

Notice of draft instrument

Revised exempt selling guideline

November 2012

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Shortened forms

ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
MWh	Megawatt hour
NEL	National Electricity Law
NEM	National Electricity Market
NER	National Electricity Rules
NMI	National Meter Identifier
NSP	Network Service Provider
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules
RoLR	Retailer of Last Resort

Retail consultation procedure

This notice, including draft amendments to the AER Exempt selling guideline (the guideline) and the registrable and deemed exemption classes, has been published in accordance with the retail consultation procedure set out in r. 173 of the National Energy Retail Rules.

Written submissions on the draft amendments are invited by 11 January 2013.
Late submissions may not be taken into account.

Submissions can be sent electronically to: AERInquiry@aer.gov.au with the title “Revised exempt selling guideline”, or by mail to:

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

Submissions provided by email do not need to be provided separately by mail.

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'.

1 Purpose and background to the AER Exempt selling guideline

Under the National Energy Retail Law (Retail Law), a person who sells energy must hold either a retailer authorisation or a valid exemption. Most entities that sell energy are authorised retailers, with responsibilities set out in the Retail Law and National Energy Retail Rules (Retail Rules).

However, there are some situations where energy is sold but a retailer authorisation may not be appropriate. Such situations could include, for example, the sale of energy in retirement homes or caravan parks, where an owner buys energy from an authorised retailer and then ‘onsells’ to residents. It may be burdensome and unnecessary to compel these businesses to obtain a retailer authorisation under the Retail Law.

The Retail Law provides for such situations by allowing the Australian Energy Regulator (AER) to exempt certain selling arrangements from the requirement to hold a retailer authorisation.¹ The Retail Law and Rules set out the exemptions framework, and the AER is responsible for regulating this framework.

The Retail Rules provide for three different types of exemption:

- deemed exemptions, which apply automatically to those who are eligible
- registrable exemptions, which apply once they have been registered with the AER and
- individual exemptions, which are available by formal application to the AER.²

Under the Retail Law, the AER must develop and publish an exempt selling guideline (the guideline).³ The AER consulted extensively in developing the current guideline and the current classes of deemed and registrable exemptions, undertaking three rounds of consultation (including two stakeholder forums), plus an additional targeted consultation relating to hardship customers.

The AER published the guideline and the deemed and registrable exemption classes in December 2011, ahead of the expected commencement of the Retail Law and Rules on 1 July 2012.

At the time of writing this notice, only the ACT and Tasmania had commenced the Retail Law. Tasmania, however, has not adopted the AER’s exempt selling framework, and therefore, the AER’s Exempt selling guideline does not apply to sellers in Tasmania. New South Wales has indicated it will commence the Retail Law

¹ Section 110 of the Retail Law.

² Rules 149, 150 and 151 of the Retail Rules.

³ Section 118 of the Retail Law.

on 1 July 2013. South Australia, Victoria and Queensland have not yet determined commencement dates.

The AER has been accepting exemption registrations and applications for individual exemptions since the publication of the guideline in December 2011.

1.1 Rationale for amendments

The AER has been accepting exemption registrations and applications for individual exemptions since the current guideline was published, despite the delay in the introduction of the Retail Law in most jurisdictions. During that time the AER has also worked with non-authorised sellers to help them better understand their obligations under the new exempt selling framework. This has led to greater AER awareness of the type and extent of onselling and other non-authorised selling of energy in the community. As a result, a number of new situations which may fall under the exemptions framework have come to light, and further complexities have been revealed.

Feedback suggests that the guideline has proven difficult for potential exempt sellers to follow and that the exemptions classes could benefit from further fine-tuning. The AER has therefore revised and restructured the guideline to make it clearer and more user-friendly, as well as amending several registrable and deemed exemption classes.

This notice accompanies the revised guideline and revised deemed and registrable classes of exemption, to provide background and explanatory material.

