

4 February 2011

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

Via email to: AERInquiry@aer.gov.au

Dear General Manager

Re: Retail Exemptions Consultation

COTA Seniors Voice (CSV) welcomes the opportunity to provide comment on the AER's proposed approach to retail exemptions. The attached submission details CSV's response to the specific questions raised in the Consultation Paper.

Due to its nature as the peak aged consumer organisation, CSV views the access to consumer and price protections for exempt customers as an important issue. Many older people reside within exempt networks and CSV is concerned that without the right protections this group will be disproportionately disadvantaged in the energy market.

Overall CSV is supportive of the approach taken by the AER. Where possible the Exempt Selling Guidelines have mirrored the protections afforded consumers in the National Energy Customer Framework (NECF) and therefore represent a consistent approach.

CSV does however have some concerns around:

- The proposed lack of hardship provisions for exempt customers;
- The lack of onus on exempt sellers to provide information on concessions and rebates; and
- The AER's approach to providing information to exempt sellers and potential exempt sellers.

Should you have any questions regarding the issues raised in the attached submission, please contact Tom Stead, Policy Officer on (08) 8224 5515 or email tstead@seniorsvoice.org.au.

Yours sincerely



Ian Yates AM
Chief Executive

Attachment: COTA Seniors Voice AER Retail Exemptions Consultation Paper Submission



COTA Seniors Voice

**Australian Energy Regulator (AER)
Retail Exemptions Consultation Paper**

Submission

2011

COTA Seniors Voice

COTA Seniors Voice (CSV) is South Australia's peak seniors' organisation with an individual membership of around 20,000 and over 250 seniors' organisation members with a combined membership of more than 60,000. In addition, CSV has 80 associate members who are aged care providers, local government bodies, health units and other service and educational institutions. CSV membership networks and programs are state-wide.

CSV has a longstanding record of contribution to State Government policy for older people, their carers and families, and also delivers a range of programs and services for older Australians.

CSV is concerned that older people's access to affordable quantities of essential services such as water and energy is under threat and supports the view that everybody should have affordable access to sufficient quantities of essential services for health, wellbeing and social participation.

South Australia and its Older Population

South Australia has an ageing population, greater than any other state or territory in Australia. At present, 1 in 7 South Australians are aged 65 years and over. By 2021 it will be 1 in 5 and by 2051 it will be 1 in 3. At the same time, people aged 85 years and over will quadruple from 1 in 57 South Australians being aged over 85 to 1 in 15 being aged over 85 by 2051.¹

Many older people in South Australia are also dependent on government benefits. In 2007-08 106,600 South Australian households had retirement pensions as their principal source of income.² More recent data shows that 180,000 older South Australians receive Age and Department for Veteran's Affairs benefits³, of whom approximately 120,000 receive the maximum rate.

These figures show that there are not only that there are more older South Australians, but that many of them are reliant on limited incomes to meet their basic needs.

