also been extended to state:

An exempt person must offer an exempt customer who has identified themselves as being in financial difficulty flexible payment for energy bills, such as alternative arrangements for payment by periodic instalments (bill smoothing).

However this condition does not apply where the exempt customer has:

	<ul style="list-style-type: none"> ▪ had 2 payment plans cancelled by the exempt person in the previous 12 months due to non-payment, or ▪ been convicted of an offence involving illegal use of energy in the previous 2 years.
<p>In the October 2011 targeted consultation, stakeholder submissions expressed general support for the proposed hardship provisions (see appendix C) and welcomed the additional protections. Several stakeholders offered more specific comments, which are as follows:</p> <ul style="list-style-type: none"> ▪ a consumer group stated that the additional provisions did not go far enough in offering protection to exempt customers with financial difficulties. It disagreed with self identification, stating that the onus should not be on the customer to self identify. The submission expressed concerned with exempt selling activities generally, pointing to problems with current practices, and stated that further monitoring of exempt selling needs to be undertaken (it also stated that this would be difficult, given that the AER has opted not to impose universal registration on all exempt persons). The consumer group further stated that information on flexible payment options should be included on reminder notices and disconnection notices, and that requiring exempt persons to only provide information to customers on concessions and rebates was not satisfactory, instead, there should be a positive obligation on exempt persons to assist customers with applying for these. ▪ an industry group stated that the new flexible payment options set 	<p>It can be difficult to identify hardship customers. Though one stakeholder noted that self identification is too onerous for customers, we consider that it would be unduly burdensome to require exempt persons to identify customers experiencing financial difficulty. We further consider that it is the customers themselves who are better equipped to identify whether or not they are experiencing hardship. Therefore, we support self identification of exempt customers for the purposes of the exempt selling guideline financial difficulty provisions. Self identification, amongst other things, might involve:</p> <ul style="list-style-type: none"> ▪ the exempt customer notifying the exempt person (by email, telephone, or in person) that they are having difficulty paying all or part of their bill, ▪ the exempt customer notifying the exempt person (by email, telephone, or in person) that they are experiencing financial difficulties and are unable to pay their bill. <p>Exempt persons are required under condition 2 (information provision) to inform customers that assistance is available to the exempt customer if they are unable to pay energy bills due to financial difficulty, as well</p>

<p>out in condition three should be extended to owners' corporations, to cover circumstances where an owner within a strata scheme has indicated they are experiencing financial difficulty.</p> <ul style="list-style-type: none"> ▪ another consumer group expressed support for the proposed amendments, but suggested further clarification on precisely what information the AER expects reminder notices to contain. 	<p>as the process the exempt customer should follow to inform the exempt person of this financial difficulty.</p> <p>Under condition 2, exempt persons must explain to exempt customers how they can identify themselves as experiencing financial difficulty.</p> <p>References to body corporate or bodies corporate in the guideline can be taken as references to owners' corporation(s). On this basis, the amendments to condition 3 apply to owners' corporations where class R2 applies.</p> <p>Where an exempt person issues a reminder notice, they are also required to notify customers of the flexible payment options and other assistance that may be available to them. This is reflected in condition 8. We agree with stakeholder comments that requirements on information must be contained in reminder notices needed clarification.</p> <p>We consider that reminder notices should provide:</p> <ul style="list-style-type: none"> ▪ a statement advising that flexible payment options are available for those experiencing financial difficulty, ▪ a statement that rebates and concessions may be available to the exempt customer, and ▪ a phone number on which to contact the exempt person to discuss flexible payment options and the availability of concessions and
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	<p>rebates.</p> <p>The above amendments apply to some of the AER’s classes of deemed and registrable exemptions. However, it is open to the AER to impose conditions on holders of individual exemptions also. Where an applicant for an individual exemption proposes to onsell energy to residential customers, the AER will likely require the exempt person to provide their customers with hardship protections. Depending on the scope and scale of those exempt selling activities, the hardship protections may be similar to, or even mirror, those contained in the Retail Law. This will be assessed on a case by case basis.</p> <p>A stakeholder noted concerns with several practices currently being undertaken by exempt persons, for example, an exempt person charging ‘additional fees’ for offering payment plans. Such behaviour undermines any benefit derived from such protections. The AER will monitor the compliance with the new customer protection (and similarly, any customer protection conditions imposed on individual exempt persons).</p>
<p>One consumer group noted that exempt persons should be required to provide greater explanation to exempt customers of the protections they will miss out on by taking supply from a person who is not an authorised retailer.</p>	<p>The AER agrees that exempt persons should fully inform their customers of the different types of protection they will receive as an exempt customer. Condition 2 requires the exempt person to inform the exempt customer that they are not subject to all the obligations of an authorised retailer, and that the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer. This information must be provided at the commencement of the tenancy or residency, as well as at the request of the exempt customer.</p>

	The AER will also place this type of disclosure provision as a condition on individual exemptions, as appropriate.
A business sought clarification on whether exempt customers should apply directly to the relevant government body for a concession where these are available (as is currently the case in some jurisdictions).	It is the exempt person's responsibility (under condition 2) to inform its customers of government or non-government concessions, rebates and other schemes that may be available. However, exempt customers are responsible for applying for those schemes directly, rather than through the exempt person. This is analogous with the situation for customers of authorised retailers. It is the customer, rather than the exempt person, who would have the information required by government (or other) bodies to determine their eligibility for concession and rebates.
Fees	
<p>One ombudsman scheme noted that the AER's draft guideline states that the AER does not support exempt persons passing on 'administration' fees. The ombudsman noted, however, that there is no explicit mention of late payment fees in the guideline. It stated that late payment fees should be limited to the exempt person's administration costs only (resulting from the exempt customer's late payment), and that the guideline should explicitly address this.</p> <p>A business also expressed concerns at the AER's views on passing on administrative fees (to the extent that this applies to shopping centres and retail tenants).</p>	The AER considers that it is acceptable for an exempt person to earn a profit from exempt selling generally. However, we do not support the concept of exempt persons passing on an 'administration' fee (or similar). These are not fees that an authorised retailer would commonly charge a customer. To allow exempt persons to charge these types of fees is an unnecessary diversion from the rights afforded to customers of authorised retailers, and is in conflict with the exempt customer factors set out in the Retail Law. The AER remains concerned that an exempt person could charge administrative fees in an attempt to circumvent the requirement that residential customers are charged no more than the relevant standing offer prices. The AER has therefore maintained its position on administrative fees and has not changed

