



Level 2, 172 Flinders St  
Melbourne VIC 3000  
Phone: 03 9639 7600  
Fax: 03 9639 8966  
ACN 100 188 752

26 August 2011

Mr Tom Leuner  
General Manager  
Markets Branch  
Australian Energy Regulator  
GPO Box 520  
Melbourne VIC 3001

By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@aer.gov.au)

Dear Mr Leuner,

**Notice of draft instrument – Exempt selling guideline; Exempt selling guideline (June 2011)  
– Public version**

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

We welcome the opportunity to respond to the AER's June 2011 Notice of draft instrument - Exempt selling guideline (notice of draft instrument) and the exempt selling guideline (guideline). We have provided a confidential version of our submission (11 August 2011) and a confidential version of our submission (26 August 2011) in response to the AER's papers.

We are pleased to see the retention of the pricing cap;<sup>1</sup> this is especially important in situations where exempt customers lack retailer choice or find the cost of accessing free retail competition prohibitive due to the cost of metering infrastructure changes. We agree that exemptions should generally be issued on a site by site basis (particularly where energy onselling is a core activity of the business), and that specialist onsellers should require individual exemptions.<sup>2</sup> We support the inclusion of the following in the AER's guideline:

---

<sup>1</sup> For example, class D2, condition 7.1.

<sup>2</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), at 10; also part A, at 10, 25.

- The obligation to supply;<sup>3</sup>
- The mirroring of the relevant provisions of the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR) in relation to life support customers;<sup>4</sup>
- The reference to “personal contact” prior to disconnection;<sup>5,6</sup>
- Protecting customers from disconnection when they have made an application for relief from an organisation providing either governmental or non-governmental funded energy charge rebates, concessions or relief;<sup>7</sup>
- Provision of a telephone contact number which must not exceed the cost of a local call;<sup>8</sup>
- The overcharging provisions.<sup>9</sup>

While the above are positive steps, we still have concerns about the guideline. We raised similar concerns in our previous submissions to the AER. As we believe that these matters are important, we raise them again for the AER’s consideration.

#### **Customer protections – payment plans and hardship assistance**

CUAC has been involved in the AER’s consultations on exempt selling. In our previous submissions to the AER (2 August 2010 and 4 February 2011), we raised the need for there to be consumer protections for exempt customers equivalent to the protections customers purchasing energy from an authorised retailer receive. This is crucial given that the evolving urban landscape and demographic movements have resulted in a steady increase in the number of households who are customers of exempt networks, and the marketing of energy services by exempt sellers.

With the rise in the number of exempt customers, CUAC is concerned that exempt customers today still generally do not have equivalent consumer protections to those enjoyed by customers purchasing energy from an authorised retailer; for example, access to basic customer protections, including:

- payment plans;
- hardship programs;

---

<sup>3</sup> For example, class D2, condition 1 (obligation to supply).

<sup>4</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 14-15.

<sup>5</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 19. For example, class D 2, condition 8.1. c(iii) reads:- “the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay.”

<sup>7</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 19.

<sup>8</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 21.

<sup>9</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 22.

- a free, impartial and independent external dispute resolution scheme such as the Energy and Water Ombudsman (Victoria) (hereinafter called EWOV).

In this regard, we are disappointed that the AER guideline has excluded a requirement on exempt sellers to offer their customers a basic level of hardship assistance and payment plans. The notice of draft instrument captures the essence of what consumer groups including CUAC have raised in previous submissions to the AER regarding this important issue. We acknowledge that it is a complex matter as access to such assistance may be impacted by jurisdictional residential tenancy legislation. However, energy is an essential service and the lack of such basic customer protections serves to exacerbate the vulnerability of a group of people within our community who are already experiencing disadvantage. In particular, the low income and disadvantaged consumers who are residing in caravan parks, boarding/rooming houses.

According to the AER:

[S]ome customers of exempt sellers may receive cheaper energy as a direct result of the exempt seller having lower compliance costs than an authorised retailer. In paying a lower price, these customers should understand they may be 'trading off' certain customer protections, for example, access to hardship policies under the Retail Law.<sup>10</sup>

CUAC strongly disagrees with the above position. The lower prices which some exempt customers receive, does not justify the trading off of what we would consider key customer protections – payment plans and basic hardship assistance.

We note that there is an exemption condition requiring an exempt seller to advise customers in writing before the start of their residency/tenancy "that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if they were purchasing from an authorised retailer."<sup>11</sup> Customers generally, will be unaware of what the implications of this might be unless this is properly explained to them. Merely informing the exempt customer that they do not receive the same customer protections as customers purchasing energy from an authorised retailer might not be very helpful.

We believe that equivalent consumer protections for customers of exempt networks to customers purchasing energy from authorised retailers is fundamental, if exempt customers are to also benefit from the community expectation that no one should be disconnected from energy supply due solely to an inability to pay. CUAC agrees with the AER that "an appropriate exempt selling framework can mitigate many of the customer protection issues that may arise."<sup>12</sup> However, we are concerned that the AER's proposed exempt selling framework does not sufficiently mitigate this.

---

<sup>10</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 3.