1.2 Overview of amendments

Guideline

The AER has amended its guideline for further clarity and simplicity. The guideline has a substantially different structure from the previous version. The AER has also separated the [guideline and the determinations](#) (which set out the classes of exemption, and associated conditions) into two documents.

Deemed and registrable exemptions

Some new exemption classes have been created and others deleted. Some classes have also been made less prescriptive to enable a broader range of non-authorised selling to be captured.

1.3 Legislative requirements

Where a person or business' primary business is to sell energy, the AER will normally require that they apply for a retailer authorisation. However, the Retail Rules empower the AER to exempt certain sellers where appropriate.

The AER can determine to exempt certain classes of persons, by either deeming them to be exempt or requiring a person within a class to register with the AER.⁴ The AER may also decide to grant an individual exemption to a particular person.⁵

The AER may from time to time amend the deemed and registrable exemption determinations by following the retail consultation procedure set out in the Retail Rules.⁶

When exercising its exempt selling powers, the AER must take into account the following policy principles:

- that regulatory arrangements for exempt persons should not unnecessarily diverge from those applying to authorised retailers,
- that exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way as comparable retail customers in the same jurisdiction are, and
- that exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers in the Retail Law and Retail Rules.⁷

The AER may also have regard to the exempt seller related factors and the customer related factors when exercising its exempt selling functions.⁸

The AER's exempt selling guideline, in addition to providing information about exemptions, must set out:

- procedures for applying for the grant, variation or revocation of an individual exemption,
- the information that must be provided by an applicant for an individual exemption,
- requirements relating to registered exemptions,
- guidance on the application of the exempt seller related factors and the customer related factors in making any decision relating to exemptions,
- the categories of deemed and registrable exemptions, and any associated conditions of exemption that are to apply, and
- any other matters that the AER considers relevant.⁹

⁴ Rules 150(1) and 151(1) of the Retail Rules.

⁵ Rule 149(1) of the Retail Rules.

⁶ Rules 150(3) and 151(4) of the Retail Rules. The retail consultation procedures, which the AER must follow when amending the guideline, are set out at r. 173 of the Retail Rules

⁷ Section 114(1) of the Retail Law.

⁸ These are set out at sections 115 and 116 of the Retail Law.

⁹ Rule 154 (1) of the Retail Rules.

The guideline also sets out the AER's considerations on the exempt seller and customer related factors, and how these have influenced the AER's conclusions on exempt selling.

The AER may amend the guideline at any time in accordance with the retail consultation procedures.¹⁰

¹⁰ Section 118 of the Retail Law. The retail consultation procedures, which the AER must follow when amending the guideline, are set out at r. 173 of the Retail Rules.

2 Proposed revisions to guideline

The AER proposes a number of revisions to the guideline. These revisions are intended to better explain the AER's approach to exempt selling, and to remove redundancies and inconsistencies in the classes of deemed and registrable exemptions. The revisions are also intended to make the classes less prescriptive (see Section 3). The key changes to the guideline are discussed below.

2.1 Specialist external providers

An owner/operator of an embedded network may employ a specialist external provider to undertake some or all energy selling functions on their behalf. Their functions may include liaising with customers, organising connections and disconnections, issuing bills to customers and handling energy related complaints. The specialist external provider may also contract with an authorised retailer for the supply of energy. These functions are core, not incidental, to their business.

The activities of specialist providers raise several issues. One relates to who should hold the exemption – the specialist provider or the embedded network owner/operator (only the embedded network owner/operator is eligible for a class exemption; a specialist onseller needs to apply for an individual exemption). Another issue relates to whether a specialist provider who holds an individual exemption should be required to apply for an authorisation.

In relation to the first issue, the AER considers that it is the entity that is contracted to buy energy from an authorised retailer (and therefore bears the risk of any non-payment) that must hold the exemption. The following examples demonstrate how this works:

Example A

An embedded network owner/operator has a contract with a retailer to buy energy, which it then on-sells to residents/tenants. The embedded network/owner employs a specialist provider to undertake all the practical aspects of on-selling, such as billing and metering.

