



Issues Paper

AER approach to retail exemptions

June 2010

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Amendment record

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1 Introduction

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

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

It is likely that the AER will assume responsibility for the enforcement of the proposed National Energy Retail Law (Retail Law) and National Energy Retail Rules (Retail Rules) under the National Energy Customer Framework.¹ This will include responsibility for the regulation of electricity and gas retail markets (other than retail pricing) in most jurisdictions. It is currently understood that the AER's role will not extend to Western Australia, the retail electricity market in the Northern Territory or some retail gas markets.

Under Part 5 of the proposed Retail Law, a person wishing to sell energy must either hold a retailer authorisation or have an exemption from that requirement. The AER will be responsible for issuing exemptions.

As part of its retail exemptions role, the AER will be required to develop a guideline to provide information about exemptions. The guideline will address a number of matters including the procedure for applying for an individual exemption, and the categories of sellers who qualify for class exemptions.

This issues paper and the attached draft classes of deemed and registrable exemptions constitute the first step in the AER's consultation process. This work is based on the second exposure draft of the National Energy Customer Framework (released November 2009) and will be updated following passage of the final framework.

This paper has been prepared to seek feedback on a number of issues arising from the proposed exemptions arrangements and to facilitate consultation on the draft classes of exemption. For convenience, the main issues identified by the AER have been set out in shaded boxes. We also welcome any comments on issues not specifically raised in this paper.

Transitional arrangements including, for example, the process for transitioning existing jurisdictional exemptions to national exemptions, are not covered in these documents.

¹ <http://www.ret.gov.au/Documents/mce/emr/rpwg/default.html>

2 Public consultation process

This issues paper and draft classes of exemption have been published to provide an opportunity for preliminary consultation in preparation for the hand-over of retail functions to the AER.

The AER is likely to be required to publish several guidelines, including the Exempt Selling Guideline, as part of its new role under the proposed Retail Law and Retail Rules. The AER is also likely to be required to publish determinations of deemed and registrable exemptions as part of its new role.

Upon the passage of the Retail Law, the AER will be seeking stakeholder comment on the guidelines under a 'formal' prescribed consultation process (as set out in the proposed retail legislation). This may have to occur within a short timeframe. Accordingly, the AER is undertaking preliminary consultation during 2010 to provide stakeholders with as much opportunity as possible to consider the key issues and comment on the preparation of draft guidelines and draft determinations.

The issues papers, guidelines and determinations prepared as part of this preliminary consultation process are based on the second exposure draft of the Retail Law and Retail Rules.² Any changes to the framework prior to its passage through South Australian Parliament may result in changes to the content of the guidelines and issues papers.

How to make submissions to this issues paper

The AER invites comments on the draft guideline and issues paper. Submissions can be sent electronically to: AERInquiry@aer.gov.au or by mail to:

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

The closing date for submissions is **2 August 2010**.

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

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

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided and such claims should not be made unless all information is truly regarded as confidential. The identified information should

² <http://www.ret.gov.au/Documents/mce/emr/rpwg/default.html>

genuinely be of a confidential nature and not otherwise publicly available. In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or 'blacked-out'.

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

Stakeholder forums

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

Half-day forums will be held on the mornings of 19 and 20 August in Melbourne and Adelaide, respectively. The Melbourne-based forum will have video conference links to Canberra and Hobart. The Adelaide-based forum will have video conference links to Sydney and Brisbane. The agenda for these forums will be identical, and stakeholders need only attend one of the forums. Minutes for both forums will be distributed to stakeholders who attend either forum.

To register your attendance at one of the forums, please send an email to AERInquiry@aer.gov.au by 4 August 2010. The subject of the email should state 'Registration for Exempt Selling Stakeholder Forum - attention Pip Dodgson'. In your email, please specify in which city you will be attending. Attendance to the forums will be limited, and registration is essential. We ask that stakeholders nominate no more than one participant each.

Next steps

The next step will be the stakeholder forums. The AER will most likely release a preliminary draft of the draft Exempt Selling Guidelines and revised draft classes of deemed and registrable exemptions later this year.

Following that, as is discussed above, there will be the 'formal' prescribed consultation process once the Retail Law is passed. This prescribed process will allow for further consultation and submissions on the draft Exempt Selling Guidelines and draft classes of deemed and registrable exemptions.

3 Overview of exemptions

The proposed Retail Law prohibits any ‘unauthorised selling of energy’.³ A person wishing to sell energy must hold a retailer authorisation or have an exemption from that requirement. Retailer authorisations and exemptions are currently administered by the respective jurisdictional regulators and departments.

Under the proposed Retail Law, the AER will be responsible for administering retailer authorisations as well as exempting persons from the requirement to obtain a retailer authorisation. The type of person who might seek an exemption will often be distributing energy within a small local network and selling to persons within the network, for example: a caravan park owner; shopping centre operator; rooming house operator; or body corporate.⁴ Persons who are exempted from the requirement to hold a retailer authorisation will be known as ‘exempt sellers’.

The main focus of existing jurisdictional exemptions regimes is energy ‘reselling’ or ‘onselling’. This occurs where a person acquires energy from a licensed retailer and then they, or a person acting on their behalf (such as a billing agent), sell this energy to customers who are within the limits of premises owned, occupied or operated by the relevant person (the customers are unlikely to be directly connected to the distribution network).⁵ Some jurisdictional exemption regimes also address the supply of energy to customers who are not connected to the national grid (‘off-grid’ customers).

Exemptions will generally not be appropriate for conventional energy retailing activities where the retailer is registered with AEMO for wholesale market purposes.

Some jurisdictional (state and territory) regulators have raised concerns about the regulatory arrangements which apply to persons currently selling energy to small to medium sized customers under an individual or class exemption (or purportedly under an exemption), often within an embedded network. These customers may be especially vulnerable, for example long term residents of caravan parks, and residents of boarding and rooming houses. Customers of exempt sellers generally receive fewer protections than customers purchasing from a licensed retailer, and in most jurisdictions they are unable to access the jurisdictional Ombudsman scheme. Currently, the customer protections offered vary across jurisdictions. The AER is required to develop a single regulatory framework for exempt selling that will apply consistently to exempt sellers across all jurisdictions.

This paper seeks feedback from stakeholders on a range of potential issues that the AER has identified in developing a framework for exempt selling under the proposed Retail Law and Retail Rules. We do however welcome any comments on issues in relation to exempt selling not specifically raised in this paper.

³ See section 501 of the proposed Retail Law.

⁴ A body corporate is referred to as an ‘owners’ corporation’ in Victoria. Where the term “body corporate” is used in this issues paper, it includes owners’ corporations.

⁵ This definition has been adapted from the recommended definition in the Essential Service Commission of Victoria’s final report of its ‘Small Scale Licensing Review’, published March 2007.

3.1 The AER's role under the proposed Retail Law and Retail Rules

The date from which the AER takes responsibility for exemptions will vary across jurisdictions according to the respective nominated transfer dates. During this preliminary consultation the AER is using a notional transfer date of 1 July 2011, the earliest date on which the framework will take effect in any jurisdiction.

3.1.1 Sale of energy

Section 501 of the proposed Retail Law prohibits any 'unauthorised selling of energy'. The AER considers that a sale of energy occurs when a person passes on a charge for energy as a separate charge, as opposed to a situation where the cost of energy is absorbed into another charge such as rent.

The AER assumes that, where a charge for energy is absorbed into another charge, the energy portion of the charge would be covered under the applicable jurisdictional tenancy law and any other relevant legislation. This covers a number of situations, such as hotels, motels and caravan parks for holiday makers. For the avoidance of doubt, however, the AER is proposing to provide an exemption for such charges. This is discussed below in section 5.2.1.

Service fees for unmetered supply of energy to public and community housing tenants will not be considered to involve a sale of energy and will therefore not be addressed under the AER's guidelines and determinations. As the proposed Retail Law and Rules only address the sale of energy, the AER's guidelines and determinations will also not address the selling of bulk hot water.

Q1: Do stakeholders agree with the AER's interpretation of what constitutes the sale of energy?

3.1.2 Policy principles

The proposed Retail Law specifies that the AER, in carrying out any exempt selling function or power under the Retail Law or Retail Rules, *must* take into account a number of policy principles.⁶ These are that:

- 'regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers'
- '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'
- 'exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules'.

⁶ See section 528 of the proposed Retail Law.

3.1.3 Exempt seller and customer related factors

There are also a number of exempt seller related factors⁷ and customer related factors⁸ that the AER *may* take into account when carrying out its exempt selling functions and powers. The exempt seller related factors in the proposed Retail Law are:

- ‘whether selling energy is or will be a core part of the exempt seller’s business or incidental to that business’
- ‘whether the exempt seller’s circumstances demonstrate specific characteristics that may warrant exemption’
- ‘whether the exempt seller is intending to profit from the arrangement’
- ‘whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets’
- ‘the extent to which the imposition of conditions on an exemption, or to which the requirements of other laws, would allow appropriate obligations to govern the applicant’s behaviour rather than requiring the applicant to obtain a retailer authorisation’
- ‘the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller’
- ‘any other seller related matter the AER considers relevant’.

