

DRAFT

AER (Retail) Exempt Selling Guideline

November 2012

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1. The National Energy Retail Law and what it means for you

The National Energy Retail Law (Retail Law) provides a national framework for the sale of energy (gas and electricity) to customers.¹ It is the final stage in the move to national regulation of energy markets.

Under the Retail Law, anyone who sells energy to people for use at premises must have either a retailer authorisation, or a retail exemption. Energy selling covers a wide range of activities, from a landlord recovering electricity costs from tenants, to large-scale energy retailing. Premises include residential homes or other places of residence (for example, a caravan park where tenants reside permanently), shopping centres and commercial sites. If you sell energy and do not have an authorisation or exemption to do so, you may be fined or ordered, by a Court, to remedy the breach.²

2. About this guideline

This guideline is for people or businesses that sell energy under the Retail Law and need a retail exemption. This guideline focuses on what you need to know and what you must do in order to comply with the Retail Law as an exempt seller.

Exempt selling refers to the sale of energy that does not require a national retailer authorisation and has been ‘exempted’ by the AER. This guideline deals with retail exemptions under the Retail Law. For network exemptions under the National Electricity Law, please see the AER’s [Network service provider registration exemption guideline](#).

If you need a retail exemption, this guideline will help you understand:

- what retail exemptions are and how they work
- whether or not you, or your business, need a retail exemption
- how to obtain a retail exemption and which type of exemption you should apply for
- the AER’s role in the exempt selling framework
- the factors we will consider when assessing individual exemption applications.

¹ The objective of the Retail Law is to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy.

² We may issue an infringement notice (s 308 of the Retail Law). We may also apply to the Federal Court under section 44AAG of the Competition and Consumer Act 2010 (Cth) to order a person to cease the activity that is in breach, or take action to remedy the breach, or implement a specified program for compliance with the Retail Law.

3. About the AER

The AER is an independent statutory authority under Part IIIAA of the *Competition and Consumer Act 2010 (Cth)*. The AER is the national regulator of electricity and gas.³ From 1 July 2012, the AER started to take on functions that had previously been managed by the states and territories. Our responsibilities include administering and regulating authorisations and exemptions (retail and network) in participating jurisdictions

³ The AER does not regulate the energy markets in Western Australia or the Northern Territory.

4. What is exempt selling?

Exempt sellers are persons, businesses or other entities that are exempt from the requirement to hold a national retailer authorisation.

An example of exempt selling is **onselling**, which occurs when a person buys energy from an authorised retailer and sells it to another person or business. Onselling often occurs in privately owned embedded networks, such as caravan parks, shopping centres, retirement villages, office buildings and apartment buildings. Generally, onsellors require a retail exemption.

4.1 What is the sale of energy?

A **sale of energy** is defined as a sale of gas or electricity to a person or business for use at premises, and is reflected in a separate, discrete charge for energy. A sale of energy is not taking place where energy costs are absorbed into another charge (for example, a hotel tariff which includes energy costs).⁴

Some examples of a sale of energy are illustrated below:

A monthly or quarterly bill to a long term resident of a caravan park based on a resident's metered consumption of gas or electricity

A charge for metered energy (in addition to rent) within a residential apartment block

A charge for unmetered energy where a commercial landlord is billed and then splits the bill between tenants

A charge for metered energy which is generated "off-grid"

4.2 Do I require a retailer authorisation or a retail exemption?

If you sell energy in the ACT, NSW, Victoria, Queensland or South Australia, you require either a retailer authorisation *or* retail exemption. Although Tasmania has commenced the Retail Law, it has not adopted the AER's exemptions framework⁵.

A person or business that has been granted a national retailer authorisation can sell energy to any customer, small or large, in participating jurisdictions. People or businesses whose *primary* business is to sell energy to customers need a retailer authorisation.

Retailer authorisations are normally required where:

⁴ The sale of bulk hot water is not considered a 'sale of energy' under the Retail Law and Retail Rules.

⁵ For information on Tasmanian exemptions, see the Office of the Tasmanian Economic Regulator.

- your core business is the sale of energy, and you are likely to expand your sales over time ⁶
- your only relationship with your customers is the sale of energy and you have no other relationship with the customer (for example, you do not also have a landlord/tenant relationship)
- you intend to sell to many customers and/or sell a large volume of energy.⁷

However, a retailer authorisation may be burdensome and unnecessary in some instances, and a retail exemption may be more appropriate, say, for:

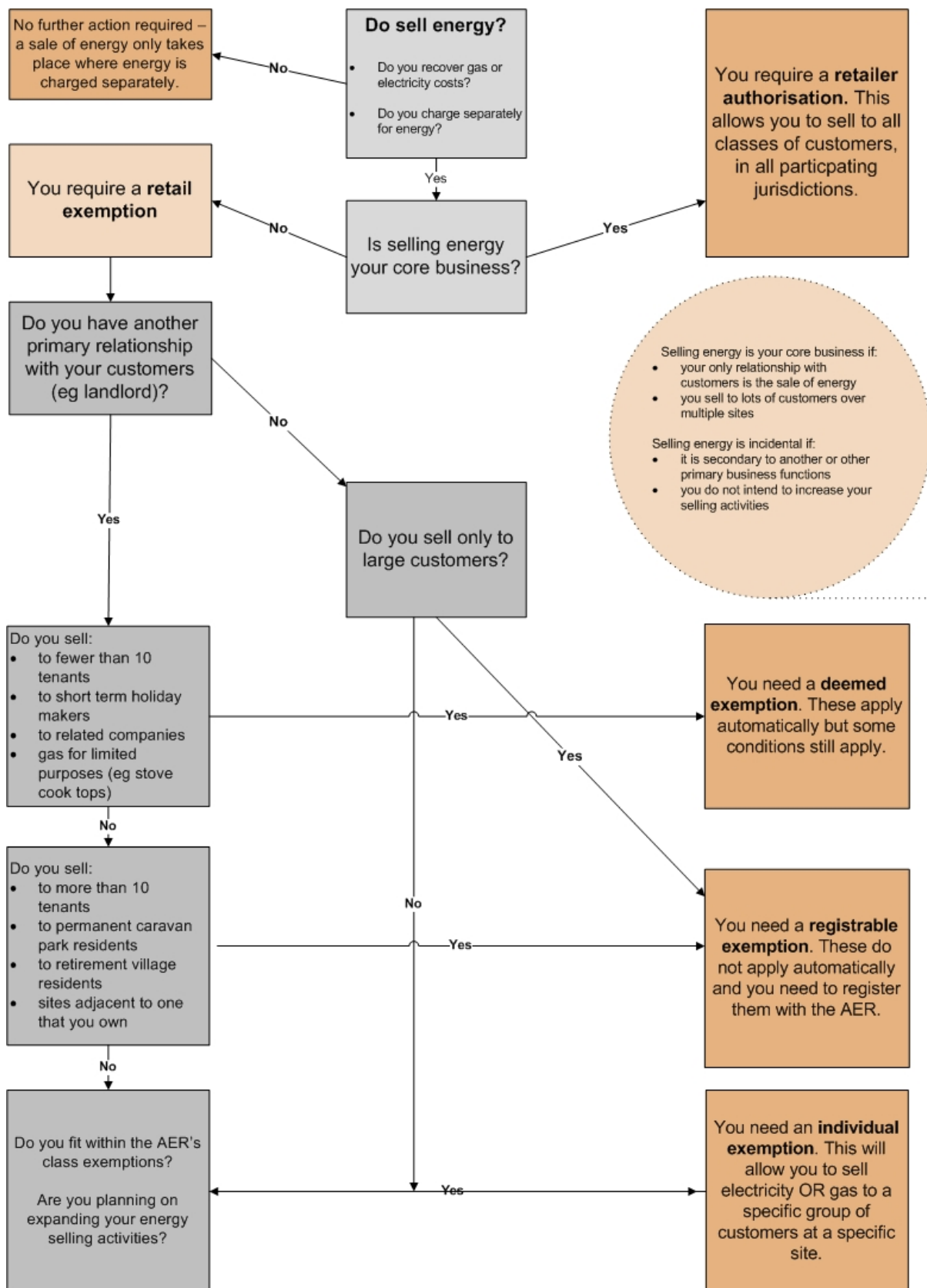
- people or businesses that sell energy incidentally – for example, where a shopping centre owner rents a shopfront to tenants and also sells them essential services such as energy⁸
- people or businesses selling energy at no profit or as a community service
- people or businesses who sell at one site or to a defined group of customers, and who have no intention of expanding the energy selling component of their business.
- entities who onsell energy.

The diagram below will assist you in determining whether or not you need an exemption or a retailer authorisation.

⁶ For further information on what the AER considers to be ‘core’ business, please see section 9.

⁷ Further information on retailer authorisations is set out in the AER’s [Retailer authorisation guideline](#)

⁸ For further information on what the AER considers to be ‘incidental’ selling, please see section 9.



4.3 Who should hold the exemption?

Many people use an agent to manage the sale of energy, particularly within embedded networks, and determining who should hold the exemption is not always straight-forward. An agent will normally liaise with customers, organise connections and disconnections, issue bills and handle any energy related complaints. Sometimes they will also buy and sell the energy on behalf of a landlord or body corporate.

