



Notice of draft instrument - exempt selling guideline

June 2011

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Shortened forms

ACCC	Australian Competition and Consumer Commission
AEMA	Australian Energy Market Agreement
AEMO	Australian Energy Market Operator
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
COAG	Council of Australian Governments
MCE	Ministerial Council on Energy
MSATS	Market Settlement and Transfer Solution
NEL	National Electricity Law
NER	National Electricity Rules
NGR	National Gas Rules
NMI	National Meter Identifier
Public Register	Public Register of Authorised Retailers and Exempt Sellers
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort

Retail consultation procedure

This notice and the attached draft *Exempt selling guideline* (guideline), which includes other instruments, have been published in accordance with the retail consultation procedure set out in rule 173 of the National Energy Retail Rules (Retail Rules).

The Australian Energy Regulator (AER) invites comments on this notice and guideline. Responses to this consultation will inform the development of the final guideline.

This is the final stage of the AER's consultation on the guideline. As advised in Standing Committee of Officials Bulletin No 190 of 21 March 2011, all activities carried out by the AER prior to the commencement of the National Energy Retail Law (Retail Law) and Retail Rules (such as consultation, making instruments and decision making) will be supported by appropriate transitional provisions enacted by participating jurisdictions to ensure instruments and decisions made as a result of these activities are valid and take effect on commencement of the Retail Law and Rules.

Written submissions on this notice and the draft guideline are invited by 12 August 2011. Electronic submissions should be sent to AERInquiry@aer.gov.au with the subject line 'Submission to exempt selling guideline' or by mail to:

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

The AER is also current consulting (as a separate process) on its approach to electricity network service provider registration exemptions. These exemptions apply when a network owner or operator is exempt from the requirement in the National Electricity Rules to register with AEMO. These consultation papers can be found at www.aer.gov.au. The papers raise several issues which are also applicable to this exempt selling guideline.

PLEASE NOTE:

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

Parties wishing to submit confidential information are asked to:

- clearly identify the information that is subject of the confidentiality claim
- provide a non-confidential version of the submission for publication, in addition to the confidential one

The AER does not generally accept blanket claims for confidentiality over the entirety of the information provided. Such claims should not be made unless all information is truly regarded as confidential. The identified information should genuinely be of a confidential nature and not otherwise publicly available. In addition to this, parties must identify the specific documents or relevant parts of those documents which contain confidential information. The AER does not accept documents or parts of documents which are redacted or ‘blacked out’.

For further information regarding the AER’s use and disclosure of information provided to it, please refer to the *ACCC–AER information policy: the collection, use and disclosure of information*, which is available on the AER website under ‘Publications’.

Following a review of comments submitted on the draft guideline, the AER will release the final version of the guideline.

1 Requirement to develop an exempt selling guideline

Section 118 of the Retail Law requires the AER to develop and maintain an *Exempt selling guideline* in accordance with the retail consultation procedure. The AER must make any amendments to the guideline in accordance with submissions received during the retail consultation procedures set out in r. 173 (2) (c) of the Retail Rules.

The Retail Law prohibits a person from engaging in the sale of energy to a person for premises unless the seller has obtained a retailer authorisation or is selling energy pursuant to an exemption from the requirement to hold an authorisation.¹ The guideline sets out the new national framework for retail exemptions. The guideline includes determinations of deemed and registrable exemptions. It also sets out the conditions attached to those classes of exemptions.

The guideline will assist applicants to assess their eligibility for the different classes of deemed and registrable exemptions set out in the determinations. It will also outline the circumstances in which they may need to seek an individual exemption or a retailer authorisation.

Information required by the AER from a person or entity applying for an individual exemption or registering for a registrable exemption is contained in the guideline. To be eligible for a deemed or registrable exemption, you must fall within a class of exemption outlined in the determinations of deemed and registrable exemptions. The conditions of exemption outlined in the determinations are binding on persons covered by a deemed or registrable exemption.

This guideline applies to the onselling of energy for those who are exempted from the requirement to hold a retail authorisation under the Retail Law. A *network* exemption (governed by the AER's network exemptions framework) applies to persons who own, operate or has control over a network, but is exempt from the requirement to register with AEMO. Such an exemption may apply, for example, to an embedded generator. The AER has developed a single registration process for both the network Guideline and Exempt Selling Guideline to facilitate applicants seeking an exemption from both sets of requirements

¹ Section 88 of the Retail Law

2 Context in which this draft guideline has been prepared

The Retail Law and Rules are the final stage in the transition to national regulation of energy markets. The Ministerial Council on Energy's (MCE's) consultation on the National Retail Law and Rules started in 2006 and included extensive consultation on two exposure drafts in 2009 and 2010. Under the Retail Law, the AER will grant retail exemptions. Previously, various jurisdictional regulators were responsible for this.

2.1 AER approach to retail exemptions

In developing its approach to exemptions, the AER must have regard to the objectives of the Retail Law and the policy principles contained in that law that must be taken into account when the AER is performing or exercising functions and powers in relation to exempt selling. Those policy principles are aimed, in part, at ensuring that customers of exempt sellers are not unreasonably disadvantaged as compared to customers of authorised retailers.

While recognising that in some situations the exempt seller is the only person who is able to supply energy to its intended customers, the AER also acknowledges that exempt selling is not always in the long term interests of customers.

The AER considers that customers of exempt sellers should not be denied customer protections afforded to customers of authorised retailers, in so far as is possible.² The AER has taken guidance from the customer protection requirements set out for authorised retailers in the Retail Law as these are the protections that policy makers considered to be essential for retail customers.

The guideline aims, insofar as practically possible, to align the obligations of exempt sellers with those that apply to authorised retailers. Customers will benefit from having greater protections, often in addition to those protections offered under other legislation, such as residential tenancies legislation.

A retail exemption should not be viewed as an optional or electable alternative to a retailer authorisation. Applications for individual exemptions will be considered on a case by case basis in accordance with the policy principles, exempt seller related factors and exempt customer factors as outlined in the guideline.

There are three types of retail exemptions:

- deemed classes of exemption, which apply automatically;
- registrable classes of exemption, which apply when after a person has notified the AER that they belong to a particular class;
- individual exemptions, which apply once the AER has granted that person an individual exemption.

² See s. 114 (1) (c) of the Retail Law.

The AER has identified a range of activities where it is appropriate for exempt selling arrangements to be in place. The AER has developed classes of exemption (deemed and registrable) for activities where they could be clearly defined, involve a relatively straightforward onselling of energy within an embedded network and were, or were likely to be, widespread.

Class exemptions reduce the regulatory burden of the exemptions regime by removing the need for a large number of individual exemption applications for similar onselling arrangements. We recognise that there are currently onselling activities taking place in each state and jurisdiction. Class exemptions will facilitate a smoother transition of these onsellers to the national exemptions framework.

Most of the registrable classes of exemption transition are only open to new onsellers until 1 January 2015. Onselling operations that commence after this date will require an individual exemption. Requiring individual exemptions provides the AER with a greater opportunity to scrutinise a proposed onselling arrangement and impose conditions that reflect the needs of the onseller and its customers.

2.2 Preparation of the draft guideline

The AER has conducted two rounds of preliminary consultation on retail exemptions. The first, in June 2010, outlined AER's initial considerations and approach to exemptions. The June 2010 issues paper generated considerable feedback from a wide range of stakeholders. The AER's initial approach was to determine eligibility for deemed and registrable classes of exemption based on:

- number of small customers served,
- whether or not these customers are able purchase from their choice of retailer rather than the exempt seller if they wanted to do so.