The customer related factors are:

- ‘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 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’
- ‘any other customer related matter the AER considers relevant’.

Each of these principles and factors is discussed further in section 4.

3.1.4 AER exempt selling functions

The specific exempt selling functions and powers that the AER will assume responsibility for under the proposed Retail Law and Retail Rules are described below.

⁷ See section 529 of the proposed Retail Law.

⁸ See section 530 of the proposed Retail Law.

Issuing retail exemptions

The AER can grant three types of exemptions:⁹

- ***Individual exemptions***, which are granted on application on a case-by-case basis.
- ***Deemed exemptions***, which apply automatically to a class of sellers determined by the AER.
- ***Registrable exemptions***, which apply to a class of sellers determined by the AER, but are only effective from the date on which a person registers with the AER as belonging to that class (and thereby becomes a ‘registered’ exemption). This type of exemption will allow the AER to increase its knowledge of certain exempt selling activities. It will also assist the AER in monitoring and educating exempt sellers in relation to their obligations as well as enforcing these obligations where necessary.

The proposed Retail Law and Retail Rules do not provide specific guidance on which sorts of retailing activities may be appropriate for exemption or, more specifically, which activities are appropriate for each type of exemption.

Generally an exemption will be appropriate where the benefits of the seller operating under an exemption exceed the costs of the seller having an exemption rather than a retailer authorisation. The AER will consider this alongside the policy principles, exempt seller related factors and customer related factors in developing the classes of exemptions and when granting individual exemptions.

The AER aims to have a nationally consistent approach to exemptions wherever possible, whilst minimising the number of different categories of exemption. It is proposed that this will be achieved by using broad exemptions categories which capture various exempt selling activities across all jurisdictions.

Imposing conditions on exempt sellers

The AER can impose conditions on an exempt seller or class of exempt sellers.¹⁰ A condition can require an exempt seller to abide by any obligation that would apply to a retailer under energy laws. An exempt seller must comply with all conditions imposed, and the AER may deal with a breach of a condition as if it were a breach of the Retail Rules.

Conditions for individual exemptions can be imposed when the exemption is granted, varied, or at any other time during the currency of the exemption. The AER can vary or revoke any condition it has placed on an individual exemption.

⁹ See section 525 of the proposed Retail Law.

¹⁰ See section 526 of the proposed Retail Law.

Developing Exempt Selling Guidelines

The legislation requires the AER to issue Exempt Selling Guidelines that provide information about exemptions from the requirement to hold a retailer authorisation.¹¹ The guidelines must include provisions concerning:

- procedures for applying for the grant, variation or revocation of an individual exemption
- the information that must be provided by an applicant for an individual exemption
- requirements relating to registrable exemptions
- guidance on the application of the ‘exempt seller related factors’ and the ‘customer related factors’ in making any decision relating to exemptions (these factors are set out above in section 3.1.3)
- the categories of deemed and registrable exemptions; and any associated conditions of exemption that are to apply
- any other matters that the AER considers relevant.

Q2: Are there any other matters that should be included in the Exempt Selling Guidelines?

Maintaining and publishing a Public Register

The AER will also be required to maintain, and publish on its website, a public register of authorised retailers and exempt sellers.¹² As well as information relating to authorised retailers, the public register must include:

- the names and business addresses of exempt sellers who are subject to an individual exemption
- a list of the classes of persons in respect of whom a deemed exemption is in force
- a list of the classes of persons in respect of whom an exemption is registrable
- the names and business addresses of exempt sellers who have registered with the AER as belonging to a class of persons subject to a registrable exemption.

The Retail Rules also permit the AER to include in the public register other particulars and information relating to authorised retailers, exempt sellers and associated matters that it considers relevant.¹³

To provide insight into exempt selling activities, the AER will require exempt sellers to also disclose the following information, some of which will be included on the public register:

¹¹ See section 532 of the proposed Retail Law.

¹² See section 533 of the proposed Retail Law.

¹³ See rule 917 of the proposed Retail Rules.

- name and address of the site under exemption (this would be included on the public register)
- contact details for the exempt seller (these would not be included on the public register):
 - for the AER to contact the exempt seller
 - the contact number given to the exempt seller's customers
- the number of premises within the site under exemption, with a breakdown between large business, small business, and residential customers, including the status of residential customers, e.g. tenants, lodgers (this information would not be included on the public register)
- addresses of any other sites where the exempt seller holds an individual or registered exemption
- whether any premises have elected to purchase energy from a retailer of their choice (this information would not be included on the public register)
- the number of customers who are reliant on any energy-powered life support equipment (this information would not be included on the public register)
- the approximate total quantity of energy supplied (this information would not be included on the public register).

It will be the exempt seller's responsibility to inform the AER of any changes to this information.

A discussion of registrable exemptions and the classes of exempt selling activities that will be made registrable is contained in section 5 of this paper.

Q3: Are there other particulars and information relating to exempt sellers that should be included in the public register?

3.2 Distinction between retail exemptions and network exemptions

The provision of energy often involves a mix of distribution and retailing activities. A person seeking a retail exemption will generally be distributing energy through a small local network, which may be embedded within another entity's distribution network, or may be an isolated network. For regulatory purposes, the physical act of distributing electricity or gas must be separated from retail activities (i.e. charging customers for their energy consumption).

Currently, some jurisdictions issue a single exemption for both state distribution licensing requirements and retail activities.¹⁴ The AER's role under the proposed Retail Law and Retail Rules, however, relates to retail exemptions only.

A person seeking to distribute and sell electricity within an embedded network will need to be covered by either a class or individual exemption from the AER for both their electricity distribution and retailing activities.¹⁵ They must also comply with any relevant distribution licensing or exemption requirements in jurisdictional legislation.

The exemption framework for electricity distribution networks connected to the national grid is broadly outlined in two documents: the Network Service Provider Exemptions Guidelines (NSP Exemptions Guidelines) and the General Exemption Guidelines.¹⁶ There are a number of synergies between these network guidelines and the retail Exempt Selling Guidelines, in particular as the General Exemption Guidelines outline that class exemptions apply to caravan parks, office buildings, flats/apartments, units, industrial parks and shopping centres. It may be difficult to distinguish between distribution issues and retail issues in these embedded network situations. The AER considers that it would be timely to review the NSP Exemptions Guidelines and the General Exemption Guidelines once this preliminary consultation on the Exempt Selling Guidelines has concluded.

The AER intends to conduct consultation on amendments to the NSP Exemptions Guidelines and the General Exemption Guidelines in late 2010 or early 2011. Any distribution network exemption matters raised by stakeholders during this consultation process will be taken into account in the AER's review of the NSP Exemptions Guidelines and the General Exemption Guidelines.

The AER will also examine the feasibility of developing a single application process for situations where an applicant is seeking an individual exemption from both sets of requirements.

A person seeking to both distribute and sell gas within an embedded network, or to distribute and sell energy within an off-grid network, will need to seek an individual retail exemption from the AER (or make sure they are covered by a deemed or registrable exemption), and comply with any relevant distribution licensing or exemption requirements in jurisdictional legislation.

3.3 Current jurisdictional approaches

The AER has reviewed the current jurisdictional arrangements for exemptions and the recommendations of the Essential Services Commission of Victoria (ESCV) in its small scale licensing review (completed in 2007).¹⁷

¹⁴ For example, in Queensland legislation an 'on-supplier' is defined as someone who supplies or supplies and sells energy for use in a premises that they own or operate. In South Australia, the Essential Services Commission of South Australia can grant exemptions from both network and retail licensing requirements.

¹⁵ They will need an exemption from registration as a network service provider under the National Electricity Rules.

¹⁶ See <http://www.aer.gov.au/content/index.phtml/itemId/658904>

¹⁷ Essential Service Commission of Victoria's final report of its 'Small Scale Licensing Review', published March 2007.

The AER's review has highlighted that exemptions arrangements operate very differently across jurisdictions. In some jurisdictions, exemptions arrangements differ between onselling arrangements and off-grid supply, and onselling within an embedded network is sometimes treated differently to onselling in other situations. For example, South Australian legislation allows both gas and electricity embedded network owner/operators an automatic exemption whereas operators who do not own the embedded network must apply for an exemption.

Current policies tend to allow operators onselling within an embedded network to fall under class exemptions. Self-assessment application processes and limited registration requirements in the jurisdictional regimes mean that it is not possible to know the number or scale of exempt sellers operating.

Pricing protections in onselling situations generally involve imposing the maximum price that an onseller can charge. In most jurisdictions where pricing protections exist, the maximum price is the standing offer tariff of the local retailer.

4 Issues for discussion

The AER seeks feedback on a number of issues, particularly around relevant matters to consider under the policy principles, exempt seller related factors and customer related factors. These are discussed below.

