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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 Consumer Utilities Advocacy Centre Ltd (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

We welcome the opportunity to respond to the AER's December 2010 Consultation Paper and Response to Submission Retail Exemptions ("Consultation Paper"), Exempt Selling Guideline ("Guideline"). CUAC has participated in the AER public forums on exemptions and provided a detailed submission to the AER Issues Paper Approach to Retail Exemptions ("Issues Paper") dated 2 August 2010. This submission therefore focuses on areas where we feel additional response is required.

We 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 is discussed further in our submission.

AER's ability to revoke exemptions

The AER is empowered to revoke an exemption where it is satisfied that there has been a "material failure" by the exempt seller to meet the conditions imposed on the exempt

seller.[1] The Guideline[2] sets out the process for revoking exemptions where exempt sellers, are operating under a class exemption. "Material failure" is, however, undefined in the Guideline. CUAC suggests that the AER provide some guidance including examples, in the Guideline as to what "material failure" means.

AER's considerations under the National Energy Retail Law

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

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.

Nevertheless, there are circumstances where onselling would arguably be in the longer term interests of consumers. The Consultation Paper mentions, the provision of energy through decentralised networks and off-grid networks[3]. We note that decentralised energy projects will be addressed by individual exemptions due to the unique nature of these projects. In the case of off-grid networks, individual exemptions would apply only if the State/Territory elects to bring their off-grid networks under the NECF. We support the AER's approach of individual exemptions for these situations.

AER's considerations on the policy principles

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

[1] Section 111(2), National Energy Retail Law (South Australia) Bill 2010.

[2] AER, Exempt Selling Guideline (December 2010), at 23 (paragraph 2.3), 30 (paragraph 4.1.5).

[3] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 30-32.

Yes, we agree with the AER that in assessing requests for exemptions from onsellers, more weight should be placed on ensuring that exempt customers receive appropriate protections, than on minimising onsellers' compliance costs.

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

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.

We are of the view that customers, regardless of where they are residing, should in principle, be able to access the competitive energy retail market. This, however, might not be practical, currently, because of the jurisdictional limitations (set out in AEMO's Embedded Network Guidelines) and the logistical difficulties mentioned in the Consultation Paper. Therefore, we agree that, at least in the short term, it may not be practicable to require full retail competition in all embedded networks except in jurisdictions where it is currently available.[4]

We welcome the opportunity to participate in consultations on the Network Service Provider Exemption Guidelines.

Our answer is "yes" to Q4. However, in addition to prohibiting onsellers from refusing to supply exempt customers, who do not have access to retailer choice, other customer protections, including a price cap, are required.

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

The AER has questioned the practicality of imposing payment plans and hardship assistance on exempt sellers.[5] We understand the complexities involved in this area. CUAC, however, believes 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.

We are particularly concerned with long term exempt customers residing at caravan parks and boarding/rooming houses (that is, these premises are their principle place of residence). They experience a range of disadvantage including low income and financial hardship. It is

[4] AER, Exempt Selling Guideline, at 39-40 (paragraph 5.1.2).

[5] AER, Exempt Selling Guideline, at 41-42 (paragraph 5.1.3).

unacceptable that one of the most vulnerable groups is denied basic customer protections because of the "the potential conflict with tenancy legislation"[6] and that "assistance provided to these customers to only manage arrears for their energy charges may not reduce or avoid their risk of eviction."[7]

CUAC believes that exempt customers are entitled to an equivalent level of protection in relation to the energy component of their accommodation charges, like customers who purchase energy from authorised retailers. CUAC strongly believes that no one should be disconnected from energy supply solely due to an inability to pay. Payment plans and hardship assistance will assist customers remain connected to supply. There is also an equity issue. That is, the lack of an equivalent level of customer protection for exempt customers creates "second class" services.

The development of the LPG code in Victoria provides a good example of how government, industry, the Energy and Water Ombudsman Victoria and consumer groups worked together to overcome barriers to provide protections for LPG customers. This resulted in a voluntary code for LPG and allowed LPG consumers, access to EWOV. The AER needs to take a long term view of exempt customer protections and work with jurisdictions to overcome the obstacles towards the development of a customer protection framework for exempt customers.

