



Our Ref: 62369  
Contact Officer: Susan Faulbaum  
Contact Phone: 08 8213 3463

8 September 2017

Mr Mark Smithers  
Operations Manager Macquarie Centre  
Corner of Herring & Waterloo Roads  
North Ryde NSW 2113

Dear Mr Smithers

**AMP Capital Investors application for an individual retail exemption**

I refer to your application of 20 June 2017 for an individual exemption under the National Energy Retail Law (Retail Law) for AMP Capital Investors Limited (AMP Capital) (ABN 59 001 777 591) to sell electricity at Macquarie Shopping Centre, Corner of Herring Road and Waterloo Road, North Ryde NSW 2113.

I am writing to inform you that the Australian Energy Regulator (AER) has considered AMP Capital's application and decided, on 8 September 2017, to grant an individual exemption in accordance with s.110 of the Retail Law.

In accordance with the National Energy Retail Rules, the AER has published the application on its website, and sought submissions from interested parties.<sup>1</sup>

The AER has considered the policy principles relating to exempt selling in s. 114 of the Retail Law, being:

- a) regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers,
- b) exempt customers, should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable retail customers in the same jurisdiction have that right,
- c) exempt customers, should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and Rules.

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<sup>1</sup> r. 155(3) and 156, National Energy Retail Rules.

In making its decision, the AER is guided by the objective of the Retail Law<sup>2</sup>, the exempt seller factors,<sup>3</sup> the customer related factors,<sup>4</sup> and the assessment approach outlined in the AER (Retail) Exempt Selling Guideline.

The AER is satisfied that AMP Capital should be exempt from the requirement to hold a national retailer authorisation for the sale of electricity at Macquarie Shopping Centre, having regard to the considerations outlined above. If AMP Capital wishes to change the way it sells electricity it should contact the AER as it may need to apply for an authorisation or another exemption. If these activities are not covered by this exemption, AMP Capital may be in breach of s. 88 of the Retail Law and we may take enforcement action or otherwise seek to ensure compliance.

The exemption is subject to the conditions set out at Appendix A of the attached Instrument of Exemption. AMP Capital must advise the AER in writing by **9 October 2017** whether it accepts these conditions. Please note, the exemption will not take effect until then.

If you have any queries, or would like to discuss this further, please contact Susan Faulbaum on 08 8213 3463.

Yours sincerely



Sarah Proudfoot  
General Manager  
Retail Markets

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<sup>2</sup> The national energy retail objective 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”. (s. 13, Retail Law)

<sup>3</sup> s. 115, Retail Law.

<sup>4</sup> s. 116, Retail Law.

