



Consultation Paper and Response to Submissions

Retail exemptions

December 2010

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Introduction

The Australian Energy Regulator (AER) is an independent statutory authority that is part of the Australian Competition and Consumer Commission (ACCC) under Part IIIA of the *Trade Practices Act 1974* (Cth).

The AER is responsible for the economic regulation of electricity networks in the National Electricity Market (NEM) and gas pipelines in jurisdictions other than Western Australia. It also monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Law and Rules and the National Gas Law and Rules.

The AER will also assume responsibility for the enforcement of the National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) under the National Energy Customer Framework (Customer Framework). This will include responsibility for the regulation of electricity and gas retail markets (other than retail pricing) in most jurisdictions. The AER will not undertake this role in Western Australia or the Northern Territory.

The Retail Law was introduced into South Australian Parliament on 27 October 2010.¹ It is expected that it will be progressively implemented by jurisdictions between 2011 and 2013.

Under Part 5 of the Retail Law, the AER is responsible for issuing and revoking retailer authorisations and exemptions. Unless exempt from the requirement, a person must hold a retailer authorisation prior to engaging in the retail sale of energy.

As part of its retail exemptions role, the AER is required to develop Exempt Selling Guidelines to provide information about retail exemptions and to set out the AER's information requirements for applicants.² The AER is also required to determine classes of persons in respect of whom class exemptions are in force.

The AER is seeking stakeholder comment on the draft guidelines and draft determinations of class exemptions. The draft determinations of class exemptions are contained in **Attachments 1 and 2** of this paper.

1.1 Public consultation process

The AER is undertaking consultation on the draft guideline. It is seeking comments on whether the guideline fully addresses the requirements set out in section 118 of the Retail Law and rule 154 of the Retail Rules. The AER is also seeking comments on whether the guideline provides clear guidance to potential applicants and exemptees on eligibility for class exemptions and the processes for obtaining an individual exemption or registered exemption.

¹ A copy of the Retail Law as introduced in the South Australian Parliament can be accessed at <http://www.legislation.sa.gov.au/listBills.aspx?key=N>.

² The requirement to develop the guideline, and the information to be included, is set out in section 118 of the Retail Law and rule 154 of the Retail Rules.

This consultation is occurring prior to the passage of the Retail Law to provide stakeholders with as much opportunity as possible to consider the key issues and comment on the preparation of draft categories of deemed and registrable exemptions. The Retail Rules contemplate a ‘formal’ consultation process (the retail consultation procedure set out in rule 173 of the Retail Rules) following passage of the Retail Law.

There is an opportunity, however, for the application legislation of participating jurisdictions to ‘authenticate’ consultation undertaken by the AER to date. The AER notes, however, that this will be a matter for each jurisdiction to determine.

The AER initiated consultation on its retail exemptions functions with the release of an issues paper and draft categories of class exemptions in June 2010.³ Twenty seven submissions were received. Those documents were based on the second exposure draft of the Customer Framework (released in November 2009).⁴

This consultation paper, revised draft determinations of deemed and registrable exemptions and draft guideline address issues raised in submissions to the first round of consultation. These documents also reflect changes in the Customer Framework between the second exposure draft and the Retail Law that was introduced into South Australian Parliament. Further, they reflect changes in the Customer Framework between the second exposure draft and the proposed rules released by the Ministerial Council on Energy on 5 November 2010.⁵

Following a review of any submissions on this consultation paper, draft guideline, and determinations of deemed and registrable exemptions, the AER will consider changes to the guideline and determinations of deemed and registrable exemptions. The AER will conduct further consultation on retail exemptions in 2011. Where significant issues are raised in submissions, the AER may seek to meet with relevant stakeholders prior to conducting further consultation.

1.2 How to make submissions to this paper

The AER invites comments on this consultation paper, draft guideline and revised draft determinations of deemed and registrable exemptions. Submissions can be sent electronically to: AERInquiry@aer.gov.au. Submissions sent electronically should have the title “Submission re Retail Exemptions – attention Pip Dodgson”. Submissions may also be sent by mail to:

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

The closing date for submissions is **4 February 2011**.

³ Available on the AER website (www.aer.gov.au) under ‘AER future retail functions’.

⁴ <http://www.ret.gov.au/Documents/mce/emr/rpwg/default.html>

⁵ The updated Customer Framework package is available at www.mce.gov.au

The AER prefers that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will therefore be treated as public documents unless otherwise requested, and will be placed on the AER's website (www.aer.gov.au). Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission, in addition to a confidential one.

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available. In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked-out'.

For further information regarding the AER's use and disclosure of information provided to it, please refer to the *ACCC–AER information policy: the collection, use and disclosure of information* on our website under 'Publications'.

1.3 Public forum

The AER invites stakeholders to participate in a stakeholder forum to discuss issues surrounding the AER's proposed approach to exempt selling, and the ongoing development of the AER Exempt Selling Guidelines and determinations of deemed and registrable exemptions.

A forum will be held on the afternoon of **Wednesday 15 December 2010** in Brisbane. This forum will have video conference links to Sydney, Melbourne, Canberra, Hobart and Adelaide.

To register your attendance at the forum, please send an email to AERInquiry@er.gov.au by 10am on **13 December 2010**. The subject of the email should state "Registration for Retail Exemptions Stakeholder Forum – attention Pip Dodgson". Attendance at the forum will be limited, and registration is essential. We ask that stakeholders nominate no more than one participant each.

2 Retail exemptions framework

2.1 Requirement to hold authorisation or retail exemption

The Retail Law prohibits a person from engaging in the retail sale of energy unless the person has obtained a retailer authorisation or has been granted an exemption from the requirement to hold an authorisation.⁶ A breach of this prohibition attracts a civil penalty.⁷

The AER is responsible for issuing and revoking retailer authorisations and exemptions. A retailer authorisation allows the holder to engage in the retail sale of electricity or gas.⁸ An exemption allows the holder to engage in the sale of energy provided they comply with the conditions placed on the exemption.

Persons who are exempted from the requirement to hold a retailer authorisation are known as ‘exempt sellers’. Their customers are known as ‘exempt customers’.⁹

2.2 Energy onselling

An exemption is required where there is a sale of energy for premises and a person does not hold a retailer authorisation. A sale of energy requiring authorisation or exemption occurs where a person charges another person for energy (for use in premises). This is likely to occur where there is a dedicated energy charge, either as a standalone charge or as a specified or itemised amount for energy charged in conjunction with other charges such as rent.

Retail exemptions are most commonly required in situations where energy is being ‘onsold’. Energy onselling, also known as reselling, occurs where a person (the exempt seller) makes arrangements to acquire energy from an authorised retailer and then they, or a person acting on their behalf (such as a billing agent), onsell this energy to customers who are usually within the limits of a site owned, occupied or operated by the exempt seller. In such a situation, customers of the exempt seller take their power from an embedded distribution network (that exists within the site in which they are located) and which has a connection point to the main distribution network.

Examples of embedded networks where onselling occurs can be found within shopping centre complexes, caravan parks, and retirement villages.

The sale of energy may also occur in ‘off-grid’ networks (that is, networks that are not connected to the national electricity grid). For example, a remotely-located mining company may not, for economic reasons, have a connection to the national electricity grid. For this company to provide electricity to workers living in their accommodation quarters, it would be required to install the network itself. If it

⁶ Section 88 of the Retail Law.

⁷ Section 4 of the Retail Law.

⁸ Section 100(1) of the Retail Law.

⁹ Rule 148 of the Retail Rules.

charges for electricity supply from this network, it would be selling energy. Off-grid networks are regulated under State/Territory legislation, and only require an exemption if the State or Territory in which they are located has elected to bring their off-grid networks under the Customer Framework. To date, one State has advised the AER that it may not bring its off-grid networks under the Customer Framework. This is discussed further under section 3.6.

2.3 Types of retail exemptions

The AER can grant exemptions from the requirement to hold a retailer authorisation on an individual basis or by declaring a class of persons to whom a deemed or registrable exemption applies. A deemed exemption applies automatically. No application to the AER is required, and a person covered by a deemed exemption does not need to register their activities with the AER. A registrable exemption is only effective for any particular individual from the date on which the eligible person is registered on the Public Register of Authorised Retailers and Exempt Sellers by the AER. Once this occurs, the person holds a ‘registered’ exemption. Certain information must be provided as part of the registration process.

The AER may impose conditions on individual, deemed and registrable exemptions.

2.4 Exempt Selling Guidelines

The AER is required to issue Exempt Selling Guidelines to explain the procedures for the grant and variation of individual exemptions and the processes the AER follows when assessing applications for individual exemptions (and applications for their variation), including information requirements. The guidelines must also include guidance on the categories and conditions of class exemptions.

The guidelines must additionally provide guidance on the ‘exempt seller related factors’¹⁰ and ‘customer related factors’¹¹ that the AER may take into account when making exempt selling decisions. The AER is also required to take into account certain policy principles when performing or exercising functions and powers relevant to exempt selling.¹²

2.5 Determinations of deemed and registrable exemptions

Rule 150 of the Retail Rules requires the AER to issue a determination of deemed exemptions, and rule 151 requires the AER to issue a determination of registrable exemptions. Draft determinations of deemed exemptions and registrable exemptions are contained in **Attachments 1 and 2** of this paper respectively.

¹⁰ Section 115 of the Retail Law.

¹¹ Section 116 of the Retail Law.

¹² Section 114 of the Retail Law.

2.6 Public Register of Authorised Retailers and Exempt Sellers

Section 119 of the Retail Law requires the AER to maintain and publish on its website a Public Register of Authorised Retailers and Exempt Sellers (Public Register). Exempt sellers who hold individual exemptions or registered exemptions will appear on the Public Register. The Public Register will also include a list of the classes of persons for whom deemed exemptions are in force, and a list of the classes of persons for whom an exemption is registrable.

2.7 Changes to the retail exemptions framework

Since the second exposure draft of the Customer Framework was released (on which consultation to date was based) some changes have been made to the proposed legislative framework. The following discussion aims to address the key changes to the framework between release of the second exposure draft and the version of the Customer Framework that was introduced into South Australian Parliament and circulated by the Ministerial Council on Energy's Standing Committee of Officials on 5 November 2010.

2.7.1—AER's ability to revoke exemptions

Section 111 of the Retail Law enables the AER to revoke, in relation to a particular exempt seller, an individual exemption or a deemed or registered exemption. The AER may revoke an exemption where it is satisfied that there has been a material failure by the seller to meet the conditions imposed on the exempt seller. The AER must follow the same revocation process that applies to retailer authorisations before it can revoke an exemption.¹³ Under this revocation process, the AER may impose conditions on the transfer of customers to another entity.

2.7.2—AER's ability to cap retail prices charged by exempt sellers

Rule 152(4) of the Retail Rules enables the AER to impose a condition in relation to the prices charged by an exempt seller to exempt customers at residential premises. Where the AER imposes such a condition, the AER must ensure that these customers are charged no more than the standing offer price of the local area retailer.

2.7.3—AER's ability to regulate exempt seller's metering arrangements

Rule 152(5) of the Retail Rules enables the AER to impose conditions on exempt sellers with respect to the installation, maintenance and reading of meters of exempt customers in accordance with jurisdictional energy legislation. The Retail Law definition of "jurisdictional energy legislation" excludes national energy legislation such as the National Electricity Law, National Electricity Rules, National Gas Law and National Gas Rules, and therefore excludes any metrology procedures made under this legislation.

¹³ See section 120 of the Retail Law.

2.8 Transition of existing State and Territory exemptions

The Ministerial Council on Energy has established a national working group, the 'Joint Implementation Group', to address national transition matters arising from the implementation of the Customer Framework, and to co-ordinate jurisdictional transition work. The AER will work with States and Territories on their transitional arrangements through the Joint Implementation Group, to ensure that the transitional arrangements for each State and Territory's pre-existing onselling arrangements are accommodated either in their application legislation or in the determinations of deemed and registrable exemptions.

