



Draft for preliminary consultation

Exempt selling guideline

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Glossary

ABN	Australian Business Number
ACN	Australian Company Number
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ACCC	Australian Competition and Consumer Commission
ASIC	Australian Securities and Investments Commission
Customer Framework	National Energy Customer Framework
Electricity Law	National Electricity Law
NMI	National Meter Identifier
Public Register	Public Register of Authorised Retailers and Exempt Sellers
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort

Part 1: Introduction

1.1 Purpose of the Guideline

This guideline is designed to help applicants understand the framework for retail exemptions. It should be read in conjunction with the Australian Energy Regulator's (AER) retail exemption determinations which set out the categories (classes) of deemed and registrable exemptions and the conditions attached to them.¹ These determinations are separate regulatory instruments with which applicants must comply. This guideline will assist applicants to assess their eligibility for the different classes of deemed and registrable exemptions set out in the determinations and to understand the circumstances in which they may need to seek an individual exemption or a retailer authorisation. It also explains the conditions attached to the various classes of exemption.

This guideline sets out the information that must be provided with an application for an individual exemption. It also describes the information that a person will be required to provide to the AER in order to register for a registrable exemption.

The guideline also provides guidance on classes of exemptions and the associated conditions of exemption. To be eligible for a deemed or registrable exemption, you must fall within a class of exemption outlined in the determinations of deemed and registrable exemptions. The conditions of exemption outlined in the determinations are binding on persons covered by a deemed or registrable exemption. The distinction between deemed and registrable exemptions is discussed in section 1.5.

1.2 The regulatory framework

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

The AER is responsible for the economic regulation of the electricity networks in the national electricity market (NEM) and gas pipelines in jurisdictions other than Western Australia. It also monitors the wholesale electricity and gas markets and is responsible for compliance with and enforcement of the National Electricity Law (Electricity Law) and Rules and the National Gas Law and Rules.²

The AER is responsible for the enforcement of the National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) under the National Energy Customer Framework (Customer Framework). This includes, or will include, responsibility for the regulation of electricity and gas retail markets (other than retail pricing) in most jurisdictions. The AER's responsibilities do not apply to retail energy markets in Western Australia or the Northern Territory.

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.

¹ Available the AER website at www.aer.gov.au.

² Further information about the AER's role can be found on the AER website at www.aer.gov.au.

1.3 The requirement to be authorised or hold an exemption

The Retail Law prohibits a person from engaging in the retail sale of energy unless the person has obtained a retailer authorisation or is selling energy pursuant to an exemption from the requirement to hold an authorisation.³

The AER is responsible for issuing and revoking retailer authorisations and exemptions. A retailer authorisation allows the holder to engage in the retail sale of the specified form of energy (electricity and/or gas)⁴ in all participating jurisdictions and to all contestable classes of customers. An exemption allows the holder to engage in the sale of the specified form of energy (electricity or gas) provided they comply with the conditions placed on the exemption.

Persons who are exempted from the requirement to hold a retailer authorisation are known as ‘exempt sellers’. Their customers are known as ‘exempt customers’. An exempt customer is defined as a person to whom an exempt seller sells energy and who would be a retail customer of the seller if the seller were a retailer.⁵

1.4 Retail exemptions

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

It is unlikely to be considered to be a sale of energy where the provision of energy forms part of another service and there is no separately identified charge for energy (i.e. energy costs are passed through to customers in other costs). For example, a consumer might stay in a motel and be supplied with energy during their stay, but the energy is supplied as an integral part of another service, namely the accommodation. In these situations, where there is no separate charge for energy, no authorisation or exemption will be required.

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

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

³ Section 88 of the Retail Law.

⁴ Section 100(1) of the Retail Law.

⁵ Rule 148 of the Retail Rules.

applicants for exemptions are therefore likely to include the owners and operators of these sites. Other likely on-sellers include strata title bodies corporate/owners' corporations and landlords of rooming houses.

If an applicant for exemption is selling electricity within an embedded network, and is also the owner or operator of the embedded network, it is likely they will also require an exemption from the requirement to register as a network service provider.

Section 11 of the Electricity Law states that persons may only engage in transmission or distribution activities if they are registered with the Australian Energy Market Operator (AEMO), or if they are exempt from that requirement. Similar to retail exemptions, network service provider exemptions are administered by the AER, but must be applied for through a separate process.⁶ Network exemptions only apply to networks connected to the national electricity grid, and are not required for off-grid networks. While a separate application will be required for both exemptions, the AER will aim to streamline the process where both a network service provider exemption and a retail exemption are required. Application processes for the registration of registrable exemptions, and the grant and variation of individual exemptions, are outlined below in Parts 3 and 4.

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

Off-grid networks are regulated under state/territory legislation, and only require an exemption if the state/territory in which they are located has elected to bring their off-grid networks under the Customer Framework. Some states and territories regulate off-grid networks solely under state/territory legislation. In these states and territories, off-grid networks are not covered by the Customer Framework. This guideline therefore does not apply.

Note: To date, South Australia has advised the AER that off-grid networks located in that state will not be brought under the Customer Framework. In the future, a list of states and territories which elect to include their off-grid networks under the Customer Framework will be provided on the AER's website.

1.5 Types of retail exemptions

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

⁶ For more information visit <http://www.aer.gov.au/content/index.phtml/itemId/658904>.

registration process. This information is set out in section 3.1.1. The activities which are covered by deemed and registrable exemptions are set out in section 2.1.

The AER will not provide advice as to whether a person meets the criteria for a deemed or registrable exemption. We can only provide guidance on how the classes of exemption operate, and recommend obtaining independent legal advice before relying upon a deemed exemption or seeking registration under a registrable exemption.

Persons who do not meet the criteria for a deemed or registrable exemption may apply for an **individual exemption**. The AER must decide whether to grant or refuse an application for an individual exemption. Persons who are considering applying for an individual exemption are encouraged to seek guidance from the AER prior to making their application, as in some circumstances it may be more appropriate for them to seek a retailer authorisation. Exemptions will not be appropriate for conventional energy retailing activities where the retailer is registered with AEMO for wholesale market purposes. Further information on the retailer authorisation framework is set out in the AER's Retailer authorisation guideline, available on our website at www.aer.gov.au.

Conditions may apply to all classes of deemed and registrable exemptions and to individual exemptions. The conditions attached to individual exemptions are likely to be more onerous than those attached to deemed and registrable exemptions.

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

1.6 Grant and variation of individual exemptions

This guideline explains the procedures for the grant and variation of individual exemptions and the processes the AER follows when assessing applications for individual exemptions (and applications for their variation). The guideline sets out the information that must accompany any such application. We recommend that applicants consult with us prior to and while preparing an application for an individual exemption, so that we can provide information and guidance relevant to your individual circumstances as a potential exempt seller.

1.7 Policy principles

The Retail Law contains certain policy principles that the AER is required to take into account when performing or exercising functions and powers relevant to exempt selling.⁷ These principles are, in part, aimed at ensuring that customers of exempt sellers are not unreasonably disadvantaged as compared to customers of authorised retailers. Part 5 of this Guideline sets out the AER's considerations on these policy principles. The Retail Law also sets out certain factors that the AER may take into account when making exempt selling decisions. These factors are known as the exempt seller related factors⁸ and customer related factors⁹. Part 5 of this guideline

⁷ Section 114 of the Retail Law.

⁸ Section 115 of the Retail Law.

⁹ Section 116 of the Retail Law.

includes guidance on how the AER will take these factors into account when making any decision relating to exemptions.

1.8 The Public Register of Authorised Retailers and Exempt Sellers

Section 119 of the Retail Law requires the AER to maintain and publish on its website a Public Register of Authorised Retailers and Exempt Sellers (Public Register) containing information about these persons.

Exempt sellers who hold individual exemptions or registered exemptions will appear on the Public Register. It will also include a list of the classes of persons for whom an exemption is deemed or registrable.¹⁰ We note that because exempt sellers operating under a class of deemed exemption have no registration requirement placed on them, these exempt sellers will not appear on the Public Register. Instead, the Public Register will include a list of the classes of persons for whom deemed exemptions are in force.

¹⁰ Rule 164 of the Retail Rules.

Part 2: Class exemptions categories and associated conditions

The Retail Law and Retail Rules do not provide specific guidance on which sorts of selling activities may be appropriate for exemption nor which activities are appropriate for each type of exemption. The AER has considered the policy principles, exempt seller related factors and customer related factors in developing the deemed and registrable classes of exemption. Guidance on the principles and factors is set out in Part 5 of this Guideline.

2.1 Proposed retail exemption categories

The following table summarises the classes of exemption for various onselling activities.

For many of the classes of exemption, separate customer metering is a prerequisite. Separate classes of exemption have been developed for unmetered supply, to clarify when unmetered supply is permitted without authorisation. A separate class of exemption has also been developed for large customers, reflecting that the relationship between large customers and retailers is, with the exception of retailer of last resort arrangements, not addressed by the Customer Framework. The requirements that will apply to onsellors selling to large customers are, therefore, likely to be limited to those set out under other legislation (such as consumer protection legislation). In addition, some disclosure and retail competition-related conditions will apply to onsellors selling to large customers.