Access to ombudsman schemes or other free external dispute resolution

We note that currently, there are legal, practical and financial barriers to onsellers participating in energy ombudsman schemes. We would like to see the energy ombudsman scheme extended to exempt sellers over time. To safeguard customers' rights customers need access to a free, impartial and independent external dispute resolution body or energy ombudsman scheme. We are pleased to note that the AER will be raising this issue regarding exempt customer access to energy ombudsman schemes with jurisdictions through the Joint Implementation Group (JIG). This is an issue which CUAC will raise with the Victorian government in its implementation of the NECF.

Q6. Do stakeholders support the AER's considerations on the application of Australian Standard ISO 1002-2006?

[6] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 21. See also AER, Exempt Selling Guideline, at 42 (paragraph 5.1.3).

[7] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 21. See also AER, Exempt Selling Guideline, at 42 (paragraph 5.1.3).

Our view on this is that the Australian Standard ISO 1002-2006 *(Customer satisfaction – Guidelines for complaints handling in organisations)* should be applied to large exempt sellers operating under deemed and registrable exemptions where there is no direct conflict between the Australian Standard and any specific legislation the exempt seller operates under. This standard should also apply to all exempt sellers including specialist exempt sellers[8] 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.[9] As stated in the Guideline, exempt sellers selling under an individual exemption should generally be subject to conditions which more closely resemble the obligations that apply to an authorised seller.[10] There should therefore be a condition applying Australian Standard ISO 1002-2006 to internal dispute handling processes, in the same way that authorised retailers are obliged to.[11]

We understand that the Australian Standard may be onerous for small exempt sellers operating under a deemed or registrable exemption. In these cases, the AER should consider applying the standard on a case-by-case basis.

According to the Guideline:

> [The AER] will consider requiring customer protections, such as access to dispute resolution and customer hardship policies, on a case by case basis when considering applications for individual exemptions.[12]

CUAC submits that "customer protections, such as access to dispute resolution and customer hardship policies" are all the more important in the context of large onsellers and specialist onsellers seeking individual exemptions for the sale of energy to residential exempt customers.

Q9. Do stakeholders agree that the AER should recognise pre-existing onselling arrangements under jurisdictional legislation as a relevant exempt seller related factor?

While pre-existing onselling arrangements under jurisdictional legislation are a relevant exempt seller related factor, future onselling activities should not be exempted solely on the

[8] "Specialist exempt providers" refer to those that operate embedded networks and engage in onselling at various embedded network sites. AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 25.

[9] AER, Exempt Selling Guideline, at 42 (paragraph 5.1.3).

[10] AER, Exempt Selling Guideline, at 38 (paragraph 5.1.1).

[11] Section 81, National Energy Retail Law (South Australia) Bill 2010.

[12] AER, Exempt Selling Guideline, at 42 (paragraph 5.1.3).

basis that the activity may have been eligible for an exemption under jurisdictional legislation. We support the AER's proposed approach in reducing eligibility of some onselling activities for a class exemption, and instead requiring applications for individual exemptions to be made (see our response to Q11).

As a matter of principle, customers should have access to choice of retailer. Therefore, we agree that exemptions should not be granted to new developments on the basis of infrastructure issues.

Q10. Do stakeholders agree that the AER should consider collective decision making arrangements as a relevant characteristic or circumstance of exempt customers?

Where energy has been onsold under a contract negotiated on behalf of a group of customers under a collective agreement, the AER needs to ensure that consumers gave their explicit informed consent to the proposed arrangement.[13]

AER's revised approach to deemed and registrable exemptions

Approach to exemptions where customers have access to retailer of choice.