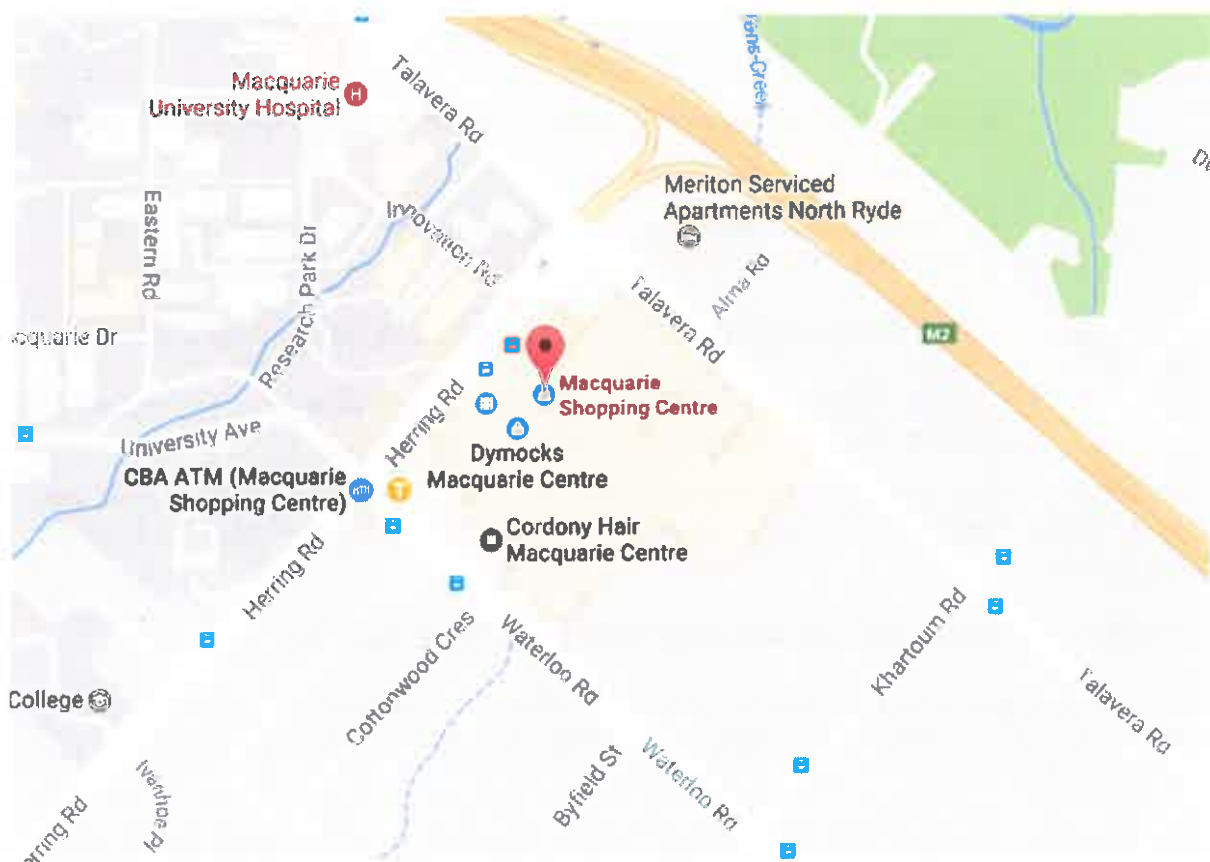
## Schedule 1: Instrument of Exemption

### INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO HOLD A RETAILER AUTHORISATION

**DATE OF ISSUE: 8 September 2017**

**FORM OF ENERGY: Electricity**

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator on 8 September 2017 decided to grant AMP Capital Investors Limited (AMP Capital) (ABN 59 001 777 591) an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to the conditions set out Appendix A. This exemption applies to the sale of electricity to the premises at Macquarie Shopping Centre, Corner of Herring Road and Waterloo Road, North Ryde NSW 2113. (see map at below).



## **Appendix A – Conditions of exemption**

### **Condition 1 – Provision of information to tenants regarding embedded network retrofit**

1. The exempt person must provide notice, by letter, to tenants of the building to be retrofitted at Macquarie Shopping Centre, corner of Herring Road and Waterloo Road, North Ryde NSW 2113, of the plan to install an embedded network.
2. The exempt person must provide each tenant with the following information regarding the installation of the embedded network:
  - a. a written notice which provides the tenant with information concerning:
    - i. the tenant's right to choose their own retailer, even within an embedded network
    - ii. the tenant's ability to enter into an energy only contract<sup>5</sup> with an authorised electricity retailer
    - iii. the obligations regarding electricity offer matching, as set out in conditions 3 and 4
    - iv. the obligations regarding duplication of network charges, as set out in condition 5.
  - b. a copy of the electricity sales agreement to be offered by the exempt person
  - c. the contact details of a representative of the exempt person who will address any concerns and queries relating to the planned retrofit.
3. The exempt person must ensure that information regarding the proposed retrofit is clearly, fully and adequately disclosed, and that it has regard to a person's capacity to provide consent.

### **Condition 2 – Collecting and recording explicit informed consent**

1. The exempt person must provide the tenant with the information set out in condition 1, prior to seeking the tenant's explicit informed consent to the retrofitting of the embedded network.
2. The exempt person must keep records of the consent obtained. These records must:
  - a. include copies of the information provided to tenants
  - b. include records of consultations and meetings held with tenants
  - c. identify and record which tenants have not consented and the reasons for non-consent

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<sup>5</sup> 'Energy only contract' means a contract that charges customers for their energy consumption only and does not include a supply charge.

