



# **Draft AER (Retail) Exempt Selling Guideline**

**Version 4**

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# 1 About this guideline

The National Energy Retail Law (Retail Law) provides a national framework for the sale of energy (gas and electricity) to customers.<sup>1</sup> It includes the National Energy Retail Rules (Retail Rules) and the National Energy Regulations. This framework is regulated by the Australian Energy Regulator (AER)<sup>2</sup>.

Under the Retail Law, any person or business who sells energy to another person for use at premises must have either a retailer authorisation or a retail exemption.<sup>3,4</sup>

This guideline is for people or businesses that sell energy under the Retail Law (see Section 2 on page 5 for more information on who is an energy seller) and need a retail exemption. An exemption allows certain types of energy sellers to be exempted from parts of the Retail Law.<sup>5</sup>

You should read this guideline if you charge another person for the cost of energy at a premises, be it for profit or simply to recover your own costs.

This guideline will help you understand:

- what retail exemptions are and how they work
- whether you, or your business, need a retail exemption
- how to obtain a retail exemption and which exemption class applies to you
- the factors we, the Australian Energy Regulator, will consider when assessing exemption applications.

If you have read this guideline and are still unsure whether you need an exemption, please contact us. We can help you understand how the guideline operates but you may need to seek your own legal advice. You can email us at [AERExemptions@aer.gov.au](mailto:AERExemptions@aer.gov.au), or phone the AER Infocentre on 1300 585 165 (Australian callers) or + 612 6243 1305 (overseas callers).

This guideline deals with retail exemptions under the Retail Law. For network exemptions under the National Electricity Law, please see the AER's Network service provider registration exemption guideline.<sup>6</sup>

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

<sup>2</sup> The AER is established and operates pursuant to the provisions of Part IIIAA of the Competition and Consumer Act 2010 and is the national regulator of energy markets and networks. Our responsibilities include administering and regulating authorisations and exemptions (retail and network) in participating jurisdictions.

<sup>3</sup> Section 88 of the Retail Law. A breach of this provision attracts a civil penalty.

<sup>4</sup> The Retail Law does not apply to off-grid arrangements in jurisdictions that have specifically excluded these arrangements under their adopting legislation.

<sup>5</sup> The businesses which are exempt by our class exemptions are described in our *Exempt Selling Guideline*. The *Retail Law* empowers us to develop an Exempt Selling Guideline which sets out how we regulate exempt sellers.

<sup>6</sup> <http://www.aer.gov.au/node/983>

## 2 Who is an energy seller?

Energy selling covers a wide range of activities, from energy retailing by authorised retailers to households and businesses and landlords recovering energy costs from their tenants.

For the purposes of the Retail Law the sale of energy is the sale of gas or electricity to a person or business for use at **premises**, and is reflected in **a separate, discrete charge for energy**.

Energy ‘sales’ do not necessarily have to be for profit to be subject to the provisions of the Retail Law —passing on energy costs to another person is considered to be a sale.

Similarly, ‘premises’ can have a broad application and we take a pragmatic approach to defining it.

We do not consider it to be a sale of energy where energy costs are only one part of another fixed charge (for example, rent that includes energy costs, or a hotel tariff that includes energy costs),<sup>7</sup> or where the costs are shared (for example, in a group house or a community facility).

Some examples of a sale of energy include:

- Energy sold to a long term resident of a caravan park, where the energy sold is based on the resident’s metered consumption
- Metered energy billed to tenants (but is not part of rent) within a residential apartment block
- Energy costs passed through—at no profit—from a landlord to tenant
- Unmetered energy where a commercial landlord is billed and then apports the cost between tenants
- Energy supplied to builders at a construction site on a temporary basis
- Energy sold through power purchase agreements to supplement the energy a customer buys from an authorised retailer

These examples are not exhaustive as energy sales can take many forms. We will consider the particular facts of each situation as they arise.

If you are unsure whether your activities and arrangements would be considered to be “selling energy”, it may be necessary to obtain your own legal advice.

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<sup>7</sup> The sale of bulk hot water is not considered a ‘sale of energy’ under the Retail Law and Retail Rules.

## 3 Do I need an authorisation or an exemption?

If you sell energy in a state or territory that operates under the Retail Law, you must hold either a retailer authorisation or retail exemption.<sup>8</sup> You cannot hold both.

Penalties apply for sellers of energy who do not have an authorisation or an exemption.<sup>9</sup>

This section of the guideline will help you decide if an exemption is appropriate for your situation. We have developed a separate guideline for businesses that want to apply for a retailer authorisation.<sup>10</sup>

### 3.1 When a retailer authorisation is required

A national retailer authorisation allows you to sell electricity or gas in all states and territories where the Retail Law applies and to all classes of customers.<sup>11</sup>

Retailer authorisations are normally required where:

- your core business is the sale of energy to customers<sup>12</sup>
- your primary relationship with your customers is the sale of energy and you have no other, or an otherwise minor, relationship with the customer (for example, you do not also have a landlord/tenant relationship)
- you plan to sell energy to customers and/or sell a large amount of energy across a number of sites or jurisdictions.<sup>13</sup>

The AER assesses and approves applications for retailer authorisation.

### 3.2 When an exemption may be more appropriate

In some instances, the nature of the sale of energy, or relationship between the energy seller and customer, will mean a retail exemption is more appropriate.

For example, an exemption may be more appropriate for a person, business or government agency that sells energy:

- incidentally—for example, where a shopping centre owner rents a shopfront to tenants and also sells them energy<sup>14</sup>

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<sup>8</sup> In Tasmania the exemptions framework does not apply to embedded networks, such as caravan parks, shopping centres, and apartment buildings but does allow for individual exemptions, for example, for solar power purchase agreement providers (section 23, the *National Energy Retail Law (Tasmania) Act 2012*).

<sup>9</sup> We may issue an infringement notice (s 308 of the Retail Law). We may also apply to the Federal Court under section 44AAG of the Competition and Consumer Act 2010 (Cth) for an order to pay a pecuniary penalty, and/or an order that the person cease the activity that is in breach, or take action to remedy the breach, or implement a specified program for compliance with the Retail Law.

<sup>10</sup> The *AER Retailer Authorisation Guideline* is available on the AER's website: <http://www.aer.gov.au/retail-markets/authorisations>

<sup>11</sup> Except where limited by state or territory legislation.

<sup>12</sup> For further information on what the AER considers to be 'core' business, please see section 9.

<sup>13</sup> Further information on retailer authorisations is set out in the AER's Retailer authorisation guideline (<http://www.aer.gov.au/node/345>).

<sup>14</sup> For further information on what the AER considers to be 'incidental' selling, please see section 9.

- as a community service or at cost
- to a defined group of customers at one site, and does not intend to expand their energy sales.

So like an authorisation, the holder of an exemption is permitted to sell energy. However unlike authorisations, the seller is restricted to selling to a defined class or classes of customer, usually at a specific site or sites. These restrictions will be set out in the terms of the exemption.

Retail exemptions were largely developed to manage the practice of energy “on-selling”. On-selling (or reselling), is when a person or business sells energy that they have purchased from a retailer to customers through an embedded network,<sup>15</sup> such as a shopping centre, apartment building, retirement village or caravan park. The primary relationship the on-seller has with their customer is not the sale of energy. Most, but not all, exemptions are held by on-sellers. A person that sells energy to customers to supplement the energy that customer buys from a retailer (for instance, energy that is generated by solar panels or other equipment they own) may also be eligible for a retail exemption.

Exempt sellers also have a range of obligations to their customers as conditions of their exemption. The core conditions are based on retailer customer protections under the Retail Law but will vary according to the specifics of a seller’s operations. They cover obligations such as an obligation to supply, provision of key information, billing and payment arrangements, disconnection and reconnection and concessions and rebates (Appendices A-2 and A-3).

If you plan to expand the activities specified in your exemption you must notify us. You may be able to apply for an exemption variation but, if the scale and scope of your proposed sales is too great, you may need a retailer authorisation.

If this becomes the case, you will need to surrender your exemption once you are granted an authorisation.

### **3.3 Examples: Authorisation or exemption?**

The following examples help to demonstrate the difference between an authorisation and an exemption. Given each case will be different it is important to look at these examples as illustrative only. We will consider the particular facts of each situation and encourage you to contact us and discuss your circumstances. We also recommend you get your own legal advice.

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<sup>15</sup> An embedded network is a privately owned electricity network where a single meter (which is supplied by a retailer) provides all energy for the site. Energy is then delivered to customers via the private network, and customers are billed based on privately owned sub-meters at their premises. Typically, energy distributed through embedded network is ‘resold’ – that is, the network owner buys energy from a retailer and then resells it to tenants or customers within the network.

### **Example A**

Company A plans to sell gas and electricity to residential customers and, in the longer term, to small business customers. It plans to start off on a small scale in South Australia and then to expand to New South Wales and Queensland. Its core function is the sale of energy (it doesn't provide any other services to its customers).

It would be appropriate for Company A to seek a retailer authorisation.

