

Our ref: DBN1781

Department of
**Employment, Economic
Development and Innovation**

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
AERInquiry@aer.gov.au

Dear Mr Leuner

The Department of Employment, Economic Development and Innovation (DEEDI) welcomes the opportunity to provide comment to the Australian Energy Regulator (AER) on its draft Exempt Selling Guideline (guideline) and Consultation Paper and Response to Submissions (consultation paper) released in December 2010.

DEEDI supports the provision of a robust framework for the on-selling of energy. The AER's guideline will provide improved clarity for exempt sellers and exempt customers regarding their obligations and responsibilities, and additionally provide exempt customers with greater consumer protection.

The attached response has been provided on the areas of concern to Queensland and DEEDI supports the overall approach taken by the AER. DEEDI will look forward to working with the AER as it commences further consultation on retail exemptions and begins consulting on its electricity Network Service Provider Exemption Guideline in 2011.

I trust this information is of assistance. Should you have any further enquiries, please contact Mr Darren Schneider, Director, Industry and Client Services of DEEDI on telephone (07) 3237 1131.

Yours sincerely



DAN HUNT
Associate Director-General

Associate Director-General
Department of Employment, Economic
Development and Innovation
PO Box 15216
City East
Queensland 4002 Australia
Telephone +61 7 3898 0375
Facsimile +61 7 3238 3088
Website www.deedi.qld.gov.au
ABN 24 830 236 406

The Department of Employment, Economic Development and Innovation (DEEDI) Response to the Australian Energy Regulator Exempt Selling Guideline and Consultation Paper and Response to Submissions December 2010.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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 on-seller from refusing to supply them, to ensure that they can obtain energy supply?

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

We support the AER's proposal to recognise pre-existing on-selling arrangements under jurisdictional legislation and that all persons who have engaged in on-selling activities permitted under state and territory exemptions regimes prior to the move to the national retail regulatory framework should be accommodated, provided that on-selling has not been their core business. Recognition of pre-existing on-selling arrangements will ensure persons who have operated legitimately under state/territory exemption regimes are not unfairly disadvantaged.

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

DEEDI has no issues to raise for this question.

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

In Queensland, the on-selling of energy on an unmetered basis is not prohibited and there are existing arrangements in place to accommodate this situation. DEEDI therefore requires the inclusion of a specific deemed class exemption for on-selling unmetered energy to small customers.

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

Whilst DEEDI supports the AER's proposed approach to reduce the eligibility of some on-selling activities for a class exemption; we note that the AER considers conditions on individual exemptions are likely to be more onerous than those on class exemptions (see section 1.5 of the draft guideline). The provision of more onerous conditions may not necessarily be in the best interest of exempt customers.

For example, in Queensland, Special Approvals issued under the Electricity Act 1994 (Qld) may authorise the sale of electricity in circumstances where a retail authority is not appropriate. Special Approval holders may source electricity from the national grid or from off-grid generators. This electricity can be sold in a variety of situations such as a mining company providing supply to a small residential precinct or for the supply of energy to small island communities.

Customers of Special Approval holders are mostly located in areas where it is not economically practicable to obtain electricity through a regulated electricity network (and therefore, a retailer). The supply and sale of electricity to customers is incidental to the core business of the vast majority of Special Approval holders and the arrangement between the parties is a private one. In such cases, energy is provided at the goodwill of the entity and therefore there are minimal conditions imposed on the Special Approval holder.

As such, it is recommended that in determining whether to place conditions on an individual exemption, the AER should consider the nature of the selling arrangement and whether doing so could result in the exempt seller choosing to withdraw the service. This could have significant negative consequences for customers.

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)?

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

Q17: What activities / entities should any such class exemption cover?

DEEDI has no issues to raise for these questions.

Q18: Are the conditions of exemption 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?

DEEDI has no issues to raise for these questions.