<sup>11</sup> AER, Exempt selling guideline (June 2011), Attachment 1, see class D2, condition 2.1b as an example.

<sup>12</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 1.

We have, in the confidential version of our submission, provided a detailed case study on exempt selling highlighting the uncertainty and inadequacy of protections which apply to exempt customers in Victoria. This case is relevant to both owner occupiers and private renters.

The developer of a building contracted an exempt seller to implement an embedded electricity network at their new residential development. In the middle of this year, the developer wrote a letter to residents which included the exempt seller's electricity brochure, a letter from the exempt seller's customer service representative offering "Discount electricity supply" and an intermediary sale of energy agreement (including the terms and conditions).

We found the information provided, and some of the content on the exempt seller's website misleading. The exempt seller's customer charter claimed to be based on the Victorian Energy Retail Code. However, a closer examination revealed that not all the provisions were based on the Energy Retail Code; many provisions were less favourable. The information suggested to potential customers that they will be getting an attractive energy offer with all the Victorian Energy Retail Code's protections. We raised our concerns regarding the exempt seller to key government and regulatory stakeholders on 21 July 2011. Following this, changes have been made to the exempt seller's website. For example; their customer charter has been amended; their electricity brochure is also no longer available on their website. While these changes are positive, we still have significant concerns about the adequacy of consumer protection extended to customers of the exempt seller.

The AER has stated that it would not "deny an exemption to entities that are operating legitimately under state/territory exemption regimes prior to the commencement of the Retail Law."<sup>13</sup> We are concerned that entities holding state or territory exemptions will be easily granted an exemption under the national exemptions framework without much scrutiny. In the transition to the national framework, the AER needs to ensure that exemptions are issued to appropriate applicants, and that an effective monitoring and enforcement regime is in place to ensure that exempt sellers are compliant with the conditions that they are subject to.

### **Disconnections**

We recommend mirroring the provisions of rule 116(1)(i) of the National Energy Retail Rules (NERR) which prohibits disconnections for non-payment of customers purchasing energy from authorised retailers, during extreme weather events. Extreme weather event is defined as "an event declared by a local instrument as an extreme weather event in a jurisdiction in which the customer's premises are located." The AER has stated that "disconnection on an extreme heat day will be dealt with on a state by state basis by means of each state's application legislation."<sup>14</sup> We understand that an extreme weather event under the NERR needs to be declared by a local instrument. That being so, we suggest an exemption condition protecting exempt customers from such disconnections in the event that an extreme weather event is declared by the state.

In relation to continuity of supply, it is important to have the authorised retailer inform the AER if disconnection of an exempt seller is imminent. The AER has acknowledged that there is a need to compel the authorised retailer to notify them if this is the case; however, it "cannot be

---

<sup>13</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 10.

<sup>14</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 19-20.

done through the exempt selling guideline but will need to be considered under the Retail Law and Rules.<sup>15</sup> This is a concern. We recommend that the AER refer this issue to the Joint Implementation Group; it appears that a rule change may be required.

### Smart meters

We are pleased that the AER has acknowledged that “the application of smart meter related protections should be the same for authorised retailer customers and exempt customers.”<sup>16</sup> Currently, there are no smart meter related protections in the National Energy Customer Framework (NECF). In the case study referred to above, the exempt seller’s customer charter and terms and conditions do not have any smart meter related customer protections even though the residents will have a smart meter. CUAC is concerned about this and will raise this as a jurisdictional issue to the Victorian government.

### Registration

The AER has acknowledged the comments raised by stakeholders regarding why universal registration is important. We are disappointed that the AER has not been persuaded that universal registration would result in greater transparency in the exempt selling environment. According to the AER, many exempt sellers would not be aware of their obligation to register for “minor energy onselling activities.” On this basis, the AER has stated that:

[A] universal registration requirement would lead to contravention by many small exempt sellers, exposing them to potentially higher penalties, and creating a compliance issue that would be difficult for the AER to resolve.<sup>17</sup>

CUAC is of the view that in the context of energy, which is an essential service, and unlike any other discretionary services, compliance is even more important. We are concerned that without universal registration, there is no information available as to the extent of exempt selling under the deemed categories and how those exempt customers are faring in relation to their energy supply. It also makes monitoring and enforcement of exempt seller’s deemed conditions very difficult. If small businesses are “expected to be aware of their obligation to register relatively simple information such as their business name”,<sup>18</sup> they could likewise be educated as to the requirement to provide information about energy onselling. The AER has stated that they might consider universal registration in the future if “onselling becomes more prevalent.” We believe that onselling is already prevalent; as mentioned in the earlier part of this submission, onselling appears to be growing. In light of this, we are of the view that universal registration should apply now.

---

<sup>15</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 20-21.

<sup>16</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 23.

<sup>17</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 15.

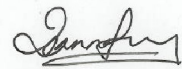
<sup>18</sup> AER, Notice of draft instrument – exempt selling guideline (June 2011), part A, at 15.

Thank you for the opportunity to participate in this consultation. If you have any queries, please contact the undersigned at 03 9639 7600.

Yours sincerely,



Jo Benvenuti  
Executive Officer



Deanna Foong  
Senior Policy Officer