According to the AER's revised approach, "the availability of full retail competition is no longer relevant to an onseller's eligibility for a class exemption."[14] It appears that the rationale for the revised approach is to ensure that onsellers in jurisdictions where there is retailer choice are not disadvantaged.[15]

We have concerns with the AER's revised approach. While access to retailer choice is not the sole determinant of whether an exemption should be given, we believe it is a relevant factor given that exempt customers do not enjoy equivalent customer protections as customers of authorised retailers.

Q11. Do stakeholders agree with the AER's categories of exemptions set out in the draft determinations? Why or why not?

There are 11 types of activities and situations (D1 to D7, R1 to R3) which the AER has assessed as appropriate for class exemptions, at least in the short term. While we support

[13] AER, Exempt Selling Guideline (December 2010), at 48 (paragraph 5.3.1).

[14] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 27.

[15] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 27.

the AER's approach in tailoring the exemption categories to specific circumstances, there is the potential for overlap between categories. In some cases, an applicant for an exemption or an exempt seller may not know which specific category of exemption they fall under. Some clear guidance will be required.

We do not support the deemed category of exemptions because we believe that all exempt sellers should be registered. Please refer to our response to Q19.

AER's considerations on individual exemptions

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?

Yes, we support the AER's approach for the reasons given at page 30 of the Consultation paper. We agree that class exemptions are generally inappropriate for specialist onsellers, decentralised energy systems, and the sale of energy in off-grid networks under the NECF.

Consumers are entitled to be individually metered so that they are billed on consumption. Thus, we believe that individual exemptions should not be granted in future developments or redevelopments where electricity usage is unmetered.[16]

We agree that conditions attached to individual exemptions should generally be more onerous and more closely resemble the obligations imposed on authorised retailers than those attached to class exemptions.[17]

Q13. Do stakeholders agree with the AER's considerations on the sale of energy through off-grid networks (where these are brought under the Customer Framework)?

The Consultation Paper mentions that the AER will consider the feasibility of developing a class exemption category for off-grid networks once the scope of off-grid networks which jurisdictions elect to bring under the NECF is known. CUAC welcomes the opportunity to participate in consultations on this issue.

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

[16] AER, Exempt Selling Guideline (December 2010), at 47 (paragraph 5.2.7).

[17] AER, Exempt Selling Guideline (December 2010), at 9, 38.

The exemptions framework must not be used as a "backdoor" means of entry into the retail energy space, to allow onsellers (especially large and specialist onsellers) to circumvent the obligations placed upon authorised retailers under the NECF. The AER needs to scrutinise each application for an individual exemption closely to see whether an application for a retailer authorisation is more appropriate. We agree that exemptions will not be appropriate for conventional energy retailing activities where the retailer is registered with AEMO for wholesale market purposes.[18]

An exempt seller who onsells 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.

Q15. Do stakeholders agree with the AER's considerations on the provision of onselling through decentralised networks?

Q16. Is it feasible for the AER to issue a class exemption for decentralised energy projects?

Q17. What activities/entities should any class exemption cover?

Q18. Are the conditions of exemptions set out in class D2 of the draft determination of deemed exemptions (with the exception of those that relate to the operation of state/territory tenancy legislation) appropriate for decentralised energy projects? Are further conditions of exemption required?

We agree that onselling through decentralised networks would best be addressed by individual (not class) exemptions for the reasons set out at pages 31-32 of the Consultation Paper.

Due to the unique nature of decentralised energy projects, the list of conditions set out in D2 should not be exhaustive. Conditions will need to be assessed on a case-by-case basis.

[18] AER, Exempt Selling Guideline (December 2010), at 9.

AER considerations on the Public Register

Q19. Do stakeholders agree with the AER's proposed registration arrangements?

We are pleased to see that the revised classes of registrable exemptions would over time result in more exempt sellers registered on the public register. For registrable exemption classes R1, R2 and R3, individual exemptions will be required for those commencing onselling on or after 1 January 2015. However, we do not agree with the AER's proposed registration arrangements.