3 Response to submissions from preliminary consultation

Twenty seven written submissions were received on the issues paper and draft determinations of deemed and registrable exemptions during the preliminary consultation process that the AER undertook from June to August 2010. Stakeholders also attended two public forums in August 2010. In both written and verbal submissions, stakeholders were divided in their support for the general approach adopted by the AER in the draft determinations of deemed and registrable exemptions. Copies of all written submissions are available on the AER's website (www.aer.gov.au).

This paper details the AER's consideration of the submissions received. It seeks feedback from stakeholders on the AER's revised approach to retail exemptions under the Customer Framework, and on a range of issues that the AER has identified or given further consideration to in developing the revised framework. The AER welcomes any comments on retail exemption issues that have not been specifically raised in this paper or in the draft Exempt Selling Guidelines.

3.1 Relationship between retail and network exemptions

Submissions received during the preliminary consultation process highlighted a range of issues related to both retail and network exemptions.

In preparing the draft Exempt Selling Guideline and draft determinations of deemed and registrable exemptions, the AER's focus is on addressing retail issues. The AER has focussed on retail issues because rule 152 of the Retail Rules enables the AER to impose conditions on exempt sellers, including conditions that require an exempt seller or class of exempt sellers to comply with obligations derived from energy laws which apply to retailers.

A number of submissions requested the AER to consider retail exemptions and network exemptions matters together. The AER anticipates commencing consultation on changes to its electricity Network Service Provider Exemption Guidelines in 2011, and anticipates that consultation on both the retail and electricity network exemptions guidelines will occur concurrently. In the meantime, the AER is taking all submissions from the retail exemptions consultation into account in its preparatory work on revising the Network Service Provider Exemption Guidelines.

Submissions on the issues paper raised a range of distribution issues, including:

- the proposal that exempt sellers should be entitled to collect network ("use of system") charges from all connections downstream of the gate meter
- issues of quality of supply to exempt customers, in particular in caravan/residential parks.

The draft Exempt Selling Guidelines and draft determinations of deemed and registrable exemptions do not address these issues as they are distribution matters. The issue of electricity network charges within embedded networks will be considered as part of the AER's review of the Network Service Provider Exemption

Guidelines. Quality of supply issues are a matter for States and Territories under the Australian Energy Market Agreement. Issues of metering accuracy relate to both electricity network and retail exemptions, and will be considered as part of both processes.

3.2 AER's considerations under the National Energy Retail Law objective

3.2.1—Growth of onselling

In the June 2010 issues paper, the AER stated:

“In recent years there has been an apparent increase in the number of customers who purchase their energy from an onseller, particularly within large residential developments.

The AER is concerned about the growth in onselling because a range of protections that apply to customers of retailers will not automatically apply to customers of onsellers.”

In the paper, the AER asked stakeholders whether the apparent growth of onselling was problematic. A number of submissions responded that the AER should not have asked this question, considering it to be inappropriate and unduly negative.

The AER has had regard to these concerns, but notes that the objective of the Retail Law requires the AER to consider the long term interests of consumers. In determining its overall approach to retail exemptions, the AER is required to consider the different types of onselling and whether they are in the long term interests of consumers.

Stakeholder submissions noted many advantages and disadvantages of onselling and embedded networks. Some of the key advantages put forward were:

- the opportunity for consumers to use their bulk purchasing power to obtain lower energy retail prices, which is particularly beneficial where customers are on a fixed income such as a pension
- the tailored, responsive service that can be provided to customers of onsellers in situations such as shopping centres and retirement villages
- the ability of the embedded network to ensure immediate connection of new residents/lessees rather than waiting for a licensed retailer to arrange this with the distributor, ensuring that premises can be leased immediately.

On the other hand, the disadvantages were said to include:

- the risk of monopolistic behaviour by the onseller resulting in exploitation of consumers
- the lack of access to the protections that apply to customers of licensed distributors and retailers, such as retailer hardship policies and energy Ombudsman schemes

- the costs which embedded networks impose on the market as a whole through more complex connections, embedded network management, metering arrangements for exempt customers and administration of data provision for market settlement purposes
- the additional risks that customers incur when they purchase energy from a person who is not subject to the Australian Energy Market Operator's prudential requirements, and no retailer of last resort scheme is in place to protect them.

3.2.2—AER considerations on whether the growth of onselling is in the long term interests of consumers

The AER is concerned that the growth of onselling may present consumer protection issues, particularly where residential exempt customers are unable to access the rebates and social programs that offset the impact of rising energy prices. This is because in some jurisdictions such assistance is only available to customers purchasing from a retailer and not to customers of onsellers. Further, customers of onsellers may not always be able to benefit from other government measures, such as energy efficiency policies and programs. They may also be unable to participate in demand management and energy conservation measures such as controlled load.

The AER's key concern is to ensure that these customers are not denied the protections received by residential customers who purchase energy from an authorised retailer. The AER will consider matters such as small customer access to energy Ombudsman schemes, community service obligations (rebates and social programs) and energy efficiency measures when considering whether it is appropriate to grant an individual exemption to an onselling arrangement involving small customers.

The AER will also take into account the additional risks that customers of onsellers face due to the lack of prudential requirements for onsellers. The AER is concerned that customers of onsellers are not protected through a retailer of last resort scheme if their onseller defaults on its energy purchases. Whilst these customers may pay lower tariffs than retail customers, they face greater risks to their continuity of energy supply than retail customers.

A number of submissions claimed that it is advantageous for tenants to purchase energy from their landlord. The AER considers that it is very difficult to gauge whether or not onselling is indeed welcomed by tenants. In both residential and commercial tenancies, the AER notes that there are potentially both upsides and downsides to having a direct relationship with a person (whether a landlord, office building manager, shopping centre manager, etc) who both onselling energy to a person and provides them with other services.

It is difficult for the AER to judge claims that embedded networks and onsellers provide a better quality, more tailored service. However the AER notes that embedded network arrangements enable landlords to ensure timely connection and avoid the inconvenience of premises being disconnected between tenancies, without the need to install smart meters. It is also difficult for the AER to ascertain whether, in certain situations, customers may feel under pressure to agree to participate in the conversion of premises to an embedded network. The AER notes that onselling may

be problematic where there is an imbalance in the negotiating power between landlord and tenant.

The AER considers that, in general, onselling (and its growth) will not always be in the long term interests of consumers. For this reason, the AER has revised its approach to deemed and registrable exemptions since the release of the June 2010 issues paper.

Q1: Do stakeholders agree with the AER’s considerations on whether onselling is in the long term interests of consumers?

3.3 AER’s considerations on the policy principles

3.3.1—Policy principle 1: Divergence in regulatory arrangements between onsellers and retailers

The first policy principle set out in the Retail Law states that “regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers”.¹⁴ A key issue in determining when divergence is necessary is the issue of compliance costs for onsellers. One submission was concerned that if the AER increased onselling compliance costs for caravan parks they would cease metering individual customers and instead apply a fee additional to existing rents and site fees. The submission noted that this would remove the customers’ incentive to conserve energy. While the AER notes that there is a risk that onsellers will seek to avoid conditions of exemption by absorbing energy costs into other charges, the AER considers that this risk is relatively low. Such a strategy would be very risky for onsellers as their tenants would have little incentive to limit their demand.

The AER notes the submissions made to the effect that the AER should, in establishing customer protections for customers of onsellers, take into account the costs associated with complying with consumer protection mechanisms. The AER notes that compliance costs are only explicitly considered in the exempt seller factors where the AER is instructed to consider “the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller”.¹⁵ However, the AER is required to balance its consideration of compliance costs with the following competing considerations:

- the policy principle that regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers¹⁶
- the policy principle that exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers¹⁷

¹⁴ Section 114(1)(a) of the Retail Law.

¹⁵ Section 115(1)(f) of the Retail Law.

¹⁶ Section 114(1)(a) of the Retail Law.

¹⁷ Section 114(1)(c) of the Retail Law.

- the exempt seller factor regarding 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 authorisation¹⁸
- the exempt seller factor concerning the likely cost of obtaining a retailer authorisation and of complying with the Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller¹⁹
- the customer related factor regarding 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.²⁰

In view of the number of statutory principles and factors which address protections for customers, and the fact that onsellers’ compliance costs are addressed in the legislation in terms of the costs of obtaining a retailer authorisation, rather than the cost of complying with conditions of exemption, the AER considers that when assessing future applications from onsellers, it will generally place more weight on ensuring that customers of onsellers receive appropriate protections, than on minimising onsellers’ compliance costs.

Q2: Do stakeholders agree with the AER’s considerations on onseller compliance costs?

3.3.2—Policy principle 2: Choice of retailer

The second policy principle set out in the legislation 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”.²¹

3.3.2.1—Practicability of requiring full retail competition in gas embedded networks/onselling situations

The AER sought submissions on whether full retail competition is practicable in the gas onselling context. There was overwhelming support in the submissions made to the AER that access to full retail competition is not practicable in the gas onselling context, particular where gas is used for limited purposes. Currently, AEMO does not have any guidelines to underpin full retail competition in gas (in contrast to the situation in electricity). As one submission noted, there is no recognition of “parent”²² and “child”²³ metering arrangements in gas network systems nor in the market systems, so retailer of choice cannot be provided.

¹⁸ Section 115(1)(e) of the Retail Law.

¹⁹ Section 115(1)(f) of the Retail Law.

²⁰ Section 116(b) of the Retail Law.

²¹ Section 114(1)(b) of the Retail Law.

²² “Parent” metering is metering through which the energy measured is supplied to more than one connection point.

Submissions also noted that access to retailer of choice for “children” (i.e., exempt customers) in gas onselling situations involves wholesale market issues, retail market issues, metering location issues, access/charging issues, as well as network safety issues. Where a development has not been configured to cater for gas appliances other than individual gas cooktops and ovens, then it may not be cost effective to provide for separate customer metering to enable choice of retailer. The AER accepts these submissions and agrees that currently, choice of gas retailer in onselling/embedded network situations is not practicable.

3.3.2.2—Practicability of requiring full retail competition in electricity embedded networks/onselling situations

The AER generally supports electricity customers within embedded networks having access to full retail competition. The ability of these “children” to access full retail competition will help to ensure that any benefits that embedded networks provide to their owners and operators are passed on to customers within embedded networks. However, there are a range of reasons why access to full retail competition may not be practicable in all circumstances.

The AER considers that requiring access to full retail competition is also unlikely to be practicable in caravan parks and similar situations where dwellings are transient, and where customers may reside a few months and then move on. Requiring access to full retail competition in these situations could create logistical difficulties for caravan park owners. In such situations, a market retailer may wish to disconnect premises at the end of the occupant’s tenure, and there may be delays in reconnection which prevent the caravan park owner from being able to immediately let out the accommodation. While smart meters can be used to address this issue, the AER notes that this will not always be economic. The AER appreciates that one rationale for onselling in such situations is that the accommodation provider wishes to ensure that there will always be immediate energy supply for their next tenant/customer.

The Australian Energy Market Operator’s (AEMO) Embedded Network Guidelines set out the arrangements for effecting full retail competition in electricity embedded networks, in those jurisdictions where this is available. That guideline outlines the jurisdictional provisions relating to the contestability of embedded network customers which embedded network operators should take into account. Access to retailer of choice is restricted in the following jurisdictions:

- the Australian Capital Territory and Tasmanian arrangements do not allow consumer choice for consumers supplied by embedded networks in those jurisdictions
- Queensland does not allow choice for “small” consumers supplied by embedded networks

²³ “Child” metering is metering that is related to parent metering in the sense that the difference between the energy measured at the parent meter and at the child meter is the energy consumption for one or more other connection points.

- in South Australia, consumers defined as “transitional inset customers” generally do not have access to the retail market (transitional inset customers are customers who entered into their lease agreement prior to 1 January 2003 — these customers will only have access to their retailer of choice if this is specified in their lease agreement).

The AER notes that, for electricity full retail competition to be practicable in embedded networks, making provision for it in the Exempt Selling Guidelines is not sufficient. Changes may be required to the National Electricity Rules, the AER’s Network Service Provider Exemption Guidelines, AEMO’s Embedded Network Guidelines, existing jurisdictional legislation and distributors’ and retailers’ systems. In view of the substantial work that would be involved in facilitating full retail competition in embedded networks, the AER considers that it is not practicable in the short to medium term to require full retail competition in embedded networks except in those jurisdictions where it is currently available as set out in AEMO’s Embedded Network Guidelines.