Activity	Deemed Exemption	Registrable Exemption	Application for individual exemption required
<i>Class D1</i> Bodies corporate or owners' corporations that pass on the cost of unmetered energy for common areas through body corporate fees.	Deemed exemption for current and future onsellors.	N/A	N/A
<i>Class D2</i> Metered energy onselling by residential landlords or lessors to less than 12 residences.	Deemed exemption for current onsellors and future onsellors.	N/A	N/A

Activity	Deemed Exemption	Registrable Exemption	Application for individual exemption required
<i>Class D3</i> Metered energy onselling to short term residents in holiday accommodation.	Deemed exemption for current and future onsellers.	N/A	N/A
<i>Class D4</i> Energy onselling in residential situations not covered under residential tenancy legislation.	Deemed exemption for current and future onsellers.	N/A	N/A
<i>Class D5</i> Unmetered gas onselling to individual premises where gas is used for limited purposes.	Deemed exemption for current and future onsellers.	N/A	N/A
<i>Class D6</i> Landlords or lessors passing on common area energy costs to premises in commercial developments.	Deemed exemption for current and future onsellers.	N/A	N/A
<i>Class D7</i> Exemption for persons engaged in the onselling of energy to a related company.	Deemed exemption for current and future onsellers.	N/A	N/A

Activity	Deemed Exemption	Registrable Exemption	Application for individual exemption required
<i>Class R1</i> Energy onselling by commercial/retail landlords or lessors.	N/A	Registrable exemption for current onsellers and those who commence onselling before 1 January 2015.	Required for those who commence onselling on or after 1 January 2015.
<i>Class R2</i> Persons operating under state or territory strata title (or similar) legislation and onselling metered energy.	N/A	Registrable exemption for current onsellers and those who commence onselling before 1 January 2015.	Required for those who commence onselling on or after 1 January 2015.
<i>Class R3</i> Retirement villages operating under state or territory retirement village legislation and onselling metered energy.	N/A	Registrable exemption for onsellers commencing onselling before 1 January 2015.	Required for those who commence onselling on or after 1 January 2015.
<i>Class R4</i> Metered energy onselling in caravan parks, residential parks and manufactured home estates to residents who principally reside there.	N/A.	Registrable exemption for current and future onsellers.	Only where exempt seller believes conditions of exemption are not appropriate for their situation.

Activity	Deemed Exemption	Registrable Exemption	Application for individual exemption required
<i>Class R5</i> Registrable exemption for persons engaged in onselling metered energy to large customers.	N/A	Registrable exemption for current and future onsellers.	N/A

2.1.1—Deemed exemption classes

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

This class will provide a deemed exemption for those currently engaging in onselling under state or territory legislation and future onselling activities. The exemption should apply irrespective of whether the energy is metered or not.

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

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

This class will provide a deemed exemption for those landlords currently engaging in onselling under state or territory tenancy legislation or under state or territory class exemptions. The deemed exemption will also apply to any future onselling.

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

Note—This class is intended to apply to the onselling of energy to transient or short term customers in holiday accommodation including hotels, motels, inns, holiday flats, holiday cabins, campsites, non-residential caravan parks and marinas. Customers will be considered ‘transient’ or ‘short term’ where the accommodation is not the person’s regular home or dwelling.

This class will provide a deemed exemption for both those persons currently engaging in onselling under a class exemption and for any future onselling.

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

Note—This class is intended to apply to the onselling of energy by landlords, lessors or management corporations (and similar entities) to residential accommodation that is not covered by residential tenancy legislation, including hostels, rooming houses and boarding houses.

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

This class will provide a deemed exemption for both those currently engaging in onselling under class exemptions and any future onselling.

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

This class will provide a deemed exemption for the provision of unmetered gas to individual residences. The exemption would only apply where gas is used for limited purposes, that is, for cooking appliances.

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

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

This class will apply to persons who currently pass on common area energy costs, as well as to those who commence this activity in the future.

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

This class will provide a deemed exemption for both those currently engaging in onselling under class exemptions and any future onselling.

2.1.2—Registrable exemption classes

Class R1 (*this class will be closed to new entrants from 1 January 2015*)—**Persons onselling metered energy to small customers within the limits of a site that they own, occupy or operate, where the relationship between the person and the small customer is governed by commercial or retail tenancy legislation**

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

This registrable exemption class will apply to persons who were engaging in energy onselling to commercial or retail tenants under a state or territory class exemption prior to that state or territory’s implementation of the Customer Framework, as well as any future onselling until this class closes to new entrants from 1 January 2015. This will enable any commercial developments currently under construction to be completed, but will require new constructions to obtain an individual exemption if onselling is contemplated.

Class R2 (*this class will be closed to new entrants from 1 January 2015*)—**Persons onselling metered energy to residents where the relationship between the person and the resident is governed by strata title or similar legislation**

This class will provide a registrable exemption for those onselling under a state or territory class exemption and for persons that commence onselling metered energy up to the transition date of 1 January 2015. An individual exemption will be required for the onselling of metered energy beyond this date.

Class R3 (*this class will be closed to new entrants from 1 January 2015*)—**Persons onselling metered energy to residents for use within the limits of a retirement village that they own, occupy or operate, where the relationship between the person and the resident is governed by retirement village legislation.**

This class will provide a registrable exemption for those currently engaging in onselling under a state or territory class exemption prior to implementation of the Customer Framework in their jurisdiction, as well as those that commence onselling prior to 1 January 2015. An individual exemption will be required for future onselling.

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

Note—Premises will be considered the ‘principal place of residence’ for the exempt customer where the premises are the primary location that a person inhabits. It will not matter what kind of dwelling it is, as long as it is where the exempt customer lives most of the time.

This class will provide a registrable exemption for those currently engaging in onselling under a state or territory class exemption as well as future onselling arrangements.

It should be noted that many caravan parks onsell to both short term holidaymakers and persons whose principal place of residence is the caravan park. Where this occurs, Class D3 will apply to the sale of energy to short term holidaymakers, and Class R4 will apply to the sale of energy to persons whose principal place of residence is the caravan park.

Class R5—Persons onselling metered energy to large customers.

This class will provide a registrable exemption for persons engaging in onselling where the sale of energy is within the limits of a site owned, occupied or operated by the person and the person sells only to large customers.

2.2 Conditions of exemption for deemed and registrable class exemptions

The AER can impose conditions on an exempt seller or a class of exempt sellers.¹¹ These conditions may include requirements on an exempt seller or class of exempt sellers to abide by obligations that are based on the obligations that would apply to a retailer under energy laws.¹² The AER may modify the obligations to reflect that the exempt seller is not a retailer and the exempt customers are not retail customers.

An exempt seller must comply with all conditions imposed on them under their particular kind of exemption.¹³ Civil penalties, as described in Part 6 of this guideline, apply if this provision is breached or if there is an attempted breach. Section 112(3) of the Retail Law states that the AER may deal with a breach of a condition as if it were a breach of the Retail Rules.

2.2.1—Metering-related conditions

Separate customer metering will be required for the majority of the classes of exemption. Specific exemptions have been developed where metering is not required (for example, for charging for common area energy use). In determining which classes of exemption are subject to metering requirements, the AER has weighed up the benefits and costs of requiring metering. The AER considers that it is not appropriate to require metering for common area energy use, nor where gas is used in apartment buildings for limited purposes such as cooktops.

Rule 152(5) of the Retail Rules enables the AER to impose conditions on exempt sellers for or with respect to installing, maintaining and reading of meters of exempt customers in accordance with jurisdictional energy legislation.

2.2.2—General conditions for class exemptions for selling to small customers

The following is a summary of the ‘core’ conditions which apply to exempt sellers operating under deemed and registrable classes of exemption. Not all conditions apply to all classes of exemption. As the number of conditions varies with different

¹¹ Section 114 of the Retail Law.

¹² Rule 152 of the Retail Rules.

¹³ Section 112 of the Retail Law requires an exempt seller to comply with conditions imposed on them or on a class of exempt sellers to which they belong.

exemption classes, the numbering below reflects the numbering of the class D2 exemption category. Section 2.2.3 sets out which conditions apply to each class and the reasons for this.

Generally, the full set of conditions apply to exempt sellers selling to residential customers.

Condition 1—Information provision

This condition is intended to ensure that customers of exempt sellers are provided with detailed upfront information at the time they enter into the energy-buying agreement with the exempt seller, including information on any relevant complaints hearing body. Where choice of retailer is available, customers can use this information to decide whether they will, in fact, purchase energy from the exempt seller, or whether they will instead purchase from an authorised retailer.

This condition also requires the onseller to inform the customer explicitly that they are not an authorised retailer and that the customer will therefore not receive the same protections received by customers purchasing from an authorised retailer. This will ensure that the customer is aware of the distinction between the two arrangements and can use this information to decide whether or not they want to purchase from the exempt seller. The onseller is also required to inform the customer of the conditions applicable to the exemption with which the onseller must comply.

