



# **Notice of Draft Instrument: Amendments to the AER (Retail) Exempt Selling Guideline**

September 2015

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## Amendment Record

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# 1 Nature and authority

## 1.1 Introduction

This Notice of Draft Instrument<sup>1</sup> (Notice) accompanies the Australian Energy Regulator's Draft (AER) Retail Exempt Selling Guideline (guideline).

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. 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>2</sup> and how these have influenced the AER's decisions on exemption classes and conditions.

The AER proposes to revise 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".

The Notice provides details of the context in which the draft guideline has been prepared, the issues involved, and the possible effects of the proposed changes.<sup>3</sup>

## 1.2 Authority

The Retail Law allows us to make and amend guidelines in accordance with the retail consultation procedure.<sup>4</sup>

The current guideline (and information on its development) is available on the AER website: <http://www.aer.gov.au/node/29390>.

## 1.3 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

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<sup>1</sup> National Energy Retail Rules s 173(2)(b).

<sup>2</sup> National Energy Retail Law, ss115 and 116.

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

<sup>4</sup> National Energy Retail Law s 61; National Energy Retail Rules r 173.

- 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.

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.

## **1.4 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.

## **1.5 Version history and effective date**

This Notice has been prepared for consultation purposes only.

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 3.0 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 3.0 is the current version of the guideline.

We are currently consulting on a draft version 4.0 of the guideline.

Our consultations on regulating alternative energy sellers ("Alternative energy sellers - regulation under the National Energy Retail Law", and "Regulating innovative energy selling business models under the National Energy Retail Law") were also taken into account in preparing the draft guideline.

## 2 What is the purpose of this Notice?

When we propose or make amendments to the guideline we are required to explain those changes in a notice.

This notice covers amendments that we have previously consulted on and also proposed changes that we are consulting on for the first time.

The changes we have consulted on previously relate to the AER's position on innovative or alternative energy sellers. In **section 3.2** of this notice we outline the history of our consultation on this issue and the proposed changes to the guideline as well as our rationale for those changes. Broadly we propose to continue to regulate alternative energy selling through the exempt selling framework and will set out the principles that will guide our assessment of applications in the guideline and propose creating a new class exemption for certain alternative energy sellers.

The second category of proposed changes covers changes not previously consulted on. These proposals are based on lessons learnt administering the exempt selling framework over the past three years. We consider regulation should be fit for purpose and that less regulation is therefore appropriate for certain types of selling. We are also keen to maximise the potential of the guideline to flexibly meet the needs of an evolving industry. We therefore propose to extend the eligibility of a number of established classes and to make the guideline less prescriptive where we can.

Our proposed amendments fall into three broad categories – policy, fine-tuning/future proofing and housekeeping – and are explained in detail in this notice. We consider that our proposed amendments will make the guideline clearer and will better capture low risk energy selling activities, as well as reduce the regulatory burden for sellers without compromising customer protections.

In summary, the key changes:

- Clarify obligations on exempt sellers who retrofit an embedded network, including decreasing regulation where all customers in the embedded network have agreed to the network conversion
- Tighten the guideline's language to provide clearer guidance to exempt sellers about their obligations, for example, 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.

- 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 sought to improve the readability of the guideline. We have:

- Introduced a numbering system
- Developed a more logical flow from the perspective of a potential exempt seller
- Used more meaningful headings to communicate section content (and removed unnecessary headings)
- Removed some repetition by grouping all related information together.

Please note, we are providing these proposed amendments for stakeholder comment and to highlight the areas on which we are looking for further detail to inform our position. No final views have been reached. We welcome submissions from exempt sellers, customers and other interested parties. In particular, we seek stakeholder views on the following questions:

### **Questions for stakeholders**

1. Should the electricity tariff cap that exempt sellers may charge small customers (i.e. relevant retailer standing offer) be retained? If not, how else can small customer tariffs be kept to a reasonable level?
2. Are there any potential barriers to exempt sellers offering a customer a minimum of two payment methods (see new Condition clause 3(2)).
3. Under Condition 11 - Reconnection of supply - the AER has removed the term 'as soon as practicable' in relation to the requirement that an exempt seller must reconnect the premises. We seek views on whether the obligation should be time limited and if yes, what limits should be imposed.
4. We are proposing to require exempt sellers to claim government rebates or concessions on behalf of customers who cannot claim the rebates or concessions themselves. In the current guideline exempt sellers must use best endeavours only. We are interested to understand what this change would mean for exempt sellers—in particular, what costs exempt sellers would incur in making the claims. We are also interested in whether stakeholders see other possible solutions to this issue.
5. We are proposing a new class for power purchase agreement (PPA) providers who sell to business customers or residential customers where the PPA has particular characteristics, including limiting it to residential agreements of no more than a 10 year term.
  - a. Is this term appropriate? Do you consider a different term would be better?
  - b. Are there any other criteria the AER should include for eligibility for this class?
  - c. Should the class be extended to cover other types of alternative energy seller?
6. Your views on any other proposed changes.

