

Draft Instrument of Exemption

**INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO HOLD A RETAIL
AUTHORISATION**

DATE OF ISSUE: 5 March 2013

FORM OF ENERGY: Electricity

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator on 15 February 2013 decided to grant Energy Metering Services Inc (ABN 32 143 143 908, trading as Energy Metering Services) an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to the following conditions.

This exemption applies to the premises at 77 Grenfell Street, Adelaide SA 5000.

Attachment A

Condition 1 – Obligation to supply

1. An exempt person cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except in accordance with relevant disconnection provisions.
2. An exempt person cannot refuse to sell energy to a customer on the basis that the customer owes the exempt person outstanding amounts from a previous account. The exempt person can include in a new account any outstanding amounts owed on a previous account (except where the unpaid amounts are for other premises for which the customer has an ongoing contract with the exempt person).

Condition 2 - Information provision

1. The exempt person must advise exempt customers, in writing, at the start of their tenancy/occupancy of the following:
 - a. any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
 - b. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer may not receive the same protections as it would if they were purchasing from an authorised retailer
 - c. the exempt customer's rights in relation to dispute resolution including:
 - i. the exempt person's procedures for handling disputes and complaints, and
 - ii. any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located
 - d. the conditions applicable to the exemption that the exempt person is operating under
 - e. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
 - f. contact numbers in the event of a gas or electricity fault or emergency.
2. In addition to the requirement to provide the information at the commencement of the exempt customer's tenancy/occupancy, the information set out in paragraph 1 of this condition must be provided by the exempt person at any time on request by the exempt customer or the AER.
3. Once the determination comes into force in the relevant state or territory, the information set out in paragraph 1 of this condition must be provided by an exempt person to existing exempt customers as soon as practicable but no later than three months after the determination is in force in the relevant state or territory.

Condition 3 - Billing and payment arrangements

1. An exempt person must ensure that the meter for each exempt customer is read and bills are issued to each exempt customer at least once every three months.
2. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. The name of the exempt customer.
 - b. The address of the exempt customer's premises.
 - c. Date that the account was issued.
 - d. The identifier of the meter for the exempt customer's premises.
 - e. The pay-by date for the bill.
 - f. Date of the current meter reading or estimate, as applicable.
 - g. The dates to which the meter reading or estimate applies (billing period).
 - h. Days in the billing period.
 - i. Current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
 - j. Previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill.
 - k. The amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt person purchases gas for the site).
 - l. Tariffs, fees and charges applicable to the exempt customer.
 - m. The basis on which tariffs, fees and charges are calculated.
 - n. Details of the available payment methods.
 - o. A telephone number for account inquiries and complaints.

Condition 4 - Estimation as basis for bills

1. An exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis for any bill issued.
2. An exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.

3. An exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
4. Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the exempt customer reasonably available to the exempt person, or
 - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
5. If a customer's bill is based on an estimation, this must be clearly stated on the exempt customer's bill.

Condition 5 - Pay-by date

1. The pay-by date for a bill must not be less than 13 business days from the date on which the exempt person issues the bill.

Condition 6 - Receipts

1. An exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
 - a. direct debit, or
 - b. credit card over the phone and the customer is provided with a receipt number.
2. An exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

Condition 7 - Pricing

1. Where access to choice of retailer for a customer is not available,¹ an exempt person must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity of energy directly to the premises of the exempt customer.

Condition 8 – Undercharging and overcharging

1. Where an exempt customer has been undercharged, an exempt person can recover the amount undercharged subject to the following:
 - a. Where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount

¹ This condition applies if immediate access to a retailer of choice is not available, that is, where the customer must pay for and negotiate a new connection and pay for associated infrastructure.

undercharged in the 9 months before the date on which the customer is notified of the undercharging.

