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Draft AER (Retail) Exempt Selling Guideline; Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline

CUAC

The Consumer Utilities Advocacy Centre Ltd (CUAC) is a specialist consumer organisation established in 2002 to represent Victorian energy and water consumers in policy and regulatory processes. As Australia's only consumer organisation focused specifically on the energy and water sectors, CUAC has developed an in-depth knowledge of the interests, experiences and needs of energy and water consumers.

Our work is guided by strong principles. Energy and water services are essential for health, wellbeing and social participation. Therefore, we believe that consumer interests – particularly those of low-income, disadvantaged and rural and regional consumers – must be a primary consideration in the development and implementation of energy and water policy and in service provision.

CUAC's advocacy maintains a focus on the principles of affordability, accessibility, fairness, and empowerment through information and education. CUAC supports informed consumer participation in energy and water markets.

ATA

Founded 35 years ago, the ATA is a National, not-for-profit organisation whose 5,500 members are residential energy consumers.

Through the application of our experience in energy policy and markets to our advocacy and research, and close collaboration with fellow members of the National Energy Consumer Roundtable, the ATA is an important voice for energy consumers Australia-wide.

ATA presents a uniquely two-fold perspective as a consumer advocate: with the continuing support of the Consumer Advocacy Panel (now Energy Consumers Australia) we represent the interests of all small energy consumers in with respect to the promotion of energy affordability and improvements to the NEM, and speak with authority on behalf of the growing portion of the consumer base who have an active interest in demand side participation.

Introduction

CUAC and ATA welcome the opportunity to comment on the Draft AER (Retail) Exempt Selling Guideline (draft Guideline) and the Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline (Notice).

Irrespective of the specific questions asked in the issues papers, CUAC and ATA believe that the overarching principles listed below, which promote, fairness, transparency and efficiency, need to govern the exemptions framework:

- Consumers should have appropriate consumer protections regardless of who their energy provider is. Energy services require energy specific consumer protections.
- Every consumer should be able to access the services of the energy ombudsman, or equivalent free, independent and impartial dispute resolution service, when they have a complaint against their energy provider regardless of whom their energy provider is. Access to a free, independent and impartial dispute resolution service is a basic consumer right.
- There should be rigour in compliance and monitoring as this allows consumers to know how energy providers perform in relation to one another. It allows 'competition by comparison.'

We have endeavoured to respond to the questions raised in the Notice below:

Questions for stakeholders

1. Should the electricity tariff cap that exempt sellers may charge small customers (i.e. relevant retailer standing offer) be retained? If not, how else can small customer tariffs be kept to a reasonable level?

Given the practical barriers that consumers experience in exercising retailer choice in embedded network arrangements, a price cap is appropriate. From a Victorian perspective, the standing offer is no longer an appropriate benchmark for a price cap given that prices are deregulated in Victoria. The standing offer as a benchmark does not guarantee that customers of exempt sellers receive a competitive offer from their re-seller. A recent report prepared for the St Vincent de Paul Society found that:

> *'The cost of energy has decreased but retailers have no incentive to reduce their standing offer prices (effectively their base rate) to reflect these reduced costs. There is retail competition in Victoria, however, and the retailers are thus competing on offering the biggest pay on time discount.'*[1]

Given the practical barriers to switching, customers who are unable to switch will be stuck with higher standing offer rates than what's generally available in the market.

[1] May Maseuth Johnston (2015), *Victorian Energy Prices July 2015: An Update on the Victorian Tariff-Tracking Project* (Report prepared for the St Vincent de Paul Society), p.41.

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> *'Typical consumption households (4,800kWh per annum) on the worst standing offer can save $600 –$800 per annum if switching to the best published market offer (depending on their network area).'*[2]
>
> *'Two years ago, the average standing offer was 20% more than the average market offer (including discounts). Now the average standing offer is 25% more than the average market offer.'*[3]

Standing offers represent what consumers who are not accessing a competitive retail market pay for energy. Given that access to competitive energy services is a fundamental aspect of Australian energy policy, ATA and CUAC are of the view that the benchmark should reflect the best market offers available for a customer in a particular network area, rather than the standing offer.

2. Are there any potential barriers to exempt sellers offering a customer a minimum of two payment methods (see new Condition clause 3(2))?