### **Example B**

Company B is a mining company based in outback Queensland. It owns and operates an electricity generator which it uses to power its mining operations. It also supplies electricity to the townspeople (most of whom it employs). Its business is mining—not the generation and sale of energy, but does so because there is no other viable source of energy to the community and it is mutually convenient for the company and its customers. Its energy generation and sales activities will be restricted to this site and will continue for as long as the company's mining operations continue (or another source of energy becomes available).

It would be appropriate for Company B to seek an exemption (specifically an 'individual exemption' – see Section 4.3 of this Guideline).



## 4 Which type of exemption do I need?

There are three types of exemption: deemed, registrable and individual. The type of exemption you may be eligible for will depend mainly on the nature of your business, who you are selling energy to, and why you are doing it.

Deemed and registrable exemptions are ‘class exemptions’ that apply to certain groups—or classes—of people who sell energy. Generally, these are people or businesses who sell energy incidentally, meaning that the sale of energy would not occur if it were not for the existence of another, more central, relationship between the seller and customer, usually landlord and tenant.

We have grouped common exempt energy sellers into separate numbered classes. These are intended to cover classes of persons engaged in similar energy selling activities. Classes that are held automatically, or ‘deemed’, begin with the letter ‘D’ (e.g. D1, D2 etc.). Classes that a seller must display on our public register by completing an online form are known as ‘registrable’ exemptions and begin with the letter ‘R’ (e.g. R1, R2 etc.). The criteria for each class and the associated conditions of exemption are outlined in appendices A-1 and A-2 respectively. If you require an exemption but do not fit the criteria of the established classes, you must apply for an individual exemption.

### 4.1 Deemed exemptions

A **deemed exemption** applies automatically to certain classes of people. A person covered by a deemed exemption does not need to either apply or register with us.

Deemed classes are usually for small-scale selling arrangements or arrangements that carry lower levels of regulatory risk (that is, need little regulatory oversight). Most are subject to conditions.

Deemed exemptions apply to a range of entities, including, but not limited to:

- businesses that sell energy to a related company
- persons who sell metered energy to fewer than 10 small businesses or residents
- caravan parks or holidays parks that sell metered energy to people in short term holiday accommodation
- businesses that sell unmetered electricity in Queensland<sup>16</sup>
- people who sell unmetered gas where gas is used for limited purposes
- telecommunications companies that sell energy to business customers for use at, for example, a data centre
- government agencies (and similar) that sell metered energy ancillary to their core functions.

A full list of deemed exemptions is set out at Appendix A-1 (Table 2).

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<sup>16</sup> Unmetered onselling to residential customers is currently allowed in Queensland (provided certain conditions are met) under the Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s. 165.

## 4.2 Registrable exemptions

Some energy selling activities need to be registered. This is to make them more transparent, usually because the scale of the activities is larger and / or the impact on the market greater than for deemed exemptions.

Like deemed exemptions, **registrable exemptions** apply to certain classes of people (see below). An exemption only applies to a particular individual or entity for a particular site, and is subject to conditions.

Entities that registrable exemptions apply to include, but are not limited to:

- persons who sell metered energy to 10 or more small tenants or residents within a site, or who sell to sites adjacent to their own
- retirement villages or caravan parks who sell metered energy to permanent residents
- people or businesses selling energy to large customers.<sup>17</sup>

Some registrable classes (R6—Persons selling metered energy to small customers at an adjacent site and R7—Persons selling unmetered energy to small business customers) only apply to legacy arrangements. Energy sellers are only eligible for these classes where the arrangements are long-standing (i.e. commenced **before** 1 January 2015).

A full list of registrable exemptions is set out at Appendix A-1 (Table 2).

## 4.3 Individual exemptions

Where the sale of energy is not covered by a deemed or registrable class exemption, a business or person may apply for an **individual exemption**.

An individual exemption normally applies for the sale of energy at a particular site and / or to a particular customer (or group of customers). Individual exemptions are intended for more unusual and often one-off arrangements and are therefore tailored to the specific situation of the person or business seeking the exemption.

Conditions attached to an individual exemption are intended to balance the needs and rights of customers and the regulatory burden that meeting those conditions will place on the exemption holder.

For example, if you are proposing to sell to large industrial customers, the conditions we impose are likely to be minimal. For those planning to sell to residential customers, we will likely impose conditions that provide customer protections similar to those provided under the Retail Law—for example, a requirement to offer hardship programs.

Businesses that want to sell energy on a large scale (numbers of customers and / or energy sold) will likely need a retailer authorisation.

If your activities do not fall within one of our class exemptions you should contact us to discuss the most appropriate regulatory instrument for you—a retailer authorisation or an individual exemption, depending on your circumstances.

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<sup>17</sup> The threshold for large electricity customers in New South Wales, the ACT, Queensland and Victoria is 100MWh per annum, 150MWh per annum in Tasmania and 160MWh per annum in South Australia. For gas, the threshold in all jurisdictions is 1TJ per annum.

## **4.4 Other situations: retrofitting**

If you plan to retrofit an embedded network you will not be eligible for any deemed or registrable class exemptions unless you have the full consent of all the affected residents or tenants. If you are unable to obtain full consent, you will need to apply for an individual exemption (further details are at Appendix A-1, Tables 1 and 2).

## 5 Who should hold the exemption?

As a rule, the person **selling** the energy should hold the exemption. The person selling the energy will generally have a contract with an authorised retailer and will bear the financial risk of their customers' non-payment.<sup>18</sup> If you, your business or your organisation buy the energy from a retailer, then you will need an exemption.

If you are given an exemption, your exemption is specific to you and applies to the activities for which you were granted, or registered, the exemption. Your exemption cannot be extended or transferred to related businesses or subsidiaries (that is, to another ACN or ABN).<sup>19</sup> Those other businesses will need to apply or register for their own separate exemptions.

### 5.1 When you use an agent or service provider

The person that holds an exemption is responsible for ensuring compliance with all conditions of the exemption.

Many people or businesses use an agent or service provider to manage the sale of energy to their customers, particularly within embedded networks. A service provider may liaise with customers, organise connections and disconnections, issue bills and handle any energy related complaints. Sometimes they will also buy and sell the energy on behalf of a landlord or body corporate. In this instance the landlord or body corporate is the account holder.

If the service provider buys energy from a retailer and sells it directly to your residents or tenants, they are the account holder. Therefore they are selling energy and need an exemption or authorisation. Our view is that class exemptions are not appropriate for service providers because for them, selling energy is a core business activity. Service providers therefore need to apply for an individual exemption or a retailer authorisation. If the service provider is selling energy to only a small number of sites they may be eligible for an individual exemption for each of the sites. However, if they sell, or intend to sell, at many locations they may need to apply for a retailer authorisation (see discussion on Individual exemptions in Section 4.3).

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<sup>18</sup> That is, they will be liable for costs to the retailer, even if their customers do not pay their bills.

<sup>19</sup> An exemption will continue to apply where a company has changed its name or ownership because an exemption is granted to the legal entity, which does not necessarily change in those circumstances.

## 6 How do I obtain an exemption?

### 6.1 Deemed exemptions

Deemed exemptions are automatic, provided you meet the criteria attached to the deemed class. This means you do not need to apply for or register an exemption, but rather are 'deemed' to be exempt. You must comply with the conditions of the deemed exemption. The core conditions, and the exemption classes they apply to, are detailed at Appendices A-2 and A-3, respectively.

### 6.2 Registrable exemptions

Registrable exemptions are not automatic. You can register an exemption by completing the registration form on our website.<sup>20</sup> To register a retail exemption, you need to complete Parts A and C of the form.

You must provide all the information requested in the form, including:

- the legal name (and trading name) of the business or person seeking the exemption, and their Australian Business Number (ABN) or Australian Company Number (ACN)
- the site address for the exemption, the number of customers at that site and the class of exemption (for example, class R1), and a brief description of the normal business activities undertaken at that site<sup>21</sup>
- details of a customer contact and authorised representative so that we can contact you if necessary.

Anyone on-selling electricity will likely also need a network exemption. If you do, you should also complete Part B of the registration form. The [Electricity network service provider registration exemption guideline](#) sets out the network registration process in Part C of that guideline.

You can submit completed forms electronically to: [AERExemptions@aer.gov.au](mailto:AERExemptions@aer.gov.au).

There is no formal approval process for registrable exemptions. Your exemption comes into effect once you are registered on our [public register of exempt sellers](#).<sup>22</sup>

Conditions apply to all registered exemptions. You must comply with these conditions (see Appendices A-2 and A-3).

You should advise us if your details change, for instance if the site for which you have the exemption changes owners, or the nature of your energy selling activities changes (for example, you no longer sell energy to small non-residential customers, but to large customers), or you start selling energy to life support customers. You may need to apply for a different type of exemption or an authorisation.

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<sup>20</sup> A copy of our exemption registration form can be found here: <http://www.aer.gov.au/node/471>

<sup>21</sup> For example, retail shopping centre, residential apartment building, caravan park or retirement village.