Whether it is you or your agent who needs an exemption depends on who is *selling* the energy. The person selling the energy will have a contract with an authorised retailer and will bear the financial risk of their customers' non payment.⁹ If the agent buys energy from a retailer and sells it directly to your residents or tenants, they are selling energy and need an exemption (or authorisation).¹⁰ If you, your business or your organisation buy the energy, then you will need the exemption. As the person or business that owns or manages the embedded network, you or your business will be eligible for a class exemption. Agents are not eligible and will need an individual exemption or authorisation.

If the agent is selling energy to only a small number of sites they may be eligible for an individual exemption. However, as we generally do not issue individual exemptions that cover multiple sites (see section 9.2.4 below) the agent may need to apply for a retailer authorisation if they sell at many locations and intend to keep expanding their business.

Two examples are provided below:

Example A

A body corporate wishes to onsell energy to residential tenants within an apartment block. The body corporate decides to outsource billing services, connections and complaints handling to an agent. The agent also negotiates a market contract for the body corporate to buy energy. The body corporate's name is on the contract with the retailer, and if tenants fail to pay their bills on time, the body corporate is liable for the charges to the retailer.

In this case, the body corporate is selling energy and would be eligible for a class exemption. The body corporate will also be responsible for meeting the exemption conditions, even if it outsources certain aspects of its energy sales to an agent.

⁹ That is, they will be liable for costs to the retailer, even if their customers do not pay their bills.

¹⁰ The agent should be able to advise you whether they hold a retailer authorisation, or you can refer to the AER's [public register of authorised retailers](#).

Example B

A body corporate in a new development decides to create an embedded network and engages an agent to wire its building for the sale of energy. As part of that contract, the body corporate will wholly outsource the sale of energy to the agent. The body corporate does not enter into a contract with a retailer – rather, the agent buys the energy and sells it to the building residents / tenants. Because the agent must pay the retailer's bill, it bears the financial risk of non payment. It also provides all the energy related services to the residents / tenants within the building.

In this case, the agent is selling the energy and would need to obtain an exemption (or a retailer authorisation).

5. Class exemptions

Class exemptions are retail exemptions that apply to certain groups of people who sell energy, known as ‘classes’. Generally, these are people or businesses who sell energy incidentally, meaning that energy sales are not a core part of their business, and they are not motivated by profit.

Class exemptions will generally apply to:

- **landlords** or **bodies corporate** who sell energy to small commercial/retail tenants or small residential tenants, or who sell to sites adjacent to the site they own or manage
- **retirement village** or **caravan park owners** who sell energy to long term residents or short term holiday makers
- businesses or persons who sell energy to **large customers**¹¹
- **related companies** that sell to one another
- the sale of unmetered electricity in Queensland (or in other jurisdictions, subject to certain limitations, (see section 9.4), or the unmetered sale of gas where that gas is used for limited purposes.

Class exemptions fall into two general categories – deemed exemptions and registrable exemptions.

5.1 Deemed and registrable exemptions

A **deemed exemption** is an exemption that applies automatically to certain classes of people. A person covered by a deemed exemption does not need to either apply or register with the AER (however, conditions will apply). Deemed classes are generally for small-scale selling arrangements where the costs associated with registration would outweigh the benefits of increased regulation.

A **registrable exemption** applies to certain classes of people and must be registered with the AER. It is only effective for a particular individual or entity for a particular site, and is subject to conditions. Registrable classes are for energy selling activities that the AER considers requiring greater transparency and regulatory oversight, usually because the scale of the activities is larger and the impact on the market would be greater.

A comprehensive list of class exemptions is set out at Appendix A of this Guideline.

¹¹ See section 6 – *FAQs* - for large and small customer thresholds

5.2 Obtaining a class exemption

Deemed exemptions

Deemed exemptions are automatic. You do not need to apply to the AER. Rather, you are ‘deemed’ to be exempt, provided you comply with all conditions attached to your particular exemption class, which can be found [here](#).

Deemed exemptions apply to:

- businesses who sell energy to a **related company**
- **commercial and residential landlords** or **bodies corporate** who sell metered energy to fewer than 10 small tenants or residents
- **caravan parks** or **holidays parks** who sell metered energy to people in short term holiday accommodation¹²
- businesses who sell unmetered electricity in Queensland for certain purposes¹³
- people who sell unmetered gas where gas is used for limited purposes.

A full list of deemed exemptions is set out at Table 1 of Appendix A.

Registrable exemptions

Registrable exemptions are not automatic. They can be obtained by completing a registration form and lodging it with us. There is no formal approval process for registrable exemptions; your exemption comes into effect when you appear on our [public register of exempt sellers](#).¹⁴ Conditions apply to all registrable exemptions.

Registrable exemptions apply to:

- **commercial and residential landlords** or **bodies corporate** who sell metered energy to more than 10 small tenants or residents within a site, or who sell to sites adjacent to their own
- **retirement villages** or **caravan parks** who sell metered energy to permanent residents
- people or businesses selling energy to **large customers**¹⁵

¹² This category includes residential parks and manufactured home estates.

¹³ We understand that unmetered onselling to residential customers is currently allowed in Queensland. Arrangements have been made to limit future unmetered exempt selling, but current exempt persons are not required to retrofit premises with individual meters.

¹⁴ Please note that your exemption will only appear on the AER’s public register of exemptions when the Retail Law has commenced in your jurisdiction.

¹⁵ See section 6 - FAQs - for large and small customer thresholds

- some unmetered energy supply arrangements entered into prior to the commencement of the Retail Law.

A full list of registrable exemptions is set out at Table 2 of Appendix A.

A registrable exemption can be obtained by completing the AER's registration form, which is available on [our website](#). To obtain a retail exemption, you need to complete Parts A and C of the form.¹⁶

You must provide all the information requested in the form. This includes:

- the legal name (and trading name) of the business or person seeking the exemption, and their Australian Business Number (ABN) or Australian Company Number (ACN)
- the site address for the exemption, the number of customers at that site and the class of exemption (for example, class R1), and a brief description of the normal business activities undertaken at that site¹⁷
- details of a customer contact and authorised representative for the exempt sellers, so that we can contact you if necessary.

Once you've completed your registration form, you can submit it electronically to: aerexemptions@aer.gov.au.

Alternatively, you can fax your form to 03 9290 1457 or post it to:

Australian Energy Regulator
GPO Box 520
Melbourne Victoria 3001

5.3 Close of class exemptions to new entrants

Some of the registrable classes of exemption are only open to new energy sellers until 1 January 2015 (further information is set out at Appendix A). This is to enable planned developments, or developments under construction, to be completed without having to incur additional regulatory costs. Any energy selling operations that commence after this date will require an individual exemption or a retailer authorisation. This will allow us to better scrutinise future energy selling arrangements and impose conditions that more closely reflect the requirements of the Retail Law.

¹⁶ If you also own, operate or control the network used to sell the energy – for example, a private or embedded network - you may also require a network exemption (which can be obtained by completing Part B of the form). For further information on network exemptions, please see section 8 below.

¹⁷ For example, retail shopping centre, residential apartment building, and caravan park or retirement village.

6. Exempt selling FAQs

When does my class exemption take effect?

Your class exemption takes effect when it appears on the AER's public register of exempt sellers. If the state or territory that you operate in has not yet commenced the Retail Law, your exemption will appear on the public register when the Retail Law commences in that state or territory.

What if I am eligible for more than one class, or sell to different kinds of customers within the same site?

If you sell to more than one class of customer (for example, you sell to residential customers *and* large customers at the same site), you can register for different types of exemptions at that particular site (for example, an R1 exemption and R2 exemption). You will need to comply with relevant conditions for each applicable class. You can register multiple class exemptions for a particular site on the same form.

What if I sell only to large customers?

The sale of energy to large customers is usually covered by the R5 class exemption. The definition of large customer varies from jurisdiction to jurisdiction, as Table 1 shows.

Table 1: Small and large customer classifications

Jurisdiction	Electricity		Gas	
	Small customer	Large customer	Small customer	Large customer
Queensland	Customers consuming less than 100 MWh per annum	Customers consuming more than 100 MWh per annum	Customers consuming less than 1TJ per annum	Customers consuming more than 1TJ per annum
ACT				
Victoria				
New South Wales	Customers consuming less than 160 MWh per annum	Customers consuming more than 160 MWh per annum		
South Australia				

I am having trouble filling out the registration form – where can I get help?

You can email us at aer.inquiry@ aer.gov.au with any questions, or phone the AER/ACCC Infocentre on 1300 585 165 (Australian callers) or + 612 6243 1305 (overseas callers).

How much does an exemption cost?

There is no charge for lodging an exemption with the AER. There are also no ongoing fees or charges to maintain exemptions.

Can I transfer my exemption?

If a business is sold (or ownership is otherwise transferred) and the previous owner/operator held a deemed or registrable exemption, the class exemption will continue as long as the new entity continues to meet the eligibility criteria and conditions for that exemption. However, the new entity should advise us that it is now the relevant exemption holder so that we can amend our records.

What is a NEM registered service provider?