For jurisdictions where electricity full retail competition is currently available in embedded networks, the AER is currently considering making changes to its Network Service Provider Exemption Guidelines to underpin these arrangements. This will be subject to future consultation by the AER, but the AER’s proposed preliminary arrangements may include ensuring that electricity networks make suitable arrangements for:

- the provision of, and access to, consumer metering
- the registration of National Meter Identifier (NMI) data, and
- compliance with AEMO requirements for metrology.

One stakeholder has suggested that the NMI of both the “parent” and “child” meters in any (electricity) embedded network should be included in the Public Register, as this would assist in facilitating a customer transfer to the customer’s retailer of choice in the event that the customer seeks to exercise choice of retailer (at least in jurisdictions where choice of retailer is available within embedded networks). The AER has not currently included this information requirement in the registration requirements, pending consideration of the issue of NMI registration as part of consultation on the Network Service Provider Exemption Guidelines.

The issue of who pays for modifications to enable an exempt customer to access choice of retailer will be considered as part of the AER’s consultation on the Network Service Provider Exemption Guidelines. That consultation process will also consider whether network configuration and metering arrangements that facilitate full retail competition would be required for new developments and redevelopments.

Q3: Do stakeholders agree with the AER’s considerations on choice of retailer in electricity embedded network onselling situations?

Q4: In jurisdictions where a customer within an embedded network does not have access to choice of retailer, should the AER impose a condition preventing

the onseller from refusing to supply them, to ensure that they can obtain energy supply?

3.3.3—Policy principle 3 - Affording customer protections to exempt customers

The third policy principle states that “exempt customer should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules”.²⁴ The submissions on customer protections mainly addressed the following areas:

- hardship protections and payment plans
- access to Ombudsman schemes and other free forms of external dispute resolution, and
- the Australian Standard for internal complaints handling.

3.3.3.1—Hardship protections and customer payment plans

The June 2010 issues paper stated:

“The AER notes that ultimately in a hardship situation where the tenant is purchasing both accommodation and energy from the same party, a hardship policy may have limited meaning given that tenancy law will determine the consequences of non-payment of rent. In some jurisdictions, tenants may only be evicted for rent in arrears and not for failing to pay charges such as those for energy. In other jurisdictions, this is not regulated and a lease may provide that any payment submitted to the landlord is first used to cover charges owing for energy and other services, and the remaining amount is put towards rent. This means that unless a tenant pays all charges and rent payable, the tenant is liable for eviction.

Requiring a hardship policy in these situations may not be particularly helpful to tenants, as the policy would ensure flexible payment options for the payment of energy charges but not for the payment of rent or accommodation charges. The requirements of a hardship policy may involve a potential conflict with tenancy legislation.

Under the draft categories of deemed and registrable exemptions, sellers operating under a deemed or registrable exemption will not be required to have a hardship policy or offer flexible payment options. However, if they choose to offer a flexible payment plan, they will not be permitted to disconnect the exempt customer while the customer meets the terms of the payment plan”.

In response to the above comments, one submission expressed concern that access to some financial counselling services and other assistance programs is linked to being covered by a hardship policy or charter. The submission argued that for this reason, exempt sellers should be required to provide hardship policies. The submission recommended that the AER draft a standard form hardship charter to be used by all exempt sellers.

²⁴ Section 114(1)(c) of the Retail Law.

A further submission suggested that as a minimum, onsellers should be obliged to provide flexible payment options (including payment plans taking into account the customer's capacity to pay) and hardship assistance to their customers. The submission suggested that exempt customers should have the same level of consumer protection as retail customers in regards to payment plans. It was also submitted that exempt sellers should offer customer hardship policies that offer no less than the minimum requirements for a customer hardship policy.

The AER considers that it is not feasible for it to draft a standard form hardship policy to be used by all exempt sellers selling energy to residential customers. For customers covered by residential tenancy legislation, the AER's considerations on the potential conflict with tenancy legislation are set out above in the extract from the June 2010 issues paper. For customers in residential situations which are not covered by tenancy legislation, the AER considers that requiring onsellers to offer customers a hardship policy, or a payment plan, will not be particularly helpful to the exempt customer, as the impact of a payment plan is only to ensure flexible payment options for energy charges, but not for accommodation charges. We recognise that some customers of exempt sellers who are struggling to pay their energy charges will also be struggling to pay their accommodation charges. Therefore any assistance provided to these customers to only manage arrears for their energy charges may not reduce or avoid their risk of eviction. This is particularly so given that any accommodation charges are likely to be higher than those for the energy they consume.

The requirements set out in the Customer Framework in relation to hardship specify that energy retailers themselves must develop, implement and maintain their own customer hardship policies. Whilst these must be approved by the AER (and as such must include the minimum requirements and achieve the purpose specified in the Retail Law), retailers are able to develop their own flexible payment options and other programs and initiatives to assist their customers experiencing payment difficulties due to hardship. This allows energy retailers the flexibility to innovate and to ensure that the programs and processes they offer under such policies are targeted to best assist and meet the needs of their hardship customers.

Given the wide range of types of exempt sellers that will be captured by the categories of deemed and registrable exemptions, and the different groups of customers they will sell to, it would be very difficult to develop a standard form hardship policy that would be applicable to and effective in all of these situations. Furthermore, it is unlikely that any standard form policy developed would be flexible enough to take account of and respond to the individual needs and personal circumstances of each of these residential customers experiencing hardship and may render any prescribed assistance ineffective.

Finally, we consider that such a proposal would impose significant and new regulatory costs on these exempt sellers which in turn are likely to be reflected in higher energy charges to their customers, and may compound any existing hardship issues that such a policy response is seeking to address. There are also further practical considerations in how such a regime would work in practice. Given that often hardship issues require longer-term strategies and assistance to resolve (usually involving a wide range of agencies) and in some cases residential customers of exempt sellers are in transient or short-term accommodation, this may

make it impractical or risky for the onseller to require them to offer this type of assistance. For example, a requirement for exempt sellers to establish payment plans which enable arrears to be paid off over a 12-month period is not practical if a customer's lease is only for 6 months.

The AER therefore reiterates the considerations set out in the June 2010 issues paper on applying hardship policy requirements to deemed and registrable exemption classes.

Q5: Do stakeholders agree with the AER's reasons for not requiring hardship policies for deemed and registrable exemptions?

3.3.3.2—Access to Ombudsman schemes or other free external dispute resolution

In the June 2010 issues paper, the AER noted:

“Under the AEMA, small customer dispute resolution is a state and territory responsibility. Therefore, changes to the AEMA are required for the AER to require exempt sellers to provide dispute resolution mechanisms to their customers. The AER has raised this issue with policy makers.

.....

Currently, customers of exempt sellers in most jurisdictions do not have the same access to an Ombudsman or alternative dispute resolution scheme that is afforded to customers of a retailer. There are a number of practical difficulties associated with requiring exempt sellers to join an Ombudsman or alternative dispute resolution scheme. The annual membership fees associated with industry-based Ombudsman schemes may be prohibitive for exempt sellers, and the cost of membership would ultimately be passed through to their customers. If Ombudsman schemes instead charged exempt sellers for complaints handling on a ‘fee for service’ basis, the fee charged per case would need to be greater than the incremental costs associated with resolving it, so that the exempt seller contributed to the fixed costs of the scheme. Otherwise, an inequitable situation may arise whereby existing members of Ombudsman schemes are cross-subsidising exempt sellers.

As the AER cannot compel a statutory formed or industry-based Ombudsman scheme to extend its membership to exempt sellers, it may not be appropriate to require membership of such a scheme as part of an exemption. Jurisdictions and Ombudsman schemes should consider whether to extend the authority of these schemes to customers of exempt sellers in order to give full effect to this policy principle”.

The AER received two submissions from energy Ombudsman schemes. The Energy and Water Ombudsman NSW (EWON) noted in its submission that it is the only energy Ombudsman with jurisdiction over energy onselling in residential parks. Its submission noted that exempt retailers, including residential park owners, are not fee-paying members of EWON's scheme. EWON's Board has decided that provided that the number of residential parks complaints remains low, the cost of investigating such complaints will be spread across all scheme members. EWON's submission noted that it has considered the option of a fee for service for exempt retailers, but rejected this option as being not cost effective to administer and enforce.

The Energy and Water Ombudsman (Victoria) (EWOV) also made a submission on the retail exemptions issues paper. EWOV noted that it considered the question of exempt retailers accessing its dispute resolution services during the Essential Services Commission of Victoria's Small Scale Licensing Review in 2006 to 2007. EWOV commissioned an independent feasibility study in April 2007. EWOV notes that it has been several years since its board reviewed this matter, and it will need an opportunity to reconsider its position. The issue of who exempt sellers are, and how many there are, remains a key issue to resolve.

While the AER agrees with stakeholder submissions to the effect that there is a need for impartial and independent external dispute resolution for exempt customers, the AER accepts that there are a number of issues that need to be addressed before this is feasible. The AER reiterates the comments cited above from the June 2010 issues paper on retail exemptions. The AER is concerned that there are a number of legal, practical and financial barriers to onsellors participating in energy Ombudsman schemes, and accepts that these issues are particularly complex where smaller onsellors are concerned.

As the operation of Ombudsman schemes is outside the scope of the AER's role, and remains a matter for individual States and Territories, the AER will continue to raise the issue of exempt customer access to Ombudsman schemes with jurisdictions through the Joint Implementation Group. The AER will also raise these issues with individual incorporated energy Ombudsman schemes. Over time, the AER hopes that energy Ombudsman membership can be extended, at least to those larger onsellors that are specialist external providers of onselling services.

3.3.3.3—Internal complaints handling — Australian Standard AS ISO 20002-2006

In the June 2010 issues paper, the AER stated:

“Related to the above discussion of access to dispute resolution schemes is the issue of complaints handling. If it is not feasible for the AER to require exempt sellers to participate in a dispute resolution scheme, requirements in relation to complaints handling may be useful.

One option is to require exempt sellers to develop complaints handling arrangements based on *Australian Standard AS ISO 10002-2006 (Customer satisfaction – Guidelines for complaints handling in organisations)* as is required of authorised retailers under section 403 of the proposed Retail Law. The Standard outlines principles which the AER believes would provide sufficient guidance to exempt sellers unfamiliar with complaints handling processes.”

Some stakeholders acknowledged that, for smaller onsellors operating under a deemed or registrable exemption, it might not be possible to meet AS ISO 10002-2006. These stakeholders accepted that any requirement for an exempt seller operating under an individual exemption to comply with Australian Standard ISO 10002-2006 needs to be assessed on a case-by-case basis. Other stakeholders considered that the AER had not justified why the standard should not apply to exempt sellers.

The AER has considered these issues, and accepts that the Australian Standard may be unduly onerous for many smaller onsellors operating under a deemed or registrable exemption.

Some stakeholders were also concerned that there may be a conflict between the dispute resolution arrangements that apply under retail/commercial tenancy legislation, and the requirements of Australian Standard ISO 10002-2006. The AER does not agree with these submissions. The Australian Standard deals only with the internal handling of complaints, and does not address external complaint resolution mechanisms, except to state that if the complainant rejects the organisation's proposed resolution to the complaint, then the organisation should inform the complainant of alternative forms of internal and external recourse available.

As there is no prohibition within retail/commercial tenancy legislation on attempting to resolve a dispute internally before, where necessary, referring it to the appropriate external dispute resolution body, the AER considers that there is no inherent conflict between the dispute resolution arrangements that apply under retail/commercial tenancy legislation, and the requirements of the Australian Standard.

In situations in which the AER considers that there is no direct conflict between the Australian Standard and any specific legislation that an onseller operates under, such as tenancy or retirement village legislation, the AER may require the onseller to develop complaints handling arrangements based on the Australian Standard ISO 10002-2006. The AER will consider the application of the standard in the future to larger onsellors on a case-by-case basis.

Q6: Do stakeholders support the AER's considerations on the application of Australian Standard ISO 10002-2006?

