



# **Notice of instrument: Revised AER (Retail) Exempt Selling Guideline**

## **- Version 3**

April 2015

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## Amendment Record

Version	Date	Pages
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# Table of Contents

<b>Shortened forms</b> .....	<b>2</b>
<b>Nature and authority</b> .....	<b>3</b>
Introduction .....	3
Authority .....	3
Role of the guideline .....	3
Definitions and interpretation .....	3
Version history and effective date .....	4
Overview .....	4
<b>Amendments to the guideline</b> .....	<b>6</b>
Introductory section.....	6
Registrable exemptions and new entrants .....	6

## Shortened forms

Shortened form	Long form
AER	Australian Energy Regulator
guideline	<i>AER (Retail) Exempt Selling Guideline</i>
Retail Law	National Energy Retail Law
Retail Rules	National Energy Retail Rules

# Nature and authority

## Introduction

This Notice outlines amendments to version 2.0 of the *AER (Retail) Exempt Selling Guideline* (the guideline).

The amendments serve to re-open a number of registrable exemption classes that closed to new entrants on 1 January 2015. The closing date for two classes and for retrofitted embedded network sites remain closed.

The proposed amendments were subject to public consultation. This process, which concluded on 10 February 2015, did not result in any submissions.

## Authority

The National Energy Retail Law (Retail Law) allows us to make and amend AER Exempt Selling Guidelines in accordance with the retail consultation procedure.

## Role of the guideline

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

- explains what retail exemptions are and how they work
- provides information to assist exempt sellers in determining whether or not they, or their business, need a retail exemption
- explains how to obtain a retail exemption and which exemption class applies to the seller
- outlines the factors we will consider when assessing individual exemption applications
- covers the conditions attached to various classes of exemption.

The purpose of the guideline is to assist people or businesses that sell energy under the Retail Law and need a retail exemption. It should be read by those that charge another person for the cost of energy, be it for profit or simply to recover their own costs. This guideline focuses on what these sellers need to know and what they must do to comply with the Retail Law as an exempt seller.

## Definitions and interpretation

In this notice, key words and phrases have the meaning given to them in:

- the shortened forms or
- if not defined in the shortened forms, the Retail Law and National Energy Retail Rules (Retail Rules).

## Version history and effective date

The current version of the guideline is version 3.0 (April 2015).

## Overview

Under the Retail Law, the AER is responsible for regulating exempt selling. Exempt selling refers to the sale of energy which is not subject to a national retailer authorisation. As part of our role, we must develop and maintain an exempt selling guideline.<sup>1</sup> The guideline, which accompanies this notice, sets out our approach to regulating exempt sellers. It also details the various exemption classes and the conditions attached to those exemptions.

Under the Retail Law, we can exempt people or businesses (sometimes referred to as exempt sellers, on-sellers, or non-authorised sellers) from the requirement to hold a retailer authorisation.<sup>2</sup> We allow exemptions for situations where energy is sold but a retailer authorisation may not be appropriate – for example, the sale of energy in retirement homes or caravan parks, or where an owner buys energy from an authorised retailer and then sells it to tenants. The retail exemptions framework is aimed at giving exempt customers protections comparable to those of retail customers. However, exempt sellers differ from authorised retailers in that they usually lack the economies of scale and scope from which retailers benefit and mostly do not sell energy as their core business. Often they have a pre-existing relationship with the customer (e.g. landlord-tenant) and sell energy for a variety of reasons—as a matter of convenience, or incidentally, or simply in order to pass on energy costs. It would be burdensome and unnecessary to compel these businesses to obtain a retailer authorisation.

There are three kinds of exemptions provided for in the Retail Rules,<sup>3</sup> being:

- deemed exemptions (which apply automatically)
- registrable exemptions (which apply when an eligible person registers with the AER)<sup>4</sup> and
- individual exemptions (which are granted by the AER on a case by case basis, on application).

When performing our exempt selling functions, we must have regard to the exempt selling policy principles set out in the Retail Law.<sup>5</sup> We may also consider the exempt seller factors,

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<sup>1</sup> National Energy Retail Law, section 118.

<sup>2</sup> National Energy Retail Law, section 110.

<sup>3</sup> National Energy Retail Rules, rules 149 – 151.

<sup>4</sup> And appear on the AER's [Public Register of Retail Exemptions](http://www.aer.gov.au/node/11037) (<http://www.aer.gov.au/node/11037>)

<sup>5</sup> National Energy Retail Law, section 114.

and the customer related factors, also set out in the Retail Law.<sup>6</sup> These factors and principles have guided us in the development and amendment of the guideline.