A National Electricity Market (NEM) registered service provider is the business that delivers energy for the site to the gate meter. In most cases, this will be the local distributor.¹⁸ You should be able to find the name of your distributor on your bill - the distributor's number is normally found under the 'faults and emergencies' section. Otherwise, you can contact your retailer to find out who your distributor is.

I'm not eligible for any of the class exemptions – what do I do?

If you do not fall into an exemption class (deemed or registrable) you may apply for an individual exemption. Individual exemptions are tailored to specific situations, with conditions attached to the exemption where necessary. Further information on individual exemptions is set out at section 7. We recommend that you contact us to discuss your specific circumstances if you are considering applying for an individual exemption.

I sell energy to small commercial tenants but do not meter the energy – can I get a class exemption?

Separate metering allows usage to be accurately recorded and therefore enables bills to reflect actual consumption. We therefore do not support the sale of energy where customers' energy consumption is not separately metered. However, we acknowledge that there are situations where premises, particularly commercial premises, do not have separate meters, for example:

- A landlord recovers energy costs by charging each tenant a portion of the bill by dividing the bill by the number of tenants at the site, or by floor space, or as a fixed percentage.
- The account is in the name of a tenant who recovers the costs from other tenants in the building.

In these situations, an R7 exemption will apply, but only to commercial or retail arrangements and not to any residential sales of energy. This class was created in recognition of current arrangements but is not an endorsement of unmetered selling. In future, this class will be closed to new entrants (from the date the Retail Law commences in the relevant jurisdiction), and any new sellers will need to either install adequate metering (making them eligible for a class R1 exemption) or apply for an individual exemption. Even then, we will

¹⁸ Distributors are sometimes referred to as distribution network service providers, or DNSPs.

only consider approving an individual exemption for unmetered supply in special circumstances.

What is the public register?

We maintain a [public register of exempt sellers](#) on our website¹⁹ that includes a list of registrable and deemed class exemptions. It also lists persons and businesses that hold individual exemptions or registered exemptions. The register includes the following details:

- the name of the legal entity that holds the exemption, and the relevant Australian Business Number (ABN) or Australian Company Number (ACN)
- the name of the site that your exemption relates to (if applicable), and the address of the site
- the state or territory in which you hold an exemption
- the class of exemption you hold and the date that it came into effect
- conditions attached to the exemption.

People or businesses who fall under a deemed exemption do not need to register with us, and therefore do not appear on the public register.

Are there conditions attached to my class exemption?

Yes. Each class exemption has a range of conditions that you must meet. If you cannot meet all the conditions attached to your exemption you should contact us immediately.

Conditions are designed to provide protections for customers without overburdening exempt sellers. A summary of the conditions attached to each exemption is set out at Appendix A and a full list of conditions can be found on the [AER's website](#). The core conditions are outlined at Appendix B.

I buy my energy from an exempt seller – what are my rights?

An overview of your rights as an exempt customer is set out at appendix D of this guideline. Our website also has information about your rights, and provides a full list of conditions that your seller must meet as part of their exemption.

What happens if I do not meet the conditions of my exemption?

If we believe there has been a material failure by an exempt seller to meet their exemption conditions we may revoke the exemption.²⁰ Whether or not we think there has been a 'material failure' will differ in each instance. However, as a general rule, where your failure

¹⁹ This is a requirement under the Retail Law, s. 119.

²⁰ Retail Law, s. 111.

to meet a condition has had a significant or widespread impact on your customers, this is likely to be considered a ‘material failure’.²¹

How much can I charge my small tenants or customers?

If you sell energy to small residential tenants or customers, you cannot charge those customers any more than the local area retailer’s standing offer. If you sell energy to small commercial or retail tenants, and those tenants do not have access to choice of retailer, you cannot charge those customers any more than the local area retailer’s standing offer.

²¹ Retail Law, s. 120 sets out the process for revoking an exemption. We must give an exempt person notice that we intend to revoke, and why we intend to revoke. We will then give the exempt person an opportunity to respond in writing, showing cause why their exemption should not be revoked, and outlining how they intend to rectify the problem. If we are not satisfied with the exempt person’s response, we may fix a time for the revocation to take effect and inform the exempt person of any conditions they must comply with.

7. Individual exemptions

This section explains individual exemptions, including how to apply for an individual exemption and the process we follow when granting individual exemptions.

7.1 What is an individual exemption?

Energy selling that is not covered by a class of deemed or registrable exemption will require an individual exemption or a retailer authorisation. If your activities do not fall within one of our class exemptions you should contact us in the first instance. We can then discuss the most appropriate regulatory instrument for you – a retailer authorisation or an individual exemption, depending on your circumstances.

An individual exemption normally applies to a specific person or business for the sale of energy at a particular site and/or to a particular customer (or group of customers). Individual exemptions will be tailored to the specific situation of the person or business seeking the exemption. Conditions attached to an individual exemption take into account the needs of customers and also the regulatory burden that meeting those conditions will place on the exemption holder. For example, if you are proposing to sell to large industrial customers, we will likely impose less onerous or minimal conditions on your exemption. For those wishing to sell to small residential customers, we will likely impose conditions that provide customer protections that are similar to those provided under the Retail Law – for example, a requirement to offer hardship programs. Businesses that wish to sell primarily to small customers on an ongoing basis may require a retailer authorisation.

7.2 How do I apply for an individual exemption?

We recommend that you contact us before making an application for an individual exemption. This is so that we can provide information and guidance relevant to your individual circumstances, and assist you with the application process.

Once you have completed your application please send it to:

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

And email to: [AERInquiry@aer.gov.au](mailto:AERInquiry@ aer.gov.au) with ‘Application for individual exemption’ in the subject line. We will acknowledge your application by email.

Applications for an electricity network service provider exemption may be lodged together with an application for an individual retail exemption.

7.2.1 Information that the AER needs

Appendix C sets out the information that you must provide when you apply for an individual exemption. Please contact us if you cannot provide any information set out at Appendix C.²²

Please be aware that providing false or misleading information in an application for the grant or variation of an individual exemption is a serious offence under the *Criminal Code Act 1995* (Cth). The maximum penalty for such an offence is 12 months imprisonment.

7.2.2 Public consultation process

Once we have received and accepted your application for an individual exemption, we will publish a notice on our website:

- stating that the application has been received
- seeking written submissions on the application from interested stakeholders.

The consultation period will run for at least 20 business days.²³

7.2.3 Confidentiality

We understand that you may provide us with confidential information as part of your application. If you do, we ask that you clearly identify and mark anything you consider confidential and give reasons for each confidentiality claim. Please also advise us of any potential disadvantage that disclosing the information might cause you. In addition, you should submit both a public and confidential version of the information. You should only redact information in the public version that you consider confidential.

A confidentiality claim, by itself, is not always enough to prevent disclosure. Under the National Electricity and Gas Laws and the *Competition and Consumer Act 2010* (Cth), we may disclose confidential information in certain circumstances, for example, where disclosure would not cause detriment, or the public benefit in disclosing the information outweighs that detriment.

If we are considering disclosing this information, we will let you know and give you an opportunity to comment in the first instance.²⁴

²² We will generally not commence processing your application until we have received all required information.

²³ The Retail Consultation Procedures (set out at Rule 173 of the Retail Rules) states that the AER must consult for 20 days, at a minimum.

²⁴ The AER may use the information for any purpose connected with the performance or exercise of its functions or powers.

7.2.4 Decision making process

We will advise you of our decision on your application in writing.²⁵ If your application is approved, we will also advise you of any conditions that may be attached to the exemption.²⁶ You will need to formally accept those conditions before your exemption takes effect.

When considering applications for individual exemptions, we will be guided by the Retail Law objective, which is:

to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.

We will also consider the policy principles, exempt seller related factors and customer related factors specified in the Retail Law when considering your application.²⁷ Guidance on how we consider these principles and factors is provided in section 9 of this guideline. We encourage any applicants for individual exemptions to familiarise themselves with those policy principles and factors before making an application.

7.2.5 Grounds for refusal

We may refuse an application for an individual exemption, for example, if:

- we believe that granting an exemption may not contribute to the achievement of the national energy retail objective;²⁸
- we consider that granting an exemption will not give effect to the policy principles or is inconsistent with the exempt seller related factors or the customer related factors;
- we believe you should apply for a retailer authorisation, given the scale and scope of your energy sales;
- you have provided us with false or misleading information.

7.3 What conditions are attached to an individual exemption?

We want to ensure that customers are not unfairly disadvantaged because they buy energy from an exempt seller rather than an authorised retailer. Authorised retailers are required to offer a range of customer protections, such as hardship programs and access to payment plans. They are also bound by conditions surrounding disconnection, billing and termination of supply. We may impose similar conditions on individual exemptions. We will tailor

²⁵ Rule 160 (approval) and rule 163 (refusal) of the Retail Rules.

²⁶ Rule 160 of the Retail Rules.

²⁷ Our exemption decisions are subject to judicial review (covering questions of law only) under the Administrative Decisions (Judicial Review) Act 1977 (Cth).

²⁸ We will consider whether or not the granting of the exemption is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers, as required by section 205 of the Retail Law.

conditions to the scope and nature of the activities being undertaken, and will discuss these with you as part of the application process.

