

21 December 2017

Sarah Proudfoot
General Manager, Retail Markets Branch
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By email: AERExemptions@aer.gov.au

Dear Ms Proudfoot

AER Draft (Retail) Exempt Selling Guideline

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in New South Wales. Established in 1982, PIAC tackles systemic issues that have a significant impact upon disadvantaged and marginalised people. We ensure basic rights are enjoyed across the community through litigation, public policy development, communication and training. The Energy + Water Consumers' Advocacy Program represents the interests of low-income and other residential consumers, developing policy and advocating in their interests in the NSW energy and water markets.

PIAC contends that all energy consumers should have access to equivalent levels of protection for similar products and services. The arrangements for exempt customers often involve an inherently higher level of risk compared to customers of an authorised retailer, which can be made worse by the absence of equivalent protections.

PIAC supports the intent of the proposed changes to the AER's (Retail) Exempt Selling Guideline as a step towards enhancing the consumer protections available to exempt customers.

External dispute resolution

Currently, exempt customers are unable to access binding external dispute resolution. This is a fundamental consumer protection that should be available for all energy consumers, regardless of supply arrangements. Without external dispute resolution, exempt customers do not have a key protection against improper behaviour by their energy providers.

PIAC strongly supports changing the Guideline to require exempt sellers that sell energy to residential customers to be members of, and/or covered by, the relevant energy ombudsman scheme/s. This will ensure that these consumers have access to fair, independent dispute resolution.

Internal dispute resolution

PIAC also supports the introduction of explicit obligations regarding internal dispute resolution. Like access to ombudsman schemes, internal complaint and dispute handling are important protections that all energy consumers require.

Dispute resolution for exempt small business customers

PIAC contends that the external dispute resolution reforms should be extended to exempt sellers that sell energy to small business customers. In PIAC's submission to the *Access to dispute resolution services for exempt customers* issues paper, we noted that large commercial customers may not require as high a level of

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protection as small consumers.¹ However, PIAC does not consider this to be the case for small businesses. Like residential consumers, many small businesses are unlikely to be able to negotiate on an equal level with their exempt seller. Therefore, they require consumer protections like access to external dispute resolution.

The AER reports that it did not receive any explicit evidence that exempt small business customers require access to external dispute resolution through ombudsman schemes.² PIAC suggests the lack of small business submissions to the paper this is a reflection of their lack of representation in energy policy development and regulation, rather than evidence a problem does not exist.

PIAC would welcome further discussion regarding treatment of exempt small business customers.

Explicit informed consent for exempt customers

PIAC has previously raised concerns about the level of consumer consent required by exempt sellers under the current Guideline.³ We consider the consent of consumers when signing up to energy contracts to be their first level of protection.

PIAC supports the AER's decision to more clearly define the explicit informed consent (EIC) requirements for exemption applicants wanting to retrofit an existing site's electrical wiring into an embedded network. This will align the protection provided to exempt customers with that given to consumers with standard supply contracts.

However, we remain concerned about EIC when a consumer connects to an existing embedded network. PIAC contends that EIC should also be required in this situation. Currently, these consumers are not covered by EIC. Instead, exempt sellers are only subject to broader information provision requirements.

The South Australian Council of Social Service has identified that the information that is provided is often hidden in a general rental agreement or contract of sale, rather than in a standalone electricity contract or disclosure statement.⁴ This means that consumers may sign a tenancy or property sales agreement have made an uninformed choice to have their energy provided by an exempt seller. PIAC considers this lack of a key consumer protection to be unacceptable.

To address this issue, in PIAC's view the AER should require upfront EIC to be given by consumers when connecting with an existing exempt seller.

Other amendments

PIAC supports the minor amendments listed in the 'Other amendments' section of the AER's *Notice of Draft Instrument*.⁵ In particular, PIAC supports the clarification of provisions related to information provision regarding proposed retrofits, who should hold the exemption and the process for making changes to registerable exemptions. PIAC considers these to be common-sense reforms that will add clarity to the retail exemption framework.

¹ PIAC, *Exempt customer dispute resolution issues paper*, July 2017, p. 2, <<https://www.piac.asn.au/wp-content/uploads/2017/07/17.07.14-PIAC-sub-to-AER-exempt-customer-dispute-resolution-issues-paper-FINAL.pdf>>.

² AER, *Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5*, November 2017, p. 9.

³ PIAC, *Embedded network regulation: a consumer view*, May 2017, pp. 2-3, <<https://www.piac.asn.au/wp-content/uploads/2017/07/17.05.23-Submission-in-response-to-the-AEMCs-Review-of-regulatory-arrangements-for-embedded-network-consultation-paper.pdf>>.

⁴ SACOSS, *The retail and network exemption framework: emerging issues for consumers*, December 2015, p. 47.

⁵ AER, *Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5*, pp. 12-14.

Continued engagement

PIAC would welcome the opportunity to meet with the AER and other stakeholders to discuss these issues in more depth.

Yours sincerely

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