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General Manager  
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Dear Sir/Madam

### **Australian Energy Regulator Approach to Retail Exemptions**

Origin Energy Retail Limited (Origin) welcomes the opportunity to respond to the Australian Energy Regulator's (AER) Approach to Retail Exemptions Issues paper.

#### **1. Consultation**

A suitable national retail exemptions scheme must accommodate the multitude of differing existing jurisdictional installations as well as providing a fair and controlled approach to new installations. As indicated in the Issues Paper, this is a complicated task. No jurisdiction has addressed this adequately in the past for either gas or electricity and Origin believes several rounds of workshops and consultation will be required to understand the full implications of a new national retail exemption regime. To this end, we believe that the proposed industry workshop on this issue should have been scheduled prior to the submission due date for this consultation rather than some two weeks afterwards. Therefore, we suggest that the AER consider re-structuring the timing of further consultations so that industry workshops occur prior to any submission date. This approach was successfully utilised in various other energy consultation processes in the past, including Queensland Full Retail Competition and the National Smart Meter Program.

#### **2. Principle to assess retail exemption**

Origin is of the view that the retail exemptions regime should apply only when the cost of providing supply by an authorised retailer is prohibitive or impractical. In all other cases, standard customer protections should apply. Otherwise, the retail exemptions regime becomes a justification for customer protections that fall short of the minimum deemed necessary by government, industry, regulators and consumer groups.

Care must be taken in this process not to reduce customer protections for some customer segments in an attempt to capture all existing on-selling arrangements. Origin suggests that grandfathering arrangements could be used for existing sites but only those that cannot be readily supplied via authorised retailers. This would be preferable to creating a special category for these installations going forward with reduced customer protection obligations.



The on-going administration cost for the AER of the proposed exempt retail scheme will be significant as the number of exempt sellers will be far in excess of the number authorised retailers. The resource implications of this scheme need to be considered in its development. Origin would like to be reassured that authorised retailers would not be called upon to fund the exempt seller regime in the form of increased authorisation fees.

### **3. Initial Response to Questions Raised in the Issues Paper**

Origin has attempted to respond to the many questions raised in the issues paper to assist in the development of the exempt retail regime; however, we convey that these are only our initial positions and we look forward to further discussions on these issues.

**Q1: Do stakeholders agree with the AER's interpretation of what constitutes the sale of energy?**

The proposed definition of 'sale of energy' meaning when a person passes on a charge for energy as a separate charge - as opposed to a situation where the cost of energy is absorbed into another charge such as rent - is supported by Origin.

**Q2: Are there any other matters that should be included in the Exempt Selling Guidelines?**

At this stage there does not appear to be any other matter that should be included into the Exempt selling Guidelines.

**Q3: Are there other particulars and information relating to exempt sellers that should be included in the public register?**

Origin supports the concept of a register of exempt sellers and associated sites, as it will ensure that exempt sellers are not lost once they have received an exemption - which is the case currently in some jurisdictions. However, Origin also sees merit in all exempt selling parent meters being tagged as an embedded network in Australian Energy Market Operator's Market Settlement and Transfer System (MSATS). Once the parent meters were tagged in MSATS it would trigger the establishment of an embedded network code on the 'Embedded Network Identifier Codes list' of MSATS as well. This list provides a good repository for much of the information proposed for the exempt seller's public register. While it is understood that this information is not publicly available it would be a very relevant resource for industry participants. The tagging of parent meters related to exempt seller installations also provides the following benefits:

- The magnitude of electricity load being supplied by exempt sellers can be monitored on an on-going basis; and
- After a RoLR event exempt selling parent meters could help to identify affected customers of exempt sellers.

**Q4: Is the apparent growth in on-selling problematic, and if so, why?**

Origin has some concern regarding the double standard for customer protection that could develop with an increase in on-selling, but in some instances exempt selling provides a cost effective arrangement as it allows alternative fuels like gas to be supplied, which would not otherwise be viable. As mentioned above any exempt retail



scheme should be based on the premise that it should only exist where it is absolutely justified based on installation cost or practical reasons.

Q5: Is it appropriate for the AER to impose no conditions on large customers of exempt sellers (as is the case for large customers of authorised retailers), or should they be provided with basic customer protections where the existing arrangements prevent them from choosing their own retailer?

Q6: Should the AER impose a condition on on-sellers selling to large customers to ensure that they do not hinder or prevent the customer from choosing their own their own retailer.

Origin agrees there is no need to impose conditions on exempt sellers that service large customers. Large customers are capable of negotiating suitable arrangements for their supply of energy and do not need the same protection mechanisms offered to small customers whether supplied by an exempt seller or an authorised retailer. Large customers need the flexibility to negotiate the right balance between price and service that allows them to suitably compete in their respective markets. The supply of energy is simply one of many important procurement arrangements that a large customer needs to manage.