3.4 AER considerations on the exempt seller factors and customer related factors

3.4.1—Distinguishing between “core” and “incidental” onselling activities

A number of submissions did not agree with the AER's proposed distinction in the June 2010 issues between core and incidental activities. In the issues paper, the AER stated:

“One consideration in determining whether the sale of energy is incidental may be whether it can be practicably avoided. Where the sale of energy cannot be avoided it would be considered incidental, but where it can be avoided, it would be considered a core business activity”.

A number of submissions argued that looking at whether onselling can be “practicably avoided” does not assist in determining whether or not the onselling is incidental, nor make it a core business activity. The AER accepts these submissions and has revised its approach to distinguishing between core and incidental onselling activities. In determining whether onselling is “core” or “incidental”, the AER will have particular regard to an onseller's business model. The AER will generally consider onselling to be a person's “core” business where their business model

involves being an onseller over a number of sites. Thus, for “specialist external providers” that operate embedded networks and engage in onselling at various embedded network sites, these activities will be considered to be their “core business”. The AER will also consider whether, in the absence of an onselling arrangement, the onseller’s relationship to a particular site or sites would cease. Whether the onseller’s business would continue but for the onselling activity taking place is also relevant.

The AER will generally consider onselling to be “incidental” where energy provision is one of a suite of services provided to a customer, and where the sale of energy does not constitute a significant aspect of the relationship. The AER will also consider the value of energy provided relative to the value of other services provided by a service provider. For example, in an industrial park, high energy usage tenants may pay a landlord onseller more for their energy use than for rental. In such a situation, it may be difficult to demonstrate that onselling is only “incidental” to the relationship. Where energy charges form a relatively low proportion of overall rental/accommodation costs, the argument that energy onselling is “incidental” will be much stronger, for example in a caravan park situation.

Q7: Do stakeholders support the AER’s views on the distinction between “core” and “incidental” onselling?

3.4.2—Profit intention of the exempt seller

In the June 2010 issues paper, the AER stated:

“It is to be expected that an exempt seller will only sell energy if it is going to at least cover its costs. The AER does not consider it unacceptable for an exempt seller to earn some level of profit which reflects the efficiencies attributable to exempt sellers versus the cost of administering the onselling arrangements (economic profit), but a balance should be struck between the level of profit earned and the prices charged to customers. An exempt seller purchases energy from a retailer as one account and will often pay a bulk (large customer) tariff due to the volume purchased. If the exempt seller is charging customers the relevant standing offer tariff ... while paying a (generally lower) bulk tariff, then the difference between these two tariffs will be the profit contribution for the exempt seller”.

A number of submissions raised concerns with the AER’s approach to the exempt seller related factor regarding the profit intention of the exempt seller. These submissions expressed concern that the AER did not support onsellors earning a profit. However, provided that pricing arrangements are disclosed prior to the onselling arrangement commencing, and that pricing protections are in place for residential customers, then the AER is not overly concerned about the profit intention of the exempt seller. The AER has revised its considerations under this exempt seller related factor for the purposes of the Exempt Selling Guidelines, to make the AER’s position on profiting from onselling clearer.

Provided that residential customers in an onselling situation face no overall disadvantage in the energy prices they pay compared to standard retail prices (which the AER will ensure through the imposition of pricing conditions), the AER will generally not place considerable weight on this particular exempt seller factor.

It is however related to the issue of whether or not onselling constitutes a person's "core" business or is "incidental" to their business activities. This is discussed above under section 3.4.1.

Q8: Do stakeholders support the AER's revised considerations on the profit intention of the exempt seller?

3.4.3—Other relevant exempt seller related factors: recognition of pre-existing onselling arrangements under jurisdictional legislation

A number of stakeholders were concerned that the AER's approach to retail exemptions in the June 2010 issues paper could result in the stranding of existing embedded network assets. Some embedded networks may involve a minimal capital outlay for the network owner. Other networks may involve very substantial capital investments for the network owner.

The AER notes that such investments may not be able to be recouped through the charging of distribution charges alone, and it may be necessary for the network operator to be able to charge both network and retail charges in order to recoup their investment.

The AER will take into account the investments made by existing network owners in making decisions under the retail exemptions regime. The AER does not consider it is generally appropriate to prevent persons who, prior to commencement of the Customer Framework, have operated legitimately under State/Territory exemption regimes from continuing to engage in onselling activities. The class exemption categories seek to ensure that all persons who have engaged in onselling activities permitted under State/Territory exemptions regimes prior to the move to the national retail regulatory framework are accommodated, provided that onselling has not been their core business. The revised draft class exemption categories mainly focus on onsellers that have some relationship to customers through the provision of accommodation or management of residential or commercial premises. They are not intended to cover specialist providers of onselling services. It is expected that specialist providers would generally hold individual exemptions. The transition of these exemptions will be considered through the Joint Implementation Group.

However, in recognising the operations that were in place prior to the implementation of the Customer Framework, it does not follow that the AER will automatically exempt future operations of a similar nature. That is, the AER will not allow exemptions for future onselling activities solely on the basis that the activity may have previously been eligible for an exemption under jurisdictional frameworks.

Future developments will not be granted class exemptions on the basis of infrastructure issues. The AER expects that new developments would be designed in a way that would not restrict the ability of customers to purchase from outside the network. We would encourage developers to consider onselling arrangements in the initial planning stage of a development as the classes of exemptions (and our approach in general) is likely to be less accommodating to granting exemptions after new infrastructure is in place.

Q9: Do stakeholders agree that the AER should recognise pre-existing onselling arrangements under jurisdictional legislation as a relevant exempt seller related factor?

3.4.4—Characteristics and circumstances of the exempt customers

The draft Exempt Selling Guidelines note that the AER will take into account whether energy is being onsold under a contract that was negotiated on behalf of a group of customers as a whole under a collective agreement. In this situation, the AER will consider whether the consumers provided informed consent to the proposed arrangements.

Q10: Do stakeholders agree that the AER should consider collective decision making arrangements as a relevant characteristic or circumstance of exempt customers?

3.5 AER’s revised approach to deemed and registrable exemptions

3.5.1—AER approach in the June 2010 issues paper

Key aspects of the approach to class exemptions proposed by the AER in the June 2010 issues paper, and stakeholder feedback, are set out below.

3.5.1.1—Approach to exemptions where customers have access to retailer of choice

In the June 2010 issues paper, the AER stated:

“The AER considers that it will generally not be appropriate to grant a retail exemption (and particularly a deemed or registrable exemption) to an onseller where all customers have access to a retailer of choice. Onselling in these circumstances is unnecessary and deprives customers of some protections under the Retail Law and Rules”.

A number of submissions suggested that access to full retail competition should not determine whether or not an onseller is eligible for a deemed or registrable exemption. The AER accepts these submissions, as this approach would disadvantage onsellors in jurisdictions where customer choice of retailer is available to customers in embedded networks, notwithstanding that their customers have the option of not purchasing from the onseller. Under the revised categories of deemed and registrable exemption, the availability of full retail competition is no longer relevant to an onseller’s eligibility for a class exemption.

3.5.1.2—Classes of exemption

In the June 2010 issues paper, the AER proposed 7 classes of exemption:

- Class 1 deemed exemptions covered onsellors who own, occupy or operate multiple dwellings or premises at a single site, where the onseller was onselling to no more than 25 sites

- Class 2 deemed exemptions covered a person passing on the cost of energy in a charge for rent, accommodation or other services, provided that there is no separate itemised charge for energy
- Class 3 deemed exemptions covered persons engaged in the onselling of energy to a related company
- Class 4 and 5 exemptions allowed temporary deemed exemptions for persons engaged in onselling metered energy to small customers within the limits of a site they own, occupy or operate where there are more than 25 small customer premises, or large customers within the limits of a site they own, occupy or operate
- Classes 6 and 7 registrable exemptions were to replace class 4 and 5 exemptions from 30 June 2013.

Some stakeholders supported the draft categories of deemed and registrable exemptions proposed in the AER's June 2010 issues paper. Several submissions suggested that all onselling should be exempt by default. Other stakeholders considered that the AER should limit the proliferation of onselling arrangements and have a plan to transition the variety of existing onselling arrangements in the market. A number of submissions argued that the AER's approach to distinguishing between deemed and registrable exemptions based on the number of customer sites was arbitrary.

A number of submissions noted the need to ensure that the exemptions framework does not override or undermine aspects of the landlord/tenant relationship which are governed under tenancy legislation, for example the lease dispute process.

A significant number of stakeholders did not support the Class 2 exemption as set out in the June 2010 issues paper, that is, the exemption for passing on an undisclosed charge for energy. Some stakeholders were also concerned that 'service charge' arrangements could be used as a way of avoiding the need to obtain an authorisation or exemption prior to engaging in the sale of energy. The AER notes these concerns. In the proposed classes of deemed and registrable exemptions set out below, there is no equivalent of the Class 2 exemption proposed in the issues paper.

3.5.1.3—AER's revised classes of deemed and registrable exemptions

The AER accepts that the classes of exemption in the June 2010 issues paper require revision, and no longer proposes to determine eligibility for deemed or registrable exemptions based on the number of customer sites.

As the AER does not believe that passing through an undisclosed charge for energy constitutes a sale of energy, and this exemption was only included for the avoidance of doubt, it considers it appropriate to omit this category of exemption in the revised draft categories of exemption.

The AER considers that the most effective means of ensuring the long term interests of consumers are upheld, and ensuring that exemptions can co-exist with

State/Territory legislation governing certain types of onsellers such as landlords, is to develop a larger number of exemptions categories. These exemption categories would be tailored to the specific circumstances of particular situations of onselling. For example, the AER considers that it is appropriate to provide separate exemptions for landlords onselling under residential tenancy legislation, and landlords onselling under retail/commercial tenancy legislation. The AER has identified the following activities and situations as being suitable for class exemptions, at least in the short term:

- bodies corporate that recoup the cost of unmetered energy for common areas through body corporate fees – deemed exemption for current and future onsellers (class D1)
- metered energy onselling to less than 12 residences, where the relationship is governed by residential tenancy legislation – deemed exemption for current and future onsellers (class D2)
- metered energy onselling to transient short term residents in holiday accommodation – deemed exemption for current and future onsellers (class D3)
- metered energy onselling in residential situations where the relationship between the onseller and the resident is not covered by residential tenancy legislation - deemed exemption for current and future onsellers (class D4)
- unmetered gas onselling to individual premises where gas is used for limited purposes – deemed exemption for current and future onsellers (class D5)
- persons recouping the cost of energy used in common areas of a site from tenants in commercial or retail premises where the relationship is governed by commercial or retail tenancy legislation – deemed exemption for current and future onsellers (class D6)
- persons engaged in the onselling of energy to a related company – deemed exemption for current and future onsellers (class D7)
- metered energy onselling to small customers where the relationship is governed by commercial or retail tenancy legislation – registrable exemption for current onsellers and those who commence onselling before 1 January 2015 (class R1)
- persons onselling metered energy to residents where the relationship is governed by strata title or similar legislation – registrable exemption for current onsellers and those who commence onselling before 1 January 2015 (class R2)
- onselling metered energy to residents of retirement villages where the relationship is governed by retirement village legislation – registrable exemption for onsellers commencing onselling before 1 January 2015 (class R3)
- persons engaged in onselling metered energy to large customers – registrable exemption for current and future onsellers (class R4).

Class exemptions for the above categories of onselling are set out in the draft determinations of deemed and registrable exemptions appended to this paper (**Attachments 1 and 2**).

Q11: Do stakeholders agree with the AER's categories of exemption set out in the draft determinations? Why or why not?

3.6 AER's considerations on individual exemptions

The revised categories of deemed and registrable exemptions will, over time, reduce eligibility of some onselling activities for a class exemption. The AER considers that in some circumstances, it is more appropriate to require individual exemptions for onselling proposals. This will enable the AER to consider consumer benefit on a case-by-case basis, taking into account the availability of concessions, rebates and other government social programs in the relevant jurisdiction. It will also enable the AER to consider whether it is feasible to mitigate the risks faced by customers in the event that an onseller defaults on their energy payments. Requiring individual exemptions will also assist the AER to impose more stringent conditions of exemption on some new onsellers, while recognising that existing onsellers may have a legitimate expectation that their onselling activities will continue to be permitted.