In this situation, the embedded network owner/operator is eligible for a class exemption as it holds the contract with the retailer and bears the risk of the on-selling. The specialist provider is simply an agent.

Example B

An embedded network owner/operator wishes to on-sell energy. They contract a specialist provider to provide this service. The specialist provider negotiates and forms a contract with a retailer to buy energy. The specialist provider then on-sells this energy to customers within the embedded network.

In this situation, the specialist provider must obtain an individual exemption (or authorisation) as they hold the contract with the retailer and bear the risk of the on-selling. As they are not the network owner/operator, they are ineligible for any of the class exemptions. The network owner/operator would only need to obtain a network exemption.

The second issue relates to the circumstances in which an external provider (or any other non-authorized energy seller) will be required to apply for an authorisation. The AER is likely to require an energy seller to apply for a retailer authorisation in the following situations:

1. Energy is being bought and sold on a large scale: to a large number of customers, and/or to many different sites, and/or in large volumes.
2. Energy is being sold for profit: it is not being sold for reasons of convenience or priced merely for cost recovery.
3. Selling energy is a core function of the entity's business – it is not incidental.
4. The seller's relationship with their customers is based solely on their role as an energy seller; there is no other relationship (for example, a landlord/tenant relationship).

The AER is of the view that businesses that are effectively acting as energy retailers should be required to meet all of the obligations and requirements imposed on authorised retailers.

The guideline has been amended to clarify these issues.

2.2 Clarification of “exempt selling”

The current guideline focuses particularly on energy onselling. Although this is probably the most prevalent form of non-authorized energy selling, it is not the only form. The AER has amended the guideline to include other types of non-authorized energy selling, for example in “off grid” situations where a person is both generating and selling energy. In general, “off grid” energy selling, or other energy selling arrangements that involve both the generation and sale of energy, will require an individual exemption. The guideline has therefore been amended to apply to energy selling generally (and not onselling, specifically).

2.3 Pricing for commercial and retail customers

The current guideline provides that small residential customers cannot be charged more than the local area retailer's standing offer. The AER has amended the guideline to extend this pricing protection to small *retail and commercial* customers in embedded networks, where those customers *do not* have access to a retailer of choice.

This represents a departure from the AER's previously held view that it does not have the power to make pricing conditions for non-residential exempt customers.¹¹ This view is based on r. 152 (4) of the Retail Rules, which states that:

Where the AER determines that it is appropriate to impose a condition in relation to prices to be charged to exempt customers at residential premises by an exempt seller, the AER must ensure that those customers are charged no more than the standing offer price of the local area retailer.

¹¹ AER *Exempt selling guideline*, December 2011, p.14.

However, given the prevalence of onselling to commercial/retail customers in embedded networks, the AER has further investigated its legal options under the Retail Law. The AER has determined that rule 152(4) does *not* preclude the AER from making pricing conditions for small commercial or retail customers.

The AER acknowledges that retail and commercial customers would not ordinarily have access to pricing protections under the Retail Law. However, unlike customers of authorised retailers, exempt customers in embedded networks do not have easy access to contestable markets. The AER understands that some customers in embedded networks cannot access retail contestability at all, for example, traditional inset customers in South Australia. This inability to access a retailer of choice places the exempt customer at a significant disadvantage when negotiating with their exempt seller.

Further, the AER understands that such a pricing condition is consistent with current jurisdictional arrangements for pricing in embedded networks. On this basis, we consider that the inclusion of a price cap consistent with the local area retailer's standing offer is not an onerous requirement on exempt sellers.

2.4 Multi-site exemptions

The AER's current guideline states that the AER will not generally grant exemptions covering multiple sites, particularly where selling energy is a core activity for the entity. The AER considers that where a seller behaves like a "traditional" retailer, a retailer authorisation will usually be more appropriate. In these circumstances the long term interests of consumers are better served by the range of customer protections that an authorised retailer is required to provide.