For example, we would likely apply minimal conditions where the energy sale is:

- provided as a community service
- to customers in remote areas and is the only viable supply of energy
- to large customers only.

We are unlikely to place onerous conditions in these situations, as this may discourage sellers from providing services and may result in customers losing access to a reliable energy supply. Similarly, where a person is selling energy to large commercial customers, we will normally assume that extensive customer protections are unnecessary.

However, some situations warrant more extensive conditions being attached to the individual exemption. For example, we would likely apply conditions that are similar to the obligations placed on an authorised retailer for sellers who sell to:

- small residential customers
- vulnerable customers
- customers who cannot take supply from a retailer of their choice

A description of the types of conditions we may impose is set out at Appendix B.

7.4 What happens if I do not meet the conditions of my individual exemption?

In the first instance we will work with you to ensure your customers continue to receive energy and ensure that any breaches are rectified as soon as possible.

If the non-compliance is serious (for example, if there has been a material failure) we may decide to revoke your exemption.²⁹ As with class exemptions, we will consider what constitutes a ‘material failure’ on a case by case basis. In general, where an exempt person has not complied with their exemption conditions and this has resulted in a significant or widespread impact on their customers, we would consider that there has been a material failure.

When revoking an exemption we must follow the process outlined in section 120 of the Retail Law, which includes:

- giving notice that we intend to revoke the exemption, and our reasons for revocation
- the exempt person being given an opportunity to respond, in writing, showing why the exemption should not be revoked and proposing what they will do to rectify the problem.

²⁹ Section 111 of the Retail Law empowers the AER to revoke exemptions.

If we are not satisfied with your response we may set a time for the revocation to take effect and will inform you of any conditions you must comply with. We will publish our revocation decision on the AER's website.

7.4.1 Location and length of exemption

Most individual exemptions will be issued for a particular site or area, and will limit the sale of energy to a certain class or classes of customers. Generally, we will not issue individual exemptions for multiple sites and only issue them where we consider that doing so is consistent with the Retail Law objective.

The Retail Law does not place a limit on the duration or validity of an exemption. However, we may impose a time limit on the grant or variation of an individual exemption. This will be determined on a case by case basis.

If no expiry date is stated as a condition of exemption, the grant or variation of the individual exemption will continue indefinitely unless it is revoked.

7.4.2 Form of energy sold

In your application you must specify the form of energy—gas or electricity—that you wish to sell. An individual exemption will specify the form of energy you are permitted to sell, and cannot be varied to sell another or additional form of energy. You will need to apply for a new or separate individual exemption to do this.

7.4.3 Difference between retailer authorisation and individual exemptions

A retailer authorisation allows you to sell a specified form of energy (electricity or gas) in all participating jurisdictions and to all classes of customers.³⁰ Authorised retailers are subject to the Retail Law and must do certain things as a condition of their authorisation. An individual exemption allows the holder to sell a specified form of energy (electricity or gas) to a defined class or classes of customer provided they comply with the conditions placed on the exemption. The main difference between an authorisation and an individual exemption is that an exempt seller's energy sales are limited to the terms of their exemption, whereas an authorised retailer's sales are unrestricted. If you plan to expand the activities specified in your exemption you must notify the AER, and may be required to apply for an exemption variation.

The two examples below demonstrate the difference between an authorised retailer and a holder of an individual exemption.

³⁰ Except where limited by state or territory legislation.

Example A

Company A sells gas and electricity to small residential customers. It currently has approximately 500 customers in Victoria. Its core function is the sale of energy (it doesn't provide any other services to its customers) and it plans to expand its business to New South Wales and Queensland. It has also just commenced marketing to small business customers.

Company A will require a retailer authorisation.

Example B

Company B is a small telecommunications company that provides large business customers with telecommunications services. It owns an electricity generation asset at its business premises and, for convenience, wants to sell generated energy to 3 business customers that are located within the same industrial park and 2 rural customers who are adjacent to the park (there is currently no other viable energy supply to these customers). Its business is primarily to sell communications services—not energy—and it does so only because it is mutually convenient for the company and its customers. It does not have any plans to expand its energy selling activities.

Company B would be eligible for an individual exemption.

8. Network exemptions

If an applicant for a retail exemption is selling electricity within an embedded network and is also the owner or operator of that embedded network, it is likely they will also need to be exempt from having to register as a network service provider.³¹

Section 11 of the National Electricity Law (NEL) states that:

a person may only engage in transmission or distribution activities if they are registered with AEMO or if they are exempt from that requirement.

The AER administers both the network and retail exemption processes. The processes are separate, although registration for one or both can be made through the [one form](#).

The [Electricity network service provider registration exemption guideline](#) sets out further information on network exemptions, including classes of exemption and how to apply for a network exemption.

³¹ Network exemptions apply only to networks connected to the national electricity grid, and are not required for off-grid networks.

9. Policy principles

The AER's exemption decisions are informed by the policy principles outlined in the Retail Law. These principles are, in part, aimed at ensuring that exempt customers are not unreasonably disadvantaged compared to customers of authorised retailers. The Retail Law also sets out exempt seller related factors³² and customer related factors³³ that we may consider when making exemption decisions. The Retail Law requires that this guideline include guidance on each of these factors.

The objective of the Retail Law is *to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy*.³⁴

This objective guides us in the exercise of our powers and functions.³⁵

9.1 Exempt selling policy principles

The policy principles established under section 114 of the Retail Law and how they inform our exemption decisions are outlined below.

9.1.1 Divergence in regulatory arrangements

Section 114(1)(a) of the Retail Law states that '*regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers*'.

The retail exemptions framework is aimed at giving exempt customers comparable protections to those provided to retail customers. However, for many exempt sellers the only thing they have in common with authorised retailers is that they sell energy. Exempt sellers are usually smaller businesses, and lack the economies of scale and scope that traditional retailers have. Exempt sellers may sell energy as a matter of convenience, or may sell it incidentally.

Consequently, certain requirements under the Retail Law and Retail Rules may be more burdensome for exempt persons and regulatory divergence is therefore necessary to reflect the different circumstances of exempt selling. Some requirements of the Retail Law and Retail Rules are entirely inappropriate for exempt persons, for example, the price disclosure requirements for retailers' standing offer and market offer prices.³⁶

³² Section 115 of the Retail Law.

³³ Section 116 of the Retail Law.

³⁴ Section 13 of the Retail Law.

³⁵ Section 205 of the Retail Law.

³⁶ These requirements are set out in Division 11 of Part 2 of the Retail Law.

However, the AER considers that an exempt seller that expands the scale and/or scope of its business should be subject to additional regulatory requirements. This reflects our view that energy is an essential service and the full suite of customer protections under the Retail Law should be afforded wherever possible.

9.1.2 Choice of retailer

Section 114(1)(b) of the Retail Law states 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*’.

In principle, all customers should be able to choose their energy retailer. We therefore do not support the creation of infrastructure that deliberately reduces a customer’s ability to exercise choice.

Choice can be limited in embedded networks where access to retailers depends largely on network configuration and the type of meter in place at the premises. These factors are usually determined at the time a building is constructed, and reconfiguration may be expensive and therefore uneconomic.

We do not want to see restrictions on customer choice continue in new developments and redevelopments. We consider that network configuration and metering arrangements should be designed to facilitate customers’ choice of retailer wherever possible. Building regulations, such as the *Building Code of Australia* and jurisdictional development legislation, state that all future multi-unit residential and office building developments must have electricity sub-meters installed.

We will not grant exemptions to new developments where individual meters have not been installed. In future meters should be installed in each individual dwelling in a building, with each tenant having a meter for their own consumption.³⁷ Developers who are contemplating selling electricity through an embedded network should therefore consider appropriate metering arrangements in the initial planning stage of a development so that they do not fall outside the exemptions framework.

As Table 2 shows, some jurisdictions do not require access to retailer of choice in embedded networks. For electricity, access to retailer of choice is currently not available for embedded network customers in the Australian Capital Territory, Tasmania, Queensland or for certain South Australian customers. For gas customers, it is not available to embedded network customers in any jurisdiction.

³⁷ In a multi-storey building, we do not consider a single meter on each storey to be adequate.

Table 2: Current availability of full retail contestability (FRC) in embedded networks

Jurisdiction	Energy type	FRC available within embedded networks?
NSW	Gas	No
	Electricity	Yes
SA	Gas	No
	Electricity	Yes, except for ‘transitional inset consumers’—customers whose lease commenced prior to 1 January 2003
TAS	Gas	No
	Electricity	No
VIC	Gas	No
	Electricity	Yes
ACT	Gas	No
	Electricity	No
QLD	Gas	No
	Electricity	Yes, except for ‘small customers’—customers who consume less than 100 megawatt hours per year ³⁸

Our ability to impose conditions to give exempt customers access to retailer of choice is therefore limited. Where, however, customers have access to a retailer of choice, the exempt person must advise them that they have a choice and must not prevent them from exercising their choice. We may also impose similar conditions on individual exemptions.

Moreover, we do not generally approve of sites that are retrofitted to remove access to choice of retailer. In such cases, we will expect to see evidence that fully informed consent has been obtained.

³⁸ While technically available, the practicability of this is unclear.