## 2.1 How to make submissions

This notice and the accompanying consultation draft of the AER (Retail) Exempt Selling Guideline have been prepared in accordance with the retail consultation procedure in rule 173 of the National Energy Retail Rules.

Interested parties are invited to make written submissions on the draft guideline by close of business, **9 November 2015**. Stakeholders are invited to provide any relevant feedback, however we are seeking specific input on a number of questions (see above).

Submissions should be sent electronically to: [AERExemptions@aer.gov.au](mailto:AERExemptions@aer.gov.au) with the subject line 'AER (Retail) Exempt Selling Guideline'. We ask that all submissions sent in an electronic format are in Microsoft Word or other text readable document form.

Alternatively, submissions can be sent to:

Ms Sarah Proudfoot  
General Manager—Retail Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information are requested to:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

We will place all non-confidential submissions on our website at [www.aer.gov.au](http://www.aer.gov.au). For further information on the AER's use and disclosure of information provided to it, see the ACCC/AER Information Policy, June 2014, available on the AER website.

Please direct enquiries about this Notice and the draft guideline, or about lodging a submission, to [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au).

## 3 Regulating alternative energy selling under the Guideline

The AER proposes to amend the guideline to reflect our consultations on regulating alternative or innovative energy sellers.

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.

The AER summarised key issues in regulating "alternative energy providers" in an [issues paper](#), which it 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. The AER published its [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, the AER 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).

### 3.1 Current position under the guideline

The current guideline does not specifically provide for alternative energy sellers. Guidance for these sellers is contained in separate documentation. We are amending the guideline to reflect our regulatory approach, which includes our earlier guidance and subsequent clarifications following consultation.

### 3.2 Consultation and outcomes

The consultation in early 2015 and submissions received in response to the consultation raised a significant number of issues - see Appendix A for a summary of stakeholder views. Central to these were:

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

We have considered in detail the framework we have in place 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.

We agree that exemptions remain the preferable mechanism to regulating alternative energy sellers given the strong principle-based framework for exemptions combined with 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 have 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 were 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, 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. 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 have 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 draft guideline remains one of light-handed regulation and includes a proposal for 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 10 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.

### 3.3 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 the 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).

In addition, we propose creating a new class exemption for PPA providers that sell to commercial customers or where they sell to residential customers under an agreement that is less than 10 years in length and has transparent termination and buy-out clauses for the customer. This class and the rationale for the eligibility criteria are discussed in more detail at **Section 7.1**.

## 4 Retrofitting of premises

This is a new issue that the AER has consulted on briefly in the context of individual exemption applications for retrofitted embedded networks. However we seek your views on the proposed changes to the guideline for exempt sellers who seek to retrofit premises after 1 January 2015.

### 4.1 Current position under the guideline

Under the current 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 Electricity Network Service Providers Registration Exemption Guideline (network guideline) a seller must have the complete agreement of all affected residents to qualify for a network exemption.

The AER's view is that access to retail competition is the best way to empower electricity consumers and, by setting the threshold for network conversions high, has 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 residents / tenants a better deal. Provided residents / tenants are no worse off—and potentially, share in the savings—the AER sees no reason to maintain the stringent obligations currently placed on property owners who wish to retrofit sites.

The AER therefore proposes to relax the regulation of retrofitted sites where all affected residents / tenants have agreed to the network conversion.

### 4.2 Amendments to the guideline

We propose to allow entities that have the explicit informed consent of all residents affected by a network conversion to continue to be eligible for deemed exemptions or to register retail exemptions.

Previously the AER's stance has been to restrict the conversion (i.e. retrofitting) of existing (brownfield) sites to become embedded networks. We currently do this by requiring landlords to apply for individual retail exemptions and through condition 12 of the network guideline, which sets a high threshold (100% acceptance by tenants) for a conversion to proceed. This is because we consider that access to retail competition is the best way to empower electricity consumers and that if the way they source their energy changes, consumers should have a say in those changes. However, we understand from our recent engagement with the shopping centre sector, in particular, that the intended protections are now acting to prevent residents / tenants from accessing lower energy costs through the bulk purchasing power of their landlords. We note that not all residents / tenants will benefit from a conversion so our concern has now shifted to addressing a different question: If the majority of residents / tenants stand to benefit from a conversion and want it to proceed, how do we protect those who do not want to join the embedded network?