4.1 Apparent growth in onselling

In recent years there has been an apparent increase in the number of customers who purchase their energy from an onseller, particularly within large residential developments. Energy onselling has always been reasonably common, but there are a number of reasons which may account for the apparent increase in this area. The ease with which onsellers can obtain bulk energy supply, and the cost-effectiveness of doing so may be factors. A further factor may be that in large residential developments, developers are keen to minimise the space allocated to individual customer metering, thereby restricting customers' access to full retail competition that would otherwise be available to them in many jurisdictions.

The cost of including individual metering in developments may have also contributed to an increase in onselling of unmetered energy, especially gas where it is only being used for cooking. Unmetered onselling is discussed further in section 4.3.7.

The AER is concerned about the growth in onselling because a range of protections that apply to customers of retailers will not automatically apply to customers of onsellers. For example, there are no rules governing what would happen if an onseller becomes insolvent or is unable to pay their energy procurement costs. Further, onsellers are generally not required to participate in energy Ombudsman and alternative dispute resolution schemes. Under the proposed Retail Law, retail customers are provided with protections against such an event through the provision of a Retailer of Last Resort (RoLR) scheme. This aims to provide a seamless transition for retail customers to another retailer if their retailer becomes insolvent. Customers of exempt sellers may become stranded, particularly in a case where there is no metering infrastructure which would allow them to be serviced by the local distributor.

Q4: Is the apparent growth in onselling problematic, and if so, why?

4.2 Policy principles

As explained above, the proposed Retail Law outlines policy principles that the AER must take into account when performing or exercising an AER exempt selling function or power.

4.2.1 Regulatory arrangements for exempt sellers

The first policy principle that the AER must take into account in carrying out its exempt selling functions relates to the regulatory arrangements for exempt sellers:

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. For example, exempt sellers will be accountable for their compliance with the Retail Law and Retail Rules under the same enforcement provisions in Part 13 of the Law as authorised retailers, but will not be subject to the compliance and performance reporting regimes that will apply to authorised retailers under Part 12.

The AER's role is to strike a balance between ensuring customers are adequately protected and the need to avoid overburdening some energy sellers, particularly on-sellers who will be the main focus of the AER's exemptions regime, with regulation. When such divergence is not appropriate, it may be necessary to require the energy seller to obtain a retailer authorisation.

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 conditions attached to an individual exemption are likely to more closely resemble the obligations that apply to an authorised retailer.

The categories of deemed and registrable exemptions (and therefore which activities will require an individual exemption) are discussed below in section 5. The factors that the AER may use to determine the type of exemption (if any) that a person selling energy is eligible for include the number and type of customers being served and whether the activity is practicably avoidable (i.e. whether it is possible for the exempt supply customers to be served by an authorised retailer).

The customer protections that the AER considers relevant for each category of exemption are based on the protections that apply to small customers (i.e. residential and small business customers consuming up to 100 megawatt hours per annum of electricity and 1 terajoule per annum of gas) under the proposed Retail Law if they purchased from an authorised retailer. Customer protections are not extended to large business customers under the proposed Retail Law. The AER's preliminary view is that this is appropriate for large business customers who purchase energy from an exempt seller. However, it may be appropriate to impose a condition ensuring that exempt sellers servicing large customers do not hinder or prevent their customers from choosing their own retailer.

Q5: Is it appropriate for the AER to impose no conditions on large customers of exempt sellers (as is the case for large customers of authorised retailers), or should they be provided with basic customer protections where the existing arrangements prevent them from choosing their own retailer?

Q6: Should the AER impose a condition on on-sellers selling to large customers to ensure that they do not hinder or prevent the customer from choosing their own retailer?

4.2.2 Access to retailer of choice

The second policy principle that the AER must take into account in carrying out its exempt selling functions refers to access to retailer of choice:

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. In some cases, such as supply to off-grid customers, there is no competition for energy supply and therefore it is not possible to provide customers with access to a retailer of choice. For grid-connected customers in the competitive energy market, the ability to choose their own retailer 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.

The discussion in this section focuses on electricity full retail competition, as, depending on the amount of gas being consumed within a development, it may not be economic to provide access to gas full retail competition. The ability for gas customers to choose their retailer is discussed further below.

Within a particular building, each meter may have been assigned a unique identifier for wholesale market purposes. If this is the case, customers within that building will be able to choose their own retailer. The AER considers that it will generally not be appropriate to grant a retail exemption (and particularly a deemed or registrable exemption) to an onseller where all customers have access to a retailer of choice. Onselling in these circumstances is unnecessary and deprives customers of some protections under the Retail Law and Rules.

Where meters within an embedded network have not been assigned an identifier for wholesale market purposes, access to full retail competition in electricity varies across states and territories. The arrangements in each jurisdiction are discussed in detail in AEMO's Embedded Network Guideline issued in July 2009.¹⁸

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. In many instances the arrangements for electricity metering may be under the control of the local electricity distributor. However, there are currently no national building requirements for developers of multi-dwelling complexes (such as apartment buildings and shopping centres) to provide space for an individual energy meter for each tenant. 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, nor in the development of consistent requirements to be administered by distributors.

The AER will consider how it may use its exempt selling role to discourage future developments that do not afford customers the right to retailer of choice. Placing upfront network configuration and metering requirements directly on developers is likely to be outside the scope of the AER's powers as developers are not usually engaged in the provision of energy. Furthermore, exemptions will often only be

¹⁸ <http://www.aemo.com.au/electricityops/0640-0012.pdf>

sought once a building has been completed. Where there is no individual metering or the network configuration does not facilitate retail competition, it may be extremely difficult and costly to retrofit the building in order to allow customers to have access to retailer of choice. It is likely that this cost burden will fall on the owner or operator of the building rather than its developer, and will ultimately be passed through to owners and occupants within the building.

The AER will consider how best to extend full retail competition to exempt customers where comparable retail customers in the same jurisdiction have that right. Ultimately, however, the most effective solution may be through legislative change.

In the short term, it may be appropriate to allow an exemption where the metering arrangements are not able to facilitate customer choice of retailer, provided that the metering allows customers to be charged according to metered (rather than non-metered) consumption. In the longer term, the AER would expect that as more new developments enable customer choice of retailer, fewer energy selling situations will be eligible for a class exemption.

Q7: How important is it for customers in onselling situations to have access to choice of retailer?

Q8: Once network configuration/metering issues are addressed, are there any other impediments to exempt customers having access to choice of retailer for electricity?

It may also not be practicable for customers who use gas for limited purposes to choose their gas retailer. Units in some apartment complexes have gas cooktops, but the complexes are not configured to enable the use of other gas appliances. The expense of requiring individual metering to support retailer choice for this relatively limited gas usage is unlikely to be justifiable. Gas safety considerations, in particular the risk of gas explosions, mean that that costs of installing metering can be significant. Many bodies corporate in these situations absorb the gas costs into their body corporate fee, as jurisdictional tenancy legislation tends to prohibit them from charging tenants directly for unmetered energy.¹⁹ This may be appropriate given the relatively small amounts of gas used for cooking purposes.

The AER's approach to unmetered consumption is discussed below in section 4.3.7.

Q9: Where gas is only used for limited purposes, how important is it for customers in onselling situations to have access to choice of retailer for gas?

4.2.3 Customer protections

The third policy principle that the AER must take into account in carrying out its exempt selling functions refers to customer protections:

¹⁹ For example, see sections 52 and 53 of Victoria's *Residential Tenancies Act 1997* [http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/c7f3c6d8118d4bcaca256e5b00213c3d/\\$FILE/97-109a.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubStatbook.nsf/edfb620cf7503d1aca256da4001b08af/c7f3c6d8118d4bcaca256e5b00213c3d/$FILE/97-109a.pdf)

exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules

Under the proposed Retail Law and Retail Rules, retail customers are afforded a number of customer protections. These include obligations on retailers to offer a payment plan in the case of hardship, the right to have their bill based on a meter read (or reasonable estimate) and rules regarding connection, disconnection, and life support equipment. Such protections are not automatically extended to customers of exempt sellers. The AER recognises that these customers can be some of the most vulnerable in society and aims to ensure that they receive appropriate protections through the imposition of specific conditions on exempt sellers selling energy to small customers. These protections will complement the protections available to tenants under jurisdictional tenancy legislation.

One obstacle restricting exempt sellers from providing the full range of customer protections under the Retail Law and Retail Rules may be that many exempt sellers operate on a small scale, each servicing only a small number of customers, and so may not have the resources to provide customer protections such as hardship schemes. The AER's customer protection conditions that apply to small customers of exempt sellers will take this into account.

A key part of this policy principle is that customer protections should be provided 'as far as practicable'. While the AER does not want to over burden exempt sellers, it recognises the importance of ensuring that exempt customers are provided with protections that closely resemble those afforded to retail customers. After much consideration of the protections that would be 'practicable' to provide to exempt customers, the AER has reached the preliminary view that it is practicable to provide a core set of customer protections to all small exempt customers, regardless of the environment the exempt seller is operating in or the number of customers served. These protections are particularly important where customers have no choice but to purchase from the exempt seller.

