

CONSULTATION PAPER ON EXEMPT SELLING GUIDELINE

Under the National Energy Retail Law (Retail Law), a person who wishes to engage in the sale of energy must hold either a retailer authorisation or a valid exemption. The Australian Energy Regulator (AER) is responsible for issuing authorisations, and exempting persons or classes of persons from the requirement to hold a retailer authorisation.

The AER is also required to publish an *Exempt selling guideline*. The guideline outlines the classes of deemed and registrable exemptions and provides guidance on the associated conditions. It also provides advice on the application and registration processes for individual and registrable exemptions. The AER may amend the guideline at any time in accordance with the retail consultation procedures.

The AER commenced preliminary consultation on its approach to exempt selling with the release of an issues paper in June 2010. This was followed by the release of draft versions of the guideline in December 2010 and June 2011. Public forums to discuss issues raised in the consultation process were held in August 2010, December 2010 and July 2011. In the most recent round of consultation, the AER received submissions on the draft guideline from 21 stakeholders.

The exemption classes set out in the guideline will apply to all exempt sellers in participating jurisdictions from 1 July 2012, when the Retail Law commences. The AER expects to finalise the *Exempt selling guideline* in November 2011. It will begin accepting applications for individual exemptions from December 2011. The AER will accept registrations for registrable exemptions from 1 January 2012.

AER approach to customers facing financial difficulty in draft guideline (June 2011) and stakeholder responses

The AER must take account of the general principle that exempt customers should (as far as practicable) not be denied customer protections afforded to retail customers in the Retail Law and Retail Rules. However, in its draft guideline released for consultation in June 2011, the AER considered that it may be overly onerous to require exempt sellers to provide the level of assistance to customers facing financial difficulty that authorised retailers are required to provide under the Retail Law. The AER also considered that it may be difficult to implement assistance measures relating to the supply of energy where an exempt seller is also the provider of accommodation (for example, in landlord/tenant situations where the exempt customer is also paying rent to the exempt seller).

Submissions from both consumer and energy industry representatives throughout the consultative process have consistently expressed concern at the lack of protection for residential customers experiencing financial difficulty under deemed and registrable classes of exemption. Stakeholders reiterated the need for at least some basic protections for exempt customers and suggested several approaches that would benefit customers, without being unduly burdensome on exempt sellers. These approaches included requiring exempt sellers to provide:

- flexible payment plans

- information on government concessions
- referrals to financial counsellors
- energy efficiency advice

Several stakeholders also disagreed with the AER's assertion that hardship support may not be effective when the onseller is also the person charging the exempt customer for accommodation. Stakeholders noted that there are circumstances where a customer may seek to manage their energy costs, and methods to do this, irrespective of any additional liability for rent.

Proposed change in AER approach to exempt customer protections

Having considered all options put forward in submissions, the AER intends to introduce some additional requirements on exempt sellers focusing on the protections offered to small customers facing financial difficulty.

The AER proposes to introduce an overarching policy principle (to apply to all exempt sellers) that 'disconnection of premises of a customer who has identified themselves as experiencing financial difficulty due to inability to pay energy bills should be a last resort'. This is analogous to the hardship policy statement in the Retail Law, and should safeguard customers against immediate or short term disconnection. This principle also recognises that energy is an essential service and that in some cases, the exempt seller is the only party able to provide energy to the exempt customer (for example, in off-grid networks or where access to retail contestability is not available). Disconnection for those customers would be particularly disadvantageous.

The AER notes, however, that it may be unduly burdensome to require exempt sellers to identify customers experiencing financial difficulty and that it is the customers themselves who are better equipped to identify whether or not they are experiencing such problems. Therefore, the AER proposes self identification of exempt customers for the purposes of the *Exempt selling guideline* financial difficulty provisions. Self identification, among other things, might involve the exempt customer notifying the exempt seller (by email, telephone, or in person) that they will have difficulty paying, or are unable to pay, all or part of their bill.

In light of all of the above, the AER proposes the following amendments to the conditions of exemption classes D2, D4, D6, R2, R3 and R4 to support customers in financial difficulty. These classes are likely to include small residential customers, and would capture customers who are particularly vulnerable. These customers, in some cases, can only take supply from their exempt seller and are therefore unable to access retail contestability if they are unhappy with service provided to them. Further, there is significant uncertainty about whether these exempt customers can access ombudsmen schemes in the event of billing and payment issues.

Condition 2—Information provision

Exempt sellers will be required to inform customers that assistance is available if the customer is unable to pay energy bills due to financial difficulty; the forms of

assistance available; and the process the exempt customer should follow to inform the exempt seller of this financial difficulty.

Condition 3—Billing and payment arrangements

Condition 3 has been extended to require an exempt seller to offer flexible payment terms to customers experiencing financial difficulty, having regard to:

- the customer's capacity to pay
- any arrears owing by the customer
- the customer's expected energy consumption needs over the following 12 month period.

However this condition does not apply where the exempt customer has:

- had two payment plans cancelled by the exempt person in the previous 12 months due to non-payment
- been convicted of an offence involving illegal use of energy in the previous two years.

Condition 8—Payment difficulties and disconnection or cessation of supply

Condition 8 has been extended to require an exempt seller to do the following for a customer who has identified as experiencing financial difficulties:

- Provide energy efficiency advice by directing the customer to the Australian government energy efficiency website or other energy efficiency resource.
- Ensure that the customer is aware of the available relevant government or non-government energy rebates, concessions and relief schemes.
- Not charge the customer a late payment fee.
- Not charge the customer a security deposit.

Further, where an exempt seller issues a reminder notice, they will be required to notify customers of any flexible payment options or other assistance that may be available to them.