¹ Australian Bureau of Statistics (2005) Populations Projections

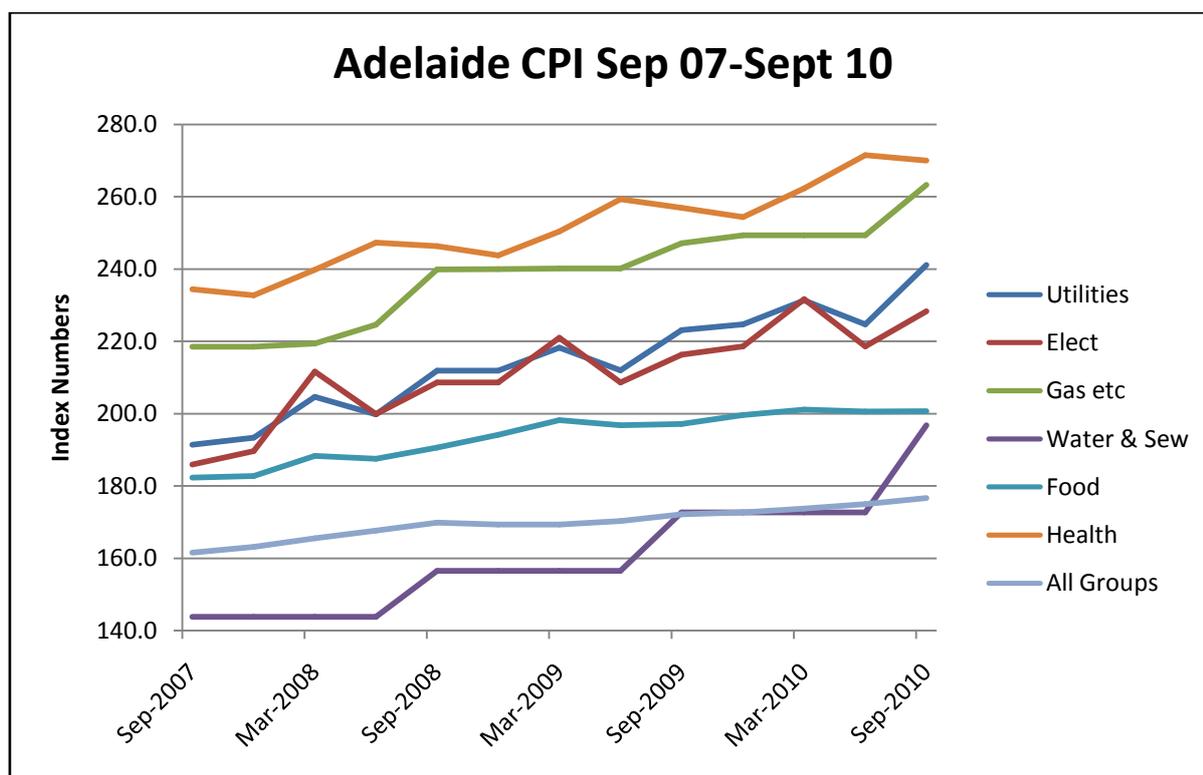
² Australian Bureau of Statistics (2009) Household Income and Income Distribution, Australia, 2007-08

