Retail Exemptions – Consultation Paper and Draft Exempt Selling Guideline

QCOSS Submission

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QCOSS
queensland council of social service inc
WORKING FOR A FAIR QUEENSLAND

Response to AER Consultation Paper: Retail Exemptions

Queensland Council of Social Service (QCOSS) is the peak body for over 600 welfare and community sector organisations in Queensland. For over 50 years QCOSS has worked to promote social justice and exists to provide a voice for Queenslanders affected by poverty and inequality. We act as a State-wide Council that leads on issues of significance to the social, community and health sectors. We work for a Fair Queensland and develop and advocate socially, economically and environmentally responsible public policy and action by community, government and business.

QCOSS has been funded by the Department of Employment, Economic Development and Innovation for an energy consumer advocacy project in Queensland. The purpose of this project is to advocate on behalf of Queensland consumers and particularly vulnerable and low income households in relation to energy.

QCOSS welcomes the opportunity to comment on the Consultation Paper and draft Exempt Selling Guideline. In general, we support the approach taken by the AER, including its position on whether onselling is in the long term interests of customers, and are pleased with the level of recognition it has given to the need to ensure adequate customer protections for customers of onsellers. The areas where we have concerns with the AER's proposed guidelines are discussed below.

QCOSS is not able to respond to all of the questions in the Consultation Paper. We have only responded in detail where we have additional comments on, or concerns with the position taken by the AER. QCOSS agrees with the position taken by the AER in relation to the following areas:

- whether onselling is in the long term interests of consumers
- onseller compliance costs
- the application of Australian Standard ISO 10002-2006
- the distinction between 'core' and 'incidental' onselling
- the profit intention of the onseller
- reducing eligibility of some onselling activities for a class exemption, and instead requiring an application for an individual exemption to be made.

Our comments in response to other selected questions in the Consultation Paper are set out below.

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?

QCOSS believes that as a general principle, customers of embedded networks should have access to choice of retailer where it is technically feasible to allow retail competition. However, we agree with the AER's assessment as to the practicability of requiring full retail competition in embedded networks in the short term.

We agree that the AER should impose a condition obliging onsellers to supply customers in embedded networks where choice of retailer is not available. QCOSS also believes that in such circumstances, conditions should be imposed in regards to the prices that onsellers may charge. We note that the AER has already proposed that prices be capped at no more than the standing offer rate as a condition of deemed and registrable exemptions. QCOSS supports these conditions, and suggests that the same conditions should apply to individual exemptions where the exempt seller is supplying small customers who do not have access to choice of retailer.

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

QCOSS does not agree with the AER's approach to hardship policies and payment plans for exempt customers. While we acknowledge that it would be difficult to develop uniform requirements to offer hardship policies that would apply to all exempt sellers, QCOSS does not believe this justifies denying exempt customers any form of consumer protection in relation to hardship and payment arrangements.

QCOSS believes it would be feasible for flexible payment options, including payment plans, to be available to exempt customers. We consider the AER's reasons for not requiring exempt sellers to offer payment plans to be flawed. While accommodation charges may be a contributing factor to hardship, and many customers may struggle to pay their housing costs, this does not mean that payment plans for energy charges are redundant. Indeed, there is evidence that for many low income renters, prioritising energy bills is a significant reason for rental arrears.[1] It is not correct to assume, therefore, that offering payment plans for energy charges will not help customers who are also struggling to pay their accommodation charges. For low income consumers, making small, regular payments can be an essential strategy for managing their living costs. QCOSS cannot see any reason why an exempt customer would be less likely to benefit from the ability to spread their energy costs over one or more billing periods than a customer of an authorised retailer who is also experiencing housing stress. Nor do we see why the plight of consumers whose income is not sufficient to meet all of their living expenses should justify denying an important customer protection to those who could afford their energy costs with flexible payment options.

QCOSS also disagrees that it is too impractical or risky to require onsellers to offer flexible payment options. Since customers usually continue consuming energy up until shortly before, or the date of leaving their accommodation, onsellers must have processes for collecting or recovering energy costs after their customers have vacated the premises. QCOSS does not believe that the risk of exempt customers leaving their premises with energy charges in arrears is any greater if the customer is on a payment plan than if they are required to pay their energy charges as a lump sum. In fact, given the relationship between energy bills and rental arrears referred to above, and the potential for payment plans to include ongoing consumption as well as arrears, offering flexible payment arrangements may reduce onsellers' risks.

[1] Sharam, Andrea (2007) 'What the gas and electricity arrears of private low-income tenants can tell us about financial stress', Journal of Economic and Social Policy 11(2): Article 2. Available at: http://epubs.scu.edu.au/jesp/vol11/iss2/2.

We agree that for small-scale onsellers, it would not be practical to require that they have hardship policies offering assistance beyond flexible payment options. However, in some situations, such as where customers are receiving energy from specialist onsellers or operators of very large residential complexes, it may be feasible to require further hardship assistance be provided. While the AER proposes that such entities be required to apply for individual exemptions in the future, those who are eligible for registrable exemptions before 1 January 2015 would continue to hold a class exemption. QCOSS believes that the conditions applying to deemed and registrable exemptions for onselling to residential customers should require exempt sellers to offer payment plans as a minimum. Depending on the size and type of the onseller, conditions applying to class D4, R2, R3, and R4 exemptions could also include requirements to have hardship policies offering other types of assistance.

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

QCOSS agrees with the AER's approach to recognising pre-existing onselling arrangements. We particularly support the AER's views regarding exemptions for future developments and its expectation that new developments be designed in such a way as to allow customers choice of retailer.

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

QCOSS agrees that the collective decision making arrangements of exempt customers may be a relevant characteristic or circumstance when the AER makes decisions relating to exemptions. However, we would point out that the individual customers in a group on whose behalf a contract has been negotiated may change, for example as occupants move out of a complex and are replaced by new residents/customers. In addition to considering whether the members of the initial group of customers have given explicit informed consent, the AER should consider whether or how easily new customers can opt out of the proposed arrangements.

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

QCOSS generally agrees with the AER's categories of exemption. However, Class D4, relating to onsellers whose relationship with their exempt customer is not governed by residential tenancy legislation, appears to cover a broad range of accommodation providers, ranging in size from very small to very large. While we would agree with the provision of a deemed exemption for small accommodation providers, it is not clear to us why large boarding houses and hostels should be treated differently from caravan parks. Accordingly, QCOSS recommends that Class D4 be restricted to residential accommodation providing

rooms for less than 12 customers. Larger accommodation providers should be required to either register or apply for an individual exemption.

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)?

QCOSS is concerned by the proposal to develop a class exemption category for off-grid networks if a sufficient number are brought under the National Energy Customer Framework. We believe that the circumstances in which consumers are supplied by off-grid networks are too varied to justify a blanket approach. While some off-grid networks may only supply a small number of residential consumers in the immediate area, in other cases there may be substantial numbers of customers involved. For example, the Queensland town of Weipa, with a population of more than 3000 people, is supplied with electricity by Rio Tinto. QCOSS would prefer that operators of off-grid networks are required to apply for individual exemptions, so that the AER can consider what conditions should apply on a case-by-case basis. If, when more information is known about which off-grid networks are to be brought under the Customer Framework, it is found that there are too many off-grid networks for this to be feasible, or that the majority of off-grid networks supply very few residential customers, QCOSS may support a class exemption. However, we believe that even in this case, operators of off-grid networks should still be required to apply for an individual exemption if they are supplying a significant number of residential consumers.

QCOSS notes that Ergon Energy operates more than 30 isolated networks in Queensland. However, the Queensland Government has proposed that Ergon will be required to comply with the NECF in relation to its isolated networks. Since Ergon Energy is an authorised retailer, our comments above have been made on the assumption that Ergon's isolated networks will not come under the exemptions framework.

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?

QCOSS has been advised that some community housing providers choose to onsell electricity to their tenants to avoid issues associated with having electricity disconnected between occupants. Such organisations may manage properties at multiple locations, some of which may not be covered by the proposed class exemptions. While selling energy is not the core business, nor the main interaction that community housing organisations have with their customers, QCOSS believes that in these cases, it would be beneficial for the AER to issue individual exemptions on an entity-specific, rather than site-specific basis. This would reduce the administrative burden associated with applying for individual exemptions on a site-specific basis, and ensure consistency in the conditions that apply at different locations managed by an organisation. QCOSS believes that this would be in the long term interests of consumers living in community housing.

In regards to specialist onsellers, QCOSS agrees with the general principles expressed by the AER. We believe it is appropriate to require that entities selling energy at multiple locations as their main activity or interaction with customers obtain a retailer authorisation.

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?

QCOSS reiterates our belief that a requirement to offer flexible payment plans is feasible and should be included in the conditions for class exemptions relating to residential customers. We also believe that it is feasible to require additional forms of assistance be offered to exempt customers experiencing hardship by onsellers operating under class D4, R2, R3, and R4 exemptions, although the types of assistance that must be offered would differ between these classes. For example, caravan park operators might only be required to provide information on sources of financial assistance in addition to offering flexible payment options to long term residents, whereas a retirement village could also be required to offer referral to financial counsellors or assistance with reducing energy usage. Body corporates or owners corporations should be required to provide exemptions from by-laws that prevent residents from taking actions that would enable them to reduce their energy usage if they are experiencing ongoing difficulties in meeting their energy costs.

In relation to the proposed conditions, QCOSS recognises that the AER has attempted to develop similar customer protections to those available to customers of authorised retailers, to the extent that it is feasible and reasonable to do so. However, we believe that the proposed conditions are weaker than necessary. Specific comments on the proposed conditions are set out below.

Condition 1 (Information provision)

QCOSS believes that any information summary given to exempt customers at the start of their residency or tenancy in accordance with Condition 1 should include details of how payments will be apportioned and action that may be taken in the event of non-payment of energy charges, where the processes that apply are set out in state or territory legislation. Although this information may already be provided to customers under the terms of their tenancy agreement or otherwise in accordance with the state or territory legislation, QCOSS holds the view that customers are more likely to understand their rights and obligations if all of the information is provided in a single document.

Condition 3 (Estimation as basis for bills)

QCOSS notes that unlike authorised retailers, exempt sellers in the classes to which Condition 3 applies have a direct stake in the premises at which they selling energy. Therefore we expect that exempt sellers would have a greater capacity to ensure that meters are in working order, accessible, and read at the appropriate time than authorised retailers do, and should be subject to stricter conditions in relation to estimation of bills. While circumstances may arise in which it is necessary for an exempt seller to issue an

estimated bill, it is reasonable to expect that the exempt seller will act promptly to rectify those circumstances. QCOSS believes that the proposed conditions should prohibit estimated bills being issued for consecutive billing periods. Alternatively, if bills are issued more frequently than quarterly, there should be a requirement on the exempt seller to ensure that meters are read at least once in every six months.

QCOSS also disagrees that operators of short term holiday accommodation should be permitted to issue estimated bills. We question whether the exempt seller would have reliable data available on which to base an estimate. In most cases there will be no historical metering data for the exempt customer. Any usage data recorded by the exempt seller for other customers, or for the same customer during previous visits, will cover short periods during which the customers' consumption patterns are likely to differ from their usual usage, and may vary widely between customers depending on the season, weather during their stay and activities planned by the customers. The exempt seller is also likely to have much less data from which to calculate averages than an authorised retailer or distributor. Therefore QCOSS believes it would be very difficult for operators of short term holiday accommodation to make a reasonable estimate of any individual customer's energy usage.

Condition 4 (Pay-by date)

The AER's draft guidelines state that Condition 4 is intended to ensure that customers have enough time to organise payment after receiving their bill, which is particularly important for customers on low or fixed incomes. QCOSS supports requiring exempt sellers to allow at least the same amount of time for payment of a bill as that required of authorised retailers. However, in the absence of a requirement to offer flexible payment options, we are concerned that 13 business days may not be enough time for customers on low incomes or who are experiencing a financial crisis to organise payment. If the AER does not accept our arguments on the need to include a condition requiring exempt sellers to offer payment plans, then QCOSS recommends as an alternative that exempt sellers are required to extend the pay by date by at least 10 business days when a customer informs them that they need more time to pay, or are in the process of obtaining financial assistance.

Condition 6 (Pricing and billing requirements)

QCOSS notes that in its June 2010 Issues Paper, the AER originally proposed that exempt sellers be required to inform customers of changes to tariffs within 5 business days of becoming aware of the variation. In the December 2010 Consultation Paper, this has been revised to require that customers are notified as soon as practicable, and no later than the next bill. Although we recognise that the changes to this condition reflect the provisions of the National Energy Customer Framework, QCOSS prefers the AER's original proposal. It is important that wherever possible customers are informed of changes to their tariffs prior to the change coming into effect, so that they have the opportunity to adjust their usage or budget to take into account increases in energy costs. The current wording of the proposed conditions, requiring exempt sellers to notify customers of tariff changes 'as soon as practicable', does not give as clear guidance as the original provision, and may result in customers receiving notice of tariff increases later than is necessary. We believe that earlier

notification is important in assisting customers to manage their energy costs, and may also reduce the likelihood of disputes between exempt sellers and their customers over energy charges.

QCOSS also disagrees with the removal of the provisions relating to overcharging. The National Energy Retailer Rules contain provisions relating to overcharging and we do not believe this is an area where extending the same protections to exempt customers would be unduly burdensome for onsellers. Including overcharging provisions in the conditions offers more effective protection, since Condition 1 requires that customers are given a copy of the conditions at the start of their tenancy or residency, whereas few customers would be aware of the provisions of the Australian Consumer Law or contract law. Knowledge of the obligations on exempt sellers to refund or credit overcharges would assist customers to better enforce their rights.

Condition 7 (Payment difficulties and disconnection or cessation of supply)

QCOSS supports the proposed requirements prior to disconnection for non-payment of a bill. However, requiring this process to be followed provides little assistance to customers who are unable to pay their bill prior to the deadline for disconnection due to financial difficulties. QCOSS reiterates its view that exempt sellers should be required to offer payment plans to customers who are experiencing payment difficulties.

Condition 8 (When disconnection or cessation of supply is prohibited)

QCOSS notes that Condition 8 does not include any reference to a minimum debt threshold for disconnection. The National Energy Retailer Rules include a prohibition on disconnection for non-payment where the amount owed is less than a prescribed amount, and the customer has agreed to repay the debt. QCOSS does not believe there is any justification for denying exempt customers the same protection.

Clause 1(b) of Condition 8 prohibits disconnection where an exempt customer has a pending application for a rebate, concession or grant available under a government funded scheme. However, some exempt customers may not be able to access government funded schemes in their jurisdiction, where the schemes are administered by authorised retailers. QCOSS believes that this clause should be expanded to prohibit disconnection where a customer is in the process of seeking assistance through other agencies.

Condition 9 (Reconnection of supply)

Customers of authorised retailers benefit from the protection of distributor service standards requiring reconnection requests to be actioned within a prescribed timeframe. Since these service standards don't apply to exempt sellers, and given that energy is an essential service, QCOSS believes that Condition 9 should impose a time limit for reconnecting a premises where the exempt person is directly responsible for reconnection. We do not believe that requiring the exempt person to do so as soon as practicable is sufficient. If it is

not practicable for the exempt seller to meet the required deadline for reconnection, they should not be permitted to disconnect the customer.

Condition 13 (Dispute resolution)

QCOSS believes that Condition 13 should contain more detailed requirements in relation to resolving disputes before external dispute resolution bodies are engaged. For example, there should be a requirement for exempt sellers to respond to a customer's complaint within a specified timeframe. Clarity about the process means that customers know what to expect, and may assist in resolving disputes earlier and reducing the likelihood of customers needing to access external dispute resolution bodies.

QCOSS disagrees with the AER's proposal not to apply Condition 13, at least in modified form, to exempt sellers operating under a class D3 exemption. We believe that there should be a requirement for operators of short term holiday accommodation to at least have a process for resolving disputes that may arise over energy charges.

Condition 16 (Maintaining records)

QCOSS is concerned that Condition 16 requires minimal information to be kept by exempt sellers. Access to records is important should it become necessary for the AER or another body to investigate the operations of an exempt seller, or in the event of a dispute between an exempt seller and customer. QCOSS believes that the AER should require sufficient records to be kept by exempt sellers to allow it to monitor compliance with the conditions applying to their exemption category. Such records may provide useful evidence for either party in the event that the AER considers revoking a particular onseller's exemption. In addition to the requirements proposed in the draft determination, QCOSS believes that exempt sellers should be required to maintain records of the following:

- Copies of any receipts issued under Condition 5
- Notices given to customers in relation to tariff variations
- Any instances where the customer was undercharged or overcharged, and what action was taken
- Whether a payment plan or alternative payment arrangement has been agreed with the customer
- Any reminder notice or disconnection warning notice given to the customer
- Details of when other contact has been made or attempted in relation to non-payment of bills or disconnection
- Any instances where the customer has been disconnected
- Whether the customer has applied for a rebate, concession or grant for which the exempt seller is responsible for administering
- Details of any complaints made by the customer

QCOSS recognises that it may be necessary to vary the requirements for maintaining records between some exemption classes. However, we believe that at a minimum, the

recommended requirements above should apply to all registrable exemption classes relating to residential customers.

QCOSS is also concerned that the proposed condition only requires copies of bills to be kept for 12 months. We believe that exempt sellers should be required to maintain records of bills issued and the information listed above for at least 2 years, based on the timeframe within which authorised retailers will be required to provide historical billing information to their customers free of charge under the National Energy Customer Framework..

QCOSS also disagrees with the AER's proposal not to apply Condition 16 to class D3 and D5 exemptions. Our view is that requirements to maintain records should apply to all class exemptions covering onselling to residential customers, to enable any relevant body to investigate disputes or compliance with legal obligations.

Historical billing information

QCOSS notes that Condition 18, relating to providing exempt customers with historical billing data, proposed in the AER's issues paper in June 2010 is no longer included in the suite of conditions proposed in the December 2010 Consultation Paper. The Consultation Paper does not give any reason as to why this condition was removed. QCOSS supports this condition and believes it should be included in the final exemptions package.

Conditions applying to class D3 exemptions

QCOSS notes that the modified Condition 2 (Billing and payment arrangements) proposed for onsellers in short term holiday accommodation requires that bills be issued at least once every three months. QCOSS questions whether this is appropriate to short term residents staying in holiday accommodation. If an exempt customer's stay at a holiday accommodation site is longer than three months, then we believe that a class D4 or R4 exemption, with all conditions applying, may be more appropriate.

For customers staying at holiday accommodation for less than 3 months, QCOSS believes that the requirement should be that the meter is read and a bill issued when the customer checks out of the accommodation. We suggest that if operators of short term holiday accommodation are unable to issue a bill based on a meter reading at the time their guests check out, they should not be permitted to bill customers for energy.

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?

QCOSS supports the proposed pricing condition and agrees that it achieves the objective of ensuring that residential customers of an exempt seller are not disadvantaged in relation to price, compared to other non-market customers.

Bulk hot water

QCOSS notes that the AER's position seems to be that the provision of bulk hot water does not involve a sale of energy. However, this leaves bulk hot water in a regulatory vacuum. Bulk hot water customers do not benefit from price regulation and are not able to obtain lower prices by choosing another retailer, and as such are left highly vulnerable. QCOSS believes that as long as energy retailers are issuing bills for the costs of heating water distributed through bulk hot water systems, either directly to residential customers or via a body corporate, landlord or other third party, this is an activity that needs to be regulated under energy customer protection frameworks. It is not acceptable that customers should be denied regulatory protection simply because the energy they are billed for was converted to heat before reaching their premises.