<sup>22</sup> Please note that your exemption will only appear on the AER's public register of exemptions when the Retail Law has commenced in your jurisdiction. The AER's public register of exemptions can be found here: <http://www.aer.gov.au/node/11037>

## 6.3 Individual exemptions

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

Appendix B sets out the information that you must provide when you apply for an individual exemption.

Providing false or misleading information (or omitting to provide relevant information) to a Commonwealth entity is a serious offence under the *Criminal Code Act 1995* (Cth).<sup>23</sup> A court may impose a maximum penalty of \$102,000 *per offence* on a body corporate for breaches of this provision.

If your application contains confidential information, you should:

- clearly identify anything you consider confidential
- give reasons for each confidentiality claim
- advise of any potential harm that disclosing the information might cause you
- also submit a public version of your application.

The public version of your application should be detailed enough for members of the public to comment if they wish to—you should only remove genuinely sensitive information from the application.

A confidentiality claim, by itself, is not always enough to prevent disclosure. Under the Retail Law and the *Competition and Consumer Act 2010* (Cth), we may disclose confidential information in certain circumstances, for example, where disclosure would not cause detriment, or the public benefit to disclosing the information outweighs that detriment. For further information on the AER's policy on the collection, use and disclosure of information see the ACCC and AER information policy.<sup>24</sup>

If we are considering disclosing confidential information, we will contact you and first provide you an opportunity to comment.<sup>25</sup>

You can submit your application to:

[AERExemptions@aer.gov.au](mailto:AERExemptions@aer.gov.au) with 'Application for individual exemption' in the subject line.

The process for assessing an application for an individual exemption is set out in Section 7.

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<sup>23</sup> Section 137.1 of the *Criminal Code*

<sup>24</sup> <http://www.aer.gov.au/publications/corporate-documents/accc-aer-information-policy-collection-and-disclosure-of-information>

<sup>25</sup> The AER may use the information for any purpose connected with the performance or exercise of its functions or powers.

## 7 Assessing applications for individual exemptions

### 7.1 Public consultation process

We will review your application and will contact you if there is any incomplete or missing information. Provided your application is complete, we will 'accept' your application and start the required public consultation process (accepting your application does not mean that the AER has approved it).

At this point, we will publish a notice on our website:

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

The consultation period will run for at least 20 business days.<sup>26</sup>

### 7.2 Assessing an application

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

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

We will also consider the policy principles, exempt seller related factors and customer related factors specified in the Retail Law when considering your application.<sup>27</sup>

Guidance on how we consider these principles and factors is provided in Appendix E. We encourage anyone applying for an individual exemption to familiarise themselves with those policy principles and factors before making an application.

### 7.3 Making a decision

Unlike deemed and registrable exemptions, the AER needs to approve individual exemptions.

Once we have considered your application we will advise you, in writing, of our decision.<sup>28</sup> If your application is approved, we will also advise you of any conditions that may be attached to the exemption.<sup>29</sup> You will need to formally accept those conditions in writing before your exemption takes effect. If you do not accept the conditions within the specified time period, your exemption will be taken to be refused.

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<sup>26</sup> The Retail Consultation Procedures (set out at Rule 173 of the Retail Rules) states that the AER must consult for a minimum of 20 business days.

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

<sup>28</sup> Rule 160 (approval) and rule 163 (refusal) of the Retail Rules.

<sup>29</sup> Rule 160 of the Retail Rules.

### 7.3.1 Coverage or scope of exemption

Most individual exemptions will be issued for a particular site or area, and will limit the sale of energy to a certain class or classes of customers. We will only grant an individual exemption that covers multiple sites where we consider that doing so is consistent with the Retail Law objective.

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

If the exemption does not have an expiry date it will continue indefinitely unless it is cancelled.

### 7.3.2 Change of circumstances

Your exemption will specify the form of energy you may sell and the scope of your sales: it cannot be varied to sell another or additional forms of energy, or to additional sites.<sup>30</sup> You will need to apply for an exemption variation or possibly a new or separate individual exemption to do this. Also, if your details change in any other way, for example if an exempted site changes ownership, you should contact us so that we can amend the public register.

## 7.4 Grounds for refusal

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

- we consider that granting an exemption will not contribute to the achievement of the national energy retail objective<sup>31</sup>
- we consider that granting an exemption will not give effect to the policy principles or is inconsistent with our considerations under the exempt seller related factors or the customer related factors
- we consider you should apply for a retailer authorisation, given the scale and scope of your energy sales
- you have provided us with false or misleading information.

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<sup>30</sup> Unless your exemption specifically allows you to sell across multiple sites, for example, solar power purchase agreement sellers.

<sup>31</sup> We will consider whether or not the granting of the exemption is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers, as required by section 205 of the Retail Law.



## 8 Exemption conditions and compliance

### 8.1 Exemption conditions

Most exemptions—both class and individual—have conditions that you must meet. Conditions are designed to protect customers without overburdening exempt sellers, and the general conditions are modelled on the protections that authorised retailers must provide their customers.

The conditions must be appropriate for the energy selling activities you engage in and reflect customers' need for protection. These vary according to the nature of the energy sale (including scale and scope) and the seller-customer relationship. For example, we would likely apply minimal conditions where the energy sale is to commercial or large customers, as large customers are unlikely to need a high level of consumer protection. However, customers may need more protection in other situations. For example, we would likely apply conditions that are similar to the obligations placed on an authorised retailer for sellers who sell to residential customers.

A full list of core conditions can be found at Appendix A-2. Appendix A-3 shows which conditions apply to each exemption class.

If you cannot meet all the conditions attached to your exemption you should contact us immediately.

Appendix F summarises the rights of exempt customers, including how those rights may differ from those applying to retail customers.

### 8.2 Breaches of conditions

A breach of an exemption condition is a breach of the Retail Law, and is a civil penalty provision.<sup>32</sup> Possible enforcement responses to breaches of the Retail Law or Rules can generally be categorised as either administrative (a resolution that is an agreement between the parties and does not rely on any particular provision of the Retail Law or Rules, such as voluntary undertakings, revisions to internal processes or improved compliance training) or involve a statutory enforcement action. Statutory enforcement action can include issuing infringement notices of \$4,000 for a natural person or \$20,000 for a body corporate,<sup>33</sup> enforceable undertakings and court proceedings or a combination of these options. The AER also has the power, in limited circumstances, to revoke a retail exemption.

If an exempt seller is a corporation it may be held responsible for any actions of its officers and employees that result in a breach.<sup>34</sup> In addition, if a corporation contravenes a breach

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<sup>32</sup> Section 112 of the Retail Law.

<sup>33</sup> Section 308 of the Retail Law. The term 'body corporate' is not defined in the Retail Law but encompasses any office or group of people recognised at law as having separate legal personality. Corporates, whether incorporated under the Corporations Act 2001 or by special statute, come within the definition. This is in contrast to the use of this term as defined in the Glossary to this guideline.

<sup>34</sup> Section 305 of the Retail Law.

provision,<sup>35</sup> each officer who knowingly authorised or permitted the contravention is deemed to have committed the breach.<sup>36</sup>

Depending on the facts and circumstances, an exempt seller may also be held responsible for the actions of their agents. Agents of exempt sellers may be liable under the Retail Law if they aid, abet, counsel or procure a breach of a civil penalty provision, or are in any way knowingly concerned in a breach by the exempt seller.

For further information on our approach to exemption breaches see the AER's [Compliance and Enforcement Statement of Approach](#).<sup>37</sup>

In addition to complying with your obligations under the Retail Law and this guideline, you must comply with relevant legislation, including the competition provisions of the *Competition and Consumer Act 2010*.

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<sup>35</sup> A breach provision is defined by section 303 of the Retail Law as 'an offence provision, a civil penalty provision or a conduct provision'. These terms are further defined in the Retail Law.

<sup>36</sup> Section 304 of the Retail Law.

<sup>37</sup> Also see the AER's *Compliance Procedures and Guidelines: National Energy Retail Law, Retail Rules and Retail Regulations*, which is available on the AER website - <http://www.aer.gov.au/node/1267>.

## 9 Cancelling and revoking exemptions

### 9.1 Cancelling an exemption

If your circumstances change and you no longer need an exemption you may apply to the AER to cancel your exemption. The process for cancelling an exemption is the reverse of the process for creating it.<sup>38</sup> In the case of a registrable exemption this will simply mean removing your exemption from the public register of exemptions. However, the process for cancelling an individual exemption will mean public consultation and a decision making process.

Before we begin the process of cancelling an exemption we will want to be satisfied that all energy selling has ceased or, if energy is still being sold, that it is being sold by someone holding the appropriate regulatory instrument such as an exemption or authorisation.

We must follow a number of formal steps when we receive an application to cancel an individual exemption. These include:

- publishing a notice on our website stating that the cancellation application has been received and seeking written submissions on the application from interested parties
- allowing a period of at least 20 business days for written submissions to be made
- considering all written submissions made during that period before deciding whether to cancel your exemption
- providing you with a written notice of our decision and, if we decide to refuse your application for cancellation, providing you with a notice setting out the reasons for our decision
- publishing the details of our decision on our website.

The cancellation of an individual exemption will normally be a straightforward process.