Q12: Do stakeholders support the AER's proposed approach to reducing eligibility of some onselling activities for a class exemption, and instead requiring applications for individual exemption to be made?

Three situations where the AER notes that individual retail exemptions would be required are:

- specialist onsellers
- decentralised energy systems (for example, co-generation, tri-generation, fuel cells and renewable energy) and
- the sale of energy in off-grid networks (but only where the State or Territory in question has elected to bring off-grid networks under the Customer Framework).

The AER considers that generally, the provision of energy through decentralised networks and off-grid networks will be in the long term interests of consumers.

The AER notes that off-grid networks are regulated under State/Territory legislation, and only require an exemption if the State or Territory in which they are located elects to bring their off-grid networks under the Customer Framework. To date, South Australia has advised the AER that off-grid networks located in that state will not be brought under the Customer Framework.

The AER will work with each participating State and Territory to determine the scope (if any) of off-grid networks that will be covered by the Customer Framework, and if there are sufficient off-grid networks that jurisdictions elect to

bring under the Customer Framework, will consider whether it is feasible to develop a class exemption category for off-grid networks.

Q13: Do stakeholders agree with the AER’s considerations on the sale of energy through off-grid networks (where these are brought under the Customer Framework)?

The AER’s approach to individual retail exemptions for specialist onsellers is set out below.

3.6.1—Exemption arrangements for specialist onsellers

The AER has not developed a class exemption category to cover specialist external providers of onselling, who both operate embedded networks and manage onselling within those networks across a number of sites. Where an onseller’s business model is to be a specialist provider, and the sale of energy is the only or main interaction that the onseller has with the customer, the AER will generally consider that onselling is a core business activity. In these situations, an individual exemption will be required. The AER’s considerations on “core” business activities are set out in more detail in section 3.4.1 above.

The AER is considering whether to issue some individual exemptions on an entity-specific basis, rather than on a site-specific basis. This would enable an onseller to onsell at multiple locations. The AER considers that this would generally only be appropriate where the onseller is subject to all relevant obligations placed on retailers under the Retail Law and Retail Rules (that is, the vast majority of obligations placed on retailers under the Retail Law and the Retail Rules).

As a general principle for individual exemptions, the AER considers that the closer the arrangements are to a general retail arrangement, then the more likely that general obligations on retailers would apply to the onseller.

Q14: Should the AER ever issue individual exemptions on an entity-specific basis, enabling a person to onseller at multiple locations? Is a retailer authorisation more appropriate for onsellers that wish to onsell at multiple locations?

3.6.2—Individual exemptions for onselling in decentralised energy systems

Distributed, or decentralised energy, brings energy generation closer to where it is used. Distributed energy includes wind power, solar panels, combined heat and power schemes or other electricity generation connected directly into a local distribution network. Distributed energy assists in addressing greenhouse gas issues by reducing the amount of greenhouse gases produced because of energy production and use. Distributed energy may be used in industrial and commercial settings for consumption on-site or across multiple sites, as well as for the

generation of electricity for multiples premises and customers.²⁵ It involves interactions between generation, distribution and retail regulation.

The AER recognises that both governments and customers support decentralised energy, in particular in a carbon constrained environment. The AER considers that decentralised energy projects will generally be in the long term interests of consumers, and are therefore generally suitable candidates for retail exemption.

The AER has considered the submission of one stakeholder that the AER should provide a class exemption for local electricity generators to retail electricity over the local distribution network. Due to the unique nature of these projects, the AER considers that it would not be feasible (at least in the short term) to develop a class exemption category that addressed the different circumstances of each particular project providing low or zero carbon decentralised energy supply. Further, the AER notes that such projects will in any case generally require individual electricity network service provider exemptions from the AER.

The proposed categories of deemed and registrable exemption therefore do not include a specific category for renewables or decentralised energy (cogeneration and tri-generation), although some distributed energy situations may come within the exemption for onselling to large customers. The AER considers that the most appropriate way of accommodating distributed energy projects that involve energy onselling to small customers is through the regime for individual exemptions. With further experience of such applications it may be feasible for the AER to prepare a class exemption for them.

In formulating any conditions of exemption for such persons, the AER would take into account the regulatory burden and endeavour to take a light handed approach where appropriate.

Q15: Do stakeholders agree with the AER's considerations on the provision of onselling through decentralised networks?

Q16: Is it feasible for the AER to issue a class exemption for decentralised energy projects?

Q17: What activities / entities should any such class exemption cover?

Q18: Are the conditions of exemption set out in class D2 of the draft determination of deemed exemptions (with the exception of those that relate to the operation of state/territory tenancy legislation) appropriate for decentralised energy projects? Are further conditions of exemption required?

²⁵ Source Ofgem – *Distributed Energy, Summary for Non-Specialists*, available at <http://www.ofgem.gov.uk/Sustainability/Environment/Policy/SmallrGens/DistEng/Documents1/DE%20Non-Specialist%20Summary%20-%20Final.pdf>.

3.7 AER considerations on the Public Register

3.7.1—Universal registration requirements

The June 2010 issues paper stated:

“While registration has many benefits, the AER considers that it is not practical to require a blanket registration of all exempt sellers. This would place a large administrative burden on small exempt sellers in both physically registering and understanding why they need to register in the first place”.

A number of stakeholders suggested that all onsellors should be registered with the AER. While the AER agrees with stakeholders that registration has benefits in terms of providing transparency regarding the scale and scope of onselling activities, and facilitating the AER’s monitoring of those activities, the AER does not agree with a universal registration requirement. The AER is concerned that many onsellors are very small businesses that are not affiliated with any particular industry association. In these circumstances, it is difficult to ensure that these onsellors are aware of their obligation to register with the AER. For smaller onsellors, it is unlikely that imposing a registration requirement would provide an accurate picture of the scale and scope of onselling operations. However, the revised classes of registrable exemption should ensure that over the next few years, a significant number of onsellors are registered on the public register of authorised retailers and exempt sellers.

Q19: Do stakeholders agree with the AER’s proposed registration arrangements?

3.7.2—Information requirements for the Public Register

One stakeholder queried the timing requirements for updates to the public register, noting that it was unclear for example whether or not annual updates of changes would be required, or updates within, for example, 2 business days of the change. The draft Exempt Selling Guidelines propose that amended information is provided by registered exemptees as information relevant to the public register changes, to ensure that their exemption remains valid.

Another stakeholder suggested that the type of meter used for exempt customers should be recorded on the public register. They also suggested that the management arrangement (i.e. owner operated/operated by an agent) should be recorded.

Q20: Should customer meter types be recorded on the public register?

Q21: Should management arrangements for embedded networks be recorded on the public register?

Q22: Are the information requirements for registration, as set out in the draft Exempt Selling Guidelines, appropriate?

3.8 Proposed changes to the conditions of class exemptions

The AER has proposed a number of changes to the conditions of exemption that will apply to most classes of onsellers selling to small customers.

3.8.1—Information Provision

The information requirements regarding dispute resolution have been extended to include not just information about the available external dispute resolution bodies but also an outline of the exempt seller's (internal) procedures for handling disputes and complaints (see Condition 1 of the class D2 exemption).

Exempt sellers are now required to explicitly inform their customers that they are not subject to all of the obligations of an authorised retailer and that the customers will therefore not receive the same protections as if they purchased from an authorised retailer.

The exempt seller is now required to inform its customers of the conditions of exemption that the exempt seller is operating under.

The availability of flexible payment options was previously limited to those exempt customers experiencing payment difficulties; this limitation has been removed so that all exempt customers can now access flexible payment options.

The exempt seller is now required to specify the energy tariffs and all associated fees and charges applicable to the exempt customer at the start of the exempt customer's tenancy or residency (see paragraph 1(e) of Condition 1 of the class D2 exemption), and the basis on which these are calculated (see paragraph 2(j) of Condition 2 of the class D2 exemption).

The exempt seller must now provide its customers with contact numbers to be used in the event of a gas or electricity fault or emergency.

3.8.2—Billing and payment arrangements

This clause still requires billing to occur at least every three months, but no longer requires that billing occurs no more frequently than rent or accommodation charges are paid (see Condition 2 of the class D2 exemption).

The clause specifying that bills may be issued outside the required periods when the exempt seller and customer have agreed on an alternative payment plan has been updated to remove the reference to the customer experiencing payment difficulties.

The unit of measurement for a gas meter reading has been changed from gigajoules to cubic meters.

The units to be used when declaring the amount of energy consumed have been clarified. Electricity consumption must be shown in kilowatt hours. Gas consumption must be shown in cubic meters and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as applied by the exempt seller's retailer for the site).

3.8.3—Estimation as basis for bills

There have been no substantive changes to this condition since the June 2010 issues paper was released (see Condition 3 of the class D2 exemption).

3.8.4—Pay-by date

The pay-by date must now be no less than 13 business days from the date on which the exempt person issues the bill (see Condition 4 of the class D2 exemption). This is an increase of one business day to reproduce the requirement placed on authorised retailers.

3.8.5—Receipts

Exempt sellers are no longer required to provide customers with a receipt for amounts paid for energy where the customer pays by direct debit (see Condition 5 of the class D2 exemption).

3.8.6—Undercharging

The condition relating to overcharging has been removed as it is considered that the Australian Consumer Law and contract law provide adequate protections. The condition related to undercharging has been retained to ensure that customers are not disadvantaged if the exempt seller fails to bill them at least every three months (see section 5 of condition 6 of the class D2 exemption).

3.8.7—Pricing requirements

The requirements to inform customers of tariffs, fees and charges, and the availability of energy rebates/concessions are now covered under the ‘information provision’ condition (see section 1(f) and (g) of Condition 1 of the class D2 exemption).

The requirement around informing customers about changes to the tariff charged has been modified. The exempt seller must now provide the customer with notice of any tariff change as soon as practicable, and no later than the customer’s next bill (see section 2 of Condition 6 of the class D2 exemption).

The condition stating that an exempt seller must not impose any other charge on a customer in relation to the supply of energy has been extended to state that the exempt seller must not impose any charge that could not be charged by the relevant local retailer for new connections under a standard retail contract.

A qualification has been added to this condition, whereby it does not apply where alternative pricing requirements are contained in applicable State or Territory legislation.

3.8.8—Payment difficulties and disconnection or cessation of supply

An exempt seller may now proceed with disconnection where the continuity of supply to the premises would be unsafe. In this case, the exempt seller must use best endeavours to notify the customer prior to disconnecting the property, and to rectify

the problem and reconnect the premises as soon as practicable (see Condition 7 of the class D2 exemption).

The requirements around disconnection for non-payment have been extended to include a reminder notice, a disconnection warning and personal contact with the customer.

This condition has been extended to state that an exempt seller cannot refuse to supply a customer except in accordance with the provisions set out in the condition.

3.8.9—When disconnection or cessation of supply is prohibited

The condition that disconnection or cessation of supply is prohibited when a customer has made a complaint directly relating to the proposed reason for disconnection or cessation to the energy Ombudsman has been extended to include other relevant external dispute resolution bodies (see section 1(c) of Condition 8 of the class D2 exemption).

This condition does not apply where the exempt seller is a landlord and State or Territory legislation sets out the process and requirements for disconnection or cessation of supply by landlords.

3.8.10—Reconnection of supply

This condition has been extended to include situations where it is the network operator who must connect the exempt customer's premises, so that when reconnection is appropriate, the exempt seller can instruct the network operator to do so (see Condition 9 of the class D2 exemption).

3.8.11—Concessions and rebates

The requirement for an exempt seller to assist its customers to access any government rebate, concession or assistance under a relief scheme has been modified. A number of stakeholders commented on this requirement, stating it was unreasonable to expect an exempt seller to assist customers to access assistance where it was available to the customer directly. Exempt sellers will still be required to use their best endeavours to claim a government energy rebate, concession or assistance under a relief scheme where the assistance can only be claimed by the exempt seller on behalf of the exempt customer (see Condition 10 of the class D2 exemption).