³ FaHCSIA (2010) Income support customers: a statistical overview 2009

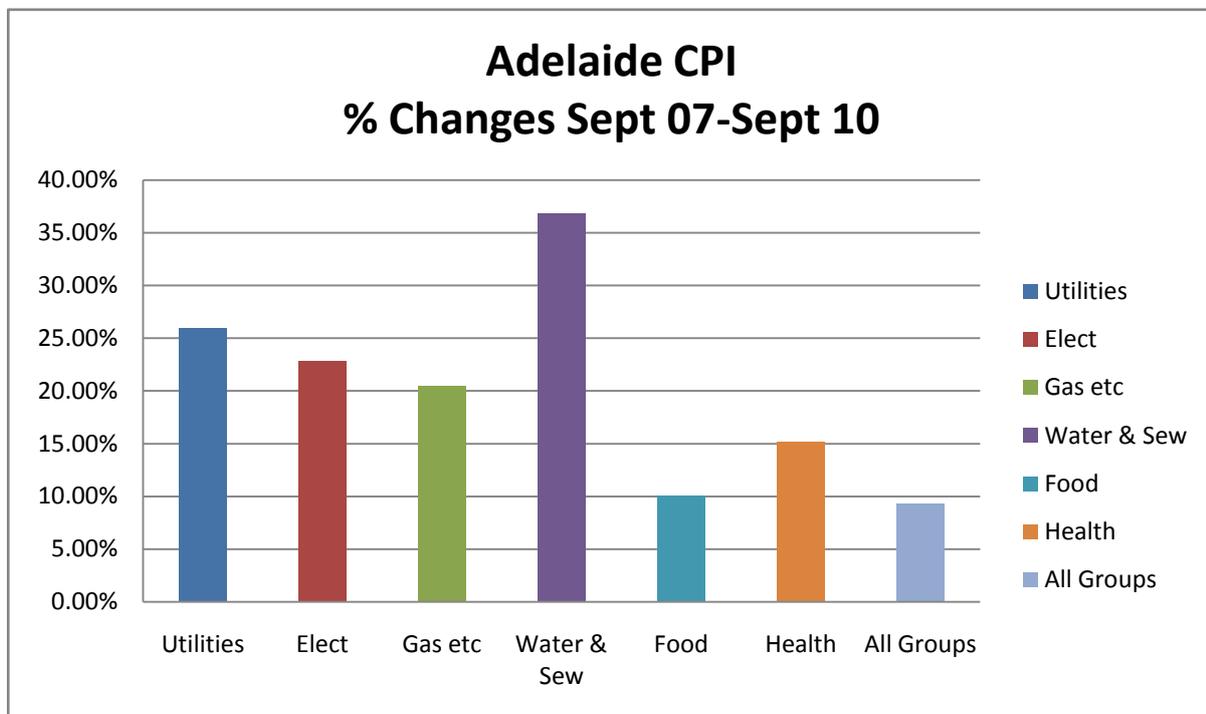
Older People and Essential Services

There is no doubt that the cost of essential services is affecting older people. Rising costs for electricity, gas and water all diminish the ability of households – particularly those on low and fixed incomes – to manage their weekly finances and to maintain health and wellbeing. This is of particular concern because after housing costs, utility bills are often ranked highest in order of importance and thus are paid before other costs such as food and medical costs.

The increasing burden of essential services can be seen in the CPI data. These show that electricity; gas and other household fuels; and water and sewerage costs have risen well above the general, or 'all groups' CPI (see below) over the last three years.



The costs of electricity and gas in Adelaide have both risen at over twice the rate of CPI (see below).



CSV continues to maintain that even small nominal increases in the price of utilities can have significant proportional and actual impacts on the lifestyle of older people. There is a proportion of the population that is now only just able to manage their existing financial commitments. Given the recent increases in the prices of other essential goods and services such as food, fuel and water, any further increase in water prices is likely to place these households under financial duress. It is clear that strong price regulation, progressive tariff structures and realistic concessions are required to ensure affordable access.

Older People and Exempt Selling

Older people often find themselves in exempt selling situations such as in retirement villages, residential parks, and aged care facilities. CSV does not take the position that these energy consumers are always worse off for being exempt customers – often the payment of energy costs in general fees and charges (including rent) removes the stress of receiving bills. Additionally, the buying power of exempt sellers can lead to lower prices.

However CSV remains concerned that older people who are exempt customers often do not receive the range of consumer protections available to retail energy customers. Not having access to retail markets can also lead to exploitative behaviour by exempt sellers.

CSV's responses to the questions raised in the AER's consultation paper should therefore be read in the context of ensuring that all older people, regardless of residence, should be offered the maximum protections that can practically be provided.

Response to Questions

Q1: Do stakeholders agree with the AER's considerations on whether onselling is in the long term interests of consumers?

CSV agrees with the AER's assessment that the growth of onselling will not always be in the long term interests of consumers. The lack of choice and protections afforded consumers in onselling situations is already of concern, and growth in this area will lead to more consumers being disadvantaged in this way.

CSV notes that the lack of direct relationship between consumers and the NEM (particularly retailers and distributors) also means that a range of programs and incentive schemes relating to energy efficiency are unavailable, and that without metering infrastructure there is currently little incentive to become more energy efficient.

Together the lack of consumer protections and lack of accessibility for broad government policy initiatives means that the growth in onselling is not always in the long terms interests of either consumers or government.

Q2: Do stakeholders agree with the AER's considerations on onseller compliance costs?

CSV agrees that consumer protections need to be put ahead of compliance costs when assessing applications for exemption. While it is understood that there needs to be some regard to compliance costs, it is the interests of consumers that is paramount.

Q3: Do stakeholders agree with the AER's considerations on choice of retailer in electricity embedded network onselling situations?

CSV views the ability to choose an electricity retailer as important, but is cognisant of the complexity of requiring that this be afforded to all consumers within embedded networks. The AER is right to point out that the number and complexity of regulatory instruments that require changing renders significant change in the short term undesirable.

CSV is also of the view that market choice is not an end in itself and is most desirable when it provides the desired outcomes in terms of affordability and access. Recent research⁴ has shown that older people feature strongly in the number of South Australian energy customers who have never considered switching from the Standing Contract retailer, indicating that strong price and consumer protections are more important than the availability of choice.