### 9.2 Revoking an exemption

If you do not comply with the conditions of your exemption and, after looking into the matter, we consider the non-compliance is serious (for example, if there has been a material failure) we may decide to revoke your exemption.<sup>39</sup> An example of a 'material failure' is where an exempt person has not complied with their exemption conditions and this has had a significant or widespread impact on their customers.

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<sup>38</sup> The power to repeal an exemption is contained in section 20 of the National Gas Law, as applied to the Retail Law by section 8 of the Retail Law

<sup>39</sup> Section 111 of the Retail Law empowers the AER to revoke exemptions

Before we revoke your exemption we must:

- give you notice that we intend to revoke your exemption, and our reasons for revoking it
- give you an opportunity to respond, in writing, showing why the exemption should not be revoked and proposing what you will do to rectify the problem.<sup>40</sup>

If we are not satisfied with your response we may set a time for the revocation to take effect and will inform you of any conditions you must comply with. A condition may require you to comply with certain requirements of the Retail Law and / or Rules that may continue to apply after the revocation.<sup>41</sup> We will publish our revocation decision on our website.

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<sup>40</sup> Section 120 of the Retail Law.

<sup>41</sup> Section 120(8) of the Retail Law

## 10 Network exemptions

If you are selling electricity from a private embedded network that you own or operate,<sup>42</sup> you will need to either register the network with the Australian Energy Market Operator (AEMO) or register an exemption with us if the network is not in a deemed exemption category.<sup>43</sup>

In most cases, if you are eligible for a deemed or registrable retail exemption you will also need a network exemption. Some, but not all, individual exemption holders will also need a network exemption (sellers of power purchase agreements, for example, will not).

We administer both the network and retail exemption processes. Although the exemptions are separate, you can register either or both a retail exemption and network exemption on the [one form](#).<sup>44</sup> If you have already been granted an individual retail exemption you will need to register your network exemption separately.

The [Electricity network service provider registration exemption guideline](#)<sup>45</sup> sets out further information on network exemptions, including classes of exemption and how to apply for a network exemption.

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<sup>42</sup> Network exemptions apply only to networks connected to the national electricity grid, and are not required for off-grid networks.

<sup>43</sup> Section 11 of the National Electricity Law.

<sup>44</sup> A copy of our exemption registration form can be found at: <http://www.aer.gov.au/node/471>.

<sup>45</sup> A copy of this guideline is available at <http://www.aer.gov.au/node/983>.

## 11 Glossary

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

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

**disconnection** or **de-energisation** of premises means:

- in the case of electricity—the opening of a connection or
- in the case of gas—the closing of a connection

in order to prevent the flow of energy to the premises.

**energy** means electricity or gas.

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

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

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

**explicit informed consent** means consent is given by a customer to an exempt seller where the exempt seller has clearly, fully and adequately disclosed all matters relevant to the consent of the customer, including each specific purpose or use of the consent; and the customer gives the consent to the transaction:

- in writing signed by the customer; or
- verbally, so long as the verbal consent is evidenced in such a way that it can be verified and recorded; or
- by electronic communication generated by the customer.

**large customer** means a business customer who consumes energy at business premises at or above the upper consumption threshold, as defined by the relevant jurisdiction. If no threshold is defined – 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas, as per the National Energy Retail Regulations SA 2012.

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

**off-grid** means not physically connected to the distribution or transmission systems that make up the national electricity power system.

**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.

**PPA** means a power purchase agreement, which is a financial arrangement in which a business provides, installs and maintains, at no initial cost, an electricity generation system at a customer's premises and in exchange, the customer buys the energy generated for an agreed period.

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

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

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

**retrofitting** means installing a private electricity network into a site that was established and serviceable by a retailer to allow onselling.

**small customer** means a customer—

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

**SPPA** means a solar power purchase agreement.

## Appendix A-1: Classes of deemed and registerable exemptions and conditions

Table 1 – Deemed classes of exemption

Deemed exemption class	Application	Class criteria	Future sellers
<p><b>Class D1</b></p> <p>Persons selling metered energy to fewer than ten small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or property managers (and similar entities) who sell energy in commercial or retail developments such as shopping centres, office buildings, airports and industrial parks.</p> <p>Customers are commercial or retail customers.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has fewer than 10 commercial or retail premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p><b>Unless the explicit informed consent of all customers is obtained</b>, individual exemptions will be required in this instance.</p>
<p><b>Class D2</b></p> <p>Persons selling metered energy to fewer than ten residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, owners and operators of rooming houses, lessors, or property managers (and similar entities) who sell energy to residential dwellings such as units, standard apartments, flats and purpose built off-site student accommodation.</p> <p>Customers include tenants, occupants and owner-occupants.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has fewer than 10 residential premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p><b>Unless the explicit informed consent of all customers is obtained</b>, individual exemptions will be required in this instance.</p>



Deemed exemption class	Application	Class criteria	Future sellers
<p><b>Class D3</b></p> <p>Persons selling metered energy to occupants of holiday accommodation on a short-term basis.</p>	<p>Customers are short term occupants of holiday accommodation including (but not limited to) hotels, motels, inns, holiday flats, holiday cabins, campsites, caravan parks and marinas.</p> <p>Customers do not include residents of caravan parks, residential parks and manufactured home estates who principally reside there. Persons selling to these customers are covered by registrable exemption R4.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The occupancy is short-term, that is, the resident does not principally reside there and</p> <p>There is a separate itemised item for the sale of energy.</p>	<p>Class remains open.</p>
<p><b>(new) Class D4</b></p>	<p>Temporary supply for the construction and commissioning phase of building, civil, construction, industrial, transport, mining or other projects</p>	<p>Incidental supply to facilitate bona fide construction and commissioning of new facilities on the same or an adjoin site</p>	<p>Class remains open</p>
<p><b>Class D5</b></p> <p>Persons selling unmetered gas to individual premises where gas is used for limited purposes.</p>	<p>Gas that is sold for limited purposes, for example, for use in cooking appliances. It does not include gas used in the production of bulk or stored hot water.</p>	<p>Gas is used for premises within the limits of a site owned, occupied or operated by the person and</p> <p>The premises are not separately metered for gas consumption, and</p> <p>There is a separate itemised charge for the gas sold, and</p> <p>Gas is not used for space heating.</p>	<p>Class remains open.</p>

Deemed exemption class	Application	Class criteria	Future sellers
<p><b>Class D6</b></p> <p>Persons selling unmetered electricity to residential customers in Queensland.</p>		<p>Electricity is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Premises are not separately metered, and</p> <p>The relationship between the seller and customer is covered by the Residential Tenancies and Rooming Accommodation Act 2008 (Qld).</p>	<p>Class remains open until Queensland legislation no longer permits this type of selling.</p>
<p><b>Class D7 - DELETED</b></p>			<p>This exemption class has been revoked</p>
<p><b>Class D8</b></p> <p>Persons selling energy to a related company.</p>	<p>Persons or companies who sell energy to a related company where the person or company controls, or is controlled by, another company including where:</p> <ul style="list-style-type: none"> <li>• a company is a subsidiary of another company, or</li> <li>• two companies have a common holding company.</li> </ul>		<p>Class remains open.</p>
<p><b>Class D9</b></p> <p>Persons selling energy to customers in conjunction with, or ancillary to, the provision of telecommunications/information services.</p>	<p>Applies to (but is not limited to) telecommunications companies and data centre operators.</p>	<p>Energy is sold on or within the person's premises, and</p> <p>The energy is used in conjunction with, or ancillary to, the provision of telecommunications or information services.</p>	<p>Class remains open.</p>

Deemed exemption class	Application	Class criteria	Future sellers
<p><b>Class D10</b></p> <p>Government and similar agencies, other than housing authorities, selling metered energy to non-residential customers.</p>	<p>Applies to (but is not limited to) Federal, State and Local Government departments, statutory authorities or government owned corporations established under legislation of the Commonwealth or States and Territories (excludes housing authorities), and universities (excludes residential accommodation).</p>	<p>The entity has been established for purposes other than the sale, supply or generation of energy, or the supply of housing or residential accommodation to tenants, and</p> <p>The entity sells energy for purposes that are ancillary to its primary functions or objectives under its establishment legislation, and</p> <p>Each premises is separately metered.</p>	<p>Class remains open.</p>

**Table 2 - Registrable classes of exemption**

Registrable exemption class	Application	Class criteria	Future sellers
<p><b>Class R1</b></p> <p>Persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or management corporations (and similar entities) who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has 10 or more commercial or retail premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p><b>Unless the explicit informed consent of all customers is obtained,</b> individual exemptions will be required in this instance.</p>
<p><b>Class R2</b></p> <p>Persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors, rooming houses or management corporations (and similar entities) who sell energy to residential dwellings such as units, standard apartments, flats and purpose built student accommodation.</p> <p>Customers include tenants, occupants and owner-occupants.</p> <p>Customers do not include retirement village residents, or residents of caravan parks, residential parks and manufactured home estates who permanently reside there. Energy sales to these customers are covered by registrable classes R3 and R4, respectively.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>The site has 10 or more premises.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p><b>Unless the explicit informed consent of all customers is obtained,</b> individual exemptions will be required in this instance.</p>