The core protections which the AER proposes to afford exempt customers are set out in **Attachment 1**. These protections address:

- Provision of information about dispute resolution, flexible payment options, government energy rebates and concessions, and access to choice of retailer.
- Frequency of billing and provision of billing information.
- The requirement to use best endeavours to base a bill on a meter read or, where this is not possible, a reasonable estimate.
- Specifying the pay-by date for bills.
- A requirement to provide receipts.
- Bill adjustments to correct for undercharging and overcharging.
- Price setting and disclosure requirements.

- Protections regarding disconnection and continuity of supply.
- Assistance with accessing government energy rebates and concessions, where relevant.
- Hours when the exempt seller must be contactable.
- Dispute resolution provisions.
- Records maintenance and provision of account information (current and historical).
- Requirements with respect to life support equipment.

Q10: What core customer protections should exempt sellers be required to provide for their small customers?

Q11: Are the core protections proposed in the draft categories of deemed and registrable exemptions attached to this paper appropriate?

As the list above demonstrates, small exempt customers will receive a wide range of the protections that are provided to retail customers under the proposed Retail Law and Retail Rules. However, there are some Retail Law and Retail Rules protections which the AER considers it is not practicable to afford to small exempt customers. These are discussed below.

RoLR protections

As noted above, one key risk associated with operating under an exemption rather than a retailer authorisation is that customers may be left stranded if an exempt seller encounters financial difficulty. Under the proposed Retail Law, retail customers are provided with protections against such an event through the provision of a RoLR scheme. If a ‘mini RoLR’ event were to happen to an exempt seller, the exempt seller’s customers might be disconnected regardless of whether or not they have themselves paid the exempt seller for their energy consumption. The AER is considering whether any conditions can be imposed on exempt sellers that would mitigate the risks of such an occurrence.

Under the proposed classes of deemed and registrable exemptions, exempt sellers will be required to notify the AER if they receive a disconnection warning from their retailer, or are disconnected, so that procedures to avoid disconnection of the exempt seller’s customers can be investigated. They will also be required to advise affected exempt customers. In other words, if the onseller itself is threatened with disconnection, it will have obligations to notify its customers and the AER.

Q12: Do stakeholders agree with the requirement for exempt sellers to notify the AER, and their customers, of the possibility of disconnection?

Q13: Are there any conditions which the AER could impose which might help to mitigate the risk of an exempt seller failing and leaving its customers without supply? Would it be appropriate for the AER to do this?

Hardship protections

Under section 225 of the proposed Retail Law, a retailer must implement a hardship policy approved by the AER. The purpose of a hardship policy is to assist hardship customers to better manage their energy bills on an ongoing basis. In essence, the purpose is to avoid a customer being disconnected for non-payment of energy charges.

The AER has given much consideration to the hardship protections that could be included as a condition of deemed and registrable exemptions. The AER envisions that exempt sellers in tenancy situations (who are likely to be operating under a deemed or registrable exemption) will provide other services in addition to energy, such as accommodation. It is likely that customers experiencing financial difficulties with regard to energy charges would also experience financial difficulties with regard to their rent or accommodation charges.

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

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

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

The AER is likely to require persons operating under individual exemptions to develop hardship policies. It will determine the appropriateness of this requirement on a case by case basis.

Q14: To what extent can the protections found in hardship policies be applied to customers of exempt sellers operating under deemed and registrable exemptions?

Dispute resolution mechanisms

Under the AEMA, small customer dispute resolution is a state and territory responsibility.²⁰ Therefore, changes to the AEMA are required for the AER to require exempt sellers to provide dispute resolution mechanisms to their customers. The AER has raised this issue with policy makers.

For the purposes of this issues paper, the AER has assumed that the AER can determine customer dispute resolution arrangements for small customers of exempt sellers. On this basis, the draft categories of deemed and registrable exemption require the exempt seller to make reasonable endeavours to resolve any dispute concerning the sale of energy to an exempt customer, and to advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme and any relevant tribunal in the state or territory in which the exempt supply customer is located, if applicable.

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

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

Another option would be for the AER to require exempt sellers to develop and manage their own dispute resolution mechanism. This option may not be effective if small scale exempt sellers have little experience with dispute resolution, or if they are not committed to working with their customers to resolve any issues that arise. This option is potentially less costly for the exempt seller but it may be less likely to result in a satisfactory resolution of customer complaints.

Q15: In jurisdictions where the Ombudsman or dispute resolution schemes do not extend to exempt sellers, what dispute resolution processes should the exempt seller provide to its customers?

²⁰ See clause 17, Annexure 2 of the AEMA.

Internal complaints handling by exempt sellers

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

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

- Visibility – information about how and where to complain should be well publicised to customers and other interested parties.
- Accessibility – a complaints-handling process should be easily accessible to all complainants.
- Responsiveness – receipt of a complaint should be acknowledged to the complainant immediately and addressed promptly.
- Objectivity – each complaint should be processed in an equitable, objective and unbiased manner.
- Charges – the complaints-handling process should be free of charge to the complainant.
- Confidentiality – the complainant’s personally identifiable information should be available where needed but only for the purpose of addressing the complaint, and should be actively protected from disclosure unless consented.
- Customer-focused approach – the service provider should adopt a customer-focused approach, be open to feedback and committed to resolving complaints.
- Accountability – the service provider should ensure that accountability for and reporting on its actions and decisions is clearly established.
- Continual improvement – continual improvement of the complaints-handling process and the quality of its products should be a permanent objective of the organisation.

The Standard also contains information on how to action each of these principles which the AER believes would assist in reducing the administrative burden of developing dispute resolution processes.

The AER’s preliminary position is that any requirement to develop complaints handling arrangements should apply only to exempt sellers operating under an individual exemption, and not to those operating under a deemed or registrable class exemption.

Q16: Should exempt sellers operating under an individual exemption be required to base their dispute resolution processes on *Australian Standard AS ISO 10002-2006*, as amended and updated from time to time?

Q17: Should this requirement be extended to exempt sellers operating under a deemed or registrable class exemption, or to all exempt sellers selling to more than a certain number of customers? Why or why not?

4.3 Exempt seller related factors

The proposed Retail Law also outlines exempt seller related factors that the AER may take into account when performing or exercising an AER exempt selling function or power.²¹ Although these factors are not mandatory considerations for the AER, a greater understanding of how each may be used to assess exempt selling situations may aid the AER in better judging exemption applications and variations. The exempt seller related factors are discussed below.

4.3.1 Exempt seller ‘incidental’ requirement

The first exempt seller related factor considers whether selling is incidental to the exempt seller’s business:

whether selling energy is or will be a core part of the exempt seller’s business or incidental to that business

Exemptions are designed to reduce the administrative burden on small scale operators selling energy as an incidental activity. They should not be used as a means of avoiding the requirement to hold a retailer authorisation where selling energy is a core part of a person’s business. For this reason, the AER agrees with the idea that an exemption should only be allowed where selling energy is ‘incidental’ to that business. The difficulty lies in developing a threshold or test to govern what distinguishes an incidental business activity from a core business activity.

The ESCV considered what was meant by the words ‘incidental supply’ in its small scale licensing review, and noted the difficulties associated with trying to define this term.²²

One consideration in determining whether the sale of energy is incidental may be whether it can be practicably avoided. Where the sale of energy cannot be avoided it would be considered incidental, but where it can be avoided, it would be considered a core business activity. For example, a body corporate responsible for a large residential apartment building with metering that enables full retail competition *can* supply energy to its tenants, but this activity is discretionary as it could easily be avoided by having a retailer service each resident. On the other hand, installing metering to support full retail competition in many tenancy situations and in off-grid networks is not practicable, in which case the sale of energy would be considered incidental. This factor will not be considered in isolation, but rather in conjunction with other factors such as the number of customers being served.

²¹ See section 529 of the proposed Retail Law.

²² Page 19 of the Small Scale Licensing Review draft recommendations, released December 2006. Incidental supply is also discussed in the final report of the review.

The draft deemed and registrable exemptions categories attached to this paper reflect this distinction between avoidable and unavoidable onselling, as they are limited to onselling situations where the exempt customers do not have metering that enables access to retailer of choice. Persons who wish to engage in onselling who are not covered by a class exemption will require an individual exemption from the AER.

In considering applications for individual exemption, the AER proposes to examine whether the proposed onselling is avoidable, and intends to seek information from applicants on this question. For example, a body corporate which wished to onsell to dwellings within a strata property that can be serviced by an authorised retailer would require an individual exemption. A retailer authorisation would not be feasible in this situation, as under section 501 of the draft Retail Law, the body corporate would then need to meet a requirement to register with the Australian Energy Market Operator in relation to the relevant wholesale market or markets. (It may, however, be appropriate in such a situation for the AER to require the onseller to comply with all relevant obligations imposed on authorised retailers under the Retail Law).

The AER may consider the ‘incidental selling’ factor in conjunction with the factor which explores whether the exempt seller is intending to profit from their selling arrangement. A landlord selling energy to its tenants at cost is more likely to be considered an incidental activity by the AER. However, structuring the selling arrangement with the intention of making a profit from it may indicate that it is a core business activity in its own right. This could be inferred, for example, from the onseller setting its own tariff structure. In these circumstances it may be more appropriate for the onseller to seek a retailer authorisation.

