

18 November 2011

General Manager
Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERInquiry@aer.gov.au

Dear AER,

AER consultation paper on exempt selling guideline (October 2011)

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 comment on the *Australian Energy Regulator (AER) Consultation paper on exempt selling guideline (October 2011)* (hereinafter called "consultation paper"). CUAC has been involved in the AER's consultations on the exempt selling guideline and has responded to all of the earlier exempt selling guideline papers issued by the AER.

In our submissions, CUAC has emphasised the need for there to be consumer protections for customers purchasing energy from exempt sellers, equivalent to the protections customers purchasing energy from an authorised retailer receive. This is especially important where the customer cannot access the competitive retail market and therefore can only obtain supply from the exempt seller. Further, preventing or impeding consumer choice is anti-competitive. CUAC is very concerned that even in recent large residential developments today, customers still lack access to retailer choice or experience considerable barriers in accessing the competitive retail market.

The overall approach of the AER's consultation paper, which is to impose additional requirements on exempt sellers with regard to residential customers experiencing financial difficulty, is a step in the right direction. Nevertheless, it still does not go far enough in extending to exempt customers the same protections customers obtaining supply from an authorised retailer receive.

Overarching policy statement

The consultation paper states that:

The AER proposes to introduce an overarching policy principle (to apply to all exempt sellers) that "disconnection of premises of a customer who has identified themselves as experiencing financial difficulty due to inability to pay energy bills should be a last resort." This is analogous to the hardship policy statement in the Retail Law, and should safeguard customers against immediate or short term disconnection. This principle also recognises that energy is an essential service and that in some cases, the exempt seller is the only party able to provide energy to the exempt customer....Disconnection for those customers would be unduly burdensome.

We note that the proposed "overarching policy statement" enunciated above is not analogous (or equivalent) to the hardship policy statement in the National Energy Retail Law (NERL). Section 47 of the NERL states that:

[a] retailer must give effect to the general principle that de-energisation (or disconnection) of premises of a hardship customer due to inability to pay energy bills should be a last resort option.

There is no reference in the above NERL general principle to a customer identifying themselves as being in hardship.

The proposed "overarching policy statement" places the onus solely on customers to self-identify themselves as experiencing financial hardship. While we agree that customers should be encouraged to contact their exempt seller when they face payment difficulties, exempt sellers (particularly the larger on-sellers) should also be able to identify customers who are experiencing payment difficulties. For example: a customer who has recently missed a bill payment may be facing payment difficulty. We therefore do not agree with the AER's view that it would be "unduly burdensome to require exempt sellers to identify customers experiencing financial difficulty." As exempt sellers are providing an essential service, they need to receive some basic training to pro-actively identify customers who may be experiencing payment difficulties. It is also in the interest of the exempt seller to identify financial hardship cases early on in the process and to offer assistance before the customer's debt level accrues to an unmanageable level.

We submit that the "overarching policy statement" be amended to remove the reference to customer self-identification. We suggest words to this effect:

The supply of energy is an essential service. An exempt seller must give effect to the general principle that disconnection of the premises of a customer who is experiencing financial difficulty due to inability to pay energy bills must be a last resort.

Condition 2 – information provision

We support the proposed amendment to Condition 2 to incorporate information provision on the availability of assistance to a customer who is unable to pay energy bills due to financial difficulty. That is, information on the forms of assistance available; the processes the exempt customer should follow to inform the exempt seller of their financial difficulty. However, as

explained above, the onus should not be solely placed on the exempt customer to self-identify; exempt sellers should also proactively identify exempt customers who may be experiencing payment difficulty.

Condition 3 – billing and payment arrangements

Currently, the level of consumer protection exempt sellers, offer to their customers with payment difficulties is unacceptable. For example:

It is a real concern, that on one exempt seller's website, "additional charges" may be imposed on the exempt customer if the exempt seller "agree[s] to offer" the customer an instalment plan. Customers who seek a payment plan are already experiencing payment difficulty. The fact that the exempt seller requires the customer to pay "additional charges" before offering the customer a payment plan demonstrates that exempt seller's complete lack of understanding on how to engage with customers who are experiencing financial difficulties.