	<p>guideline in this area.</p> <p>The AER is cognisant of the Retail Law requirement that a retailer cannot charge late payment fees to those customers experiencing financial difficulties. We appreciate the ombudsman comments that late payment fees should be limited to ‘administrative costs.’ However we consider that this term leaves some uncertainty and is open to misinterpretation. Therefore, such a condition would be difficult to monitor and enforce by the AER.</p> <p>However, the AER does consider that late payment fees charged to exempt customers should be reflective only of actual costs reasonably incurred by the exempt person as a result of the customer’s failure to pay on time. For this reason the guideline now contains a provision in condition 7 (pricing) that an exempt person must limit late payment fees to ‘a recovery of reasonably incurred costs by the exempt person as a result of the customer’s late payment’.</p> <p>This would include, for example:</p> <ul style="list-style-type: none">▪ a recovery of any late payment fees charged by an authorised retailer to the exempt person, or▪ the cost of contacting the customer for follow up or reminder, for example, phone calls or letters. <p>The AER does not consider it appropriate for an exempt person to derive any profits from late payment fees. For example, if a retailer charged an exempt person a late payment fee, the exempt person could only pass this on to the exempt customer but not add any ‘mark up’ to</p>
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	<p>the fee.</p> <p>The exempt person must also inform the customer that a late payment fee may be charged under condition 2 (information provision) and condition 3 (billing and payment arrangements).</p> <p>The AER also notes that exempt persons must not charge late payment to customers who are experiencing financial difficulty (see discussion of condition 8 for customers experiencing financial difficulties above).</p>
Retailer of last resort (ROLR)	
<p>One ombudsman scheme accepted the AER’s view that RoLR arrangements were beyond the scope of the exempt selling guideline. However, it stated that that financial insolvency of an exempt person would affect all aspects of its business, including the provision of accommodation and energy. It noted that exempt customers risk disconnection where an exempt person becomes insolvent, and expressed hope that any appointed administrator would quickly seek an alternate energy provider to ensure continuity of supply.</p>	<p>The AER is mindful of stakeholder concerns about circumstances surrounding insolvency of exempt persons and the subsequent potential disconnection. For authorised retailers, insolvency would normally trigger a RoLR event. The AER’s RoLR plan sets out the processes for dealing with a RoLR event (the RoLR plan is available on the AER’s website at www.aer.gov.au).</p> <p>However, as stakeholders noted, the AER does not have power to mandate RoLR arrangements as part of its exempt selling guideline. Where metering arrangements allow customers to access retail contestability, exempt customers affected by insolvency of an exempt person may take supply from an authorised retailer. However, we acknowledge that for customers who do not have access to retail contestability, insolvency of an exempt person may lead to disconnection. We consider that it would be in the best interests of appointed administrators to ensure minimal disruption and continuity</p>

	of supply for exempt customers.
Life support customers	
<p>One ombudsman scheme noted that the guideline does not place any timeframes on when an exempt person must notify the distributor of any life support customers on the network. It suggested that the appropriate timeframe for this was two business days.</p> <p>The ombudsman scheme suggested the AER mirror the life support customer provisions contained in Part 7 of the Retail Rules. A distributor noted that the AER should put in place more stringent requirements for life support exempt customers. Another distributor noted that the AER should require the exempt seller to provide the retailer or distributor with confirmation from a registered medical practitioner that a person requires life support equipment.</p>	<p>The AER agrees with stakeholder comments on life support customers. Based on these comments, the AER has sought to align the life support requirements in the exempt selling guideline with those contained in the Retail Law and Retail Rules. The life support provisions in condition 15 now state that 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:</p> <ul style="list-style-type: none"> ▪ 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 ▪ advise the exempt person’s authorised retailer and distributor that a person residing at the premises requires life support equipment, and ▪ 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. <p>An exempt person is also required to maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.</p>

	<p>One submission noted that the timeframe for an exempt person to notify their distributor of life support customers should be two days. We have sought to align the life support provisions in the guideline with those contained in the Retail Law and Rules, which do not prescribe a time frame for notification of distributors (by retailers). Therefore, we will not prescribe a timeframe in the guideline, but would expect exempt persons to notify the distributor as soon as practicable after they become aware of life support customers residing at premises.</p>
Communication and education	
<p>One ombudsman scheme stated that communication campaigns should have an educative focus, and that the AER should encourage customers to resolve complaints directly with their providers. It suggested a variety of communication methods should be used (such as radio, newspapers and local publications), with a focus on vulnerable customers.</p> <p>One jurisdictional body noted that many energy exempt persons may not be aware of the coming changes to the regulation of exempt selling, and that the AER should take measures to inform these exempt persons of their changed obligations.</p>	<p>As noted previously, the AER plans to undertake an extensive education and communications campaign on exempt selling. This will likely occur in the months before the Retail Law commences on 1 July 2012. The campaign will target both exempt customers and exempt persons. For exempt customers, the AER will focus on providing information on their rights as exempt customers and the differences between the treatment of exempt customers and customers of authorised retailers under the Retail Law. For exempt persons, it will focus on the changed obligations under the Retail Law, and inform exempt persons how to determine their eligibility and apply for an exemption. The AER will also continue to liaise with jurisdictions, industry bodies and consumer groups to ensure a smooth transition to the new exemptions framework.</p>
<p>An industry group sought clarification on the transition of exemptions granted before the commencement of the Retail Law. Of particular</p>	<p>For exempt persons, the AER will undertake targeted consultation with those currently holding exemptions in participating jurisdictions to</p>