- d. record the outcome of any negotiation and/or dispute resolution with tenants
  - e. be kept for a period of two years
  - f. be provided to the AER on request.
3. The exempt person must engage with tenants who do not consent, and seek to mitigate their concerns.
  4. The exempt person must record the tenant's consent for the embedded network retrofit in a document that is separate to any document acknowledging that the tenant is selecting the exempt person as its electricity supplier.

### **Condition 3 – Offer matching for large customers**

**This condition applies only if the large customer was a tenant at the time of the creation of the embedded network.**

1. If a tenant, who is categorised as a large electricity customer,<sup>6</sup> does not consent to becoming part of the embedded network, the exempt person must:
  - a. facilitate, within the embedded network, the continuation of the tenant's electricity contract with their current retailer,<sup>7</sup> or
  - b. maintain the tenant's direct connection to a registered distributor<sup>8</sup>, or
  - c. fulfil a request made by the tenant that the exempt person match any genuine electricity offer that would be available to the particular tenant if they were still a grid connected customer.
2. The exempt person must fulfil any subsequent request made by a tenant to match an electricity offer if the request is made 12 months or more after a previous request.
3. In the absence of a subsequent request to match an electricity offer, the exempt person need only apply the matched offer for a period of 12 months.
4. The exempt person's obligation to match an electricity offer expires upon termination or renewal of the customer's tenancy/lease.

### **Condition 4 – Offer matching for small customers**

**This condition applies only if the small customer was a tenant at the time of the creation of the embedded network.**

1. If a tenant, who would be categorised as a small electricity customer, does not consent to becoming part of the embedded network, the exempt person must fulfil a request made by

<sup>6</sup> A "large" customer is a customer that consumes 100 MWh or more of electricity per annum.

<sup>7</sup> Where a separate account is rendered for network charges, the exempt person must also meet the large customer's reasonable cost of a bill validation service in relation to that account.

<sup>8</sup> A "registered distributor" is an electricity network distributor that is registered with AEMO.

the tenant that the exempt person match any genuine electricity offer that would be available to the particular tenant if they were still a grid connected customer.

2. The exempt person must fulfil any subsequent request by a tenant to match an electricity offer if the request is made 12 months or more after a previous request.
3. In the absence of a subsequent request to match an electricity offer, the exempt person need only apply the matched offer for a period of 12 months.
4. The exempt person's obligation to match an electricity offer expires upon termination or renewal of the customer's tenancy/lease.

#### **Condition 5 – Duplication of network charges**

1. The exempt person must ensure that tenants who enter into an energy only contract with an authorised retailer are not billed twice for network charges.
2. The exempt person must negotiate directly with the authorised retailer of the tenant to ensure that the tenant is not billed twice for network charges.
3. The exempt person must reimburse the tenant for any duplicate network charges incurred by them as a result of an energy only contract.

#### **Condition 6 – Metering arrangements**

1. The exempt person must not charge a tenant the cost of any changes to metering and other network alterations that take place in the course of retrofitting the embedded network.
2. The exempt person must ensure that metering arrangements within the embedded network allow for tenants to access retail competition.

#### **Condition 7 – Obligation to supply**

1. Subject to conditions 15 and 16, the exempt person cannot refuse to sell energy to a tenant except where the tenant's premises have been disconnected by the exempt person for a reason other than failure to pay a bill and the matter leading to the disconnection has not been rectified. The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

#### **Condition 8 – Provision of exempt selling information to exempt customers**

1. The exempt person must advise an exempt customer, in writing, at the start of their tenancy/ sale agreement of the following:
  - a. any right of the exempt customer, under state laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
  - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if it were purchasing from an authorised retailer

- c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints
    - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state in which the exempt customer is located
  - d. the conditions applicable to the exemption that the exempt person is operating under
  - e. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
  - f. contact numbers in the event of an electricity fault or emergency, including the number for a 24-hour emergency contact line.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency/agreement, the information set out in condition 8(1) of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.