3.8.12—Retailer of choice

This condition has not changed (see Condition 11 of the class D2 deemed exemption).

3.8.13—Contact details

This condition has been relaxed slightly (see Condition 12 of the class D2 deemed exemption) so that exempt sellers must provide a means for contact for enquiries and complaints that can be "readily accessed" by its customers, rather than strictly within business hours at no more than the cost of a local call. This approach is seen

as more flexible for both the exempt seller and its customers, recognising that exempt sellers such as residential landlords do not always work within “standard” business hours.

3.8.14—Dispute resolution

Previously there was a requirement for an exempt seller, in the event of a dispute, to make the customer aware of any right to access an energy Ombudsman scheme or relevant tribunal in the customer’s State or Territory. The reference to a tribunal has been replaced with the more generic reference to ‘any other relevant external dispute resolution body’ in the relevant State or Territory (see Condition 13 of the Class D2 exemption).

3.8.15—Life support customers

This requirement has been extended so that the exempt seller must inform not only their distributor of any customers who have life support equipment that is reliant on energy for its operation, but also their authorised retailer (see Condition 14 of the class D2 exemption).

3.8.16—Continuity of supply

This condition has been revised so that the exempt seller must inform its customers and the AER if they are (or are expected to be) disconnected, but such a notification is no longer triggered by disconnection warning notices (see Condition 15 of the class D2 exemption). This reflects feedback from industry participants that disconnection warning notices are frequently issued and do not necessarily mean that disconnection is imminent.

3.8.17—Maintaining records

This condition has been revised to reduce the record-keeping requirements, as much of the information that was required would be available in copies of bills (see Condition 16 of the class D2 exemption). The requirement to retain copies of bills for the previous 12 months has been retained.

Q23: Do stakeholders agree with the revised conditions outlined in the draft determinations that will apply to each class of exemption? Why or why not?

3.9 AER considerations on retail pricing protections

A number of submissions to the June 2010 issues paper commented on retail pricing matters. The AER’s considerations on these issues are set out below.

3.9.1—Condition that charges not be greater than local area retailer’s standing offer

In the June 2010 issues paper, the AER proposed a condition of class 1 exemptions, that:

“An 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 of energy directly to the premises of the exempt customer”.

Several submissions were concerned that the pricing condition proposed in the June 2010 issues paper would prevent an embedded network from charging a supply charge, and would limit them to charging only a usage charge. The AER does not consider that the proposed condition has this effect.

The Retail Rules now include a provision explicitly enabling the AER to oversee the prices charged by onsellers, where onsellers are selling to residential premises. Where the AER imposes such a condition, rule 152(4) states that the AER must ensure that those customers are charged no more than the standing offer price of the local area retailer. Standing offer prices are defined under section 2 of the Retail Law as follows:

“standing offer prices means all of the tariffs and charges that a retailer charges a small customer for or in connection with the sale and supply of energy to a small customer under a standard retail contract”.

This definition ensures that standing offer prices include both supply charges and usage charges. It should be noted, however, that under the Australian Energy Market Agreement, States and Territories retain retail pricing responsibilities, and the AER’s proposed pricing condition is subject to any contrary arrangements made by States and Territories. For example, jurisdictions may wish to limit the supply charge that is charged in certain embedded network situations, on the basis that the amperage provided within the embedded network is lower than that available on the distribution network.

One stakeholder noted that, for customers that exercise choice of retailer in embedded networks, the issue of how the “parent” onseller allocates network charges across customers will be important, to enable second tier retailers to understand whether they are quoting the customer an energy only or an energy and supply contract. The AER will consider the incidence, and allocation, of network charges within embedded networks as part of its review of the electricity Network Service Provider Exemption Guidelines.

3.9.2—Condition that an exempt person must not impose any other charge on an exempt seller

In the June 2010 issues paper, the AER proposed a condition of class 1 exemptions, that:

“An exempt person must not impose any other charge on an exempt customer in relation to the supply of energy”.

Several submissions raised concerns with the prohibition on charging “any other charge”. This condition was included with the intention of ensuring that, from a pricing perspective, customers of an onseller are not disadvantaged relative to customers of the local area retailer. It was intended to prevent exempt sellers from

charging any fees or charges that are not charged for by the relevant local area retailer. However, several submissions raised concerns that the prohibition on charging other fees would prevent them from charging for fees that are charged for legitimately by the relevant local area retailer. Some stakeholders were also concerned that the condition seemed to contradict disclosure requirements that would require onsellors to disclose tariffs and charges applicable to an exempt customer, and the basis on which they are calculated. The AER's aim is to ensure that, from a pricing perspective, customers of an onseller are not disadvantaged relative to customers of the local area retailer.

This condition has now been redrafted to better reflect the AER's intentions, and now states:

"An 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."

This condition will only apply to exempt customers at residential premises.

Q24: Does the AER's revised pricing condition achieve the AER's objective of ensuring that, from a pricing perspective, residential customers of an onseller are not disadvantaged relative to customers of the local area retailer?

3.9.3—Pricing protections where full retail competition is available

Some stakeholders suggested that, where full retail competition is available, the AER should not regulate the prices charged by onsellors. However, the AER does support price constraints where retail competition is available, for several reasons:

- in jurisdictions where full retail competition is found to be effective and retail price regulation is removed, customers below a defined consumption threshold will still have access to a standing offer tariff — retail price conditions simply ensure that residential customers of onsellors pay no more than retail customers purchasing under a standing offer tariff
- even in jurisdictions where full retail competition is available within embedded networks, it is extremely difficult to determine with any certainty how effective full retail competition is within embedded networks, nor the reasons for why the switching rates within embedded networks seem to be low where full retail competition is available. The AER must take into account the possibility that the landlord/tenant relationship is a deterrent to tenants switching away from the landlord onseller
- there may be significant switching costs for customers in embedded networks exercising the ability to choose their own retailer, including meter changeover costs, which do not apply to customers that are directly connected to the distribution network
- even where market mechanisms are in place to facilitate customers in embedded networks choosing their own retailer, such customers may not always be attractive to retailers due to the administrative and system complexities of serving them.

The AER therefore intends to impose price constraints on all the tariffs charged to all residential customers of embedded networks, irrespective of whether full retail competition is available.

3.10 AER considerations on metered and unmetered supply

3.10.1—Smart meter-related protections

One submission noted that, in the future, smart meters may be utilised in embedded networks, and that the same customer protections that apply to retail customers with smart meters may need to be considered. The AER agrees that smart meter-related protections should be available for small exempt customers with a smart meter. The AER notes that the Ministerial Council on Energy’s Smart Meters Working Group is considering smart meter protections. The AER anticipates that in the future, the Customer Framework will be amended to provide customer protections for customers with smart meters. Until that time, it may be necessary to address smart metering through conditions based on those that apply to Victorian customers with a smart meter.

Q25: How should the AER address protections for small exempt customers in embedded networks with a smart meter? What core protections are required?

3.10.2—Practicality of requiring metering for all gas onselling

A number of submissions on the issues paper and draft categories of deemed and registrable exemptions noted that there is a good case for allowing the onselling of unmetered gas, particularly where gas is only used for limited purposes. These submissions noted that it may be more economical to have unmetered gas supply for apartment blocks for appliances such as cooktops and ovens. As the usage of gas in these situations is relatively low, the costs of directly connecting individual residences to the gas distribution network will generally exceed the benefits. Further, a range of technical and safety issues arise in relation to gas metering within developments. Submissions that considered this issue generally recognised that where gas is only used for limited purposes, it may be more cost effective for customers to have only a parent meter, and no metering for “children” within the network.

While the AER generally supports the use of metering to send price signals to customers and ensure equitable charging, the AER agrees with stakeholder submissions that in situations of limited gas use, the costs of requiring gas metering can exceed the benefits. The AER has therefore provided a class exemption for unmetered gas supply for purposes of cooking and heating water. This exemption does not extend to arrangements for space heating.

Q26: Is the proposed exemption for the onselling of unmetered gas appropriate?

3.10.3—Common area charges and other tenancy-related instances of unmetered supply

The June 2010 categories of class exemption did not provide for commercial/retail landlords to charge tenants common area charges for unmetered energy. The AER accepts submissions to the effect that the class exemption categories should also address charging for unmetered energy in common areas of commercial/retail tenancies. The revised classes of exemption enable the charging of common area charges. The AER has not imposed any conditions on this class of exemption, as the obligations on commercial/retail tenants are adequately addressed in tenancy legislation.

The AER notes that unmetered supply in commercial/retail tenancies may also occur outside of common areas. For example, one submission noted that it may not always be practicable to install a meter in other areas of a commercial/retail tenancy, such as tenants' storage areas. The AER has not provided an exemption for unmetered supply in commercial tenancies outside of common areas. The AER considers that, if the energy usage outside common areas is significant, it will be economic for the onseller to meter this usage.

Q27: Do stakeholders support the AER's approach to common area charges and unmetered supply in commercial/retail tenancies?

3.10.4—Metering accuracy

The AER's draft classes of deemed and registrable exemptions which accompanied the June 2010 issues paper proposed that customers would need to be metered for onsellors to be eligible for most classes of exemption. Several stakeholders noted the need for the AER to ensure that metering used by onsellors meets relevant Australian Standards, and accuracy requirements that apply to market meters. As is noted above in section 2.7.3, the AER may impose conditions on exempt sellers with respect to installing, maintaining and reading of exempt customers' meters in accordance with jurisdictional energy legislation. However, the AER may not impose metering-related conditions that require compliance with aspects of national energy legislation, including metrology procedures made under national energy legislation. The AER will be liaising with the Joint Implementation Group to gain an understanding of the metrology requirements found in State and Territory legislation other than national energy legislation and to determine appropriate metering-related conditions.

Q28: Given that the AER cannot impose metering accuracy requirements under national metrology procedures, which existing State/Territory metering accuracy requirements should be imposed on onsellors?

3.10.5—Bulk hot water

The AER received several submissions on the issues paper that raised the issue of bulk hot water. Hot water is often supplied to customers living in multi-tenanted dwellings under a bulk arrangement. The water is generally supplied through a shared installation, meaning that water is heated at one location within the dwelling and distributed as required to individual customers. Gas or electricity flows from

the distributors' network through a bulk hot water energy meter (master meter) to the site's bulk hot water installation, where cold water is heated. The heated water then flows from the installation through individual hot water flow meters and into individual apartments. Customers do not have individual meters for the purpose of recording the energy used to heat the hot water that they individually consume. The energy retailer is usually responsible for each individual occupier's hot water meter, whilst the body corporate is responsible for the bulk hot water installation and associated pipe work.

Several submissions were concerned that retail exemptions are currently being used to allow unfair bulk hot water arrangements, including the locking in of long-term service contracts by original owner developers and third party service providers, and over which current tenant/consumers have very little influence. One submission noted that such customers do not have access to choice of retailer and that they also do not generally benefit from any discounts received by the service provider on the bulk energy it purchases on their behalf. Several stakeholders expressed concern that approved energy meters are not used in bulk hot water schemes. They were concerned that tenants/consumers being billed for bulk hot water have very few avenues for redress when problems occur.

The AER appreciates the concerns expressed by these stakeholders. The AER notes that bulk hot water charges may be calculated according to the amount of energy deemed to be consumed based on the hot water flow meter (for example, using a conversion factor of a certain amount of gas per litre of hot water). Bulk hot water charges may also be charged on a per litre basis according to the amount of hot water used, with no energy charges. It is unclear whether a 'sale' of energy occurs for the purposes of section 88 of the Retail Law in either circumstance. The AER will consider further whether there is a 'sale' of energy for the purposes of section 88 of the Retail Law and will also raise this issue with the Joint Implementation Group.

3.11 Exempt Selling Guidelines

The AER is seeking stakeholder feedback on the content of the draft Exempt Selling Guidelines that were released together with this consultation paper.

Q29: Do stakeholders have any concerns about the content of the draft Exempt Selling Guidelines?

Attachment 1 – Draft Determination of Deemed Exemptions

Draft Determination

Deemed exemption classes

The AER determines the following classes of persons as classes of persons in respect of whom a deemed exemption is taken to be in force for the purposes of section 110 of the National Energy Retail Law and rule 150 of the National Energy Retail Rules.