A further consideration in judging whether selling energy is incidental to the exempt seller’s business may be the resources dedicated to the selling operations. If, for example, it takes the exempt seller only one day a month to manage the energy selling, it may be judged that energy selling is likely to be incidental to the exempt seller’s business. In contrast, if it took one (or more) full time staff to manage the energy selling, or if this was outsourced to an energy broker, it may be judged as a core part of the exempt seller’s business.

Q18: What sort of tests should the AER use to determine whether the sale of energy is incidental to a business?

Q19: Is the approach taken to the ‘incidental’ requirement in the categories of deemed and registrable exemptions appropriate?

4.3.2 Exempt seller’s circumstances

The second exempt seller related factor considers the exempt seller’s circumstances:

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.

The ‘exempt seller’s circumstances’ potentially covers a wide range of issues. However, one important factor is likely to be the practicability of registering as a

participant in the relevant energy wholesale market. Section 501 of the proposed Retail Law assumes that a person who holds a retailer authorisation will purchase from the wholesale market and will therefore need to register with AEMO. It may not be practical for persons such as onsellors or energy suppliers in off-grid networks, neither of whom purchase from the wholesale market, to register. To avoid unnecessary regulation of these activities it may be more practical to grant an exemption.

Q20: Are there any additional circumstances to those identified above (and in other parts of this issues paper) that would warrant the AER issuing an exemption rather than a Retailer Authorisation?

4.3.3 Profit intention of the exempt seller

The third exempt seller related factor considers whether or not the exempt seller intends to profit from the sale of energy:

whether the exempt seller is intending to profit from the arrangement

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

The AER believes that provided that pricing conditions are imposed to restrict the prices that the exempt seller can charge, the exempt seller's profit will be reasonably limited. It is when an exempt seller sells a large volume of energy, or sells to a large number of customers, that the amount of accounting profit earned could increase above an acceptable level (e.g. cost savings over and above efficiency gains are not passed on).

The AER does not support the concept of exempt sellers passing on an administration fee or similar fee (for example, a charge for meter reading) to their customers to cover any costs incurred in their operations. Any reasonable administration costs should be recovered as part of the energy tariffs. The draft determination of deemed and registrable exemptions attached to this paper requires that the exempt person must not impose any other charge on any exempt customer in relation to the supply of energy.

Pricing protections for off-grid supply arrangements are discussed in section 4.3.7

Q21: How should the AER judge an exempt seller's profit intentions?

Q22: Will the proposed pricing protections adequately protect exempt supply customers?

4.3.4 The ‘significance’ of the exempt seller’s activities

The fourth exempt seller related factor refers to the amount of energy to be sold by the exempt seller:

whether the amount of energy likely to be sold by the exempt seller is significant in relation to national energy markets

This exempt seller related factor provides further depth to the consideration of whether selling energy is incidental. For example, selling energy may be considered a core activity to a small operator due to its profit-making potential, but if the quantity of energy sold is minimal compared to that sold in the national energy markets, then an exemption may still be more appropriate than a retailer authorisation.

It could be argued that all exempt selling activities are insignificant 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.

The AER also notes that in the attached draft determination of deemed and registrable exemptions, onselling to more than 25 premises requires registration. The AER considers it appropriate to require registration in this situation due to the larger scale of such operations.

Q23: What additional information might the AER have regard to when considering the significance of the energy likely to be sold by an exempt seller?

4.3.5 Whether an exemption would provide appropriate governance of the exempt seller

The fifth exempt seller related factor considers whether the exempt seller would have appropriate obligations placed on it under an exemption, compared to those that would apply under a retailer authorisation.

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. For example, in a straightforward tenant/landlord situation, the applicable jurisdictional residential tenancies law may outline who is responsible for the cost of utilities and how the costs of these must be administered. However, this may not be true for more complex onselling situations such as boarding houses, which are not always captured under residential tenancies law and may therefore not be adequately governed. In such situations, there may not be adequate guidance for exempt sellers or adequate protections for tenants.

In other situations, state/territory legislation comprehensively addresses both distribution and retail aspects of embedded networks. For example, New South Wales comprehensively regulates customer service standards for the onselling of energy in residential parks.²³ Persons covered by these customer service standards are not required to comply with conditions of exemption in the attached draft determination of deemed exemptions.

Under the proposed Retail Law, the AER can impose conditions on an exempt seller or class of exempt sellers. This will allow the AER to complement any relevant jurisdictional legislation while ensuring that all instances of onselling are covered. Placing conditions on exempt sellers to abide by obligations based on some of the obligations imposed on authorised retailers will ensure that these entities are adequately governed without going as far as to require a retailer authorisation.

One issue with the AER imposing conditions on exempt sellers is that the rules applying to retailers may evolve through the rule change process, and rule changes would not automatically be reflected in all the exemption conditions. However, the proposed Retail Law allows the AER to vary a condition imposed on an exempt seller or class of exempt sellers at any time. This would allow any critical changes to the retail regulatory framework to be reflected in the obligations imposed on exempt sellers.

Q24: Will the obligations imposed through proposed exemption conditions (see attached) and existing state/territory tenancy legislation be sufficient to avoid requiring the exempt seller to obtain a retailer authorisation?

Q25: Are there any instances where state/territory tenancy and related legislation comprehensively addresses onselling, such that the conditions proposed in the attached draft determinations of deemed and registrable exemptions should not be applied?

4.3.6 The cost of obtaining a retailer authorisation compared to the benefits to the exempt seller's customers

The sixth exempt seller related factor compares the costs of the exempt seller obtaining a retailer authorisation (rather than operating under an exemption) to the benefits that would be provided to the exempt seller's customers if the exempt seller was authorised:

the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller

The policy principle that customers of exempt sellers should, as far as practicable, not be denied customer protections afforded to retail customers aims to minimise the 'gap' in the protections provided to these two types of customers. However, it will not always be practicable to require exempt sellers to develop the hardship policies and

²³ *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* (prescribed as the relevant code by the *Residential Parks Regulation 2006* (NSW) for the purposes of section 37(6)(b) of the *Residential Parks Act 1998* (NSW)).

other protections that retailers must have in place (see earlier discussion in section 4.2.3). A cost benefit analysis assessing aspects of customer service and protection against the cost of applying for a retailer authorisation is challenging.

It is likely that the cost associated with the onseller obtaining a retailer authorisation rather than an exemption would be passed on to its customers. Energy charges are capped but the cost may flow through in charges the customers pay for other services supplied by the onseller (for example, through accommodation charges). Ultimately it may not be in the best interests of the exempt seller's customers to require a retailer authorisation, particularly where customers are offered a number of protections through the conditions imposed under an exemption.

Q26: What methods might the AER adopt to determine the costs of obtaining a retailer authorisation compared to the benefits to customers of being serviced by a retailer rather than an exempt seller?

4.3.7 Any other relevant exempt seller related matter

There is an additional clause that gives the AER the discretion to consider any other exempt seller related matter when performing or exercising an AER exempt selling regulatory function or power.

any other seller related matter the AER considers relevant

Two key relevant issues which the AER has identified so far are the treatment of unmetered supply and off-grid supply arrangements.

Treatment of unmetered supply

There are some onselling situations where customers are not individually metered and therefore are not provided with access to retailer of choice. These situations are discussed above in section 4.2.2. The AER will give consideration to situations where customers purchasing from an onseller 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 charging tenants for energy unless the consumption has been separately metered. The AER supports these protections.

The AER has identified one instance of onselling being permitted where the customer is not separately metered, under the *Electricity Act 1994 (Qld)*.²⁴ The AER may refuse to provide exemptions for future developments or redevelopments where electricity use of individual dwellings 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. For existing buildings where the electricity use of individual dwellings is unmetered, the AER will take into account the costs of retrofitting meters when considering whether to include a sunset date in the relevant exemption.

The AER acknowledges that a requirement for individual gas metering of dwellings may not always be practicable or efficient. For example, as noted above in

²⁴ See sections 20 to 20H.

section 4.2.2, some apartment complexes have gas cooktops, but are not configured to enable the use of other gas appliances. It may be quite costly to require individual metering for relatively limited gas usage. Many bodies corporate in these situations absorb the gas costs into their body corporate fee. This may be appropriate given the relatively small amounts of gas used for cooking purposes and the low probability of consumers responding to price signals for such a limited usage. To facilitate this, the AER has proposed a deemed exemption for persons passing on the cost of energy as part of a bundled charge. This exemption would cover the 'sale' of energy through body corporate fees charged to owners. This exemption will not be subject to any conditions, and will only apply to the extent that such activity is considered a 'sale' of energy under the Retail Law and Rules.

Q27: Should the AER create a class of deemed exemption for persons engaged in the sale of unmetered energy where that is not prohibited by jurisdictional legislation? If yes, what conditions should be attached to that exemption? Should it be limited to existing dwellings and those that are currently in the planning stages?

Q28: Are there situations where it may be appropriate for the AER to grant an individual exemption to a new development that does not allow for individual electricity metering of dwellings?