Condition 2—Billing and payment arrangements

This condition is included to ensure that customers receive bills at regular intervals. The requirement to bill customers at least every three months is taken from the Retail Rules requirements placed on authorised retailers.¹⁴ This helps reduce the risk of a customer being presented with a large bill that covers a long time period.

This condition also includes requirements on what information must be included in a bill for an exempt customer. These requirements replicate some of the requirements that apply to authorised retailers when they prepare bills.¹⁵ The information requirements are intended to provide customers with consumption information and allow them to make informed decisions about their consumption. The detailed metering information will also assist the exempt customer to determine whether there may be a metering or billing error.

Condition 3—Estimation as basis for bills

This condition is intended to ensure that customers who are required to be separately metered are, where possible, billed according to their metered consumption rather than a consumption estimate. The requirement on exempt sellers to base estimates on historical metering data or, where this is not available, average usage by a comparable customer is derived from the requirement that applies to authorised retailers.¹⁶

¹⁴ Rule 24 of the Retail Rules.

¹⁵ Rule 25 of the Retail Rules.

¹⁶ Rule 21 of the Retail Rules.

Condition 4—Pay-by date

This condition is intended to allow customers enough time after receiving their bill to organise payment. This is particularly necessary for customers who are on a fixed or low income. The timeframe for payment (13 business days) reflects the requirements that apply to authorised retailers.¹⁷

Condition 5—Receipts

This condition will ensure that, for payments made other than by direct debit, exempt sellers and their customers both have a record of any amount paid for energy. This condition is particularly important where customers are making payments to the onseller for both energy and accommodation/rent.

Condition 6—Pricing requirements

This condition will ensure that customers are informed of all tariffs, fees and charges to allow them to make informed decisions regarding their energy consumption. It will also assist customers to prepare for tariff changes.

This condition also ensures that residential exempt customers are charged no more than the standing offer price of the local area retailer for equivalent customers, and are not subject to any charges that cannot be charged by the relevant local area retailer. These prices are published on the local area retailer's website.¹⁸

This condition is designed to ensure that in pricing terms, residential customers of onsellors are not disadvantaged relative to residential customers of an authorised retailer, and is permitted by rule 152(4) of the Retail Rules.

Condition 7—Payment difficulties and disconnection or cessation of supply

This condition is intended to ensure that customers of exempt sellers cannot be disconnected without due cause. It also ensures that customers who are experiencing payment difficulties are allowed some time to pay any outstanding amounts they owe to the exempt seller. Further it allows for disconnection where the supply of energy would be unsafe, with reconnection required once the safety issue has been rectified.

Condition 8—When disconnection or cessation of supply is prohibited

This condition is intended to protect customers against being disconnected in a number of situations such as when someone at the residence is dependent on life support. It also ensures that customers are not disconnected at a time when reconnection would not be available within a reasonable time.

Condition 9—Reconnection of supply

This condition ensures that any customer who has been disconnected is reconnected if any outstanding matters such as payments are resolved within 10 business days of the

¹⁷ Rule 26 of the Retail Rules.

¹⁸ Section 23 of the Retail Law.

disconnection, and any reconnection charge has been paid. The exempt seller must reconnect the customer as soon as practicable.

Condition 10—Concessions and rebates

This condition ensures that customers who are eligible to receive any government energy rebate, concession or assistance under a relief scheme are able to access this and use it towards energy bills issued by the exempt seller. This condition is necessary because an exempt customer may not be able to claim a rebate, concession or assistance without the co-operation of the exempt seller.

Condition 11—Choice of retailer

This condition seeks to ensure that where a customer is eligible to purchase energy from a retailer of their choice, the exempt seller will not hinder them from doing so.

Condition 12—Contact details

This condition ensures that exempt sellers are readily accessible to customers should they wish to make inquiries or complaints.

Condition 13—Dispute resolution

This condition ensures that where a customer has a dispute, the exempt seller will make reasonable endeavours to resolve it, and advise the customer of any relevant external dispute resolution bodies that may assist the customer with their dispute.

Condition 14—Life support customers

This condition ensures that exempt sellers inform the relevant distributor, and the exempt seller's own retailer, if they service any customer who is dependent on life support equipment.

Condition 15—Continuity of supply

This condition ensures that the exempt seller makes the AER and its customers aware of any discontinuance of their supply triggered by the disconnection of the exempt seller and more generally, where there is any likelihood that they will be unable to continue onselling energy.

Condition 16—Maintaining records

This condition ensures that exempt sellers maintain billing information about their customers so this information can be accessed at a later date if required.

2.2.3—Application of general conditions to particular classes of exemption

Not all of the general conditions outlined above apply to all classes of exemption. This section covers, for each class of exemption, a summary of the conditions that do not apply and the reason for this.

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

No general conditions are attached to this class of exemption as the allocation of energy charges by bodies corporate or owners’ corporations is adequately covered by the legislation under which they operate.

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

All of the general conditions apply to this class of exemption. However, the disconnection conditions (conditions 7 and 8) will not apply where state or territory tenancy legislation sets out a process for the disconnection of a customer.

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

As the customers covered by this class of exemption are short term residents of holiday accommodation, a number of the core conditions are not relevant. These include conditions related to customer choice of retailer and concessions. Customers are also less vulnerable and so it is unnecessary to impose all protections available to long term residents. Conditions have been limited to requiring that customers are fully informed of the charges they will be liable for and are billed at appropriate intervals.

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

All of the general conditions apply to this class of exemption.

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

A number of conditions cannot apply to this class of exemption (for example, life support) as they are specific to electricity customers, or are dependent on customers being separately metered. These include conditions related to choice of retailer, concessions and disconnection/reconnection. Billing and bill estimation conditions have also been adjusted to reflect that customers are not separately metered. Additionally, customer protection conditions relating to continuity of supply and maintenance of records have been removed, reflecting that gas supply in these circumstances is not an essential service.

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

No general conditions are attached to this class of exemption as the allocation of energy charges by commercial or retail landlords is adequately covered by the legislation under which they operate.

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

No general conditions are attached to this class of exemption.

Class R1 (*this class will be closed to new entrants from 1 January 2015*)—**Persons onselling metered energy to small customers within the limits of a site that they own, occupy or operate, where the relationship between the person and the small customer is governed by commercial or retail tenancy legislation**

A number of conditions cannot apply to this class of exemption as they are specific to residential customers (for example, life support and concessions). Additionally, the condition relating to continuity of supply has been removed, reflecting that the timing of information to customers about the potential for cessation of supply is not as critical for business customers as for residential customers.

Class R2 (*this class will be closed to new entrants from 1 January 2015*)—**Persons onselling metered energy to residents where the relationship between the person and the resident is governed by strata title or similar legislation**

All of the general conditions apply to this class of exemption.

Class R3 (*this class will be closed to new entrants from 1 January 2015*)—**Persons onselling metered energy to residents for use within the limits of a retirement village that they own, occupy or operate, where the relationship between the person and the resident is governed by retirement village legislation.**

All of the general conditions apply to this class of exemption.

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

All of the general conditions apply to this class of exemption.

Class R5—Persons onselling metered energy to large customers.

Large retail customers are not provided customer protections under the Retail Law and Retail Rules. Therefore, only minimal protections are extended to large customers of exempt sellers to ensure they are not disadvantaged as a result of being a customer of an exempt seller. Conditions include a requirement that customers have access to a choice of retailer, and are made aware that they will not have a Retailer of Last Resort automatically appointed if the exempt seller fails.

2.3 Process for revoking exemptions where exempt sellers are operating under a class exemption

Under sections 111(1)(b) and 111(1)(c) of the Retail Law, the AER can revoke an exemption from a particular exempt seller operating under a deemed exemption, and can also revoke a registered exemption. The grounds for revocation are that the AER is satisfied that there has been a material failure by the exempt seller to meet the conditions imposed on them. The Retail Law outlines a process for revocation that the AER must follow in section 120, which includes the following steps:

- The AER must first give the exempt seller a notice that it intends to revoke the exemption, and the reasons why the AER considers that grounds for revocation exist.
- The exempt seller must respond to the notice in writing during the time specified by the AER (but not less than 10 business days), showing why the exemption should not be revoked and proposing actions the exempt seller will take to rectify the problem.

If we are not satisfied with the exempt seller's response, we may fix a time for the revocation to take effect and inform the exempt seller of any conditions they must comply with. Where an exemption for an exempt seller operating under a class exemption is revoked, the exempt seller is no longer eligible to operate under that class. If they continue to sell energy, they will be in breach of section 88 of the Retail Law, which prohibits the sale of energy without a retailer authorisation or exemption.

Part 3: Requirements relating to registrable/registered exemptions

Registrable exemptions cover onselling activities that must be registered with the AER to receive the benefit of an exemption. Following registration on the Public Register of a person's onselling activities, the registrable exemption becomes a registered exemption in respect of that person. The registered exemption applies to a person from the time they are entered on the Public Register.

