



**EnergyAustralia**

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Dear Sarah

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

### **1. Introduction**

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EnergyAustralia welcomes the opportunity to comment on the Australian Energy Regulator's (AER) proposed amendments to the (Retail) Exempt Selling Guideline. We are one of Australia's largest energy companies, providing electricity and gas to over 2.5 million household and business customers in NSW, Victoria, Queensland, South Australia and the Australian Capital Territory. We also own and operate a multi-billion dollar portfolio of energy generation and storage facilities across Australia, including coal, gas and wind assets with control of over 4,500MW of generation in the National Electricity Market.

EnergyAustralia recognises that the current exemption framework, which involves tailored conditions for exempt sellers, appears appropriate and fit for purpose given the current scale of exempt sellers and penetration of storage technology at a residential and small business level. Within this context, the proposed changes to the exempt seller guidelines are relatively minor and as such, are largely supported.

However, the current framework is a binary approach to customer protection whereby an energy seller is either an authorised retailer or exempt (albeit with conditions). It operates in an environment where the number of feasible mechanisms through which retail customers can obtain energy is increasing. An absence of carefully defined and fairly allocated responsibilities for consumer protection will undermine effective competition and become problematic as the distinction between primary and secondary sources of energy becomes less clear. The AER appears to recognise these limitations, concluding in its Notice of Instrument that while it gave consideration to some proposals to 'level the playing field', none were workable under the current framework.

EnergyAustralia agrees that the limits of the current framework are increasingly apparent. It is conceivable that exempt sellers (particularly 'innovative energy sellers' in the AER's terminology) could satisfy a large proportion of a customer's energy needs while an authorised retailer retains primary responsibility for customer protection obligations. Therefore,

authorised retailers will compete with exempt sellers, while incurring relatively higher costs and with more limitations on commercial flexibility. Therefore it is important that regulatory frameworks keep pace with customer and market needs and technological change.

While this consultation relates to amendments to the exemption guideline, EnergyAustralia is keenly awaiting the outcome of the AER's consultation on the regulation of innovative sellers and any initiatives resulting from the COAG Energy Council's review of New Products and Services in the Electricity Market. We hope this will lead to a more appropriate regulatory framework that reflects the evolution of the energy sector, while providing an appropriate level of protection for energy consumers, regardless of the mechanism through which they obtain their energy. We expect this will involve further amendments to the exempt seller guideline and to the National Energy Retail Law.

Our submissions to these respective consultations include a more detailed discussion of this issue and a list of the core obligations that we believe should apply to all energy sellers.<sup>1</sup>

## **2. Comments on specific amendments**

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Despite our concerns about the overarching framework, EnergyAustralia welcomes the AER's intention to remove various ambiguities and areas of confusion within the current exemption guidelines. Clarity and certainty in regulatory administration will improve market outcomes so the following amendments are supported:

- tightening up the obligations through removal of the terms 'fair and reasonable' (in relation to pricing), 'best endeavours' (in terms of obligations for exempt sellers to claim concessions) and 'cost effective' (in terms of pricing);
- clarification that the obligation on exempt sellers to assist customers in financial hardship only applies to residential customers; and
- deletion of clauses 7(5) and 7(6), which created uncertainty about the application of the guideline where jurisdictional pricing requirements exist.

## **3. Extension of core conditions**

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EnergyAustralia recognises that the AER is seeking to adopt a proportionate and flexible approach to the regulation of exempt sellers. However, our submissions to previous reviews have emphasised the importance of competitive neutrality and the need for an appropriate focus on consumer wellbeing regardless of their energy source, so we support measures to introduce appropriate protections for exempt customers. In particular, we support the requirement for exempt sellers to offer at least two payment methods to customers, and clarification that jurisdictional tenancy legislation does not negate the prohibition of disconnection or cessation of supply where there are life support, prohibited date and extreme weather requirements.

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<sup>1</sup> Submission to AER is available at <https://www.aer.gov.au/retail-markets/retail-guidelines/regulating-innovative-energy-selling-business-models-under-the-national-energy-retail-law/initiation>. Submission to COAG Energy Council is available at <http://www.scer.gov.au/workstreams/energy-market-reform/demand-side-participation/new-products-and-services-in-the-electricity-market/>.

The proposed requirement for exempt sellers to claim government rebates or concessions on behalf of customers who cannot do so themselves is supported in principle but will likely impose additional complexity and costs due to nature of some schemes and the substantial differences in such schemes across jurisdictions.

For example, all states except Victoria calculate concessions according to a daily rate. The Victorian Government on the other hand calculates the majority of its concessions as a percentage of eligible charges. Unlike other states, it also has a supply charge concession and transfer fee waiver concession.

Exempt sellers will need to understand the scope and eligibility criteria for all the schemes that apply in those jurisdictions in which they operate, in addition to the ongoing eligibility status of their customers, even where the number of customers unable to claim is small. However, this is a broader issue and the AER's proposed condition further highlights these differences, which impose unnecessary costs on all energy sellers, including authorised retailers.

Finally, we hold the view that it is crucial that retail customers have access to an appropriate dispute resolution mechanism, regardless of whether a customer is supplied by a traditional authorised, embedded network operator, or any other type of alternative energy seller. As such, EnergyAustralia believes that exempt sellers should be required to participate in an ombudsman scheme (or a similar independent dispute resolution body) to ensure customers' rights are upheld in the same manner as they would be under a traditional energy supply arrangement. Furthermore, it is important that complaints to an ombudsman scheme are correctly assigned to the seller to whom the issue relates, rather than automatically to the authorised retailer.

We understand that funding and administration issues would need to be resolved to allow for exempt sellers to be members of the scheme but we believe that these can and must be addressed to ensure that consumer rights are protected as the energy industry continues to evolve.

Should you require further information regarding this submission please call me on (03) 8628 1479.

Yours sincerely



**Geoff Hargreaves**  
Industry Regulation Lead