There is no question that large customers should be able to seek their own retailer and an exempt seller should not hinder this process or create unreasonable barriers. However, any specific regulation around 'not hinder' requires more clarification as there is complexity in relation to metering configurations and the allocation of metering and supply costs when new connection arrangements are being considered.

Q7: How important is it for customers in on-selling situations to have access to choice of retailer?

Q8: Once network configuration/metering issues are addressed, are there any other impediments to exempt customers having access to choice of retailer for electricity?

Origin understands that the issue of on-selling has been managed differently in many jurisdictions for various reasons and that the existing market presents a complex array of on-selling situations. Many of these arrangements were established under contracts between consenting parties and it will be almost impossible to change them with respect to retailer choice (but this does not mean that consumer protection issues cannot be modified or re-examined). Therefore Origin believes that the AER should develop an exemptions regime that facilitates these existing arrangements but focuses on criteria for limiting on-selling arrangements for new developments. This will ensure that retailer choice and the full suite of retailer provided customer protection provisions are available to the vast majority of energy users.

Whether driven by cost, service or opportunities provided by private networks the establishment of new on-selling arrangements should imply that a normal market supply is problematic and therefore retailer choice cannot be delivered for these installations.

Q9: Where gas is only used for limited purposes, how important is it for customers in on-selling situations to have access to choice of retailer for gas?

Origin agrees that where gas is used for cooking only in residential apartments there is a case to support on-selling by the body corporate of the property. This arrangement



allows gas to be supplied in a cost effective manner considering the small individual gas loads that result from cooking. Customers would not be unduly disadvantaged by this form of gas cost allocation.

Retailers can then compete to supply gas to the body corporate and competition can exist at the master supply gas meter.

Q10: What core customer protections should exempt sellers be required to provide for their small customers?

Q11: Are the core protections proposed in the draft categories of deemed and registrable exemptions attached to this paper appropriate?

The proposed list of core customer protections that exempt sellers may be required to deliver is quite extensive. Any existing party or on-seller forced to comply with these obligations will experience an increase in costs and therefore it places a reasonable barrier to the establishment of an on-selling arrangement. However, it does place perhaps an unreasonable impost on, for instance, a body corporate that is on-selling gas for cooking to apartments. It also contradicts, to some extent, one of the exempt seller factors that the AER may take into account when carrying out its exempt selling functions:

*‘Whether the exempt seller is intending to profit from the arrangement’.*

It appears unreasonable to place a list of customer protection obligations on a party that is not expecting to profit from the arrangement. Therefore, while Origin is not opposed to the concept of customers receiving customer protection, we see a need to limit further proliferation of on-selling arrangements and a plan to transition the variety of existing on-selling arrangements in the market. There is a risk that some existing exempt customers may not continue to receive supply if new obligations are too onerous.

Q12: Do stakeholders agree with the requirement for exempt sellers to notify the AER, and their customers, of the possibility of disconnection?

Q13: Are there any conditions which the AER could impose which might help to mitigate the risk of an exempt seller failing and leaving its customers without supply? Would it be appropriate for the AER to do this?

Origin is not convinced that greater transparency, to the AER, of disconnection notices will provide any real benefit in protecting exempt customers from loss of supply. If an on-seller is defaulting on their bills it is usually too late to achieve any benefit from notification. Normally, the on-seller is verging on insolvency and nothing can be done. The only real way to solve this problem is for the AER to request securities (equivalent to at least 3 months energy supply) in the form of bank guarantees or cash from on-selling applicants before an exemption is granted. These securities could be called upon to ensure supply was not disconnected. It would also allow some time for a new on-seller to be found during the intervening period. Obviously this is not unlike the prudential arrangements that authorised retailers are subjected to in wholesale energy markets.

Q14: To what extent can the protections found in hardship policies be applied to customers of exempt sellers operating under deemed and registrable exemptions?



Origin agrees with the AER that in most cases the on-seller will be the owner/operator and energy provider and that any non payment problem sits within the framework of tenancy law in these situations.

As indicated in our response to questions 10 and 11, above, the obligation to provide a hardship program on a party that is not expected to make a profit seems unreasonable.

However, rather than provide a hardship program perhaps some advice obligations could exist in its place. For example the on-seller could be obliged to provide a list of organisations that provide financial assistance.