Registrable exemption class	Application	Class criteria	Future sellers
<p><b>Class R3</b></p> <p>Retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.</p>	<p>Owners or operators of retirement villages.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered.</p>	<p>Class remains open except for sites where embedded networks are retrofitted after 1 January 2015.</p> <p><b>Unless the explicit informed consent of all customers is obtained,</b> individual exemptions will be required in this instance.</p>
<p><b>Class R4</b></p> <p>Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there</p>	<p>Owners or operators of caravan parks, residential parks and manufactured home estates.</p>	<p>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</p> <p>Each premises is separately metered, and</p> <p>The premises are the residents' principal place of residence, that is, it is where the person lives most of the time and / or the person has no other place of residence.</p>	<p>Class remains open</p>
<p><b>Class R5</b></p> <p>Persons on-selling metered energy to large customers.</p>	<p>Persons who on-sell energy to large commercial customers.</p>	<p>Each premises is separately metered (unless the customer has agreed otherwise), and</p> <p>The customers are large (ie for electricity, customers consume 100 MWh pa or more in New South Wales, the ACT, Queensland and Victoria, 150 MWh pa in Tasmania, and 160MWh pa in South Australia; and for gas, customers consume 1TJ pa or more).</p>	<p>Class remains open</p>

Registrable exemption class	Application	Class criteria	Future sellers
<p><b>Class R6</b></p> <p>Persons selling metered energy to small customers at a site or premises <b>adjacent</b> to a site that they own, occupy or operate</p>	<p>Sellers who commenced selling prior to 1 January 2015.</p> <p>Legacy arrangements.</p>	<p>Energy is used for premises adjacent to the site owned, occupied or operated by the person, and</p> <p>Each premises is separately metered, and</p> <p>Energy sales across site boundaries are permitted by the relevant jurisdiction.</p>	<p>Sellers who commenced selling after 1 January 2015 must apply for individual exemptions.</p>
<p><b>Class R7</b></p> <p>Persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate.</p>	<p>Bodies corporate, landlords, lessors or management corporations (and similar entities) who sell energy in commercial or retail properties such as shopping centres, office buildings, airports and industrial parks.</p> <p>Sellers who commenced selling prior to 1 January 2015.</p> <p>Legacy arrangements.</p>	<p>Energy is used for premises within the limits of a site owned, occupied or operated by the person, and</p> <p>Premises are not separately metered.</p>	<p>Sellers who commenced selling after 1 January 2015 must apply for individual exemptions.</p>
<p><b>Class R8</b></p> <p>Persons selling electricity through power purchase agreements (PPAs) to customers who are connected to the national electricity grid</p>		<p>Energy is sold to:</p> <ul style="list-style-type: none"> <li>residential customers where the duration of the PPA is less than 10 years and the customer is able to terminate the agreement early and / or</li> <li>commercial customers.</li> </ul>	<p>Class remains open</p>

## Appendix A-2: Core exemption conditions

The following conditions apply under rule 153 to the sale of energy to exempt customers by exempt persons. These conditions are core conditions and are based on the retail customer protections provided under the National Energy Retail Law (Retail Law).

Not all of these conditions apply to all exemption classes. The specific obligations under each condition will vary from class to class and will depend on whether the class relates to residential or commercial/retail customers. Sellers should refer to the table at Appendix A-3 for the full list of conditions for their particular class in order to confirm their obligations.

### Condition 1 – Obligation to supply

- 1 An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
- 2 Subject to condition 10, an exempt person can refuse to sell energy to an exempt customer where:
  - a. the outstanding amounts are owed under the exempt customer's ongoing energy account
  - b. the exempt customer's premises have been disconnected by the exempt person for a reason other than the failure to pay a bill and the exempt customer has not within 10 business days of disconnection rectified the matter that gave rise to the disconnection. The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

### Condition 2 - Information provision

- 1 The exempt person must advise exempt customers, in writing, at the start of their tenancy/residency/agreement 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 it were purchasing from an authorised retailer
  - c. the exempt customer's rights in relation to dispute resolution including:
    - i. the exempt person's procedures for handling disputes and complaints, 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 availability of relevant government or non-government energy rebates, concessions and relief schemes
  - f. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
  - g. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy

- h. the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
  - i. 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/agreement, 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 Retail Law commences 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 Retail Law commences in the relevant state or territory.

### **Condition 3 - 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 offer at least two payment methods to an exempt customer.
- 3 An exempt person must offer flexible energy payment options to an exempt customer who has identified themselves as being in financial difficulty. Flexible payment options may include arrangements for payment by periodic instalments having regard to:
  - a. the customer's capacity to pay,
  - b. any arrears owing by the customer, and
  - c. the customer's expected energy consumption needs over the following 12 month period, or the duration of their tenancy/residency/agreement if the tenancy/residency/agreement is less than 12 months.
- 4 The requirements in paragraph 2 do not apply where the exempt customer has:
  - a. had two flexible payment arrangements cancelled by the exempt person in the previous 12 months due to non-payment, or
  - b. been convicted of an offence involving illegal use of energy in the previous two years.
- 5 An exempt person must include the following particulars in a bill for an exempt customer:
  - a. The name of the exempt customer.
  - b. The address of the exempt customer's premises.
  - c. Date that the account was issued.
  - d. The identifier of the meter for the exempt customer's premises.
  - e. The pay-by date for the bill.
  - f. Date of the current meter reading or estimate, as applicable.
  - g. The dates to which the meter reading or estimate applies (billing period).
  - h. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - i. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
  - j. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules 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).
  - k. Tariffs, fees and charges applicable to the exempt customer.



- l. The basis on which tariffs, fees and charges are calculated.
- m. Any amount deducted, credited or received under a government or non-government funded energy charge rebate, concession or relief scheme or under a payment arrangement.
- n. Details of the available payment methods.
- o. A telephone number for account inquiries and complaints.

#### **Condition 4 - 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, or apportioned, for any bill issued.
- 2 An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
- 3 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.
- 4 Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
  - a. historical metering data for the exempt customer reasonably available to the exempt person, or
  - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
- 5 If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

#### **Condition 5 - 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 6 - 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:
  - a. direct debit, or
  - b. credit card over the phone and the customer is provided with a receipt number.
- 2 An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

#### **Condition 7 - Pricing**

- 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, or estimated 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 An exempt person must limit any fee charged to a customer for late payment to a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.

#### **Condition 8 – Undercharging and overcharging**

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

#### **Condition 9 - Payment difficulties and disconnection or cessation of supply**

- 1 Where an exempt customer informs the exempt person that it is unable to pay energy bills due to financial difficulty, the exempt person must:
  - a. direct the exempt customer to the Australian government energy efficiency website or another information resource with energy efficiency advice, and
  - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
  - c. not charge the exempt customer a late payment fee, and
  - d. not charge the exempt customer a security deposit.
- 2 Subject to Condition 10, 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's tenancy/residency/agreement has ended and the exempt customer is vacating the premises, or
  - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:
    - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, and, in the case of residential exempt customers, has offered the exempt customer more flexible payment terms to pay any amount outstanding and has restated the forms of assistance available if the non-payment is due to financial difficulty, and
    - ii. following non-payment by the date specified in the reminder notice, or, in the case of residential customers, the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
    - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
    - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
- 3 Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
- 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 10 - 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 or non-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 exempt person, 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 (inclusive) in any year.

- 2 For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
- 3 This condition does not apply where the exempt customer has requested disconnection.
- 4 This condition does not apply where the energy supply agreement between the exempt person and exempt customer has been terminated.

#### **Condition 11 - 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).

#### **Condition 12 - Concessions and rebates**

- 1 Where an exempt customer is eligible to receive a government or non-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 or non-government energy rebate, concession or assistance under a relief scheme can only be claimed by the exempt person on behalf of the exempt customer, then, assuming there is no legal impediment, the exempt person must make that claim and, if successful, must apply the rebate, concession or assistance to the exempt customer's bill.

#### **Condition 13 - Choice of retailer**

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

#### **Condition 14 - Contact details**

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

#### **Condition 15 - Dispute resolution**

- 1 In the event of a dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, 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 16 - Life support customers**

- 1 Where an exempt customer provides an exempt person with confirmation from a registered medical practitioner that a person residing at the exempt customer's premises requires life support equipment, the exempt person must:
  - a. advise the person whose embedded distribution network the sale of energy is occurring within (if different from the exempt person) that a person residing at the premises requires life support equipment, and
  - b. advise the exempt person's authorised retailer and distributor that a person residing at the premises requires life support equipment, and
  - c. provide the exempt person's authorised retailer and distributor with any relevant information about the premises for the purposes of updating their records and registers.
- 2 An exempt person must maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.