The classes of registrable exemptions represent reasonably common onselling activities. The AER considers that it is appropriate for those activities to be covered under a class exemption both because of the nature of the activities, and because the activities may have commenced under state and territory class exemptions prior to the implementation of the Customer Framework. The requirement for registration increases our awareness of the scale of onselling activities being carried out under these exemptions. This assists with compliance monitoring and allows us to refine the categories of deemed and registrable exemptions as we obtain more information on the nature and scale of onselling activities.

3.1 Process for registering under a registrable class exemption

Registrations must be submitted both in writing and electronically via email.

Registrations should be posted to:

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

And emailed to: Retail.Exemptions@aer.gov.au

The AER will acknowledge all registrations with a reply email and provide details of a contact person within the AER who will respond to any inquiries regarding the registration.

If any of the information provided to the AER for the purposes of registration changes during or after registration, you may no longer meet the requirements for registration. You should notify the AER of these changes by submitting amended information to the address above to ensure that your registered exemption remains valid.

If you will no longer meet the requirements for registration, and you wish to continue to sell energy, you may need to apply for an individual exemption (or a retailer authorisation).

3.1.1—Information required to accompany the registration

The Retail Rules specify a number of particulars that must be included on the Public Register and give the AER discretion to include other particulars it deems to be

relevant.¹⁹ These particulars must be provided as part of the registration. A description of your onselling situation and suitability for the applicable registrable class must also be included.

The following particulars must be provided to the AER (note that only those which are stated as such will be published on the Public Register):

- 1 Your legal name. If you are an owners' corporation, body corporate or community corporation, please indicate this (this information will be published on the Public Register).
- 2 Your trading name if different to your legal name (this information will be published on the Public Register).
- 3 Australian Business Number (ABN) or Australian Company Number (ACN) (this information will be published on the Public Register).
- 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 The address of the physical site at which you intend to sell energy. Please provide a map of the site. Please also include a brief description of the premises to which your registration applies and its current and intended use/s.
- 7 Please indicate the nature of the activities you propose to undertake (the characteristics of your business).
- 8 The form/s of energy for which the retailer individual exemption is sought (electricity, gas or both). For electricity, please state whether the network you propose to sell within is directly or indirectly connected to the main grid or is an off-grid network (where the off-grid network is located in a state or territory that has elected to bring off-grid networks under the Customer Framework).
- 9 The date from which you intend to commence selling energy (this information will be published on the Public Register).
- 10 Do you have any experience in selling energy? If so, please provide a brief summary including:
 - date/s and location/s of previous operations
 - form of energy sold
 - scale of operations (that is, the number and size of customers)

¹⁹ Rule 164 of the Retail Rules.

- an explanation of which activities were conducted in-house and which were contracted out to third parties.
- 11 Do you currently hold, or have you previously held or been subject to an individual energy selling exemption, a class energy selling exemption or a licence/authorisation in any state or territory? If so, please provide details of this.
- 12 Have you formed a bulk purchase contract with an energy retailer, and how far into the future does this contract apply? Please provide a brief summary of this arrangement.
- 13 The number of premises within the site for which registration is sought, with a breakdown between large business, small business, and small residential customers (this information will be published on the Public Register):
- ‘large business customer’ means a business customer who consumes at least 100 megawatt hours a year (for electricity) or 1 terajoule a year (for gas)
 - ‘small business customer’ means a business customer who consumes less than 100 megawatt hours a year (for electricity) or 1 terajoule a year (for gas)
 - ‘small residential customer’ means a residential customer who consumes less than 100 megawatt hours a year (for electricity) or 1 terajoule a year (for gas)
- 14 Addresses of any other sites where the exempt seller is seeking or holds an individual or registered exemption (information relating to registered exemptions will be published on the Public Register).
- 15 Whether any exempt customers currently elect to purchase energy from a retailer of their choice, or any expectation that any future customers will exercise this right.
- 16 the number of customers who are currently reliant on any energy-powered life support equipment, or any expectation of future customers who will be reliant on this equipment.
- 17 the approximate total quantity of energy (electricity, gas or both as applicable) supplied or to be supplied annually.

As noted above, it is the exempt seller’s responsibility to inform the AER of any changes to this information that may affect their eligibility for exemption under a registrable exemption or compliance with the applicable conditions.

Part 4: Individual exemptions

Energy selling activities which are not covered by a class of deemed or registrable exemption will require an individual exemption or a retailer authorisation. The AER encourages persons who wish to obtain an individual exemption to contact us for further discussion before submitting an application.

Any person who falls under a deemed or registrable exemptions class may instead seek an individual exemption. This may be desirable where the person does not consider that the conditions attached to a deemed or registrable exemptions class are appropriate for their particular circumstances.

Some exempt sellers may hold an exemption that was originally issued by a state or territory regulator or department, and was transitioned by the state or territory's application legislation to an individual exemption overseen by the AER. In this case, the exempt seller must comply with any applicable conditions imposed in the application legislation.

An individual exemption will be granted on the basis of an exempt seller's circumstances at the time of application and the exemption will only remain valid as long as those circumstances remain current. Where an exempt seller's circumstances change, they will need to seek a variation of the exemption from the AER. An exempt seller may also seek a variation (or revocation) of a condition; for example, where a condition imposed under an individual exemption is no longer relevant to the exempt seller's situation. The AER encourages exempt sellers to contact us to discuss any variations to their individual exemption they believe to be appropriate prior to submitting an application.

4.1 Procedures for applying for the grant or variation of an individual exemption

The following procedures should be followed when applying for the grant or variation of an individual exemption.

Applications for the grant or variation of an individual exemption must be submitted both in writing and electronically via email.

Please post applications to:

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

And email to: Retail.Exemptions@aer.gov.au

Applications for an electricity network service provider exemption may be lodged together with an application for an individual retail exemption.

We will acknowledge your application by email.

4.1.1—Form of energy

You must specify whether you are seeking the grant or variation of an individual exemption for the selling of gas, electricity or both.

Once granted for a specific form of energy, an individual exemption cannot be varied to change or add to the form of energy to which the exemption relates. This does not prevent an application for, or the grant of, another exemption.

4.1.2—Contacts within the AER

Upon application for a retail exemption, you will be assigned a retail exemption contact person at the AER. We may also assign you a separate contact person at the AER who will respond to any inquiries regarding network service provider exemption applications. Further details on the information requirements for applications for electricity network service provider exemptions are available on our website at <http://www.aer.gov.au/content/index.phtml?itemId=658904>.

4.1.3—Public consultation process

We will publish a notice on our website stating that an application for the grant or variation of an individual exemption has been received and that written submissions about the application may be made to the AER by the specified date.

The notice may contain the application in its entirety or only some parts of it. Any matters you identify as confidential will not be published if we agree that such information is confidential. In accordance with the consultation process, we will consider all submissions received within the consultation period before a decision is made on the application. The consultation period will run for at least 20 business days from the date set out in the notice.

During the consultation period we may consult with industry participants, organisations and individuals with regard to your application. This may include persons residing at, or leasing, premises at the site for which the exemption is being sought. We may ask questions and seek documents from third parties relating to the application. Where required, we may also request advice from external experts and consultants.

Please refer to the *ACCC–AER information policy: the collection, use and disclosure of information* under ‘Publications’ on our website for further information on our treatment of information provided to us.

4.1.4—Conditions

We may impose conditions in relation to the grant, variation or revocation of an individual exemption.²⁰ We may also impose conditions while an exemption (as granted or varied) is current.

²⁰ Rule 158(2) (grant or variation) and sub-sections 120(8) & (11) (revocation) of the Retail Law

Conditions will generally relate to the sale of energy to exempt customers. Some conditions may require compliance with certain obligations that apply to retailers under the Retail Law and Rules and other energy legislation with which retailers are required to comply.²¹ These obligations may be modified from conditions applying to authorised retailers to recognise that they are being imposed on exempt sellers and exempt customers, rather than authorised retailers and retail customers.

We may also impose pricing conditions to ensure that the prices that will be charged to exempt customers at residential premises are no more than the standing offer price of the local area retailer.²² Upon commencement of the Customer Framework, the standing offer price of each local area retailer will be published on the AER's website.²³

Exempt sellers that operate an electricity embedded network will be required to comply with any conditions imposed under the Network Service Provider Exemptions Guidelines relating to electricity metering. We may impose additional conditions in relation to the installation, maintenance and reading of exempt customers' meters in accordance with jurisdictional energy legislation.²⁴

The AER is likely to require all exempt sellers operating under an individual exemption to inform their customers explicitly that they will be purchasing energy from an exempt seller rather than authorised retailer and that they may therefore not receive the same protections as retail customers. Any such condition would be based on Condition 1 of Class D2 of the determinations of deemed and registrable exemptions. A copy of the conditions of the exemption may also be required to be provided to the customers of the exempt seller. This will ensure that the exempt seller's customers are aware of the distinction between exempt sellers and authorised retailers and provide explicit informed consent to the arrangement. Where possible, customers can use this information to decide whether or not they want to purchase from the exempt seller.