We do not consider additional protections are necessary (that is, in addition to the protections embedded customers would ordinarily receive) where all tenants / residents affected agree to a network conversion.

However, sellers who have not obtained the consent of all affected customers will need to continue to apply for individual exemptions. When assessing individual exemption applications the AER will seek to ensure that any potential customer detriment in retrofitted networks is mitigated through conditions. As with recent applications for individual exemptions it is likely that any conditions imposed on an exempt seller in these circumstances will include offer-matching and measures to facilitate access to competition to the extent possible

## **5 'Fair and reasonable' pricing**

### **5.1 Current position under the guideline**

The current 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 are proposing to amend 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 should be charging.

### **5.2 Amendments to the guideline**

We are amending the guideline to clarify what exempt sellers can charge customers under the discussion in 'Profit intentions of an exempt seller' (pp.49). We propose removing 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.

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 Current position under the guideline

One of the core conditions of the current 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 (see Condition 12). The term "best endeavours" is ambiguous and subjective, meaning it is not clear what an exempt seller would need to do to comply with 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 are entitled to expect in terms of assistance from their seller.

### 6.2 Amendments to the guideline

We propose to make the requirement to claim government rebates on behalf of exempt customers a positive obligation, and so provide certainty for exempt sellers and their customers. This 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. We consider this amendment a positive step in assisting small customers within embedded networks and going some way to addressing some of the situational challenges those customers can face.

The customers affected by this condition are vulnerable customers and to the extent we can, we want to ensure these customers have access to consumer protections, given in the majority of cases they do not have access to alternative solutions such as transferring to a cheaper offer from another provider. We believe customers who might benefit from government rebate schemes should benefit, but recognise that there may be issues with this approach, including additional administrative costs on exempt sellers. We seek stakeholder views on this issue - see Question 4 above. We note too that governments have taken different approaches to this issue in the jurisdictions that have adopted the Retail Law. In New South Wales, for example, exempt customers can claim government energy rebates and concessions themselves.

If this amendment is not adopted in the final guideline, we may remove the obligation on exempt sellers under the current Condition 12(2) to use best endeavours to claim exempt customers' rebates or concessions. In this case the conditions would no longer include an obligation around exempt customer rebates or concessions. We would however expect exempt sellers to assist their customers in claiming these rebates or concessions wherever possible.

## 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 Current position under the guideline

The current 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 Amendments to the guideline

The AER is proposing to include 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.

We propose the following new registrable exemption class:

- 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.

Anyone registered under this new class will be subject to the same conditions as sellers currently granted individual exemptions (see *New conditions* under 9.1.1 below).

## 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 Current position under the guideline

The current 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 Network Service Provider exemption guideline makes provision for a deemed exemption class for this type of activity.

### 7.2.2 Amendments to the guideline

We propose a new deemed class exemption, D4, which would cover 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 propose a number of minor variations to exemption class criteria and applicable conditions.

### 8.1 Class variations

**Deemed classes D1 and D2** (*sale of metered energy to small commercial/retail customers*)

**Registrable classes R1 and R2** (*sale of metered energy to residential 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 or residents affected by the conversion 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). We therefore propose extending the eligibility criteria for the D1, D2, R1 and R2 classes to newly retrofitted sites (i.e. post-1 January 2015) where all customers have provided explicit informed consent to the network conversion.

These amendments will lessen the regulatory load for energy sellers who have the full agreement of all tenants / residents 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. To remedy this oversight we must amend the guideline.

We therefore propose extending the eligibility criteria for the D9 class to include data centre operators and to clarify that eligible sellers listed under that class includes, but is 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 therefore propose extending the eligibility criteria for the D10 class to include universities and to clarify that eligible sellers listed under that class include, but is 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 therefore propose relaxing the restrictions on persons selling to large customers so that the seller may 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. Eligibility will be restricted to on-sellers only (under the current guideline the class is open to energy sellers, not on-sellers), so that persons who purchase from the wholesale energy market and sell to large customers will still be required to apply for a retailer authorisation.

**Deemed class D3** (*Persons selling metered energy to occupants of holiday accommodation on a short-term basis*)

The application of this class has been amended to clarify that the list of eligible sellers is not an exhaustive one.