<p>concern were:</p> <ul style="list-style-type: none"> ▪ differences between AER’s conditions and current jurisdictional conditions, and ▪ the process of registering with the AER. <p>A consumer group also sought clarification on the transition of current exempt persons, and stated that the AER should adequately scrutinise current exempt persons transitioned from participating jurisdictions.</p>	<p>assist in their transition to national regulation under the Retail Law and Retail Rules. Of particular importance will be familiarising exempt persons (and future exempt persons) with the AER’s exempt selling guideline and informing them of their responsibilities as an exempt person, particularly where they are different from current obligations.</p> <p>For those eligible for registrable exemptions, the AER will provide details of the registration process, and will explain the application and approval process for individual exemptions to persons seeking them. In addition, the AER welcomes general queries from people seeking further information or clarification on exempt selling.</p> <p>Participating jurisdictions can transition current exempt persons as part of their application legislation to enact the new Retail Law and Retail Rules. Transitioned exempt persons will hold an individual exemption under Retail Law from 1 July 2012. The AER has no role in scrutinising exempt persons transitioned in this manner. However, once an exempt person holds an individual exemption, they are required to comply with all the conditions attached to that exemption. The AER will monitor compliance with those exempt persons in the same way it would with any other exempt person.</p>
<p>Classes of exemption</p>	
<p><i>Deemed vs. registrable exemptions</i></p> <p>An industry group noted that caravan parks, residential parks and manufactured home estates of less than 20 sites should be eligible for a deemed exemption, rather than a registrable exemption. It noted that</p>	<p><i>Deemed vs. registrable exemptions</i></p> <p>The AER does not agree that caravan parks, residential parks and manufactured home estates of less than 20 sites should be granted a deemed exemption. The AER intends to monitor the extent of exempt</p>

the issues paper appeared to reason that residential landlords (with less than 20 sites) are eligible for a deemed exemption because residential tenancy legislation applies to them, and argued that (in some cases) residential tenancy legislation also applies to caravan parks, residential parks and manufactured home estates.

selling in the short to medium term, and creating registrable classes rather than deemed classes (where possible) will provide the transparency to do this.

Residential tenancy law (or other tenancy legislation which applies to permanent residents of caravan parks) in most jurisdictions only applies where a resident is a permanent or long term resident (i.e. three months or longer). Therefore, there are many cases in which short term residents of caravan parks, residential parks and manufactured homes are not protected by residential tenancy legislation. Some long term or permanent residents of caravan parks or manufactured home parks are particularly vulnerable and therefore are in need of further information and clarification on their rights as an exempt customer. Registration of such exempt persons allows the AER to maintain oversight of exempt selling activities to these particularly vulnerable customers.

<p><i>Class D2</i></p> <p>A distributor suggested the AER should align class D2 in the exempt selling guideline with class ND2 in the network service provider registration exemption guideline. Specifically, condition 17 states that the exempt person must not hinder a customer from taking supply from a retailer if they choose (where access to retail contestability is available).</p> <p><i>Class D2</i></p> <p>A consumer group also recommended that class D4 be limited to 12 customers or less.</p>	<p><i>Class D2</i></p> <p>The AER agrees that an exempt person should not hinder a customer from taking supply from an authorised retailer. We have updated the information provision requirements in the guideline (condition 2) to include information on whether or not metering arrangements at a site provide for access to retail contestability, should a customer wish to take supply from an authorised retailer.</p> <p>The AER's class D4 was originally limited to 12 customers or less, however, it revised this in an earlier draft guideline. We consider 20 customers or less is the appropriate amount for exempt persons onselling to customers in situations not covered by jurisdictional tenancy legislation.</p>
<p><i>Overlap between classes R1 and R5</i></p> <p>An industry group noted potential confusion on the multiple classes of exemptions that could apply to shopping centres, and sought clarification particularly on the overlap between classes R1 and R5. It supported the D7 class of exemption, which applies automatically. It supported class R1, but did not agree with the proposed cut off date for new exempt persons of 1 January 2015 (and that new exempt persons will need to apply for individual exemptions after this time) and stated that class R1 exemptions prior to 1 January 2015 should operate in perpetuity unless revoked.</p>	<p><i>Overlap between classes R1 and R5</i></p> <p>The AER acknowledges that some exempt selling situations may be subject to more than class of exemption. In shopping centres (where the exempt person may supply to large commercial customers, and smaller customers through the commercial landlord relationship), the exempt person would likely require both an R1 and R5 exemption.</p> <p>In this case, the exempt person must comply with conditions attached to both classes of exemption when dealing with exempt customers under each class. That is, when dealing with large customers, the exempt person would have to comply with conditions attached to</p>

	<p>class R5 and when dealing with small commercial customers, it would have to comply with conditions attached to class R1.</p> <p>For clarity, the AER notes entities that <i>commence</i> exempt selling activities after 1 January 2015 will be required to apply for an individual exemption. Those entities already operating under a registrable class of exemption, however, can continue selling energy under the relevant class until that class is revoked or varied.</p>
<p><i>Class D4</i></p> <p>A business sought clarification of the operation of class D4. Specifically, it sought clarification on:</p> <ul style="list-style-type: none"> ▪ whether an exemption exempts the sale of electricity to owner/occupiers within a residential building, and whether an exemption contemplates the supply of electricity to part (but not all) of a building, and ▪ to what extent an operator is permitted to act on behalf of landlords, lessors and property managers. <p>A consumer group also recommended that class D4 be limited to 12 customers or less.</p>	<p><i>Class D4</i></p> <p>Class D4 can apply to situations where an exempt person is selling to some, but not all, of the tenancies within a residential building.</p> <p>It can occur where the exempt person supplies electricity to some parts of a building but not others (for example, in a high rise development with commercial tenancies and residential tenancies, or where some residents have chosen to take supply from an authorised retailer).</p> <p>The arrangements between landlords/property managers, and exempt persons, are usually the subject of commercial negotiation between those parties. The AER would generally not be concerned if the landlord permitted an exempt person to act on its behalf for the procurement and sale of energy. As noted previously, the AER would be concerned by situations where residents are deliberately denied access to their choice of retailer, or where residents are not fully informed of the terms and conditions of their contract/arrangement with the exempt person.</p> <p>The AER’s class D4 was originally limited to 12 customers or less,</p>

	<p>however, it revised this in an earlier draft guideline. We consider 20 customers or less is the appropriate amount for exempt persons onselling to customers in situations not covered by jurisdictional tenancy legislation.</p>
<p><i>Class R2</i></p> <p>A business asked for guidance on how class R2 would operate in practice, and in what particular circumstances the exemption will apply. It also sought clarification on how the AER statements regarding ‘growth of exempt selling’ in high density buildings would affect the granting of class R2 exemptions.</p>	<p><i>Class R2</i></p> <p>The AER envisages that this class will apply to landlord/tenant situations in apartment or multi-dwelling developments, where the landlord or an agent sells energy to the tenants. The AER’s considerations on the growth of exempt selling will not affect an exempt person’s ability to obtain a class R2 exemption, as these exemptions are not ‘granted’ by the AER and apply automatically once an eligible exempt person registers as belonging to that class.</p> <p>However, the AER will continue to monitor the growth of exempt selling over time.</p>
<p><i>Unmetered supply</i></p> <p>A consumer advocacy group stated that no class of exemption should apply to unmetered exempt selling.</p>	<p><i>Unmetered supply</i></p> <p>Class D6 applies to unmetered onselling in Queensland. The AER understands that metered onselling to residential customers is currently allowed in Queensland, and while arrangements have been put in place to limit future unmetered exempt selling, current exempt persons are not required to retrofit premises with individual meters.</p>

Access to retailer of choice

One distributor stated that the AER should ask exempt persons if they have a negotiated connection agreement with the licensed network service provider (NSP) at the meter/gate which defines responsibilities, so that an exempt customer can take supply from an authorised retailer rather than the exempt person if they wish.

