



**Regulation of alternative energy sellers  
under the *National Energy Retail Law*:  
Issues Paper**

October 2013

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### **Amendment record**

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# 1. Introduction

Increasing energy prices, a desire to manage consumption and growth in renewable energy options have led to increased consumer demand for alternative energy products. In turn, this has led to changes in the way that consumers engage - or want to engage - with the energy market. Businesses have responded by developing new and innovative ways of selling energy.

Changing market conditions, including the reduction of jurisdictional feed in tariffs (FIT) and reductions in solar panel rebates, have also contributed to the growth in this business sector.

The *National Energy Retail Law (Retail Law)* regulates the sale of energy. It requires anyone selling energy (gas or electricity) to persons for premises to be authorised, or exempt from the requirement to be authorised. The Australian Energy Regulator (AER) is responsible for regulating anyone who sells energy and for administering retailer authorisations and exemptions.

Authorised retailers currently operating in the National Energy Market (NEM) have historically operated under a business model that we describe in this paper as a 'typical' energy retailer model (described further in section 2 below). Under this model the retailer is the sole provider of a customer's energy (gas or electricity) and energy is sold as an essential service. Once a business is authorised, it is bound by a range of obligations under the *Retail Law*.

Not all energy sellers require a retailer authorisation and a retail exemption may be granted, for example, to businesses where the sale of energy is incidental to the business's core activity, or is provided as a community service.

Since the *Retail Law* commenced we have been approached by a range of businesses offering new and innovative energy products that involve the sale of energy. Generally, these new energy sellers do not sell energy under a 'typical' energy retailer model and are also different from typical exempt sellers.

This paper discusses the extent to which those businesses should be regulated under the *Retail Law*.

## 1.1 Purpose of consultation

Although these alternative energy selling models were not explicitly contemplated at the time the *Retail Law* was drafted, we consider that, the current *Retail Law* retailer authorisations and exemptions framework can provide appropriate regulatory oversight for these sellers. Our approach to regulating these businesses will be governed by a range of factors, for example whether the business is providing an essential or supplementary energy service.

We are seeking input from stakeholders on our proposed approach to regulating alternative energy sellers; including the factors that will determine our approach and the weight they should be given. We are also interested in understanding whether other alternative energy selling models exist, and whether stakeholders consider that these sellers raise implications under other consumer protection frameworks.

The *Retail Law* provides energy-specific protections for customers (with residential customers receiving more extensive protections than large customers). Customers of exempt sellers receive protections as a condition of the seller's exemption and are also covered by other additional legislative and/or consumer protection frameworks.

Examples include:

- under the Consumer Credit Code, administered by the Australian Securities and Investments Commission (ASIC), particularly where sellers are engaging in a 'hire purchase' arrangement
- under the Competition and Consumer Act 2010 (CCA 2010), where an alternative energy seller engages in misleading and deceptive, unconscionable or third line forcing conduct
- under the Australian Consumer Law (ACL), which provides remedies for unfair contract terms, warranties, and product safety
- state and territory Fair Trading offices.

In this paper we are seeking to deal only with the implications of these new business models from an energy legislation perspective. The other legislative requirements which may apply are not within the scope of this review.

Specific stakeholder questions are set out at section 5 of this paper.

## 2. Selling energy under the Retail Law

Energy is an essential service, necessary to provide a basic standard of living.<sup>1</sup> In developing the *Retail Law*, the Ministerial Council on Energy Standing Committee of Officials (MCE SCO) considered the ‘essential service nature of energy supply for the health, safety and well-being of the citizens of Australia.’<sup>2</sup> It noted that customers should be able to access a basic supply that meets their need. Moreover, because energy is an essential service, energy consumers require comprehensive protections beyond those offered under generic consumer protection legislation.

### 2.1 Sale of energy – definition

The ‘sale of energy’ under the *Retail Law* is the sale of gas or electricity to a person or business for use at premises, and is reflected in a separate, discrete charge for energy. It includes:<sup>3</sup>

- any sale of gas or electricity at a person’s residential home, which includes places of permanent residence such as caravans, manufactured homes, whether for general domestic purposes or for a specific purpose<sup>4</sup>
- any sale of gas or electricity for use in a business, factory, industrial site or other fixed location.