This determination takes effect on [XXXX].

- Class D1—Bodies corporate or owners’ corporations recouping from their members, through body corporate fees, the cost of energy used in common areas within the land affected by the body corporate 44**
- Class D2—Persons onselling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is governed by residential tenancy legislation and there are less than 12 residential premises at the site 45**
- Class D3—Persons onselling metered energy to transient or short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate..... 52**
- Class D4—Persons onselling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is not governed by residential tenancy legislation 54**
- Class D5—Persons onselling unmetered gas for use in premises within the limits of a site that they own, occupy or operate, where gas is used for limited purposes 61**
- Class D6—Persons recouping the cost of energy used in common areas of a site that they own, occupy or operate, from tenants in commercial or retail premises, where the relationship between the person and the tenant is governed by commercial or retail tenancy legislation..... 65**
- Class D7—Persons onselling energy to a related company within the limits of a site that they own, occupy or operate..... 66**

Class D1—Bodies corporate or owners' corporations recouping from their members, through body corporate fees, the cost of energy used in common areas within the land affected by the body corporate

A deemed exemption is in force for persons falling within the following class:

Bodies corporate who:

1. supply energy to common areas within the limits of land affected by the body corporate, and
2. recoup from members, through body corporate fees, the cost of energy supplied to common areas.

Conditions

No conditions apply to the sale of energy under the Class D1 deemed exemption.

Class D2—Persons onselling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is governed by residential tenancy legislation and there are less than 12 residential premises at the site

Note—This class is intended to apply to the onselling of energy by landlords, lessors or property managers (and similar entities) to residential dwellings such as units, standard apartments and flats.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is for use in residential premises located within the limits of a site owned, occupied or operated by that person,
2. the site includes 12 or fewer residential premises,
3. the premises are separately metered, and
4. the person selling the energy is a landlord, lessor or property manager (or similar entity) and the relationship between the person and the residents is governed by residential tenancy legislation.

Conditions

The following conditions apply under rule 153 to the sale of energy to residential customers by persons covered by the Class D2 deemed exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
 - a. any right of the exempt customer, under state or territory 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 they 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, and

- 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 or territory 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. any flexible payment options provided by the exempt person to exempt customers in relation to the sale of energy, including alternative payment arrangements for payment by periodic instalments
 - g. information about the availability of relevant government energy rebates, concessions and relief schemes
 - h. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.
 - e. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
 - f. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.

- g. Days in the meter reading or estimate period.
- h. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- i. Tariffs, fees and charges applicable to the exempt customer.
- j. The basis on which tariffs, fees and charges are calculated.
- k. Any amount deducted, credited or received under a government-funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- l. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

- 1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
- 2. An 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.
- 3. Where an estimation is used as the basis for a 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.
- 4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

- 1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.

2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Pricing and billing requirements

1. An 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 of energy directly to the premises of the exempt customer.
2. An 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. An 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.
4. The requirement in paragraphs 1–3 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
5. Where an exempt customer has been undercharged, an 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.
 - 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).

Condition 7 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 8, an 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 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 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 paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
3. An exempt person must not refuse to supply an exempt customer except where the requirements of this condition have been met.
4. This condition does not apply where state or territory 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 8 - When disconnection or cessation of supply is prohibited

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
- a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. 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 (both inclusive) in any year.
- 2. This condition does not apply where the exempt customer has requested disconnection.
- 3. This condition does not apply where state or territory 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 9 - Reconnection of supply

- 1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 10 - Concessions and Rebates

- 1. Where an exempt customer is eligible to receive a government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2. If the government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 11 - Choice of retailer

- 1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 12 - Contact details

- 1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 13 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Condition 14 - Life support customers

1. An exempt person must maintain records of any exempt customers who have life support equipment on their premises that depends on energy for its operation, and must advise the exempt person's authorised energy retailer and distributor of any such life support customers.

Condition 15 - Continuity of supply

1. An 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 onselling energy.

Condition 16 - Maintaining records

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

Class D3—Persons onselling metered energy to transient or short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate

Note—This class is intended to apply to the onselling of energy to transient or short term residents in holiday accommodation including hotels, motels, inns, holiday flats, holiday cabins, campsites, non-residential caravan parks and marinas.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is for use in premises located within the limits of a site owned, occupied or operated by that person,
2. the person provides holiday accommodation at the site,
3. the premises are separately metered, and
4. the resident is transient or short term.

For the purposes of this exemption, a reference to a ‘transient or short term’ resident is a reference to a person who is using the accommodation, where the accommodation is not the person’s regular home or dwelling.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by persons covered by the Class D3 deemed exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The period covered by the bill.
 - b. The amount of energy consumed, or estimated to be consumed, in the billing period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied

(these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).

- c. Tariffs, fees and charges applicable to the exempt customer.
- d. The basis on which tariffs, fees and charges are calculated.

Condition 3 - Estimation as basis for bills

1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
2. An 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.
3. Where an estimation is used as the basis for a 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.
4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - Receipts

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 5 - Pricing and billing requirements

1. An 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 of energy directly to the premises of the exempt customer.

Condition 6 - Contact details

1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Class D4—Persons onselling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is not governed by residential tenancy legislation

Note—The forms of residential accommodation that are not covered by residential tenancy legislation vary across states and territories, but may include hostels, rooming houses and boarding houses.

Where a more specific exemption class also applies—for example, the exemptions for holiday accommodation (class D3), caravan parks, residential parks and manufactured home estates (classes R4) or retirement villages (class R3)—the onseller will be subject to, and required to comply with the conditions applying to, the more specific exemption.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is for use within the limits of a site owned, occupied or operated by that person,
2. the person provides residential accommodation at the site,
3. the relationship between the person and the residents is not governed by residential tenancy legislation in the relevant state or territory,
4. the residential accommodation is separately metered, and
5. the sale of energy does not satisfy the criteria for deemed exemption class D3, or registrable exemption classes R3 or R4.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons covered by the Class D4 deemed exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
 - a. any right of the exempt customer, under state or territory 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 they 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, and
 - 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 or territory 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. any flexible payment options for energy provided by the exempt person for exempt customers, including alternative payment arrangements for payment by periodic instalments
 - g. information about the availability of relevant government energy rebates, concessions and relief schemes
 - h. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.

- e. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
- f. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
- g. Days in the meter reading or estimate period.
- h. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- i. Tariffs, fees and charges applicable to the exempt customer.
- j. The basis on which tariffs, fees and charges are calculated.
- k. Any amount deducted, credited or received under a government-funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- l. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

- 1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
- 2. An 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.
- 3. Where an estimation is used as the basis for a 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.
- 4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Pricing and billing requirements

1. An 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 of energy directly to the premises of the exempt customer.
2. An 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. An 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.
4. The requirement in paragraphs 1–3 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
5. Where an exempt customer has been undercharged, an 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.
 - 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).

Condition 7 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 8, an 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 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 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 paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
- 3. An exempt person must not refuse to supply an exempt customer except where the requirements of this condition have been met.
- 4. This condition does not apply where state or territory 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 8 - When disconnection or cessation of supply is prohibited

- 1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. 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 (both inclusive) in any year.
2. This condition does not apply where the exempt customer has requested disconnection.

Condition 9 - Reconnection of supply

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
- a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 10 - Concessions and Rebates

- 1. Where an exempt customer is eligible to receive a government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2. If the government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 11 - Choice of retailer

- 1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 12 - Contact details

- 1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 13 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Condition 14 - Life support customers

1. An exempt person must maintain records of any exempt customers who have life support equipment on their premises that depends on energy for its operation, and must advise the exempt person's authorised energy retailer and distributor of any such life support customers.

Condition 15 - Continuity of supply

1. An 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 onselling energy.

Condition 16 - Maintaining records

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

Class D5—Persons onselling unmetered gas for use in premises within the limits of a site that they own, occupy or operate, where gas is used for limited purposes

Note—This exemption will only apply where gas is used for limited purposes, that is, for use in cooking appliances and, possibly, heating of water.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of gas where:

1. the gas is for use in premises within the limits of a site owned, occupied or operated by the person or, in the case of a body corporate, on land affected by the body corporate, and
2. the premises are not separately metered for gas consumption, and
3. there is a separate itemised charge for the gas (or, in the case of a body corporate, the cost is recouped through body corporate fees), and
4. the gas is not used for space heating.

Conditions

No conditions apply where a body corporate recoups the cost of gas through body corporate fees.

For the sale of unmetered gas to exempt customers by exempt persons (other than bodies corporate) under the Class D5 deemed exemption, the following conditions apply under rule 153.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
 - a. the exempt customer's rights in relation to dispute resolution including:
 - i. the exempt person's procedures for handling disputes and complaints, and
 - 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 or territory in which the exempt customer is located
 - b. the conditions applicable to the exemption that the exempt person is operating under

- c. the gas tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of gas
 - d. any flexible payment options for gas provided by the exempt person for exempt customers, including alternative payment arrangements for payment by periodic instalments
 - e. contact numbers in the event of a gas fault or emergency.
2. The information set out in paragraph 1 of this condition must be provided by the exempt person at the request of the exempt customer or the AER.
 3. The information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable (and at least within three months) after the determination is in force.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the meter reading or estimate on which the bill is based, as applicable.
 - e. Days in the meter reading or estimate period.
 - f. The amount of gas consumed, or estimated to be consumed, by the site in the meter reading or estimate period. Gas consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied.
 - g. The amount of gas deemed to be consumed by the exempt customer in the meter reading or estimate period, including the basis of allocation of the deemed amount.
 - h. Tariffs, fees and charges applicable to the exempt customer.
 - i. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

1. An exempt person must use best endeavours to ensure that the site's gas meter is read and used as the basis for any bill issued.

2. An exempt person may base an exempt customer's bill on an estimation of the site's gas consumption where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
3. Where an estimation of gas consumption for the site is used as the basis for a exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the site reasonably available to the exempt person, or
 - b. where this is not available, the average usage of gas by a comparable site over the corresponding period.
4. If a bill is based on an estimation of gas consumption for the site, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

1. An exempt person must provide each exempt customer with a receipt for any amount paid for gas, except where payment has been made by direct debit.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for gas was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Pricing and billing requirements

1. An 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 of gas directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An 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.
4. The requirement in paragraphs 1–3 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
5. Where an exempt customer has been undercharged, an 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.
- 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).

Condition 7 - Contact details

1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 8 - Dispute resolution

1. In the event of a dispute concerning the sale of gas to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Class D6—Persons recouping the cost of energy used in common areas of a site that they own, occupy or operate, from tenants in commercial or retail premises, where the relationship between the person and the tenant is governed by commercial or retail tenancy legislation

Note—This class is intended to apply where landlords, lessors or management corporations (and similar entities) recoup common area energy costs from tenants of premises in commercial or retail developments such as shopping centres, office buildings, airports and industrial parks.

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to tenants where:

1. the energy is used within the limits of a site owned, occupied or operated by the person, and
2. the energy is used within common areas of that site, and
3. the relationship between the person and the tenant is governed by commercial or retail tenancy legislation, and
4. the cost of the energy is recouped in accordance with the terms of a lease between the person and the tenant.

Conditions

No conditions apply to the sale of energy under the Class D6 deemed exemption.

Class D7—Persons onselling energy to a related company within the limits of a site that they own, occupy or operate

A deemed exemption is in force for persons falling within the following class:

Persons engaged in the onselling of energy to a related company, where the energy is used within the limits of a site owned, occupied or operated by the person.

For the avoidance of doubt, where a company controls or is controlled by another company including where:

1. a company is a subsidiary of another company, or
2. two companies have a common holding company,

the two companies are related and will qualify to operate under this class of exemption.

Conditions

No conditions apply to the sale of energy under the Class D7 deemed exemption.

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 which includes an owners corporation but is not a body corporate for the purposes of the *Corporations Act 2001* (Cwlth).

disconnection 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 or both.

energy Ombudsman scheme means a scheme associated with the energy Ombudsman for the relevant state or territory 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 means a person who is exempted by the AER under a deemed or registered exemption from the requirement to hold a retailer authorisation.

large customer means a business customer who consumes energy at business premises at or above the upper consumption threshold of 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas.

meter means any device (compliant with metrology requirements and Australian standards) 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.

residential customer means a customer who purchases 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 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 of 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas.