The AER sees merit in seeking this information. The AER has updated the guideline (sections 4.1.1 and 5.2.1 – information requirements) to ask exempt persons whether or not metering arrangements at the site allow for access to retail of choice. We also seek information on what type of meters are used at the site.

Treatment of large customers

Two businesses sought classes of registrable or deemed exemption for exempt persons who supply to large business or industry customers. Both submitted that this was more appropriate than an individual exemption or retailer authorisation, as individual exemptions or retailer authorisations were:

- more onerous to obtain,
- increased compliance costs, and
- are a barrier to entry for new businesses.

Stakeholders argued that certain provisions designed to protect or assist smaller customers were not necessary for large customers, and that minimising compliance costs allowed exempt persons to pass on cheaper energy supply. One stakeholder suggested a need to distinguish customers using above 750MWh per annum.

The AER notes that a class of exemption (R5) already exists for the metered exempt selling of energy to large customers. This would also extend to the provision of energy for industrial customers. While cost of compliance is a relevant consideration, there are only two broad conditions that apply to class R5. This reflects that both parties are commercially sophisticated enough to negotiate their own terms and conditions, without the need for extensive regulatory oversight.

Conditions include a requirement that customers have access to a choice of retailer, and the exempt person notifies the exempt customer that they will not have a RoLR automatically appointed if the exempt person becomes insolvent or fails. We do not consider these conditions particularly onerous and therefore have retained them. We do not consider it appropriate to provide a deemed exemption for exempt persons selling to large customers, as registration is not overly onerous.

The AER does not consider it necessary to distinguish customers consuming above 750MWh per annum.

Change of ownership/transfer of exemption	
<p>One industry group and a business noted concern that exemptions are not transferable. One stakeholder stated that this would add an element of uncertainty to transactions and valuations. Another noted that certain questions arise out of this prohibition, including:</p> <ul style="list-style-type: none"> ▪ would the exemption expire on the change of ownership/control of the company that holds the exemption? When does the exemption expire? ▪ if an exemption is held by an entity whose ownership changes (but the name of the entity does not change), does the exemption transfer? <p>A distributor also sought clarification, and suggested that an ‘interim’ changeover period may need to be adopted.</p>	<p>We maintain our view that, generally, retail exemptions are not transferable. The AER does not wish to encourage ‘transfer’ of exemptions from one entity to another. In summary, our likely approach will be:</p> <ul style="list-style-type: none"> ▪ where an entity is subject to a deemed or registrable exemption, and the ownership of that entity changes but the activities remain the same, the class exemption will remain if the new entity continues to meet the eligibility criteria for that class of exemption. For classes of exemption, there is no nominal ‘expiry’ on the exemption, and the entity can continue to operate under the class of exemption that expired previously. ▪ where an entity holds an exemption, and the ownership structure of that entity changes, it must notify the AER. For class exemptions, where the activities undertaken remain the same despite the change of ownership, the class exemption will likely remain. For individual exemptions, the exemption will not ‘expire’ as such. Rather, the entity can continue selling energy provided that it continues to engage in the same activities as previously undertaken.
Public register for exempt persons	
Two retailers, a consumer group and two distributors argued for	The AER reiterates its stated position from the June 2011 consultation

universal registration for all exempt persons. They submitted that it would provide:

- transparency to consumers and industry
- some form of oversight when required
- an indication of electricity load being supplied by exempt persons
- a record of where exempt customers exist (in the case of a RoLR event).

A distributor submitted that the public register should contain sufficient information to allow greater transparency and monitoring of the exempt selling market. It also submitted that the information on the public register should be the same for holders of individual exemptions and registrable exemptions, and that the general conditions for each class of exemption should also be included.

papers. The AER does not consider universal registration for all exempt persons is necessary.

Registration is currently required for registrable and individual exempt persons. When setting regulatory requirements, the AER considers the cost of compliance against the benefits derived for customers and the market at large. The value of the information gained from compulsory registration of deemed exemption holders would outweigh the consequential costs for these types of exempt persons.

The AER considers that small exempt persons providing energy services under deemed exemptions are usually not operating in pursuit of profit and the sale of energy is incidental to their core business.

Such a requirement would be burdensome for small exempt persons, who may have limited resources to dedicate to regulatory compliance. In most cases, there is a clear distinction between types of entities requiring deemed exemptions and those requiring registrable or individual exemptions. The latter will likely be larger, more sophisticated businesses with better resources to meet compliance requirements such as universal registration.

The AER may consider universal registration in the future if exempt selling becomes more prevalent, or where issues in the market become apparent.

The AER does not consider it necessary to include the conditions of exemption for the various classes of exemption on the public register as this information is contained in the exempt selling guideline.