After reviewing stakeholder feedback in written submissions, and views expressed at the two August 2010 public forums, the AER decided to revise the proposed approach.

The second round of informal consultation, which commenced in November 2010, presented the AER's revised approach to exemptions by way of a consultation paper, a draft exempt selling guideline and draft determinations of deemed and registrable exemptions. In that round of consultation, the AER revised its approach to eligibility for deemed and registrable classes of exemption. Written stakeholder submissions on that round closed in February 2011.

That approach was well received by stakeholders at the public forum held in December 2010 and formed the basis of the instrument that attached to this notice.

3 Issues involved in the preparation of this guideline

Submissions were generally supportive of the AER's approach set out in the November 2010 consultation documents. A summary of all issues raised and the AER's response to these is at Attachment A.

Several stakeholders expressed concerns around some specific issues, which are explored below.

Hardship policies

Stakeholders stated that hardship policies are a necessary part of the exempt selling regime, given that many exempt customers are likely to be vulnerable. Many stakeholders also acknowledged the complexities of requiring hardship policies for exempt sellers. Stakeholders noted that exempt sellers should be required to at least have hardship provisions for customers experiencing payment difficulties.³ Some suggestions included:

- certain classes of exempt sellers should be required to offer flexible payment options
- there should be no disconnection allowed unless an offer for flexible payment had been made and either refused, or not adhered to.

The November 2010 issues paper stated that, where the exempt seller is also the landlord, a hardship policy, or a payment plan, may not be particularly helpful as it assists only with energy, not accommodation, payment difficulties. Several stakeholders disagreed with this view. They stated that for low income customers, making small, regular payments can be an essential strategy for managing their living costs. An exempt customer would not be less likely to benefit from the ability to spread their energy costs over one or more billing periods. Others did not agree with the reasoning that because energy costs will in most cases constitute a small proportion of overall costs (i.e. as compared to rental costs), a payment plans would only assist with energy costs.

The AER understands the concerns of many submissions regarding hardship protections for customers of exempt sellers and is aware that some exempt customers are particularly vulnerable. The AER reiterates its view that hardship policies are difficult to enforce for exempt sellers, and may not be particularly effective in assisting hardship customers who obtain their accommodation from the on-sellers. On a practical level, even if a customer is on a payment plan for their energy use, that may be of little use if they cannot meet their accommodation payment *and* there is no requirement for the exempt seller, as the accommodation provider, to offer payment plans. Therefore, for payment plans to be fully effective in many of these situations, there needs to also be a payment plan on the rent charges (the AER notes that some tenancy tribunals can make such orders, but the AER does not have this power).

³ See Appendix B, issue 5.

However, the AER notes that there is merit in offering flexible payment options. If an exempt seller does offer hardship policies or flexible payments plans, they must notify their customers of this in any reminder notices for late payment of bills.

Australian Standard ISO 10002-2006 (complaint handling and dispute resolution).

The issues paper proposed that exempt sellers (under deemed or registrable exemptions) would be required to develop and maintain dispute resolution policies in accordance with the Australian Standard ISO 10002-2006. For individual exemptions, this requirement would be assessed on a case by case basis.

Most submissions supported the requirement for holders of individual exemptions to comply with the Australian Standard ISO 10002-2006.⁴ Several however, stated that the Australian Standard should apply to *all* exempt sellers (and not just individual sellers on a case by case basis).

The AER accepts that there is a need for impartial and independent external dispute resolution for exempt customers. Ideally, exempt customers will have access to ombudsmen schemes. The potential application of some jurisdictional ombudsman schemes to exempt customers is currently being investigated. There are, however, a number of legal, practical and financial barriers to ombudsman schemes applying to exempt sellers. The AER does not have jurisdiction over these matters.

For general dispute resolution, the AER maintains its view that the Australian Standard should be applicable to larger on-sellers on a *case by case* basis only. The AER will consider the application of the Australian Standard as a dispute resolution condition for individual sellers on a case by case basis. In doing so, the AER will have regard to the need for exempt customers to receive similar protection to those who purchase energy from an authorised retailer.

Public register

Several submissions stated that all exempt sellers should be required to be on the public register. These stakeholders did not support the suggestion that only holders of registrable and individual exemptions be required to register. Some stakeholders disagreed with the AER's view that public registration for smaller on-sellers is unduly burdensome. They stated that a universal register of exempt sellers would result in greater transparency and accountability in exempt selling.

The AER does not agree that universal registration for all exempt sellers will necessarily lead to greater transparency in the exempt selling area. We maintain our view that such a requirement would be burdensome for small exempt sellers, who may have limited resources to dedicate to regulatory compliance. The value of the information gained from universal registration would not outweigh the consequential costs for these types of on-sellers.

We acknowledge that there are benefits of public registration. At this stage, we still consider universal registration unnecessary, however, may consider it in the future if

⁴ See Appendix B, Issue 6

onselling becomes more prevalent, or where issues are arising in the market which call for greater transparency and accountability.

Exemptions on an entity specific basis

Some submissions were supportive of multi-site exemptions, where it would offer administrative advantages to some community housing groups. However, most submissions considered that, where an entity is retailing to multiple sites, it should be required to obtain a retailer authorisation. Other submissions stated that such entities should apply for site by site exemptions. Given that each site will have its own characteristics,⁵ some argued that it was inappropriate to grant a blanket exemption to a specific entity regardless of the potentially different types of site it is selling to.

In most cases it will be inappropriate to issue individual exemptions that provide for an entity to sell energy at more than one site, but this will be assessed on a case by case basis. The AER also notes that it does not intend to grant exemptions covering multiple sites where selling of energy is a core activity for that entity.

⁵For example, customer numbers, customer category, supply arrangements and service arrangements.

4 Possible effects of this guideline

On 1 July 2012 the new National Retail Law and Rules will take effect. Under the Retail Law, the AER is responsible for issuing and revoking retailer authorisations and exemptions. Unless exempt from the requirement, a person must be granted a retailer authorisation prior to engaging in the sale of energy. The exempt selling guideline establishes our considerations on exempt selling, and assists the AER in its exemption functions by:

- specifying our approach to granting (and revoking, where relevant) retail exemptions which apply in situations where a retailer authorisation may not be appropriate and
- creating a framework for the oversight of exempt onselling activities (this framework includes conditions placed on exempt sellers to ensure accountability and transparency).

The guideline will create a streamlined national structure for exempt sellers. The centralising of the current jurisdictional arrangements for exempt selling into a single framework will contribute to national consistency. Accountability to a single body, the AER, will create savings and certainty over time for exempt sellers.

The guideline and determinations will assist persons applying for exemptions, by setting out the information we require and will consider in granting an exemption. Our proposed classes of deemed and registrable exemptions will reduce the regulatory burden for onsellors while still providing conditions to which they must adhere—this will ultimately serve the long term interest of exempt customers. The application of registrable, deemed and individual exemptions will also assist us in gaining information on the nature and scope of exempt selling.

Exempt sellers currently operating under jurisdictional frameworks must ensure they are complying with all requirements of the Retail Law from the commencement date. In the case of retail exemptions, sellers must ensure they are within one of the deemed or registrable classes of exemption or apply for an individual exemption from the AER if they will be selling energy after that date. We seek to minimise any burden by taking existing jurisdictional arrangements into account in developing our guideline. This will facilitate a smooth transition to the national framework with minimal costs to current exempt sellers. By consulting on and releasing the guideline ahead of the transition date (and engaging in several rounds of stakeholder consultation), we have sought to give exempt sellers and stakeholders adequate time to identify and implement any changes necessary.