However, where the AER believes it is in the interests of customers, it may consider granting a multi-site exemption. These circumstances include, but are not limited to, situations where the selling is:

- provided as a community service
- incidental and arises out of a relationship of convenience
- incidental and arises from a long-standing historical relationship between the seller and the customer(s).

The AER has revised the guideline accordingly.

2.5 Solar panels

The AER notes a relatively new business model for the sale of solar panels¹² whereby the solar panel company installs solar panels at a customer's premises but retains ownership of the panels. The solar panel business is able to recover the cost of the infrastructure by entering into long term energy supply contracts (for example, 20 years) with customers. Customers are effectively bound to take supply from the

¹² These are referred to by some businesses as "Power Purchase Agreements".

business and must, if they wish to opt out, pay the business the depreciated purchase and installation price of the solar panels.

These arrangements are an alternative to traditional solar panel installation models where a property owner buys solar panels outright, and then is entitled to use or sell any surplus energy generated. The sale of surplus energy back into the grid is managed by the customer's retailer and the customer is only charged – or credited – for their net usage.

It is important that this new business model is dealt with under the exempt selling framework (it is currently not) as, fundamentally, it involves the sale of energy. It also raises important customer protection issues, particularly given that the model is based on the customer entering into a significantly long term contract.

It would be difficult to create an exemption class that encompassed the various types of arrangements possible under this new business model. Additionally, the AER does not consider such arrangements to be 'incidental' sales of energy. Individual exemptions may therefore be more appropriate for this type of energy sale. As noted in the previous section, the AER prefers not to grant multi-site exemptions but considers this to be a situation where it might be warranted if it were in the best interests of customers. The alternative would be for a business to seek an individual exemption for each property that entered into this type of solar panel arrangement.

If the AER did decide to grant a multi-site exemption it would be restricted to the particular type of selling (worded to replicate the specific contractual model) being undertaken by the seller. The seller operating under this exemption will not be able to sell energy under any other business model; for example, they will not be able to use their exemption to sell energy in a shopping centre or an apartment block. The AER will also attach conditions to the individual exemption to provide appropriate consumer protections. These are likely to include conditions relating to:

- the length of the solar panel contract
- a mandatory cooling off period
- the way in which customers are billed
- the way in which customers are metered
- the need to make provisions for customers experiencing financial difficulty
- disconnection provisions
- obligations for information disclosure to customers
- customer buy-out of panels.

The AER may consider that at some point it is no longer appropriate for an entity to operate under an exemption and that they should apply for a retailer authorisation. This will usually occur when the seller has changed the nature or scope of their activities, or has expanded the scale of its activities.

3 Proposed revisions to exemption classes

3.1 Schedule of amendments to the Exempt Selling Guideline

Activity	Proposed amendments	Reason for amendments
<p><i>Class D1</i></p> <p><i>Replace:</i></p> <p>Bodies corporate recouping from their members, through body corporate fees, the cost of (metered or unmetered) energy used in common areas within the land affected by that body corporate</p> <p>[This class will be closed to new entrants from 1 January 2015.]</p> <p><i>With:</i></p> <p><u>Persons selling metered energy to fewer than ten small retail or commercial customers within the limits of a site that they own, occupy or operate,</u></p>	<ul style="list-style-type: none"> Class deleted and replaced with a new exemption class that mirrors class D2 	<p><i>Deletion of original D1</i> <i>Although we do not consider common area charging to constitute a sale of energy, this class was originally included in the guideline for the avoidance of doubt. Stakeholders have indicated that the purpose of the class is confusing. Given this, and the fact that the AER does not consider common area charging to be a sale of energy, we propose removing this class from the guideline.</i></p> <p><i>Creation of new D1</i> <i>Under the current guideline there is a deemed exemption for the sale of energy to residential tenants below a certain threshold (20 customers). Given that commercial or retail customers are likely to need less regulatory oversight than residential customers, we propose creating a similar deemed class for the sale of energy by retail or commercial landlords below a specified threshold.</i></p> <p><i>The current threshold for a deemed exemption is 20 customers. We propose lowering this to 10 customers as we consider this to be a small scale operation (particularly where those customers are residential). Conversely, the sale of energy to 10 or more customers is a significant operation that requires greater regulatory oversight and should be registered (but should not have to require an individual exemption, which is the case for anyone selling above the threshold under the current guideline.(see class R1).</i></p> <p>The conditions attached to the new class D1 will be the same as for class R1.</p>