Conditions may be imposed when the individual exemption is granted or varied or at any time while the exemption is on foot.²⁵ The AER may vary or revoke a condition.²⁶

If we impose conditions when your individual exemption is granted or varied, you will be given notice of this.²⁷ You will need to accept any conditions imposed within 20 business days (or that period as extended by the AER). A failure to give the AER a notice of acceptance of imposed conditions will result in your application being refused (see 'grounds for refusal' below).²⁸ Details on the appropriate format for the

²¹ Rule 152(3) of the Retail Rules.

²² Rule 152(4) of the Retail Rules.

²³ Section 23(7) of the Retail Law.

²⁴ Rule 152(5) of the Retail Rules.

²⁵ Rule 158(2) of the Retail Rules.

²⁶ Rule 158(3) of the Retail Rules.

²⁷ Rule 160 of the Retail Rules (read together with rule 158(4)).

²⁸ Rule 161(2) of the Retail Rules.

formal acceptance of conditions will be provided to you if we impose conditions on the grant of your exemption.

4.1.5—Consequences of a failure to meet conditions

Under section 111 of the Retail Law, the AER may decide to revoke an individual exemption on the grounds that we are satisfied that there has been a material failure by the exempt seller to meet the conditions imposed as part of its exemption. The process for revocation that we must follow is outlined in section 120 of the Retail Law, and includes the following steps:

- The AER must give the exempt seller a notice that it intends to revoke the exemption, and the reasons why the AER considers that grounds for revocation exist.
- The exempt seller may respond to the notice in writing during the time specified by the AER, showing why the exemption should not be revoked and proposing actions the exempt seller will take to rectify the problem.

If we are not satisfied with the exempt seller's response, we may fix a time for the revocation to take effect and inform the exempt seller of any conditions they must comply with. We must then publish a copy of the decision to revoke the exemption on our website and advise AEMO and the distributor concerned of the revocation. We may also advise the exempt seller's retailer of the revocation.

4.1.6—AER decision making

Our decision to grant or refuse your application for an individual exemption, or the variation of an individual exemption, will be made by assessing your application against any applicable provisions of the Retail Law. In assessing the application, we will be guided by the objective of the Retail Law, that 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*. Where your application relates to onselling to small customers, we are required to perform our functions in a manner that is compatible with the development and application of consumer protections for small customers under the Customer Framework, including (but not limited to) protections relating to hardship customers.²⁹

The AER will consider the Retail Law objective, the policy principles, exempt seller related factors and customer related factors when granting and varying individual exemptions. Guidance on the policy principles and factors is provided below in Part 5.

We will not generally commence processing your application until all required information has been provided.³⁰

You will be given notice of the AER's decision regarding your application for the grant or variation of the individual exemption.³¹ As noted above, if your application is

²⁹ Section 205 of the Retail Law.

³⁰ Rule 155(2) of the Retail Rules.

approved, you will also be given notice of any conditions which may be attached to the exemption, as well as any other matter relevant to the decision.³²

When you are given notice of the grant or variation of your individual exemption, the notice will specify which form/s of energy (gas or electricity or both) the grant or variation of exemption relates to. If you subsequently wish to sell a form of energy not covered by the individual exemption, you must apply for a further individual exemption. Your individual exemption cannot be changed to exempt the selling of another form of energy, or to change the form of energy to which the exemption relates.³³

4.1.7—Grounds for refusal

We may refuse an application for an individual exemption. Some reasons for which we may refuse an application include:

- We do not believe that granting an exemption will or is likely to contribute to the achievement of the national energy retail objective in a manner that 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;
- We believe that issuing a retailer authorisation rather than an exemption will or is likely to contribute to the achievement of the national energy retail objective in a manner that is compatible with the development and application of consumer protections for small customers under the Customer Framework, including protections relating to hardship customers.
- You have provided us with false or misleading information.

Providing false or misleading information in an application for the grant or variation of an individual exemption is a serious offence under the *Criminal Code* (Cth). The maximum penalty for such an offence is 12 months imprisonment.

We may also refuse an application if we consider that granting an exemption will not give effect to the policy principles or will not take into account the exempt seller related factors or the customer related factors.

4.1.8—Issue and public notice of individual exemption

If the AER has made a decision to grant your individual exemption, and you have accepted any conditions imposed on the exemption, we must, as soon as practicable, issue you with an instrument of exemption. Similarly, once the AER has made a decision to vary your exemption, and you have accepted any conditions imposed on the variation, we must, as soon as practicable, issue you with an instrument of

³¹ Rules 160 (approval) & rule 163 (refusal) of the Retail Rules.

³² Rule 160 of the Retail Rules.

³³ Rule 159 of the Retail Rules.

variation (or an instrument containing the exemption as varied). We must also publish the terms of the exemption or variation on our website.

4.1.9—Withdrawal of application

An application may be withdrawn by notice in writing to the AER at any time before it is approved by us. Any withdrawn applications will be removed from the AER's website as soon as practicable. If you subsequently change your mind, you must submit a new application.

4.1.10—Duration of exemption

The Retail Law and Rules do not specify any limit on the duration or validity of an exemption. However, the AER may impose a time limit on the grant or variation of an individual exemption. Any time limit will depend partly on the capital investment required to engage in the proposed exempt selling.

Where the investment in the embedded network has been fairly minimal, we consider a five year term to be generally appropriate for individual exemptions.

A significant distributed energy project may only be viable if a retail exemption is granted, and it may take a number of years to recoup the investment in the network and generation facilities. The expiry date for individual exemptions related to such projects is likely to be significantly longer than five years.

If no expiry date is stated as a condition of exemption, the grant or variation of the individual exemption will continue indefinitely unless it is revoked, in accordance with the Retail Law and Rules.

Where a State or Territory has elected to bring its off-grid networks under the Customer Framework, the AER will not generally set expiry dates for exemptions for any off-grid networks. However, if there is a material change in circumstances, the AER may seek to impose further conditions on the exemption or, if necessary, seek to revoke the exemption.

4.2 Information requirements on application for the grant of an individual exemption

We recommend that you communicate with us prior to submitting an application for the grant of an individual exemption. The provision of some of the information set out below may not be necessary in all circumstances. The information requirements may vary from case to case because many exempt selling situations are unique. Discussions prior to the submission of your application may therefore avoid time being spent on the provision of unnecessary or irrelevant information.

Please note that we may request further information from you to allow us to better assess your application against the policy principles, exempt seller related factors and customer related factors.

General particulars for the grant of an individual exemption

The AER requires the following general information to be provided in your application for the grant of an individual exemption:

- 1 Your legal name. If you are an owners' corporation, 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 The address of the physical site at which you intend to sell energy. Please provide a map of the site. Please also include a brief description of the premises to which your application for grant of individual exemption apply and their current and intended use/s.
- 7 Please indicate the nature of the activities you propose to undertake (the characteristics of your business).
- 8 The form/s of energy for which the individual exemption is sought (electricity, gas or both). For electricity, please state whether the network you propose to sell within is directly or indirectly connected to the main grid or is an off-grid network (where the off-grid network is located in a state or territory that has elected to bring off-grid networks under the Customer Framework).
- 9 The date from which you intend to commence selling energy.
- 10 Mailing addresses for residences at the site (where applicable). The AER may use this information to ensure that potential customers are able to participate in its consultation process.
- 11 Do you have any experience in selling energy? If so, please provide a brief summary including:
 - date/s and location/s of previous operations
 - form/s of energy sold
 - scale of operations (that is, the number and size of customers)
 - an explanation of which activities were conducted in-house and which were contracted out to third parties.

- 12 Do you currently hold, or have you previously held, an energy selling exemption or licence/authorisation in any state or territory? If so, please provide details of this.
- 13 Why are you seeking an individual exemption, and why do you believe that an exemption (rather than a retailer authorisation) is appropriate to your circumstances?
- 14 Have you formed a bulk purchase contract with an energy retailer, and how far into the future does this contract apply? If so, please provide a brief summary of this arrangement.

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. The AER requires you to answer the following questions.

- 15 Will your customers be your tenants? Please outline whether the tenancies are of a residential or commercial nature. 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 villages legislation, residential parks or manufactured home estates legislation) in your state or territory?
- 16 Are you providing other services (for example, accommodation/leasing of property) to persons on the site, to whom you intend to sell energy, or will your only commercial relationship to persons on the site be the selling of energy? If you are providing other services, please outline what these services are, and the contractual or leasing arrangements under which these services are being provided.
- 17 The total number of dwellings/premises at the site and the number of these dwellings/premises you anticipate selling energy to.
- 18 Will you be onselling energy (that is, selling energy purchased from an authorised retailer) or purchasing it directly from the wholesale market?
- 19 Please provide an estimation of the aggregate annual amount of energy you are likely to sell (kilowatt hours or megawatt hours for electricity and megajoules 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 tenancy customers).
- 20 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).
- 21 Will each premises/dwelling be separately metered? If the application concerns a new development or a redevelopment and customers will not be separately metered, please explain why not.