Q29: In what situations would it be appropriate for the AER to grant an individual exemption to a new development that does not allow for individual gas metering of dwellings?

Q30: Are there concerns about situations where there is no meter, and the consumer is not billed separately for electricity/gas? Although the consumer 'pays' for the energy indirectly (most likely through higher rent or body corporate fees), are stakeholders aware of particular concerns regarding vulnerable consumers?

Q31: Are stakeholders aware of situations where there is no meter, but customers pay an itemised charge for electricity/gas on terms negotiated as part of the purchase or leasing arrangement?

Q32: Would electricity metering that is not compliant with national metrology procedures suffice in situations where it would be expensive to retrofit an existing dwelling?

Treatment of off-grid supply arrangements

Some jurisdictions have special arrangements dealing with the supply of energy to customers who are not connected to the national grid. These off-grid customers are often remotely located and are supplied energy from local companies that run private generators. If not supplied by local companies, these customers would have to rely on their own generation and fuel sources.

The AER considers that, in most circumstances, it will not be appropriate to require energy suppliers in off-grid networks to obtain a retailer authorisation. The national retailer authorisation process is designed around participation in the wholesale

electricity and gas markets. As these energy suppliers will not deal in the wholesale markets, requiring an authorisation may impose an unnecessary regulatory burden. In addition, other protections for customers such as access to retailer of choice are not relevant to off-grid supply arrangements where there is no retail competition.

As the circumstances in each case of off-grid supply are likely to vary significantly, the AER considers that these arrangements are best covered by individual exemptions. This will allow the needs of the energy supplier and the off-grid customers to be assessed on a case-by-case basis, with any conditions on an exemption tailored to the exempt seller's specific needs.

Not all of the conditions attached to the categories of deemed and registrable class exemptions set out by the AER for onselling in Attachment 1 will be relevant to off-grid energy suppliers. For example, the conditions imposing price protections for customers of the exempt seller will not be relevant. As off-grid customers are unlikely to be covered by retail price regulation, the AER is unable to specify a maximum price that can be charged to these customers by reference to the standing offer price of the local area retailer.

Q33: Is it appropriate for the AER to require energy suppliers in off-grid networks to seek individual exemptions?

Q34: Are pricing protections necessary for off-grid customers? If so, what conditions could the AER impose on off-grid suppliers to limit energy prices?

Q35: What other seller related factors might the AER consider in addition to those outlined in the Law?

4.4 Customer related factors

In addition to the exempt seller related factors, the proposed Retail Law outlines customer related factors which the AER may also take into account when performing or exercising an AER exempt selling function or power.²⁵ The customer related factors are discussed below.

4.4.1 Characteristics of the exempt customers

The first customer related factor in the proposed Retail Law considers whether the characteristics of the exempt customers warrant exemption:

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 would differ greatly 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. Energy customers in most residential tenancy situations are likely to be covered under jurisdictional tenancy legislation, but fewer protections are offered for commercial/retail tenants.

²⁵ See section 530 of the proposed Retail Law.

The AER's preliminary position is to consider customers in terms of the proposed Retail Law's consumption thresholds.²⁶ 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.

Large business customers for whom energy costs may be a significant expense are likely to give consideration to the onselling arrangements as part of their lease negotiation. The AER has therefore taken the preliminary view that where an exemption is granted for the sale of energy to large customers, no conditions will be imposed. However, the AER has sought views on whether it is appropriate to impose a condition preventing an exempt seller from hindering a large customer from accessing the retailer of their choice (see section 4.2.1).

In contrast, customers of exempt sellers will tend to be residential customers (or smaller business customers). They may not have factored energy costs into their tenancy costs. The core deemed and registrable exemptions categories therefore require the exempt seller to provide its customers with information regarding energy charges and other fees that the exempt supply customer will be liable for.

In determining exemptions for the supply of energy to off-grid customers, the AER will also consider whether customers who have no alternative source of energy would be disadvantaged if an exemption was not issued, or if an exemption was issued on terms that made it uneconomic for the exempt seller to supply them with energy.

Q36: What specific customer characteristics or circumstances make it appropriate for them to be served under an exemption rather than a Retailer Authorisation?

4.4.2 Whether an exemption would provide appropriate protections to exempt customers

The second customer related factor considers whether the exempt customers would receive appropriate protections if serviced by the exempt seller:

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 issues surrounding conditions on exempt sellers relating to customer rights and protections are discussed above in section 4.2.3, and are also addressed in question 24 of this issues paper.

²⁶ As defined in regulations 8 and 9 of the draft National Energy Retail Regulations.

4.4.3 Any other relevant customer related matter

There is an additional clause that gives the AER the discretion to consider any other customer related matter when performing or exercising an AER exempt selling regulatory function or power.

any other customer related matter the AER considers relevant

Q37: What other customer related factors might the AER consider in addition to those outlined in the Law and those discussed in section 4.2.3?

5 Proposed Exemptions

5.1 Deemed class exemptions and Registrable class exemptions

Under section 525 of the Retail Law and rule 903 of the Retail Rules, deemed exemptions apply automatically to a class of sellers determined by the AER. Registrable exemptions also apply to a class of sellers, but are only effective from the date on which a person registers with the AER as belonging to that class. Energy retailing activities which are not covered by a deemed or registrable exemption will require an individual exemption or a retailer authorisation.

In determining draft classes of exemptions, a key issue for the AER is whether or not to require registration. Requiring registration of an exempt seller may have two benefits in terms of accountability. Firstly, the exempt seller will be aware that its operations are known to the AER and thus that it is not operating ‘under the radar’. The mere awareness that a regulatory framework applies to it may be enough to encourage the exempt seller into greater compliance with its obligations. Secondly, registration of an exempt seller may result in the exempt seller having a greater understanding of its obligations; once the AER becomes aware of the existence of an exempt seller, by means of registration, it may be able to provide the exempt seller with information regarding the exempt seller’s obligations.

Registration of exempt sellers will also facilitate more targeted regulatory oversight of their activities by the AER.

Finally, registration will give the AER an idea of the scale of the exempt activities and the types of customers affected. This will enable the AER to make more informed regulatory decisions regarding exempt selling, particularly in relation to the types of conditions that are appropriate, and the circumstances in which an individual exemption or retailer authorisation may be more appropriate than a class exemption.

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

The AER’s preliminary view is that the key distinction between deemed and registrable exemption categories for onsellors will be the number of premises the onseller is capable of servicing. Basing the categories on the total number of premises within a single site (rather than the number of premises that the onseller is providing energy services to) ensures that temporary fluctuations in the number of exempt customers, and fluctuations in the total amount of energy sold, do not result in an exempt seller who previously came within a deemed exemption being covered by a registrable exemption, and vice versa.

The AER considers that an onseller capable of servicing more than 25 premises within a site is operating a significant onselling operation, and should be required to register (and, in some situations, to obtain an individual exemption) rather than automatically qualifying for a deemed exemption.

Q38: Do stakeholders agree with the AER's registration threshold of 25 premises with a single site? Why or why not?

Transition period

Exempt sellers operating prior to the implementation of the National Energy Customer Framework will be doing so in one of two ways under jurisdictional legislation. They will either operate on a self-assessment basis against a set of criteria, or by approval after an individual application to the jurisdictional regulator or department. It is anticipated that sellers who are exempt by approval will maintain their status under the national framework and be transitioned to the public register as part of the respective jurisdiction's transitional legislation.

Registered exempt sellers will be granted a grace period during which they will need to register with the AER. This will be achieved by creating a temporary deemed exemption, to be replaced by a registrable exemption that the exempt seller must register as belonging to prior to, or at, the expiry date of the grace period.

5.2 Class exemption categories

To facilitate consultation, the AER has developed draft classes of deemed and registrable exemptions to accompany this issues paper. A draft determination of deemed exemptions and a draft determination of registrable exemptions are provided in **Attachment 1**.

The proposed Retail Law and Retail Rules do not provide specific guidance on which sorts of retailing activities may be appropriate for exemption or, more specifically, which activities are appropriate for each of the different types of exemption.

The rationale for the draft classes of exemption is discussed below.

5.2.1 Classes of deemed exemptions

Based on current jurisdictional exemption arrangements and preliminary discussions with stakeholders, the AER has developed draft classes of activities which are suitable to fall under deemed exemptions. For clarity, each activity is defined as a separate class.

Class 1 exemptions

The main category of proposed deemed exemption (Class 1) is for onsellers who own, occupy or operate multiple dwellings or premises at a single site. The AER considers that such persons should be exempted in respect of retailing activities on a site-specific basis (i.e. whether or not an exemption applies will depend upon the characteristics of the individual site).

The AER has formed the preliminary view that exemptions should be attached to the site at which the onselling occurs rather than to the entity that is the onseller. This is because suitability for an exemption will often be dependent on the characteristics of the site itself, not those of the onseller. For example, whilst the same onseller may be selling energy at two sites, the infrastructure at one of these sites may be such that it

would be possible for customers to choose their own retailer whereas at the other site the infrastructure may make such a choice impracticable, if not impossible.