**Q15: In jurisdictions where the Ombudsman or dispute resolution schemes do not extend to exempt sellers, what dispute resolution processes should the exempt seller provide to its customers?**

This issue highlights the very reason why exempt selling should be limited as there is little chance that customers can be provided the same level of customer protection as provided by authorised retailers. The option for on-sellers to develop and manage their own dispute resolution process is unlikely to occur, due to the costs and the differing core businesses of on-sellers. It is also difficult to see how an on-seller could adequately manage a comprehensive customer dispute process as it requires specialist expertise resources that most on-sellers will not have available.

The suppliers of bottled LPG in Victoria addressed this issue to some extent by establishing and agreeing to comply with a voluntary code for the sale and supply of bottled LPG. However, under this code the Energy and Water Ombudsman Victoria was called upon for dispute resolution and this imposed significant costs onto LPG suppliers. The numbers of disputes in this market are very low and the relative ombudsman cost per dispute is very high causing concern for smaller suppliers of LPG.

A similar concern would also apply to many small on-sellers if this model was utilised under the exempt selling regime.

The LPG industry investigated the option of using dispute resolution services offered by the private sector but again their cost was prohibitive.

Origin therefore believes that exempt sellers should be obliged to resolve disputes in a fair and reasonable manner and enforcement measures should be applied by the AER if this outcome does not occur.

**Q16: Should exempt sellers operating under an individual exemption be required to base their dispute resolution processes on Australian Standard AS ISO 10002-2006, as amended and updated from time to time?**

**Q17: Should this requirement be extended to exempt sellers operating under a deemed or registrable class exemption, or to all exempt sellers selling to more than a certain number of customers? Why or why not?**

Origin is still considering its position on this issue.

**Q18: What sort of tests should the AER use to determine whether the sale of energy is incidental to a business?**



Q19: Is the approach taken to the ‘incidental’ requirement in the categories of deemed and registrable exemptions appropriate?

Origin generally supports the tests that the AER is contemplating.

Q20: Are there any additional circumstances to those identified above (and in other parts of this issues paper) that would warrant the AER issuing an exemption rather than a Retailer Authorisation?

Origin has not identified any additional circumstances at this stage.

Q21: How should the AER judge an exempt seller’s profit intentions?  
Q22: Will the proposed pricing protections adequately protect exempt supply

The AER’s intention to manage profit by restricting exempt seller prices to standing prices has some merit, but in many existing installations, an exempt seller may still profit from standing prices due to the avoidance of additional costs incurred by licensed retailers and distribution networks. Therefore the success of this measure is contingent on the particular installation and the justification for it to exist as an on-selling arrangement. Origin believes more work needs to be done to determine the factors used to assess the profit of exempt sellers and potential exempt sellers.

Q23: What additional information might the AER have regard to when considering the significance of the energy likely to be sold by an exempt seller? customers?

Origin is still considering the criteria that could be used in this assessment.

Q24: Will the obligations imposed through proposed exemption conditions (see attached) and existing state/territory tenancy legislation be sufficient to avoid requiring the exempt seller to obtain a retailer authorisation?

Q25: Are there any instances where state/territory tenancy and related legislation comprehensively addresses onselling, such that the conditions proposed in the attached draft determinations of deemed and registrable exemptions should not be applied?

Origin is still considering its position on this issue.

Q26: What methods might the AER adopt to determine the costs of obtaining a retailer authorisation compared to the benefits to customers of being serviced by a retailer rather than an exempt seller?

Origin is still considering its position on this issue.

Q27: Should the AER create a class of deemed exemption for persons engaged in the sale of unmetered energy where that is not prohibited by jurisdictional legislation? If yes, what conditions should be attached to that exemption? Should it be limited to existing dwellings and those that are currently in the planning stages?

Q28: Are there situations where it may be appropriate for the AER to grant an individual exemption to a new development that does not allow for individual electricity metering of dwellings?

Q29: In what situations would it be appropriate for the AER to grant an individual exemption to a new development that does not allow for individual gas metering of dwellings?

Q30: Are there concerns about situations where there is no meter, and the consumer is not billed separately for electricity/gas? Although the consumer 'pays' for the energy indirectly (most likely through higher rent or body corporate fees), are stakeholders aware of particular concerns regarding vulnerable consumers?

Q31: Are stakeholders aware of situations where there is no meter, but customers pay an itemised charge for electricity/gas on terms negotiated as part of the purchase or leasing arrangement?

Q32: Would electricity metering that is not compliant with national metrology procedures suffice in situations where it would be expensive to retrofit an existing dwelling?

Origin believes that only deemed exemptions for current un-metered electricity on-sellers should be given. New on-sellers of un-metered electricity should be required to obtain an exemption. This is based on the concern that developers could move towards setting up new un-metered on-supply arrangements to avoid having to comply with the proposed consumer protection measures and the restriction on the price that they can charge on-supply customers. If this occurs, customers have no consumer protection measures and are potentially exposed to higher prices. This is particularly a concern for Queensland where electricity un-metered on-supply is permitted and is occurring.