- 22 What types of meters will be used? For example, basic/accumulation meters, manually read interval meters or remotely read interval meters?
- 23 What accuracy standards apply to the meters? Do the meters comply with Australian Standards? If so, specify which Standard or Standards.
- 24 If customer dwellings/premises are separately metered, how often and by whom do you propose the meters are read?
- 25 How will you determine energy charges if customers are not separately metered?
- 26 In what form and how often will customers be billed? Will you be issuing bills yourself or through a billing agent?
- 27 What dispute resolution procedures do you intend to put in place to deal with energy-related complaints and issues?
- 28 Do you intend on making energy efficiency options available to your customers? Will your network incorporate solar or other generation options for sustainability purposes?
- 29 Please provide any further information that you consider would assist the AER to process your application.

4.3 Information requirements on application for the variation of an individual exemption

We recommend that you communicate with us prior to submitting an application for the variation of an individual exemption. The information required to support this application revolves around changes to the information provided to the AER when the original application was made (where the exemption was granted by the AER rather than under state or territory application legislation for the Customer Framework), and reasons for the variation. Discussions prior to the submission of your application may therefore avoid time being spent on the provision of unnecessary or irrelevant information.

Please note that we may request further information from you to allow us to better assess your application for variation of exemption against the objective of the Retail Law, the policy principles, exempt seller related factors and customer related factors.

Particulars required for the variation of an individual exemption

The AER requires the following information to be provided 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 remains appropriate for your changed circumstances, rather than requiring a retailer authorisation.
- 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 requirements in Section 4.2 above that were provided to the AER when the original application for the individual exemption was submitted. If you have retained an electronic copy of the information requirements submitted with your original application, we encourage you to submit a version of this with tracked changes. If your individual exemption was not issued by the AER (it is a continuation of an exemption issued by a state or territory prior to their implementation of the Customer Framework), we will advise you whether you also need to address the information requirements set out in section 4.2. We will provide this advice following receipt of the information required for the variation of your exemption, as set out in this section.

Part 5: Guidance on the policy principles, the exempt seller related factors and the customer related 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*. This objective is the overarching consideration that guides the AER in administering the retail exemption provisions of the Retail Law and Retail Rules. The AER must carry out its exempt selling functions in a manner that will or is likely to contribute to the achievement of the national energy retail objective in a manner that is compatible with the development and application of consumer protections for small customers, including protections relating to hardship customers.³⁴

The Retail Law sets out policy principles that we must take into account when making any decision relating to exemptions.³⁵ It also sets out exempt seller related factors³⁶ and customer related factors³⁷ that we may also take into account in making these decisions. These principles and factors provide more detailed considerations to guide the AER in its oversight of retail exemptions. The Retail Law requires that this guideline include guidance on each of these factors.

When making decisions relating to exemptions, the AER will not consider these factors in isolation, but rather in conjunction with the operational aspects of the proposed exempt selling arrangement, for example the number and type of customers served.

Guidance on each of the policy principles, exempt seller related factors and customer related factors is provided below.

5.1 Policy Principles

Each of the policy principles is listed below, along with guidance on how we will take the principles into account in making any decision relating to exemptions.

5.1.1—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’.

The purpose of an exemptions regime is to enable less regulation of some energy sellers. This means that a certain level of divergence from the regulatory arrangements that apply to retailers is inevitable. The AER’s role is to strike a balance between ensuring customers are adequately protected and the need to avoid overburdening energy on-sellers with regulation. When such divergence is not appropriate, it may be necessary to require the on-seller to obtain a retailer authorisation.

³⁴ Section 205 of the Retail Law.

³⁵ Section 114(1) of the Retail Law.

³⁶ Section 115 of the Retail Law.

³⁷ Section 116 of the Retail Law.

The level of divergence from the regulatory arrangements which apply to retailers is likely to depend on the type of exemption held by the exempt seller. Deemed and registrable exemptions may have fewer conditions attached to them, whilst in many cases, conditions attached to an individual exemption are likely to more closely resemble the obligations that apply to an authorised retailer. For example, a specialist provider who operates embedded networks and manages onselling across a number of sites is likely to be required to comply with a range of obligations that apply to authorised retailers.

The customer protections that the AER considers relevant for each category of exemption are based on the protections that apply to small customers (that is, residential and small business customers consuming up to 100 megawatt hours per year of electricity and 1 terajoule per year of gas) under the Retail Law and Retail Rules if they purchased from an authorised retailer. Retail customer protections are not extended to large business customers under the Retail Law, with the exception of access to a retailer of last resort if their retailer fails. The AER intends to distinguish between small customers and large business customers who purchase energy from an exempt seller, and will not extend retail customer protections designed for small customers to large exempt customers.

The AER has not extended all protections that apply to retail customers to exempt customers. The AER considers that some divergence is necessary. Retailers achieve economies of scale by having a large customer base, which allows them to spread the cost of regulation over the large number of customers. Exempt sellers tend to serve a smaller number of customers and therefore will not usually achieve comparable economies of scale. This makes certain requirements under the Retail Law and Retail Rules more burdensome and less appropriate for exempt sellers. In formulating the classes of deemed and registrable exemptions, and the conditions attached to them, the AER has considered where divergence in regulatory obligations is necessary to ensure that the costs imposed on onsellers (and consequently on their customers) do not exceed the benefits.

In some situations, regulatory divergence is necessary to reflect the different circumstances of onselling. Some requirements of the Retail Law and Retail Rules are entirely inappropriate for exempt sellers. For example, the price disclosure requirements for retailers' standing offer and market offer prices are irrelevant to exempt selling.³⁸ Requirements placed on certain authorised retailers under the Retailer of Last Resort (RoLR) scheme in Part 6 of the Retail Law are also irrelevant to exempt sellers.

Authorised retailers are required to be a registered participant for the purchase of electricity through the wholesale market. Where exempt sellers onsell energy that is purchased from an authorised retailer (rather than purchased directly from the wholesale market), registering as a participant in the wholesale market will not be relevant and divergence from this requirement placed on retailers may be appropriate.

³⁸ These requirements are set out in Division 11 of Part 2 of the Retail Law.

5.1.2—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’.

Affording customers of exempt sellers the right to retailer choice is a complex issue. The ability of customers to choose their own retailer in the competitive energy market depends on network configuration and the type of meter (if any) in place at their premises. These factors are usually determined at the time a building is constructed, and reconfiguration may be expensive and therefore uneconomic.

The most effective way of affording customers the right to a choice of retailer is to ensure that network configuration and metering arrangements for new developments and redevelopments must facilitate customer choice of retailer. However, there are currently no national building requirements for developers of multi-dwelling complexes (such as apartment buildings and shopping centres) to provide space and access for an individual energy meter for each tenant or owner/occupier. State and local governments have also not mandated the provision of space for meters. The move away from energy being supplied by a single state-owned corporation and the introduction of retail competition has not yet been reflected in jurisdictional planning requirements. These planning issues may need to be addressed by state and territory governments in order to facilitate customers’ choice of retailer.

The AER considers that the distinction between electricity and gas is important when establishing whether it is practicable to afford customers the right to a choice of retailer.

The following table outlines the availability of access to retailer of choice or ‘full retail competition’ (FRC) currently available for embedded networks in each jurisdiction.

Jurisdiction	Energy type	FRC available within embedded networks?
NSW	Gas	No
	Electricity	Yes
SA	Gas	No
	Electricity	Yes, except for ‘transitional inset consumers’—customers whose lease commenced prior to 1 January 2003
TAS	Gas	No
	Electricity	No
VIC	Gas	No
	Electricity	Yes
ACT	Gas	No
	Electricity	No
QLD	Gas	No
	Electricity	Yes, but not for small customers (consuming < 100MWh per year)

Electricity choice of retailer

For electricity, each customer within an embedded network can, in theory, be assigned a national meter identifier (NMI), which is one means to allow access to choice of retailer.

In the short term, the AER considers that for electricity, it is only practicable to afford the right to choice of retailer to customers in certain jurisdictions. The arrangements for customers in embedded networks to access electricity retail competition are set out in AEMO's Embedded Network Guidelines.³⁹

The Embedded Network Guidelines outline the jurisdictional arrangements relating to the contestability of embedded network customers which embedded network operators should take into account. Access to retailer of choice is restricted in the following jurisdictions:

- the Australian Capital Territory and Tasmanian arrangements do not allow choice of retailer for customers supplied by embedded networks in those jurisdictions
- Queensland does not allow choice for 'small' consumers supplied by embedded networks
- in South Australia consumers defined as 'transitional inset consumers'⁴⁰ generally do not have access to the retail market. This definition covers customers whose lease commenced prior to 1 January 2003 and therefore is unlikely to apply to many customers today.

We will take these jurisdictional provisions into account when applying this policy principle. That is, access to an electricity retailer of choice in the short term is unlikely to be practicable in the Australian Capital Territory, Tasmania, Queensland and for certain South Australian customers.

There are instances where providing customers with access to electricity retailer of choice may create logistical difficulties for the exempt seller, in particular in situations where customers may reside at premises for several months. For example, where an authorised retailer services tenants in a caravan park, they may wish to disconnect a customer's supply at the end of their tenancy. Any delays in obtaining reconnection may prevent the caravan park owner from being able to immediately lease the premises to another customer. However, an immediate connection could be guaranteed if the caravan park owner was the energy provider. While smart meters can be used to address this issue, the AER notes that this will not always be economic. The AER appreciates the rationale for the onseller being the exclusive source of energy in situations like this where it is the only cost effective means for the accommodation provider to ensure immediate connection for tenants.

