

4 August 2010

Mr Tom Leuner
General Manager
Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3000

By email: AERInquiry@aer.gov.au

Dear Mr Leuner

Re: Approach to retail exemptions

Thank you for the opportunity to provide comment on the Australian Energy Regulator's (AER) *Approach to retail exemptions* (the Issues Paper).

The following comments are based on our experience as an independent complaint handling body.

Apparent growth in onselling

The Issues Paper states that there has been an apparent increase in the number of customers who purchase their energy from an onseller. The Energy and Water Ombudsman (Victoria) (EWOV) currently does not have jurisdiction over exempt sellers. However, customers of exempt sellers contact EWOV to make enquiries. In 2008/2009 EWOV registered 23 cases against exempt retailers and 24 cases where reference was made to embedded networks. In 2009/2010 EWOV received 19 enquiries concerning embedded networks and 23 enquiries about exempt retailers. While EWOV has not seen an increase in enquiries from exempt customers, this does not mean that there has not been a growth in onselling. The enquiries were lodged by a range of customers, such as residents in retirement villages, small business owners in shopping centres, residents and business owners in large developments. This shows the complexity of the onselling market, as all of these groups of customers have different needs. A requirement for all exempt sellers to register with the AER would lead to a better understanding of the number and type of sellers.

Customer protections

The protections offered to small customers of authorised retailers under the *National Energy Customer Framework* (NECF) are not automatically available to exempt customers. The Issues Paper states quite rightly that exempt customers are often some of the most vulnerable in society and it therefore is very important that they have access to appropriate protections.

The core protections outlined in the attachment seem comprehensive. It is particularly important that exempt customers are informed about their rights in relation to dispute resolution (condition 1), receive regular bills that allow them to understand what they are being charged for (condition 2) and are given enough warning in the event of a disconnection for non-payment (condition 8). EWOV notes that condition 8 does not require a two-step notification process or best endeavours by sellers to contact customers before disconnection. This does not seem to give customers much time to seek assistance from external agencies, given that there is no obligation on exempt sellers to offer hardship assistance.

Hardship protections

According to the Issues Paper, a hardship policy may not be helpful in situations where the customer is purchasing both energy and accommodation from the same party, as it would allow for flexible payments of energy charges but not rent. EWOV acknowledges the complexity caused by the potential conflict with tenancy law in these situations. However, given that customers in these situations often are particularly vulnerable, other forms of assistance could be considered, such as the prohibition of late payment fees and the provision of energy efficiency advice.

Dispute resolution

EWOV agrees that exempt customers should have access to an independent dispute resolution scheme and is open to the idea of offering its dispute resolution services to these customers. As you might be aware, EWOV considered this matter during the Essential Services Commission's consultation on a *Small Scale Licensing Framework* in 2006/2007 where different options of extending membership to exempt sellers were canvassed. EWOV commissioned an independent feasibility study and presented this to its Board in April 2007. The Board decided that it was too early in the process to make a decision. As it has been several years since the Board reviewed this matter, it will need an opportunity to reconsider its position. The matter will be discussed at the next available board meeting in October 2010. However, the issue of who exempt resellers are, and how many, remains a key issue to resolve.

EWOV supports the suggestion that internal dispute resolution mechanisms should be based on the *Australian Standard AS ISO 10002 -2006 (Customer satisfaction – Guidelines for complaints handling in organisations)*. The AER proposes that this should only apply to exempt sellers operating under an individual exemption. EWOV seeks further clarification why it should not apply to other exempt sellers.

Registration threshold

The Issues Paper lists advantages of registration such as accountability, more targeted regulatory oversight and a better understanding of the scale of exempt activities. The AER proposes that exempt sellers that have less than 25 premises within a single site should not be required to register because of the large administrative burden it places on these sellers. EWOV acknowledges that these are small scale operators, however they do sell an essential service and therefore it could be argued that the benefits of registration outweigh the administrative burden.

We trust the above comments are helpful. Should you require further information or have any queries, please contact Kristina Schmieg, Policy and Research Officer, on (03) 9649 7599 or at Kristina.Schmieg@ewov.com.au.

Yours sincerely

A handwritten signature in cursive script that reads "Fiona McLeod".

Fiona McLeod
Energy and Water Ombudsman (Victoria)