<p>One business suggested a downloadable application form and individual exemption application form.</p>	<p>The AER sees merit in creating a standard template for applications for individual exemptions, as well as for registrations under registrable classes of exemption. We are currently considering the form that such a template might take, and will notify stakeholders of this in due course (along with details of other specific aspects of the application process) as part of its education and communication campaign.</p> <p>Once developed, these templates will also be available on the AER's website.</p>
<p>Dispute resolution provisions</p>	
<p>Several stakeholders disagreed with the draft guideline's dispute resolution provisions.</p> <p>One retailer stated that the AER's guideline implied a right of access to ombudsman schemes for exempt customers. It suggested removing this statement, as not all exempt customers will have access to ombudsman schemes.</p> <p>It also expressed concern that the condition does not require the exempt person to offer any independent dispute resolution. It proposed that individual and registrable exempt persons should be required to participate in an independent dispute resolution service.</p> <p>Several other stakeholders made similar comments, and stated that the guideline does not make it clear that exempt customers are not subject</p>	<p>The AER acknowledges stakeholder comments on dispute resolution provisions. We did not intend to imply that ombudsman schemes were available to all exempt customers. Rather, the AER notes that several jurisdictions are currently investigating whether or not ombudsman schemes will be available to exempt customers. As at December 2011, several jurisdictions were considering this option.</p> <p>The AER maintains its views that it is overly onerous to expect small exempt persons who belong to a deemed exemption class to provide access to external dispute resolution provision. Though the AER has not required this as part of the final guideline, the extended customer protections set out earlier in this table offer extra protection to exempt customers experiencing payment difficulties.</p> <p>Exempt persons must commit to internal dispute resolution processes</p>

<p>to the same protections as those of authorised retailers. Stakeholders also argued that the AER should take further steps to ensure that vulnerable customers, in particular, have access to independent, no cost dispute resolution which is not subsidised by retailers or distributors.</p>	<p>as a condition of their exemption. Exempt persons are also prohibited from disconnecting a customer whilst a complaint remains unresolved.</p>
<p>An industry group noted that, given the operation of retail tenancy laws in each state and territory, no further dispute resolution procedures for exempt customers are required. It cited in particular the Victorian Civil and Administrative Tribunal (VCAT) and the Administrative Decisions Tribunal of NSW (ADT) as examples of bodies to provide recourse to retail tenants in the event of a complaint or issue. It suggested that the exempt selling guideline should avoid duplication this area.</p>	<p>The AER does not agree that where state and territory bodies exist to hear residential tenancy disputes, no further dispute resolution is required. Bodies such as VCAT and ADT usually only hear matters that relate only to tenancy disputes. Most exempt customers would be unlikely to pursue complaints about their energy charges through these forums. Therefore, it is important to retain mechanisms, such as internal dispute resolution, for complaints relating solely to the exempt customer's energy charges.</p>
<p>One consumer group sought clarification on what 'reasonable endeavours' means in the context of dispute resolution.</p>	<p>'Reasonable endeavours' will be considered on a case by case basis. An exempt person who uses their reasonable endeavours to resolve a dispute will approach the matter in a fair, impartial manner and take all steps a reasonable person under the circumstances would take to resolve the dispute to the satisfaction of both parties.</p>
<p>Compliance issues</p>	
<p>A jurisdiction expressed concern with placing the onus on exempt persons for compliance monitoring, and sought clarification as to whether to the AER intends to monitor compliance in other ways.</p>	<p>The guideline requires exempt persons to inform the AER of any changes to its eligibility for a class exemption. In the AER's view, this is the most practical and accurate way for it to become aware of compliance issues. However, there are several other sources from which the AER might receive information about non compliance, for</p>

	<p>example, through market information and intelligence or complaints data. The requirement for exempt persons to notify the AER would only be triggered when no other information has been provided to the AER.</p> <p>Once notified of non-compliance, the AER can engage with the exempt person to explore the extent of non-compliance, including how many customers may be affected and how long the non-compliance may continue. In minor cases of non-compliance, the AER will work with the exempt person to ensure continuity of supply to exempt customers.</p> <p>For serious breaches, the AER has several compliance options available to it, including revocation of the exemption. For individual exemptions, the AER can vary conditions on the exemption where necessary.</p>
<p>A distributor submitted that exempt persons should be subject to regular reviews. It noted that while the Retail Rules do not impose any timeframes for review or revocation of exemptions, the AER may impose a time limit.</p>	<p>The AER appreciates the need for regular reviews of exemptions. While the AER will not necessarily undertake regular audits or reviews, it will investigate all instances of complaint or concern with exempt persons under the guideline.</p>
<p>Application of the guideline</p>	
<p>Broadcasting groups argued that the exempt selling regime should not apply to it.</p>	<p>The AER has no discretion to exclude persons or entities from the application of the Retail Law and Retail Rules. Anyone who sells energy in the National Electricity Market (NEM) after 1 July 2012 must have either a retailer authorisation, or an exemption from the</p>

	<p>requirement to hold a retailer authorisation.</p> <p>Broadcasting groups (or other similar bodies) who sell energy and wish to continue doing so must be covered by an exemption from 1 July 2012 (or an authorisation, if appropriate). It is an entities' responsibility to ensure that it belongs to one of the AER's classes of exemption, or obtains an individual exemption.</p> <p>It is also open to broadcasting groups to apply for an individual exemption prior to the Retail Law coming into effect. The process for applying for an individual exemption (including the information required by the AER) is contained at section 5 of the exempt selling guideline.</p>
<p>Individual exemptions and specialist exempt persons</p>	
<p>An industry group noted concerns with the application process for individual exemptions. It also argued that the policy principles, exempt seller factors and exempt customer factors might prejudice applications for individual exemptions.</p>	<p>The AER will assess individual exemption applications on a case by case basis, but always against the guiding principles set out in the exempt selling guideline. The Retail Law outlines policy principles which the AER must consider when making any decision relating to exemptions, there is no discretion around this. There are exempt seller related factors and customer related factors that we may also consider.</p> <p>The process for applying for an individual exemption will be relatively simple. It does not attract any fees and charges and is designed to provide a decision on applications as soon as practicable. The guideline sets out clearly what information that the applicant must provide the AER. When an applicant submits an application for individual exemption, the AER will contact the applicant and advise</p>