**Application - all deemed and registrable classes**

The description of how the various class exemptions apply currently 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 therefore redundant and we propose to remove them from the description of class exemptions.

### 8.1.1 Core condition variations

*Condition 1 - Obligation to supply*

Clause (2) currently specifies that an exempt person cannot refuse to sell energy to a customer because they owe the seller outstanding amounts from a previous account. The meaning of this clause, as currently worded, is unclear and has 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 therefore propose amending this condition to make it easier to understand and also to incorporate the requirements of rule 18(7) of the Retail Law. Specifically, we propose amending the condition to allow 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 10 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*

The current 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).

A new clause 3(2) has therefore been inserted which requires an exempt person to offer a customer at least two payment methods.

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.

### *Condition 7 - Pricing*

Clause 7(5) currently provides that any jurisdictional pricing requirements will act to exclude the pricing obligations set out under condition 7 of the guideline. We believe 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 costs 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 that 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 therefore propose deleting both clauses 7(5) and 7(6) from the guideline.

### *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.

The clauses have therefore been amended to address the unintended consequence of the current drafting. They 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*

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 therefore propose removing this clause. Standard legal principles will apply to any conflicting legislation.

#### *Condition 11 - Reconnection of supply*

The current 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.

We recommend that the term be removed but as part of our consultation we ask whether this requirement be time limited and, if so, what limits should be imposed.

#### *Condition 12 - Concessions and rebates*

Clause 12(2) 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 are not claiming the rebate on behalf of their customers and that they will not do so unless an absolute obligation is placed on them. We therefore consider that this requirement should become absolute, namely the exempt seller *must* make that claim, unless there is a legal impediment to them doing so.

#### *New conditions*

We propose adding two new conditions to the set of core conditions (conditions 20 and 21). These conditions currently apply to exemptions granted to PPA providers and 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 National Energy 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 ability to negotiate contract terms
- **D9** (*sale of energy in conjunction with the provision of telecommunication/information services*) due to the minimal 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. The condition has been reworded 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. Condition 2(1)(h) has been excluded from these classes, with the exception of **D5** (*sale of unmetered gas to individual premises where gas is used for limited purposes*). We propose that it should also not apply to this class.

#### *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 covers 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 propose removing 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) requires that an exempt seller must advise their customers of any rights that they have in relation to dispute resolution. This requirement currently does 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**

Condition 13 requires an exempt seller to not unreasonably hinder an exempt customer from accessing the retailer of their choice. It currently applies to telecommunication/information service providers under **class D9**. However, the energy sales covered by this this class comprise are relatively small and incidental to the provision of telecommunication/information services. We therefore consider that this condition is unnecessary and impractical and should not be imposed.

**Class D9: Condition 17**

Condition 17 requires 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 currently does 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 propose to apply 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, similarly, 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 propose removing them.

## 9 Clarification - various

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

### 9.1.1 Exemption cancellation process

The current 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

The guideline has been amended 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 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, are long term-residents for the purposes of the guideline.

## 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 AER web-site. 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.

## Appendix A: Summary of submissions and AER response

What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
AEMO	<b>Exemption is the preferred option</b>	
AGL	<p>The majority of stakeholders' submissions were in favour of a system using exemptions for alternative energy sellers. The submissions cited the following advantages of exemptions over authorisations:</p> <ul style="list-style-type: none"> <li>• Greater flexibility regarding the application to new alternative business models;</li> <li>• The approach is in place and tested and there is no compelling reason for change;</li> <li>• The overwhelming majority of customers will remain connected to the energy retailer of their choice and will therefore have necessary protections;</li> <li>• Reduces 'red tape' for new businesses offering innovative products;</li> <li>• Authorisation would act as a barrier to entry for small innovative businesses</li> <li>• The benefits of authorisation for businesses does not outweigh its costs as a regulatory burden</li> </ul>	<p>The policy principles and exempt seller and customer related factors specified in the Retail Law help us determine whether an authorisation or exemption is appropriate for an energy seller. These principles and factors have also informed the class exemptions that we have created for certain types of energy sellers.</p> <p>We will also consider such factors as the nature of the service provided to the customer, whether the form of regulation is appropriate and fit for purpose, and whether it duplicates existing regulation. We have updated the guideline to reflect the role these factors have in our assessment.</p> <p>When determining how best to regulate energy supply, one of the questions we consider is whether a service is discretionary or non-discretionary and the effect disconnection would have on a customer's ongoing energy supply. This principle has continued to guide our thinking in our proposed approach to alternative energy providers under the exempt selling framework.</p> <p>We consider that our current approach in relation to alternative energy sellers remains appropriate. Exemptions can be tailor-made to suit the specifics of an energy sale and are therefore a better regulatory fit for alternative energy sales.</p>
Alexander Robinson		
Clean Energy Council		
Consumer Action Law Centre		
Energy Network Association		
Energy Storage Council		
Energy Supply Association of Australia		
Ergon Energy		
Ethnic Communities Council of NSW Inc		
EWON		
First Solar	A number of the submissions were in favour of exemptions, but believed the AER should be granting exemptions subject	