A. Response to submissions

1. Is onselling in the long term interests of consumers?

Most stakeholders agreed that onselling is not necessarily in the long term interests of consumers. Several noted that onselling has negative implications for consumer protection/customer choice, and results in limited access to payment schemes, lack of access to hardship programs, dispute resolution schemes and RoLR schemes. Consumer groups suggested that customers with energy and accommodation provided by the same person are particularly vulnerable, as fear of rent increases and retaliatory eviction can act as a barrier to a tenant raising utility issues or complaints.

One stakeholder noted that broad industry costs associated with embedded networks are out of proportion to the number of customers involved.

Another stakeholder (a specialist onseller) did not necessarily agree that onselling is not in the long term interests of consumers. It suggested that an appropriate exempt seller regime can mitigate many

We maintain our view that onselling (and its growth) is not always in the long term interests of consumers. That is not to say that onselling is never in the long term interests of consumers, but a proliferated and unrestrained growth of onselling may have a detrimental effect on customer protections and choice. We note that there are specific situations where onselling is not desirable. For example, where onselling limits a customer's access to retailer of choice or limits a customer's access to consumer protections which would be available to them through an authorised retailer.

However, in some situations, we note that onselling cannot be practicably avoided. The AER agrees that an appropriate exempt seller regime can mitigate many of the customer protection issues that may arise. Our exempt selling guideline provides such mitigation through customer protections around:

- payment plans
- disconnection, and notification of disconnection protocols
- dispute resolution and complaint handling
- price regulation.

Through the classes of exemption we have created, we have taken steps to minimise the future growth of onselling.

<p>of the customer protection issues that may otherwise arise.</p>	<p>Some stakeholders noted that lack of access to a RoLR scheme (for exempt customers) is concerning. Some suggested that the AER consult on the arrangements for where exemptions are expired or revoked (noting that RoLR arrangements apply only to direct connections on licensed distribution networks). Dealing with these matters is beyond the scope of the AER’s exempt selling guideline, and is a matter to be considered by policy makers.</p>
<p><u>2. Is it appropriate to place more weight on ensuring appropriate customer protections, than on minimising onsellers’ compliance costs</u></p> <p>Most stakeholders agreed that customer protection should be given more weight than compliance costs, arguing that consumer protections should be prioritised above compliance costs when assessing exemption applications. Stakeholders noted that there is a potential imbalance in the negotiating power between an onseller and a customer. They submitted that exempt sellers and retailers should have the same compliance costs, particularly with respect to consumer protection.</p> <p>One distributor suggested that the AER’s exemptions regime involves imposing a fairly onerous range of conditions for a relatively small number of customers. It submitted that this may lead to unduly burdensome compliance costs.</p>	<p>We maintain our view that more weight be given to customer protections than on compliance costs. Under the Retail Law, we are bound to consider ‘the likely cost of obtaining a retailer authorisation and of complying with this Law and the Rules as a retailer compared to the likely benefits to the exempt customers of the exempt seller’.⁶ However, we must balance this against the other policy principles, the exempt seller related factors and the customer related factors set out in the Retail Law, for example the policy principle that regulatory arrangements for exempt sellers should not unnecessarily diverge from those for authorised retailers, and the customer factors around consumer protection. We aim to provide customers of exempt sellers with a broad range of protections that are not unduly burdensome on the onseller. We acknowledge that costs of compliance should be minimised or reduced where possible without compromising customer protection.</p>

⁶ Section 115(1)(f) of the Retail Law.

<p>One retailer noted that exempt sellers can often provide cheaper energy, due to lower compliance costs. It suggested that reduced customer protections in these cases may be a ‘trade off’ for cheaper energy.</p>	<p>We are not proposing to impose unduly onerous conditions on on-sellers. Our proposed conditions are still less onerous than those which apply to authorised retailers as we recognise that exempt sellers service fewer customers than authorised retailers. However, these customers should not be subject to little or no protection.</p> <p>We agree with stakeholder submissions that some customers of exempt sellers may receive cheaper energy as a direct result of the exempt seller having lower compliance costs than an authorised retailer. In paying a lower price, these customers should understand they may be ‘trading off’ certain customer protections, for example, access to hardship policies under the Retail Law.</p>
<p><u>3. Is it practical in the short to medium term to require full retail competition in embedded networks in jurisdictions where it is not currently available?</u></p> <p>Most stakeholders agreed that it was not practical to require full retail competition at present. Several noted that strong price signals and consumer protections are more important than the availability of customer choice, and that jurisdictional limitations and other logistical issues mean customer choice is not always practical. One stakeholder opposed the creation of NMIs for exempt customers and said that access to full retail competition would be impractical and unfairly burdensome on small operators. One distributor noted that the decision to extend full retail competition to customers within embedded networks should lie with the jurisdictions, not the AER. It was also noted that a cost/benefit analysis needs to be done before it can be concluded that customers in an embedded network would be better off with access to full retail competition.</p>	<p>In light of stakeholder submissions, we consider that requiring access to full retail competition for embedded network customers is not practical in the short to medium term. Most stakeholders agreed that, in principle, access to full retail competition for all energy customers is desirable. Where ‘children’ can access full retail competition, the benefits that embedded networks provide to their owners and operators can be passed back to those ‘child’ customers. However, several stakeholders noted that this is not currently practical. We agree with this, and note that in some on-selling arrangements, access to full retail competition may be limited due to technical constraints (for example, in off-grid networks, or in caravan parks where residents are often short term). We would be concerned where infrastructure issues within the control of the on-seller impede a customer’s access to retailer of</p>

Other broad issues were raised, including the establishment of embedded networks in larger commercial and residential premises which as a result of their meter configuration do not allow for full retail competition. Other stakeholders noted the need for consistency between jurisdictions, and one retailer stated that the AER should consider the use of AEMO’s MSATS—the Market Settlement and Transfer Solution—to identify parent and child meters, and also the use of NMIs to track loads and sites associated with onsellers and embedded networks. One stakeholder sought clarification of roles and responsibilities of the licensed distributor and Exempt Network Operator.

choice. For example, where an apartment block is developed and the developer does not install individual meters capable of being NEM compliant. This would effectively force customers to take supply from the onseller. Insofar as practicably possible, exempt customers should be able to ‘opt out’ of onselling arrangements if they wish.

We also note that our guideline may change over time, to reflect any arrangements made in the network exemption guidelines. This could be, for example, the requirement for discoverable NMIs and market metering within embedded networks. To enable full electricity full retail competition, changes may be required to:

- the National Electricity Rules
- our Network Service Provider Exemption Guidelines
- existing jurisdictional legislation
- regulated entities’ systems.

It is therefore not practical for us to require full retail competition in all embedded networks in the short term. We accept that access to full retail competition should not be the single determinant of whether onsellers are eligible for a deemed or registrable exemption. This approach would disadvantage onsellers in jurisdictions where customer choice of retailer is not available to customers in embedded networks. Under the revised classes of deemed and registrable exemption, the availability of full retail competition is no longer relevant to an onseller’s eligibility for a class exemption.