Gas choice of retailer

Requiring onsellors to provide customers with access to retailer of choice may not be practical for gas, particularly where only small quantities of gas are involved. Where

³⁹ Published in November 2009, see <http://www.aemo.com.au/electricityops/0640-0012.pdf>.

⁴⁰ See http://www.escosa.sa.gov.au/library/100630-ResellingAdvisoryBulletinNo_1.pdf.

gas is used only for cooktops and ovens, as is often the case in multi-tenanted situations such as apartment buildings, the amounts of gas consumed by individual residences would generally not justify the expense of gas metering of each residence's consumption. It follows that it would not be practical to require the exempt seller to ensure that these customers had access to retailer of choice.

Even where individual residences are separately metered for their gas usage, and where gas usage may be significant, there are currently no AEMO guidelines to underpin full retail competition in gas embedded networks. The AER therefore considers that access to full retail competition is not currently practicable in the gas onselling/embedded network context.

Hindering customers' access to retailer of choice

While the AER's ability to impose conditions ensuring access to retailer of choice is limited in practice for the reasons set out above, we have imposed conditions on deemed and registrable exemptions to ensure that where customers have access to retailer of choice, the exempt seller must advise that this choice is available to them and cannot hinder the customer's choice. We may also choose to impose similar conditions in the case of individual exemptions.

5.1.3—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'.

The concept of 'practicable' in this policy principle will take into account the compliance burden that providing the same set of customer protections as a retailer would place on the onseller. This issue is also considered under the exempt seller factors.

The protections given to retail customers under the Retail Law are not automatically extended to customers of exempt sellers. We recognise that these customers can be some of the most vulnerable in society and aim to ensure that they receive appropriate protections through the imposition of conditions on exempt sellers selling to small customers. The protections set out in general conditions 1 to 16 reflect the AER's considerations on the core protections that should be afforded to small exempt customers supplied under a class exemption. These protections will complement the protections available to customers under jurisdictional tenancy and other relevant legislation.

Hardship policy requirements and flexible payment plan requirements have not been included in the conditions that apply to deemed and registrable exemptions, as the AER has concerns about the practicability of imposing such requirements.

The practicability of requiring exempt sellers to implement hardship policies and provide their customers with flexible payment plans depends on provisions of other legislation, in particular residential tenancy legislation. For example, in some jurisdictions this legislation can dictate the order in which any amount paid to a landlord is applied between various charges that the tenant owes, including for accommodation and energy. It would therefore not be practicable for the AER to

require these exempt sellers to offer their customers hardship programs or payment plans where the requirements under these conditions to allocate payments first towards amounts owed for energy charges could conflict with the arrangements in residential tenancy legislation.

Requiring onsellors to offer customers a hardship policy or payment plan may not always assist the exempt customer, as payment plans provide flexible payment options for energy charges, but not for accommodation charges. We recognise that some customers of exempt sellers who are struggling to pay their energy charges will also be struggling to pay their accommodation charges. Therefore any assistance provided to these customers to only manage arrears for their energy charges may not reduce or avoid their risk of eviction.

Authorised retailers are required to develop complaints handling arrangements based on *Australian Standard ISO 10002-2006 Customer satisfaction – guidelines for complaints handling in organisations* (the Standard). Where there is no conflict between the Standard and any specific legislation that an onseller operates under, such as tenancy or retirement village legislation, the AER may require the onseller to develop complaints handling arrangements based on the Standard. For example, it may be appropriate to impose this requirement on landlords onselling to retail/commercial tenants. This would not conflict with commercial tenancy legislation under which these landlords operate.

The AER will consider the application of the Standard to exempt sellers seeking an individual exemption on a case by case basis.

We will consider requiring additional customer protections, such as access to dispute resolution and customer hardship policies, on a case by case basis when considering applications for individual exemptions. The AER's considerations on the arrangements that may apply to larger exempt sellers operating under an individual exemption are set out elsewhere in this section of the guidelines.

5.2 Exempt seller related factors

The exempt seller related factors are set out in section 115 of the Retail Law. Each of the exempt seller related factors is listed below, along with guidance on how we will take these factors into account in making any decision relating to exemptions.

5.2.1—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'.

In establishing whether selling energy will be a core part of the exempt seller's business or incidental to that business, the AER will have regard to the exempt seller's business model. We would generally consider onselling to be a core activity where the exempt seller's business model involves onselling over multiple sites. For an entity that operates embedded networks and manages onselling over various sites, we would consider that person to be a specialist external provider and these activities to be their core business.

In establishing whether selling energy will be a core part of the exempt seller's business or incidental to that business, the AER will also consider the relationship between the exempt seller and its customers. We will establish whether the exempt seller sells energy to the customer as part of the provision of other services, or whether selling energy is the only interaction the exempt seller has with the customer. In other words, in the absence of an energy onselling arrangement, would the exempt seller and its customers have another relationship?

Where selling energy is the only relationship the exempt seller has with the customer, it would generally be considered to be a core part of the exempt seller's business. For example, a company that specialises in the facilitation of energy onselling is unlikely to provide other services, such as accommodation, to the customer.

Where the exempt seller sells energy as part of another relationship and the sale of energy does not constitute a significant aspect of the relationship, it would generally be considered to be incidental to the exempt seller's business. For example, a landlord who sells their tenant energy will have also entered into a lease with the tenant for the provision of accommodation. The sale of energy would not be contemplated if the customer was not a tenant of the landlord.

The AER will also consider the value of energy provided relative to the value of other services provided by the exempt seller. For example, in an industrial park, high energy usage tenants may pay a landlord onseller more for their energy use than for rental. In such a situation, it may be difficult to demonstrate that onselling is only 'incidental' to the relationship. Where energy charges form a relatively low proportion of overall accommodation costs, for example, in a caravan park, the argument that energy onselling is 'incidental' will be much stronger.

5.2.2—Characteristics of the exempt seller

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

The exempt seller's circumstances may relate to the number of customers served, the total volume supplied or the way in which the exempt seller operates. Where the exempt seller serves only a small number of customers, for example within a small strata title dwelling, it may not be practicable to require them to carry out the application process for a retailer authorisation, or to adhere to the various compliance and performance reporting requirements placed on retailers.

The way in which an exempt seller operates is also likely to indicate whether their circumstances warrant exemption. A landlord who must sell energy due to the way energy infrastructure is set up at their property (for example, at a caravan park) may warrant an exemption, particularly when the energy is provided in addition to another service and the energy component makes up a small component of the total cost of all services provided to the customer.

The AER considers that projects involving decentralised energy, whereby energy is generated on or near a site to reduce transmission requirements and losses from transportation, will generally be in the long term interests of customers and therefore such projects will potentially be suitable candidates for exemptions. Since each

situation is likely to be unique, these situations are best addressed through an application for individual exemption.

The AER recognises that in some situations, the exempt seller is the only person who is able to supply energy to its intended customers. This might be the case in remote areas which are not connected to the main distribution network (off-grid networks) in states or territories which have elected to bring off-grid networks under the Customer Framework. We will endeavour not to disadvantage such customers by refusing an exemption, or by issuing an exemption in a way that makes it uneconomic for the exempt seller to continue to supply them with energy.

5.2.3—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.

The AER has taken this exempt seller factor into account in distinguishing between situations where onsellers are specialist providers across multiple sites, and situations where the onselling is part of a suite of services provided to a customer. Where the onselling activities (and thus the anticipated profits) are significant, an individual exemption will generally be required.

It is to be expected that an exempt seller will only operate if it is going to at least cover its costs. The AER considers that it is acceptable for an exempt seller to earn a profit, provided that there are pricing protections in place for eligible customers (that is, residential exempt customers) to ensure that they are not disadvantaged. Provided that pricing conditions are imposed to restrict the prices that the exempt seller can charge these customers, the AER should not need to place much weight on this particular exempt seller factor insofar as residential customers are concerned. Earning a profit from onselling to residential customers will therefore not be a barrier of itself to eligibility for an exemption.

The AER does not support the concept of exempt sellers passing on to their customers an ‘administration’ or similar fee in an attempt to circumvent the requirement that residential customers are charged no more than the relevant standing offer prices. The AER considers that onsellers should only be able to charge eligible customers (residential exempt customers) charges for energy that are charged by the local area retailer. The AER has imposed a condition to this effect (condition 6).

The Retail Law and Rules do not enable the AER to regulate the prices that onsellers charge non-residential customers. The AER will however take these prices into account when determining eligibility for an exemption, in particular where small business customers are affected. The AER will be concerned to ensure that onsellers are not exploiting exempt customers, in particular where the exempt customers do not have access to choice of retailer.

5.2.4—Amount of energy likely to be sold

Section 115(1)(d) 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’.