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Origin Energy Permitz Group PIAC Pooled Energy Simply Energy Total Environment Centre United Energy	to more stringent requirements than they currently do.	PPAs are more wide-spread and better understood than when we first considered them in 2013. We consider where the PPA provider is selling to business customers, and /or residential customers where the PPA is less than ten years <b>and</b> includes early termination provisions, these arrangements can appropriately be grouped into a new exemption class as it involves minimal regulatory risk.
Alinta Anonymous energy law practitioner	<p><b>Authorisation is the preferred option</b></p> <p>Two submissions suggested that authorisations are the more appropriate form of regulation for alternative energy providers. The main reason put forward was that exemption created an uneven playing field, with retailers suffering a regulatory burden that their competitors did not. It was also argued that the hardship of authorisation and its obligations were not significant.</p>	<p>The regulatory costs of complying with the obligations imposed on an authorised retailer under the Retail Law can be substantial and could be prohibitive for some small energy sellers. As with other types of exempt selling where we consider that the additional regulatory costs that would be imposed upon an energy seller by an authorisation outweigh the costs to customers of receiving a lesser level of regulation, an exemption is likely to be sufficient for alternative energy supply. Our view was, and remains, that when an alternative energy provider contracts with a customer to provide a discretionary or secondary energy service, an authorisation is not practical or warranted. This view was shared by the majority of stakeholders.</p> <p>As noted during consultation in 2015, many of the Retail Law obligations are inappropriate, for example participation in the</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
<p>Alternative Energy Solutions</p> <p>Council on the Ageing Queensland</p> <p>Energy Australia</p> <p>Energy Retailers Association of Australia</p> <p>EWON</p> <p>Simply Energy</p>	<p><b>Other</b></p> <p>A number of submissions argued that neither authorisations nor exemptions are appropriate and that the choice should depend on the circumstances. One submission argued that whichever applies, exemption or authorisation, the same conditions should be applied to each entity.</p> <p>Two submissions called for a new alternative framework that sits somewhere between exemption and authorisation.</p>	<p>Retailer of Last Resort scheme, and obligations to provide standing offers. So long as the customer remains connected to the grid and the alternative energy seller is a secondary source of energy, we consider exemptions to be the best regulatory fit.</p> <p>Under the Retail Law, the AER is able to regulate the sale of energy through either a retailer authorisation or exemption. Accordingly a person selling energy in a jurisdiction that has adopted the NERL must either apply for a retailer authorisation or seek an exemption.</p> <p>Our view is that the level of regulation should be proportionate to the level of protection energy customers need. These needs vary according to the type of service they are receiving and their relationship with their energy seller.</p> <p>We think it is important to recognise the different needs of customers with a single source of energy supply to customers purchasing energy from multiple sources of supply. We consider a customer needs a greater level of protection where a service carries the possibility that a customer's energy supply could be disconnected. In this case the seller will need to either be authorised or if exempted, will be subject to conditions that mirror a retailer's obligations. However, customers do not need the same level of protection where there is no risk of them being disconnected, for example where the seller is providing a supplementary source of energy (as in the case of PPA providers).</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder

Stakeholder response

AER response

### In relation to Option 2 (exemption, rather than authorisation), what, if any, conditions should be placed on an individual exemption for an alternative energy seller?

AEMO

**Exemptions should have conditions**

AGL

The majority of submissions argued that individual exemptions for alternative energy sellers should be subject to conditions.

Alternative Technology Association

These submissions varied greatly in terms of what conditions and in what circumstances those conditions should apply, but the overwhelming majority of submissions that discussed conditions expressed a view that exemption without conditions would be inadequate.