The AER’s contemporaneous consultation on the *Electricity network service provider registration exemption guideline* will deal with the

	issue of who pays for modifications to enable access to retail competition.
<p><u>4. In jurisdictions where a customer within an embedded network does not have access to a choice of retailer, should the AER impose a condition preventing the onseller from refusing to supply them, to ensure that they can obtain supply?</u></p> <p>Most stakeholders agreed that exempt sellers should be prohibited from refusing to supply. One consumer group said that in addition to prohibiting refusal to supply, other customer protections, including a price cap are required. One stakeholder expressed concern with such a prohibition, noting that the imposition of a condition to mandate energy supply could result in a customer refusing to pay.</p>	<p>We do not agree that, if an exempt seller has an obligation to supply, then customers would simply refuse to pay. The exempt selling guideline (and the conditions on exempt selling) contains explicit provisions for exempt sellers to deal with non-payment. Given that energy is an essential service, and that there are provisions to protect exempt sellers from non-payment, we consider it appropriate to create an obligation to supply where the exempt customer has no choice of retailer.</p> <p>This is not to say that an exempt seller must offer continued supply in the event of non payment. The guideline states that an exempt seller can disconnect for non-payment (provided that they have provided a reminder notice and a disconnection warning, and have contacted the customer - see condition eight of the guideline). Other submissions submitted that exempt sellers (in exercising their obligation to supply) should offer a set of ‘standard’ contractual terms. We don’t consider this necessary, and moreover, it is beyond the scope of our role in exemptions. We consider that ‘model’ terms and conditions are appropriate, given the varied scope of onselling and the differences in contractual relationships between onsellers and their customers. However, in granting individual exemptions, we will have regard to the</p>

	<p>terms and conditions that the onseller is seeking to impose. Where the terms and conditions are unduly onerous, we would normally seek to have them amended (in consultation with the applicant).</p>
<p><u>5. Should hardship policies be required for deemed and registrable exemptions?</u></p> <p>Most stakeholders submitted that hardship policies should be required for deemed and registrable exemptions. They submitted that exempt customers are often particularly vulnerable and should have similar protections to those who have choice of retailer. Several stakeholders stated that there should be an obligation to offer flexible payment plans, a prohibition of late payment fees, the provision of energy efficiency advice, and restrictions on disconnections. One noted that, even if it is not practical to expect all exempt sellers to provide hardship assistance, a minimum set of standards should be imposed on some classes of seller.</p> <p>Some consumer groups argued that the AER’s reasons for not requiring exempt sellers to offer payment plans were flawed, and noted that an exempt customer is no less likely to benefit from a payment plan than a customer of an authorised retailer.</p>	<p>We maintain that a requirement to developed and maintain hardship policies may be overly onerous for many onsellers (in particularly, those who operate on a small scale, or for whom the provision of energy is merely incidental to their main business activities). We also note a payment plan may only be an effective solution for hardship customers who obtain their accommodation from the onseller in situations where a responsible body (for example, a Tribunal) can ensure there is a payment plan for both sets of charges (see further discussion below). Several stakeholders also noted that some exempt customers are amongst the most vulnerable in society. We acknowledge that this may be the case, in particular, for long term residents of caravan parks and boarding/rooming houses. We recognise that some exempt customers who are experiencing difficulty paying their energy charges may also experience difficulty in paying their accommodation charges. Therefore any assistance provided to these customers to only manage arrears for their energy charges may not reduce or avoid their risk of eviction. This is particularly so given that any accommodation charges are likely to be higher than those for the energy they consume.</p> <p>The hardship policy requirements for retailers mean that they are able to develop their own flexible payment options and other programs and initiatives to assist their customers experiencing payment difficulties due to hardship. Retailers can adapt their policies to ensure that they</p>

	<p>are meeting the needs of their hardship customers. Given the wide range of types of exempt sellers and exempt customers, it would be difficult to develop a standard form hardship policy that would be applicable to and effective in all of these situations.</p> <p>The practicability of requiring exempt sellers to implement hardship policies and provide their customers with flexible payment plans depends on provisions of other legislation, in particular residential tenancy legislation. For example, in some jurisdictions this legislation can dictate the order in which any amount paid to a landlord is applied between various charges that the tenant owes, including for accommodation and energy. It would therefore not be practicable for the AER to require these exempt sellers to offer their customers hardship policies or payment plans where the requirements under these conditions to allocate payments first towards amounts owed for energy charges could conflict with the arrangements in residential tenancy legislation.</p> <p>Requiring onsellors to offer customers a hardship policy or payment plan may not always assist the exempt customer, as payment plans provide flexible payment options for energy charges, but not for accommodation charges. We recognise that some customers of exempt sellers who are struggling to pay their energy charges will also be struggling to pay their accommodation charges. Therefore any assistance provided to these customers to only manage arrears for their energy charges may not reduce or avoid their risk of eviction.</p> <p>Payment plans will likely only be effective to assist hardship customers who also obtain their accommodation from the onseller in situations where a regulatory body (such as the Consumer, Trader and Tenancy</p>
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	<p>Tribunal in New South Wales) can make an order regarding payments plans for both the energy charge and the accommodation charge. This would allow customers to budget for the payment of both without being disconnected or evicted. The AER cannot make such orders involving accommodation charges.</p> <p>However, where an exempt seller does offer hardship policies or flexible payments plans, they must notify their customers of this in any reminder notices for late payment of bills.</p>
<p><u>6. Dispute resolution schemes and the application of Australian Standard ISO 10002-2006.</u></p> <p>Stakeholder comments varied on the application of the Australian Standard. One ombudsman noted that access to ombudsman schemes for exempt customers should be investigated. This would be of particular value to vulnerable/disadvantaged customers. Consumer groups argued that the Australian Standard should apply to all exempt sellers, even though this may be onerous, as many exempt customers are in a vulnerable position. One retailer submitted that the current ombudsman scheme members should not cross-subsidise exempt sellers. Many stated that application of the standard on a case by case basis to larger on-sellers is not satisfactory, and stated that all holders of an individual exemption should be required to comply with the standard; they should be subject to conditions which more closely resemble the obligations that apply to an authorised seller.</p> <p>One submission noted that Victorian caravan park residents can apply to CAV and CVAT for dispute resolution.</p>	<p>We accept that the Australian Standard may be onerous for some small on-sellers operating under a deemed or registrable exemption. However, we still consider it to be valuable for maintaining an acceptable level of customer protection. We do not agree with submissions on the inconsistencies between the Australian Standard and applicable tenancy legislation. The former deals only with the internal handling of complaints, and does not address external dispute resolution mechanisms. Retail/commercial tenancy legislation does not prohibit internal dispute resolution before, where necessary, referring the complaint to an appropriate external dispute resolution body. Therefore, no inherent conflict exists between the dispute resolution arrangements that apply under retail/commercial tenancy legislation, and the requirements of the Australian Standard.</p> <p>Where we consider that there is no direct conflict between the Australian Standard and any other relevant legislation, we may require</p>

	<p>sellers to develop complaints handling arrangements based on the Australian Standard ISO 10002-2006. We will consider future application of the Australian Standard to larger onsellors on a case by case basis.</p>
<p><u>7. Distinction between core and incidental onselling</u></p> <p>There was general stakeholder support for the AER’s view that it will generally consider onselling to be ‘incidental’ where energy provision is one of a suite of services provided to a customer, and where the sale of energy does not constitute a significant aspect of the relationship. Several stakeholders noted that exemptions should not be used to bypass authorisation. Incidental onselling should be seen as an activity undertaken due to its practical unavailability and which does not attract a profit. Core onselling should be seen as an activity that is present as a profit stream.</p>	<p>We maintain our views on the distinction between core and incidental onselling. We recognise the issue of whether onselling can be ‘practicably avoided’ may not be helpful in distinguishing between core and incidental onselling activities. Instead, we will examine each onseller’s business model to help establish whether onselling is core or incidental. Onselling may be considered ‘core’ where:</p> <ul style="list-style-type: none"> ▪ the seller provides/sells energy across multiple sites ▪ without the sale of energy, the onseller’s relationship with the customer would cease to exist ▪ the onseller’s business would not continue or be viable if not for the sale of energy <p>Onselling may be considered ‘incidental’ where:</p> <ul style="list-style-type: none"> ▪ energy provision is one of several services provided, and the sale of energy does not constitute a significant aspect of the relationship. ▪ the value of energy services is low, relative to the value of other services provided (where energy charges form a relatively low proportion of overall rental/accommodation costs, the argument that energy onselling is ‘incidental’ will be much stronger, for example in a caravan park).

