



Submission to  
The Australian Energy Regulator (AER)

**Response to draft AER (Retail) exempt  
selling guideline Version 4**

From UnitingCare Australia

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*UnitingCare Australia is the national body for social services in the Uniting Church in Australia, supporting service delivery and advocacy for children, young people, families, people with disabilities, and older people*

## **UnitingCare Australia**

UnitingCare Australia is the national body for the UnitingCare Network, one of the largest providers of community services in Australia. With over 1,600 sites, the network employs 39,000 staff and is supported by the work of over 28,000 volunteers. We provide services to children, young people and families, Indigenous Australians, people with disabilities, the poor and disadvantaged, people from culturally diverse backgrounds and older Australians in urban, rural and remote communities.

UnitingCare Australia works with and on behalf of the UnitingCare Network to advocate for policies and programs that will improve people's quality of life and is committed to speaking with and on behalf of those who are the most vulnerable and disadvantaged, for the common good.

We appreciate the opportunity to respond briefly to this version of the exempt selling guideline, recognising the importance of this guideline, particularly with respect to the rapidly changing nature of energy supply services in Australia, and in particular the shift from what is generally regarded as energy supply services to energy services.

As a principle we believe that all customers should have access to affordable energy to meet essential needs at an affordable price with recourse to reasonable levels of consumer protection, including access to Ombudsman schemes. We also believe that the fewer the number of exemptions in the market place, the more efficient and effective the market will operate.

### **Nature of entity seeking retailer exemption**

Having considered a few recent applications for retailer exemption, we are strongly of the opinion that the exemption should be sought by the parent company and not by a specific site or any part of a larger company. That is to say the whole company must be regarded as the applicant, not a particular site. For example, a single Westfield shopping centre site should not be considered as the seeker of retail exemption, rather the seeker for exemption should be the Westfield Shopping Centre development business.

The growth of energy service or third-party providers is a significant development to Australian energy markets and one that will be increasingly relevant, we believe, to issues of exempt applications. Our view is that any entity that is able to effect the supply of energy to an end user must be regarded under exempt (retail) selling guidelines. That is, the inclusion of third-party providers, aggregators and the like as well as embedded networks and even small retailers.

### **Criteria for considering exemption**

In order to assess applications for exempt selling we propose that there are some principals which need to form a basis for future considerations. These include:

- Fairness in comparison with retailers, specifically existing retailers, not deemed eligible for exemption;
- The nature of the business whether a direct provider, e.g. retailer, an incidental energy provider, e.g. an embedded network, aggregator, or third-party provider of energy services including, for example, solar panels, home energy management systems and the like;
- The geographic spread of the applicant. For example, an embedded network for a town is a different proposition than an embedded network for a small shopping centre;
- The magnitude of impact on end users. In particular we believe that whilst some energy providers will argue that energy provision is incidental to their main business. Traditionally the notion of shopping centres has been used as an example or caravan parks. However we propose that taking a consumer perspective where the cost of electricity is significant for the end user, then the sale of electricity is not trivial. For example, a retailer in a shopping centre for whom electricity costs were more than say 5% of their business costs, then that energy supply is not incidental to the consumer whilst the supplier, in this case in the embedded network, may argue that it is. As a principal the consumer perspective must come first.

### **Categories for exemption**

We have considered that current categories for exemption being 'deemed', 'registerable' and 'individual', and we are not convinced that these are the best categories for future application of the exempt selling guideline. We are suggesting that new categories be something like 'deemed supplier', 'registerable supplier', 'deemed service', 'registerable service' and 'not exempt supplier' and 'not exempt service'.

### **Basis for consideration of exemption**

We suggest that the current basis for consideration of exemption based on number of customers or outlets, is a bit too loose and makes application of some of our principals perhaps more difficult than maybe needed. Rather we propose that the basis for consideration for exempt selling guidelines is the amount of energy supplied rather than the number of customers. So we suggest the following as a guide:

- Deemed Supplier: less than 100 megawatt hours of electricity per annum supplied;
- Registerable Supplier: between 100 megawatt hours and 5 gigawatt hours per annum supplied;
- Deemed Service: managing less than 100 megawatt hours per annum;
- Registerable Service: managing between 100 megawatt hours and 5 gigawatt hours per annum;

- Not Exempt Supplier, Not Exempt Service: provision of more than 5 gigawatt hours per annum.

We recognise that this is different from the current open ended nature of registerable entities, but we believe that it is fair and reasonable that an embedded network or other energy service that is supplying the sort of quantum of energy that is comparable with a small (second tier) retailer, that is not able to gain exemption, is reasonable and indeed is a fair way to proceed.

### **Process for exempt selling guideline determination**

We suggest that current process as outlined on page 14 of the draft guideline version 4 is important where a public consultation phase is required. However, this needs greater clarity about the issue and questions upon which public input is sought. It is currently difficult to work out how to make a meaningful and useful contribution as a consumer organisation, for example, to applications for exempt selling guidelines.

Criteria for assessing retailer exemption needs to be specified to ensure greater transparency for the processes and to guide the nature of any responses. We propose conditions for approved exemptions could be that consumers must have:

- Guarantee of supply;
- A price no greater than a specified market contract price, as provided by the 'end' retailer at the time of customer and exempt seller signing a contract or agreement;
- Customer protections being in place and here we note that a minimum set of consumer protections for both deemed and registerable suppliers and services needs to be further developed starting with a consultation about relevant sub-set of NECF elements;
- Access to Ombudsman. This is an important basic consumer protection that we believe all energy consumers should have access to.

We appreciate that this issue is important and being undertaken in a time of rapid change. We look forward to further consideration of these important questions.