#### **Condition 9 - Billing and payment arrangements**

1. The exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. The exempt person must offer at least two payment methods to an exempt customer. However, if an exempt person offers direct debit as one payment method, they must also offer at least two other payment methods to an exempt customer (that is, at least three methods in total). In each case, at least one of the payment methods offered must be able to be effected without internet access. For example:
  - a. in person
  - b. by telephone
  - c. by mail
  - d. by direct deposit into a bank account.
3. An exempt person must include the following particulars in a bill for an exempt customer:
  - a. the name of the exempt customer
  - b. the address of the exempt customer's premises
  - c. date that the account was issued
  - d. the identifier of the meter for the exempt customer's premises

- e. the pay-by date for the bill
- f. date of the current meter reading or estimate, as applicable
- g. the dates to which the meter reading or estimate applies (billing period)
- h. current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- i. previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
- j. the amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours.
- k. tariffs, fees and charges applicable to the exempt customer
- l. the basis on which tariffs, fees and charges are calculated
- m. details of the available payment methods
- n. a telephone number for account inquiries and complaints.

#### **Condition 10 - Estimation as basis for bills**

1. The exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
2. The exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
3. The exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
4. Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
  - a. historical metering data for the exempt customer reasonably available to the exempt person, or
  - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
5. If an exempt customer's bill is based on an estimation, this must be clearly stated on the bill.

#### **Condition 11 - Pay-by date**

1. The pay-by date for a bill must not be less than 13 business days from the date on which

the exempt person issues the bill.

### **Condition 12 - Receipts**

1. The exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
  - a. direct debit, or
  - b. credit card over the phone and the customer is provided with a receipt number.
2. The exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

### **Condition 13 - Pricing**

1. The exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.
2. The exempt person must provide notice to the exempt customer of any change in the exempt customer's tariff as soon as practicable, and no later than the exempt customer's next bill.
3. The exempt person must not impose any charge on an exempt customer that could not be charged by the relevant local area retailer for new connections under a standard retail contract.<sup>9</sup>
4. The exempt person must limit any fee charged to a customer for late payment to a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.<sup>10</sup>

### **Condition 14 – Undercharging and overcharging**

1. Where an exempt customer has been undercharged, the exempt person can recover the amount undercharged subject to the following:
  - a. where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging
  - b. the exempt person cannot charge interest on the undercharged amount

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<sup>9</sup> For clarification, a "charge" includes, but is not limited to, account establishment fees, late payment fees, debt collection fees, service charges, and security deposits. The fees and charges allowable under a standard retail contract are governed by Division 6 of the National Energy Retail Rules (which sets out the requirements for charging a security deposit under a standard retail contract) and may also be governed by jurisdictional legislation.

<sup>10</sup> For clarification, a late payment fee can only be charged where it has not been excluded by jurisdictional legislation.

- c. the exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
- 2. Where an exempt customer has been overcharged, the exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
  - a. where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
  - b. where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
  - c. no interest is payable on the overcharged amount.
  - d. where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

#### **Condition 15 - Disconnection or cessation of supply**

- 1. Subject to Condition 16, the exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
  - a. the exempt customer has requested disconnection, or
  - b. continuity of supply to the premises would be unsafe, or
  - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises, or
  - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:
    - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, and
    - ii. following non-payment by the date specified in the reminder notice, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and

- iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
  - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
- 2. Where an exempt customer is disconnected in accordance with condition 15(1)(b), the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
- 3. This condition does not apply where state tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

#### **Condition 16 - When disconnection or cessation of supply is prohibited**

- 1. The exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
  - a. the exempt customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
  - b. the disconnection or cessation of supply would occur on:
    - i. a business day before 8am or after 3pm, or
    - ii. a Friday or the day before a public holiday, or
    - iii. a weekend or a public holiday, or
    - iv. the days between 20 December and 31 December (inclusive) in any year.
- 2. The exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
- 3. This condition does not apply where:
  - a. the exempt customer has requested disconnection, or
  - b. where continuity of supply to the exempt customer's premises would be unsafe, or
  - c. where there is an unplanned interruption to supply, or

- d. where the energy supply agreement between the exempt person and exempt customer has been terminated.