### 2.2 Typical energy selling model under the *Retail Law*

Despite differences in their offerings and the scale and nature of their operations, ‘typical’ energy retailers share a number of features. Under a ‘typical’ energy retail model:

- the seller is usually the sole supplier of a particular fuel type (gas or electricity, or both) to a customer’s premises
- energy is sold as an essential service, and the sale of energy forms part of the seller’s core business

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<sup>1</sup> Productivity Commission, [Review of Australia’s Consumer Policy Framework](#), Report: Volume 2, pp. 108-109, May 2008.

<sup>2</sup> Ministerial Council on Energy, Standing Council of Officials, *A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers – Policy Response Paper*, June 2008, p. iv

<sup>3</sup> A sale of energy is not taking place where energy costs are absorbed into another fixed charge (for example, rent that includes energy costs, or a hotel tariff that includes energy costs), or where they are shared, for example, in a group house or a community facility.

<sup>4</sup> This may include, for example, a sale of energy for the charging of an electric vehicle (EV) at a person’s residential premises. Charging of an EV at a person’s residential premises is distinct from a commercial charging facility – such as those located in shopping centres or car parks. We do not consider commercial charging to constitute consumption ‘for premises’ for the purposes of s. 88 of *the Retail Law* as the energy sale is for an external, mobile purpose.

- the seller is registered with Australian Energy Market Operator (AEMO) to purchase from the wholesale market for gas and/or electricity, and is financially responsible in the wholesale market for the premises<sup>5</sup>
- the seller offers electricity and/or gas contracts which run for a specified short to medium term period (for example, one, two or three years)
- the seller offers electricity and/or gas contracts which generally provide for the sale of energy as a primary or standalone service and include the network and wholesale energy charges incurred by the energy retailer
- gas and/or electricity to the customer(s) is delivered via regulated transmission and distribution networks (that is, the customer is connected to the national ‘grid’ and has a national meter identifier (NMI) for electricity or meter installation reference number (MIRN) or delivery point identifier (DPI) for gas).

Sellers described above require a retailer authorisation and must abide by certain conditions which are prescribed through uniform regulatory requirements under the *Retail Law*. Appendix A summarises entry requirements for authorised retailers (retailers) under the *Retail Law*. It also sets out the broad obligations that retailers must meet once they are authorised.

## **2.3 Exceptions to the ‘typical’ retailer model under the *Retail Law***

In developing the *Retail Law*, the Ministerial Council on Energy Standing Council of Officials (SCO) recognised that not all energy sellers operate under the business model described in section 2.2 above. It noted that ‘exemption’ regimes are traditionally used ‘to accommodate activities that do not fall easily into – or warrant the full imposition of – the retailer authorisation regime.’<sup>6</sup> Examples include (but are not limited to):

- a strata/property/caravan park manager onselling to customers
- the sale of energy to customers in remote locations
- situations where the supply of energy to retail customers is not the primary focus of the entity and constitutes a very small portion of its business.<sup>7</sup>

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<sup>5</sup> The National Energy *Retail Law* does not require wholesale market registration as a precondition to obtaining a retailer authorisation; however, the majority of authorised retailers are registered as market participants with the Australian Energy Market Operator (AEMO).

<sup>6</sup> *ibid.*

<sup>7</sup> Ministerial Council on Energy, Standing Council of Officials, *A National Framework for Regulating Electricity and Gas (Energy) Distribution and Retail Services to Customers – Policy Response Paper*, June 2008, pp. 80-84.

The *Retail Law* provides a framework for businesses that sell energy under different circumstances from a ‘typical’ energy retailer. Certain types of energy sellers are exempt from the need to obtain a retailer authorisation.<sup>8</sup> These are known as class exemptions, and are designed to reflect the longstanding practice of energy ‘reselling’ in embedded networks.<sup>9</sup> Class exemptions cover incidental sales of energy by businesses such as retirement villages, caravan park owners and residential or commercial landlords. These sellers do not sell energy as their core business, and sell energy through a pre-existing relationship with their customers (for example, a landlord/tenant relationship).