	<p>A number of progressive energy projects are being trialled in new residential developments. Many of these projects involve the provision of ‘energy services’ (such as lighting and climate control) that use electricity and gas as inputs. Where persons offering energy services as part of a residential development are unsure whether the activity involves a ‘sale of energy’, we encouraged them to talk to the AER to ensure they are not operating in breach of the Retail Law.</p>
<p><u>8. Do stakeholders support the AER’s revised considerations on the profit intention of the exempt seller?</u></p>	<p>Stakeholders generally supported the AER’s view on profit intention of exempt sellers. We have maintained our views in this area.</p>
<p><u>9. Should pre-existing onselling arrangements under jurisdictional legislation be recognised as a relevant exempt seller related factor?</u></p> <p>Most stakeholders agreed with the AER’s view in this area. Many agreed that reducing eligibility of some onselling activities for a class exemption and instead requiring applications for individual exemptions is appropriate. Exemptions should not be granted to new developments where the infrastructure has not been designed to allow for full retail competition.</p>	<p>We maintain our views on current jurisdictional arrangements for onselling.</p> <p>In general, we will not deny an exemption to entities that are operating legitimately under state/territory exemption regimes prior to the commencement of the Retail Law. We understand the our classes of exemptions cover all onselling activities that are currently taking place in the NEM. We have developed classes of exemption for persons who have some relationship with their customers through the provision of accommodation or management of residential or commercial premises. For these persons, the onselling of energy is typically incidental to their main commercial business. This is in contrast with people for whom onselling is part of their main business model. Class exemptions do not apply to these people, for example, specialist providers. Specialise onsellers should generally apply for individual exemptions.</p>

	<p>We will not allow exemptions for future onselling activities merely because that activity has been previously eligible for exemption under jurisdictional regimes.</p> <p>We will not grant class exemptions on the basis of infrastructure issues (see also our response to submissions on question 4 above). New developments should not restrict the ability of customers to purchase energy from a retailer in jurisdictions where this is available to retail customers. Developers should consider our guideline and approach to exemptions in the initial planning stage as the exemption classes (and our approach in general) are likely to be less accommodating after new infrastructure is in place.</p>
<p><u>10. Should collective decision making arrangements be considered a relevant characteristic or circumstance of exempt customers?</u></p> <p>Stakeholder submissions were generally supportive of the AER’s approach. However, one consumer group noted that individual customers in a group on whose behalf a contract has been negotiated may change, for example, as occupants move in or out of a complex. Another user group noted the importance of ensuring that explicit informed consent was obtained in these situations. A distributor also queried whether onselling arrangements for a brownfield site are permissible, and, if so, the rights of the existing customers to remain connected to the licensed distributor.</p>	<p>We will generally take into account whether energy is being onsold under a contract negotiated on behalf of a group of customers as a whole under a collective agreement. We will examine whether or not informed consent has been obtained in these cases.</p>
<p><u>11. Are the categories of exemption set out in the draft determinations appropriate?</u></p>	<p>The AER has revised some classes of exemption, as follows:</p>

<p>Most submissions supported the AER’s classes of exemption, and agreed that tailoring exemption categories to specific circumstances was appropriate.</p> <p>One consumer group noted the overlap between some classes and sought clarification to ensure that exempt sellers understand which class of exemption they should apply for.</p> <p>Similarly, a distributor queried (for each class of exemption) whether the billing of energy must be metered, or whether an unmetered bill can be provided.</p> <p>A consumer group submitted that it is not clear how large boarding houses and hostels are different from caravan parks, and that Class D4 should be restricted to residential accommodation providing rooms for less than 12 customers.</p> <p>One stakeholder noted that, in Queensland, the on-selling of energy on an unmetered basis is permitted, and that there are existing arrangements in place to accommodate this situation. A specific deemed class exemption for onselling unmetered energy to small customers should therefore be included.</p>	<ul style="list-style-type: none"> ▪ We no longer propose to determine eligibility for deemed or registrable exemptions based on the number of customer sites ▪ We have omitted the exemption for the passing through of undisclosed charges for energy. We do not consider that this constitutes a ‘sale of energy’ for the purpose of the Retail Law <p>We consider that the activities and situations listed in attachment one and two of our guideline are appropriate for deemed and registrable exemptions.</p> <p>Separate customer metering is a prerequisite for many of the classes of exemption. Separate classes of exemption have been developed for unmetered supply, to clarify when unmetered supply is permitted. Queensland has been the only jurisdiction to expressly permit such unmetered onselling of electricity. A class exemption exists for persons who have operated under this permission. A second situation where unmetered supply may qualify for a class exemption is the supply of gas for limited purposes such as cooking. Any future unmetered onselling of energy which does not fall under any of the class exemptions will require an individual exemption</p>
<p><u>12. Proposed reduction in eligibility of some onselling activities for a class exemption, instead requirement for an application for an individual exemption to be made.</u></p> <p>Most stakeholders agreed that requiring individual exemptions will ensure that the AER has greater oversight of exempt selling arrangement and can impose and monitor consumer protection provisions. One stakeholder stated that conditions attached to</p>	<p>Since stakeholders generally supported the AER’s view on the proposed reduction in eligibility for class exemptions, we have not amended the guideline in this area.</p>

<p>individual exemptions should only resemble those of authorised retailers where it will be in the best interests of the customers.</p>	
<p><u>13. Off-grid networks – is a class exemption appropriate?</u></p> <p>Only three stakeholders responded explicitly to this question. One stated that in the current circumstances off-grid networks are too varied to justify a ‘blanket’ approach. Another stated that off-grid networks do not lend themselves to inclusion in the National Retail Law and Rules. Further, it does not follow that because a customer has access to off-grid energy rather than no energy at all that the off-grid supply is necessarily in the long term interests of consumers</p>	<p>We will liaise with each participating state and territory to determine which off-grid networks will be covered by the Retail Law and Rules.</p>
<p><u>14. Should individual exemptions ever be issued on an entity-specific basis enabling a person to onsell at multiple locations? Is a retailer authorisation more appropriate in these circumstances?</u></p> <p>Most submissions did not support entity specific exemptions. One retailer stated that blanket exemptions for a single entity may encourage the development of new premises specifically designed to limit/deny customer access to the competitive market. One consumer group noted that exemptions should not be seen as an opportunity to circumvent the requirements of the Retail Law and Rules. Several stakeholders also submitted that specialist external onsellers and multiple site onsellers should be required to obtain a retailer authorisation, or at least individual exemptions. Most noted that customers should receive full customer protections.</p> <p>One distributor noted that each site should be treated on its own merit and hence registration or individual exemption must be for a specific</p>	<p>In most cases it will be inappropriate to issue individual exemptions that relate to an entity and more than one site. We do not generally intend to grant exemptions covering multiple sites where selling of energy is a core activity for that entity.</p> <p>That said, in some situations onselling may be considered to be incidental even where it occurs over multiple sites. The AER will consider the value of energy provided relative to the value of other services provided by the exempt seller. For example, in an industrial park, high energy usage tenants may pay a landlord onseller more for their energy use than for rental. In such a situation, it may be difficult to demonstrate that onselling is only ‘incidental’ to the relationship. Where energy charges form a relatively low proportion of overall</p>