Activity	Proposed amendments	Reason for amendments
<p><u>where the relationship is a landlord/lessee relationship.</u></p>		
<p><i>Class D2</i></p> <p><i>Replace:</i></p> <p>Persons energy metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and resident is governed by jurisdictional residential tenancy legislation and there are less than 20 residential premises at the site.</p> <p><i>With:</i></p> <p><u>Persons selling metered energy to fewer than ten small residential customers within the limits of a site that they own, occupy or operate, by a body corporate, or where the relationship is a</u></p>	<ul style="list-style-type: none"> • Classes D2 and D4 combined to create a new class exemption with the additional amendments: <ul style="list-style-type: none"> ▪ Bodies corporate included as potential exempt sellers ▪ The threshold for the number of customers to whom exempt sellers can sell energy lowered from 20 to 10 	<p><i>The original D2 and D4 classes are very similar: the only difference is that one applies to relationships governed by jurisdictional residential tenancy legislation and the other does not. Given the same conditions apply to both classes it will help simplify the guideline to consolidate the two. By removing the reference to “jurisdictional residential tenancy legislation” the new class will cover small scale selling to all types of residential customers.</i></p> <p><i>The threshold has been reduced from 20 to 10 customers to better reflect the regulatory risk between small scale (low risk) and larger scale (moderate risk) energy sales.</i></p> <p><i>Bodies corporate engaged in small scale onselling would need to obtain a registrable exemption under the current guideline. The AER considers that residential customers of a body corporate do not need a greater level of regulatory oversight than residential customers of other types of landlords. A body corporate selling energy to 10 or more residential customers is still required to obtain a registrable exemption.</i></p> <p>The conditions attached will remain the same as for the original class D2.</p>

Activity	Proposed amendments	Reason for amendments
<u>landlord/lessee relationship.</u>		
<p><i>Class D3</i></p> <p>Persons onselling metered energy to short term residents for use within the limits of a holiday accommodation site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorized energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>
<p><i>Class D4</i></p> <p><i>Remove:</i></p> <p>Persons onselling metered energy to residents for use within the limits of a site that they own, occupy or operate, where the relationship between the person and the resident is not governed by residential tenancy legislation.</p>	<ul style="list-style-type: none"> Deleted as a stand-alone class exemption: merged with class D2 	<p><i>See D2</i></p>

Activity	Proposed amendments	Reason for amendments
<p><i>Class D5</i></p> <p>Persons onselling unmetered gas for use in premises within the limits of a site that they own, occupy or operate, where gas is used for limited purposes.</p>	<ul style="list-style-type: none"> Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorized energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>
<p><i>Class D6</i></p> <p>Persons onselling unmetered electricity in Queensland to small customers for use within the limits of a site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorized energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>
<p><i>Class D7</i></p> <p><i>Remove:</i></p> <p>Persons recouping the cost of energy used in common areas of a site that they own, occupy or operate, from tenants in commercial or retail premises, where the relationship between the person and the tenant is</p>	<ul style="list-style-type: none"> Class deleted 	<p><i>Although we do not consider common area charging to constitute a sale of energy, this class was originally included in the guideline for the avoidance of doubt. Stakeholders have indicated that the purpose of the class is confusing. Given this, and the fact that the AER does not consider common area charging to be a sale of energy, we propose removing this class from the guideline.</i></p>