9.1.3 Access to customer protections

Section 114(1)(c) of the Retail Law states that '*exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules*'.

Ideally, exempt customers should be given a similar level of protection as comparable customers of authorised retailers. This is not just a matter of equity, but recognises that these customers can be some of the most vulnerable in society and in need of appropriate protections.

However, as noted above, requiring exempt sellers to provide these protections can be burdensome and not practicable in all instances. The customer protections provided under the Retail Law are therefore not automatically extended to all exempt customers.

We have developed a set of general conditions for exempt persons based on the retail customer protections. The extent to which these apply to a particular class exemption depends largely on the nature of the energy sales and the customer type. For example, residential exempt customers will receive the greatest level of protection. Exempt persons selling energy to residential customers under a deemed or registrable exemption will therefore be required to provide such protections as flexible payment plans for customers who identify themselves as experiencing financial difficulty.

Under the Retail Law, retail customer protections are not generally extended to large business customers, and similarly, have not been extended to large exempt customers under the exemptions framework.³⁹

Conditions attached to an individual exemption may more closely resemble the obligations that apply to an authorised retailer, although the inclusion of hardship protections, flexible payment options and other customer protections will be considered on a case by case basis.⁴⁰

Authorised retailers are required to develop complaints handling arrangements based on *Australian Standard ISO 10002-2006 Customer satisfaction – guidelines for complaints handling in organisations* (the Standard). For individual exemptions, we may require the exempt seller to develop complaints handling arrangements based on this Standard.

9.2 Exempt seller related factors

The exempt seller related factors set out in section 115 of the Retail Law are outlined below. This section also provides guidance on how these factors inform our exemption decisions,

³⁹ Large customers do have access to a retailer of last resort if their retailer fails under the Retail Law.

⁴⁰ For example, an agent who manages onselling across a number of sites is likely to be required to comply with a range of obligations that apply to authorised retailers, or may even be required to obtain a retailer authorisation.

and on whether an exemption or a retailer authorisation would be more appropriate under the various scenarios.

9.2.1 Core versus incidental business

Section 115(1)(a) of the Retail Law enables the AER to consider ‘*whether selling energy is or will be a core part of the exempt seller’s business or incidental to that business*’.

Whether the sale of energy is incidental to an energy seller’s business will largely depend on the nature of their relationship with customers.

A sale of energy is not incidental where the seller’s sole relationship with the customer is the sale of energy. Rather, in this situation, selling energy is fundamental to the exempt person’s business. Conversely, a sale of energy may be incidental to a person’s business where the exempt person sells energy as part of a suite of services, and/or has another primary relationship with the customer. For example, a landlord who sells energy to a small tenant also provides the tenant with accommodation. Energy sales are a secondary component of the relationship and the landlord would not be selling energy in this instance if the customer were not a tenant.

If the energy sale is incidental, the seller is likely to be eligible for an exemption. Where it is not incidental an authorisation may be more appropriate.

9.2.2 Characteristics of the exempt seller

Section 115(1)(b) of the Retail Law enables the AER to consider ‘*whether the exempt seller’s circumstances demonstrate specific characteristics that may warrant exemption*’.

The exempt person’s circumstances may relate to the number of customers served, the total volume of energy supplied or the way in which the exempt person operates. An exemption is more appropriate for someone who sells energy on a small scale – both in terms of customer numbers and the volume of energy sold. The way in which an exempt person operates can also be a determining factor. Thus an exemption is likely to be appropriate:

- for someone who has to sell energy to their tenants or residents because of the way the energy infrastructure is set up at their property (for example, at a caravan park)
- where energy is generated on or near a site to reduce transmission requirements and losses through transportation
- where energy is generated and sold off-grid and the seller is the only viable source of energy (for example, in a remote community).

Some energy selling arrangements will not fall into an existing exemption class and will need an individual exemption. We will assess such arrangements on a case by case basis and attach

conditions as appropriate. We are concerned to not disadvantage customers in these types of arrangements by refusing an exemption, or by imposing conditions that will make it uneconomic for the exempt person to continue to supply customers with energy.

9.2.3 Profit intentions of the exempt seller

Section 115(1)(c) of the Retail Law enables the AER to consider ‘*whether the exempt seller is intending to profit from the exempt selling arrangement.*’

An energy seller’s profit motive can help determine whether energy selling is incidental or not. Where someone sells energy to make a profit, rather than to recover costs, the sale is less likely to be incidental. Depending on the scale of the energy sold, a retailer authorisation may be more appropriate for the seller than an exemption.

Where an exempt person is intending to profit from selling energy we will need to be satisfied that there are appropriate pricing protections in place for certain exempt customers (in particular, residential customers).

An exempt seller must not charge a small residential customer more than the local area retailer’s standing offer. Similarly, the exempt person should only be able to recover the reasonable costs that they incurred as a result of a customer’s late payment (see condition 7).

We will also impose a pricing condition on exempt sellers who are selling to retail or commercial customers in embedded networks where there is no access to choice of retailer. Sellers will not be permitted to charge those customers more than the local area retailer’s standing offer. For the purposes of this condition, we consider that a customer has access to choice of retailer where that customer can take supply from an authorised retailer by switching immediately, rather than having to negotiate a new connection with a distributor and/or change metering infrastructure.

Further, we do not support exempt sellers passing on an ‘administration’ or similar fee to their customers to circumvent any capping of energy charges required under an exemption condition.

9.2.4 Amount of energy likely to be sold

Section 115(1)(d) of the Retail Law enables the AER to consider ‘*whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets.*’

We may compare the amount of energy that an exempt person sells to the amount sold by comparable authorised retailers. When the scale of a person’s energy sales increases (and the more their operations resemble those of an authorised retailer), they may be required to obtain a retailer authorisation. If an exemption is granted for ‘significant’ operations, the

conditions placed on the exempt person will likely be similar to those applying to authorised retailers.

The amount of energy sold may also become significant where an exempt person sells energy at multiple sites. Where an energy seller intends to operate at multiple sites and is not covered by a deemed or registrable exemption, they may need to apply for either an individual exemption for each site or a retailer authorisation. We will not usually grant an individual exemption covering multiple sites but may consider doing so in certain circumstances.

9.2.5 Appropriate obligations governing the applicant's behaviour

Section 115(1)(e) of the Retail Law enables the AER to consider '*the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow appropriate obligations to govern the applicant's behaviour rather than requiring the applicant to obtain a retailer authorisation*'.

In general, the closer an energy seller's operations are in scale and scope to those of an authorised retailer, the more closely their exemption conditions will mirror the general retailer obligations. Where an exempt seller's obligations largely replicate those applying to a retailer, a retailer authorisation may actually be more appropriate.

We have also considered the requirements of state or territory tenancy legislation in developing exemption classes and conditions. Some jurisdictional legislation regulates aspects of energy selling, for example the cost of utilities and how these costs should be recovered in a simple tenant/landlord relationship. However, this legislation is designed to address tenancy—and not energy—matters. Exemption conditions therefore supplement jurisdictional legislation, which on its own does not provide energy-specific protections for exempt customers.

9.2.6 Costs and benefits of obtaining a retailer authorisation

Section 115(1)(f) of the Retail Law enables the AER to consider '*the likely cost of obtaining a retailer authorisation and of complying with this Law and Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller*'.

To obtain a retailer authorisation, a person needs to meet three entry criteria specified in the Retail Law.⁴¹ These entry criteria are:

- organisational and technical capacity—the person must have the necessary organisational and technical capacity to meet the obligations of a retailer
- financial resources—the person must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer

⁴¹ Section 90 of the Retail Law.

- suitability criterion—the person must be a suitable person to hold a retailer authorisation.

The process of applying for a retailer authorisation is rigorous and includes extensive information requirements. In addition, authorised retailers must comply with all relevant regulatory obligations under the Retail Law and the Retail Rules. The regulatory costs for a small energy seller that lacks the economies of scale and scope of an authorised retailer can be substantial. An exemption may therefore be preferable to an authorisation where these costs are likely to exceed the customer benefits, particularly if the exempt customers receive protections similar to those that retail customers receive as a condition of the exemption.

Applying for a retailer authorisation is free.

9.3 Customer related factors

Section 116 of the Retail Law sets out a number of customer related factors. These are outlined below, along with guidance on how we will apply these factors in our exemption decisions.

9.3.1 Characteristics of the exempt customers

Section 116(a) of the Retail Law enables the AER to consider ‘*whether the characteristics of the exempt customers or the circumstances in which energy is to be sold to them by the applicant are such as to warrant exemption*’.

Exempt residential customers need a higher level of protection than large exempt customers (who can be assumed to have more bargaining power and therefore a greater ability to protect their own interests). We consider that, where energy is sold to large customers, few conditions are necessary.

Another relevant customer characteristic is whether the energy is being sold under a contract negotiated on behalf of a group of customers. We will expect evidence that all customers have given their explicit informed consent to the arrangement.