<p>embedded network owner. One stakeholder noted that there are administrative advantages in having entity-specific exemptions.</p>	<p>accommodation costs, for example, in a caravan park, the argument that energy onselling is ‘incidental’ will be much stronger.</p>
<p><u>15. 16. 17. & 18 Onselling through decentralised and off-grid networks</u></p> <p>There was general stakeholder agreement with the AER’s view that it is not feasible to develop a class exemption for onselling through decentralised networks. There was some concern that parties that may seek a class exemption for decentralised projects may be more interested in the operation of specialised equipment that in consumer protection issues. Several distributors noted the need to ensure that decentralised embedded networks are registered in some form. Otherwise, they may exist without broad industry knowledge and the presence at a site of residential customer with dependencies on electricity supply for life support may be overlooked.</p>	<p>Off-grid networks are regulated under state/territory legislation, and only require an exemption if the state/territory in which they are located has elected to bring their off-grid networks under the Retail Law. Off-grid networks in Queensland, New South Wales, Victoria, and ACT will be brought under the national exemptions regimes (under the Retail Law). They will therefore subject to this guideline. Tasmania has retained all responsibility for the regulation of onselling. South Australia regulates off-grid networks solely under state/territory legislation and this guideline therefore does not apply. We do not consider it feasible to include a class of exemption to address the different circumstances of each particular decentralised network. These will generally require individual electricity network service provider exemptions from the AER. We consider the most appropriate way of dealing with these networks is via an individual retail exemption as well. While class exemption (D2) may be applicable to some onsellors, we note that the corresponding conditions should not be exhaustive. This is because decentralised conditions are often unique and need to be assessed on a case by case basis. Therefore, special conditions may be necessary due to the unique nature of off-grid or decentralised energy projects.</p> <p>We recognise the importance of ensuring supply to life support customers. This is an area where we would consider it inappropriate to deviate from the Retail Law and Rules. Therefore, for life support customers, we have mirrored the relevant provisions of the Retail Law</p>

	<p>in our conditions for exempt sellers (see section 116 of the Retail Law). Specifically:</p> <p>“An exempt seller must not arrange for disconnection of premises registered as having life support equipment”</p> <p>We encourage exempt customers who do have life support equipment to notify their exempt seller when they begin taking supply.</p>
<p><u>19. Proposed registration arrangements</u></p> <p>Most stakeholders recognised the need for registration of some type. Several submissions were supportive of the AER’s decision to not require registration of deemed as well as registrable exemptions. However, other stakeholders sought registration of all exempt sellers and rejected the suggestion that this would be unduly burdensome. Several retailers suggested that a universal register would lead to greater transparency in exempt selling. They noted a ‘double standard’ where authorised retailers face an ongoing increase in performance monitoring and regulatory oversight, while monitoring of exempt sellers remains limited or non-existent.</p> <p>Some stakeholders had suggestions for the content of the register. One distributor stated that the register should contain the commonly used public name of the site or facility to which the exemption applies, distribution arrangements, nominated contact person, 24/7 contact details for emergencies and faults, number of customers on life support, and management arrangements.</p>	<p>We accept that registration provides accountability and transparency about the scope and extent of onselling activities. We also acknowledge that registration allows us to monitor onselling. However, we do not agree that universal registration for all exempt sellers will lead to greater transparency in the exempt selling arena, nor that the value of the information gained from universal registration would outweigh the costs imposed on small onsellers. We consider that the revised classes of registrable exemption should ensure that over the next few years a significant number of onsellers are registered on the public register of authorised retailers and exempt sellers.</p> <p>Small business operators are expected to be aware of the obligation to register relatively simple information such as their business name (as was noted in one submission). However, many would not know of their obligation to register for minor energy onselling activities (such as landlord to tenant). We consider that a universal registration requirement would lead to contravention by many small exempt sellers, exposing them to potentially high penalties, and creating a compliance issue that would be difficult for the AER to resolve.</p>

	<p>The AER also believes that the exempt seller registration list is not the appropriate place to attempt to help distributors with embedded network transparency issues. Other mechanisms such as MSATS can be used to provide the necessary transparency. Any necessary changes to MSATS needs to be dealt with through the National Electricity Rules not through universal registration. We consider that if policy-makers had intended universal registration for exemptions, deemed exemptions would not have been included in the Retail Law or Rules. The legislation does not contemplate the registration of deemed exemption holders. We consider that if it was the intention of policy-makers to require registration of all exempt sellers, provisions for such would have been made in the Retail Law.</p> <p>We accept that exempt sellers will need to be educated about their new responsibilities. The AER will liaise with industry associations and state/territory bodies such as the Offices of Fair Trading, in order to address compliance issues.</p> <p>We agree that the Register should contain the commonly used public name of the site or facility to which the exemption applies.</p>
<p><u>20 & 21 Should customer meter types and management arrangements be recorded on the public register?</u></p> <p>Submissions varied on whether it is necessary to record meter types. There was little support for the recording of management arrangements.</p>	<p>We consider that MSATS is the appropriate location for information on meter types. If necessary, rule changes can be pursued to ensure that such information is housed in MSATS.</p> <p>Given that there was little support for the inclusion of management arrangements on the public register, the AER will not include this.</p>

<p><u>22. Information requirements for registration</u></p> <p>One stakeholder considered it unreasonable to expect onsellers to include the number of customers on life support, given that this number may be constantly changing.</p> <p>Another noted that, without clear registration and publicly available particulars, embedded networks can exist without broad industry knowledge. The presence at a site of customers with dependencies on energy supply for life support may therefore be overlooked.</p> <p>The AER should provide guidance to assist onsellers (particularly small) with the registration process. A template or pro-forma might be beneficial, particularly if it explained key terms.</p>	<p>We agree that it is not practical to require an exempt seller to include the number of customers on life support as part of registration given that these numbers will fluctuate over time, particularly in retirement villages.</p> <p>The public register is not the place to deal with any deficiencies in the current arrangements regarding communication between exempt sellers, authorised retailers, and distributors as to the status of life support customers. Any such deficiencies should be addressed through the Retail Law rule change process. The public register is a facility for recording and making public set information regarding certain classes of exempt seller. It is not as a proxy for other market systems, such as MSATS, through which exempt retailers, authorised retailers and distributors, should be engaging.</p> <p>As stated above, the AER intends to provide onsellers with guidance regarding the registration process.</p>
<p><u>23. Do stakeholders agree with the revised conditions outlined in the determinations that will apply to each class of exemption?</u></p> <p><i>Condition 2 – Billing and payment arrangements:</i></p> <p>One stakeholder noted that requiring onsellers who provide short term holiday accommodation (class D3) to issue bills at least once every three months may not be appropriate. Instead, they should be required to read the meter (and issue a bill) when the customer checks out of accommodation. If a customer’s stay is longer than three months, a</p>	<p><i>Condition 2 (now condition 3)</i></p> <p>The AER agrees that, where a customer’s stay is longer than three months, class exemption D4 will apply.</p> <p>Where short term accommodation is provided for a shorter period than three months, the meter would be read at the end of each customer’s</p>