Origin believes that there is a greater case for un-metered gas than un-metered electricity on-supply. In many situations, it is more economical to have un-metered gas supply for apartment blocks for appliances such as cook tops. Usage is usually relatively low and the payback period for a direct connection to the network and a meter outweighs the benefits. It may be appropriate that in situations where a new development proposes un-metered gas supply for appliances - an individual exemption is given.

Q33: Is it appropriate for the AER to require energy suppliers in off-grid networks to seek individual exemptions?

Q34: Are pricing protections necessary for off-grid customers? If so, what conditions could the AER impose on off-grid suppliers to limit energy prices?

Q35: What other seller related factors might the AER consider in addition to those outlined in the Law?

Origin is still considering its position on this issue. . As a general position, we do not support retail price controls in a competitive retail market place. However, by definition these customers cannot take advantage of a competitive market.

Our preliminary view is that at a minimum, where there are price protections available to small energy customers of standard retailers, these protections should be available to customers within an embedded network. However, it is not always straightforward, as these customers may be provided with a different service mix than other customers and price controls will inhibit what may be efficient solutions for that site.

In addition, the situation may be complicated by the structure of the concession framework in a given jurisdiction. A more fundamental question relates to the rights of access to concessions and the imposition of other jurisdictional budgetary and/or policy measures such as the Queensland Community Ambulance Levy, state based energy efficiency and carbon/renewable policies etc.



Q36: What specific customer characteristics or circumstances make it appropriate for them to be served under an exemption rather than a Retailer Authorisation?

At this stage Origin supports the specific characteristics or circumstances presented by the AER.

Q37: What other customer related factors might the AER consider in addition to those outlined in the Law and those discussed in section 4.2.3?

Origin is still considering its position on this issue.

Q38: Do stakeholders agree with the AER's registration threshold of 25 premises with a single site? Why or why not?

Origin notes that in this section of the Issues Paper a transition period is suggested. This seems appropriate and Origin understands that all on-sellers would be required to fulfil the obligations within a certain period of time and there would be no grandfathering of current arrangements. Origin's main concern with this transition period is in relation to the time period given for on-sellers to be compliant. The proposed framework will mean substantive changes for many on-sellers and sufficient time will need to be given to allow them to become compliant. This is particularly true in jurisdictions such as Queensland where there is no regulation of the arrangements except for price.

A communication or education strategy to inform on-sellers of the requirements also does not seem to have been addressed. Origin understands that this would be the role of the AER and it will be imperative that this be in place as soon as possible to ensure all on-sellers are aware of the requirements.

Q39: Do stakeholders agree with the AER's proposed Class 1 deemed exemption? Why or why not?

Q40: Do stakeholders agree with the conditions outlined in the attached draft determination that will apply to this class of deemed exemption? Why or why not?

Origin is still considering its position on this issue.

Q41: Do stakeholders support the AER providing a blanket exemption (the Class 2 deemed exemption) to cover situations where energy is passed through without a separate charge? Why or why not?

Q42: Do stakeholders agree with the AER's proposal for this exemption to be issued without conditions?

As stated earlier, Origin believes that only existing electricity un-metered on-supply arrangements should be given an automatic deemed exemption. New un-metered electricity on-sellers should be required to apply for an exemption. This is to ensure un-metered on-supply is only set up in situations where this is necessary. Origin has a concern that un-metered on-supply may grow to avoid all the consumer protection measures associated with metered on-supply.

Q43: Do stakeholders agree with the AER's proposed Class 3 deemed exemption? Why or why not?

Origin is still considering its position on this issue.





Q44: Do stakeholders agree with the AER's proposed Classes 4 and 5 deemed exemptions? Why or why not?  
Q45: Do stakeholders agree with the conditions outlined in the attached draft determination that will apply to small customers under the Class 4 deemed exemption? Why or why not?  
Q46: Do stakeholders agree with the AER's proposed classes of registrable exemptions? Why or why not?  
Q47: Is the approach of allowing a transitional deemed exemption that will be replaced by a registrable exemption appropriate? Will the proposed expiry date allow sufficient time for the relevant exempt sellers to register?

Origin is still considering its position on this issue.

Q48: Should individual exemptions be time-limited?

Origin supports the AER's intention to have a time limitation for exemptions as this will allow for:

- a re-assessment of the installation based on new technologies for supply and metering to determine if an exempt seller arrangement is still required;
- to reconfirm the details of the arrangement in the market systems, and
- to obtain customer feedback on the quality of service provided by the on-seller.

Should you require further information on this submission please do not hesitate to contact me on 03 9652 5880.

Yours sincerely

[Signed]

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