Activity	Proposed amendments	Reason for amendments
governed by commercial or retail tenancy legislation.		
<p><i>Class D8</i></p> <p>Persons onselling energy to a related company within the limits of a site that they own, occupy or operate.</p>	<ul style="list-style-type: none"> Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorized energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>
<p><i>Class R1</i></p> <p><i>Replace:</i></p> <p>Persons onselling metered energy to small customers within the limits of a site that they own, occupy or operate, where the relationship between the person and the small customer is governed by commercial or retail tenancy legislation</p> <p><i>With:</i></p> <p><u>Persons selling metered energy to ten or more small retail or commercial customers within</u></p>	<ul style="list-style-type: none"> Class limited to persons onselling to 10 or more customers per site The requirement that the landlord/tenant relationship be governed by commercial or retail tenancy legislation is removed The 1 January 2015 sunset clause is removed. 	<p><i>This class of exemption has been amended, in part, to better reflect the regulatory risk between small scale and larger scale energy sales. Small scale onselling to retail/commercial and residential customers will now fall under deemed exemptions (D1 and D2, respectively). Persons selling energy to 10 or more customers for a given site will need to register their exemptions. The amended exemption class mirrors the new exemption class for larger scale residential energy selling (R2).</i></p> <p><i>We understand that not all landlord/tenant relationships fall under commercial tenancy legislation and we do not wish to exclude such arrangements. The requirement that landlord/ tenant relationships be governed by commercial or retail tenancy legislation has therefore been removed.</i></p> <p><i>We consider the regulatory risk for this type of activity to be relatively low and not warranting individual exemptions. The AER considers registration will provide sufficient protection for small commercial and retail customers who buy energy under this class. The sunset clause for anyone who falls into this category and commences selling energy after 1 January 2015 has therefore been removed.</i></p>

Activity	Proposed amendments	Reason for amendments
<p><u>the limits of a site that they own, occupy or operate, where the relationship is a landlord/lessee relationship</u></p>		<p>The conditions attached to R1 will remain the same.</p>
<p><i>Class R2</i></p> <p><i>Replace:</i></p> <p>Bodies corporate onselling metered energy to residents for use in premises within the limits of a site affected by that body corporate.</p> <p><i>With:</i></p> <p><u>Persons selling metered energy to ten or more small residential customers within the limits of a site that they own, occupy or operate, by a body corporate, or where the relationship is a</u></p>	<ul style="list-style-type: none"> • Class deleted and replaced with a new class exemption that includes landlords/lessors but limited to persons selling to 10 or more customers per site. • New requirement that anyone that engages in this type of activity on or after 1 January 2015 must apply for an individual exemption. 	<p><i>The amendment removes inconsistencies in the current guideline between similar types of non-authorized energy selling. Under the current guideline only landlords onselling to fewer than 20 residential customers for a given site are eligible for a deemed exemption. Anyone selling to 20 or more residential customers needs an individual exemption. Bodies corporate engaged in either small scale or larger scale onselling are eligible for a registrable exemption (R2).</i></p> <p><i>This new exemption class mirrors the amended R1 class. As with R1 it applies to larger scale energy selling activities (ie 10 or more small residential customers). In addition, the class has been extended to include all non-authorized sellers of energy, not just bodies corporate.</i></p> <p><i>This amendment will result in a change for some landlords selling energy to small residential customers; namely landlords selling to 10 or more customers will now need to register their exemption, whereas previously anyone selling to fewer than 20 customers was eligible for a deemed exemption.</i></p> <p><i>The new class R2 will remain open until 1 January 2015, after which any bodies corporate or residential landlords that commence selling to 10 or more residents will need an individual exemption. The AER has taken this step to discourage developers of new buildings, and retrofitters of existing buildings, from creating</i></p>