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

Yes, however given registration is a new requirement for Queensland exempt sellers who fall within a registrable exemption category, and the large number of conditions the AER intends to impose on them, DEEDI suggests the AER considers alternative mechanisms to educate exempt sellers about their obligations and conditions imposed under the guideline. This applies particularly to exempt sellers who fall within the deemed exemption category as they may not be associated with an industry body and may be unaware they are in violation of the AER's guideline.

Further, a transitional period would be beneficial for deemed exempt sellers to implement imposed conditions.

Q20: Should customer meter types be recorded on the public register?

DEEDI has no issues to raise for this question.

Q21: Should management arrangements for embedded networks be recorded on the public register?

DEEDI has no issues to raise for this question.

Q22: Are the information requirements for registration as set out in the draft Exempt Selling Guideline appropriate?

As mentioned above, regulation of Queensland on-sellers has been minimal. As a result DEEDI anticipates on-sellers will require assistance with the AER's proposed requirements for registration. Therefore, in addition to educating on-sellers about the applicable conditions under the new regulatory framework, DEEDI suggests guidance be provided to on-sellers to assist with the registration process. A template or pro-forma could be beneficial to on-sellers, especially for small on-sellers who may not comprehend the information required (i.e. the difference between large and small customers or what a bulk purchase contract is etc).

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?

Condition 6 – Pricing and billing requirements

As a result of the different levels of retail competition within each jurisdiction, each state and territory has the ability to retain pricing protections under the National Energy Customer Framework. It is considered essential that jurisdictions are also responsible for any regulation of the pricing of energy supplied under on-selling arrangements. DEEDI strongly supports the qualification included in paragraph 4 of Condition 6 to allow for jurisdictions to legislate alternative pricing provisions.

Condition 8 – When disconnection or cessation of supply is prohibited

DEEDI generally supports the provisions in Condition 8 regarding disconnection conditions for exempt sellers. Condition 8.1b states that an exempt seller must not disconnect an exempt customer where an application for a concession has been made and Condition 8.1c states that an exempt seller must not disconnect an exempt customer where the exempt customer has made a complaint to an appropriate external dispute resolution body.

However, DEEDI recommends the AER note that customers of on-sellers in Queensland do not currently have access to the Energy and Water Ombudsmen Queensland and can only apply for the Electricity Rebate and Reticulated Natural Gas Rebate with the consent of the exempt seller. It is recommended that the AER define the concessions it intends to capture in condition 8.1b.

There is also the risk that an exempt seller may not be aware of its customers who have made a complaint and this could lead to an inadvertent contravention of this condition.

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?

DEEDI has no issues to raise for this question.

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

DEEDI has no issues to raise for this question.

Q26: Is the proposed exemption for the on-selling of unmetered gas appropriate?

While the use of metering to send price signals to customers to allow for equitable charging, where appropriate, is supported, DEEDI acknowledges that in situations of limited gas use, the costs of requiring gas metering can exceed the benefits.

Failure to provide an exemption for unmetered on-selling of gas may result in onerous retrofitting costs for exempt sellers, which would ultimately be borne by residents and small business. Consequently DEEDI supports the class exemption provided for unmetered gas supply for purposes of cooking and heating water (not space heating).

Q27: Do stakeholders support the AER's approach to common area charges and unmetered supply in commercial/retail tenancies?

DEEDI has no issues to raise for this question.

Q28: Given that the AER cannot impose metering accuracy requirements under national metrology procedures, which existing State/Territory metering accuracy requirements should be imposed on on-sellers?

DEEDI has no issues to raise for this question.

Q29: Do stakeholders have any concerns about the content of the draft Exempt Selling Guideline?

DEEDI is concerned about the absence of definitions and clarity in the draft guideline and consultation paper regarding billing agents, billing administrators and specialist external providers. All parties associated with the on-selling of energy need to be aware of the applicability of the guideline to their business and whether they have any obligations under the exempt selling framework. It is recommended that each term be further defined to improve clarity regarding the AER's intention regarding business models captured under each definition.

It is acknowledged that the AER has involved billing agents, billing administrators and specialist external providers in consultation to date; DEEDI recommends this continue to ensure each party is aware of on-sellers obligations.