The Public Register will have information on exempt sellers who hold individual or registered exemptions. However, for deemed exemptions, the Public Register will merely list the classes of persons for whom deemed exemptions are in force.[19] The AER's rationale for not requiring universal registration is that "[t]his would place a large administrative burden on small exempt sellers in both physically registering and understanding why they need to register."[20]

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…[21]

We disagree that requiring small exempt sellers to register their exemption is unduly burdensome. Currently, exempt sellers register their business name either with the Australian Securities & Investments Commission (ASIC) if it is a national business, or with the state government department responsible in that jurisdiction (in Victoria, it is Consumer Affairs Victoria). 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.

[19] AER, Exempt Selling Guideline (December 2010), at 10.

[20] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 33.

[21] AER, Exempt Selling Guideline (December 2010), at 24.

Proposed changes to the conditions of class exemptions

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?

The amendments are generally positive. However, we still have concerns, in particular with conditions impacting customers who are long term residents in premises with exempt networks (that is, the premises are their primary place of residence). Our comments below should not be taken to imply that we support deemed exemptions. As mentioned in our response to Q11 and Q19, we do not support deemed exemptions.

Absence of requirement for payment plans and hardship assistance -

We are concerned that there is still no obligation on exempt sellers to offer payment plans or hardship assistance to customers experiencing payment difficulties. We are pleased that the requirements around disconnection have been strengthened to include reminder and disconnection notices, as well as personal contact with the customer. However, without an obligation on exempt sellers to offer a payment plan and hardship assistance, disconnection will result as a matter of course once the exempt customer is unable to meet payment. Please refer to our response to Q5.

Billing and payment arrangements -

The supply address and the billing period (not just days in the meter reading) should be included as part of the particulars in a bill for an exempt customer.

Pricing and billing requirements -

We note that the requirement around informing customers about tariff changes has been amended. Exempt sellers are now required to provide exempt customers with notice of tariff changes as soon as practicable, and no later, than the customer's next bill.[22] This condition mirrors the notice requirements imposed on authorised retailers under the NECF.[23] As a matter of principle, we believe that all customers should receive prior notification of any tariff changes.

The AER's rational for removing the overcharging condition is that "the Australian Consumer Law and contract law provide adequate protections."[24] We note that there are overcharging

[22] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 35.

[23] Rule 46 (3) and (4), National Energy Retail Rules.

[24] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 35.

provisions in the National Energy Retail Rules in relation to authorised retailers[25] notwithstanding Australian Consumer Law or contract law. If the amount overcharged is $50 or more, authorised retailers are obliged to repay that amount as directed by the small customer or credit the amount to the next bill. We believe that a similar provision should be included as a condition of the exemption.

We suggest that a condition similar to Rule 30(2)(c) of the National Energy Retail Rules be included where undercharging has occurred. That is, the amount to be recovered should be listed as a separate item in the bill with an explanation provided to the exempt customer.

Payment difficulties and disconnection or cessation of supply –

There is a reference to "personal contact" at page 36 of the Consultation Paper before a customer can be disconnected for non-payment. This is, however, not reflected in the conditions to the AER's Draft Determination of Deemed Exemptions. Condition 7 of Class D2, for example, refers to the exempt seller using "its best endeavours to *contact* the customer in connection with the failure to pay." We suggest that contact include both personal contact and telephone contact.

The AER has included in the condition on "payment difficulties and disconnection or cessation of supply" the following:

> An exempt person must not refuse to supply an exempt customer except where the requirement of this condition has been met.

We ask that the AER clarify what the above provision means.

When disconnection or cessation of supply is prohibited -

The prohibition of disconnection has been extended to cover exempt customers who have lodged complaints with the energy Ombudsman, as well as with other relevant external dispute resolution bodies. While this is an improvement, we are of the view that this prohibition should extend to exempt customers who have complaints which are in the process of being addressed by the exempt seller. We raised this in our submission to the issues Paper.

Reconnection of supply –

We also raised the need for a time frame to govern reconnection times in our submission to the Issues paper. It would be reasonable for the exempt seller to reconnect the exempt customer on the same day, if the request was made before 3pm on a business day. If the

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[25] Rule 31, National Energy Retail Rules.

reconnection request is made after 3pm, the exempt seller must reconnect by the next business day.