	<p>them of likely timeframes for a decision and notify them of any further information that may be required. Applicants will also have opportunities to ask questions of the AER. For individual exemptions, the AER undertakes an extensive consultation period where any issues can be raised.</p>
<p>A distributor supported the AER's position that where an individual exemption is required, the conditions attached to that exemption may reflect those attached to a retailer authorisation. A business expressed concern about the complexity of the application process for individual exemptions, and another stakeholder expressed concern over the AER's 'discretionary powers' and sought confirmation that the AER will be consistent in the exercise of its discretion.</p>	<p>After undertaking the prescribed consultation process for an individual exemption application, and deciding whether to grant or reject the application, the AER will notify the applicant of the outcome, including any conditions attached to the exemption (if granted). The AER welcomes queries and questions from stakeholders seeking further clarification on aspects of the application process, particularly before submitting an application.</p>
<p>One business noted that there may be situations where a single entity has ownership of a precinct, which is subsequently sub-divided and sold to other persons. The guideline should provide clarity as to what entity is eligible for an exemption. The guideline should also outline eligibility requirements and whether the scale or size of a network will determine eligibility for an exemption.</p>	<p>In situations where a single entity owns a property or precinct, and sub-divides that property but on-sells energy to the new owners, it is still the original entity that requires a retail exemption. The entity selling energy (i.e. charging tenants or occupants or owners for energy) will usually be the party who must hold an exemption.</p>
<p>One consumer advocacy group stated that all brownfield sites should be required to apply for individual exemptions.</p>	<p>The AER has permitted brownfield sites to hold a class exemption (D2, D3, D4) where the site is retrofitted before 2015. The 2015 timeframe has been implemented so that current entities that have already planned to commence exempt selling activities can proceed as planned.</p> <p>All sites after that date will require an individual exemption. For the AER to allow an exemption for a brownfield site, we must be convinced that the majority of customers within the network have</p>

	<p>agreed to be serviced by the exempt person rather than a retailer. A further consideration for the AER will be the ability of customers to continue to purchase energy from a retailer of their choice after the retrofit.</p>
<p>Disconnection and reconnection provisions</p>	
<p>An industry group recommended that the AER add a provision to condition 8 that allows shopping centre landlords to disconnect an exempt customer when a retail lease expires. It noted that condition 8(3) may have been intended to address this situation, but stated that more clarification is needed.</p>	<p>The AER agrees that shopping centre landlords should be permitted disconnect when a retail lease expires, provided that the tenant is not renewing its lease (to ensure continuity of supply for tenants remaining at the premises). The AER has clarified condition 8 of the guideline to reflect this. The new sub condition 1(c) states that an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:</p> <ul style="list-style-type: none"> a. the exempt customer has requested disconnection, or b. continuity of supply to the premises would be unsafe, or c. <i>the exempt customer's lease has expired and the exempt customer is vacating the premises</i> (emphasis added) <p>The AER has retained the wording on flexible payment terms in the disconnection conditions 8 and 9, noting that several classes of exemption now have hardship provisions—including the requirement to offer flexible payment plants—attached to their conditions.</p>

<p>One consumer group stated that the disconnection provision is confusing, and implies that all exempt persons must include a reminder notice that flexible payment options may be available (when in some cases, they are not). It expressed concern around section (1)(c)(ii) of the condition, and stated that the words ‘<i>or the establishment of more flexible payment terms</i>’ be removed. It also suggested that condition 9 include a requirement that the exempt person cannot disconnect where a bill complaint remains unresolved.</p> <p>The same consumer group also suggested that the guideline requirements for obligation to supply and termination of supply are inconsistent. It submitted that the AER remove the ten business day timeframe, stating that exempt persons should have the same timeframes for reconnection as authorised retailers.</p>	<p>The AER agrees that an exempt person cannot disconnect an exempt customer while a bill dispute remains unresolved. The AER has therefore updated condition 9 (1) (b) with words to this effect.</p> <p>For clarity, the ten day reconnection time frame is not a timeframe within which the exempt person is required to reconnect. Rather, the guideline states that where an exempt person has disconnected an exempt customer, and the exempt customer rectifies the matter which led to disconnection (for example, pays outstanding amounts) within ten business days of that disconnection, the exempt person must reconnect the exempt customer. After ten days, the exempt customer must renegotiate supply with the exempt person or an authorised retailer.</p>
<p>Other conditions</p>	
<p>One consumer advocacy group sought the following changes to conditions:</p> <ul style="list-style-type: none"> ▪ a requirement that a meter is read at least once a year, ▪ limits on how frequently prices can be increased by exempt persons, and ▪ meter readings undertaken when exempt customer moves in (and out) of premises. 	<p>Exempt persons are required to issue bills at least once every three months. Exempt persons are also required to read meters when permanent residents move in and out of dwellings. We have updated condition 4 accordingly.</p> <p>However, the AER has not amended the guideline to limit the frequency of price increases. The exempt person cannot charge more than the local retailer’s standing offer (for residential customers). This effectively provides a cap on how much the exempt customer is paying for energy. For example, even if the price charged by an exempt person were to rise once every six months, the total effect of those price rises</p>

	would still be capped.
Exempt seller factors	
One consumer group expressed support for the AER's conclusion that the growth of exempt selling is not necessarily in the best long term interests of consumers.	As noted in our June 2011 guideline, we consider that a proliferated and unrestrained growth of exempt selling may have a detrimental effect on customer protections and choice. There are specific situations where exempt selling is not desirable. However, in some situations, exempt selling cannot be practicably avoided. With this in mind, we will assess individual exemption applications on a case by case basis, having regard to the policy principles and other factors set out in the exempt selling guideline.
Another business asked what volume of energy the AER considers to be a large enough volume to require the exempt person to seek a retail authorisation.	The volume of energy sold is merely one factor that the AER will have regard to when considering whether a retailer authorisation is more appropriate than an exemption. The AER will also consider several other factors, including the number and type of customers served, and the way in which the exempt person operates its business. The AER considers all these factors in conjunction with each other, and on a case by case basis.
Other issues	
<i>Extreme weather events</i>	<i>Extreme weather events</i>
DTEI (SA) submitted that disconnection provisions be amended to include a prohibition on disconnection on 'extreme weather event'	Not all jurisdictions have requirements around disconnection on extreme weather days. However, we have amended condition 9 to