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<sup>6</sup> National Energy Retail Law, section 115 (exempt seller factors) and section 116 (customer related factors).

## Amendments to the guideline

Amendments to the guideline are summarised below. The revised guideline is available on our website at [www.aer.gov.au](http://www.aer.gov.au).

The amendments address the closure of certain classes of registrable exemption on 1 January 2015. A number of editorial changes have also been made to the introductory section of the guideline to bring it into line with the recently revised *Retailer Authorisation Guideline*. Otherwise, the policy decisions underpinning the guideline remain substantively unchanged.

In accordance with the retail consultation procedure,<sup>7</sup> the AER sought written submissions on the amended guideline and draft notice of instrument. We received two submissions. These submissions raised important issues that were outside the scope of the review but will be addressed in the next review of the guideline.

### Introductory section

The introductory section of the guideline has been simplified in line with the [AER's revised Retailer Authorisation Guideline v2](#). The changes to this section will make the descriptions of AER's authorisation and exempt selling frameworks consistent.

### Registrable exemptions and new entrants

Under the previous version of the guideline a number of registrable class exemption categories closed to new entrants from 1 January 2015. All but two of these classes will be re-opened, namely classes R6<sup>8</sup> and R7<sup>9</sup>. Except where embedded networks are retrofitted, classes R1<sup>10</sup>, R2<sup>11</sup>, and R3<sup>12</sup> have been re-opened. Classes R6 and R7 were closed because they were not intended to cover new arrangements but rather legacy arrangements that were put in place before the Retail Law and Retail Rules commenced. Sellers who would previously have been eligible under these classes can still apply for individual exemptions.

Under the previous version of the guideline, a number of exemption classes—both deemed and registrable—were to close to any sites retrofitted after 1 January 2015. We consider that all customers should be able to choose their energy retailer and therefore do not support

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<sup>7</sup> National Energy Retail Rules, rule 173.

<sup>8</sup> R6: persons selling metered energy to small customers at a site or premises adjacent to a site that they own, occupy or operate. This class was intended to cover legacy arrangements.

<sup>9</sup> R7: persons selling unmetered energy to small commercial/retail customers at a site that they own, occupy or operate. This class was intended to cover legacy arrangements.

<sup>10</sup> R1: persons selling metered energy to ten or more small commercial/retail customers within the limits of a site that they own, occupy or operate.

<sup>11</sup> R2: persons selling metered energy to ten or more residential customers within the limits of a site that they own, occupy or operate.

<sup>12</sup> R3: retirement villages selling metered energy to residential customers within the limits of a site that they own, occupy or operate.



the creation of infrastructure that deliberately reduces a customer's ability to exercise choice. These restrictions on exemption registrations have therefore been retained.

We consider that keeping open R1, R2 and R3 (other than for retrofitted embedded networks) will enable new sellers who would have been eligible under these classes to still register their selling activities, thus ensuring a level playing field between existing and new exempt sellers. It will also provide new exempt sellers in jurisdictions where the Retail Law is yet to commence with an opportunity to register for one of these class exemptions. In reaching this view the AER has had regard to the need for regulation to be fit for purpose. In particular, these classes are subject to conditions that the exempt seller must meet to be covered by that exemption. Conditions are designed to provide protections for customers without overburdening exempt sellers, and are modelled on the protections that authorised retailers must provide their customers. The extent to which these conditions apply to a particular class exemption depends largely on the nature of the energy sales and the customer type. For example, residential exempt customers (R2) will receive the greatest level of protection and should receive such protections as flexible payment plans if they identify themselves as experiencing financial difficulty.

Keeping classes R1, R2 and R3 open will not lessen customer protections as individual exemption conditions are generally based on those of comparable class exemptions, but will reduce the administrative load of sellers and the AER. Based on our experience, we consider that a registrable exemption remains the right level of regulation given the low risk associated with the types of selling arrangements captured by these classes. We have received few complaints from exempt customers covered by these arrangements<sup>13</sup> even though registrations for these types of exemptions remain steady. This may indicate that the class conditions currently provide appropriate levels of customer protection. Exempt customers covered by R1, R2 and R3 arrangements are also covered by all other relevant customer protection legislation, for example, the Australian Consumer Law.

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<sup>13</sup> Customers that have complained about onselling arrangements have largely been exempt customers that are part of an embedded network.