Individual exemptions are available to businesses that engage in the sale of energy but do not fall within one of the class exemptions. Appendix B discusses obligations that apply to exempt sellers and the *Retail Law* exemptions framework more generally.

## 2.4 Consumer protections

Customers purchasing energy from retailers are provided uniform protections under the *Retail Law*. Customers purchasing energy from exempt sellers also have rights under the AER’s *Exempt Selling Guideline*, and these are consistent with protections under the *Retail Law* wherever feasible. Key protections are summarised below.

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<sup>8</sup> The businesses which are exempt by our class exemptions are described in our *Exempt Selling Guideline*. The *Retail Law* empowers us to develop an Exempt Selling Guideline which sets out how we regulate exempt sellers.

<sup>9</sup> An embedded network is a privately owned network used to distribute energy – for example, a retirement village, office building, shopping centre, apartment building or other defined site. Typically, energy distributed through embedded network is ‘resold’ – that is, the network owner buys energy from a retailer and then resells it to tenants or customers within the network. This is also sometimes referred to as onselling.



<b>Retail Law obligation/protection</b>	<b>Exempt Selling Guideline obligation/protection</b>	<b>AER Comment</b>
<b>Access to AER approved hardship policy (applies to small residential customers only)</b>	Modified obligation/protection applies (applies to residential customers only)	Exempt sellers are not required to develop and implement AER approved hardship policies. However, sellers must offer flexible payment terms to customers experiencing financial difficulty, and must assist customers by: <ul style="list-style-type: none"> <li>directing them to the Australian government energy efficiency website and ensuring that the customer is aware of relevant government or non-government energy rebates, concessions and relief schemes</li> <li>not charging the exempt customer a late payment fee, or a security deposit, and not disconnecting the customer if they are adhering to the terms of their payment plan</li> </ul>
<b>Access to flexible payment options (applies to small residential customers only)</b>	Same as <i>Retail Law</i> obligations for authorised retailers (applies to residential customers only)	
<b>Registration of customers requiring energy-related life support (applies to small residential customers only)</b>	Same as <i>Retail Law</i> obligations for authorised retailers (applies to residential customers only)	
<b>Billing obligations, disconnection and reconnection obligations</b>	Same as <i>Retail Law</i> obligations for authorised retailers	
<b>Adherence to energy marketing provisions set out in the <i>Retail Rules</i></b>	Modified obligation/protection applies	Exempt sellers must provide certain information to their, for example, they must notify customers that they are not an authorised retailer and may not have access to all customer protection under the Retail Law. They must obtain consent from customers entering into contracts for the sale of energy.
<b>Access to jurisdictional ombudsman schemes for dispute resolution (applies to small residential customers only)</b>	Modified obligation/protection applies (applies to residential customers only)	Most exempt sellers are not members of jurisdiction Ombudsman schemes, and therefore customers may not have right of recourse to the scheme. Exempt sellers do have obligations to have dispute resolution procedures in place, and to make reasonable endeavours to respond to disputes raised by customers. Customers can contact the AER if they are concerned that their exempt seller is not abiding by conditions of their exemption.
<b>Access to AER RoLR scheme</b>	Does not apply	We do not have power to extend the RoLR scheme to customers of exempt sellers. Access to RoLR scheme is not practically possible for many exempt customers, specifically those embedded networks, as many customers of exempt sellers do not have National Meter Identifiers (NMIs). However, exempt sellers are required to notify the AER immediately if their ability to supply is diminished.

### **3. Alternative energy selling models**

Technological developments are changing the way customers buy energy and engage in the energy retail market. Consumers are increasingly choosing to engage third party energy service providers in order to change the way they engage with the energy market, or to manage their energy usage.

Many emerging alternative energy sellers are businesses that have traditionally been involved in selling other energy products or services, and are now evolving their business models to sell energy. These businesses are selling energy in ways which involve further consideration under the authorisation and exemptions regimes.

#### **3.1 Types of alternative energy selling models**

We use the term ‘alternative energy seller’ to describe a business that sells energy in a way that is substantially different from that of a ‘typical’ energy retailer. Some examples of alternative energy selling models that the AER is assessing include

- bundled long term contracts that include both a service and product such as solar panel companies where the customer agrees to purchase generated energy at an agreed price and becomes the owner of the panels at the end of the contract (for example, solar power purchase agreements (SPPAs), explained below)
- companies selling energy to customers for a specific purpose at a premises
- businesses whose energy sales include other energy related goods or services, for example, demand management or energy efficiency products or services

#### **Solar Power Purchase Agreement (SPPAs) explained**

Businesses selling energy through SPPAs are the most common type of alternative energy sellers approaching us for authorisation or exemption.

Under an SPPA, solar panels are installed at a customer’s premises at no up-front cost. The customer agrees to purchase energy generated from those panels for a specified period (for example, 15 years). In some cases, the customer owns the panels at the end of the contract period. The business model allows the customer to buy renewable energy without a significant capital outlay, and the cost of energy sold is often low (and sold at a fixed, long term rate).

This model has been operating in other countries for some time, particularly in the USA where (in some states) the financing of solar panel systems by a third party is very common.

### **Selling energy for a specific purpose**

Some companies sell energy to customers for a defined purpose, for example, to charge an electric vehicle (EV) at the customer's home. This model involves the installation of separate meters at the premises, with the energy being sold to the customer by an EV company. This is an example of the sale of energy, and therefore, requires an exemption or an authorisation.

## **3.2 Features of alternate selling models**

There are a range of features that alternative energy suppliers may have in common:

- they have previously limited their activities to other energy related services (for example, the installation of photovoltaic (PV) infrastructure) and are new entrants to the energy retail market
- they sell energy through a medium to long term contract
- energy is provided as an add-on or supplementary service and not as an essential service: the energy sold by the alternative energy seller provides only a portion of the customer's total energy needs. In some situations, the customer purchases energy from the alternative energy seller for a specified use at a premises (for example, EV charging) or to supplement energy purchased from a retailer (for example, the installation of solar panels which comes with an obligation to purchase energy generated by the solar panels in addition to the customers regular energy supply)

## **3.3 Alternative energy sellers: policy issues and considerations**

Although “alternative”, businesses described in the previous section are selling energy and therefore require either a retailer authorisation or a retail exemption under the *Retail Law*. This section identifies factors that should be taken into account in regulating such businesses through these mechanisms.

The differences between ‘typical’ energy retailers and alternative energy sellers provide a starting point for considering how alternative energy sellers should be regulated. Key issues to be considered are whether:

- the customer has access to an authorised retailer
- the energy is being sold as an essential service, and

- the customer retains their right to access the energy retail market and engage a retailer of their choice.

Under most alternate selling energy models, the customer purchases their energy from two energy sellers. The first is an energy retailer authorised under the *Retail Law*. Alternative energy sellers normally approach a customer as a secondary energy provider, and sell energy, for example, generated through solar panels that they own. The amount each seller provides to the customer varies depending on the energy generated by the PV panels.

Under this model the customer has access to the consumer protections provided under the *Retail Law* through its relationship with the authorised retailer. In this model the service or product that the second energy seller is providing is optional—it is not an essential service. For example, if the second energy seller disconnects energy supply the customer retains access to supply via the authorised retailer.

In these circumstances, we consider that the sale of energy is an add-on, or supplementary service. The energy sold by the second or alternate energy seller provides only a portion of the customer's total energy needs, and the energy seller does not seek to be the sole or primary supplier to the customer's premises. The customer retains access to the energy retail market, including access to a retailer of choice in jurisdictions which have implemented full retail contestability (FRC). In this case, the customer's relationship with its chosen retailer is not affected by its relationship with the alternative energy seller. If the alternative energy seller fails the customer still has access to reliable supply through their retailer. The customer can also change retailers at any time regardless of their relationship with the alternative energy seller. In other words, the customer's essential needs can still be met.

However, if an alternative energy supplier wishes to take on the sole role of supplying a customer's energy needs and seeks to be the customer's only access to reliable energy supply; it is providing an essential service to the customer. This is the critical distinction between treatment of standard and alternative energy sellers and affects how the latter should be regulated.

## 4. Proposed approach to regulating alternative energy sellers under the *Retail Law*

Market innovation can provide energy consumers with greater variety and choice in how they purchase energy services. However this must be balanced against ensuring customers are adequately protected. In this section we outline our proposed approach to regulating alternative energy sellers, which we consider meets this balance. We are also guided by the *Retail Law* objective which considers the long term interests of consumers.

The Australian Energy Market Commission (AEMC) considered the evolution of energy services and products in its Power of Choice review. The review noted that some energy services now extend beyond simply the essential service of sale and supply of electricity.<sup>10</sup> The AEMC noted that the National Energy Customer Framework (NECF) should include a framework which governs third parties (non-retailers and non-regulated network services) providing energy services to residential and small business consumers.<sup>11</sup>

The AEMC identified three principles for developing a compliance regime for such energy service providers. These are:

- facilitating new entry to the electricity demand management market, to stimulate competition for the benefit of consumers
- ensuring that (residential and small business) consumers are effectively and adequately protected
- ensuring that barriers to entry are not created by requiring potential new entrants (many of whom may be small businesses) to meet onerous and unnecessary compliance and accreditation requirements.<sup>12</sup>

### 4.1 Authorisation is the preferred approach

We consider that a retailer authorisation is generally necessary when:

- an alternative energy seller is the sole supplier of gas or electricity at a premises
- the alternative energy seller prohibits the customer from entering into a contract with another retailer, or requires the customer to enter into a contract with a specified retailer

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<sup>10</sup> AEMC, *Power of choice review - giving consumers options in the way they use electricity*, Final report, November 2012, p.41, <http://www.aemc.gov.au/market-reviews/open/power-of-choice-update-page.html>

<sup>11</sup> *ibid.*, page i

<sup>12</sup> *ibid.*, page 43

- the alternative energy seller is registered with AEMO in the wholesale market for the particular fuel source, and is the financially responsible retailer for the particular premises.

Even though the alternative energy seller is not operating under a ‘typical’ retailer model in these situations a retailer authorisation will generally be necessary as the seller is taking on the role of an energy retailer, particularly to small residential customers.

In these circumstances energy is being provided as an essential service, as the alternative energy seller is supplying all or most of the energy consumption needs of the premises. This is consistent with the principle that all customers should have access to a reliable supply of energy.

Further:

- a retailer authorisation will ensure customers receive the full suite of the protections under the *Retail Law*, such as hardship protections, payment plans, conditions for marketing and the presentation of pricing information and standard contractual terms and conditions
- a retailer authorisation will ensure that the alternative energy seller and its customers are covered by the AER’s Retailer of Last Resort (RoLR) scheme (which protects customers in the event of retailer failure)
- a retailer authorisation will ensure that the alternative energy seller is aware of, and complying with, its obligations under the *Retail Law*.

## **4.2 Exemption is the preferred approach**

Retailer authorisations may not always be necessary or appropriate for the regulation of alternative energy sellers, and in some cases, a retail exemption may be appropriate. A retail exemption also gives us flexibility to regulate different alternative energy selling business models (without compromising consumer protections). This is because we have broad discretion to grant retail exemptions, and to place conditions on them as we see necessary, as distinct to energy retailers who are covered by the obligations set out in the *Retail Law*.

An exemption might be appropriate, where the alternative energy seller is:

- providing an ‘add on’ service to the customer – for example, where the customer can buy energy from a retailer of its choice

- providing a bundled contract for a service which includes the sale of energy, but where the sale of energy is a small or insignificant component of that contract.<sup>13</sup>

If the seller is exempted, the customer:

- retains their right to buy energy from a retailer, and to choose its authorised retailer
- can access the full suite of *Retail Law* protections through its relationship with the retailer
- is protected by the AER's RoLR scheme if the retailer fails.

#### 4.2.1 What type of exemption is needed?

The *Retail Law* provides for three types of retail exemptions, being:

- deemed exemptions, which apply automatically to certain classes of people
- registrable exemptions, which apply to classes of people upon registration with the AER
- individual exemptions, which may be granted upon application to the AER

Our deemed and registrable exemptions (collectively known as class exemptions) were developed in consultation with stakeholders, and reflect the types of energy selling arrangements that were permitted in jurisdictions prior to the commencement of the *Retail Law* (for example, the sale of energy through embedded networks).

Embedded networks exist in most jurisdictions, and are privately owned electricity networks where a single meter (which is supplied by a retailer) provides all energy for the site (for example, a shopping centre, apartment building, and caravan park or retirement village). Energy is then delivered to customers via the private network, and customers are billed based on privately owned sub-meters at their premises. The sale of energy in this manner is often referred to as 'reselling' or 'onselling'.

Class exemptions are generally only available to businesses that have another 'relationship' with their customers (caravan park and retirement village owners, residential and commercial landlords) and who sell energy incidentally (that is, energy sales are not a core part of their business). The current class exemptions are tightly defined and each class exemption has a number of core conditions attached to it.

At this stage, we do not propose to develop a class exemption for alternative energy sellers and consider that an individual exemption would be preferable, because:

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<sup>13</sup> Note that in this situation, a sale of energy is only taking place where it is charged for separately – for example, metered energy supplied to a premises and charged as a separate component of a bill.

- unlike class exemptions, we cannot draw on longstanding onselling practices that were explicitly permitted under jurisdictional legislation prior to the *Retail Law*
- each alternative energy selling model is different, and creating a class exemption which covers all alternative energy selling models may not be possible whilst the market is still developing.

Where a sale of energy is not covered by a class exemption, a business may apply for an individual exemption. An individual exemption normally applies to a specific person or business for the sale of energy at a particular site and/or to a particular customer or group of customers.<sup>14</sup>

We consider that while these business models are evolving, individual exemptions allow the flexibility to regulate the sale of energy, and can be tailored to the particular business model.

An individual retail exemption provides the appropriate level of customer protection and the appropriate amount of regulatory oversight, allowing us to:

- balance the needs of consumers under each specific business model, being mindful of reducing barriers to entry to allow market innovation
- tailor specific protections relating to the sale of the energy, that can co-exist with the existing protections under other legislative frameworks
- respond to emerging issues arising with respect to the sale of energy by alternative energy sellers through variation of exemptions
- develop customer protections that are relevant to the circumstances of the sale of energy, where necessary, and where appropriate, impose conditions that mirror those attached to a retailer authorisation
- respond to any emerging issues arising from the sale of energy by alternative energy sellers, including issues that arise as new business models emerge.

Although exemptions usually apply to the selling of energy at a single site, we may grant a multiple site exemption in certain circumstances. This would permit the sale of energy across all *Retail Law* jurisdictions (in the same way that authorised retailers can sell energy in all *Retail Law* jurisdictions).

This is more practical than requiring an alternative energy seller to apply for an individual exemption for each site. However, we would likely:

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<sup>14</sup> Individual exemptions are tailored to the specific situation of the person or business seeking the exemption and their customer(s). Individual exemptions, unlike class exemptions, require a formal application and our approval. We consult on the application for a minimum 20 business days.



- limit the form of energy sold – that is, to gas or electricity
- limit the class or classes of customer that energy can be sold to (for example, small business customer, residential customer, large customer)
- apply conditions governing the sale of energy appropriate to those customers (as with single site exemptions). Such conditions may include, for example:
  - an obligation to obtain explicit informed consent from the customer
  - an obligation to sell energy that is metered
  - an obligation to provide clear, accurate billing information
  - an obligation to provide at least 13 business days for customers to pay their bills

We would anticipate conditions to be minimal as customers of alternative energy sellers already have a full and extensive range of protections, as noted above.

## 5. Questions for stakeholders and next steps

The AER is seeking stakeholder submissions until 22 November 2013. Stakeholders are invited to provide any relevant feedback, however we are seeking specific input on the following questions.

### Questions

- 1. What, if any, other alternative energy selling business models are stakeholders aware of (apart from those listed in section 3), and what future business models do stakeholders consider could emerge?**
- 2. What are stakeholder's views on the AER's proposed policy considerations set out in section 3 above?**
- 3. What are stakeholders' views on the AER's proposed approach to granting exemptions and authorisations for alternative energy sellers in section 4?**
- 4. What, if any, other considerations should the AER take into account to regulate the sale of energy under alternative energy selling models?**
- 5. What implications, or future implications, could arise for the regulation of alternative energy sellers under the *Retail Law*, or other consumer protection legislative frameworks?**
- 6. What, if any, conditions should be placed on an individual exemption for an alternative energy seller?**

We will publish our final position in Quarter 1 2014.

We invite submissions from interested parties on the application by close of business, **Friday 22 November 2013**. We are also considering holding a public stakeholder forum for interested stakeholders in Melbourne (with video links to other capital cities). We ask that stakeholders interested in attending the forum note this in their submission.

Submissions should be emailed "Attention: Jacqui Thorpe, Acting General Manager, Retail Markets Branch" at [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au) with the following title in the email: Alternative Energy Sellers – Issues Paper.

We may, in future, make alterations to our *Exempt Selling Guideline* (including setting appropriate conditions) and *Retailer Authorisation Guideline* to further explain our treatment of alternative energy sellers under the *Retail Law*.

## Glossary/shortened forms

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<b>ACL</b>	Australian Consumer Law
<b>ACCC</b>	Australian Competition and Consumer Commission
<b>AER</b>	Australian Energy Regulator
<b>AEMC</b>	Australian Energy Market Commission
<b>AEMO</b>	Australian Energy Market Operator
<b>ASIC</b>	Australian Securities and Investments Commission
<b>CCA</b>	Competition and Consumer Act 2010
<b>DPI</b>	Delivery Point Identifier
<b>DSP</b>	Demand side participation
<b>EV</b>	Electric vehicle
<b>FRC</b>	Full retail contestability
<b>FRMP</b>	Financially Responsible Market Participant
<b>MIRN</b>	Meter Installation Reference Number
<b>NECF</b>	National Energy Customer Framework
<b>NEM</b>	National Electricity Market
<b>NER</b>	National Electricity Rules
<b>NMI</b>	National Meter Identifier
<b>PV</b>	photovoltaic
<b><i>Retail Law</i></b>	National Energy Retail Law
<b><i>Retail Rules</i></b>	National Energy Retail Rules
<b>retailer</b>	a retailer authorised under the <i>National Energy Retail Law</i>
<b>RoLR</b>	Retailer of Last Resort
<b>MCE's SCO</b>	Ministerial Council of Energy Standing Committee of Officials
<b>SPPA</b>	Solar Power Purchase Agreement

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## Appendix A: *Retail Law* authorisations framework

A retailer authorisation allows a business to sell a specific form of energy (gas or electricity) to all classes of customer, in all jurisdictions where the *Retail Law* has commenced. The *Retail Law* does not allow a ‘limited’ retailer authorisation.

Authorisations cannot be restricted to particular states or territories, nor to a particular class of customer.

To obtain a retailer authorisation, a business must apply to the AER and demonstrate:

- the necessary organisational and technical capacity to operate as a retailer
- the necessary financial resources, or access to resources, to operate as a retailer
- that it is a suitable person to hold a retailer authorisation<sup>15</sup>

This recognises that a retailer must have the appropriate financial and organisational capacity to provide energy to customers and to meet all compliance and regulatory obligations under the *Retail Law*.

Authorised retailers must meet all requirements under the law, regardless of their business model.

The *Retail Law* and *National Energy Retail Rules (Retail Rules)* set out energy specific regulation including obligation on retailers to:

- develop and implement AER approved customer hardship policies to assist customers experiencing financial hardship and provide customers experiencing financial difficulty with flexible payment options
- keep a register of customers who require energy-related life support equipment and to provide them with added protections for disconnection of energy services
- provide timely bills based on metered consumption, and to ensure that customers are provided with at least 13 business days to pay bills
- to have dispute resolution mechanisms for small residential customers, and to participate in jurisdictional Ombudsman schemes.

In addition, authorised retailers have regulatory obligations to:

- participate in the AER’s *Retailer of Last Resort (RoLR)* scheme which ensures continuity of supply in the event of retailer insolvency or failure<sup>16</sup>

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<sup>15</sup> National Energy Retail Law, section 90.