#### **Condition 17 - Reconnection or re-energisation**

1. Where an exempt customer is disconnected in accordance with conditions 15 and 16 and the customer makes a request for reconnection, the exempt person must reconnect the premises as soon as practicable after:
  - a. a request for reconnection is made. A request for reconnection can be made ten business days after disconnection, or sooner if the matter that led to the disconnection is rectified.
  - b. any charges for reconnection are paid, and
  - c. the customer agrees to enter into a payment plan with the exempt seller.
2. Subject to condition 17(1), the exempt person must reconnect the premises (or, where required, arrange with the distributor to reconnect the premises) as soon as practicable, and no later than two days from when the request was made.
3. Once reconnected, the exempt person may apply outstanding amounts owed by the exempt customer on previous energy accounts, to future energy bills.
4. Subject to condition 17(1), the exempt person cannot refuse to supply an exempt customer on the grounds that they owe outstanding amounts on their energy account.

#### **Condition 18 - Payment plans**

1. In establishing a payment plan the exempt seller must have regard to:
  - a. the exempt customer's capacity to pay; and
  - b. any arrears owing by the exempt customer; and
  - c. the exempt customer's expected energy consumption needs over the following 12 month period.
2. An exempt seller who offers a payment plan to an exempt customer under this condition must inform the exempt customer of:
  - a. the duration of the plan; and
  - b. the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid.

#### **Condition 19 – Planned interruptions to supply**

1. In the case of a planned interruption, the exempt person must notify each affected exempt customer by any appropriate means of the interruption at least 4 business days before the date of the interruption.

2. The notification must:

- a. specify the expected date, time and duration of the interruption; and
- b. include a telephone number for enquiries (the charge for which is no more than the cost of a local call); and
- c. include a statement that any enquiries regarding planned interruptions are to be directed to the exempt seller.

3. The exempt person must use its best endeavours to restore the exempt customer's supply as soon as possible.

**Condition 20 – Unplanned interruptions to supply**

1. In the case of an unplanned interruption, the exempt person must:

- a. within 30 minutes of being advised of the interruption, or otherwise as soon as practicable, make available, by way of a 24 hour telephone service (the charge for which is no more than the cost of a local call), information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available; and
- b. if the telephone service is automated—provide options for exempt customers who call the service to be directly connected to a telephone operator if required; and
- c. use its best endeavours to restore supply to affected exempt customers as soon as possible.

**Condition 21 - Choice of retailer**

1. Where an exempt customer is eligible under state legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by:
  - a. requiring the exempt customer to waive their ability to choose a retailer
  - b. unreasonably hindering their efforts to find another retailer, or
  - c. unreasonably hindering any metering or network changes required to enable choice of retailer.

**Condition 22 - Contact details**

1. The exempt person must provide a means of contact for account inquiries and complaints that can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

### **Condition 23 – Dispute resolution**

1. In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a resident, the exempt person must:
  - a. make reasonable endeavours to resolve the dispute, and
  - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state in which the exempt customer is located, if applicable.
2. The exempt person's dispute resolution process must meet, at a minimum, Australian Standards: AS/NZS 10002:2014 Customer Satisfaction – Guidelines for complaints handling in organisations.

### **Condition 24 – Continuity of supply**

1. The exempt person must notify the exempt customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

### **Condition 25 – Termination of energy supply agreement**

1. An energy supply agreement between the exempt person and an exempt customer will terminate:
  - a. on a date agreed by the exempt person and exempt customer, or
  - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice, or
  - c. at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied, or
  - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
  - e. when a different exempt customer moves in and starts receiving customer retail services for the premises, or
  - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
2. Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

## **Condition 26 - Maintaining records**

1. The exempt person must maintain records of the following for each of its exempt customers:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. The identifier of the meter for the exempt customer's premises (if applicable).
  - d. The date that the customer account was created.
  - e. Copies of any bills issued for the previous 12 months.
  - f. The date of the most recent meter read for the customer (if applicable).
  - g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

