

# Industry Guidance: solar power purchase agreements

## Introduction

The Australian Energy Regulator (AER) is responsible for regulating energy retail markets in jurisdictions that have adopted the *National Energy Retail Law (Retail Law)*. Under the *Retail Law* any business that sells energy must be authorised or exempt from this requirement.

Since the introduction of the *Retail Law* the AER has been approached by a range of businesses offering new and innovative services and products that involve the sale of energy (“alternative energy sellers”). 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.

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 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.

## Purpose of guidance

This guidance outlines the AER’s position on regulating SPPA providers, as these business models that are not explicitly contemplated by the *Retail Law*. This guidance has been informed by submissions on our *Issues Paper - Regulation of Alternative Energy Sellers* (the issues paper).

## Principles for regulating SPPA businesses

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* 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.

## 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. We 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.

We do not see any need to duplicate these protections through the *Retail Law* framework.

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 all 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).