A ‘brownfield’ site is a site that is established and serviced by an authorised retailer but later retrofitted. For us to allow an exemption for a brownfield site, we must be satisfied that the majority of customers within the network have agreed to take supply from an exempt seller rather than a retailer. We will not grant an individual exemption where the customers’ preference is to buy energy from an authorised retailer. A further consideration for us will be the ability of customers to continue to buy energy from a retailer of their choice after the retrofit. We may allow an exemption where choice of retailer is maintained and the customer is expected to benefit from the proposed arrangement,

Exemption classes D2, D3 and D4 apply only to brownfield sites that are retrofitted with the appropriate metering before 1 January 2015. After this time, any person wishing to sell energy at a retrofitted brownfield site will need to apply for an individual exemption.

9.3.2 Access to appropriate rights and protections

Section 116(b) of the Retail Law enables the AER to consider ‘*the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow the exempt customers access to appropriate rights and protections rather than requiring the applicant to obtain a retailer authorisation*’.

We can impose conditions on exempt persons to provide an appropriate level of protection for customers. The conditions that apply to most deemed and registrable exemptions are outlined [here](#). Conditions for individual exemptions will be based on retail customer protections but determined on a case by case basis.

Most residential and small business customers have some protections under their respective tenancy legislation or agreements. These protections, when complemented by conditions imposed by us, will go some way to matching the customer protections provided by the Retail Law. The conditions placed on individual exemptions for large and specialist onsellors will likely also resemble those that apply to authorised retailers.

9.3.3 Other relevant customer related matters

Section 116(c) of the Retail Law enables the AER to consider ‘*any other customer related matter the AER considers relevant*’.

We want to ensure, where possible, that exempt customers are not denied the protections that customers purchasing from an authorised retailer receive. However, as previously noted, exempt selling arrangements may present consumer protection issues, in particular for residential consumers. In some jurisdictions, energy rebates, social programs and energy efficiency programs are not available to customers of exempt sellers. Therefore, when imposing conditions on individual exemptions we may include requirements that relate to:

- small customer access to full retail competition
- energy Ombudsman schemes membership
- access to rebates, social programs and energy efficiency measures.

9.4 Other relevant seller related matters

Section 115(1)(g) of the Retail Law enables the AER to consider ‘*any other seller related matter the AER considers relevant*’.

We consider that unmetered supply, and co-generation, tri-generation or other sustainable energy arrangements, are additional relevant matters. These are discussed below.

Unmetered supply

Metering requirements are determined by state or territory legislation. The Retail Rules stipulate that we can impose conditions on exempt persons for or with respect to installing, maintaining and reading of meters of exempt customers in accordance with jurisdictional energy legislation.⁴²

Although we do not support unmetered energy selling, we will consider allowing exemptions in some circumstances.⁴³ One is where this is permitted under jurisdictional legislation. Another is in “legacy” arrangements.⁴⁴ Lastly there is unmetered gas supply where the gas is supplied for limited purposes (for example, bulk hot water).

We will generally not allow residential customers to be charged for energy unless that energy is separately metered,⁴⁵ but have made provision for unmetered selling in commercial tenancies (for example, bill splitting) by creating a class exemption (R7). This class allows registration of those *currently* selling unmetered energy and will expire when the Retail Law takes effect in the sellers’ respective jurisdictions. All subsequent retail or commercial tenancies will need appropriate sub-metering in order to obtain an exemption. The option of obtaining an individual exemption will remain open to people selling unmetered energy. In order to approve such an application we would need to be satisfied that adequate consumer protections are in place.

Decentralised energy: co-generation, tri-generation and sustainable energy

There has been a growth in various forms of “decentralised energy” in recent years. Decentralised energy refers to energy that is generated onsite, for example, to produce ‘clean’ energy, to utilise waste heat, or to avoid or minimise transportation costs. Co-generation, tri-generation and sustainable energy are all forms of decentralised energy.

⁴² Rule 152(5) of the Retail Rules.

⁴³ Many jurisdictions prohibit energy charges being passed on to residential tenants unless consumption is separately metered.

⁴⁴ Legacy arrangements are arrangements that were made before the National Energy Retail Law and Rules commenced in a particular jurisdiction. That is, the AER will only support these arrangements where they are long-standing arrangements that are mutually convenient to the parties.

⁴⁵ Unless in Queensland under tenancy legislation, where permitted.

We note that the costs associated with developing embedded networks to support co-generation or tri-generation can be significant. In these instances the network operator may not be able to recoup their investment costs through distribution charges alone and may need to sell energy to help offset these costs.

It is challenging to develop a class of exemption to capture these diverse activities and the guideline does not explicitly address co-generation, tri-generation or sustainability initiatives. Because of their uniqueness we consider it more appropriate, at least in the short term, for decentralised energy selling—provided it is in the long term interests of energy consumers—to be covered by individual exemptions.

The production of solar energy is another form of decentralised energy. Increasingly, solar panel installation businesses are also selling electricity. An example would be where a business installs panels at residential or commercial premises and retains ownership of the panels. These arrangements allow people to avoid having to pay the upfront installation costs and instead, to lease the panels over a long period of time.

Again, because of the diversity of the business models, we have not developed a specific exemption class for any solar panel related sale of energy. People or businesses who sell energy through solar panels may still be eligible for a generic class exemption (for example, a commercial landlord who sells energy to small retail tenants where some of the energy is sourced through solar panels may register under the R1 class exemption). If a general exemption does not apply, the person or business will need to apply for an individual exemption or retailer authorisation.

We will consider the following factors when assessing long term contracts for the sale of energy to residential customers:

- *contract length*: we do not consider it appropriate to lock customers into long term contracts (10 or more years)
- *access to consumer protections*: where a person sells energy to small or vulnerable customers we will closely scrutinise the protections they provide to customers, for example, hardship protection, access to payment plans, disconnection arrangements
- *metering arrangements*: we strongly encourage any sale of energy to be metered so that there is a direct relationship between a customer's consumption and the costs and charges they face.

10.Glossary

ABN	Australian Business Number
ACN	Australian Company Number
AER	Australian Energy Regulator
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission
DNSP	Distribution network service provider
FRC	Full Retail Contestability
MWh	Megawatt Hour
NEL	National Electricity Law
NEM	National Electricity Market
NGL	National Gas Law
NMI	National Meter Identifier
Public Register	Public Register of Authorised Retailers and Exempt Sellers
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort
TJ	Terajoule

11.Dictionary

body corporate means a controlling body of a scheme constituted under state or territory strata titles legislation, the members of which are lot owners (or their representatives), and includes an owners' corporation but is not a body corporate for the purposes of the *Corporations Act 2001* (Cth).

brownfield site means a site that is established and serviceable by a retailer but later retrofitted to allow onselling.

Disconnection or de-energisation of premises means—

1. in the case of electricity—the opening of a connection, or
 2. in the case of gas—the closing of a connection,
- in order to prevent the flow of energy to the premises.

energy means electricity or gas.

energy Ombudsman scheme means a scheme associated with the energy Ombudsman for the relevant jurisdiction as prescribed in the National Energy Retail Regulations.

exempt customer means a person to whom an exempt person sells energy and who would be a retail customer of the seller if the seller were a retailer.

exempt person or exempt seller means a person who is exempted by the AER under a deemed, registered or individual exemption from the requirement to hold a retailer authorisation. Alternatively referred to as an exempt seller.

large customer means a business customer who consumes energy at business premises at or above the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined – 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas, as per the National Energy Retail Regulations.

meter means any device that measures the quantity of energy passing through it or records the consumption of energy at the customer's premises.

onselling means an arrangement where a person acquires energy from a retailer following which the person acquiring the energy or a person acting on their behalf sells energy for use within the limits of premises owned, occupied or operated by the person.

public register means the AER's Public Register of Exempt Sellers under r. 164 of the National Energy Retail Rules. It includes a list of all holders of registrable exemptions and individual exemptions.

residential customer means a customer who buys energy principally for personal, household or domestic use at premises.

retailer means a person who is the holder of a retailer authorisation for the purposes of section 88 of the National Energy Retail Law.

small customer means a customer—

1. who is a residential customer, or
2. who is a business customer who consumes energy at business premises below the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined – 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas, as per the National Energy Retail Regulations.