Contact details –

If the "means of contact" is a telephone number, the call should not be more than the cost of a local call. The "means of contact" to be provided by the exempt seller and "readily accessed by exempt customer" should cover "account enquiries and complaints" as well as faults and emergencies.

Maintaining records –

Exempt sellers should maintain customer records for a period of time (at least a year) after the customer has moved on. Documentation is required in the event that a dispute arises after the customer has left the exempt seller. This was raised in our submission to the Issues Paper.

Class D4 - 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

Class D4 Condition 7(4)[26] is unnecessary since D4 already refers to situations where the relationship between the exempt seller and exempt customer is not governed by residential tenancy legislation.

Class R4 – Persons onselling metered energy to residents for use in premises within the limits of a caravan park, residential park or manufactured home estate site that they own, occupy or operate, where the premises are the principle place of residence for the resident.

For Class R4, there is a registrable exemption for current and future onsellers. Class R3 (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), however, requires a person commencing onselling on or after 1 January 2011 to obtain an individual exemption. A person commencing onselling before 1 January 2011 will be able to obtain a registrable (Class R3) exemption.

We note the distinction between Class R4 and R3 in terms of the requirement for an individual exemption. We suggest that an individual exemption should likewise apply for

[26] D4 Condition 7(4): This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

Class R4 in relation to a person commencing onselling on or after 1 January 2011. Currently, the conditions proposed for class exemptions (as mentioned in our submission) are inadequate. Exempt customers who have their principle residence in caravan parks, residential parks or manufactured home estate sites, should obtain equivalent level of customer protection as customers who purchase energy from an authorised retailer. Therefore, an individual exemption with stronger customer protections is more appropriate.

AER considerations on retail pricing protections

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?

We support the condition stipulating that energy charges of exempt sellers should not be greater than the local area retailer's standing offer prices. We are pleased that the AER intends to impose price constraints on all tariffs charged to residential exempt customers regardless of whether full retail competition is available.

AER considerations on metered and unmetered supply

Q25. How should the AER address protections for small exempt customers in embedded networks with a smart meter? What core protections are required?

We believe that exempt customers with smart meters require similar protections to those applying to authorised retailer customers under the NECF. We understand that the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) is currently developing the next customer protection paper, Smart Meter Customer Protection and Safety Review Draft Policy Paper Two. The Essential Services Commission of Victoria's (ESCV)'s Smart Meters Regulatory Review has led to regulatory amendments to Victorian codes and guidelines. The ESCV is now examining issues around supply capacity control and verifying bills.

We are unable to provide a detailed response to Q25 ahead of the release of SCO's Draft Policy Paper Two.

Q26. Is the proposed exemption for the onselling of unmetered gas appropriate?

We support the proposed exemption for onselling of unmetered gas in circumstances where there is limited gas use for cooking.[27]

Bulk hot water

We understand that the AER has received preliminary legal advice suggesting that bulk hot water charges do not constitute a "sale of energy" under section 88 of the National Energy Retail Law and as such are outside the exemptions framework. The concerns about bulk hot water raised by stakeholders and reflected in the Consultation Paper are very real.[28]

We refer the AER's attention to a report on rental housing standards by the Tenants Union of Victoria (TUV) which was completed in late 2010. This project, which was funded through a CUAC grant, also looked at utility supply in embedded networks. Exempt selling has led to confusion over payment responsibilities for exempt customers as well as billing for consumption in situations where there was no separate metering:

> The existence of embedded networks creates confusion about the responsibility for payment for utilities. In many instances, this confusion results in overpayment of utility costs.
>
> As discussed, the RTA apportions liability for utilities connection, service and consumption between landlords and tenants and residents. However, there have been a number of instances where residents of dwellings in embedded networks were charged for energy consumption where there is no separate metering. Upon challenge to the Victorian Civil and Administrative Tribunal (VCAT), all bills remitted to tenants and residents were found to contravene the RTA and the amounts paid under these unlawful bills were refunded.[29]

The TUV report referred to two cases involving bulk hot water charges. The case studies demonstrate that there is insufficient regulation protecting consumers in embedded networks in regard to the sale of hot water. Further, as the price at which hot water can be sold in embedded networks is not controlled (and there is no AEMO guidelines to underpin full retail competition in gas embedded networks)[30], onsellers are able to profit at the expense of consumers:

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[27] AER, Exempt Selling Guideline (December 2010), at 40-41.