Clean Energy Council

Consumer Action Law Centre

Council on the Aging Queensland

Energy Australia

Energy Networks Association

Energy Storage Association

Energy Storage Council

Ergon Energy

Ethnic Communities

Where a customer is supplied from an energy source that is secondary to grid-distributed energy, for example, through a PPA the customer does not need the same level of protection for that service as for the primary source of electricity and the seller therefore does not need to be as heavily regulated as an authorised retailer. In the case of alternative energy sellers there will often be another supplier to the customer through a grid connection. In these circumstances, we consider only minimal conditions are necessary as consumer protections are provided by the other supplier.

If the supply occurs in circumstances other than those identified by new class R8, our view is the conditions should be tailored to the nature of the energy sale and we will consider these on a case-by-case basis.

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Council of NSW Inc EWON First Solar Origin Energy PIAC Pooled Energy Simply Energy United Energy	<p><b>No further conditions</b></p> <p>Total Environment Care submitted that the current system is adequate and that no further conditions should be placed on exempt sellers.</p>	<p>The AER agrees with this view and considers that a light handed regulatory approach remains appropriate in regulating alternative energy sellers where the customer has another source of energy supply.</p> <p>As noted above, we therefore propose creating a class exemption to cover PPA in certain situations. The conditions for this exemption will be the same as the conditions applied to PPA sellers under our Final Statement of Approach.</p>
AEMO AGL Alternative Technology Solutions	<p><b>When conditions should apply</b></p> <p>A number of stakeholders argued that the conditions placed on a company should depend on a number of factors such as:</p> <ul style="list-style-type: none"> <li>• a business' volume of electricity generated or number of</li> </ul>	<p>In the draft guideline we have reiterated the principle that the level of regulation should be proportionate to the level of protection energy customers need. These needs vary according to the type of service they are receiving and their relationship with their energy seller. When determining the customer needs we take into account a range of factors relating to the nature of</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Energy Networks Association Energy Storage Council First Solar PIAC	<p>customers;</p> <ul style="list-style-type: none"> <li>whether energy is a central component of the product or services offered by the business;</li> <li>whether the seller is 'behind or 'in front of' the meter or</li> <li>if the seller can interrupt the continuous supply of electricity to the consumer.</li> </ul> <p>Some submissions argued that more onerous conditions such as customer hardship policies and dispute resolution procedures should only apply when a certain threshold was reached.</p> <p>There was significant divergence between submissions about when consumer protection conditions should be applied..</p> <p>A number of submissions argued that consumer protections should be limited to those that will not place undue burden on the business.</p>	<p>the seller's business, whether the supply is in addition to another supply and whether the customer is connected to the grid.</p> <p>We have decided that the new R8 class exemption for PPA providers should have minimum conditions. We will weigh the relevant factors on a case by case basis for energy supplied under different arrangements.</p>
AGL Consumer Action Law Centre Energy Australia Energy Storage Council Ethnic Communities	<p><b>Customer protection conditions</b></p> <p>A number of other stakeholders submitted that customer protection conditions should be placed on exemptions, in particular:</p> <ul style="list-style-type: none"> <li>dispute resolution procedures;</li> <li>ombudsman schemes;</li> </ul>	<p>Energy-specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high-quality supply of energy on fair and reasonable terms. In the case PPA providers, for example, there is generally another, grid connected source of energy supply. In these circumstances we consider the customer protections afforded the customer under its retailer supplied energy contract are sufficient. We wish to avoid duplication of regulation and</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Council of NSW Inc EWON PIAC Pooled Energy Simply Energy United Energy	<ul style="list-style-type: none"> <li>hardship policies; and</li> <li>billing and disclosure requirements.</li> </ul>	<p>regulatory burden wherever possible.</p> <p>Exempt customers generally do not receive all the protections provided for customers under the Retail Law and customers buying electricity through a supplementary energy source would receive fewer energy-specific protections from that provider.</p> <p>In our view this is appropriate as this type of seller has a fundamentally different relationship with the customer than with a retailer or even with an exempt seller onselling from the grid as the product offered is discretionary. Unless a retailer authorisation is necessary to ensure the full suite of customer protections, an authorisation may not be necessary. We note that consumer protections are available under other legislative frameworks. We do not wish to duplicate those protections or to place additional obligations on sellers who are already bound by other legislative frameworks.</p>
Energy Australia Consumer Action Law Centre	<p><b>Same protections as authorisation</b></p> <p>Energy Australia argued that customer protection conditions should apply regardless of the volume or size of the businesses to provide an even playing field between retailers and alternative energy sellers. They submitted that a lack of consistency would result in regulatory distortion that favoured the alternative energy sellers.</p> <p>The Consumer Action Law Centre similarly submitted that consumer protections should not unnecessarily diverge for consumers getting energy from authorised versus exempt</p>	<p>As with a number of other exempt selling relationships, we consider it is neither feasible nor warranted for customers of alternative energy suppliers to have the same protections as they would from their authorised retailer. Many of the Retail Law obligations are inappropriate and duplicated when an alternative energy provider contracts with a customer to provide an additional or secondary energy service. The protections available to those customers are often already provided for in other legislation such as the Australian Consumer Law and imposing additional conditions would involve regulatory doubling up.</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
	sellers.	In the event the alternative energy provider is the sole source of energy, additional consumer protections are likely to be necessary. The AER will consider applications on a case by case basis. Our assessment will be guided by the principles articulated in the draft guideline and which have informed the creation of new exemption class R8.
Origin Energy United Energy	<p><b>ACL is sufficient consumer protection</b></p> <p>Both Origin Energy and United Energy argued that there was no need for further consumer protections beyond those provided for by Australian Consumer Law.</p>	The AER agrees that customers of alternative energy sellers generally have sufficient consumer protections under non-energy specific legislation, for example the Australian Consumer Law and state or territory tenancy legislation. Exemption conditions are intended to provide energy-specific protections for exempt customers and not to duplicate protections provided through other legislation, or to place additional obligations on sellers who are already bound by other legislative frameworks.
Council on the Aging Queensland PIAC	<p><b>Payment of fee authorised/primary retailer</b></p> <p>The Council on the Aging Queensland submitted that exemptions should be subject to a condition that the alternative seller pay a fee to the customer's retailer to offset the costs of hardship, life support and concession/rebate services.</p>	We recognise that different suppliers of energy are likely to encounter different delivery costs. For alternative energy sellers, and in the context of the principle-based framework we have articulated in the draft guideline, we consider the exemption framework is not the appropriate mechanism for dealing with any differences in costs between suppliers. It is a broader question about regulatory burden experienced by different types of energy seller under the current legislative framework and may be better dealt with as part of the proposed review of the National Energy Customer Framework.