However CSV acknowledges that competition and choice are important elements of energy markets generally and that ensuring that exempt customers have a choice of retailer would represent an equitable outcome. CSV therefore submits that the AER should begin moving towards retailer choice as an outcome in the medium- to long-term.

⁴ Colmar Brunton (2010), 'Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information'

Q4: In jurisdictions where a customer within an embedded network does not have access to choice of retailer, should the AER impose a condition preventing the onseller from refusing to supply them, to ensure that they can obtain energy supply?

In keeping with the first two policy principles outlined in the AER consultation paper, embedded network customers should be afforded similar protections as those who have a choice of retailer. This would include obligation to supply and standard contract terms. Thus CSV strongly supports the AER imposing the obligation to supply on exempt sellers.

Q5: Do stakeholders agree with the AER's reasons for not requiring hardship policies for deemed and registrable exemptions?

CSV does not agree with the reasons provided by the AER.

CSV accepts that the compliance costs must be taken into account, and that it is unrealistic to expect *all* exempt sellers to comply with a standard set of hardship provisions as expected of energy retailers.

However CSV does 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), hardship provision such as payment plans will not be useful for customers experiencing payment difficulties. Often it is ancillary costs such as energy that can push people on low and fixed incomes 'over the edge'. Thus (for example) enforcing payment plans can have significant benefits for embedded network customers.

Additionally, while not all exempt sellers can be expected to comply with hardship provisions that are expected of retailers in the NEM, there is little doubt that a minimum set of standards can still be imposed on some classes of exempt sellers. By setting a minimum set of standards to be applied based on the type and size of embedded network (and waived in special circumstances), the basic rights of consumers can be maintained.

3.3.3.2: Access to Ombudsman schemes

CSV considers access to external dispute resolution mechanisms as a vital component of consumer protections. While it is understood that this issue is outside the scope of the AER's role, CSV fully supports its advocacy in extending the coverage of Ombudsman schemes to exempt sellers throughout the NEM.

Q6: Do stakeholders support the AER's considerations on the application of Australian Standard ISO 10002-2006?

Although CSV can decipher the AER's considerations and considers them logical, it is concerning that it has decided only to 'consider the application of the standard in the future to large onsellers on a case-by-case basis.'

It is also perplexing that a customer complaints handling standard can be 'considered in the future' for larger onsellers, while hardship provisions have been ruled out for large and small onsellers.

Q7: Do stakeholders support the AER's views on the distinction between "core" and "incidental" onselling?

CSV believes that the issue of 'core' versus 'incidental' onselling cannot be seen in isolation from the issue of profit intention (see Q8 below). Incidental onselling should be seen as an activity undertaken due to its (practical) unavoidability and which does not attract a profit. Core onselling should be seen as an activity that is presented as a profit stream.

Q8: Do stakeholders support the AER's revised considerations on the profit intention of the exempt seller?

CSV is concerned regarding the AER's considerations on the profit intention of the exempt seller. While the Consultation Paper states at page 25 that the AER will ensure that embedded network customers are no worse off than general retail customers, in reality there is the potential for customers to be disadvantaged through lack of access to concessions. It is therefore important that Condition 10 of the class D2 exemption be rigorously policed (discussed at Q23 below).

Q12: Do stakeholders support the AER's proposed approach to reducing eligibility of some onselling activities for a class exemption, and instead requiring applications for individual exemptions to be made?

CSV fully supports the AER's approach to reducing eligibility. It is in the long term interests of consumers to require applications for individual exemptions, and to assess these applications against a range of criteria including price, access to concessions and rebates, and other consumer protection measures.

Q14: Should the AER ever issue individual exemptions on an entity-specific basis, enabling a person to onsell at various locations? Is a retailer authorisation more appropriate for onsellers that wish to onsell at multiple locations?

CSV agrees that a retailer authorisation is more appropriate for most onsellers that wish to sell at multiple locations. There is little doubt that specialist onsellers should be treated as retailers in order to afford their customers the full range of consumer protections.