[28] AER, Consultation Paper and Response to Submissions, Retail Exemptions (December 2010), at 42.

[29] Tenants Union of Victoria, Utilities and Residential Tenancies Part 2: Future Directions for Rental Housing Standards (November 2010), prepared by Dr Andrea Sharam with Toby Archer, Andrienne Barrett and Mark O'Brien, at 12-13.
http://www.tuv.org.au/articles/files/housing_statistics/Utilities_Residential_Tenancies_Part_2.pdf

[30] AER, Exempt selling guideline (December 2010), at 41.

Case Study 8

The units in Condor Apartments and Arkley Towers at Docklands are all separately metered for water. However, hot water is supplied to each residence through a central boiler utilising gas. Each residence is not separately metered in regard to consumption of this gas. Between 2002 and 2006, residents received accounts for water consumption, including charges for the provision of hot water. The cold water rate is $1.53/kl but the hot water rate is $10.00/kl. The supply of water to each residence is controlled by the Body Corporate, who employed a billing agent to render accounts to occupants. In some instances, tenants in the respective blocks were asked to sign separate supply agreements with the Body Corporate or the billing agent. The practice of charging tenants for the gas consumption in the absence of a separate meter prima facie contradicts sections 52 and 53 of the RTA. Whilst the tenant successfully challenged these charges with the assistance of the TUV on a number of occasions the Body Corporate concerned continued to modify the practice of charging including constructing third party agreements purportedly directly with the tenant. However, despite numerous orders providing refunds for tenants who have paid these exorbitant hot water charges, it is understood the practice continues.

Case Study 9

The units in a Melbourne apartment complex are separately metered for cold water. Hot water is provided by a bulk unit, provided by a utility company that provides gas to heat the water for each apartment. The units are not separately metered in regard to gas. The utility company remits a bill to the body corporate for the supply of gas to the whole apartment complex. The body corporate estimates the approximate amount of gas supplied to each apartment (inclusive of a small administrative fee) on the basis of hot water consumption, and then remits each occupier a bill for hot water. The body corporate also charged tenants a $100 "Hot Water Deposit" fee at the commencement of their tenancies, pursuant to one of the body corporate rules of the complex.

When the validity if the gas bills and the Hot Water Deposit fee were challenged by a tenant at VCAT, it was held that, pursuant to sections 52 and 53 of the RTA the tenants were not liable to pay either to their landlords or the body corporate for the supply of gas or the Hot Water Deposit fee, because the charges derived from the supply of gas to units that were not separately metered for gas.[31]

We recommend that the AER re-consider their preliminary legal advice regarding bulk hot water charges in relation to a "sale of energy." In light of the problems raised regarding bulk hot water charging and the consumer detriment, we are of the view that bulk hot water charging needs to be regulated, such as through the exemptions

[31] Tenants Union of Victoria, Utilities and Residential Tenancies Part 2: Future Directions for Rental Housing Standards (November 2010), prepared by Dr Andrea Sharam with Toby Archer, Andrienne Barrett and Mark O'Brien, at 13.
http://www.tuv.org.au/articles/files/housing_statistics/Utilities_Residential_Tenancies_Part_2.pdf

framework. If the NECF does not allow the AER to regulate bulk hot water charging, a rule change might be warranted.

Thank you for the opportunity to participate in the AER's consultation process on exempt networks. If you have any questions, please contact the undersigned on 03 9639 7600.

Jo Benvenuti
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