<p>days, for those jurisdictions adopting this requirement. A consumer group expressed similar sentiments, stating that exempt customers should not be disconnected on extreme weather days.</p>	<p>ensure that exempt persons cannot disconnect on a day that a retailer in that same jurisdiction would be prohibited from disconnecting due to extreme weather. This reflects that some jurisdictions define extreme weather days, or similar, whereas others do not.</p>
<p><i>Definitions</i></p> <p>Two stakeholders noted that the guideline refers to ‘sites’ several times, and sought clarification on how the AER interprets the word ‘site’. One stakeholder understood that the AER’s consideration of what constitutes a ‘site’ would be a pragmatic one.</p> <p>Another stakeholder sought clarification on the definition of the phrase ‘owns, operate or controls’ contained in the exempt selling guideline. A business sought clarification on the meaning of ‘similar entities’ in class D2.</p> <p>DTEI (SA) noted that the guideline refers to the threshold for small customers as being 100MWh per annum, and noted that in South Australia, the current threshold of 160MWh will remain. It suggested clarification on this in the final guideline.</p>	<p><i>Definitions</i></p> <p>The AER has not defined the word site. The word ‘site’ can be construed as having its ordinary meaning. Stakeholders are welcome to contact the AER to discuss specific aspects of what might constitute a ‘site’ for the purposes of the guideline and applications. In most cases, we would interpret the word ‘site’ to include networks.</p> <p>Owning, operating or controlling a site usually refers to an entity that has substantial ownership of the site, manages the site or undertakes substantial operation of the site. In the context of class D2, ‘similar entities’ refers to other relationships which may be characterised as a tenant/landlord relationship.</p> <p>The AER has removed references to specific consumption thresholds in its exempt selling guideline, and has instead referred to small customers ‘<i>as defined in the relevant participating jurisdiction</i>’.</p>
<p>Additional comments in response to October 2011 consultation paper</p>	
<p>In the AER’s additional consultation on protections for customers experiencing financial difficulty, several stakeholders made submissions on other issues.</p>	<p>Most of these additional issues were considered in previous rounds of AER consultation, and have therefore been extensively dealt with in previous iterations of the AER’s exempt selling guideline.</p>

One stakeholder argued that exempt persons should not be permitted to disconnect customers on extreme weather days.

Another stakeholder noted concerns with several aspects of the guideline, including:

- the AER's consultation process, noting what it saw as a lack of submissions from exempt persons on the AER's guideline. It noted that some affected parties may not be aware of the AER, its role, and the new exempt selling arrangements;
- the potential compliance costs that will be imposed on exempt persons in adhering to the guideline;
- concerns with public registration, and confidentiality issues arising from a requirement on exempt persons to provide information on the public register; and
- inequities being imposed on exempt persons, arising from the AER's statement that customers should have access to full retail contestability wherever possible, specifically, that exempt persons whose customers subsequently take supply from a retailer are unfairly disadvantaged and not compensated.

The exempt selling guideline expressly prohibits the disconnection of exempt customers on extreme weather days (in jurisdictions where this applies), at condition 8.

In response to concerns on consultation, the AER notes that the exempt selling guideline has undergone three full rounds of consultation, commencing in June 2010. Each round of consultation has been undertaken in accordance with the Retail Consultation Procedures set out in the Retail Rules, which the AER is compelled to follow. A public forum has accompanied each round of consultation, with stakeholders in each state and territory being invited to attend. Moreover, the AER has sought out affected parties such as industry groups and associations, and will continue to engage with exempt persons as part of its broader communications campaign. Specific issues, such as universal registration and compliance costs, have been considered at length in previous rounds of consultation.

The AER remains of the view that full retail contestability, from a policy perspective, is desirable in jurisdictions where it is available. The AER considers that exempt customers should have the choice to take from an authorised retailer wherever possible, consistent with the outcomes in any other competitive market.

B. List of stakeholders

The following table lists stakeholders who provided written submissions to the June 2011 joint round of consultation on the exempt selling guideline and the NSP registration exemption guideline. Some stakeholders provided submissions that covered one or both guidelines separately, while others provided a submission that jointly covered both guidelines. The table also lists stakeholders who provided written submissions to the October 2011 consultation paper proposing additional protections for customers with financial difficulties.

Submissions are available on the AER's website www.aer.gov.au.

	Separate submission on exempt selling guideline	Separate submission on NSP registration exemption guideline	Submission covering both guidelines	Submission to the October consultation paper
Active Utilities			<input checked="" type="checkbox"/>	
ACT Civil and Administrative Tribunal				<input checked="" type="checkbox"/>
AGL		<input checked="" type="checkbox"/>		
AusGrid		<input checked="" type="checkbox"/>		
Australian Energy Market Operator (AEMO)		<input checked="" type="checkbox"/>		
Broadcast Australia	<input checked="" type="checkbox"/>			
Caravan, Camping and Touring Industry and Manufactured Housing Industry Association of NSW (CCIA NSW)	<input checked="" type="checkbox"/>			
CitiPower and Powercor		<input checked="" type="checkbox"/>		
Colonial First State		<input checked="" type="checkbox"/>		
Consumer Utilities Advocacy Centre (CUAC)	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
COTA Seniors Voice	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>

Department of Transport, Energy and Infrastructure (South Australia)			<input checked="" type="checkbox"/>	
Elengas				<input checked="" type="checkbox"/>
Endeavour Energy		<input checked="" type="checkbox"/>		
Energy and Water Ombudsman of NSW (EWON)	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>
Energy and Water Ombudsman of Victoria (EWOV)	<input checked="" type="checkbox"/>			
Energy Response		<input checked="" type="checkbox"/>		
Envestra			<input checked="" type="checkbox"/>	
Ergon Energy	<input checked="" type="checkbox"/>			
Infigen	<input checked="" type="checkbox"/>			
Jemena Electricity Networks (JEN)		<input checked="" type="checkbox"/>		
Network Energy Services	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Origin Energy	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Queensland Council of Social Services (QCOSS)	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
SA Parks – Caravan Parks Association of South Australia	<input checked="" type="checkbox"/>			
Seed Advisory			<input checked="" type="checkbox"/>	
Shopping Council Centre of Australia (SCCA)			<input checked="" type="checkbox"/>	
SP AusNet	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
Strata Community Australia				<input checked="" type="checkbox"/>
Trust Power	<input checked="" type="checkbox"/>			
TX Australia	<input checked="" type="checkbox"/>			

United Energy Distribution/MultiNet Gas	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		
VicUrban		<input checked="" type="checkbox"/>		
WINenergy		<input checked="" type="checkbox"/>		

C. October 2011 consultation paper

20 October 2011

Dear Stakeholder

***Exempt selling guideline*—consultation on additional protections for customers with financial difficulties**

In June 2011, the Australian Energy Regulator (AER) published a draft *Exempt selling guideline* for consultation. Several submissions on the draft guideline called for further protection for exempt customers experiencing financial difficulty. Based on those submissions, the AER proposes to include additional requirements on exempt persons that provide energy to residential customers (these types of exempt persons are set out in the consultation paper attached).