Appendix A: Classes of exemption

Table 1: Classes of deemed exemptions

Activity	Deemed Exemption	Application for individual exemption required	Conditions
<p><i>Class D1</i></p> <p>Persons selling metered energy to less than ten small retail or commercial customers within the limits of a site that they own, occupy or operate, where the relationship a landlord/lessee relationship.</p>	Deemed exemption for current and future sellers.	N/A	<p>A number of conditions cannot apply to this class of exemption as they are specific to residential customers (for example, life support and concessions).</p> <p>The conditions that apply are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18 and 19.</p>

Activity	Deemed Exemption	Application for individual exemption required	Conditions
<p><i>Class D2</i></p> <p>Persons selling metered energy to less than ten small residential customers within the limits of a site that they own, occupy or operate, by body corporate, or where the relationship is a landlord/lessee relationship.</p>	<p>Deemed exemption for current and future sellers.</p> <p>Brownfield sites must be retrofitted with appropriate metering. Such sites will only be eligible for this exemption if retrofitting is completed by 1 January 2015.</p>	<p>N/A</p>	<p>All of the general conditions apply to this class of exemption. However, the disconnection conditions will not apply where state or territory tenancy legislation sets out a process for the disconnection of a customer.</p> <p>Conditions 1 – 19 apply.</p>
<p><i>Class D3</i></p> <p>Metered energy selling to short term residents in holiday accommodation.</p>	<p>Deemed exemption for current and future sellers.</p> <p>Brownfield sites must be retrofitted with the appropriate metering. Such sites will only be eligible for this exemption if retrofitting is completed by 1 January 2015.</p>	<p>N/A</p>	<p>Given the nature of these customers, a number of the core conditions are not relevant, for example, customer choice of retailer and concessions. Conditions have been limited to requiring that customers are fully informed of the charges they will be liable for and are billed at appropriate intervals.</p> <p>The conditions that apply are: 1, 2, 3, 4, 6, 7 and 14.</p>

Activity	Deemed Exemption	Application for individual exemption required	Conditions
<i>Class D4 - DELETED</i>	This class exemption has been revoked, and has been incorporated into class D2.	N/A	N/A
<i>Class D5</i> Unmetered gas selling to individual premises where gas is used for limited purposes.	Deemed exemption for current and future sellers.	N/A	A number of conditions cannot apply to this class of exemption (for example, life support) as they are specific to electricity customers, or require customers to be separately metered. The conditions that apply are: 1, 2, 3, 4, 5, 6, 7, 8, 14, 15 and 18,
<i>Class D6</i> Unmetered electricity selling in Queensland to small customers.	Deemed exemption for current onsellors and those who commence onselling before 1 January 2015. For those persons, the exemption continues unless it is revoked by the AER.	Individual exemption for those who commence onselling on or after 1 January 2015.	All of the general conditions apply to this exemption class, however a number of these conditions have been adjusted to account for the fact that customers are not separately metered The conditions that apply are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19.

Activity	Deemed Exemption	Application for individual exemption required	Conditions
<i>Class D7- DELETED</i>		N/A	N/A
<i>Class D8</i> Exemption for persons engaged in the selling of energy to a related company.	Deemed exemption for current and future sellers.	N/A	No conditions

Table 2: Classes of registrable exemptions

Activity	Registrable Exemption	Application for individual exemption required	Conditions
<p><i>Class R1</i></p> <p>Persons selling metered energy to ten or more small retail or commercial customers within the limits of a site that they own, occupy or operate, where the relationship a landlord/lessee relationship</p>	<p>Registrable exemption for current and future sellers.</p>	<p>N/A</p>	<p>A number of conditions do not apply to this class of exemption as they are specific to residential customers (for example, life support and concessions).</p> <p>The conditions that apply are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18 and 19.</p>
<p><i>Class R2</i></p> <p>Persons selling metered energy to ten or more small residential customers within the limits of a site that they own, occupy or operate, by body corporate, or where the relationship is a landlord/lessee relationship</p>	<p>Registrable exemption for current sellers and those who commence selling before 1 January 2015. For those persons, the exemption continues unless revoked by the AER.</p>	<p>Individual exemption for those who commence selling on or after 1 January 2015.</p>	<p>All of the general conditions apply to this class of exemption.</p> <p>Conditions 1 – 19 apply.</p>
<p><i>Class R3</i></p> <p>Retirement villages operating under state or territory retirement village legislation and selling metered energy.</p>	<p>Registrable exemption for current sellers and those who commence selling before 1 January 2015. For those persons, the exemption continues unless revoked by the AER.</p>	<p>Individual exemption for those who commence selling on or after 1 January 2015.</p>	<p>All general conditions apply to this class of exemption.</p> <p>Conditions 1 – 19 apply.</p>

Activity	Registrable Exemption	Application for individual exemption required	Conditions
<p><i>Class R4</i></p> <p>Metered energy selling in caravan parks, residential parks and manufactured home estates to residents who principally reside there.</p>	<p>Registrable exemption for current and future sellers.</p>	<p>Individual exemption only where exempt person believes conditions of exemption are not appropriate for their situation.</p>	<p>All of the general conditions apply to this class of exemption.</p> <p>Conditions 1 – 19 apply.</p>
<p><i>Class R5</i></p> <p>Metered energy selling to large customers.</p>	<p>Registrable exemption for current and future sellers.</p>	<p>N/A</p>	<p>Large retail customers do not receive customer protections under the Retail Law and Retail Rules, so for consistency, only minimal protections are extended to large exempt customers.</p> <p>The conditions that apply are 1 and 13.</p>

Activity	Registrable Exemption	Application for individual exemption required	Conditions
<p><i>Class R6</i></p> <p>Persons selling metered energy to small business customers at a site or premises adjacent to a site that they own, occupy or operate</p>	<p>Registrable exemption for current and future sellers.</p>	<p>N/A</p>	<p>A number of conditions do not apply to this class of exemption as they are specific to residential customers (for example, life support and concessions).</p> <p>The conditions that apply are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19.</p>
<p><i>Class R7</i></p> <p>Persons selling unmetered energy to small business customers at a site or premises adjacent to a site that they own, occupy or operate, where the selling commenced prior to the commencement of the National Energy Retail Law in the relevant jurisdiction.</p>	<p>Registrable exemption for current sellers only.</p>	<p>From Retail Law commencement in the relevant participating jurisdiction.</p>	<p>A number of conditions have been adjusted to account for the fact that customers are not separately metered.</p> <p>The conditions that apply are: 1, 2, 3, 5, 7, 9, 10, 13, 14, 15, 17, 18, 19.</p>

Appendix B: Information about class exemption conditions

This section outlines the conditions that we have identified as core. They are based on the retail customer protections provided under the Retail Law.

Note, not all of these conditions apply to all exemption classes. The specific obligations under each condition will vary from class to class and will depend on whether the class relates to residential or commercial customers. Sellers should check the full list of conditions for their particular class (which can be found on the [AER's website](#)) in order to confirm their obligations.

Condition 1—Obligation to supply

This condition is intended to ensure that in jurisdictions where embedded network customers do not have access to choice of retailer, or where the cost of accessing choice of retailer is prohibitively expensive, the customers can obtain energy supply. This will protect customers where the exempt person is their only accessible energy provider.

Condition 2—Information provision

This condition is intended to ensure that exempt customers are given detailed information at the time they enter into the energy purchase agreement with the exempt person (or at any other time, by request). Where choice of retailer is available, customers can use this information to decide whether they will buy energy from the exempt person or from an authorised retailer.

This condition will ensure that customers are informed of all tariffs, fees and charges to allow them to make informed decisions about their energy consumption.

This condition requires the exempt person to provide residential customers with information on the available payment plans and hardship protections, including the process residential customers should follow to notify the exempt person that they are experiencing financial difficulties and may be unable to pay their energy bills.

Condition 3—Billing and payment arrangements

This condition is intended to ensure that customers receive bills at regular intervals. The requirement to bill customers at least every three months is taken from the Retail Rules requirements placed on authorised retailers.⁴⁶ This helps reduce the risk of a customer being presented with a large bill that covers a long time period.

⁴⁶ Rule 24 of the Retail Rules.

This condition requires exempt persons to offer flexible payment options to residential customers who identify themselves as experiencing financial difficulty. It also sets out what information must be included in an exempt customer's bill.⁴⁷ The information requirements are intended to provide customers with consumption information and allow them to make informed decisions about their consumption. The detailed metering information will also assist the exempt customer to identify metering or billing errors.

Condition 4—Estimation as basis for bills

This condition addresses situations where bills based on actual meter reads are not possible, for example when there is a meter failure. This condition is intended to ensure that customers who are separately metered are, where possible, billed according to their metered consumption rather than a consumption estimate. The requirement on exempt persons to base estimates on historical metering data or, where this is not available, average usage by a comparable customer is equivalent to the requirement that applies to authorised retailers.⁴⁸

Condition 5—Pay-by date

This condition is intended to allow customers enough time after receiving their bill to organise payment. This is particularly necessary for customers who are on a fixed or low income. The timeframe for payment (13 business days) reflects the requirements that apply to authorised retailers.⁴⁹

Condition 6—Receipts

This condition will ensure that both exempt persons and their customers have a record of any amount paid for energy. This condition is particularly important where customers are making payments to the seller for more than one service, for example, for energy and accommodation.

Condition 7—Pricing

This condition ensures that residential exempt customers, and small business customers who cannot access retailer of choice, are charged no more than the standing offer price of the local area retailer for equivalent customers, and are not subject to any charges that cannot be charged by the relevant local area retailer. Local area retailer prices are published on the local area retailer's website.⁵⁰

⁴⁷ Rule 25 of the Retail Rules.

⁴⁸ Rule 21 of the Retail Rules.

⁴⁹ Rule 26 of the Retail Rules.

⁵⁰ Section 23 of the Retail Law.

This condition is designed to ensure that in pricing terms, residential customers of exempt sellers are not disadvantaged relative to residential customers of an authorised retailer, and is required by rule 152(4) of the Retail Rules.

Condition 8 – Undercharging and overcharging

This condition is intended to ensure that where customers are undercharged they are given sufficient time to pay the undercharged amount. It limits the exempt person to recovering only the amount undercharged in the 9 months before the date on which the customer was notified of the undercharging.

This condition is intended to ensure that customers who are overcharged have the amount overcharged repaid within 10 business days of the exempt person becoming aware of the overcharging.