Activity	Proposed amendments	Reason for amendments
<p><u>landlord/lessee relationship</u></p> <p>[Individual exemption for those who commence onselling on or after 1 January 2015]</p>		<p><i>embedded networks. This is due to the significant practical barriers that customers face when they try to exercise their rights to a retailer of choice.</i></p> <p>The conditions will be the same as for the current class R2.</p>
<p><i>Class R3</i></p> <p>Persons onselling metered energy to residents for use within the limits of a retirement village that they own, occupy or operate, where the relationship between the person and the resident is governed by retirement village legislation.</p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorised energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>
<p><i>Class R4</i></p> <p>Persons onselling metered energy to residents for use within the limits of a caravan park, residential park or manufactured home estate that they own, occupy or operate, where the premises are the</p>	<ul style="list-style-type: none"> • Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorised energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>

Activity	Proposed amendments	Reason for amendments
principal place of residence for the resident.		
<p><i>Class R5</i></p> <p>Persons onselling metered energy to large customers.</p>	<ul style="list-style-type: none"> Activity has been extended to energy selling generally, not just onselling 	<p><i>While non-authorized energy sales mostly involve onselling, not all do. The guideline has been amended accordingly.</i></p>
<p><u><i>Class R6</i></u></p> <p><u>Persons selling metered energy to small business customers at a site or premises adjacent to a site that they own, occupy or operate</u></p>	<ul style="list-style-type: none"> New exemption class 	<p><i>Since publication of the guideline the AER has become aware of a number of long-standing relationships where a person who owns/occupies a site is selling energy to an adjacent site. These arrangements are generally mutually convenient for both the seller and customers.</i></p> <p><i>These arrangements are not currently covered by a class exemption, rather sellers have to apply to the AER for an individual exemption. This might be considered burdensome by some sellers and could result in them withdrawing the service. This could potentially lead to inconvenience and additional costs for the customer. Further, the AER considers registration is adequate for these arrangements.</i></p> <p><i>The conditions that are to apply to this class will be the same as the conditions for class R1. (Both classes R1 and R6 create an exemption for the onselling of energy to small commercial or retail customers. The only difference between them is that in the former the selling occurs within the site owned/operated by the exempt seller, whereas in the latter it occurs on an adjacent site.)</i></p>

Activity	Proposed amendments	Reason for amendments
<p><u>Class R7</u></p> <p><u>Persons selling unmetered energy to small business customers at a site or premises adjacent to a site that they own, occupy or operate, where the selling commenced prior to the commencement of the National Energy Retail Law in the jurisdiction.</u></p>	<ul style="list-style-type: none"> • New exemption class 	<p><i>While the AER does not support the sale of unmetered energy, it is aware of legacy arrangements where the unmetered sale of energy is occurring. As this constitutes a sale of energy it should be regulated to ensure that customers receive appropriate protections. On this basis, we are proposing a registrable class exemption for unmetered sales of energy in commercial or retail situations only.</i></p> <p><i>This exemption will be available only to existing arrangements, that is, arrangements that were in place before the Retail Law and Rules commenced.¹³ Anyone that commences selling unmetered energy after the applicable date will need to either install sub-meters at the site or premises (and obtain an R1 exemption), or apply to the AER for an individual exemption. The AER will consider approving an exemption for unmetered selling only in exceptional circumstances.</i></p> <p><i>The AER proposes the same conditions as class R1, with some amendments to reflect the unmetered nature of the sale (for example, meter reading requirements).</i></p> <p><i>(Sellers operating under class D6, namely persons onselling unmetered electricity in Queensland to small customers for use within the limits of a site that they own, occupy, or operate, are excluded from this class.)</i></p>

¹³ At the time of publication of this notice of draft instrument, only the ACT and Tasmania had implemented the National Energy Retail Law and Rules. New South Wales has indicated that it will commence the Retail Law on 1 July 2013. Other jurisdictions have not yet announced dates for commencement.