



Ms Sarah Proudfoot
General Manager – Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

19 December 2017

Lodged online

Dear Ms Proudfoot,

RE: Draft AER (Retail) Exempt Selling Guideline Version 5, November 2017

As the peak body for the health and community services sector in South Australia, the South Australian Council of Social Service (SACOSS) has an established history of interest, engagement and provision of proposed advice on the necessary market mechanisms and policy for essential services including electricity. SACOSS would like to thank the Australian Energy Regulator (AER) for their *Draft AER (Retail) Exempt Selling Guideline Version 5, November 2017* (the Draft Guideline), the *Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline* (the Notice) and their broader consultation with SACOSS on these important issues.

SACOSS supports the principle that all consumers should, as far as is practical, have the same level of customer protection regardless of who supplies the electricity, including access to a free, independent and impartial dispute resolution mechanism such as an energy ombudsman scheme. SACOSS therefore supports the AER's amendments contained in the Draft Guideline, which comprise an essential step in the process of improving exempt customers' dispute resolution options. The proposed changes will:

- require exempt sellers that sell energy to residential customers to be members of, or subject to, the relevant energy ombudsman scheme/s where they are able to be accommodated by the relevant ombudsman scheme (Condition 17 of the Draft Guideline), and
- explicitly place obligations on exempt sellers to have in place appropriate complaints and dispute handling processes (Condition 16 of the Draft Guideline).¹

¹ AER, Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5, November 2017 p.7

At this stage, Condition 17 does not apply to small business customers. SACOSS notes that the AER has indicated it may revisit access to an energy ombudsman scheme for small businesses in the future, and SACOSS encourages the AER to do so.

Condition 17 – Member of energy ombudsman scheme

Condition 17 of the Draft Guideline represents the first phase of the process to ensure improved access to ombudsman schemes for residential customers of exempt sellers. The second phase requires ensuring the jurisdictional schemes can accommodate access. In real terms, residential customers will not have access to ombudsman schemes for external resolution of energy disputes², until the schemes in each jurisdiction make the necessary amendments to their constitutions, charters or governing legislation. SACOSS is aware that this process may be lengthy and complicated, and urges the continued involvement of the AER in facilitating a shared position amongst the various jurisdictions through its collaboration with ANZEWON.

As noted in our previous submission on the AER's Issues paper,³ the schemes themselves must be tailored to meet the particular needs of small embedded networks and their customers, including funding models and membership structures that reduce the regulatory burden and costs associated with membership.⁴ This will be particularly important for exempt sellers that fall into the 'deemed' class of exemption. The costs and benefits to small exempt sellers and vulnerable customers must continue to be considered by the AER and ANZEWON in the design and implementation of the ombudsman schemes.

SACOSS recognises that Condition 17 allows for some flexibility around membership, by requiring exempt sellers that sell energy to residential customers to be members of, **or subject to**, an ombudsman scheme. SACOSS submits that the words 'or subject to' are sufficiently broad to allow for the membership of industry bodies, rather than requiring the membership of each individual member of the industry body. However, it remains unclear as to how the AER will reach the 'deemed' class, or how this class will be able to afford membership as required by the Condition. It may be that membership of an ombudsman scheme may also have to be 'deemed' for this class, which raises issues of cross-subsidisation.

SACOSS' July submission recommended that expanding access to ombudsman for exempt customers be complimented and supplemented by:

- strengthened compliance monitoring and enforcement by the AER of exempt NSPs/sellers, and
- improved information provision to exempt NSPs/sellers and their customers.⁵

SACOSS is pleased the AER agrees that 'greater education of both exempt customers and sellers in relation to regulatory obligations is desirable'⁶ and welcomes the AER's commitment to work with the ombudsman schemes on the information to be provided to both consumers and industry regarding the internal and external dispute resolution requirements in the Draft Guideline. SACOSS supports increasing the resources of

² With the exception of NSW, the Ombudsman Schemes have not been able to hear complaints from exempt customers.

³ AER, Issues Paper: Access to dispute resolution services for exempt customers, June 2017

⁴ SACOSS, Submission re: Exempt Customer Dispute Resolution Issues Paper, 14 July 2017

<https://www.sacoss.org.au/submission-aer-exempt-customer-dispute-resolution-issues-paper>

⁵ Ibid p. 2

⁶ AER, Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5, p.24

the AER to allow for greater involvement in the creation and provision of information to customers and exempt entities on these changes.