No, we do not envisage any barriers for most exempt sellers. In our experience, some of the larger re-sellers selling to residential customers in Victoria already offer more than two payment methods. Direct debit should not be the only payment option available because some consumers dislike using this method of payment. If only two payment methods are offered, both should not be reliant on having access to the Internet since some consumers do not have Internet access[4], unless the exempt business can demonstrate that they would not be able to offer that service competitively to the consumer and that the consumer understands the limitation on payment options. It would be preferable to have B-Pay (via phone) and/or Centrepay as one of the payment options offered.

3. Under Condition 11 – Reconnection of supply – the AER has removed the term 'as soon as practicable' in relation to the requirement that an exempt seller must reconnect the premises. We seek views on whether the obligation should be time limited and if yes, what limits should be imposed.

In Victoria, clause 122A of the Energy Retail Code (v.11) prescribes reconnection timeframes for energy retailers' customers.

CUAC and ATA are of the view that the term 'as soon as practicable' should be defined so that the obligation to reconnect is time limited with a view to ensuring prompt reconnections. Reconnection timeframes for re-sellers' customers should be equivalent to energy retailers' customers and adhere strictly to current industry practice and standards.

4. We are proposing to require exempt sellers to claim government rebates or concessions on behalf of customers who cannot claim the rebates or concessions themselves. In the current guideline exempt sellers must use best endeavours only. We

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2 Ibid 15.
3 Ibid 38.
4 In 2012-13, 83 per cent of households had access to the internet at home. See http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/8146.0Chapter12012-13 <accessed on 21 Oct 2015>

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are interested to understand what this change would mean for exempt sellers – in particular, what costs exempt sellers would incur in making the claims. We are also interested in whether stakeholders see other possible solutions to this issue.

ATA and CUAC support the AER's proposal to require re-sellers to claim rebates and concessions on behalf of customers who cannot claim the rebates and concessions themselves. The proposal is in the interests of re-sellers and customers as the rebate and concession go towards payment of customers' bills. Any additional cost which re-sellers might incur from this should not be passed onto their customers.

We believe that the same concessions and rebate framework that applies to energy retailers' customers should, in principle, also apply to re-sellers' customers. Two re-sellers at the AER's forum on 20 Oct essentially shared the same view with us on this. In Victoria, energy retailers' customers have the concession amount applied directly onto their bills. This is not the same for re-sellers' customers who have to apply to the Department of Human Services for a rebate (half yearly/annually). This may result in some customers falling through the cracks and not claiming their entitlements because of a lack of awareness. It should be an exemption condition for re-sellers to provide information to customers about concessions and rebates not just when the account is first set up (Condition 2e, Core Exemption Condition) but on a more ongoing basis such as on their bills. It would be helpful if a bill included a *'reference to the availability of government funded energy charge rebate, concessions or relief schemes.'* (Rule 25(1)(s), NERR).

5. We are proposing a new class for power purchase agreement (PPA) providers who sell to business customers or residential customers where the PPA has particular characteristics, including limiting it to residential agreements of no more than a 10-year term.

a. Is this term appropriate? Do you consider a different term would be better?

b. Are there any other criteria the AER should include for eligibility for this class?

c. Should the class be extended to cover other types of alternative energy seller?

CUAC and ATA supports, in principle, the creation of a new class R8 for SPPA providers and limiting it to residential agreements of no more than a 10-year term. We agree that relevant factors in ascertaining the type of conditions that should apply to SPPA providers include whether the SPPA is providing a primary or secondary supply of electricity to a household, and whether the household has a grid-connection. Consumers should be entitled to a fair consumer experience regardless of who their SPPA provider is. Regardless of whether a consumer's SPPA is with a re-seller or an energy retailer, the consumer should be entitled to equivalent consumer protections.

As drafted currently, R8 only has two conditions, neither of which deals with dispute resolution. A significant problem with the exemptions framework today is that re-sellers' customers do not have access to the services of the jurisdictional energy ombudsman for dispute resolution (except in the case of the Energy and Water Ombudsman NSW). An additional problem is that it is also unclear whether the

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jurisdictional energy ombudsman's jurisdiction extends to cover the provision of energy services by even the current members of the scheme. While the AER has referred to the Australian Consumer Law, jurisdictional consumer affairs or fair trading bodies are not necessarily best placed to address SPPA complaints (or complaints about re-sellers or embedded network operators) because they are not empowered to make binding decisions. Therefore, consumers will have to seek redress through tribunals like the Victorian Civil and Administrative Tribunal (VCAT) and incur costs, to seek a binding outcome if conciliation through the consumer affairs or fair trading bodies does not provide a favourable outcome to the consumer.