Attachment 2 – Draft Determination of Registrable Exemptions

Draft Determination

Registrable exemption classes

The AER determines the following classes of persons as classes of persons in respect of whom an exemption is registrable for the purposes of section 110 of the National Energy Retail Law and rule 151 of the National Energy Retail Rules.

This determination takes effect on [XXXX].

- Class R1—Persons onselling metered energy to small customers within the limits of a site that they own, occupy or operate, where the relationship between the person and the small customer is governed by commercial or retail tenancy legislation 69**
- Class R2—Persons onselling metered energy to residents, where the relationship between the person and the resident is governed by strata title or similar legislation 75**
- Class R3—Persons onselling metered energy to residents for use within the limits of a retirement village that they own, occupy or operate, where the relationship between the person and the resident is governed by retirement village legislation..... 82**
- Class R4—Persons onselling metered energy to residents for use in premises within the limits of a caravan park, residential park or manufactured home estate site that they own, occupy or operate, where the premises are the principal place of residence for the resident 89**
- Class R5—Persons onselling metered energy to large customers .. 96**

Class R1—Persons onselling metered energy to small customers within the limits of a site that they own, occupy or operate, where the relationship between the person and the small customer is governed by commercial or retail tenancy legislation

[This class will be closed to new entrants from 1 January 2015]

Note—This class applies to the onselling of energy by landlords, lessors or management corporations (and similar entities) in commercial developments such as shopping centres, office buildings, airports and industrial parks.

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to small customers where:

1. the energy is used for premises within the limits of a site owned, occupied or operated by the person, and
2. the premises are separately metered, and
3. the person selling the energy is a landlord, lessor or management corporation (or similar entity) and the relationship between the person and the small customers is governed by commercial or retail tenancy legislation, and
4. the cost of the energy is recouped in accordance with the terms of the lease between the small customer and the person,
5. the sale of energy commenced prior to 1 January 2015.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt sellers covered by the Class R1 registrable exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/occupancy of the following:
 - a. any right of the exempt customer, under state or territory 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 may not receive the same protections as it would if they 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, and
 - 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 or territory 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 a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/occupancy, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.
 - e. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
 - f. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
 - g. Days in the meter reading or estimate period.
 - h. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt

hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).

- i. Tariffs, fees and charges applicable to the exempt customer.
- j. The basis on which tariffs, fees and charges are calculated.
- k. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
2. An 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.
3. Where an estimation is used as the basis for a 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.
4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Billing requirements

1. Where an exempt customer has been undercharged, an 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.
- 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).

Condition 7 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 8, an 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 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 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 paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
3. An exempt person must not refuse to supply an exempt customer except where the requirements of this condition have been met.

4. This condition does not apply where state or territory 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 8 - When disconnection or cessation of supply is prohibited

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. 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 (both inclusive) in any year.
2. This condition does not apply where the exempt customer has requested disconnection.
3. This condition does not apply where state or territory 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 9 - Reconnection of supply

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 10 - Choice of retailer

1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 11 - Contact details

1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 12 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Condition 13 - Maintaining records

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

Class R2—Persons onselling metered energy to residents where the relationship between the person and the resident is governed by strata title or similar legislation

[This class will be closed to new entrants from 1 January 2015]

Note—This exemption is not intended to apply to retirement villages. Onselling activities within retirement villages which might otherwise fall within this exemption class will be subject to, and required to comply with the conditions applying to class R3.

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is used for premises that are separately metered, and
2. the relationship between the person and the resident is governed by strata title or similar legislation, and
3. the sale of energy does not satisfy the criteria for registrable exemption class R3, and
4. the sale of energy commenced prior to 1 January 2015.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt sellers covered by the Class R2 registrable exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
 - a. any right of the exempt customer, under state or territory 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 they 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, and

- 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 or territory 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. any flexible payment options for energy provided by the exempt person for exempt customers, including alternative payment arrangements for payment by periodic instalments
 - g. information about the availability of relevant government energy rebates, concessions and relief schemes
 - h. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.
 - e. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
 - f. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.

- g. Days in the meter reading or estimate period.
- h. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- i. Tariffs, fees and charges applicable to the exempt customer.
- j. The basis on which tariffs, fees and charges are calculated.
- k. Any amount deducted, credited or received under a government-funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- l. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

- 1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
- 2. An 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.
- 3. Where an estimation is used as the basis for a 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.
- 4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

- 1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.

2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Pricing and billing requirements

1. An 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 of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An 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.
4. The requirement in paragraphs 1–3 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
5. Where an exempt customer has been undercharged, an 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.
 - 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).

Condition 7 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 8, an 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 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 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 paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
- 3. An exempt person must not refuse to supply an exempt customer except where the requirements of this condition have been met.
- 4. This condition does not apply where state or territory 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 8 - When disconnection or cessation of supply is prohibited

- 1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. 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 (both inclusive) in any year.
2. This condition does not apply where the exempt customer has requested disconnection.
 3. This condition does not apply where state or territory 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 9 - Reconnection of supply

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 10 - Concessions and Rebates

1. Where an exempt customer is eligible to receive a government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 11 - Choice of retailer

1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 12 - Contact details

1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 13 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Condition 14 - Life support customers

1. An exempt person must maintain records of any exempt customers who have life support equipment on their premises that depends on energy for its operation, and must advise the exempt person's authorised energy retailer and distributor of any such life support customers.

Condition 15 - Continuity of supply

1. An 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 onselling energy.

Condition 16 - Maintaining records

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

Class R3—Persons onselling metered energy to residents for use within the limits of a retirement village that they own, occupy or operate, where the relationship between the person and the resident is governed by retirement village legislation

[This class will be closed to new entrants from 1 January 2015]

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is used for premises within the limits of a site owned, occupied or operated by the person, and
2. the premises are separately metered, and
3. the relationship between the person and the resident is governed by retirement village legislation, and
4. the sale of energy commenced prior to 1 January 2015.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt sellers covered by the Class R3 registrable exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
 - a. any right of the exempt customer, under state or territory 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 they 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, and
 - 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 or territory 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. any flexible payment options for energy provided by the exempt person for exempt customers, including alternative payment arrangements for payment by periodic instalments
 - g. information about the availability of relevant government energy rebates, concessions and relief schemes
 - h. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.
 - e. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
 - f. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
 - g. Days in the meter reading or estimate period.
 - h. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt

hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).

- i. Tariffs, fees and charges applicable to the exempt customer.
- j. The basis on which tariffs, fees and charges are calculated.
- k. Any amount deducted, credited or received under a government-funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- l. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

- 1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
- 2. An 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.
- 3. Where an estimation is used as the basis for a 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.
- 4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

- 1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.
- 2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Pricing and billing requirements

1. An 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 of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An 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.
4. The requirement in paragraphs 1–3 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
5. Where an exempt customer has been undercharged, an 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.
 - 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).

Condition 7 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 8, an 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 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 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 paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
 - 3. An exempt person must not refuse to supply an exempt customer except where the requirements of this condition have been met.
 - 4. This condition does not apply where state or territory 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 8 - When disconnection or cessation of supply is prohibited

- 1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. 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 (both inclusive) in any year.

2. This condition does not apply where the exempt customer has requested disconnection.
3. This condition does not apply where state or territory 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 9 - Reconnection of supply

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 10 - Concessions and Rebates

1. Where an exempt customer is eligible to receive a government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 11 - Choice of retailer

1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 12 - Contact details

1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 13 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Condition 14 - Life support customers

1. An exempt person must maintain records of any exempt customers who have life support equipment on their premises that depends on energy for its operation, and must advise the exempt person's authorised energy retailer and distributor of any such life support customers.

Condition 15 - Continuity of supply

1. An 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 onselling energy.

Condition 16 - Maintaining records

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

Class R4—Persons onselling metered energy to residents for use in premises within the limits of a caravan park, residential park or manufactured home estate site that they own, occupy or operate, where the premises are the principal place of residence for the resident

Note— In practice, persons operating these sites may onsell energy to both short term holidaymakers and residents whose principal place of residence is within the site. Where this occurs, Class D3 will apply to the sale of energy to short term holidaymakers, and Class R4 will apply to the sale of energy to residents whose principal place of residence is within the site.

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of energy to residents where:

1. the energy is used for premises within the limits of a caravan park, residential park or manufactured home estate site owned, occupied or operated by the person, and
2. the premises are separately metered, and
3. the premises are the resident's principal place of residence.

For the purposes of this exemption, a reference to a 'principal place of residence' means the primary premises that a person inhabits. It does not matter what kind of dwelling it is, as long as it is where the person lives most of the time.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt sellers covered by the Class R4 registrable exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency of the following:
 - a. any right of the exempt customer, under state or territory 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 they 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, and
 - 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 or territory 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. any flexible payment options for energy provided by the exempt person for exempt customers, including alternative payment arrangements for payment by periodic instalments
 - g. information about the availability of relevant government energy rebates, concessions and relief schemes
 - h. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/residency, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
 3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.
 - e. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.

- f. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable.
- g. Days in the meter reading or estimate period.
- h. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and megajoules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
- i. Tariffs, fees and charges applicable to the exempt customer.
- j. The basis on which tariffs, fees and charges are calculated.
- k. Any amount deducted, credited or received under a government-funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- l. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

- 1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
- 2. An 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.
- 3. Where an estimation is used as the basis for a 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.
- 4. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 4 - 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 5 - Receipts

- 1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by direct debit.

2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a payment for rent but has not been separately identified on the rent receipt.

Condition 6 - Pricing and billing requirements

1. An 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 of energy directly to the premises of the exempt customer.
2. An exempt person must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable, and no later than the exempt customer's next bill.
3. An 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.
4. The requirement in paragraphs 1–3 do not apply where alternative pricing requirements apply under applicable state or territory legislation.
5. Where an exempt customer has been undercharged, an 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.
 - 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).

Condition 7 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 8, an 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 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 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 paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
- 3. An exempt person must not refuse to supply an exempt customer except where the requirements of this condition have been met.
- 4. This condition does not apply where state or territory 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 8 - When disconnection or cessation of supply is prohibited

- 1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - d. 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 (both inclusive) in any year.
2. This condition does not apply where the exempt customer has requested disconnection.
 3. This condition does not apply where state or territory 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 9 - Reconnection of supply

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 10 - Concessions and Rebates

1. Where an exempt customer is eligible to receive a government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
2. If the government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the exempt customer, the exempt person must use their best endeavours to make a claim and, if successful, they must apply the rebate, concession or assistance to the exempt customer's bill.

Condition 11 - Choice of retailer

1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 12 - Contact details

1. An exempt person must provide a means of contact for account enquiries and complaints which can be readily accessed by exempt customers.

Condition 13 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, 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 or territory in which the exempt customer is located, if applicable.

Condition 14 - Life support customers

1. An exempt person must maintain records of any exempt customers who have life support equipment on their premises that depends on energy for its operation, and must advise the exempt person's authorised energy retailer and distributor of any such life support customers.

Condition 15 - Continuity of supply

1. An 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 onselling energy.

Condition 16 - Maintaining records

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

Class R5—Persons onselling metered energy to large customers

An exemption is registrable for persons falling within the following class:

Persons engaged in the onselling of metered energy to large customers.

Conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt sellers covered by the Class R5 registrable exemption.

Condition 1 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy that a retailer of last resort will not be automatically appointed for the customer if the onseller ceases to supply energy.

Condition 2 - Choice of retailer

1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

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* (Cwlth).

disconnection 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 or both.

energy Ombudsman scheme means a scheme associated with the energy Ombudsman for the relevant state or territory 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 means a person who is exempted by the AER under a deemed or registered exemption from the requirement to hold a retailer authorisation.

large customer means a business customer who consumes energy at business premises at or above the upper consumption threshold of 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas.

meter means any device (compliant with metrology requirements and Australian standards) 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.

residential customer means a customer who purchases 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 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 of 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas.