



# **Notice of Final Instrument:**

## **AER (Retail) Exempt Selling Guideline Version 4.0**

March 2016

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## Amendment Record

Version	Date	Pages
1.0	March 2016	43

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# 1 About this document

## 1.1 Introduction

The National Energy Retail Law (Retail Law) provides a framework for businesses that sell energy either as a retailer or an "exempt" seller, that is, where a retailer authorisation is not appropriate or practical. The Retail Law provides for deemed and registrable class exemptions, and for the AER to approve individual exemptions.

The AER must develop and publish an exempt selling guideline (Guideline). This Guideline sets out the processes for registering or applying for exemptions, and outlines the various exemption classes, their eligibility criteria and exemption conditions. The Guideline also spells out the AER's considerations on the policy principles specified in the Retail Law, exempt seller and customer related factors,<sup>1</sup> and how these have influenced the AER's decisions on exemption classes and conditions.

The AER has revised the Guideline to make it clearer, more flexible and to better reflect developments in the energy retail market, in particular in the area of "alternative energy selling". There are also a number of new requirements on exempt sellers.

This Notice of Instrument<sup>2</sup> (Notice) outlines these amendments. The Notice provides details of the context in which the Guideline has been prepared, the issues involved, and the effects of the proposed changes.<sup>3</sup>

The AER has published this Notice and the accompanying version 4 of the Guideline, in accordance with the retail consultation procedure set out in rule 173 of the National Energy Retail Rules (Retail Rules).

## 1.2 Role of the Guideline

The Retail Law requires anyone who is selling energy to hold a retailer authorisation or to be exempt from the requirement to hold an authorisation. To assist potential applicants for exemption we have developed a guideline, which:

- explains what retail exemptions are and how they work
- provides information to assist exempt sellers in determining whether they, or their business, need a retail exemption
- explains which type of exemption might be appropriate for a seller
- explains how to obtain a retail exemption
- outlines the factors we consider when assessing individual exemption applications
- details the conditions attached to various classes of exemption.

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<sup>1</sup> National Energy Retail Law, ss115 and 116.

<sup>2</sup> National Energy Retail Rules s 173(2)(b).

<sup>3</sup> National Energy Retail Rules s 173(2)(b)(ii).

The Guideline currently applies in Queensland, New South Wales, South Australia and the Australian Capital Territory. Although Tasmania has adopted the Retail Law it has derogated aspects of the retail exemptions framework and the registrable and deemed exemption requirements do not apply.

### **1.3 Definitions and interpretation**

In this Notice, key words and phrases have the meaning given to them in the glossary of the Guideline or, if not defined in the glossary, the Retail Law and Rules.

### **1.4 Version history and effective date**

Version 1.0 of the Guideline was released in December 2011. The Guideline and exemption classes were subject to extensive consultation, including three rounds of consultation and an additional targeted consultation on hardship customers.

Version 2.0 of the Guideline was released in July 2013. Amendments sought to streamline the Guideline, remove redundancies and inconsistencies. A number of new exemption classes were created (R6, R7 and D9 and D10) and some classes were merged.

Version 3 of the Guideline was released in April 2015. It was amended to re-open certain exemption classes that had closed from 1 January 2015. Except where sites are retrofitted, classes D1, D2, R1, R2 and R3 are now open to current sellers.

Version 3 is the current version of the Guideline. This Notice is in relation to version 4 of the Guideline.

### **1.5 Commencement**

Version 4 of the Guideline will commence in March 2016.

## 2 Purpose of this Notice

When we make amendments to the Guideline we are required to explain those changes in a notice. This Notice covers amendments that we consulted on separately and changes that were part of the consultation on the draft Guideline version 4.

We consider our amendments make the Guideline clearer, strengthen a number of customer protections and better regulate low risk energy selling activities, while reducing regulatory burden for sellers.

In summary, the key changes:

- incorporate the AER's position on alternative energy sellers into the Guideline and create a new registrable class exemption for solar power purchase providers who meet the eligibility criteria
- clarify obligations on exempt sellers who plan to retrofit an embedded network, including decreasing regulation where all customers in the embedded network have agreed to the network conversion
- require exempt sellers applying for an individual exemption for a retrofit to provide additional information as part of the application process
- provide clearer guidance to exempt sellers about their obligations, for example, through removal of references to 'fair and reasonable' pricing and imposing a positive obligation on sellers in relation to customers' concession energy rebates
- create a new class exemption for sellers supplying energy, on a temporary basis, for the construction and commissioning phase of building, civil, construction, industrial transport, mining or other projects
- extend the eligibility criteria for particular classes of sellers, including opening up a number of classes to sellers that are of the same "type" without specifically identifying them. This is intended to allow us to better regulate the "unknown" element of exempt selling and reduce the need for ongoing revisions to the Guideline and
- clarify how the AER administers the Guideline, including in relation to the liability of agents, the cancellation of an exemption and consequences of breaches of conditions.

We have also improved the readability of the Guideline with some structural and language changes.

### 2.1 Approach to consultation

We released a draft Guideline (draft Guideline) and an accompanying Notice of Draft Instrument (draft Notice) for public comment on 25 September 2015.

On 20 October 2015, while the first consultation phase was still open, we held a public forum via video conference in our Sydney, Melbourne, Adelaide, Brisbane and Townsville offices.

We received 22 submissions to the draft Guideline, and these generally supported our proposed amendments. Some submissions proposed we consider additional improvements

to the Guideline, noting the consultation process for individual exemption applications is not well understood or used by stakeholders.

Stakeholders raised a related concern about how exempt sellers consult with affected customers when retrofitting an embedded network.

In response we ran a further targeted consultation relating to the manner in which businesses consult with tenants / customers over proposed network conversions. We released a document proposing and explaining this amendment (referred to in this Notice as 'additional amendments for feedback') on 16 December 2015. Ten stakeholders provided feedback on these amendments.

The draft Guideline, draft Notice, minutes from the public forum and submissions are published on our website.<sup>4</sup> Appendix A summarises the key issues raised in the submissions and provides our response to the submissions.

The final Guideline has been informed by submissions and feedback provided to us during the consultation process. Our considerations of key issues raised in the submissions and feedback are discussed in **Sections 3 to 11**.

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<sup>4</sup> <http://www.aer.gov.au/retail-markets/retail-Guidelines/review-of-retail-exempt-selling-guideline-2015>

## 3 Regulating alternative energy selling under the Guideline

Version 3 of the Guideline does not specifically provide for the regulation of alternative energy sellers. To date, we have provided separate [guidance](#) to alternative sellers and [information requirements](#) for exemption applicants. As part of our review of Version 3 of the Guideline, we proposed amending the Guideline to include our regulatory guidance on alternative and innovative energy sellers. The positions established through a separate 2014/15 consultation, as well as subsequent consultation on the draft Guideline, are reflected in our new Version 4 of the Guideline.

### 3.1 Background

Increasing energy prices, a desire to manage consumption and technological advancements in the delivery of energy have led to a growing demand for alternative energy products. Consumers are now changing the way in which they participate in the energy market, and in response, a market for new and innovative business models is developing, for example, power purchase agreements (PPAs), wheeling, co-generation and micro-grids. These new service delivery models and products were not specifically contemplated when the Retail Law was drafted. However, where they involve the sale of energy—as, for example, through solar power purchase agreements (SPPAs)—they are captured under the Retail Law and must be regulated either under a retailer authorisation or exemption.

We summarised key issues in regulating "alternative energy providers" in an [issues paper](#), which we published in October 2013. This paper set out the AER's proposed approach to regulating these sellers, namely through individual exemptions. The focus of this paper was on solar power purchase agreements. We published our [final statement of approach](#) in June 2014, which distinguished between the type of selling that a retailer engages in when selling as the primary supplier to a customer and supply that is supplementary—energy supplied through an SPPA, for instance.

Prompted by the development of further disruptive technologies in the energy market, particularly in energy storage, we undertook further consultation in early 2015 to revisit issues relating to the regulation of alternative energy sellers (outlined in an [issues paper](#) published in November 2014).

### 3.2 2015 Consultation and outcomes

The consultation in early 2015 and submissions received in response to the consultation raised a significant number of issues.<sup>5</sup> Central to these were:

- o ensuring appropriate protection of consumers
- o competitive neutrality for all sellers of energy and
- o the desirability of having a set of enduring principles.

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<sup>5</sup> See discussion in the [Notice of Draft Instrument Version 4](#), Appendix A



We considered in detail the framework under the Retail Law, including the policy principles, the exempt seller factors and exempt customer factors that guide our consideration of all exemptions as well as a number of additional principles relevant to innovative business models. While a number of stakeholders supported bringing alternative energy sellers under the retailer authorisation framework, the majority of stakeholders considered it more appropriate to continue regulating under the exemptions framework.

The AER's view was, and remains, the exemptions framework is the preferable mechanism for regulating alternative energy sellers given its flexibility and adaptability. As stakeholders and the AER noted during consultation, exemptions can be tailor-made to suit the specifics of an energy sale and are therefore a better regulatory fit for alternative energy sales. This is in contrast to authorisations which provide a 'one size fits all' model with considerably less flexibility than exemptions.

In reaching the position that we set out in the draft Guideline, we again had regard to the important distinction we drew in our first consultation on alternative energy sellers, being the distinction between a customer's primary source of supply and secondary or discretionary supply. A number of stakeholders commented on the difficulty of determining when a supplier was the 'primary' supplier and suggested that this distinction should be refined or removed. We further considered this issue and how it may guide our approach to alternative energy selling models and have refined it by identifying a number of additional factors to assist our assessment.

We continue to consider this distinction, as well as the effect disconnection would have on a customer's ongoing energy supply, as important in terms of how and to what extent we regulate alternative energy suppliers.

If a secondary source was disconnected the customer would still have access to network distributed energy and would therefore still be supplied. Our view remains that primary providers should be required to provide customers with the full suite of energy retail protections and, as such, should be authorised. Where a customer is supplied by an energy source that is secondary to grid-distributed energy the customer does not need the same level of protection for that service as for the primary source of electricity.

A range of stakeholders made submissions on the issue of competitive neutrality between different kinds of energy sellers. Some proposed ways of 'levelling the playing field' between suppliers. For example, The Council on the Ageing (COTA) proposed the alternative energy seller pay the customer's authorised retailer a fee to towards the costs of providing hardship and life support protections. The Public Interest Advocacy Centre (PIAC) supported further consideration of this issue and other stakeholders noted the importance of competitive neutrality principles being applied more broadly. We have given consideration to the proposals but concluded that none are workable under the current framework.

Our amendments to the Guideline reflect our consideration of all the submissions and how proposed changes would be implemented under the current system. Our position under the Guideline remains one of light-handed regulation and includes a new class of exemptions for alternative energy sellers that sell to business customers under a PPA or to residential customers under a PPA that is less than ten years and has early termination provisions.

We have left open individual exemptions for other alternative energy sellers but have articulated a framework that clarifies the principles we will apply when assessing these applications.

We recognise the retail market is changing rapidly with new products and services becoming available to customers. There are many other bodies, including the Australian Energy Market Commission (AEMC), Australian Energy Market Operator (AEMO), Council of Australian Governments (COAG) Energy Council, as well as industry and consumer representatives with roles and interest in this area. We will continue to work cooperatively to ensure our approach remains relevant and flexible as the market and regulatory framework evolve.

### 3.3 Submissions to the draft Guideline

Stakeholders again reaffirmed their support for our approach to regulating alternative energy sellers. Several stakeholders' submissions dealt with the proposal to create a new class for PPA providers. A number considered setting the threshold for the contract term at ten years was too low, and others submitted the period was too high. A small number of stakeholders also suggested the same thresholds apply to small business customers.

A number of submissions suggested strengthening exemption conditions to include additional information requirements to cover termination, input costs (including cost of credit) and obligations to provide distributors with generation infrastructure records. Two submissions opposed extending class exemptions to other alternative energy sellers.

### 3.4 Amendments to the Guideline

The AER's [guidance](#) to alternative sellers and [information requirements](#) for exemption applicants (currently stand-alone documents) will be retired and our position on these selling models incorporated into this Guideline. Key points include:

- AER's approach to secondary sources of supply
- Regulation needing to be fit for purpose, flexible and not duplicating other legislation
- New information requirements specific to PPA providers who need to apply for an individual exemption (currently found as a stand-alone document on AER web-site).

We have created a new class exemption for PPA providers that sell to commercial customers and to residential customers, where the agreement is less than ten years in length and has transparent termination and buy-out clauses for the customer.

We have not extended the protections for contract period or termination or buy-out clauses to small business customers as the customer protection framework established under the Retail Law is intended primarily for residential customers. Extending the R8 class to include small business customers would extend customer protections beyond what the Retail Law otherwise provides for. It would also result in greater regulatory intervention than our light handed approach warrants, especially for business to business transactions.

The new class R8 and the rationale for the eligibility criteria are discussed in more detail at **Section 7.1**.

## 4 Retrofitting of premises

Embedded networks are increasingly common but can present challenges to customers around what we consider to be key protections such as the right to access a retailer of choice. Our initial consultation on conversion of sites to embedded networks raised a number of issues which required additional consultation. Our amendments are intended to ensure applicants and customers understand what the application process requires of an exempt seller and what opportunities a customer has to comment on an application for an exemption where the site is being retrofitted.

### 4.1 Position under Version 3 of the Guideline

Under version 3 of the Guideline certain deemed and registrable exemption classes closed to anyone converting existing sites to embedded networks (retrofitting) after 1 January 2015. An energy seller retrofitting a site must now apply for an individual exemption. Under the AER's Electricity Network Service Providers Registration Exemption Guideline (Network Guideline) a seller must have the agreement of all affected customers to qualify for a network exemption.

We consider access to retail competition is a key tool for empowering electricity consumers and, by setting the threshold for network conversions high, have sought to ensure customers have at least some say in whether a site is retrofitted. However, the rise in electricity retail margins in recent years has enabled landlords to bulk purchase and undercut existing electricity retailers and therefore, to offer customers a better deal. Provided customers are no worse off—and potentially, share in the savings—we see no reason to maintain the stringent obligations currently placed on property owners who wish to retrofit sites.

We have relaxed regulation of retrofitted commercial sites where all affected customers have agreed to the network conversion by permitting these sellers to register an exemption rather than apply for an individual exemption. We originally proposed a similar amendment for conversions involving residential customers. However, we remain concerned with the extent to which customers' decisions are informed. For this reason, we propose to not allow property owners to register exemptions for retrofitted residential sites—even if all customers have agreed. Rather property owners will continue to need to apply for individual exemptions.

### 4.2 Submissions

The majority of stakeholders supported our amendments to the Guideline, with some qualifications.

Several stakeholders expressed concerns about how much information property owners gave customers about proposed network conversions, their impact on electricity prices and customers' ability to switch retailers. A consumer group advocate supported flexible arrangements that enabled customers to choose whether they wanted to be part of an embedded network. One stakeholder representing the shopping centre industry sought a requirement that customers could not unreasonably withhold their consent to a retrofit.

In response to our second round of consultation, stakeholders largely supported our proposal to require retrofit applicants to address additional information and consent requirements. Some considered our proposal did not go far enough and others sought more guidance on information and consultation requirements. The Energy and Water Ombudsman NSW (EWON) expressed concerns about the erosion of customers' protections resulting from network conversions and proposed a staged approach to relaxing the consent requirements, starting with business customers.

## 4.3 Amendments to the Guideline

### 4.3.1 Retrofit conversions involving commercial customers

Taking into account the submissions from both rounds of consultation, we have amended the Guideline, so that if all affected commercial customers provide explicit informed consent for a conversion the exempt seller will be eligible for deemed exemption D1 or can register under the relevant class exemption, generally R1.

Our amendments to the Guideline do not remove customer agreement requirements for network conversions, and when registering, a seller will need to confirm it has obtained the explicit informed consent of all affected customers. We consider obtaining explicit informed consent is extremely important and intend to conduct periodic checks to ensure any retrofitting of customers' premises occurred only with the correct level of consent. We therefore recommend sellers keep records of that consent for at least five years.<sup>6</sup>

Where there is less than 100 per cent consent for a conversion involving commercial customers we require prospective sellers to apply for an individual exemption. We have taken into account the submissions from stakeholders that asked for more guidance on how we assess these applications and what we are seeking from applicants. In addition to the amendments to Appendix B we have provided guidance at section 7 of the Guideline by outlining key issues applicants will need to address and the type of evidence they will need to provide as part of the application for individual exemption. In particular, we will seek applicants will need to demonstrate how they will mitigate the loss of access to retailer competition and the consumer protections they had as a market customer, and have adequately facilitated explicit informed consent.

Each applicant must address the specific circumstances of the proposed retrofit and propose measures that mitigate the detriment particular to that conversion. We will seek to ensure that any potential customer detriment in retrofitted networks is mitigated through conditions that we impose upon granting the exemption.

Consistent with other changes to the Guideline aimed at improving clarity and removing subjectivity around obligations and enforcement, we have not adopted the suggested amendment that tenants not 'unreasonably withhold' consent. We do not consider it appropriate for the AER to be in the position of determining whether a customer is "reasonable" in their belief as to whether an embedded network would be in their interests.

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<sup>6</sup> It is a serious offence to provide false or misleading information to a Commonwealth agency - section 137.1 of the Criminal Code

This issue is one to be addressed through the usual process of commercial engagement between parties.

### **4.3.2 Retrofit conversions involving residential customers**

Network conversions typically result in a loss of, or diminished, retailer contestability. We note concerns raised by consumer stakeholders about the subsequent potential for consumer detriment and we agree that retrofit proposals (particularly those involving residential customers) warrant a high level of regulatory scrutiny to ensure any detriment is adequately mitigated.

Many customers within the residential customer exemption classes are vulnerable energy users and may not be in a position to fully determine the implications of joining an embedded network. In addition, as a first principle, we consider all energy customers should be able to participate fully in the retail market. We consider all affected customers should agree to any changes to a customer's electricity arrangements that may affect that customer's ability to participate in the market, that is, to access retail competition.

For many reasons, this may not always be possible and so we will assess each application proposing a network conversion on its merits. This means our assessment will be on a case by case basis, not according to whether a particular acceptance threshold has been met and taking into consideration any potential customer benefits (or, at the very least, any mitigation of potential detriments). Under version 4 of the Guideline, applicants will need to demonstrate how they propose to mitigate potential consumer detriment, as well as show adequate efforts to obtain explicit informed consent of residential customers. Unless we are satisfied that an application addresses these principles, we will not grant the exemption

The Guideline keeps the residential and retirement village customer exemption classes (D2, R2 and R3) closed to sites retrofitted after 1 January 2015. An individual exemption will be required for retrofits that would affect these types of customers.

### **4.3.3 Retrofit information requirements**

We note the importance of affected customers, whether residential or commercial, having enough information to make informed decisions and we have amended the Guideline to provide greater information about what explicit informed consent involves. Separately, we are concerned that affected customers are often unaware of the AER's consultation process for individual exemption applications and therefore do not participate. For this reason we have required applicants to provide additional information to customers when seeking to retrofit a site, specifically to advise affected tenants or customers about the retrofit proposal and what this will mean in terms of accessing a retailer of choice. As part of their application, applicants will be required to provide us with evidence of how they have consulted tenants or customers.

## 5 Pricing

### 5.1 Position under Version 3 of the Guideline

Version 3 of the Guideline caps the amount exempt sellers can charge residential customers at the relevant applicable standing offer (see Condition 7). This protection also applies to small business customers if they do not have cost effective access to a retailer of choice. This cap is the maximum amount an exempt seller may charge, it is not what they must charge. Exempt sellers may pass on the benefit of their savings to customers and charge less than the standing offer. We are also aware of a perception in some areas that 'fair and reasonable' pricing means exempt sellers cannot profit. This is not the case.

We have amended the Guideline because references to fair and reasonable pricing have proven unhelpful, given both the subjectivity of the concept and the creation of some unrealistic expectations of what exempt sellers could charge within that description.

### 5.2 Submissions

Stakeholders generally agreed on the need to restrict the amount exempt sellers could charge customers. The majority of submissions considered some form of cap necessary to protect customers. While many agreed that charges needed to be "fair and reasonable", most acknowledged that the term was ambiguous and should be removed from the Guideline.

Several stakeholders noted that using the standing offer to cap charges was not ideal but, in the absence of a better alternative, was preferable to no limit. A number recommended a form of benchmarking, including one submission that recommended a benchmark charging formula based on the best market offer in that distribution area, while another recommended price matching (limited to once a year). One stakeholder recommended exempt sellers report prices to the AER once a year.

### 5.3 Amendments to the Guideline

Under the discussion in 'Profit intentions of an exempt seller' (pp.49) we have amended the Guideline to clarify what exempt sellers can charge customers. We have also removed references to "fair and reasonable" pricing from our discussion and instead clarifying that an exempt seller may not charge more than the relevant standing offer price or any "administration" fees.

We have clarified that the obligation in condition 7(1) requires an exempt seller to charge no more than the local area retailer's standing offer rate for each of usage and supply charges. As noted, we encourage exempt sellers to charge below the rates for each of these, especially in circumstances where the seller is benefiting from supply at a lower rate at the gate meter for either or both the usage or supply charge.

However, the AER is not a retail price regulator. Given this, and in the absence of a better way of ensuring charges are not excessive, the AER considers the existing cap needs to be retained but reiterate that sellers are free to charge any amount less than the cap.

The AER does not support the proposal to require exempt sellers to report on prices. We believe this would place an onerous obligation on on-sellers and, in fact, goes beyond what we require of authorised retailers.

This amendment will not alter exempt sellers' current obligations.

## 6 Concessions for exempt customers

One of the principles underlying the retail exemptions framework is that, to the extent possible, exempt customers are entitled to the same protections as retail market customers. Specifically, section 114(1)(c) of the Retail Law states that 'exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and the Rules'.

### 6.1 Position under Version 3 of the Guideline

One of the core conditions of Version 3 of the Guideline is that, where government or non-government energy rebates or concessions can only be claimed by an exempt person, they must "use their best endeavours" to make the claim (Condition 12). The term "best endeavours" is ambiguous and subjective, meaning it is not clear what an exempt seller would need to do to meet this obligation. Accordingly, this requirement is potentially confusing for exempt sellers seeking to comply with their obligations and leaves exempt customers uncertain of what they should receive in terms of assistance from their seller.

### 6.2 Submissions

Stakeholders agreed that customers who were entitled to receive government concessions should receive them. Many supported the AER's proposal to require exempt sellers to claim concessions or rebates on behalf of exempt customers. A few caravan park owners did not, arguing that mandatory collection of rebates would be unfair for exempt sellers, particularly small businesses. There were also differing views on the administrative costs of claiming rebates and who should bear them, and on how rebates should be applied.

Caravan park owners, and a number of other stakeholders, were in favour of introducing arrangements whereby customers could claim concessions directly. This is outside the AER's jurisdiction. Several stakeholders expressed concern about customers' awareness of rebate schemes and their eligibility, and suggested that steps be taken to better educate customers.

Stakeholders also expressed concerns at the public forum about the time lag between claims being made and customers receiving their benefits as it was not deducted from their bills as it is with market customers (typically 3-6 months).

### 6.3 Amendments to the Guideline

To help ensure customers receive their entitlements in jurisdictions that do not allow them to directly claim government rebates and concessions, we have amended the Guideline as proposed to mandate the claiming of government rebates on behalf of exempt customers. The requirement will apply only in those instances where the rebates or concessions can only be claimed by the exempt person and not where exempt customers can claim them themselves. This provides certainty for exempt sellers and their customers and goes some way to addressing some of the situational challenges embedded customers can face. Many are vulnerable and so, to the extent we can, we want to ensure these customers have access to consumer protections and receive any entitlements they are due.



The AER acknowledges customers are not always aware of their entitlements, but considers this is a matter for the relevant government departments to address.

## 7 Exemption class changes

Exemption classes are intended for energy sales that are clearly defined, have common features and are common to many (or a class of) sellers. This is in contrast to one-off or unique arrangements, for which individual exemptions are appropriate. Class exemptions tend to be better understood and are generally low risk and do not need to be scrutinised in the same way as the more novel arrangements, for which sellers must obtain AER approval in order to sell energy.

The energy market is evolving and the exemptions framework and classes need to be adjusted accordingly. Where particular types of activities become more wide-spread and definable they may be able to be grouped into a new exemption class, particularly if doing so involves minimal regulatory risk

### 7.1 Power Purchase Agreement (PPA) providers - new class

#### 7.1.1 Position under Version 3 of the Guideline

Version 3 of the Guideline does not explicitly cover PPA providers other than through the individual exemption framework.

When the AER undertook its first consultation on alternative energy sellers some stakeholders recommended a new exemption class be created for PPA providers. At the time it first considered these types of arrangements the AER felt it did not understand that market well enough to create a separate exemption class for these sellers. The AER has now been exempting these sellers for over two years and has a reasonable appreciation of consumer issues for this particular segment of the market.

Consumer protections under the Retail Law are focussed on residential customers and, to a lesser extent, small business customers. Given this, we consider it appropriate for PPA providers supplying only business customers to be subject to a lower level of regulation than they currently are and therefore, be eligible for a class exemption rather than have to apply for an individual exemption.

The main issues we have identified through our assessment of PPAs have been the length of the agreements and with the ease of which customers could terminate their agreements. Our advice and understanding from consulting with industry on this issue is that 10 years allows the provider to reasonably recover the cost of the asset while ensuring the customer has sufficient flexibility to leave the agreement if their circumstances change. Having transparent termination and buyout clauses in the agreement also provides the customer with the necessary information to assess when entering the agreement the likely costs of breaking the contract early.

We consider that, where a PPA provider is supplying residential customers, an agreement of less than 10 years and with transparent early termination clauses that also include buy out costs to the customer mitigate the risks associated with information and bargaining

asymmetries between the customer and PPA provider. We therefore propose to allow sellers who meet these criteria to also be eligible for a class exemption.

### 7.1.2 Submissions

Stakeholders generally supported creation of a new class as proposed in the draft Guideline. A number commented on the proposed eligibility criteria for PPA providers selling to residential customers, with a number considering the 10 year contract term threshold was too low. Others submitted that the proposed term for eligibility was too high and it should be a shorter term. A small number of stakeholders also suggested the same thresholds should apply to small business customers.

A few stakeholders suggested strengthening exemption conditions to include information requirements to cover termination, input costs (including cost of credit) and obligations to provide distributors with generation infrastructure records.

Two retailers opposed extending class exemptions to other alternative energy sellers.

### 7.1.3 Amendments to the Guideline

The AER has included a new class of exempt sellers for PPA providers that meet certain criteria, including the type of customers they sell to and the arrangements they enter into when selling.

The new registrable exemption class will cover:

- R8: Persons selling electricity through power purchase agreements to customers who are connected to the national electricity grid where the person or business is selling electricity to business customers and /or residential customers where the PPA is less than ten years **and** includes early termination provisions.

PPA providers who are selling to residential customers and whose agreements do not meet these criteria will still need to apply for individual exemptions.

This change simplifies the exemption application process for PPA providers in certain circumstances. For residential customers, where the agreement is less than ten years and includes transparent early termination clauses, sellers would be eligible to register exemptions, rather than have to apply for individual exemptions. Sellers would still be able to offer longer contracts but, under our proposal, would need to apply for an individual exemption (as is currently the case).

Anyone registered under this new class will be subject to the same conditions as sellers currently granted individual exemptions for power purchase agreements (see *New conditions* under **8.1.1 Core condition variations** below).

The customer protection framework established under the Retail Law is intended primarily for residential customers. Extending the new R8 class to include small business customers would extend customer protections beyond what the Retail Law otherwise provides for. It would also result in greater regulatory intervention than our light handed approach warrants, especially for business to business transactions.

We have previously stated that, in our view, other legislation, including the Australian Consumer Law (ACL), places sufficient obligations on sellers to disclose information about products and services supplied by alternative energy sellers. Our view has not changed. We note the ACL also provides customers with protections in relation to unfair contract terms.

We consider eligibility for the new R8 class should not be extended to other alternative energy sellers at this time. While PPA arrangements and their implications for the electricity retail market are now reasonably well understood, other arrangements are still evolving and it would be premature to consign them to an exemption class yet.

## **7.2 New class for temporary supply in building and construction**

Although temporary energy sales, for example on construction sites, are not new, this group of sellers has requested clarification on how we regulate energy selling in these circumstances and we are proposing a new class to cover temporary supply.

### **7.2.1 Position under Version 3 the Guideline**

Version 3 of the Guideline does not provide for temporary sales of energy and anyone selling energy on a temporary basis would therefore need to apply for an individual exemption. We do not consider this necessary or appropriate given the temporary nature of the sales and the fact that energy is not being sold to residential customers. We note that the AER's Network Service Provider Registration Exemption Guideline makes provision for a deemed exemption class for this type of activity.

### **7.2.2 Submissions**

Submissions supported our amendment to create a deemed class exemption to cover this type of sale.

### **7.2.3 Amendments to the Guideline**

Accordingly we have created a new deemed class exemption, D4, which covers temporary supply for the construction and commissioning phase of building, civil, construction, industrial transport, mining or other projects prior to the owner or occupier of the site taking possession and selling to customers at the site.

## 8 Variations to exemptions (including applicable conditions)

We have made a number of minor variations to exemption class criteria and applicable conditions. These include a number of minor clarifications between the draft consultation and final as a result of submissions made during the consultation process.

### 8.1 Class variations

#### **Deemed class D1 and registrable class R1** (*sale of metered energy to small commercial/retail customers*)

These classes closed from 1 January 2015 to sites where embedded networks are retrofitted, meaning that anyone wishing to convert a site to an embedded network for this type of energy sale must apply for an individual exemption.

We consider that a person or business that has the fully informed consent of all tenants affected by the conversion at a commercial site should not have to apply for an individual exemption, rather to be able to be deemed for an exemption or to register for an exemption, as the case may be (see **section 4** above). The eligibility criteria for the D1 and R1 classes have therefore been extended to newly retrofitted sites (i.e. post-1 January 2015) where all customers have provided explicit informed consent to the network conversion.

These amendments lessen the regulatory load for energy sellers who have the full agreement of all tenants affected by a proposed exemption. There is no change to the requirements for sellers who do not have this agreement.

#### **Deemed class D9** (*sale of energy in conjunction with the provision of telecommunication/information services*)

In 2013 we created a new deemed exemption class for the sale of energy in conjunction with the provision of telecommunication/information services. Energy sold under this class is incidental, is sold in small amounts and to business customers only. As currently defined this class applies only to telecommunications providers, although could equally apply to data service providers.

We have extended the eligibility criteria for the D9 class to include data centre operators and clarified that eligible sellers listed under that class include, but are not limited to, those sellers.

#### **D10** (*sale of metered energy by government agencies to non-residential customers*)

We also created a new deemed exemption class in 2013 to cover Commonwealth, state and local government departments, statutory authorities and government owned corporations that sell energy outside of their core functions. We considered energy sales by these types of agencies did not need extensive regulatory oversight, but as some customers would likely be small business customers determined they should be subject to the same conditions as sellers under the D1 exemption class (*sale of metered energy to small commercial/retail customers*). The class does not include sales to residential customers.

Universities are comparable to government and statutory authorities in many respects, and we consider that the sale of energy by universities to non-residential customers should be treated similarly.

We have therefore extended the eligibility criteria for the D10 class to include universities and clarified that eligible sellers listed under that class include, but are not limited to, those sellers.

**Class R5** (*sale of metered energy to large customers*)

This class provides for the sale of energy to large customers. Effectively it currently covers supply of energy to the tenants of the property owner and must be metered.

We consider large exempt customers need only minimal protection—as is the case for large retail customers under the Retail Law. We have therefore relaxed the restrictions on persons selling to large customers so that the seller can sell to large customers who are not necessarily their tenants (for example, a business at an adjacent site) and to allow unmetered energy sales with the customers' agreement.

We have further considered eligibility for this class and have amended the Guideline so that the class is open to all sellers but the seller is limited to a specific site. This ensures that a seller who purchases from the wholesale energy market and sells to large customers at multiple sites will be required to apply for a retailer authorisation.

**Deemed classes D1** (*Persons selling metered energy to fewer than 10 small commercial / retail customers*), **D2** (*Persons selling metered energy to fewer than 10 residential customers*) and **D3** (*Persons selling metered energy to occupants of holiday accommodation on a short-term basis*)

**Registrable classes R1** (*Persons selling metered energy to 10 or more small commercial / retail customers*), **R2** (*Persons selling metered energy to 10 or more residential customers*)

The application of these classes has been amended to clarify that the lists of eligible sellers are not exhaustive.

**Application — all deemed and registrable classes**

The description of how the various class exemptions apply under Version 3 of the Guideline specifies they apply to current and future sellers, and do not apply to authorised retailers or to external service providers.

The Guideline applies to energy sellers generally—it is therefore not necessary to specify whether they are current or future sellers. The Guideline also makes clear that exempt sellers cannot also be authorised retailers and external service providers are not eligible for class exemptions. These qualifications are now redundant and we have removed them from the description of class exemptions.

## 8.1.1 Core condition variations

### *Condition 1 - Obligation to supply*

Version 3 of the Guideline Clause (2) specifies that an exempt person could not refuse to sell energy to a customer because the customer owed the seller outstanding amounts from a previous account. The meaning of this clause was unclear and had the practical effect of prohibiting an exempt seller from refusing to supply an exempt customer even where they owe the seller money from a previous account.

We have now clarified this condition and have also incorporated the requirements of rule 18(7) of the Retail Law. Specifically, the amended condition allows an exempt person to refuse to sell energy to a customer where the customer owes money under their ongoing energy account, or where the customer has been de-energised for a reason other than the failure to pay a bill and has not rectified the matter within ten business days. The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

### *Condition 3 - Billing and payment arrangements*

Version 3 of the Guideline does not specify what types of payment methods an exempt seller should offer customers. We understand some exempt sellers are not giving customers any choice and are requiring them to pay only by direct debit. Direct debit is not the preferred method of payment for many customers. We note the Retail Rules require retailers to provide small customers with five bill payment options (six, if you include Centrepay) (rule 32 (1) of the Retail Rules).

Stakeholder support for at least two payment methods was unanimous. Two stakeholders noted not all customers have access to online facilities and recommended that payment options should not both be internet based. EWON also encouraged the AER to mandate Centrepay as a payment option for exempt customers who are in hardship.

We have included a new clause 3(2) which requires an exempt person to offer a customer at least two payment methods, one of which must be in person, by telephone, by mail or by electronic funds transfer. We consider there is merit in the payment options not all being internet based and have included the payment options in rule 32 of the Retail Rules (other than direct debit). The clause now also requires exempt sellers to offer at least one payment option that is not internet based, and if they offer direct debit as a payment method, they must offer at least another two payment options (that is, at least three methods in total).

Given the policy principles requiring exempt customers to have the same protections as customers of retailers to the extent possible, we consider this a balanced response that does not overburden the seller but should be of some benefit to customers.

We have not mandated Centrepay as an option to customers in hardship because businesses have to be approved to offer Centrepay and as we do not control this process, we cannot reasonably require that a business be approved.

### *Condition 7 - Pricing*

Version 3 of the Guideline, Clause 7(5) provides that any jurisdictional pricing requirements acted to exclude the pricing obligations set out under condition 7 of the Guideline. We

consider this requirement should take precedence over any jurisdictional requirements relating to energy but are nonetheless unaware of any such requirements. We consider that the inclusion of this clause in this circumstance simply serves to confuse sellers who are looking to understand their pricing obligations.

Clause 7(6) states that the pricing requirements will only apply to small commercial/ retail customers if access to choice of retailer is not available to a customer, or is not cost effective. In our experience access to retailer of choice for small embedded commercial/retail customers is generally not available or would not be considered cost effective by any reasonable person. Moreover, we do not consider it appropriate or practical for the AER to become the arbiter of what is "cost effective". This is a subjective term and would be complex to determine. We consider the deletion of this clause will remove confusion around the maximum prices that can be charged to small commercial/retail exempt customers, and will provide greater regulatory certainty for both exempt customers and exempt sellers.

We have deleted both clauses 7(5) and 7(6) from the Guideline.

As noted above in **section 5**, we have also clarified that the obligation in condition 7 requires an exempt seller to charge no more than the local area retailer's standing offer rate for each of usage and supply charges.

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

Clauses 9(2)(i) and (ii) set out what an exempt seller must do before it can disconnect a customer for non-payment of their energy bill. As currently drafted, these clauses do not allow persons selling energy to non-residential customers to disconnect customers for non-payment of their energy bills. This is not our intention.

We have amended the clauses to address the unintended consequence of the drafting in version 3 of the Guideline. The clauses have been reworded to make clear that sellers' obligations to assist customers in financial hardship apply only to sellers whose customers are residential and to allow exempt sellers to disconnect non-residential customers for non-payment after meeting certain requirements.

#### *Condition 10 - When disconnection or cessation of supply is prohibited*

Version 3 of the Guideline, condition 10, sets out the situations in which disconnection or cessation of supply to exempt customers is prohibited. Condition 10(4) states that the requirements of condition 10 will not apply where jurisdictional tenancy legislation provides for the disconnection of tenants.

We are concerned that that the consequence of this condition is that jurisdictional legislation could negate the whole of condition 10, even where the tenancy legislation did not deal with some of the particular matters dealt with by this condition, for example, life support requirements, prohibited date requirements, and extreme weather requirements. This would result in a serious gap in disconnection protections for exempt customers.

We have therefore removed this clause. Standard legal principles will apply to any conflicting legislation.



### *Condition 11 - Reconnection of supply*

Version 3 of the Guideline requires an exempt person to reconnect premises “as soon as possible” after resolution of a dispute. Again, we consider this term subjective and too vague to be enforceable.

Stakeholder views on amending this condition to remove the phrase “as soon as possible” and replace it with a time limit were divided. Some stakeholders considered it unnecessary to impose a time limit as sellers have strong financial incentives to reconnect. Others thought it impractical because circumstances around disconnection / reconnection are variable and that retaining the “as soon as practicable” requirement was therefore preferable.

Several stakeholders recommended aligning the reconnection requirement with the requirements for authorised retailers. A few suggested two days was appropriate, with EWON referring to the timeframe (effectively 2 days) specified in the *Electricity Supply (General) Regulation 2014 (NSW)*.

We consider the suggested two day time frame is reasonable and adopted it for the purposes of the current obligation. Thus we have required that:

*... the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises), as soon as practicable, and no later than two days from when the request was made.*

### *Condition 12 - Concessions and rebates*

Clause 12(2) of version 3 of the Guideline requires an exempt seller to use their “best endeavours” to claim a government rebate or concession on behalf of a customer where it can only be claimed by the exempt person.

As noted under **section 6** we consider the provision of income rebates to residential customers is an important issue, and that an exempt customer should not be denied a rebate because they purchase their energy from an exempt seller, (particularly given that the exempt seller is usually their only choice of retailer). We have found the “best endeavours” requirement to be difficult to define and enforce. We are also aware that some exempt sellers will not claim the rebate on behalf of their customers unless an absolute obligation is placed on them. We have amended the Guideline to make this obligation mandatory so the exempt seller *must* make the claim if the customer is eligible for the concession or rebate and cannot claim it themselves (that is, it must be made by the account holder).

### *New conditions*

We have added two new supplementary conditions; conditions 20 and 21. While not previously included in Version 3 of the Guideline, Version 4 of the Guideline applies them to exemptions granted to PPA providers. These conditions are intended to ensure that customers understand the nature of the service being provided by the exempt seller, and to restrict the exempt seller to selling electricity only through PPAs.

Specifically, condition 20 states that an exempt person must provide the customer in writing a plain English notice explaining that the contract is covered by Australian consumer protection laws and is separate to the customer’s contract with their retailer and distributor which are covered under the Retail Law.

Condition 21 requires an exempt person to refrain from registering in the wholesale market for the purposes of purchasing energy and to not be the financially responsible retailer for the premises (rather, this must be an authorised retailer).

### 8.1.2 Class condition variations

*(New) Condition 3(2)*

Condition 3(2) is a new condition that requires an exempt person to offer an exempt customer at least two payment options. It will apply to the following exemption classes:

- **Classes D1 and R1** (*sale of metered energy to commercial/retail customers*)
- **D2 and R2** (*sale of metered energy to residential customers*)
- **D3** (*sale of metered energy to occupants of short term holiday accommodation*)
- **D5** (*sale of unmetered gas to individual premises for limited purposes*)
- **D6** (*sale of unmetered energy to small customers in Queensland*)
- **D10** (*sale of metered energy by government agencies to non-residential customers*)
- **R3** (*sale of metered energy to retirement village occupants*)
- **R4** (*sale of metered energy to permanent residents of caravan/manufactured home parks*)
- **R6** (*sale of metered energy to an adjacent site*)
- **R7** (*sale of unmetered energy to commercial retail customers*)

As noted under the discussion of *Billing and payment arrangements* above, we consider that customers be given greater choice in how they pay their energy bills—particularly small customers.

Condition 3(2) has not been added to the following classes for the reasons given:

- **D8** (*sale of energy to a related company*) due to the nature of the relationship between the exempt seller and exempt customer
- **R5** (*sale of energy to large customers*) due to the size of the exempt customer and the related assumption of their greater capacity to negotiate contract terms
- **D9** (*sale of energy in conjunction with the provision of telecommunication/information services*) due to the incidental nature of the energy sale
- **R8** (*sale of energy through solar power purchase agreements*) due to the supplementary nature of the energy sale.

*Condition 9(2)(d)*

Condition 9(2)(d) sets out what an exempt seller must do before it can disconnect a customer for non-payment of their energy bill. It was originally excluded from a number of (non-residential) exempt selling classes because the obligation on the exempt seller to provide flexible payment options and assistance for customers in financial difficulty was not considered applicable to commercial customers. The unintended consequence of removing

this condition was that exempt sellers under these classes could not disconnect customers for non-payment of their energy bills. We have reworded the condition to allow exempt sellers to disconnect non-residential customers for non-payment after meeting certain requirements, specifically, sellers under the following classes:

- **D1 and R1** (*sale of metered energy to commercial/retail customers*)
- **D10** (*sale of metered energy by government agencies to non-residential customers*)
- **R6** (*sale of metered energy to an adjacent site*)
- **R7** (*sale of unmetered energy to commercial retail customers – legacy arrangements only*)

#### *Condition 2(1)(h)*

Condition 2(1)(h) requires the exempt seller to provide exempt customers with information about available flexible payment options. It is related to condition 2(1)(f)—forms of assistance available to exempt customers in financial difficulties. This requirement does not apply to a number of classes because it is considered to impose a regulatory burden disproportionate to the small sale of energy taking place under them. We have excluded condition 2(1)(h) from these classes, as well as to **D5** (*sale of unmetered gas to individual premises where gas is used for limited purposes*).

#### *Condition 4*

Condition 4 sets out the requirements that an exempt seller must meet if he or she is unable to read an exempt customer's meter and therefore need to estimate energy usage. The condition inadvertently covered classes where energy supply is unmetered and therefore all bills will be based on an "estimation". Given exempt customers under these classes have no meter, the requirements set out in condition 4, which assume the existence of a meter, are not appropriate. We have considered prescribing a method for determining energy charges for unmetered supply, however, it appears that the methods used to determine charges for unmetered supply are often informed by the circumstances in which the unmetered sale occurs; it is therefore considered inappropriate to prescribe a particular method and we have therefore removed the requirement for the following classes:

- **D5** (*sale of unmetered gas to individual premises for limited purposes*)
- **D6** (*sale of unmetered energy to small customers in Queensland*)
- **R7** (*sale of unmetered energy to commercial retail customers – legacy arrangements only*)

#### **Class D9:** *Condition 2(1)(c)*

Condition 2(1)(c) of version 3 of the Guideline required an exempt seller to advise their customers of any rights they have in relation to dispute resolution. This requirement previously did not apply to **class D9** (*sale of energy in conjunction with the provision of telecommunication/information services*) because of the limited amount of energy sold under these arrangements. We have reconsidered our original view that it was not appropriate to require an exempt seller operating under this class to provide such information because the information is nonetheless important and can be relatively easily provided.

**Class D9: Condition 13**

Under version 3 of the Guideline condition 13 required an exempt seller to not unreasonably hinder an exempt customer from accessing the retailer of their choice. It also applied to telecommunication/information service providers under **class D9**. However, the energy sales covered by this this class are relatively small and incidental to the provision of telecommunication/information services. We therefore consider that this condition is unnecessary and impractical and no longer require it for this class.

**Class D9: Condition 17**

Condition 17 of version 3 of the Guideline required an exempt seller to notify the AER immediately if they are, or expect to be, disconnected, or if there is any likelihood that they will be unable to continue selling energy. It did not apply to energy sellers under **class D9**—this was an oversight. Given that the continued sale of energy under this class is essential to the exempt customers business, we consider it appropriate that we are informed if there is any likelihood that an exempt seller under this class will be unable to continue selling energy and therefore have applied it to **class D9**.

**Class R5: Condition 2 (information provision); Condition 6 (receipts); Condition 7 (pricing); Condition 14 (contact details); Condition 15 (dispute resolution); and Condition 18 (termination of energy supply agreement) are now excluded from this class.**

Although the conditions attached to class **R5** (*sale of metered energy to large customers*) are already quite minimal, we consider it appropriate to take an even more light-handed approach and to remove the requirement from sellers under this class to comply with the above conditions. Sales of energy under this class involve the sale and purchase of significant amounts of electricity (greater than 100 MWh per annum in most states—more in Tasmania (150 MWh) and South Australia (160 MWh)) at a significant cost. Authorised retailers selling to large customers under the Retail Law are not required to comply with such conditions and, similar requirements should also not apply to exempt sellers supplying large customers. Their current imposition is an unwarranted regulatory interference in the commercial contracts of large businesses and we have removed them.

## 9 Clarification — various

We have amended the Guideline to address gaps in, and clarify ambiguous aspects of, the document. These amendments are of a minor nature and do not have any policy impact.

### 9.1.1 Exemption cancellation process

Version 3 of Guideline does not explain how a seller would surrender or cancel an exemption should their circumstances change. We have not yet had a request for an exemption to be cancelled but need to be prepared for that eventuality. The Guideline has been amended to explain the process for cancelling registrable and individual exemptions.

### 9.1.2 Exemption transfers

We have amended the Guideline to clarify that exemptions cannot be transferred. An exemption is either granted or registered to a particular person, or legal entity. The exemption is attached to that person or entity, and in the case of an individual exemption, an assessment and consultation has been undertaken as to whether the particular person or legal entity should be granted an exemption. The Retail Law and Rules make no provision for exemptions to be transferred.

### 9.1.3 Legacy arrangements

Exemption classes **R6** (*sale of metered energy to an adjacent site*) and **R7** (*sale of unmetered energy to commercial retail customers*) were closed to **new** exempt selling arrangements from 1 January 2015. As they apply to legacy arrangements they remain open for long-standing arrangements that were in place before that date.

### 9.1.4 Long term caravan parks

Exemption class **R4** (*sale of metered energy to permanent residents of caravan/manufactured home parks*) is intended for long-term park residents. We understand that some parks restrict the length of time residents can live there. We consider long term residents for the purposes of the Guideline are any residents for whom a caravan park or manufactured home park is where the person lives most of the time and / or the person has no other place of residence.

### 9.1.5 Definition of 'onselling'

We have simplified the definition of 'onselling' in the Glossary to the Guideline. The amended definition simplifies the term by removing the word 'retailer' and instead refers to acquiring energy from 'another person'. We have also substituted the words 'within the limits of premises owned, occupied or operated by the person' to 'within the limits of a site'. We consider this refined definition better aligns with the onselling practices we are seeing in the market.

The new definition now reads: **onselling** means an arrangement where a person acquires energy from another person, and they, or a person acting on their behalf, sells energy for use within the limits of a site.

# 10 Information requirements

## 10.1.1 Information requirements for individual exemption applications (other than PPA providers)

To help us assess applications for individual exemptions we ask applicants to provide us with information about themselves and their proposed energy sales. As part of our review of the Guideline we also reviewed these information requirements. We consider a number are not necessary for our assessment and propose removing these requirements from the Guideline. Specifically:

### *Question 5*

If purchasing from an authorised retailer, have you formed, or do you intend to form, a bulk purchase contract with the energy retailer, and how far into the future does this, or will this, contract apply? If you have formed, or intend to form, a contract, please provide a brief summary of this arrangement.

### *Question 10*

What accuracy standards apply to the meters? Do the meters comply with Australian Standards? If so, specify which Standard or Standards? For electricity meters, will the meters comply with the National Measurement Act 1960 (Cth) requirements for electricity meters installed from 1 January 2013?

## 10.1.2 Information requirements for individual exemption applications from PPA providers

We have added new information requirements to the Guideline for PPA providers applying for individual exemptions. These requirements are currently found in a stand-alone document on the AER website. We consider separate information requirements are necessary as the current individual exemption requirements were not drafted with alternative energy sellers in mind and not all of the requirements are relevant to PPA providers, whereas some other information is.

## 10.1.3 Information requirements for planned retrofit conversions

Following further consultation in December 2015 -January 2016, we have also amended Appendix B to include a number of additional information requirements for applicants proposing to retrofit a site. In the course of considering individual exemption applications network conversions, it became clear to us that affected customers did not always know about, or understand, the AER's consultation process or the exemption application more broadly.

Under this amendment, applications must confirm to the AER, at the point of application, that the applicant:

- a) has advised tenants / customers that they are planning to retrofit the site as an embedded network: the applicant must include a copy of the advice to tenants / customers

which must include details about how this will affect the tenant's / customer's ability to access a retailer of choice.

b) has informed tenants / customers that the AER must consult on individual exemption applications and has provided them with information about how to make a submission to the AER's consultation process.

c) will advise tenants / customers when the application is published for consultation and when the consultation period ends.

We have asked applicants to address the guidance factors we have listed at section 7 of the Guideline when applying for an individual exemption for retrofitting a site. As discussed above, we included this guidance as it was clear during consultation that stakeholders sought more direction on applying for retrofit individual exemptions.



## 11 Other issues

One of the issues raised in our consultation on the Guideline was exempt customers' access to a comparable level of dispute resolution as is available to market customers (ombudsman schemes or the ACT Civil and Administrative Tribunal (ACAT)). Stakeholders considered exempt sellers should have appropriate dispute resolution mechanisms, including participation in the ombudsman schemes.

While each ombudsman sets the participation and membership requirements for their particular scheme we note that it is open to most schemes to provide differentiated membership or participation models. For example, we understand Energy and Water Ombudsman South Australia's (EWOSA) model provides for non-retailer members to participate voluntarily. To date only water authorities have joined but this option is also open to exempt sellers. We also note the Queensland Government is consulting on access to its ombudsman scheme for onseller customers.

We consider it is important that small energy customers have access to cheap, robust and effective dispute resolution mechanisms. We encourage the ombudsman schemes to extend participation to exempt sellers and we will work collaboratively with these schemes to determine the best way of ensuring exempt customers and sellers can access effective dispute resolution services.

## Appendix A. Summary of submissions and AER response

### Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
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#### Question 1: Limiting what exempt sellers can charge customers / fair and reasonable pricing

Clean Energy Council Associated Residential Parks Queensland	Stakeholders generally agreed on the need to restrict how much exempt sellers could charge customers and the majority felt some form of tariff cap was necessary.	We remain firm that the standing offer cap represents the maximum amount that an exempt seller can charge their customers.
Caravan and Camping Industry Association NSW	While many stakeholders agreed that charges needed to be “fair and reasonable”, most acknowledged that the term was ambiguous and should be removed from the Guideline.	We are concerned that more sellers are not charging less than the standing offer, given customers do not have access to the competitive market and, that many sellers are purchasing energy in bulk, at discounted prices.
EnergyAustralia Origin	Several stakeholders noted difficulties using the standing offer to cap charges (ENA noted, for example, that standing offers are generally 20-40% higher than market offers) but, in the absence of a better alternative, felt it should be retained.	Benchmarking or price matching may go some way to addressing the issue of equitable pricing but either option would effectively require the AER to take on a retail price regulation role, which we are not empowered to do. There may also be situations where a benchmark tariff or retail offer is less than the price the onseller is buying the electricity for. Given this, and in the absence of a simple, workable way of ensuring charges are not excessive, the AER considers the existing cap needs to be retained.
Shopping Centre Council of Australia AGL	DEWS noted that customers often misinterpret additional fees charged for the maintenance of embedded networks and recommended further guidance be given on the charging of fees.	
Public Interest Advocacy Centre	Some stakeholders recommended a form of benchmarking: CALC recommended a benchmark charging formula based on the best market offer in that distribution area, and Simply Energy recommended price matching (limited to once a year).	We note exempt sellers’ and customers’ confusion over fee charging (including security deposits) and will address this in the revised Guideline.
Energy Network Association		
Consumer Action Law Centre	CALC also recommended exempt sellers report prices to the AER once a year.	The AER does not support the proposal to require exempt sellers to report on prices. We believe this would place an onerous obligation on on-sellers and, in fact, goes beyond what we require
Simply Energy		

## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
WIN Energy Department of Energy and Water Supply Queensland Energy & Water Ombudsman NSW Energy and Water Ombudsman VIC		of authorised retailers.

### Question 2: Payment options

Consumer Action Law Centre	Support for this proposal was unanimous—stakeholders could see no impediments to introducing this requirement.	We consider there is merit in requiring the options to not all be internet based. We further propose that if one option is internet based, the other cannot be direct debit.
Consumer Utilities Advocacy Centre Energy & Water Ombudsman NSW	CUAC and CALC noted that not all customers have access to online facilities and therefore recommended that the payment options should not both be internet based. EWON also encouraged the AER to mandate Centrepay as a payment option for exempt customers who are in hardship	There are several key reasons why we are reluctant to mandate Centrepay as an option for hardship: <ul style="list-style-type: none"> <li>businesses have to be approved to offer Centrepay—the AER has no control over this process and cannot require that a business be approved</li> <li>the administrative burden of providing Centrepay may be onerous for some smaller exempt sellers</li> </ul>

### Question 3: Reconnection of supply

Clean Energy Council Associated Residential	Views were divided on whether or not to impose a time limit on reconnecting supply. Some stakeholders considered it	We note some reservations about our proposal to remove the term “as soon as practicable” from the supply reconnection
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## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
Parks Queensland Caravan and Camping Industry Association NSW Origin AGL Public Interest Advocacy Centre Energy Networks Association Consumer Action Law Centre Simply Energy Energy & Water Ombudsman NSW	unnecessary as sellers have strong financial incentives to reconnect. Others considered it impractical because circumstances around disconnection / reconnection are variable and that retaining the “as soon as practicable” requirement was therefore preferable.  Several stakeholders recommended aligning the reconnection requirement with the requirements for authorised retailers. A few suggested two days was appropriate, with EWON referring to the timeframe (effectively two days) specified in the <i>Electricity Supply (General) Regulation 2014 (NSW)</i> .	requirement. However, we remain concerned about its potential ambiguity. We agree it makes sense to align the reconnection requirement with that applying to electricity distributors but note these are based on distributors’ service standards, which vary from jurisdiction to jurisdiction. We accept stakeholders’ suggestion to consider a two day time limit and this has been added to the current obligation such that it has become:  <i>“... the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises), as soon as practicable, and no later than two days from when the request was made.”</i>

### Variation to Core Condition 9 – Payment difficulties and disconnection or cessation of supply

Caravan and Camping Industry Association NSW EnergyAustralia Energy Intelligence Energy & Water	Proposal supported to clarify sellers’ obligations to assist customers in financial hardship and to allow the disconnection of non-residential customers for non-payment in certain circumstances.  EWON also requested that 9(2)(d)(ii) be amended to require exempt sellers in NSW to include EWON’s contact details on disconnection warning notices	Noted
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## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
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Ombudsman NSW

### Question 4: Claiming concessions

Clean Energy Council Associated Residential Parks Queensland Susan Crowe Queensland Council of Social Services Brisbane Gateway Resort Caravan and Camping Industry Association (CCIA) NSW EnergyAustralia Origin Energy Shopping Centre Council of Australia AGL energy Networks Association Consumer Action Law Centre	<p>Stakeholders agreed that customers who were entitled to receive government energy concessions should receive them. Many supported the AER's proposal to require exempt sellers to claim concessions or rebates on behalf of exempt customers. Some did not, in particular park owners, who argued that mandatory collection of rebates would be unfair for small businesses. ARPQ noted that most residential park owners already claimed the rebate.</p> <p>There were differing views on who should bear the administrative costs of claiming rebates, and on how rebates should be applied. CCIANSW stated that the seller should be able to recover the administrative cost of claiming the rebate on behalf of customers, while CUAC stated they should not. AGL also argued that the exempt seller should be able to apply the rebate directly to the customer's account.</p> <p>Park owners, and a number of other stakeholders, were in favour of introducing arrangements whereby customers could claim concessions directly.</p> <p>Several stakeholders expressed concern about customers' awareness of rebate schemes and their eligibility, and suggested that steps be taken to better educate customers.</p>	<p>We note that in some but not all jurisdictions exempt customers are able to claim energy concessions and rebates themselves. To ensure exempt customers receive their entitlements in jurisdictions that do not, we propose amending the Guideline to mandate the claiming of government rebates on behalf of exempt customers. The requirement will apply where an exempt customer is entitled to an energy rebate or concession but it can only be claimed by the account holder.</p> <p>The AER acknowledges customers may not be aware of their entitlements, however as concession schemes are administered by state and territory governments, customer education may be more appropriately managed at a state and territory level.</p>
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## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
Simply Energy WINenergy Department of Energy and Water Supply Energy & Water Ombudsman NSW Energy and Water Ombudsman VIC		

### Question 5: New registration class for PPA providers

Clean Energy Council Caravan and Camping Industry Association NSW Origin Energy AGL energy Networks Association Consumer Action Law Centre Simply Energy WINenergy	<p>Stakeholders generally supported the proposal. A number commented on the proposed eligibility criteria for PPA providers selling to residential customers—some thought the 10 year contract term threshold was too low (CEC, AGL), and others thought it too high (CALC, DEWS). A small number of stakeholders also suggested the same thresholds should apply to small business customers (DEWS, Simply Energy).</p> <p>A few stakeholders suggested strengthening exemption conditions to include information requirements to cover termination, input costs (including cost of credit) and obligations to provide distributors with generation infrastructure records (CALC, ENA).</p> <p>Two stakeholders opposed extending class exemptions to other alternative energy sellers (AGL, Simply Energy).</p>	<p>To clarify, the proposal is intended to simplify the exemption application process for PPA providers in certain circumstances. Our proposal is that, for residential customers, where the agreement is less than 10 years and includes transparent early termination clauses sellers would be eligible to register exemptions, rather than have to apply for individual exemptions. Sellers would still be able to offer longer contracts but, under our proposal, would need to apply for an individual exemption (as is currently the case).</p> <p>The customer protection framework established under the NERL is intended primarily for residential customers. Extending the new R8 class to include small business customers would extend customer protections beyond what the NERL otherwise provides for. It would also result in greater regulatory intervention than our light handed approach warrants, especially for business to</p>
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## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
<p>Department of Energy and Water Supply Queensland</p> <p>Far North Queensland Electricity Users Network</p>	<p>Separately, FNQEUN argued that AER has not properly assessed the impact of SPPAs, and recommended that the AER and AEMO should jointly review the impact of SPPAs on Queensland electricity prices and grid security. It also recommended that the AER collect the same performance and compliance data for PPA providers as it does for authorised retailers.</p>	<p>business transactions.</p> <p>We maintain our view (as previously stated) that other legislation, including the Australian Consumer Law (ACL), places sufficient obligations on sellers to disclose information about products and services supplied by alternative energy sellers. We note the ACL also provides customers with protections in relation to unfair contract terms.</p> <p>We agree eligibility for the new R8 class should not be extended to other alternative energy sellers at this time. While PPA arrangements and their implications for the electricity retail market are now reasonably well understood, other arrangements are still evolving and it would be premature to consign them to an exemption class yet.</p> <p>The impact of SPPAs on electricity prices and grid security falls outside of the scope of our review of the exemptions Guideline. We note that no exempt sellers are required to report.</p>

### Retrofitting premises

<p>Origin Energy</p> <p>Shopping Centre Council of Australia</p> <p>AGL</p> <p>Energy Intelligence</p> <p>Consumer Action Law</p>	<p>Several stakeholders commented on network conversions. There was general support for the AER's proposal to allow class exemptions to apply where all affected customers agreed to a network conversion. However, a range of other issues were raised, including:</p> <ul style="list-style-type: none"> <li>the ability of customers to unreasonably withhold consent to a network conversion (Shopping Centre Council)</li> <li>financial disadvantages to large customers of network</li> </ul>	<p>The AER had proposed, in the draft Guideline, to allow property owners / bodies corporate to register an exemption (rather than have to apply for an individual exemption) if they had the consent of all affected customers.</p> <p>Our consultations raised questions about whether affected customers were being given enough information to make informed decisions. Separately, we have become concerned that affected customers are often unaware of the consultation process for</p>
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## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
Centre Coles, Kmart and Target Simply Energy WINenergy	<p>conversions, including infrastructure and cost accountabilities, and ability to expand supply capacity (Coles, Kmart, Target)</p> <ul style="list-style-type: none"> <li>• appropriate threshold for customer agreement to a proposed conversion—from 60% (WINenergy) to 90% (Coles, Kmart, Target), and whether this should be based on customer numbers or energy consumption</li> <li>• ability for customers to exercise choice, specifically:</li> <li>• information needed to make fully informed decisions and understand implications of decisions, including their long-term interests</li> <li>• exercising choice when the affected customer is not the property owner.</li> </ul> <p>Origin Energy suggested that consent is unnecessary (and therefore the need for individual exemptions) if customers have guaranteed access to a retailer of choice or can continue to use their own retailer.</p>	<p>exemption applications and that they can comment on an application, and therefore do not participate. For this reason we proposed imposing a number of additional information requirements on applicants seeking to retrofit a site, specifically to advise affected tenants or customers about the retrofit proposal and what this would mean in terms of accessing a retailer of choice. As part of their application, applicants will be required to provide us with evidence that they have consulted tenants or customers. The AER undertook further targeted consultation on these proposals in December-January (see table below for a summary of feedback).</p> <p>We remain concerned with the extent to which customers' decisions are informed. For this reason, we propose to limit the proposed amendment to business sites / premises only. Property owners proposing network conversions to residential sites / premises will continue to need to apply for individual exemptions, even with the full agreement of all of the affected customers.</p> <p>As with all applications for individual exemption, the AER considers a range of factors when assessing an application where applicants do not have, or do not anticipate having, the full consent of all customers affected by a network conversion—the Retail Law objective<sup>7</sup>, the policy principles and exempt seller and exempt customer factors specified in the Retail Law<sup>8</sup>, as well as</p>

<sup>7</sup> Section 13 of the Retail Law

<sup>8</sup> Sections 114-116 of the Retail Law



## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
		<p>any other matters the AER considers relevant. In this instance we particularly focus on:</p> <ul style="list-style-type: none"> <li>• Potential customer detriment and measures to mitigate against any harm;</li> <li>• The nature of the customers affected (i.e whether they are residential or business, and if the latter, whether they are small or large)</li> </ul> <p>We have previously stated that we consider retrofitting a retrograde step—we have not changed our position. While we acknowledge there may be benefits to customers in doing so, as Simply Energy observed in its submission, network conversions do not result in a straightforward net benefit.</p> <p>Our preference is for energy customers to be able to participate fully in the retail market. Any changes to a customer’s electricity arrangements that may affect their ability to participate in the market should, in our view, be agreed to by all affected customers. As this may not always be possible we will assess each application where a network is to be converted on its merits – namely, on a case by case basis, and not according to whether they have met a particular acceptance threshold.</p> <p>Concerns were raised about customers unreasonably withholding consent. However, we do not consider it appropriate for the AER to establish whether a person is being “reasonable” in their belief as to whether an embedded network would be in their interests— notwithstanding the difficulties in doing so in the first place.</p> <p>In principle we agree with Origin’s suggestion that the consent of</p>

## Submissions from September 2015 consultation

Stakeholder	Stakeholder response	AER response
		all customers is unnecessary for a network conversion to proceed if customers have guaranteed access to a retailer of choice or can continue to use their own retailer. However, as this adds more complexity to an already complex decision making process, we do not intend to adopt this proposal.

### New class for temporary exemption for supply to construction site

Caravan and Camping Industry Association NSW WINenergy	Proposal supported	Noted
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## Summary of submissions and responses from additional amendments

### Submissions from additional amendments

Stakeholder	Stakeholder response	AER response
<b>Further information requirements for retrofit conversions</b>		
CUAC ATA WINenergy Energy and Water Ombudsman of South Australia AGL Jemena Electricity Networks Origin Energy Energy Networks Australia Energy & Water Ombudsman NSW Shopping Centre Council of Australia	<p>The majority of stakeholders supported the proposal that applicants address further information requirements for retrofitted sites.</p> <p>A few considered the proposal did not go far enough, namely that sellers should, in addition, be required to advise customers:</p> <ul style="list-style-type: none"> <li>about reduced consumer protections including access to ombudsman schemes and hardship arrangements (CUAC, ATA, EWOSA);</li> <li>impact on a customer's existing retail contract and access to government schemes or rebates (AGL);</li> <li>fees in respect to regulated meters, contract implications if the meter changes, power outages caused by meter upgrades, cost sharing arrangement in respect to the network (ENA).</li> </ul> <p>The Shopping Centre Council was concerned about tenants receiving multiple communications and recommended a more streamlined process. It asked for more guidance on information and consultation requirements, as did WINenergy. AGL also asked for clarification on the distinction between customers and property owners.</p>	<p>Feedback suggests our proposed amendments will go some way towards addressing the information disclosure issues identified with respect to network conversions, but that more guidance is needed on how property owners should consult with customers, and more broadly. We will revise the Guideline accordingly.</p> <p>We agree with EWON that a measured approach should be taken to relaxing the consent requirements for network conversions to proceed, and therefore propose any relaxation be limited to business sites / premises only. Property owners proposing network conversions to residential sites / premises will continue to need to apply for an individual exemption.</p> <p>To clarify, our proposals relate only to retail exemptions. The Network Guideline will be reviewed and revised separately.</p>

## Submissions from additional amendments

Stakeholder	Stakeholder response	AER response
	<p>Origin Energy reiterated that consent should not be necessary if customers have guaranteed access to a retailer of choice or can continue to use their own retailer</p> <p>EWON expressed concerns about the erosion of customers' protections resulting from network conversions and asked for a staged approach to relaxing the consent requirements for affected customers, starting with business customers.</p> <p>Some of the recommendations stakeholders made were on network issues (eg metering, network charges).</p>	