The AER may compare the size of an exempt seller to the smaller retailers operating within national energy markets when considering this exempt seller related factor. As the significance of the selling operations increases, it may be more appropriate for the seller to obtain a retailer authorisation. However, if an exemption is granted for ‘significant’ operations, it is likely that the conditions placed on the exempt seller will be similar to those for a retailer.

The amount of energy sold may become significant where an exempt seller is involved in onselling at multiple sites. Where an onseller is not covered under a deemed or registrable exemption and intends to operate at multiple sites, the AER will consider the particular situation and grant either an individual exemption for each site, an individual exemption covering all sites, or require the onseller to obtain a retailer authorisation.

5.2.5—Appropriate obligations governing the applicant’s behaviour

Section 115(1)(e) 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’.

Some state/territory tenancy legislation regulates energy onselling. This legislation may govern aspects of onselling in some situations, for example in a simple tenant/landlord situation where the applicable jurisdictional residential tenancies law would outline who is responsible for the cost of utilities and how the costs of these must be administered. However, this legislation is designed to address tenancy matters and tends to only provide very basic energy-related protections to exempt customers who are tenants. The AER has considered the requirements of other legislation both when establishing classes of exemption, and when imposing conditions of exemption on class exemption categories.

We will use conditions to complement any relevant jurisdictional legislation which does not provide sufficient energy-specific protections for exempt customers to ensure that the Retail Law’s objective of promoting the long term interests of consumers is maintained.

In general, the closer an onseller’s operations are to those of an authorised retailer, the more that general retail obligations will apply to them. Where the onseller’s obligations largely replicate those applying to a retailer, we would need to be satisfied that an exemption is in fact appropriate, rather than requiring the onseller to apply for a retailer authorisation.

5.2.6—Costs and benefits of obtaining a retailer authorisation

Section 115(1)(f) 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’.

To obtain a retailer authorisation, a person needs to meet three entry criteria specified in the Retail Law.⁴¹ These entry criteria are:

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

The process of obtaining a retailer authorisation is relatively intensive, and a range of information must be provided to the AER to demonstrate that the person meets the entry criteria. For electricity, one of the costs involved with obtaining a retailer authorisation is the requirement to be registered with AEMO as a participant in the wholesale electricity market. Most onsellers will not participate in the wholesale market (that is, purchase energy directly from the wholesale pool), but rather purchase energy from an authorised retailer and onsell to their customers. For gas, one of the costs of obtaining a retailer authorisation is the requirement to be registered in relation to the relevant gas market in the state or territory in which they are operating.

In addition, authorised retailers must comply with all relevant regulatory obligations in the Retail Law and the Retail Rules.

It is likely that the cost associated with the onseller obtaining a retailer authorisation rather than an exemption would be passed on to the onseller's customers. Energy charges to residential exempt customers are capped under the AER's conditions of exemption but the cost may flow through in charges these customers pay for other services supplied by the onseller (for example, through accommodation charges). The AER recognises that ultimately the cost to smaller onsellers of obtaining a retailer authorisation will exceed the benefits to their customers, particularly where customers are offered a number of protections through the conditions imposed under an exemption.

The AER's obligation to afford customer protections to customers of exempt sellers comparable to those afforded to retail customers aims to minimise the 'gap' in the protections provided to these two types of customers. We recognise, however, that it will not always be practicable to require exempt sellers to develop the hardship policies and other protections that retailers must have in place.

5.2.7—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'. The AER considers that unmetered supply, and co-generation or other sustainable energy arrangements, are additional relevant matters.

⁴¹ See section 90 of the Retail Law.

Unmetered supply

There are some onselling situations where customers are not individually metered and therefore are not provided with access to retailer of choice. The AER will give consideration to situations where customers are not metered, and will allow an exemption for selling energy through existing unmetered arrangements only where this is permitted under jurisdictional legislation. Many jurisdictions prohibit the passing on of energy charges to tenants unless the tenant's consumption has been separately metered. The AER will ensure that onselling arrangements are consistent with these protections.

The AER may refuse to provide individual exemptions in future developments or redevelopments where electricity consumption is unmetered. This is to ensure both adequate consumer protection arrangements and also to ensure that consumers receive appropriate price signals for their energy usage.

As was discussed earlier, the AER acknowledges that a requirement for individual gas metering of dwellings may not always be practicable or efficient. For example, some apartment complexes have gas cooktops, but are not configured to enable the use of other gas appliances. An exemption is provided for situations where gas has a very limited use (see class D5).

Co-generation, tri-generation and sustainable energy

The draft exemption categories do not explicitly cover co-generation, tri-generation or sustainability initiatives but it is not the AER's intention to discourage them. Decentralised energy, whereby energy is generated on or near a site which can reduce transmission requirements and losses from transportation, is becoming increasingly common. Where generation is by a 'clean' technology, this generation helps to reduce carbon emissions from generation while also reducing the peak load of the main distribution system. Because each situation will be unique it is challenging to develop a class exemption to capture these activities. We consider it more appropriate, at least in the short term, for these situations to be covered by individual exemptions, and will grant exemptions in these situations where the initiative is in the long term interests of energy consumers having regard to all of the criteria and factors we are required to assess.

The AER recognises that some embedded networks may involve a minimal capital outlay from the network owner. However, the costs associated with developing other embedded networks such as those involving co-generation or tri-generation can be significant. Such investments may not be easily recouped through charging distribution charges alone, so it may be necessary for the network operator to sell energy to recover its costs. Network development and maintenance costs will be taken into account as an exempt seller related factor.

5.3 Customer related factors

Section 116 of the Retail Law sets out the customer related factors. Each of the customer related factors is listed below, along with guidance on how the AER will take these factors into account in making any decision relating to exemptions.

5.3.1—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’.

The consideration of this customer related factor differs depending on the type of customers being considered. For example, large commercial tenants of an industrial park are in very different circumstances to small residential customers in a retirement village.

The AER will consider customers in terms of the Retail Law’s consumption thresholds. All residential customers and business customers consuming less than 100 megawatt hours of electricity or 1 terajoule of gas annually are classified as ‘small customers’. Large customers are business customers who consume at least 100 megawatt hours of electricity or 1 terajoule of gas annually. Retailers and distributors are required to develop and publish procedures for handling small customer complaints and disputes; no such requirement is in place for large customers. A number of other protections in the Retail Law and Retail Rules apply only to residential customers, for example the requirement for retailers to provide customers with access to flexible payment options.

It can be expected that large customers in onselling situations will generally be commercial/industrial customers who consume a considerable amount of energy. Because energy costs are likely to be a significant expense for these customers, it is likely they will have given consideration to the onselling arrangements as part of their lease negotiation. Therefore the AER has taken the view that where an exemption is granted for the onselling of energy to large customers, very limited conditions will be imposed.

Another relevant customer characteristic that the AER will take into account is whether the energy is being onsold on the basis of a contract that was negotiated on behalf of a group of customers under a collective agreement. In this situation, it will be important for the AER to ascertain that there has been explicit informed consent from all customers comprising the group.

5.3.2—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’.

Customers of exempt sellers do not automatically receive the same protections as customers of authorised retailers. The AER can, however, impose conditions on exempt sellers to provide an appropriate level of protection for customers. The conditions that apply to most deemed and registrable exemptions are outlined above, and conditions for individual exemptions will be decided on a case by case basis.

Most residential and small business customers are afforded protections by the tenancy legislation under which the tenancy relationship is governed. These protections, when complemented by conditions imposed by the AER, will go some way to matching the

protections afforded to equivalent retail customers under the Retail Law. It is also likely that the conditions placed on individual exemptions for large onsellers and specialist onsellers will closely resemble those that apply to retailers.

5.3.3—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 AER will consider the customers involved in each onselling situation on a case by case basis. Onselling may present consumer protection issues, in particular for residential consumers. In some jurisdictions the rebates, social programs and energy efficiency programs that offset the impact of rising energy prices are not available to customers of onsellers. The AER’s key concern is to ensure that these customers are not denied the protections received by residential customers purchasing from an authorised retailer. The AER will therefore consider matters such as small customer access to energy Ombudsman schemes, rebates, social programs and energy efficiency measures when considering whether it is appropriate to grant an individual exemption for an onselling activity.

Part 6: Enforcement

Under the Retail Law, a person must not engage in the retail sale of energy without obtaining a retailer authorisation or an exemption from the requirement to hold an authorisation.⁴² Civil penalties apply if this provision is breached or if there is an attempted breach. Under section 299, an attempted breach is considered an actual breach. If the AER considers that a provision has been breached, we may commence proceedings under section 289. If the court finds there has been a breach, a civil penalty may be ordered under section 291. Section 308 of the Retail Law allows the AER to issue an infringement notice for breach of a civil penalty provision. An infringement notice typically requires the payment of a penalty.

The Federal Court also has powers to make orders on application by us under s.44AAG of the *Trade Practices Act 1974* (Cth), including orders requiring a person to do one or more of the following:

- cease the activity that is in breach
- take action to remedy the breach
- implement a specified program for compliance with the Retail Law.

⁴² Section 88 of the Retail Law.