However where onsellers operate multiple properties (e.g. retirement villages), retail authorisation may not be appropriate. CSV maintains that these can be assessed on a case-by-case basis.

Q19: Do stakeholders agree with the AER's proposed registration requirements?

While CSV agrees that the lack of knowledge concerning exempt selling may make registration difficult, it is still in the long term interests of consumers to ensure universal registration.

Although beyond the scope of the AER, it is suggested that state and territory consumer and business registration legislation and guidelines (as well as related Commonwealth instruments where applicable) should include information regarding exempt selling. Universal registration could be worked towards in the longer term by requiring that any sale of a business include information on what constitutes exempt selling and what is required of businesses. Additionally, real estate legislation should require that similar information and registration requirements are communicated at point of sale.

Q23: Do stakeholders agree with the revised conditions outlined in the draft determinations that will apply to each class of exemption? Why or why not?

3.8.1 – Information provision

CSV fully supports the approach taken by the AER in terms of information provision, particularly in relation to tariffs, fees and charges; and internal and external dispute resolution.

3.8.9 – When disconnection or cessation of supply is prohibited

While CSV generally agrees with the prohibitions on disconnection laid out in Condition 8 of the class D2 exemption it is concerned that an important condition provided under the South Australian Energy Retail Code (ERC)⁵ may be lost to exempt customers.

Under clause 9.7(h) of the ERC, retailers must not arrange disconnection of a small customer for non-payment on an extreme heat day.⁶ While CSV understands that this will remain as derogation under the National Energy Customer Framework (NECF), its relationship to the Exempt Selling Guidelines is unclear.

CSV strongly recommends that exempt customers are covered under the no disconnections due to non-payment on extreme heat days sub-clause.

3.8.11 – Concessions and rebates

CSV does not agree that exempt sellers should be absolved of all obligations to inform customers of concession and rebate schemes. It is noted that Condition 10(1) of the class D2 exemption requires only that exempt sellers ‘...must not hinder an exempt customer’s attempts to establish eligibility’. CSV recommends that an onus be placed on exempt sellers to provide basic information on concessions and rebates applying in the relevant jurisdiction, including eligibility requirements and contact details for obtaining further information. This is not an onerous requirement and would ensure that eligible exempt customers receive the assistance to which they are entitled. Additionally, if customers are not aware that they may be eligible for a concession or rebate provided through their exempt seller, then Condition 10(2) of the class D2 exemption is superfluous.

3.8.16 – Continuity of supply

While CSV concedes that the receipt of disconnection warning notices does not necessarily mean that disconnection is imminent, exempt customers have a right to know if their exempt seller has a poor payment record. When energy consumers do not have a direct relationship with retailers they are already at a disadvantage and this should not be compounded by further alienation from the wider energy market.

⁵ Essential Services Commission of South Australia (ESCOSA), ‘Energy Retail Code’ (ERC/03)

⁶ An extreme heat day is defined as: ‘...any day where the forecast for the Adelaide Metropolitan areas issued by the Bureau of Meteorology at 4.00pm CST indicates that the following day is the third day in a sequence of three days where the average of the minimum and maximum temperature for each day equals or exceeds 28°C’

Q24: Does the AER's revised pricing condition achieve the AER's objective of ensuring that, from a pricing perspective, residential customers of an onseller are not disadvantaged relative to customers of the local area retailer?

3.9.1 – Condition that charges not be greater than local area retailer's standing offer

CSV supports the AER position on pricing parity, and agrees that the wording of Rule 152(4) is clear on the ability of exempt sellers to charge for supply.

3.9.3 – Pricing protections where full retail competition is available

CSV fully supports the AER position on providing pricing protections where full retail competition is available.

Recent survey data from South Australia⁷ has shown that there remains a significant proportion of retail customers who have chosen to remain on standing offer contracts, and that these customers tend to be older and have low incomes. It is likely, given the power disparity between landlords and tenants (for example) that exempt customers will likewise choose to remain customers of a landlord onseller rather than enter the competitive market. For this reason alone it is necessary to retain pricing protections.

⁷ Colmar Brunton (2010), 'Monitoring the Development of Energy Retail Competition in South Australia and Consumer Preference for Market Contract Information'