- report to the AER on performance indicators which allow for comparative reporting of energy retailers and on certain breaches of the *Retail Law* and *Retail Rules*, which may trigger an enforcement response from the AER.

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<sup>16</sup> The AER's Retailer of Last Resort (RoLR) scheme provides 'last resort' retailers for each customer connected to the grid. This 'last resort' retailer automatically takes over the supply of premises if a customer's retailer becomes insolvent or otherwise fails.

## Appendix B: *Retail Law* exemptions framework

When considering whether an exemption or an authorisation is appropriate, we consider:

- whether the sale of energy is core, or incidental, to the entity's core business
- whether the entity has a pre-existing relationship with their customers
- whether the entity is selling energy for a profit
- the type of customers the entity is selling to (for example, small residential customer(s))
- the scale and scope of the energy sold

Generally, applicants fall clearly into either the authorisations or exemptions framework. For example, if an energy retail business sells energy:

- to small residential customers for a profit
- across multiple states or territories
- as part of its core business

then we will generally require the entity to seek a retailer authorisation.

Conversely, where an entity is selling energy incidentally to customers with whom they have a pre-existing relationship (for example, a landlord/tenant relationship), an exemption is usually more appropriate. The requirements on exemption holders are less onerous than requirements on authorised retailers.

There are two types of class exemptions: deemed and registrable. These exemptions are collectively known as 'class exemptions' and are designed to cover groups of people who sell energy. In our *Exempt Selling Guideline*, we determine which classes of people are covered by class exemptions, for example:

- residential and commercial landlords selling to tenants within a site they own (for example, a high rise apartment building, shopping centre, or office building)
- caravan park or retirement village owner/operators selling to residents within the park or village
- building owners selling to properties adjacent to their own
- businesses selling energy to large customers.

Generally, class exemptions call for less regulatory oversight than individual exemptions. A standard set of conditions apply to each of these classes of people, and

conditions are tailored to reflect the types of customers being sold to (for example, businesses selling to small residential customers have more extensive conditions than those selling to business or large customers). Businesses selling energy under class exemptions are subject to core sets of obligations. The obligations are designed to reflect the needs of customers buying energy (for example, small residential customers who may require further protections than business customers), and are aligned conditions with *Retail Law* obligations for authorised retailers wherever feasible.

Occasionally, a business may approach us that sells energy, but does not fall within one of our class exemptions. They may be eligible for an individual exemption.

Individual exemptions may cover the sale of energy in more unique or unusual circumstances. Conditions attached to individual exemptions are specific to the circumstances of a business and reflect the needs of their customers.

Individual exemptions involve a formal decision process whereby:

- the applicant submits an application to the AER
- we publish the application on our website for consultation
- we make a decision to grant or not grant an exemption, including any conditions attached to that exemption
- the applicant must accept the conditions attached to the exemption
- an instrument of exemption is issued.

In deciding whether to grant or refuse individual exemptions, we are guided by the *Retail Law* objective.

For individual exemptions, we tailor conditions on a case by case basis for each exemption holder, in consideration of its energy selling activities and the class of customer the business sells energy to. We have discretion to set conditions as we see fit. For example, where an individual exemption holder is selling to small residential customers, conditions which closely match retailer obligations under the *Retail Law* may be appropriate. Conversely, limited conditions may apply to those selling energy to large or industrial energy customers, as extensive customer protections may not be necessary.

The *Retail Law* prescribes the following policy considerations for the AER when performing its role in exempt selling. For example, the AER must, in performing or exercising an AER exempt selling regulatory function or power, take into account the following policy principles:

- 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, and
- exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules.<sup>17</sup>

The AER may also have regard to the exempt seller and exempt customer factors, which are set below.

### **Exempt seller related factors**

- 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 matter the AER considers relevant<sup>18</sup>

### **Customer related factors**

The customer related factors are as follows:

- 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;

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<sup>17</sup> National Energy Retail Law, section 114.

<sup>18</sup> National Energy *Retail Law*, section 115.



- 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.<sup>19</sup>

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<sup>19</sup> National Energy Retail Law, section 116.