#### **Condition 17 - 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 selling energy.

#### **Condition 18– Termination of energy supply agreement**

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

#### **Condition 19 - 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 address of the exempt customer's premises.

- c. The identifier of the meter for the exempt customer's premises (if applicable).
- d. The date that the customer account was created.
- e. Copies of any bills issued for the previous 12 months.
- f. The date of the most recent meter read for the customer (if applicable).
- g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

**Condition 20 – Information provision**

1. An exempt person must provide the customer in writing a plain English notice explaining that the contract is covered by Australian consumer protection laws and is separate to the customer's contract with their retailer and distributor which are covered under the National Energy Retail Law.

**Condition 21 – Exemption limited to the sale of electricity through power purchase agreements**

1. An exempt person must:
  - a. refrain from registering in the wholesale market for the purposes of purchasing energy, and
  - b. not be the financially responsible retailer for the premises (rather, this must be an authorised retailer).

## Appendix A-3: Exemption class conditions

Table 2 – Exemption class conditions

Conditions	Class: Deemed									
	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10
1	✓	✓	✓	N/A	✓	✓		N/A	✓	✓
2	N/A: 1 (e), (f), (h)	✓	N/A: 1 (a)-(f), (h)	N/A	N/A: 1 (a), (b), (e), (f) (h)	✓		N/A	N/A: 1(a), (c), (e), (f), (h)	N/A: 1 (e), (f), (h)
3	N/A: 3, 4, 5m	✓	N/A: 3, 4, 5 (a)-(d), (f), (h), (i), (m)	N/A	N/A: ,3, 4, 5 (d), (h),-(i), (m)	N/A: 5 (d), (h) , (i),		N/A	N/A	N/A: 3,4, 5m
4	✓	✓	✓	N/A	N/A	N/A		N/A	N/A	✓
5	✓	✓	N/A	N/A	✓	✓		N/A	N/A	✓
6	✓	✓	✓	N/A	✓	✓		N/A	✓	✓
7	✓	✓	✓	N/A	✓	✓		N/A	N/A	✓
8	✓	✓	N/A	N/A	✓	✓		N/A	N/A	✓
9	N/A: 1	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A: 1
10	N/A: 1 (a), (b)	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A: 1 (a), (b)
11	✓	✓	N/A	N/A	N/A	✓		N/A	✓	✓
12	N/A	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A
13	✓	✓	N/A	N/A	N/A	✓		N/A	✓	✓

Conditions	Class: Deemed									
	D1	D2	D3	D4	D5	D6	D7	D8	D9	D10
14	✓	✓	N/A	N/A	✓	✓		N/A	✓	✓
15	✓	✓	N/A	N/A	✓	✓		N/A	✓	✓
16	N/A	✓	N/A	N/A	N/A	✓		N/A	N/A	N/A
17	✓	✓	N/A	N/A	N/A	✓		N/A	N/A	✓
18	✓	✓	N/A	N/A	✓	✓		N/A	✓	✓
19	✓	✓	N/A	N/A	N/A	✓		N/A	N/A	✓
20	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A
21	N/A	N/A	N/A	N/A	N/A	N/A		N/A	N/A	N/A



Conditions	Class: Registrable							
	R1	R2	R3	R4	R5	R6	R7	R8
1	✓	✓	✓	✓	✓	✓	✓	N/A
2	N/A: 1 (e), (f), (h)	✓	✓	✓	N/A:	N/A: 1 (e), (f), (h)	N/A: 1 (e), (f), (h)	N/A
3	N/A: 3, 4, 5 (m)	✓	✓	✓	N/A	N/A: 3, 4, 5(m)	N/A: 3, 4, 5 (m)	N/A
4	✓	✓	✓	✓	N/A	✓	N/A	N/A
5	✓	✓	✓	✓	N/A	✓	✓	N/A
6	✓	✓	✓	✓		N/A: 2	✓	N/A
7	✓	✓	✓	✓		✓	✓	N/A
8	✓	✓	✓	✓	N/A	✓	✓	N/A
9	N/A: 1,	✓	✓	✓	N/A	N/A: 1,	N/A: 1,	N/A
10	N/A: 1 (a), (b)	✓	✓	✓	N/A	N/A: 1 (a), (b)	N/A: 1 (a), (b)	N/A
11	✓	✓	✓	✓	✓	✓	✓	N/A
12	N/A	✓	✓	✓	N/A	N/A	N/A	N/A
13	✓	✓	✓	✓	✓	✓	✓	N/A
14	✓	✓	✓	✓		✓	✓	N/A
15	✓	✓	✓	✓	✓	✓	✓	N/A
16	N/A	✓	✓	✓	N/A	N/A	N/A	N/A
17	✓	✓	✓	✓	✓	✓	✓	N/A

Conditions	Class: Registrable							
	R1	R2	R3	R4	R5	R6	R7	R8
18	✓	✓	✓	✓		✓	✓	N/A
19	✓	✓	✓	✓	N/A	✓	✓	N/A
20	N/A	N/A	N/A	N/A	N/A	N/A	N/A	✓
21	N/A	N/A	N/A	N/A	N/A	N/A	N/A	✓

## Appendix B: Information required for individual exemption applications (other than PPA providers)

### General information requirements

Please provide the following information in your application for the grant of an individual exemption:

- 1 Your legal name. If you are a body corporate or community corporation, please indicate this.
- 2 Your trading name if different to your legal name.
- 3 Australian Business Number (ABN) or Australian Company Number (ACN).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 Why you are seeking an individual exemption, and why you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances.
- 7 The address of the site at which you intend to sell energy, including a map of the site and a brief description of this site and its current and future use/s.
- 8 The primary activity of your business (for example, managing a shopping centre).
- 9 The form of energy for which you are seeking the individual exemption (electricity or gas). For electricity, please state whether the network you propose to sell is directly or indirectly connected to the main grid or is (or will be) an off-grid network.
- 10 Are you establishing, or have you established, energy supply in an area where there are no other viable energy supply arrangements available.
- 11 The date from which you intend to commence selling energy.
- 12 Mailing addresses for premises at the site (where applicable). We may use this information to ensure that potential customers are able to participate in our consultation process.
- 13 Details of any experience in selling energy, for example:
  - date/s and location/s of previous operations
  - form/s of energy sold
  - scale of operations (that is, the number, size and type of customers)
  - an explanation of which activities will be conducted in-house and which will be contracted out to third parties.
- 14 Whether you currently hold, or have previously held or been subject to, an energy selling exemption or a retail licence (retailer authorisation) in any state or territory. If so, please provide details.
- 15 What arrangements you have made in the event that you can no longer continue supplying energy (e.g., has the retailer that sells to you agreed that they will service the customers).

### Particulars relating to the nature and scope of the proposed operations

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

- 1 Will your customers be your tenants? If so, are they residential or commercial/retail? Are they covered by residential or retail tenancy, or other legislation governing accommodation that is a person's principal place of residence (for example, retirement village legislation, residential parks or manufactured home estates legislation) in your state or territory?
- 2 Are you providing other services (for example, accommodation/leasing of property) to persons on the site who you intend to sell energy to? Or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please specify what these services are, and the contractual or leasing arrangements under which these services are being provided.
- 3 What is the total number of customers at the site? Please provide a breakdown between residential and business customers (and whether they are small or large as defined for the jurisdiction in which you intend to operate).
- 4 Will you be onselling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?
- 5 What is the estimated aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and mega joules or gigajoules for gas) and the average expected consumption of customers for each type of customer you service (that is, residential customers and retail or commercial customers)?
- 6 Will your customers be wholly contained within a site owned, controlled or operated by you? (For the purposes of this question, a body corporate may be taken to 'operate' premises it oversees).
- 7 Will each premises/dwelling be separately metered? If the application is for a new development or a redevelopment and customers will not be separately metered, please explain why not.
- 8 What types of meters will be used? For example, basic/accumulation meters, manually read interval meters or remotely read interval meters? Will these meters allow your customers to change retailers (i.e. not source their energy from you)?
- 9 If customer dwellings/premises are separately metered, how often do you propose the meters to be read and by whom?
- 10 How will you determine energy charges if customers are not separately metered?
- 11 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 12 What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues?
- 13 What energy rebates or concessions are available for your customers and, if applicable, how can customers claim these?
- 14 Will you make energy efficiency options available to your customers? Will your network incorporate solar or other generation options for sustainability purposes? If so, will you use gross or net metering?
- 15 We may require you to provide evidence of customers' explicit informed consent for applications involving retrofitted embedded networks.
- 16 Please provide any further information that you consider would assist us to assess your application.

# Appendix C: Information required for individual exemption applications from power purchase providers only

## General information requirements

Please provide the following information in your application for the grant of an individual exemption:

- 1 Your legal name. If you are a body corporate or community corporation, please indicate this.
- 2 Your trading name if different to your legal name.
- 3 Australian Business Number (ABN) or Australian Company Number (ACN).
- 4 Registered postal address for correspondence. We may verify this information with the Australian Securities and Investments Commission (ASIC) or other relevant agency.
- 5 Nominated contact person, including their position in the organisation and contact details.
- 6 Why you are seeking an individual exemption, and why you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances.
- 7 The primary activity of your business (for example, managing a shopping centre).
- 8 Whether you intend to sell electricity to customers connected to the grid or who are off-grid.
- 9 The date from which you intend to commence selling energy.
- 10 Details of any experience in selling energy, for example:
  - date/s and location/s of previous operations
  - scale of operations (that is, the number, size and type of customers)
  - an explanation of which activities will be conducted in-house and which will be contracted out to third parties.
- 11 Whether you currently hold, or have previously held or been subject to, an energy selling exemption or a retail licence (retailer authorisation) in any state or territory. If so, please provide details.