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Energy Networks Association	<p><b>Set framework of criteria for conditions</b></p> <p>The Energy Networks Association submitted that the AER should develop a framework that sets the criteria for what conditions will apply in certain circumstances.</p>	<p>The AER considers the policy principles under the Retail Law and the exempt seller and exempt customer factors provide a sufficient framework for the setting of conditions. In summary, these factors require us to balance the business needs of exempt seller with the need to provide sufficient protections to the exempt customer for what remains an essential service where the supply is the customer's primary source of energy.</p> <p>We will also consider such factors as the nature of the service provided to the customer, whether the form of regulation is appropriate and fit for purpose, and whether it duplicates existing regulation. These principles have influenced our decisions on the need for certain exemption classes and the conditions that should attach to them and individual exemptions.</p>
<p>Alternative Technology Association</p> <p>Consumer Action Law Centre</p> <p>Ethnic Communities of NSW Inc</p> <p>EWON</p> <p>Origin Energy</p> <p>PIAC</p>	<p><b>Disclosure Requirements</b></p> <p>A number of stakeholders submitted that alternative energy sellers be subject to a range of disclosure requirements regarding the product being sold. These submissions proposed some or all of the following:</p> <ul style="list-style-type: none"> <li>• Inform the customer that they are not an authorised retailer</li> <li>• Inform the customer the seller is not bound by the NERL, but bound by consumer protection legislation</li> <li>• Inform the customer of the continuing right to choose its own retailer</li> </ul>	<p>We consider that other legislation, including the ACL, provides sufficient obligations on sellers and protections for customers in relation to disclosure of information about products and services supplied by alternative energy sellers.</p> <p>To the extent there is a gap we consider the proposed condition 21 for class R8 deals with this. That condition is intended to ensure customers understand they are receiving electricity from a supplier who is not their retailer and that they deal with that supplier if they have questions or complaints.</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Pooled Energy Simply Energy	<ul style="list-style-type: none"> <li>Provide full disclosure of the terms and costs of the contract such as termination, penalty and other fees</li> <li>The lack of consumer protections if the consumer goes off-grid</li> </ul> <p>These submissions also generally highlighted the importance of the "full and informed consent" requirements applying to alternative energy sellers.</p>	
Ergon Energy	<p><b>Conditions to ensure stability of NEM</b></p> <p>Ergon Energy submitted that exempt sellers should have to comply with information disclosure conditions that ensured the stability of the National Energy Market. In this respect Ergon Energy emphasised the importance of conditions going beyond merely the relationship with the customer.</p>	The AER considers that AEMO is the more appropriate body to deal with this issue.
<p><b>Should the AER include a 'trigger point' for review of individual cases if it proceeds with Option 2?</b></p>		
<p><b>Trigger points based on the specific business</b></p>		
AEMO	<p><b>In favour of a 'sunset clause'/time-based trigger point</b></p>	
AGL Alternative Technology Association	<p>A number of stakeholders submitted that a time-based trigger point for exemptions would be appropriate. The advantages of having such a trigger point were:</p>	<p>We recognise that the market is changing rapidly and regulatory arrangements that are appropriate at the time an exemption is granted may not be so at a later date. However the AER considers that its proposed light handed approach for alternative energy</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Consumer Action Law Centre EWON	<ul style="list-style-type: none"> <li>the AER would be kept abreast of changes in the market</li> <li>EWON: would allow regular comprehensive review of the market</li> </ul>	<p>sellers will provide sufficient flexibility while ensuring regulatory certainty.</p> <p>While this option remains open to us, our view is that the set of principles we have articulated in the draft guideline make a trigger point unnecessary. Further, we consider a trigger point may have unintended regulatory outcomes if sellers set up their business operations in order to avoid or otherwise not be subject to such a trigger point.</p>
Ergon Energy	<p><b>Against a 'sunset clause'/time-based trigger point</b></p> <p>Ergon Energy submitted that a time-based trigger may be undesirable because of the rapidity with which innovation is taking place and the risk that the risk the time period is too long.</p>	<p>Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary</p>
Council on the Aging Queensland Energy Storage Council (ESC) Ergon Energy	<p><b>In favour of business size trigger point</b></p> <p>Ergon Energy: better trigger than time. Could use number of customers, amount of generation or other system.</p>	<p>Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary</p>
AGL Alternative Technology Association Energy Networks	<p><b>Against a business size trigger point</b></p> <p>AGL: risk businesses will try and stay under ATA: a barrier to efficiency</p>	<p>Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary</p>