Class 1 exemptions apply to owners, occupiers and operators of a site. Some examples of ‘owners’ and ‘occupiers’ which may engage in onselling are:

- landlords and lessors of residential and commercial/industrial premises
- proprietors of hostels, boarding houses, rooming houses, caravan parks, residential parks and campsites.

Some examples of ‘operators’ which may engage in onselling are:

- bodies corporate of strata title (or similar title) properties
- managers of shopping centres and industrial parks
- persons sub-letting premises such as rooming houses that they do not occupy or own.

This first class of deemed exemption will only apply to owners, occupiers and operators engaged in onselling at a individual site with 25 or less separately metered small customer premises, where access to retailer of choice at those premises is *not* available. The AER considers that sites where access to retailer of choice *is* possible should not be covered by a deemed exemption because customers of those sites should generally be supplied by an authorised retailer. The range of conditions that apply to this class are set out in the attached draft determination.

Q39: Do stakeholders agree with the AER’s proposed Class 1 deemed exemption? Why or why not?

Q40: Do stakeholders agree with the conditions outlined in the attached draft determination that will apply to this class of deemed exemption? Why or why not?

Class 2 exemptions

A deemed exemption is also proposed where a person passes on the cost of energy in a charge for rent, accommodation or other services, provided that there is no separate itemised charge for energy. This exemption will apply where energy charges are absorbed into other charges and are not disclosed to the customer. For example, a body corporate may pass on the cost of energy for common areas of a strata title building (common stairwells, parking, gardens, garbage facilities, lifts, recreational facilities, etc) through body corporate fees.

This exemption has been included to address any doubt about what constitutes a sale of energy under the Retail Law.

No conditions of exemption are proposed for this class of deemed exemption.

Q41: Do stakeholders support the AER providing a blanket exemption (the Class 2 deemed exemption) to cover situations where energy is passed through without a separate charge? Why or why not?

Q42: Do stakeholders agree with the AER's proposal for this exemption to be issued without conditions?

Class 3 exemptions

A deemed exemption is proposed for persons engaged in the onselling of energy to a related company. No conditions of exemption are proposed for this Class 3 exemption.

Q43: Do stakeholders agree with the AER's proposed Class 3 deemed exemption? Why or why not?

Class 4 and 5 exemptions

The AER will also allow transitional deemed exemptions for persons engaged in onselling metered energy to:

- small customers within the limits of a site they own, occupy or operate where there are more than 25 small customer premises, or
- large customers within the limits of a site they own, occupy or operate.

As with the Class 1 exemption, these exemptions will be limited to circumstances where access to retailer of choice is not available for the customers. The exemption for small customers is subject to the same conditions that apply to Class 1 exemptions. The exemption for large customers will not be subject to any conditions.

It is proposed to revoke these exemptions on 30 June 2013. These exemptions will then be replaced by registrable exemptions (see below).

Q44: Do stakeholders agree with the AER's proposed Classes 4 and 5 deemed exemptions? Why or why not?

Q45: Do stakeholders agree with the conditions outlined in the attached draft determination that will apply to small customers under the Class 4 deemed exemption? Why or why not?

5.2.2 Classes of registrable exemptions

The AER proposes to have two classes of registrable exemptions. The first will cover onselling to small customers at sites with more than 25 premises; and the second will cover any onselling to large customers.

These registrable exemptions classes will take effect on 30 June 2013. These classes will replace the temporary deemed exemption Classes 4 and 5, and will operate under the same conditions proposed for those exemptions.

Q46: Do stakeholders agree with the AER's proposed classes of registrable exemptions? Why or why not?

Q47: Is the approach of allowing a transitional deemed exemption that will be replaced by a registrable exemption appropriate? Will the proposed expiry date allow sufficient time for the relevant exempt sellers to register?

5.3 Individual exemptions

Persons who wish to sell energy who are not covered by a class exemption will require an individual exemption or retailer authorisation from the AER. The AER's draft *Retailer Authorisation Guideline* sets out an application process for prospective retailers. An application process will also be included in the AER's *Exempt Selling Guideline*.

Prior to the submission of a retailer authorisation or exemption application, the AER recommends that prospective retailers attend a briefing with the AER to ensure that they have a clear understanding of the AER's expectations. This process would also help an applicant determine whether it is appropriate to seek an authorisation or an individual exemption.

Any person who falls under a deemed or registrable exemptions class may instead seek an individual exemption. This may occur where the applicant does not consider that the conditions attached to the classes of deemed and registrable exemptions are appropriate for their particular circumstances. Individual exemptions can also be sought where the applicant's particular circumstances are not covered by any deemed or registrable exemptions. For example, as discussed in section 4.3.7, the AER's preliminary view is that individual exemptions are appropriate for supply arrangements in off-grid networks.

A key issue for the AER will be whether to issue individual exemptions in perpetuity, or to issue them for a time-limited period and require the exemption holder to seek a new exemption at the end of that period. The AER's preliminary view is that individual exemptions should generally be issued for a time-limited period.

Q48: Should individual exemptions be time-limited?

Attachment 1 - Draft determination

Deemed exemptions

The AER determines the following classes of persons as classes of persons in respect of whom a deemed exemption is taken to be in force for the purposes of section 525 of the National Energy Retail Law and rule 903 of the National Energy Retail Rules.

Class 1 – Persons engaged in onselling metered energy within the limits of a site that they own, occupy or operate with 25 or less separate small customer premises

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

Persons engaged in the onselling of energy where:

1. the sale of energy is within the limits of a site owned, occupied or operated by that person;
2. the site includes 25 or less small customer premises; and
3. the sale of energy is to a separately metered small customer that does not have access to a retailer of choice because their meter has not been assigned a meter identifier for wholesale market purposes.

For the purposes of this exemption, a reference to small customer premises is a reference to premises occupied by a person who meets the definition of ‘small customer’ in the dictionary at the conclusion of this section.

Conditions

The following conditions apply to the sale of energy to exempt customers by exempt sellers covered by the Class 1 deemed exemption.

These conditions do not apply to the sale of energy by persons covered by the Class 1 deemed exemption that are park owners involved in the supply of energy to residents where that supply of energy is covered by the *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* (prescribed as the relevant code by the *Residential Parks Regulation 2006* (NSW) for the purposes of section 37(6)(b) of the *Residential Parks Act 1998* (NSW)).

Condition 1 - Information provision

1. The exempt seller must advise exempt customers at the start of their tenancy/residency of the following:
 - a. the exempt customer’s rights in relation to dispute resolution including any right that the exempt customer has to access the energy Ombudsman scheme and any relevant complaints tribunal in the state or territory in which the exempt customer is located

- b. any flexible payment options for energy provided by the exempt person for exempt customers experiencing financial payment difficulties, including payment plans for payment by periodic instalments
 - c. the availability of relevant government energy rebates, concessions and relief schemes
 - d. any right of the exempt customer, under state/territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice.
2. The information set out in paragraph 1 of this condition must be provided by the exempt seller at the request of the exempt customer or the AER.
3. The information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable (and at least within three months) after the determination is in force.

Condition 2 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer:
 - a. at least once every three months, and
 - b. where rent or accommodation charges for occupation of the small customer premises are paid more frequently than every three months, no more frequently than these are paid.
2. This condition does not apply where an alternative payment plan has been agreed between the exempt person and an exempt customer experiencing financial difficulties.
3. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. Date that the account was issued.
 - c. The pay-by date for the bill.
 - d. Date of the current meter reading or estimate, as applicable.
 - e. Current meter reading or estimate in kilowatt hours and/or gigajoules, as applicable.
 - f. Previous meter reading or estimate in kilowatt hours and/or gigajoules, as applicable.
 - g. Days in the meter reading period.

- h. The amount of energy consumed, or estimated to be consumed, in the meter reading period.
- i. Tariffs and charges applicable to the exempt customer.
- j. The basis on which tariffs and charges are calculated.
- k. Any amount deducted, credited or received under a government-funded energy charge rebate, concession or relief scheme or under a payment plan.
- l. A telephone number for account enquiries and complaints.

Condition 3 - Estimation as basis for bills

- 1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
- 2. An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
- 3. Where an estimation is used as the basis for a exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the exempt customer reasonably available to the exempt person; or
 - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
- 4. If a customer's bill is based on an estimation, the exempt person must state so clearly on the exempt customer's bill.

Condition 4 - Pay-by date

- 1. The pay-by date for a bill must not be less than 12 business days from the date on which the exempt person issues the bill.