SACOSS also emphasises the importance of ensuring the AER is sufficiently resourced to adequately monitor compliance with conditions under the Retail Guideline, and to enforce penalties for breaches. As noted above, the expansion of access to ombudsman schemes for exempt residential customers under the Draft Guideline does include residential customers of the 'deemed' class of exemption (Class D2 and D6). As exempt sellers which fall into the deemed class 'self-select' and are not obliged to register with the AER, very little is known about where these exempt sellers are, or how many exempt sellers may be included in this category. Therefore, it is impossible to quantify the number of residential customers of deemed exempt sellers who may be unaware of their right to internal dispute resolution processes or to access external dispute resolution avenues. As noted in previous submissions by SACOSS et al, compliance monitoring and enforcement of conditions by the AER is very problematic for this class of exemption, and SACOSS has therefore previously recommended the removal of this class.⁷

SACOSS recognises that while breaches of the conditions in the Retail Guideline (including Condition 17) will attract the full suite of enforcement and compliance options under the NERL, SACOSS believes the issue will lie in the AER having sufficient resources to strengthen the monitoring and enforcement of those breaches.

Condition 16 – Dispute Resolution

SACOSS supports the AER's amendments to Condition 16, which will ensure customers of exempt sellers will have access to the same internal dispute resolution processes and protections as those of authorised retailers. Some of the issues facing customers of embedded networks were highlighted in our 2015 Report on exempt customers.⁸ The 2015 report found that customers in embedded networks in long stay caravan and residential parks had a relationship with their exempt seller that was often complicated by the fact that the exempt seller was also their landlord. Consequently, some customers felt disempowered in situations where there was a dispute over billing. Consistent, well-defined processes that comply with the minimum Australian Standards: AS/NZS 10002:2014, may go some way toward providing exempt customers with a greater sense of structure, satisfaction and resolution. The 2015 Report also highlighted exempt customer feedback around a lack of information in relation to their electricity supply and bills. Once again, it will be important to ensure that customers are made aware of their right to access internal dispute resolution procedures in the event of a disagreement over billing arrangements, through an education campaign supported by the AER.

Condition 1 – Obligation to Supply; Condition 11 – Reconnection or re-energisation and Condition 12 – Payment Plans

SACOSS supports the deletion of the qualification contained in Condition 1 that exempt sellers can refuse to sell energy to an exempt customer if the customer has money owing on the account. SACOSS also supports the time limit of 10 days after which customers can request reconnection (Condition 11). SACOSS submits

⁷ Joint Submission to the AEMC on the Review of Regulatory Arrangements for embedded networks, SACOSS, Ethnic Communities of NSW, Consumer Action Law Centre, St Vincent de Paul Society Victoria, 22 May 2017 p.15
https://www.sacoss.org.au/sites/default/files/public/documents/Submissions/Utilities%20Submissions/170714_SACOSS%20Submission_AERIssuesPaper_DisputeResolution_WithAttachments.pdf

⁸ SACOSS, The Retail and Network Exemption Framework: Emerging Issues for consumers – report on the growing concern with consumer protection arrangements for exempt customers, December 2015 p.63

that between Condition 11.1.b and Condition 11.1.c the word 'or' should replace the word 'and', as these two conditions should be in the alternative. The new stand-alone payment plans provided for in Condition 12 are an important protection for customers experiencing difficulty paying their bills. However, SACOSS is concerned that exempt customers not be pressured into payment plans that are unaffordable, leading them to fall behind in payments. On the other hand, an affordable payment plan for the customer may result in arrears accumulating. The exempt seller may require education around how they approach the capacity to pay conversation, which could make the difference in the success, or otherwise, of the plan.⁹

Condition 18 – Planned interruptions to supply and Condition 19 – Unplanned interruptions to supply
SACOSS supports the addition of Conditions 18 and 19 in the Draft Guideline which place certain obligations on the exempt seller in case of a planned or an unplanned interruption to supply.

Conclusion

As previously submitted by SACOSS, these reforms have the potential to significantly improve the lived experience for vulnerable customers of small embedded networks. There will need to be more work undertaken by energy ombudsmen in each jurisdiction as well as an emphasis on education of both customers and exempt sellers in order to fully realise the potential of the dispute resolution provisions, but these amendments are a significant step on the path to ensuring exempt customers are afforded the same consumer protections as those afforded to customers of authorised retailers.

In summary, SACOSS supports the AER's proposed amendments, but reiterates the importance of:

- the AER continuing to work with ANZEWO to ensure the establishment of a scheme that is tailored to meet the particular needs of small embedded networks and their customers,
- education and information provision for customers and exempt sellers in relation to:
 - ombudsman scheme access
 - internal dispute resolution processes
 - capacity to pay conversations, and
- increased resourcing for the AER to support monitoring and enforcement of the Conditions.

We thank you in advance for consideration of our comments. If you have any questions relating to the submission, please contact Jo De Silva via jo@sacoss.org.au or 08 8305 4211.

Yours sincerely,



Ross Womersley
Chief Executive Officer

⁹ See AER, Review of Energy Retailers' Customer Hardship Policies and Practices, January 2015