## Particulars relating to the nature and scope of the proposed operations

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

- 1 Are you providing other services (for example, accommodation/leasing of property) to persons on the site who you intend to sell energy to? Or will your only commercial relationship to persons on the site be the sale of energy? If you are providing other services, please specify what these services are, and the contractual or leasing arrangements under which these services are being provided.
- 2 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 3 What dispute resolution procedures do you intend to put in place to deal with energy related complaints and issues?

- 4 Please provide any further information that you consider would assist us to assess your application.
- 5 Please describe your business model in some detail, noting jurisdictions where you will be operating, and customer number forecasts for the first 3 years.
- 6 What is your pricing structure - will you charge for energy only or are there other fees? Will you charge only for energy consumed or for all energy generated?
- 7 Are there related companies and what is their function? Do you intend to transfer any functions to any other related companies and, if so, what are they?
- 8 Do you intend to use fixed term contracts and, if so, how long will they be?
- 9 Under what circumstances can the customer terminate the agreement and at what cost?
- 10 What happens when the contract ends? Who owns the system?
- 11 Who will own any green energy certificates or rebates, including feed-in tariffs, which apply to the generation system?

## **Appendix D: Information for applicants seeking to vary an individual exemption**

We recommend that you contact us before you submit an application for the variation of an individual exemption to help ensure that the information you include in your application is relevant and necessary.

Please provide the following information in your application for the variation of an individual exemption:

- 1 An explanation of why you are seeking a variation to your individual exemption and an explanation of why you believe an exemption—rather than a retailer authorisation—remains appropriate for your changed circumstances.
- 2 Where relevant, a list of the conditions of exemption that you believe need to be varied.
- 3 A list of changes to any of the information that you provided us when you applied for your individual exemption. If you have an electronic copy of your original application, you may submit this with tracked changes. If your exemption was transitioned, a list of changes to the circumstances on which the exemption was based.

## Appendix E: Decision making factors

The objective of the Retail Law is *to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers of energy with respect to price, quality, safety, reliability and security of supply of energy.*<sup>46</sup>

This objective guides us in the exercise of our powers and functions.<sup>47</sup> It means, for example, that we may refuse an exemption application if we consider that the proposed arrangements are not in the long term interests of the affected consumers in terms of price, quality or anything else specified in the objective.

Our exemption decisions are also informed by the policy principles outlined in the Retail Law.<sup>48</sup> We will also consider such factors as the nature of the service provided to the customer, whether the form of regulation is appropriate and fit for purpose, and whether it duplicates existing regulation.

These principles are, in part, aimed at ensuring that exempt customers are not unreasonably disadvantaged compared to customers of authorised retailers. The Retail Law also sets out exempt seller related factors<sup>49</sup> and customer related factors<sup>50</sup> that we may consider when making exemption decisions. These principles and factors have shaped our decisions on the need for certain exemption classes, the conditions that should attach to them, and their application. They are also the factors that we consider when assessing individual exemption applications.

These factors should be read in conjunction with one another and not in isolation, and should be taken as a guide only. Moreover, no single principle or factor is a defining principle or factor in all instances. For example, in making a decision on an individual exemption some factors will carry more or less weight, depending on the facts and circumstances of the application. Whilst applications are considered on a case-by-case basis, we will aim to be consistent in decisions while considering the particular circumstances of each application. There may also be reasons not specified in the guideline that might cause us to refuse an application for an individual exemption.

### Exempt selling policy principles

The exempt selling policy principles and how they inform our exemption decisions are outlined below.

#### Divergence in regulatory arrangements

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

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<sup>46</sup> Section 13 of the Retail Law.

<sup>47</sup> Section 205 of the Retail Law.

<sup>48</sup> Section 114 of the Retail Law.

<sup>49</sup> Section 115 of the Retail Law.

<sup>50</sup> Section 116 of the Retail Law.



The retail exemptions framework is aimed at giving exempt customers protections to those of retail customers. However, exempt sellers differ from authorised retailers in that they usually lack the economies of scale and scope from which retailers benefit and mostly do not sell energy as their core business - rather it is incidental to their business.

Consequently, certain requirements under the Retail Law and Retail Rules may be more onerous or inappropriate for exempt persons—the price disclosure requirements for retailers’ standing offer and market offer prices, for example.<sup>51</sup> Regulatory divergence is therefore unavoidable and reflects the different circumstances of exempt sellers.

An exempt seller whose energy sales are significant in terms of scale and/or scope should be subject to additional regulatory requirements (see **Amount of energy likely to be sold**). This is because energy is an essential service and the full suite of customer protections under the Retail Law should be afforded wherever possible.

### **Choice of retailer**

Section 114(1)(b) of the Retail Law states that ‘*exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction have that right*’.

Choice can be limited in embedded networks where access to retailers depends largely on network configuration, access to individual meters (meaning that the customer has its own meter that can be read by a retailer other than the exempt seller), the type of meters in place at the premises, and the availability of “energy-only” offers. Some of these factors are determined at the time a building is constructed, and reconfiguration may be expensive and therefore uneconomic.

In addition, not all jurisdictions permit competition for embedded networks. In Queensland, Tasmania and the ACT embedded network customers can usually only access retail market offers if they have a direct connection to the local distribution network (that is, if they “leave” the embedded network.) This may require significant changes to the wiring within the network, the costs of which would normally be borne by the customer.

No jurisdiction requires retail competition for gas. In jurisdictions that do allow choice, it is a condition of both deemed and registrable exemptions that the exempt person must advise customers that they have a choice and must not prevent them from exercising their choice. We may impose similar conditions on individual exemptions.

We do not support the creation of infrastructure that deliberately reduces a customer’s ability to exercise choice as, in our view, access to retail competition is the best way to empower and protect electricity consumers. We have therefore taken steps to lessen the potential consumer detriment resulting from the removal of competition. Property owners seeking to retrofit embedded networks into a pre-existing retail development will only be eligible for deemed or registrable exemptions (classes D1, D2, R1 and R2) if **all** affected customers give explicit informed consent to the network conversion. Otherwise the property owner must apply for an individual exemption.

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<sup>51</sup> These requirements are set out in Division 11 of Part 2 of the Retail Law.

## Access to customer protections

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

As a matter of principle, exempt customers should receive the same protections as customers of authorised retailers. This is not just a matter of fairness, but recognises that these customers can be some of the most vulnerable in society and in need of appropriate protections.

However, as noted above, requiring exempt sellers to provide the full suite of protections may not be practicable in all instances. Accordingly, we have developed a set of general conditions for exempt persons based on the retail customer protections. The extent to which these apply to a particular class exemption depends largely on the nature of the energy sale and the customer type. For example, residential exempt customers will receive the greatest level of protection and should receive such protections as flexible payment plans if they identify themselves as experiencing financial difficulty.

Under the Retail Law, retail customer protections are not generally extended to large business customers and this has been reflected in the exemptions framework.

Conditions attached to an individual exemption may more closely resemble the obligations that apply to an authorised retailer, although the inclusion of hardship protections, flexible payment options and other customer protections will be considered on a case by case basis.<sup>52</sup>

Authorised retailers are required to develop complaints handling arrangements based on Australian Standards for complaints handling in organisations. For individual exemptions, we may also require the exempt seller to develop complaints handling arrangements.

## Exempt seller related factors

Exempt seller related factors<sup>53</sup> are outlined below. This section also provides guidance on how these factors inform our exemption decisions, and on whether an exemption or a retailer authorisation would be more appropriate for an energy seller under various scenarios.

### Core versus incidental business

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

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

A sale of energy is not incidental where the seller's sole or primary relationship with the customer is the sale of energy.<sup>54</sup> Conversely, a sale of energy may be incidental to a person's business where the exempt person sells energy as part of a suite of services,

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<sup>52</sup> For example, an agent who manages energy sales across a number of sites is likely to have similar obligations as authorised retailers, or may even be required to obtain a retailer authorisation.

<sup>53</sup> Section 115 of the Retail Law.

<sup>54</sup> An exception might be where a person sells energy to an adjacent site for the sake of convenience or for legacy reasons.

and/or has another primary relationship with the customer. For example, a landlord who sells energy to a small tenant also provides the tenant with accommodation. Energy sales are a secondary component of the relationship and the landlord would not be selling energy were it not for the tenancy relationship.

If the energy sale is incidental, the seller is likely to be eligible for an exemption. Where it is not incidental an authorisation may be more appropriate. An exception to this principle is where the energy sold is discretionary or supplementary (as opposed to energy supplied by an authorised retailer, which we consider primary), for example, energy sold through solar power purchase agreements (SPPAs). The AER's view is that when an SPPA provider contracts with a customer to provide a discretionary or secondary energy service, an authorisation is not practical or warranted. Many of the Retail Law obligations are inappropriate, for example participation in the Retailer of Last Resort scheme, and obligations to provide standing offers. Exemptions, on the other hand, can be tailor-made to suit the specifics of an energy sale and are therefore a better regulatory fit for the sale of energy through SPPAs (and possibly other kinds of alternative energy selling).

