



Utility Research and Advocacy Project
Credit, Commercial and Consumer Law Program
Law and Justice Research Centre
Faculty of Law, QUT

4 February 2011

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

By email: AERInquiry@aer.gov.au

Dear Mr Leuner,

Consultation Paper and Response to Submissions Retail Exemptions, Exempt Selling Guideline (December 2010)

The Utility Research and Advocacy Project is a specialised project of the Credit, Commercial and Consumer Law Program (CCCL) within the Law and Justice Research Centre (LJRC) at the Faculty of Law at the Queensland University of Technology. The project is funded by the Consumers Advocacy Panel, and aims to build a deeper level of insight and knowledge about issues concerning residential, business, rural and remote consumers of electricity.

CCCL welcomes the opportunity to respond to the Australian Energy Regulator's (AER) December 2010 Consultation Paper and Response to Submission Retail Exemptions ("Consultation Paper"), and Exempt Selling Guideline ("Guideline"). We have had an opportunity to review the submissions and response made by the Consumer Utilities Advocacy Centre Ltd (CUAC) regarding the AER's Exempt Selling Guidelines, and endorse and adopt the responses made by that organisation.

CCCL are particularly concerned that there is no requirement for exempt sellers to offer flexible payment options including payment plans and hardship assistance to exempt customers. This shared concern is discussed in detail in the CUAC submission adopted by CCCL.

CCCL particularly highlight the following CUAC comments regarding the draft Guideline:

We agree with the AER that for the reasons set out at pages 15-16 of the Consultation Paper, onselling generally is not in the long term interests of consumers. Exempt customers, generally, do not have equivalent consumer protections which customers purchasing energy from an authorised retailer have. For example: access to payment plans, hardship programs, energy ombudsman schemes etc. In some instances, exempt customers may not have access to retail competition or the cost of metering infrastructure changes to access retailer choice might be too prohibitive. Further, an exempt customer who has an essential service and accommodation provided by the same person is in a vulnerable position. Insecurity of tenure, fear of rent increases and retaliatory eviction act as additional barriers to tenants raising utility issues or complaints to their respective landlords.

We believe and advocate that hardship assistance, payment plans, access to a free, impartial and independent external dispute resolution scheme are basic customer protections. Every consumer regardless of where they reside should be entitled to these customer protections.

The Australian Standard ISO 1002-2006 (Customer satisfaction – Guidelines for complaints handling in organisations) should be applied to all exempt sellers including specialist exempt sellers operating under individual exemptions. We do not agree with the AER's approach in applying this standard to exempt sellers seeking individual exemptions on a case-by-case basis.

We do not support the deemed category of exemptions because we believe that all exempt sellers should be registered.

An exempt seller who onselling at multiple locations, and where energy is the main form of interaction they have with their customer, should comply with similar obligations imposed upon authorised retailers under the NECF. We believe that a retailer authorisation will be more appropriate in these situations rather than an individual exemption, to ensure that exempt customers receive an equivalent level of customer protection compared with customers obtaining supply from authorised retailers. This includes access to payment plans, hardship assistance, flexible payment options, energy ombudsman schemes, retailer of last resort provision etc. Because of the extent and scale of large or specialist onselling activities, these onsellers should also be subject to the same performance and compliance reporting framework authorised retailers meet under the NECF.

Energy is an essential service. Therefore, universal registration is necessary to ensure that there is transparency regarding the scale and scope of onselling activities and to facilitate the AER's monitoring of those activities. The importance of registration is acknowledged in the Guideline:

*The requirement for registration increases [AER] awareness of the scale of onselling activities being carried out under these exemptions. This assists with compliance monitoring...*¹

¹ AER, Exempt Selling Guideline (December 2010), at 24.

We disagree that requiring small exempt sellers to register their exemption is unduly burdensome. Not “understanding why they need to register” is a poor excuse to justify non-universal registration. Exempt sellers need to understand that they are providing an essential service and as such, registration is necessary to allow the AER to carry out its compliance role effectively.

CCCL also endorses and adopts the CUAC comments regarding the revised conditions applying to each class of exemption, and submit that the AER should re-examine the following exemption conditions as suggested by CUAC:

- Absence of requirement for payment plans and hardship assistance;
- Billing and payment arrangements;
- Pricing and billing requirements;
- Payment difficulties and disconnection or cessation of supply;
- When disconnection or cessation of supply is prohibited;
- Reconnection of supply; and,
- Maintaining records.

Thank you for the opportunity to participate in the AER’s consultation process on retail exemptions. If you have any questions, please contact the undersigned on **07 3138 4637**.

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