<p>different class of exemption, for example, D4 or R4, may be more appropriate.</p> <p><i>Condition 3 – Estimation as a basis for bills</i></p> <p>Submissions argued that this condition should be stricter. Exempt sellers have a greater capacity than authorised retailers to ensure that meters are in working order, accessible, and read at the appropriate time. Estimated bills should not be issued for more than three consecutive billing periods. Another stakeholder noted that operators of short term holiday accommodation should not be permitted to issue estimated bills at all. The supply address and the billing period (not just the number of the days in the meter reading) should be included on the bill</p> <p><i>Condition 5 - Receipts</i></p> <p>One stakeholder noted that exempt sellers should not be required to provide a customer with a printed receipt when credit card payments have been made by phone and a verbal receipt number provided</p> <p><i>Condition 6 – Pricing and billing requirements</i></p> <p>Some submissions stated that customers should receive prior notification of any tariff changes.</p>	<p>stay in order for metered energy to be charged.</p> <p><i>Condition 3 (now condition 4)</i></p> <p>We consider that it is necessary to allow exempt sellers to estimate bills as there may be times when the meter has failed and the exempt seller is not able to have it repaired or replaced in time to issue the customer’s bill without using an estimation.</p> <p><i>Condition 5 (now condition 6)</i></p> <p>Given that when a payment is made over the phone and a receipt number is issued, this constitutes a ‘proof of transaction’ under the Australian Consumer Law (section 100(4)), we agree that an exempt seller should not be required to provide a printed receipt in these circumstances.</p> <p><i>Condition 6 (now condition 7)</i></p> <p>We take guidance from the Retail Rules in determining what protections exempt customers should receive. The requirement on exempt sellers to notify customers of changes to the tariff charged reflects the requirement set out in section 46(4) of the Retail Rules. It is not appropriate to apply a standard higher than that required of</p>
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<p><i>Condition 7 – Payment difficulties and disconnection or cessation of supply</i></p> <p>One stakeholder noted that a reference to ‘personal contact’ before disconnection is not reflected in the conditions to the AER’s draft determination.</p> <p><i>Condition 8 – When disconnection or cessation of supply is prohibited</i></p> <p>One stakeholder argued for prohibition of disconnection where a customer is in the process of seeking assistance through non government, not just government, agencies. This is because in Queensland, exempt customers may not be able to access government funded schemes if they are administered by retailers.</p> <p>One stakeholder felt that there is a risk that an exempt seller may be unaware that a customer has made a complaint and thus inadvertently disconnect a customer in contravention of this condition.</p> <p>Disconnection for non-payment should not be allowed on an extreme heat day.</p>	<p>authorised retailers.</p> <p><i>Condition 7 (now condition 8)</i></p> <p>This condition has been amended to require ‘personal contact’ prior to disconnection.</p> <p><i>Condition 8 (now condition 9)</i></p> <p>Exempt customers who are unable to access government funded schemes should not be excluded from the disconnection prohibitions set out in condition 8. We have amended condition 8 to protect exempt customers from disconnection, where they have made an application for relief from an organisation providing either government or non-government funded energy charge rebates, concessions or relief.</p> <p>We acknowledge that there is a risk that an exempt seller may inadvertently disconnect a customer. We have amended this condition so that an exempt seller is not deemed to be in contravention of condition 8(1)(b) and (c) where it (i) is unaware that an application for relief or a complaint has been made, (ii) has made a reasonable attempt to contact the customer prior to disconnection and (iii) has not been informed by the customer of their application for relief or of their complaint to an external dispute resolution body.</p> <p>The issue of disconnection on an extreme heat day will be dealt with</p>
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<p><i>Condition 9 – Reconnection of supply</i></p> <p>Several stakeholders argued for the imposition of a time limit for reconnecting a premises where the exempt person is directly responsible for reconnection—‘as soon as practicable’ is not sufficient.</p> <p><i>Condition 10 – Concessions and rebates</i></p> <p>Some submissions sought the inclusion of a positive obligation on an exempt seller to provide a referral to an appropriate agency providing ‘assistance under a relief scheme’. Revised conditions should not have absolved exempt sellers of an obligation to inform customers of concession and rebate schemes.</p>	<p>on a state by state basis by means of each state’s application legislation.</p> <p><i>Condition 9 (now condition 10)</i></p> <p>Under the Retail Rules, there is no time limit for the reconnection of a customer by an authorised retailer. Condition 9 therefore provides greater protection to exempt customers than that received by the customers of authorised retailers. Again, we are guided by the protections provided to customers of authorised retailers under the Retail Law and Rules. Therefore, we believe it is inappropriate to increase further the protections surrounding reconnection of exempt customers.</p> <p><i>Condition 10 (now condition 11)</i></p> <p>We still consider it unreasonable to expect an exempt seller to direct customers to assistance where it is available to the customer directly. Where assistance is not available to the customer directly, exempt sellers must use their best endeavours to claim any government energy rebate, concession or assistance under a relief scheme on behalf of the exempt customer. Exempt sellers must still inform customers of concession and rebate schemes. Condition one (now condition two) states that:</p> <p>‘the exempt person must advise exempt customers, in writing, at the start of their tenancy/residency [with]... information about the availability of relevant government energy rebates, concessions and relief schemes.’</p>
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<p><i>Condition 12 – Contact details</i></p> <p>One stakeholder noted that the requirement for a readily accessible ‘means of contact’ was insufficient. They stated that the condition should require that a telephone contact should be provided, and at no more than the cost of a local call.</p>	<p><i>Condition 12 (now condition 13)</i></p> <p>Previous consultation raised the issue that exempt sellers may not have access to a landline at all times. However, in circumstances where physical access to landline is not available, most calls are diverted to a mobile service through which the customer can contact the exempt seller. On this basis, we have imposed the requirement at condition 12 that a telephone contact number must be provided and not exceed the cost of a local call.</p>
<p><i>Condition 13 – Dispute resolution</i></p> <p>Several stakeholder express a need for the guideline to contain more detailed requirements in relation to resolving disputes (for example, there should be a requirement for exempt sellers to respond to a customer’s complaint within a specified timeframe, or that the Retirement Village Act dispute resolution process should be adopted). Some sought clarification on what steps the AER will take if customer complaints to an external dispute resolution body (for example, EWON) indicate that an exempt seller made no ‘reasonable endeavours’ to resolve a complaint?</p>	<p><i>Condition 13 (now condition 14)</i></p> <p>Given that disputes may vary greatly in their complexity, the AER does not believe it is appropriate to include a set timeframe for responding to customer complaints. The wording of condition 13 makes the inclusion of a timeframe for responding to a complaint unnecessary. The exempt seller is required to make ‘reasonable endeavours’ to resolve the dispute—a delayed response to a complaint (taking into account the complexity of the dispute) would not constitute ‘reasonable endeavours’. It is not appropriate to adopt a dispute resolution process that is specific to a particular onselling situation of state/territory. We will consider non-compliance with any of the exemption conditions on a case-by-case basis and in accordance with the AER Retail Market Compliance Procedures and Guidelines.</p>
<p><i>Condition 15 – Continuity of supply</i></p> <p>An obligation should be put on authorised retailers to notify the AER if disconnection of an exempt seller to which it retails is imminent.</p>	<p><i>Condition 15 (now condition 16)</i></p> <p>We agree that there is a need to compel the authorised retailer to notify us if disconnection of an exempt seller appears imminent. However,</p>