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
Association EWON Origin Energy Sun Edison	<p>ENA: not consistent with a fit for purpose regulatory outcome and understates significance of service from perspective of individual customers</p> <p>EWON: rely on voluntary self-reporting, additional burden on seller and AER and may outweigh potential benefits</p> <p>Sun Edison: More regulation on smaller businesses where the risks are arguably greater compared with large proven businesses.</p>	
Sun Edison	<b>In favour of site percentage trigger</b>	Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary
Alternative Technology Association Clean Energy Council First Solar	<p><b>Against a 'customer oriented/proportional trigger point</b></p> <p>ATA: barrier to efficiency</p> <p>CEC: because customer oriented and out of control of seller, unmanageable business risk.</p>	Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary
Council on the Aging Queensland Ergon Energy	<b>In favour of trigger when a business may impact NEM</b>	Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary
Clean Energy Council	<p><b>A 'NEM connected/disconnected' trigger point</b></p> <p>CEC: where reconnected to NEM would be difficult due to physical limitation (e.g. micro-grid situation) or contractual</p>	Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary

## What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?

Stakeholder	Stakeholder response	AER response
	limitations.	
Alexander Robinson	<b>No specific trigger points</b>	The AER agrees with this position.
Energy Australia Pooled Energy Simply Energy Total Environment Centre	Alexander Robinson: as long as the same activities, no trigger point EA: treat all participants equally SE: Trigger points are open to gaming, provide compliance reporting and intelligence to the AER.	
Broader trigger points		
AEMO United Energy	<b>A later 'full review' trigger point</b> AEMO: later review once comprehensive regulatory framework developed.	Our view is that the set of principles we have articulated in the guideline make a trigger point unnecessary. However, the AER will continue to monitor the appropriateness of the exemptions framework.
Origin Energy	<b>A trigger based on battery technology expansion</b> An appropriate time, but should not be the focus of regulation. Focus should be on impact on consumers, not the technology	We have taken into account the strongly expressed views of many stakeholders that technological advancements should not be the trigger for a particular regulatory outcome.
Energy Storage Council (ESC) PIAC	<b>Trigger when significant number of disconnections from NEM</b> ESC: may require review of entire definition of electricity as an essential service	The AER recognises that disconnection from the grid may be a consequence of on-site generation. However this will be considered as part of the broader review of the National Energy Retail Law.

**What are stakeholders' views on the AER's proposed options? Are there other options to which the AER should have regard?**

Stakeholder

Stakeholder response

AER response

PIAC: may require review of the whole definition of electricity provision via the NEM as an essential service.

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