Condition 5 - Receipts

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

Condition 6 - Undercharging and Overcharging

- 1. Where an exempt seller has undercharged an exempt customer, it may recover from the exempt customer the amount undercharged. In recovering any undercharged amount, the exempt seller must—

- a. limit the amount to be recovered to the amount undercharged in the 12 months before the date the exempt customer is notified of the undercharging, unless the amount was undercharged as a result of the exempt customer's fault or unlawful act or omission; and
 - b. not charge the exempt customer interest on that amount; and
 - c. state the amount to be recovered as a separate item in a special bill or in the next bill, together with an explanation of that amount; and
 - d. offer the exempt customer time to pay that amount by agreed instalments, over a period nominated by the exempt customer being no longer than—
 - i. the period during which the undercharging occurred (if the undercharging occurred over a period of less than 12 months); or
 - ii. in any other case, 12 months.
2. Where an exempt customer has been overcharged by an amount equal to or more than \$50, the exempt seller must inform the exempt customer accordingly within 10 business days after the exempt seller becomes aware of the overcharging.
- a. If the amount overcharged is equal to or above \$50, the exempt person must—
 - i. repay that amount as reasonably directed by the exempt customer; or
 - ii. if there is no such reasonable direction, credit that amount to the next bill; or
 - iii. if there is no such reasonable direction and the exempt customer has ceased to purchase energy from the exempt seller, use its best endeavours to refund that amount within 10 business days.
 - b. If the amount overcharged is less than \$50, the exempt person must credit that amount to the next bill.
 - c. No interest is payable on an amount overcharged.
 - d. If the exempt customer was overcharged as a result of the exempt customer's fault or unlawful act or omission, the exempt seller is only required to repay, credit or refund the exempt customer the amount the exempt customer was overcharged in the 12 months before the error was discovered.

Condition 7 - Pricing requirements

- 1. An exempt person must, prior to selling energy to the exempt customer, inform the exempt customer in writing of the tariffs and all fees and charges applicable to the exempt customer, and the basis on which tariffs, fees and charges are calculated.

2. An exempt person must, prior to or as soon as they commence selling energy to any exempt customer, inform the exempt customer in writing of the availability of any government energy rebates, concessions and relief schemes.
3. An exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.
4. An exempt person must provide notice in writing to the exempt customer of any increases to the applicable tariff. Such notice must be provided within 5 business days of the exempt person becoming aware of the increase in the applicable tariff.
5. An exempt person must not impose any other charge on an exempt customer in relation to the supply of energy.
6. The information set out in paragraphs 1 and 2 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable (and at least within three months) after the determination is in force.

Condition 8 - Payment difficulties and disconnection or cessation of supply

1. Subject to Condition 9, an exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
 - a. the exempt customer has requested disconnection, or
 - b. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and
 - c. the exempt person has given the exempt customer at least 10 business days written notice of the intention to disconnect and the reason for disconnection.
2. The exempt person must not disconnect the exempt customer if the exempt customer pays the bill, or makes any outstanding payments under the terms of the payment plan, after receiving notice of the intention to disconnect.

Condition 9 - When disconnection or cessation of supply is prohibited

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation
 - b. an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made

- c. the exempt customer has made a complaint, directly related to the proposed reason for disconnection or cessation of supply, to the energy Ombudsman and the complaint remains unresolved
- d. the disconnection or cessation of supply would occur:
 - i. on a business day before 8am or after 3pm, or
 - ii. a Friday or the day before a public holiday, or
 - iii. a weekend or a public holiday, or
 - iv. the days between 20 December and 31 December (both inclusive) in any year.
- e. This condition does not apply where the exempt customer has requested disconnection.

Condition 10 - Reconnection of supply

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

Condition 11 - Concessions and Rebates

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

Condition 12 - Choice of retailer

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

Condition 13 - Contact hours

An exempt person must operate a telephone number for account enquiries and complaints during business hours which can be accessed by exempt customers for no more than the cost of a local telephone call.

Condition 14 - Dispute resolution

In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:

1. make reasonable endeavours to resolve the dispute, and
2. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme and any relevant tribunal in the state or territory in which the exempt customer is located, if applicable.

Condition 15 - Life support customers

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

Condition 16 - Continuity of supply

An exempt person must notify the exempt customers and the AER immediately if they receive a disconnection warning notice or are disconnected, or there is any likelihood that they will be unable to continue onselling energy.

Condition 17 - Maintaining records

An exempt person must maintain records of the following for each of its exempt customers:

1. The name of the exempt customer.
2. Date that the account was issued.
3. Date of the current meter reading or estimate, as applicable.
4. Current meter reading or estimate in kilowatt hours and/or gigajoules, as applicable.
5. Previous meter reading or estimate in kilowatt hours and/or gigajoules, as applicable.
6. Where the current and previous bills have been based on estimated consumption, details of the most recent meter read (including date and meter reading in kilowatt hours and/or gigajoules).
7. Days in the meter reading period.

8. Calculation of charges showing the total consumption, applicable rates and total amount payable.
9. The basis for determining any estimates of consumption.
10. Copies of any bills issued for the previous 12 months.

Condition 18 - Historical billing information

An exempt person must provide exempt customers with historical billing data for the previous 12 months on request and free of charge within five business days of being asked.

Class 2 – Persons passing on an undisclosed cost of energy

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

Persons passing on the cost of energy incurred within the limits of a site owned, occupied or operated by that person where:

1. the cost of energy is included in a charge for rent, accommodation or other services; and
2. there is no separate itemised charge for energy.

For the avoidance of doubt, this exemption includes a body corporate or owners' corporation that passes on the cost of energy through body corporate fees.

Class 3 – Persons engaged in the onselling of energy to a related company

A deemed exemption is in force in respect of persons engaged in the onselling of energy to a related company of the person.

For the avoidance of doubt, where a company is:

1. a holding company of another company; or
2. a subsidiary of another company; or
3. a subsidiary of a holding company of another company;

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

Class 4 – Persons engaged in onselling metered energy to small customers within the limits of a site they own, occupy or operate

It is proposed to revoke this exemption on 30 June 2013. This exemption will then be replaced by a registrable exemption (see Class 6 below).

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

Persons engaged in the onselling of energy where:

1. the sale of energy is within the limits of a site owned, occupied or operated by that person;
2. the site is separated into separate customer premises; and
3. the sale of energy is to a separately metered small customer that does not have access to a retailer of choice because their meter has not been assigned a meter identifier for wholesale market purposes.

This exemption does not apply to persons falling within the Class 1 deemed exemption.

Conditions

The conditions that apply to the sale of energy to exempt customers by exempt sellers covered by this Class 4 deemed exemption will be the same as those that apply to the sale of energy covered by the Class 1 deemed exemption.

Class 5 – Persons engaged in onselling metered energy to large customers within the limits of a site they own, occupy or operate

It is proposed to revoke this exemption on 30 June 2013. This exemption will then be replaced by a registrable exemption (see Class 7 below).

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

Persons engaged in the onselling of energy where:

1. the sale of energy is within the limits of a site owned, occupied or operated by that person;
2. the site is separated into separate customer premises; and
3. the sale of energy is to a separately metered large customer that does not have access to a retailer of choice because their meter has not been assigned a meter identifier for wholesale market purposes.

Registrable exemptions

The AER determines the following classes of persons as classes of persons in respect of whom an exemption is registrable for the purposes of section 525 of the National Energy Retail Law and rule 904 of the National Energy Retail Rules.

This determination does not apply to persons in respect of whom a deemed exemption is in force.

Class 6 – Persons engaged in onselling metered energy to small customers within the limits of a site that they own, occupy or operate

This registrable exemption will replace the temporary deemed exemption Class 4 on 30 June 2013. Exempt sellers may, however, register as belonging to this class before this date.

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

Persons engaged in the onselling of energy where:

1. the sale of energy is within the limits of a site owned, occupied or operated by that person;
2. the site is separated into separate customer premises; and
3. the sale of energy is to a separately metered small customer that does not have access to a retailer of choice because their meter has not been assigned a meter identifier for wholesale market purposes.

This exemption does not apply to persons falling within the Class 1 deemed exemption.

Conditions

The conditions that apply to the sale of energy to exempt customers by exempt sellers covered by this Class 6 deemed exemption will be the same as those that apply to the sale of energy covered by the Class 1 deemed exemption.

Class 7 – Persons engaged in onselling metered energy to large customers within the limits of a site they own, occupy or operate

This registrable exemption will replace the temporary deemed exemption Class 5 on 30 June 2013. Exempt sellers may, however, register as belonging to this class before this date.

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

Persons engaged in the onselling of energy where:

1. the sale of energy is within the limits of a site owned, occupied or operated by that person;
2. the site is separated into separate customer premises; and
3. the sale of energy is to a separately metered large customer that does not have access to a retailer of choice because their meter has not been assigned a meter identifier for wholesale market purposes.

Dictionary

disconnection of premises means—

1. in the case of electricity—the opening of a connection; or
2. in the case of gas—the closing of a connection;

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

energy means electricity or gas or both.

energy Ombudsman scheme means a scheme associated with the energy Ombudsman.

exempt person means a person who is exempted by the AER under a deemed or registrable exemption from the requirement to hold a retailer authorisation.

exempt customer means 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.

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

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

onselling means the acquisition of energy from a retailer following which the person acquiring the energy or a person acting on their behalf or a related body corporate sells energy to a customer who is within the limits of premises owned, occupied or operated by the relevant person.

retailer means a person who is the holder of a retailer authorisation.

small customer means a customer—

1. who is a residential customer; or
2. who is a business customer who consumes energy at business premises below the upper consumption threshold of 100 megawatt hours per annum for electricity or 1 terajoule per annum for gas.