- b. The exempt person cannot charge interest on the undercharged amount.
 - c. The exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
2. Where an exempt customer has been overcharged, an exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
- a. Where the amount overcharged is \$25 or more, the exempt person must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days.
 - b. Where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill.
 - c. No interest is payable on the overcharged amount.
 - d. Where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

Condition 9 - Payment difficulties and disconnection or cessation of supply

1. An exempt person must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
 - a. the exempt customer has requested disconnection, or
 - b. continuity of supply to the premises would be unsafe, or
 - c. the exempt customer's lease has expired and the exempt customer is vacating the premises, or
 - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and
 - i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice and advising the exempt customer that the exempt person may offer them more flexible payment terms to pay any amount outstanding, and
 - ii. following non-payment by the date specified in the reminder notice, or the establishment of more flexible payment terms, the exempt person has given the exempt customer a disconnection warning notice informing the exempt

customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and

- iii. 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, and
 - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
2. Where an exempt customer is disconnected in accordance with paragraph 1(b) of this condition, the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
 3. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.

Condition 10 - When disconnection or cessation of supply is prohibited

1. An exempt person must not disconnect or cease energy supply to an exempt customer's premises where:
 - a. a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. the exempt customer has made a complaint directly related to the proposed reason for disconnection or cessation of supply, to the exempt person, the energy Ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or
 - c. the disconnection or cessation of supply would occur on:
 - i. a business day before 8am or after 3pm, or
 - ii. a Friday or the day before a public holiday, or
 - iii. a weekend or a public holiday, or
 - iv. the days between 20 December and 31 December (both inclusive) in any year.
2. For electricity, the exempt person must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt person must not disconnect the exempt customer's premises.
3. This condition does not apply where the exempt customer has requested disconnection.

4. This condition does not apply where state or territory tenancy legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt person on the basis that they are a landlord.
5. This condition does not apply where the exempt customer's lease has expired.

Condition 11 - Reconnection of supply

1. Where an exempt person has arranged for the disconnection of an exempt customer's premises and the exempt customer has within 10 business days of the disconnection:
 - a. if relevant, rectified the matter that led to the disconnection, and
 - b. made a request for reconnection, and
 - c. paid any charge for reconnection,

the exempt person must reconnect the premises (or, where required, arrange with the network operator to reconnect the premises) as soon as practicable.

Condition 12 – Concessions and rebates

Not applicable

Condition 13 - Choice of retailer

1. The exempt person must not seek to prevent an exempt customer who is eligible under applicable state or territory legislation to purchase energy from a retailer of their choice from electing to do so, whether by requiring the exempt customer to waive their ability to choose a retailer or by unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 14 - Contact details

1. An exempt person must provide a means of contact for account inquiries and complaints which can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

Condition 15 - Dispute resolution

1. In the event of a dispute concerning the sale of energy to any exempt customer, and in the absence of a determination of the relevant tenancy tribunal, the exempt person must:
 - a. make reasonable endeavours to resolve the dispute, and
 - b. advise the exempt customer of any right that the exempt customer has to access the energy Ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located, if applicable.

Condition 16 – Life support customers

Not applicable

Condition 17 - Continuity of supply

1. An exempt person must notify the exempt customers and the AER immediately if they are (or expect to be) disconnected, or there is any likelihood that they will be unable to continue selling energy.

Condition 18 – Termination of energy supply agreement

1. The arrangement through which an exempt person supplies energy to an exempt customer will terminate:
 - a. on a date agreed by the exempt person and exempt customer, or
 - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice, or
 - c. at the conclusion of the exempt customer's lease for the premises to which the energy is supplied, or
 - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
 - e. when a different exempt customer starts receiving customer retail services for the premises, or
 - f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
2. Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

Condition 19 - Maintaining records

1. An exempt person must maintain records of the following for each of its exempt customers:
 - a. The name of the exempt customer.
 - b. The address of the exempt customer's premises.
 - c. The identifier of the meter for the exempt customer's premises.
 - d. The date that the customer account was created.
 - e. Copies of any bills issued for the previous 12 months.
 - f. The date of the most recent meter read for the customer.
 - g. The basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