CUAC and ATA believe this issue needs to be urgently addressed. A fair consumer experience includes access to an energy ombudsman scheme or equivalent free, independent and impartial dispute resolution service. Access to an energy ombudsman will help to boost consumers' confidence to participate in the 'new products and services' market. An additional benefit of energy ombudsman schemes in particular is that they are able to collect data on the consumer experience, identify systemic trends and feedback data to regulators, governments and other stakeholders.

CUAC and ATA would like to see Condition 20 (information provision) include a product/service disclosure requirement (i.e. all price components (including upfront costs of the technology/service as a comparison for the consumer against the contracted, financed arrangement), fees and product use, contract exit or termination terms and conditions) on SPPA providers at the point of contract/sale. This will help to minimise "product-use mistakes" and "use-pattern mistakes" both of which can lead to consumer misperceptions about total price and total benefit. The economics of SPPAs is affected by shortfalls in self-consumption, excess export, incorrectly estimated load profiles, and the impact of behavioural change etc. Given that assumptions would have been made around export, load profile and generation, it would be useful for SPPA providers to disclose estimates of consumers' net yearly financial position.

Given the substantial changes that have occurred in the energy market, CUAC and ATA are of the view that the AER's jurisdiction should be expanded to cover the provision of innovative energy services rather than covering transactions only where there is a sale of energy (i.e. a financial transaction relating to the metered volumes of energy). The decision to include SPPAs within the energy specific framework and exclude solar leasing agreements, seems an artificial distinction especially as a consumer arguably assumes more risk under a solar lease agreement (by carrying most of the volume risk) than under a SPPA. In addition, some innovative ongoing services for the operation of household appliances/devices at certain times and/or under certain conditions may be of a nature where the ACL is deficient and energy specific consumer protections appropriate.

6. Your views on any other proposed changes.

Deemed exemptions

We are not in favour of deemed exemptions. Deemed exemptions are automatic (no requirement to register or apply). Deemed exemptions make little sense and is ineffective in terms of monitoring and enforcement. 'Deemed' does not capture all the exempt selling activities in the market or what the customer experience in such arrangements are.

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Retrofitting

The AER has proposed to allow entities that have the explicit informed consent of all residents affected by a network conversion to continue to be eligible for deemed or registrable retail exemptions.

CUAC and ATA's main concern with retrofitting is that the consumer protections extended to customers in embedded network arrangements are not comparable or equivalent to the consumer protections extended to energy retailers' customers. The question we have is how informed is the consent? Even if all the residents 'consented' to the conversion of a site to an embedded network, they may not fully appreciate the full implications (including the range/type of products and services provided) and the consumer protections (e.g. access to EWOV, hardship arrangements etc) they would forgo if the site was retrofitted.

The experience of shopping centres cannot be directly translated to the experience of the residential sector which will stand to lose more in terms of consumer protections if a residential site is retrofitted. The hardship provisions, for example, is not an issue which concerns the business sector but it is of direct relevance to consumers, especially consumers residing in embedded network arrangements, who might not be cognisant of the materiality of hardship provisions for them if they have not experienced vulnerability or disadvantaged at the time they enter into an agreement, or who might not have been party to the initial agreement where it was made by a previous tenant or owner.

Apart from requiring an individual exemption if 100 per cent of the residents do not agree to the retrofitting, it is unclear what would the outcome would be for residents who do not support the retrofitting and if they will be disadvantaged in any way. We imagine that tensions could arise amongst residents especially if there is no 100 per cent support for retrofitting. Some questions we have include:

- Will residents who object to retrofitting experience any difficulties in retaining their supply from their current energy retailer?
- Will they be able to exercise retailer choice easily after the site is retrofitted?
- Will there be complexities with billing?
- How will the cost of the retrofitting be divided? Will it be only levied on those residents who agree to the retrofitting?
- What percentage of residents need to agree to retrofitting? Is it just a simple majority?

Obligation to supply

It is unclear from the drafting if both or either 2a and 2b of condition 1(2) must be satisfied before an exempt person can refuse to sell energy to an exempt customer. If a customer is in payment difficulties and on a payment plan ('outstanding amounts are owed'), can an exempt person refuse to sell energy to an exempt customer? This needs to be clarified.

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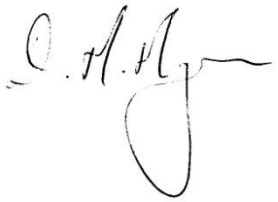
We appreciate the opportunity to participate in the AER's consultation on the draft guideline. If you have any queries, please contact the undersigned.

Yours sincerely,



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