These new requirements are not intended to replicate or mirror the hardship provisions contained in the National Energy Retail Law (Retail Law). Rather, they are intended to provide a degree of protection to exempt customers experiencing financial difficulty. The AER considers that these new requirements do not unduly increase the regulatory burden on exempt persons and that the revisions are reflective of the reasonable steps an exempt seller would take when a customer identifies themselves as experiencing financial difficulty.

Information provided here should be read alongside the draft *Exempt selling guideline* and *Notice of draft instrument* available on the AER's website.

The AER is seeking comments on these proposed changes prior to finalising the guideline. Written comments are invited by 18 November 2011. Electronic comments should be sent to AERInquiry@ aer.gov.au with the subject line 'Comments on Exempt selling guideline amendments' or by mail to:

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

Yours sincerely

Sarah Proudfoot
A/g General Manager, Retail Markets Branch

CONSULTATION PAPER ON EXEMPT SELLING GUIDELINE

Under the National Energy Retail Law (Retail Law), a person who wishes to engage in the sale of energy must hold either a retailer authorisation or a valid exemption. The Australian Energy Regulator (AER) is responsible for issuing authorisations, and exempting persons or classes of persons from the requirement to hold a retailer authorisation.

The AER is also required to publish an *Exempt selling guideline*. The guideline outlines the classes of deemed and registrable exemptions and provides guidance on the associated conditions. It also provides advice on the application and registration processes for individual and registrable exemptions. The AER may amend the guideline at any time in accordance with the retail consultation procedures.

The AER commenced preliminary consultation on its approach to exempt selling with the release of an issues paper in June 2010. This was followed by the release of draft versions of the guideline in December 2010 and June 2011. Public forums to discuss issues raised in the consultation process were held in August 2010, December 2010 and July 2011. In the most recent round of consultation, the AER received submissions on the draft guideline from 21 stakeholders.

The exemption classes set out in the guideline will apply to all exempt sellers in participating jurisdictions from 1 July 2012, when the Retail Law commences. The AER expects to finalise the *Exempt selling guideline* in November 2011. It will begin accepting applications for individual exemptions from December 2011. The AER will accept registrations for registrable exemptions from 3 January 2012.

AER approach to customers facing financial difficulty in draft guideline (June 2011) and stakeholder responses

The AER must take account of the general principle that exempt customers should (as far as practicable) not be denied customer protections afforded to retail customers in the Retail Law and Retail Rules. However, in its draft guideline released for consultation in June 2011, the AER considered that it may be overly onerous to require exempt sellers to provide the level of assistance to customers facing financial difficulty that authorised retailers are required to provide under the Retail Law. The AER also considered that it may be difficult to implement assistance measures relating to the supply of energy where an exempt seller is also the provider of accommodation (for example, in landlord/tenant situations where the exempt customer is also paying rent to the exempt seller).

Submissions from both consumer and energy industry representatives throughout the consultative process have consistently expressed concern at the lack of protection for residential customers experiencing financial difficulty under deemed and registrable classes of exemption. Stakeholders reiterated the need for at least some basic protections for exempt customers and suggested several approaches that would benefit customers, without being unduly burdensome on exempt sellers. These approaches included requiring exempt sellers to provide:

- flexible payment plans

- information on government concessions
- referrals to financial counsellors
- energy efficiency advice

Several stakeholders also disagreed with the AER's assertion that hardship support may not be effective when the onseller is also the person charging the exempt customer for accommodation. Stakeholders noted that there are circumstances where a customer may seek to manage their energy costs, and methods to do this, irrespective of any additional liability for rent.

Proposed change in AER approach to exempt customer protections

Having considered all options put forward in submissions, the AER intends to introduce some additional requirements on exempt sellers focusing on the protections offered to small customers facing financial difficulty.

The AER proposes to introduce an overarching policy principle (to apply to all exempt sellers) that 'disconnection of premises of a customer who has identified themselves as experiencing financial difficulty due to inability to pay energy bills should be a last resort'. This is analogous to the hardship policy statement in the Retail Law, and should safeguard customers against immediate or short term disconnection. This principle also recognises that energy is an essential service and that in some cases, the exempt seller is the only party able to provide energy to the exempt customer (for example, in off-grid networks or where access to retail contestability is not available). Disconnection for those customers would be particularly disadvantageous.

The AER notes, however, that it may be unduly burdensome to require exempt sellers to identify customers experiencing financial difficulty and that it is the customers themselves who are better equipped to identify whether or not they are experiencing such problems. Therefore, the AER proposes self identification of exempt customers for the purposes of the *Exempt selling guideline* financial difficulty provisions. Self identification, among other things, might involve the exempt customer notifying the exempt seller (by email, telephone, or in person) that they will have difficulty paying, or are unable to pay, all or part of their bill.

In light of all of the above, the AER proposes the following amendments to the conditions of exemption classes D2, D4, D6, R2, R3 and R4 to support customers in financial difficulty. These classes are likely to include residential customers, and would capture customers who are particularly vulnerable. These customers, in some cases, can only take supply from their exempt seller and are therefore unable to access retail contestability if they are unhappy with service provided to them. Further, there is significant uncertainty about whether these exempt customers can access ombudsmen schemes in the event of billing and payment issues.

Condition 2—Information provision

Exempt sellers will be required to inform customers that assistance is available if the customer is unable to pay energy bills due to financial difficulty; the forms of

assistance available; and the process the exempt customer should follow to inform the exempt seller of this financial difficulty.

Condition 3—Billing and payment arrangements

Condition 3 has been extended to require an exempt seller to offer flexible payment terms to customers experiencing financial difficulty, having regard to:

- the customer's capacity to pay
- any arrears owing by the customer
- the customer's expected energy consumption needs over the following 12 month period.

However this condition does not apply where the exempt customer has:

- had two payment plans cancelled by the exempt person in the previous 12 months due to non-payment
- been convicted of an offence involving illegal use of energy in the previous two years.

Condition 8—Payment difficulties and disconnection or cessation of supply

Condition 8 has been extended to require an exempt seller to do the following for a customer who has identified as experiencing financial difficulties:

- Provide energy efficiency advice by directing the customer to the Australian government energy efficiency website or other energy efficiency resource.
- Ensure that the customer is aware of the available relevant government or non-government energy rebates, concessions and relief schemes.
- Not charge the customer a late payment fee.
- Not charge the customer a security deposit.

Further, where an exempt seller issues a reminder notice, they will be required to notify customers of any flexible payment options or other assistance that may be available to them.