Another exempt seller's customer charter suggests that as long as the appropriate reminder notice has been sent to the customer, the customer will be disconnected if they do not make payment:

If you are having trouble paying an energy bill by the pay-by date, you must contact us immediately. We will not disconnect you for not paying your account before we have:

- sent you a reminder notice;
- provided you with at least five business days written notice of our intention to disconnect your energy supply.....

Further, a customer who wishes to be reconnected must first pay off all arrears:

[Exempt seller] will arrange re-connection of your service at your request. We simply ask that any outstanding amount be *paid in full*. If there are other reasons for your disconnection, we'll work with you to resolve the reason for your disconnection, and a fee may be charged.

CUAC therefore supports the AER's proposed amendments to Condition 3 to require an exempt seller to offer flexible payment terms to customers experiencing financial difficulty, having regard to: capacity to pay, arrears owed, and the customer's expected energy consumption needs over the following 12 month period. However, there is a need to monitor exempt sellers' compliance with this, as well as with other Conditions in the exemption.

Condition 8 – Payment difficulties and disconnection or cessation of supply

Part 1, Division 6 of the National Energy Retail Rules (NERR), restricts the circumstances in which a security deposit may be required from a customer. This may not be the case for all exempt sellers. For example, one exempt seller's terms and conditions for energy supply suggest that a security deposit is payable in most cases:

I /We understand a security deposit may apply and will appear on my first account.

The same exempt seller also places the onus on the customer to contact them if they want information regarding their concession status:

[Exempt seller] can provide information about these and other concessions. If you would like to confirm your eligibility for a concession, please call the [Exempt seller] customer service number. If there is any doubt as to your eligibility for a concession, [Exempt Seller] will refer your case to the appropriate government state department.

CUAC therefore supports the AER's proposed amendments to Condition 8 for customers experiencing financial difficulty:

- Provide energy efficiency advice by directing the customer to the Australian government energy efficiency website or other energy efficiency resource.
- Ensure that the customer is aware of the available relevant government or non-government energy rebates, concessions and relief schemes.
- Not charge the customer a late payment fee.
- Not charge the customer a security deposit.

The obligation to "ensure that the customer is aware of the available relevant government or non-government energy rebates, concessions and relief schemes" should not be discharged merely by the exempt seller referring the customer to the relevant department, such as the Department of Human Services. Some customers may need assistance in applying for concessions and relief schemes (such as filling in the application forms etc). In this regard Condition 11 (Concessions and rebates) is important. If the energy rebate, concession or assistance can only be claimed by the exempt seller on the customer's behalf, the exempt seller should use best endeavours to do so, and if successful, apply the rebate, concession or assistance to the customer's bills.

The last paragraph of the consultation paper states that:

Further, where an exempt seller issues a reminder notice, they will be required to notify customers of any flexible payment options or other assistance that may be available to them.

We suggest that information on flexible payment options and other assistance should be included in both reminder and disconnection notices. Since exempt sellers will be required to offer "flexible payment options" (the proposed amendment to Condition 3), the wording used should not be "any flexible payment options" but "flexible payment options."

Consequential amendments would also need to be made to the wording used in the Conditions where there are references to the exempt seller having the option to offer flexible payment terms to customers experiencing payment difficulties. For example: Condition 8(1c)(i) refers to "the exempt person *may* offer them more flexible payment terms to pay any amount outstanding."

Monitoring and compliance

The AER should monitor exempt sellers' implementation of the Conditions to ensure there is compliance. However, this will be challenging because without "universal registration" of

exempt sellers (that is: the “deemed” class of exempt sellers), there will be an information gap which would make monitoring and enforcement virtually impossible. CUAC has raised this in previous submissions to the AER; we reiterate the need to develop a universal registration process.

Exempt customer experience

Further, CUAC believes that more data needs to be collected about exempt selling. Currently, there is very little information available on what the customer’s experience is in relation to exempt selling or where the exempt selling sites are. Without this information, it is difficult to ascertain whether the exempt selling framework is working well and whether improvements are needed.

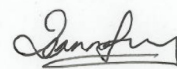
We suggest that the AER consider further work in this area. For example: a survey of exempt customers at various exempt selling premises such as caravan parks, rooming houses, retirement villages, apartment blocks, shopping centres etc to obtain feedback on customer experience.

Thank you for the opportunity to participate in the AER’s consultation on exempt selling. If you have any queries on this submission, please contact us at (03) 9639 7600.

Yours sincerely,



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Executive Officer



Deanna Foong
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