Condition 9—Payment difficulties and disconnection or cessation of supply

This condition is intended to ensure that customers of exempt persons cannot be disconnected without due cause. Residential customers who inform the exempt person that they are experiencing payment difficulties must be provided with information on energy efficiency and must not be charged fees for late payments.

The condition sets out the process the exempt person must follow before proceeding to disconnect a customer.

Further it allows for disconnection where the supply of energy would be unsafe, with reconnection required once the safety issue has been rectified.

Condition 10—When disconnection or cessation of supply is prohibited

This condition is intended to protect customers against being disconnected in a number of situations, including when someone at the residence depends on life support. It also ensures that customers are not disconnected at a time when reconnection could not occur within a reasonable time, or when there is an unresolved disconnection complaint, or during extreme weather restrictions.

Condition 11—Reconnection of supply

This condition ensures that the exempt person reconnects, as soon as practicable, a customer who has been disconnected and paid any outstanding charges (including reconnection charges) within 10 business days of the disconnection.

Condition 12—Concessions and rebates

This condition ensures that exempt customers who are eligible for government or non-government energy rebates, concessions or assistance under a relief scheme are able to access them and apply them to energy bills. This condition is necessary because an exempt customer

may not be able to claim a rebate, concession or assistance without the cooperation of the exempt person.

Condition 13—Choice of retailer

This condition ensures that where a customer is eligible to buy energy from a retailer of their choice, the exempt person will not prevent them from doing so.

Condition 14—Contact details

This condition ensures that exempt persons are readily accessible to customers should they wish to make inquiries or complaints.

Condition 15—Dispute resolution

This condition ensures that exempt persons will make reasonable endeavours to resolve customer disputes, and advise affected customers of any relevant external complaint hearing bodies that may be able to assist with their dispute.

Condition 16—Life support customers

This condition ensures that exempt persons inform the embedded distribution network operator, and the exempt person's own retailer and distributor, if they service any customer who is dependent on life support equipment. Records of life support customers must be kept.

Condition 17—Continuity of supply

This condition ensures that the exempt person informs customers and the AER of any discontinuance of their supply triggered by the disconnection of the exempt person and more generally, where there is any likelihood that they will be unable to continue selling energy.

Condition 18 – Termination of energy supply agreement

This condition ensures that the energy supply arrangements between the exempt person and its customers are only terminated if particular requirements are met.

Condition 19—Maintaining records

This condition ensures that exempt persons maintain billing information about their customers so that this information can be accessed at a later date if required.

Appendix C: Information required for individual exemption applications

We require the following general information to be provided in your application for the grant of an individual exemption:

- 1 Your legal name. If you are a, body corporate or community corporation, please indicate this.
- 2 Your trading name if different to your legal name.
- 3 Australian Business Number (ABN) or Australian Company Number (ACN).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 Why are you seeking an individual exemption, and why do you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances?
- 7 The address of the physical site at which you intend to sell energy. Please provide a map of the site. Please also include a brief description of this site and its current and future use/s.
- 8 Please indicate the nature of the activities you will be undertaking (the characteristics of your business).
- 9 The form of energy for which the individual exemption is sought (electricity or gas). For electricity, please state whether the network you propose to sell within is directly or indirectly connected to the main grid or is (or will be) an off-grid network (where the off-grid network is located in a state or territory that has elected to bring off-grid networks under this exemptions framework).
- 10 Please indicate whether you are establishing, or have established, energy supply in an area where there are no other viable energy supply arrangements available.
- 11 The date from which you intend to commence selling energy, whether upon registration or at some later date.
- 12 Mailing addresses for residences at the site (where applicable). The AER may use this information to ensure that potential customers are able to participate in its consultation process.
- 13 Do you have any experience in selling energy? If so, please provide a brief summary including:

- date/s and location/s of previous operations
 - form/s of energy sold
 - scale of operations (that is, the number, size and type of customers)
 - an explanation of which activities were conducted in-house and which were contracted out to third parties.
- 14 Do you currently hold, or have you previously held or been subject to, an energy selling exemption, a class energy selling exemption or a retail licence (retailer authorisation) in any state or territory? If so, please provide details of this.

Particulars relating to the nature and scope of the proposed operations

To determine whether it is appropriate to exempt you from the requirement to hold a retailer authorisation, we need information on the nature and scope of the operations you propose to conduct. We require you to answer the following questions:

- 1 Will your customers be your tenants? Please outline whether the tenancies are of a residential or commercial nature. Are they covered by residential or retail tenancy, or other legislation governing accommodation that is a person's principal place of residence (for example, retirement villages legislation, residential parks or manufactured home estates legislation) in your state or territory?
- 2 Are you providing other services (for example, accommodation/leasing of property) to persons on the site, to whom you intend to sell energy, or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please outline what these services are, and the contractual or leasing arrangements under which these services are being provided.
- 3 The total number of dwellings/premises at the site, with a breakdown between residential, small business and large business customers, as defined for the jurisdiction in which you intend to operate. Please also indicate the number of these dwellings/premises you anticipate selling energy to.
- 4 Will you be onselling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?
- 5 If purchasing from an authorised retailer, have you formed, or do you intend to form, a bulk purchase contract with the energy retailer, and how far into the future does this, or will this, contract apply? If so, please provide a brief summary of this arrangement.
- 6 An estimation of the aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and mega joules or gigajoules for gas) and the average expected consumption of customers for each type of customer you service (that is, residential customers and retail or commercial tenancy customers).

- 7 Will your customers be wholly contained within a site owned, controlled or operated by you? (For the purposes of this question, a body corporate may be taken to ‘operate’ premises it oversees).
- 8 Will each premises/dwelling be separately metered? If the application concerns a new development or a redevelopment and customers will not be separately metered, please explain why not.
- 9 What types of meters will be used? For example, basic/accumulation meters, manually read interval meters or remotely read interval meters? Will these meters allow your customers to purchase energy from a retailer of their choice?
- 10 What accuracy standards apply to the meters? Do the meters comply with Australian Standards? If so, specify which Standard or Standards.
- 11 If customer dwellings/premises are separately metered, how often and by whom do you propose the meters are read?
- 12 How will you determine energy charges if customers are not separately metered?
- 13 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 14 What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues?
- 15 What energy rebates or concessions are available for your customers? Please indicate the process involved for the customer to claim these.
- 16 Will you make energy efficiency options available to your customers? Will your network incorporate solar or other generation options for sustainability purposes?
- 17 Please provide any further information that you consider would assist the AER to process your application.

Information requirements on application for the variation of an individual exemption

We recommend that you communicate with us prior to submitting an application for the variation of an individual exemption. The information required to support this application revolves around changes to the information that you provided us when your original application was made (when the exemption was granted by the AER rather than under state or territory application legislation for the transition to this exemptions framework), and reasons for the variation. Discussions prior to the submission of your application may therefore avoid time being spent on the provision of unnecessary or irrelevant information.

Please note that we may request further information from you to allow us to better assess your application for variation of exemption against the objective of the Retail Law, the policy principles, exempt seller related factors and customer related factors.

Particulars required for the variation of an individual exemption

We require the following information to be provided in your application for the variation of an individual exemption:

- 1 An explanation of why you are seeking a variation to your individual exemption and an explanation of why you believe an exemption remains appropriate for your changed circumstances, rather than requiring a retailer authorisation.
- 2 Where relevant, a list of the conditions of exemption that you believe need to be varied.
- 3 A list of changes to any of the information that you provided the AER when your original application for the individual exemption was submitted. If you have retained an electronic copy of the information requirements submitted with your original application, we encourage you to submit a version of this with tracked changes. If your individual exemption was not issued by the AER (i.e., it is a continuation of an exemption issued by a state or territory and transitioned to the AER through application legislation), we will advise you whether you also need to address the information requirements set out above.

Appendix D: Information for customers of exempt sellers

If you buy your electricity or gas from an exempt seller, you have protections and rights. These may be different to those of an authorised retailer's customers. If you are a residential customer (for example, a long term resident in a caravan park, a resident in a retirement village or apartment building, or a tenant), your customer protections will include:

- flexible payment options if you are experiencing financial difficulty
- clear and set time frames for receiving and paying bills
- complaints handling arrangements
- energy charges that are no greater than the standing offer prices an authorised retailer can charge contracted customers
- clear and reasonable disconnection procedures.

If you are a tenant you may also have energy related rights and obligations under your tenancy agreement.

Retail or commercial customers will have such rights as:

- clear and reasonable disconnection procedures
- clear and set time frames for receiving and paying bills
- energy charges that are no greater than the standing offer prices an authorised retailer can charge contracted customers (small retail and commercial customers)
- complaints handling arrangements.

Exempt sellers must provide information to customers about their rights at the beginning of the contract or agreement. Your exempt seller must also give you a copy of their exemption conditions and explain their obligations to you. A list of conditions is available on our website, along with further information about your rights as a customer.

If you feel that your exempt seller is not meeting their conditions, or you would like more information about exempt selling generally, you should contact us. You can email us at aer.inquiry@ aer.gov.au with any questions, or phone the AER/ACCC Infocentre on 1300 585 165 (Australian callers) or + 612 6243 1305 (overseas callers).