### **Characteristics of the exempt seller**

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

Exemption classes have common features, which are shared by many sellers. Even if a person is not considered to need an authorisation to sell energy, they may not fall into a defined exemption class either. Where a person proposes to sell energy in a new or different way they may need to apply for an individual exemption, which is intended for unique arrangements and can be tailor-made to suit the particulars of the arrangement. We will assess arrangements on a case by case basis and attach conditions as appropriate, taking into account the needs of customers as well as the effect any obligations would have on the seller.

### **Profit intentions of the exempt seller**

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

An energy seller's profit motive can help determine whether energy selling is incidental, but it is not a defining feature and there is no prohibition on exempt sellers making a profit.

The AER does not have a role in regulating energy retail prices. To ensure that small customers receive some price protection we have therefore determined that an exempt seller must not charge small customers more than the local area retailer's standing offer.<sup>55</sup> The exempt person may not charge any other "administration" fees and may only recover the costs that they incur as a result of a customer's late payment (see condition 7).

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<sup>55</sup> A local area retailer is a retailer designated by a particular jurisdiction to take responsibility for new connections in that jurisdiction—for parts of, or the whole, jurisdiction; for specified premises or classes of premises; and specified customers or classes of customers.

## **Amount of energy likely to be sold**

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

We consider exemptions appropriate for energy sellers who sell on a small scale and/or to one or a small number of sites. However, when the scale of a person’s energy sales increases (and the more their operations resemble those of an authorised retailer), they may be required to obtain a retailer authorisation. If an individual exemption is granted for ‘significant’ operations, the conditions placed on the exempt person will likely be similar to those applying to authorised retailers.

## **Appropriate obligations governing the applicant’s behaviour**

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

The level of regulation should be proportionate to the level of protection energy customers need. These needs vary according to the type of service they are receiving and their relationship with their energy seller.

In general, the closer an energy seller’s operations are in scale and scope to those of an authorised retailer, the more closely their exemption conditions will mirror an authorised retailer’s.

Consumer protections may also be available under other legislative frameworks, for example the Australian Consumer Law and state or territory tenancy legislation. Exemption conditions are intended to provide energy-specific protections for exempt customers and not to duplicate protections provided through other legislation or to place additional obligations on sellers who are already bound by other legislative frameworks.

## **Costs and benefits of obtaining a retailer authorisation**

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

The AER has a range of tools available to regulate energy sellers—from retailer authorisations, to tailored (individual) exemptions and class exemptions. It is not appropriate to apply the same entry and regulatory requirements to all energy sellers. Rather regulation should be fit for purpose and the degree to which we regulate an energy seller will depend on their particular circumstances.

Applying for a retailer authorisation can be onerous and includes extensive information requirements. A person needs to meet three entry criteria:<sup>56</sup>

- organisational and technical capacity—the person must have the necessary organisational and technical capacity to meet the obligations of a retailer

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<sup>56</sup> Section 90 of the Retail Law.

- financial resources—the person must have resources or access to resources so that it will have the financial viability and financial capacity to meet the obligations of a retailer
- suitability criterion—the person must be a suitable person to hold a retailer authorisation.

In addition, authorised retailers must comply with all relevant regulatory obligations under the Retail Law and the Retail Rules. The regulatory costs of complying with these obligations can be substantial and could be prohibitive for some small energy sellers. Where we consider that the additional regulatory costs that would be imposed upon an energy seller by an authorisation outweigh the costs to customers of receiving a lesser level of regulation, an exemption may be sufficient.

### **Customer related factors**

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

#### **Characteristics of the exempt customers**

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

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

Another characteristic we consider is whether the customer has access to another source of energy supply. In our view, a customer needs a greater level of protection where a service carries the possibility that a customer’s energy supply could be disconnected. In this case the seller will need to either be authorised or if exempted, will be subject to conditions that mirror a retailer’s obligations. However, customers do not need the same level of protection where there is no risk of them being disconnected, for example where the seller is providing a supplementary, discretionary source of energy (as in the case of SPPA providers).

#### **Access to appropriate rights and protections**

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

We can impose conditions on exempt persons to provide an appropriate level of protection for customers. The conditions that apply to most deemed and registrable exemptions are outlined at Appendix A-1. Conditions for individual exemptions will be based on retail customer protections but determined on a case by case basis.

Many residential and small business customers also have protections under their respective tenancy or equivalent legislation or agreements. These protections, when complemented by exemption conditions, will go some way to matching the customer protections provided by the Retail Law.

## Other relevant customer related matters

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

### The nature of the service provided to customers

Energy is an essential service, regardless of its source or how it is supplied. However, this does not mean that all energy supply should be regulated the same way and, as noted earlier, regulation should be fit for purpose.

When determining how best to regulate energy supply, one of the questions we consider is whether a service is discretionary or non-discretionary and the effect disconnection would have on a customer’s ongoing energy supply. The impact on a customer of the disconnection of their primary source of energy supply (that is through the grid) is far greater than disconnection of a secondary source of supply. If a secondary source were disconnected the customer would still have access to network distributed energy and would still be supplied.

Primary providers should be required to provide customers with the full suite of energy retail protections and therefore should be authorised. Where a customer is supplied by an energy source that is secondary to grid-distributed energy (for example, through an SPPA) the customer does not need the same level of protection for that service as for the primary source of electricity. In addition, the seller does not need to be as heavily regulated as an authorised retailer. An exemption may be appropriate in this instance and the conditions tailored to the nature of the energy sale. These will be considered on a case-by-case basis.

## Other relevant seller related matters

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

### Unmetered supply

Some metering requirements are determined by state or territory legislation. The Retail Rules stipulate that we can impose conditions on exempt persons for, or with respect to, installing, maintaining and reading meters of exempt customers in accordance with jurisdictional energy legislation.<sup>57</sup>

Although we do not support unmetered energy selling, we will allow exemptions in some circumstances where, for example, it is permitted under jurisdictional legislation,<sup>58</sup> or where it is for negligible and specific use such as for gas cook tops, or in “legacy” arrangements,<sup>59</sup> or, in the case of large customers, where the parties have agreed to it.

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<sup>57</sup> Rule 152(5) of the Retail Rules.

<sup>58</sup> Most jurisdictions prohibit energy charges being passed on to residential tenants unless consumption is separately metered.

<sup>59</sup> Legacy arrangements are arrangements that were made before the National Energy Retail Law and Rules commenced in a particular jurisdiction. That is, the AER will only support these arrangements where they are long-standing arrangements that are mutually convenient to the parties.

## **Decentralised energy and the need for flexibility**

The way energy is supplied to customers is changing with the emergence of new products and services that allow customers greater control over how their electricity is delivered and consumed. This has resulted in a range of distributed generation and storage options, demand management services and new business models for selling energy. Many of these new energy sellers do not sell energy under a 'typical' energy retailer model and are different from typical exempt sellers.

Many of the new products emerging in the electricity supply market involve on-site generation which may be combined with storage. While this has broader implications for all levels of the energy market, it is already impacting on the way that energy is being retailed to customers. Increasingly, a customer's energy supply will be drawn from various sources, including from alternative energy sellers. Not all new technologies involve the sale of energy (for example, battery storage) but where they do (for example, SPPAs) they fall under the ambit of the Retail Law.

The alternative energy market is evolving rapidly and our regulatory approach aims to support—not hinder—market innovation. Our approach to regulation will be flexible and pragmatic and the level of regulation applied to a business (obligations, as well as entry criteria) needs to be appropriate for the type of energy selling undertaken.

We will seek to ensure that a customer has appropriate consumer protections under the Retail Law, conditions to an exemption, the Australian Consumer Law or other legislative requirements. However we will not impose conditions on alternative energy sellers where another supplier already guarantees these protections.

## Appendix F: Information for customers of exempt sellers

If you buy your electricity or gas from an exempt seller, you have protections and rights. These may be different to those of an authorised retailer's customers.

If you are a residential customer (for example, a long term resident in a caravan park, a resident in a retirement village or apartment building, or a tenant), your customer protections will include:

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

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

Retail or commercial customers' rights will include:

- clear and reasonable disconnection procedures
- clear and set time frames for receiving and paying bills
- energy charges that are no greater than the standing offer prices a local area retailer can, in certain circumstances,<sup>60</sup> charge contracted customers (small retail and commercial customers only)
- complaints handling requirements.

Exempt sellers must provide information to customers about their rights at the beginning of the contract or agreement. Your exempt seller must also give you a copy of their exemption conditions and explain their obligations to you. A list of conditions is available on our [website](#) along with further information about your rights as a customer.<sup>61</sup>

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

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<sup>60</sup> This applies where exempt customers do not have cost-effective access to a choice of retailer.

<sup>61</sup> Or see: <http://www.aer.gov.au/node/9804>.