<p><i>Condition 16 – Maintaining records</i></p> <p>Information required to be kept by exempt sellers is not extensive enough. Requirements should apply to all registrable exemptions relating to residential customers.</p> <p><i>Further comments</i></p> <p>The provisions relating to overcharging should not have been removed. NERR contain provisions relating to overcharging and these protections should be applied to exempt customers.</p> <p>An exempt seller should be required to ensure that, in the event of its failure, a set of relevant customer parameters are available for the new retailer (for example payment schemes or other special arrangements).</p> <p>Bill smoothing should be allowed for Classes R3 and R2. Many retirement villages provide this as a service to ease seasonal energy cost fluctuations.</p> <p>AER should request securities in the form of bank guarantees or cash from exempt sellers.</p>	<p>this cannot be done through the exempt selling guideline but will need to be considered under the Retail Law and Rules.</p> <p><i>Condition 16 (now condition 18)</i></p> <p>For several classes of registrable and deemed exemption (Class D1, D3, D6 and D7), we consider that the cost of record keeping does not outweigh the benefit to customers. We see no clear reason why these onsellers should be required to keep records.</p> <p><i>Further comments</i></p> <p>For overcharging, we consider it appropriate to again mirror the provisions in the Retail Rules (see clause 31 of the Retail Rules). That is:</p> <p><i>Where a small customer has been overcharged by an amount equal to or above the overcharge threshold, exempt seller must inform the customer accordingly within 10 business days after the retailer becomes aware of the overcharging.</i></p> <p>The exempt seller must also repay the relevant amount.</p> <p>It is within our power to impose conditions on exempt sellers at any time, whilst they hold an exemption. In the event of failure, it is open to us to impose further information requirements (where appropriate).</p> <p>We see the merit in permitting bill smoothing. Bill smoothing is permitted under the exemptions guideline (see billing conditions)</p>
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	<p>Requiring exempt sellers to provide the AER with securities in the form of bank guarantees or cash goes beyond that which can be imposed under a condition. The AER would need to request a rule change in order to make this possible.</p> <p>We agree that exempt sellers should be required to keep information on concessions and schemes that apply to exempt customers.</p>
<p><u>24. Do the AER’s pricing conditions ensure that, from a pricing perspective residential customers of an exempt seller are not disadvantaged?</u></p> <p>Most stakeholders agreed with the AER’s views on pricing conditions.</p>	<p>Stakeholders generally supported the AER’s view on the pricing conditions for exempt sellers. We have not amended the guideline in this area.</p>
<p><u>25. What protections should be provided for small exempt customers in embedded networks with a smart meter?</u></p> <p>Stakeholders noted that protections should be similar to those applying to authorised retailer customers under the Retail Law and Rules, and that customer pricing should be no greater than the host retailer standing offer irrespective of the meter type (with the exception of situations involving solar feed in tariffs).</p> <p>One distributor noted that, if a licensed distributor provides the smart meter, then embedded customer protections should consider the issues of licensed distributors possibly doing some remote de-energisations and re-energisations</p> <p>One ombudsman noted the need for protections for vulnerable customers, such as bill verification measures; unbundling tariffs and</p>	<p>We agree that the application of smart meter related protections should be the same for authorised retailer customers and exempt customers.</p>

<p>charges on bills, and notification of tariff variations.</p>	
<p><u>26. Is the proposed exemption (class D5) for the onselling of unmetered gas appropriate?</u></p> <p>Most submissions were supportive of the AER’s approach for onselling of unmetered gas. However, one stakeholder sought clarity on whether this class of exemption would include unmetered gas used for heating water.</p>	<p>The revised determination clarifies that Class D5 does not apply to unmetered gas used for heating water. We note that the sale of bulk hot water does not constitute a sale of energy for the purposes of the Retail Law and Rules. Therefore, we are not seeking to regulate the sale of bulk hot water through this process. This remains a matter for individual jurisdictions.</p>
<p><u>27. Do stakeholders support the AER’s approach to common area charges and unmetered supply in commercial and retail tenancies?</u></p> <p>Stakeholders generally agreed with the AER’s approach.</p>	<p>We maintain our approach to common area charges and unmetered supply in commercial and retail tenancies.</p>
<p><u>28. Metering accuracy requirements</u></p> <p>One stakeholder noted that a condition should be imposed that gas or electricity metering requirements in the NER and NGR (and underlying procedures) should be applied to exempt network operators and exempt sellers. This would enable exempt customers to enjoy the same comfort requiring metering accuracy/meter management processes as retail customers.</p> <p>Further, it proposed a condition that data substitutions are carried out consistently with the National Metrology Procedure.</p>	<p>The AER’s <i>Consultation Paper and Response to Submissions, Retail Exemptions</i> (December 2010), noted that under rule 152(5) of the Retail Rules, we can impose conditions on exempt sellers with respect to the installation, maintenance and reading of meters of exempt customers in accordance with jurisdictional energy legislation. However, the Retail Law definition of ‘jurisdictional energy legislation’ excludes national energy legislation and therefore excludes any metrology procedures made under it. Jurisdictional energy legislation does not appear to address metering accuracy in the retail context. Therefore, it is difficult for the AER to impose conditions</p>

	<p>regarding metering accuracy as part of this guideline.</p> <p>However, the draft <i>Network service provider registration exemption guideline</i> which addresses exemptions from the requirement to register network activities with AEMO, contains a number of conditions relating to metrology procedures based on the broader powers contained in Chapter 7 of the NER.</p>
<p><u>29. General concerns about the content of the draft Exempt Selling Guidelines</u></p> <p>Stakeholders made the following comments:</p> <p>The public register should list the site locations for each onseller's class of exemption.</p> <p>Concern at the suggestion (and uncertainty) that either state / territory enabling legislation or the AER's determinations of deemed and registrable exemptions will comprise the appropriate transitional arrangements.</p> <p>The absence of definitions and clarity regarding billing agents, billing administrators and specialist external providers. Each term needs to be further defined to improve clarity regarding the AER's intention regarding business models captured under each definition.</p> <p>Public consultation is needed where an exemption is going to be varied. The AER should consult on what will happen if an exemption is revoked or expires.</p>	<p>Given that (except in special circumstances) exemptions will be issued on a site by site basis, the register will inevitably contain the site location for each exemption</p> <p>We anticipate that individual exemptions will be transitioned in application legislation. Operators currently onselling (who wish to continue onselling) under jurisdictional classes of exemption must ensure they meet the conditions of one of the AER's classes of deemed and registrable exemptions, or seek an individual exemption, from 1 July 2012. Specialist external providers that have operated (or purported to operate) under a class exemption will need to seek an individual exemption from the AER for onselling activities from 1 July 2012. Definitions have been updated and clarified. We also note that a set of definitions has now also been included in the guideline, for clarity.</p> <p>When an exemption is varied, we will consult with stakeholders in accordance with the Retail Consultation Procedures.</p>

The exemptions guideline should include the final determinations for deemed and registrable classes of exemption conditions so that the guideline provides a single reference point.

The guideline now includes the determinations, as attachments.

B. List of submissions

Below is a list of stakeholders who provided submissions on the December 2010 issues paper:

- WINenergy
- AGL.
- SP AusNet
- Victorian Caravan Parks Association
- Department Employment, Economic Development and Innovation (Qld)
- Ergon Energy
- Queensland Council of Social Services
- Energy and Water Ombudsman of NSW
- COTA Seniors Voice
- UED Multinet
- Origin Energy
- Retirement Villages Association
- Consumer Utilities Advocacy Centre
- Shopping Centre Council of Australia
- Credit, Commercial and Consumer Law Program
- Envestra
- TRUenergy
- Integral Energy
- Energy and Water Ombudsman of Victoria