

AER Approach to Retail Exemptions – August 2010

A submission by **Network Energy Services*** representing the interests of residents, owners and operators of retirement villages, and ‘Over 55’s’ villages.

Our understanding of the purpose of the discussion paper is that the AER is seeking to develop guidelines that will assist the AER in its impending role as being responsible for the enforcement of the proposed National Energy Law (Retail Law) and National Energy Retail Rules (Retail Rules) under the National Energy Customer Framework and in particular the administration of Part 5 of the proposed Retail Law relating to the selling of energy on the basis of the seller having an exemption from the requirement to be a licensed retailer.

Persons (or parties) who are exempted from the requirement to hold a retailer authorization will be known as “Exempt Sellers”.

Retirement villages and similar facilities may represent the largest body of consumers to be affected by the activities of Exempt Sellers and in Victoria alone there are well in excess of fifty villages that as Exempt Sellers collectively supply electricity to more than 10,000 consumers.

There are more than 1,800 villages across Australia accommodating well over 150,000 residents and many of these villages may seek to become Exempt Sellers.

We consider the AER discussion paper to be a step in the right direction in establishing a sound framework for regulating exempt selling and protecting consumers.

At this point it is very important to emphasise that exempt selling is a very positive activity that provides great benefits to residents of retirement villages which is why 99.5% of residents of Victorian villages that are Exempt Sellers exercise their right of choice to choose the Exempt Seller as the supplier of electricity.

It is becoming commonplace for potential residents of retirement villages to enquire whether the village “provides the cheaper electricity” that Exempt Sellers can provide.

In many cases it is the residents of the village themselves who are the Exempt Seller via resident committees or body corporate committees and this point should be understood so that impressions of entrepreneurs taking advantage of vulnerable consumers can be tempered by the reality that in the vast majority of cases exempt selling is a “self-help” and communal activity undertaken by a village community.

All of the villages that we are involved with return the benefits from the exempt selling to the residents and seek to look after the interests of the consumers.

It follows therefore that the exempt retailers want to operate in a manner that is not detrimental or unfair to residents and the opportunity to have input to the AER

framework that will affect Exempt Sellers is very important to thousands of village owners and operators as well as consumers in retirement villages. Details of the on-selling conduct of villages that we assist are described in **Appendix One – On-selling Conduct in Retirement and ‘Over 55’ Villages.**

From the above perspective it must now be stated that on behalf of residents, owners and operators of retirement villages we were disappointed with the lack of recognition in this paper of the positive aspects and benefits of exempt selling.

To date there appears to have been little consultation with retirement village Exempt Sellers and the tone of this report seems to depict Exempt Sellers as putting their own financial interests ahead of their customers and that is not the case for the many thousands of village residents that we manage.

We understand that the process of establishing a regulatory framework must consider “what can go wrong” however we urge recognition of “what is good” about Exempt Selling” so that the framework will not only provide regulation but also opportunities for consumers to benefit.

There are assumptions within this report that portray exempt selling as a less than desirable activity and examples of this are referenced in **Appendix Two: Negative References within the AER Paper.**

In order for the AER to develop a fair framework for Exempt Retailers it is essential that the AER has a clear and informed understanding of the current practice of Exempt Sellers particularly those in the retirement village and over 55’s village sector where there are incentives for Exempt Sellers to provide cheaper electricity prices and tailored customer service for elderly consumers.

Before we commence this submission it is essential that the AER understands and acknowledges the two fundamental, underlying, core tenet of electricity on-selling, which are;

- 1) The primary benefits of electricity on-selling are achieved through energy management and co-incident demand within the embedded network, downstream of the market connection point, rather than simply ‘buying energy in bulk’.
- 2) The Embedded Network Operator owns or operates a Private Internal Network
 - a) **In all cases that we are aware of, the Exempt Retailer owns, operates and manages a private network within their site.**
 - b) The Exempt Seller is usually an owner, or an operator that is employed by a body of owners, who owns all of the electrical reticulation through a site
 - c) The owners are responsible for the investment to install the reticulation, they are responsible for managing their private network and they are responsible for maintaining their private network. Should any problems occur within their private network, the owner / operator are responsible for paying the cost of repairs.

- d) The AER paper has separated energy on-selling regulations from network and distribution aspects, however their needs to be one important recognition, and that is, in the majority of cases (all cases that we are aware of), the owner / operator installs, manages and owns their own private electricity (or gas) network.
- e) Interestingly in all retirement villages, apartment buildings, caravan parks and commercial premises that we are aware of, the owners / operators are required to install, manage and maintain the private electricity network whether the site on-sells electricity or not.
- f) This means that a situation exists whereby the benefits from the private network either go to the owners / operators and consumers, OR to the licensed distributor (despite the distributors only responsibility inside the site relating to the meter, the fuse and in some cases meter panel).
- g) Either way someone is profiting and benefiting from the private network that the owner installs.

It is the view of our clients that an Owner / Occupier that maintains a private internal network has a justifiable right to benefit by being an Exempt Seller, rather than simply incurring the liability for their internal network but gifting the benefits from efficiencies in their private network to distribution businesses.

Response to the AER Issues Paper

We believe that a large part of the AER paper sets out a fair and reasonable basis for developing a sound framework to guide the management and operations of exempt selling and protection for consumers.

However, we are also disappointed with other areas of the AER paper and the seeming lack of understanding of exempt selling and the rights of consumers and the benefits that are enjoyed by consumers.

Our comments relating to this paper therefore address key issues to ensure the points are not lost within responses to questions;

1) Benefits from Exempt Selling

We submit that the benefits from energy on-selling go to the Exempt Seller and the Consumers rather than the distribution businesses who deliver electricity to the market connection point.

2) Right of Choice

The Right of Choice is recognized and supported because not only does it provide consumers with the opportunity to purchase from the licensed retailer of their choice but it also provides them with the opportunity to purchase from the Exempt Seller.

The advantage of Right of Choice is that competition results in market forces incentivizing the Exempt Retailer to offer the best prices and provide the best service to their customers to ensure that the customers choose the Exempt Seller over other licensed retailers

The facility exists for a non-participant (child) to exercise their right of choice and it is currently a condition within the Victorian and NSW electricity on-selling rules that there be no impediment to a consumer purchasing off a licensed retailer.

The administration of non-participants (childs) who buy off a Licensed Retailer has caused problems within the market system. Determining solutions to the administration problems relating to the usage from non-participants being subtracted from parent meter bills is the main problem that has caused headaches to all parts of the industry (Exempt Sellers, Parent Meter Retailer and Distributors).

Developing easily manageable approaches to the management of non-participants (childs) is the key area that would allow energy on-selling to be more workable within the market system.

The exception for Right of Choice primarily relates to caravan park operators;

- Caravan parks should be exempt from providing 'right of choice' because where a site is certified as being a caravan park there is recognition that the dwellings are moveable, and by association transient'
- Provided the caravan park operators are charging less than or equal to the regulated tariff or standing offer the tenants should not receive right of choice

3) Customer Protection Mechanism

The Energy Retail Codes provide good protection for consumers.

Measures are necessary to safeguard consumers in situations where the Exempt Seller defaults on their energy supply obligations. The measures outlined within the AER paper have merit.

We agree that an improved framework for dispute resolution is required.

As mentioned in the AER paper Hardship Protection in most situations involving Exempt Sellers usually involves rent and other charges as well as electricity, and the issue needs to be considered in a broader context.

4) Profit Intentions of Exempt Sellers

Provided Exempt Sellers are offering prices to their consumers that are discounted below the standing offer tariff then the profit intentions of Exempt Seller should not be scrutinized to any greater extent to that of licensed retailers.

There should be recognition that the on-seller has invested in the electrical infrastructure and needs to maintain, service and repair the electricity meters, meter panels and the internal electricity network into the future.

5) Registration of Exempt Sellers

We support the concept of Exempt Seller registration, however we have issues with the classifications, particularly the proposed assessment criteria.

The assessment of whether selling is ‘incidental’ to the exempt sellers business is not a reasonable assessment criteria.

All Exempt Selling is incidental, as the core business of a retirement village, caravan park, apartment building, commercial park or shopping centre is not selling energy.

Energy On-selling is one of many support services that the owner / operators provide to facilitate their core business of providing accommodation for retirees, or servicing the needs of caravan park residents, or running a large retail complex.

Consideration of whether on-selling can be “practically avoided” does not recognize the benefits that consumers receive by having the right of choice to purchase off the Exempt Seller.

The benefits that can be derived by exempt selling should not result in Exempt Sellers being put into the same category as a licensed retailer whose sole purpose is selling energy.

The fact that an Exempt Retailer may contract the services of a billing agent to assist them is recognition that energy on-selling is not their core business however they are intending to provide responsible service to their customers.

This is no different than a retirement village contracting the services of a catering company to cook meals for their residents or an accountant to manage the tax and book keeping.

The concept of Deemed Exemptions has merit however the criteria does not appear reasonable.

As a general comment a site with less than 25 customers is more likely to be an on-seller that will experience viability challenges because they have less exempt customers from which to spread fixed parent meter costs. A larger site is more likely to generate greater discounts and benefits for exempt customers, and thereby represents a safer Exempt Seller.

As previous mentioned all customers should have access to right of choice whether they have a NMI or not. If they do not have a NMI a new connection is all that is required to provide them with Right of Choice to licensed retailer provided they are connected to the grid.

Our Suggestion;

Register all Exempt Sellers, however keep the registration process simple and manageable. This will enable the AER to keep track of all Exempt Sellers.

Provided the on-seller satisfies the structural requirements of an Exempt Seller and agrees to abide by the Exempt Selling guidelines developed by the AER, then the Owner / Occupier should be given the opportunity to provide the choice to their consumers of discounted energy from the Exempt Seller.

It is better that the AER is aware of all Exempt Sellers irrespective of size, however the details to be kept on record only need to be basic because the site should be coded within Msata. To that end when we cannot understand why there would be a need for Exempt Seller details to be on shown on public record because the licensed retailer and distributors would be able to identify on-sellers within Msatas, and the Exempt Sellers would otherwise be known by the AER.

The registration should be based on compliance and not based on time based registration as this will create ongoing administrative challenges for the AER.

*** Network Energy Services**

Network Energy Services is a business which has assisted in the establishment of the earliest embedded networks in Victoria. Our primarily involvement since then has been in assisting retirement villages and over '55's villages' to become Exempt Sellers so that elderly consumers can receive the cheapest electricity costs, concession entitlements and customer service that supports the requirements of elderly people.

Our company is involved in the implementation and on-going management of energy on-selling activities in Victoria, New South Wales and Queensland.

In recent years we have represented the retirement village sector in submissions to government in the area of embedded networks / exempt retailing, primarily in Victoria.

Appendix One – On-selling Conduct in Retirement and ‘Over 55’ Villages

Of the villages our company assists the following approaches to Exempt Selling are adopted;

- 1) Discount Tariffs – All villages provide their residents with a discount of between 10% to 25% off the standing offer in their region. The reason these on-sellers provide such significant discounts off the standing offer is for a few key reasons;
 - a. Sites use the discount as a sales tool for encouraging prospective residents to move into their retirement village. Villages have a commercial motivation to provide discounts to their tenants.
 - b. In the case of retirement villages and ‘over 55’s’ villages, many of these villages are run by residents committees, or have residents committees providing input into the management of the village.
 - c. Given that utility prices are increasing at a greater rate than the pension, this means that the disposable income of pensioners is declining. Saving on energy costs is therefore very important for pensioners who live on tight budgets.
 - d. In Victoria all consumers have right of choice of their retailer so the prices offered by the Exempt Seller needs to be better than the comparative market offers from licensed retailers.
- 2) The customer service is customized and more personalized by many Exempt Sellers. This is a huge issue for the retirement village communities because press button telephone call centers are incredibly difficult for elderly residents in retirement villages. Ensuring elderly customers can phone through and speak to a person immediately is essential. For elderly residents who are partially blind their electricity bills are enlarged to A3 size so the resident can read them. There is also a physical presence in the village so an elderly resident can directly communicate with the Exempt Seller when raising queries if required.
- 3) Energy Concessions – One of the key aspects we notice when supporting elderly communities is that the residents were often unaware of additional energy concessions that are available to them, particularly special concessions relating to conditions such as Multiple Sclerosis, Parkinson’s Disease, Lupus, CPAP Machines and Life Support concessions.
- 4) The foundations for the conduct by the Exempt Sellers that we assist are based on the Energy Retail Code, this includes consumer protection mechanisms, such as;
 - a. A customer charter is provided to all residents outlining their consumer rights.
 - b. The dispute resolution and dispute escalation process is clearly mapped out for them. In Victoria should the dispute be VCAT (Victorian Civil and Administrative Tribunal).
 - c. The relationship between the village and their residents is much closer and should there be financial hardship then it is likely that financial difficulties may relate to other areas, and not just energy bills. Assistance can then be discussed with the resident on a broader basis.

Appendix Two – Negative References within the AER Paper

Cl 4.1 The tone of this section does not recognize the positive reasons for exempt selling and indeed demonstrates a lack of understanding about why and how exempt selling works and is beneficial to consumers. This paper shall discuss this aspect.

We cannot understand the question Q4: “Is the apparent growth in onselling problematic?” This paper discusses the proposition as best we can.

Cl. 4.2.2 (para 4) “The AER considers that it will generally not be appropriate to grant a retail exemption --- to an onseller where all customers have access to a retailer of choice”. The statement ignores firstly that virtually all consumers in an embedded network not only have access to their ROC but it is mandated that they must not be denied access to ROC (Victoria and NSW), and secondly seeks to deny consumers the right to choose an exempt Seller as their ROC. To prevent consumers from having the right to choose an Exempt Seller would seem to be contrary to ACCC competition objectives.

Cl 4.3.1 This section treats the matter of whether exempt selling is incidental to the exempt sellers business as a negative. We propose that when the residents of a retirement village act as a community to become an exempt seller it could be construed as not being a core activity because after all, their main activity is “living in the village”, and yes, they all have access to licensed retailers. But residents want to go to the expense and effort of becoming an exempt seller so that they themselves as consumers will benefit from the efficiencies from energy management and coincidental demand to which they are entitled and which can provide them with benefits far greater than they can obtain from any licensed retailer.

Why does not this discussion paper consider helping these consumers to achieve these benefits rather than seeming to suggest that because on-selling is not a core part of the Exempt Sellers activity then residents should not be allowed to be Exempt Sellers.

Further comment relating to Cl 4.3.1 and “incidental” can be made about para 4 (bottom of P 24) suggesting that a test can be whether on-selling can be “practically avoided”. Why is this a consideration when on-selling is both lawful and a moral and competitive right of the consumer. It should not be a matter of whether the on-selling can be “practically avoided” but rather how the consumers can exercise their right of choice to have or be an exempt seller. The tone of this section is very disturbing.

Again in Cl 4.3.1 (the last para) a test for “incidental” is whether the exempt selling activities are outsourced to an “energy broker”. Network Energy Services is not an “energy broker”, we are a specialist billing services provider to retirement villages that are Exempt Sellers. If the suggestion made in this clause is to be interpreted as a village should not be an Exempt Seller because they outsource the billing activities to professionals who have the resources, expertise and independence to responsibly perform

the work then one presumes that the AER considers that the village should also not engage accountants to manage the village financial affairs and should not engage solicitors to manage village legal matters.

CI 4.3.1 shows little understanding of why consumers want to be customers of Exempt Sellers, of the consumers rights to be customers of Exempt Retailers and how exempt reselling operates.

CI 4.3.3 (third para) seems to demonstrate that the AER paper has a lack of understanding of how exempt selling works. The comment “That the AER believes that provided that pricing conditions are imposed to restrict the prices that Exempt Sellers can charge then the Exempt sellers profit will be reasonably limited” infers that the benefits of on-selling are achieved by purchasing energy at a sufficiently low price to cover costs. The benefits of on-selling do of course come from the efficiencies developed by diverse usage profiles and coincident demand within the embedded network. This should be understood and recognized by the AER.

This section (CI 4.3.3) appears to be based on a fundamental premise that profit should not be made from exempt selling.

In fact what is occurring in an embedded network is that exempt selling provides the benefits from the efficiencies (and especially coincident demand) within an embedded network to the consumer rather than to the Distribution Business that brings the electricity to the point of supply for the embedded network. If the AER intends to deny residents in a retirement village the benefits of energy efficiencies within their village (downstream of the market connection point) then it should be expected that they will seek to also prevent the benefits from efficiencies that occur for other sites such as motels, hotels, factories, hospitals etc from benefiting the consumer and instead pass those benefits to the Distribution Business that delivers electricity to the market connection point of the motel, hotel etc.

We understand that there may be unscrupulous Exempt Sellers who may seek to take advantage of consumers however we consider that such parties are in the minority and that the majority of consumers benefit greatly from exempt selling. In some of the more efficient embedded network village residents enjoy benefits (direct and indirect) that amount to a discount of 30% off the standing offer of the local retailer.

This paper should not throw the baby out with the bath water meaning that residents in retirement villages should not be obstructed from accessing these benefits because of the possible actions of some exempt sellers.

At this point it may be relevant to comment on CI 3.3 (Last para) which states that “Pricing protections in on-selling situations generally involve imposing the maximum price that an on-seller can charge” which is usually the regulated (where such exists) or the standing offer of the local retailer. The situation described is probably the best solution for prescribing a maximum price and is endorsed by us so long as there are measures in place to ensure that the standing offers are “honest”.

It is interesting to note that we have observed that some offers made by licensed retailers do not appear to have been made to the same standards as required of Exempt Sellers whereby the price charged by those licensed retailers does not represent the stated

discount off the local retailers standing tariff. Hopefully the AER will address this matter so that consumers of licensed retailers can be certain that the stated discount is applied to the same benchmark as for Exempt Retailers.

For the record we endorse having a benchmark maximum price for exempt selling because it provides transparency for exempt retailer customers regarding the amount of discount that they receive and a level of protection for vulnerable consumers. We would like licensed retailers be bound by similar requirements.