

Part 9 Exempt selling regime

Division 1 Preliminary

148 Definitions

In this Part:

exempt customer means a person to whom an exempt seller sells energy and who would be a retail customer of the seller if the seller were a retailer;

exemption means an exemption from the requirement to hold a retailer authorisation;

retail customer means a person who is a customer of a retailer.

Division 2 AER power to exempt

149 Individual exemptions

- (1) The AER may decide to grant an individual exemption to a particular person.
- (2) An individual exemption comes into force from the date on which the instrument of exemption is issued by the AER under rule 162 (2).

150 Deemed exemptions

- (1) The AER may, in accordance with the retail consultation procedure, determine a class of persons in respect of whom a deemed exemption is taken to be in force.
- (2) A deemed exemption comes into force from the date the determination is made, or on the date specified in the determination, by the AER specifying the class of exempted persons.
- (3) The AER may from time to time amend determinations under this rule in accordance with the retail consultation procedure.

151 Registrable exemptions and registered exemptions

- (1) The AER may, in accordance with the retail consultation procedure, determine a class of persons in respect of whom an exemption (a **registrable exemption**) is registrable.
- (2) A registrable exemption becomes a registered exemption in respect of a particular person when the person is registered as such on the Public Register of Authorised Retailers and Exempt Sellers.

- (3) A registered exemption comes into force from the date the person who is subject to the exemption is registered as such on the Public Register of Authorised Retailers and Exempt Sellers.
- (4) The AER may from time to time amend determinations under this rule in accordance with the retail consultation procedure.

152 Conditions generally

- (1) The AER may impose conditions in relation to the sale of energy by an exempt seller or class of exempt sellers to exempt customers.
- (2) Conditions may be imposed:
 - (a) in respect of individual exemptions—under rule 158; and
 - (b) in respect of deemed exemptions and registered exemptions—under rule 153.
- (3) Without limitation, a condition may require an exempt seller or class of exempt sellers to abide by specified obligations derived from energy laws and applicable to retailers, with any modifications specified in the condition, as if:
 - (a) an exempt seller were a retailer; and
 - (b) the exempt customers of an exempt seller were retail customers of a retailer.
- (4) Where the AER determines that it is appropriate to impose a condition in relation to prices to be charged to exempt customers at residential premises by an exempt seller, the AER must ensure that those customers are charged no more than the standing offer price of the local area retailer.
- (5) The AER may impose conditions on exempt sellers for or with respect to installing, maintaining and reading of *meters* of exempt customers in accordance with jurisdictional energy legislation.

153 Conditions for deemed exemptions and registered exemptions

(1) Conditions

If the AER makes a determination under rule 150 for a class of deemed exemptions or under rule 151 for a class of registrable exemptions, the AER may impose conditions in relation to the sale of energy by exempt sellers of that class to exempt customers by specifying the conditions as part of the determination.

(2) When conditions may be imposed

Conditions may be imposed when the determination is first made or during the currency of the determination.

(3) **Variation or revocation of condition**

The AER may, by way of amendment of the determination, vary or revoke a condition.

(4) **Application of new or varied conditions**

Subject to the terms of the determination imposing or varying a condition:

- (a) a condition imposed during the currency of the determination applies to persons who already are exempt sellers under the determination (as well as to persons who afterwards become exempt sellers under the determination); and
- (b) a condition varied during the currency of the determination applies as varied to persons who already are exempt sellers under the determination (as well as to persons who afterwards become exempt sellers under the determination).

(5) **Application of revoked conditions**

Subject to the terms of the amending determination that revokes a condition, a revoked condition ceases to apply to persons who already are exempt sellers under the determination (as well as to persons who afterwards become exempt sellers under the determination).

Division 3 AER Exempt Selling Guidelines

154 AER Exempt Selling Guidelines

(1) **Application of this rule**

This rule applies to the AER Exempt Selling Guidelines referred to in section 118 of *the Law*.

(2) **Subject matter of AER Exempt Selling Guidelines**

The AER Exempt Selling Guidelines must, in addition to providing information about exemptions, include provisions concerning:

- (a) procedures for applying for the grant, variation or revocation of an individual exemption; and
- (b) the information that must be provided by an applicant for an individual exemption; and
- (c) requirements relating to registered exemptions under rule 151; and
- (d) guidance on the application of the exempt seller related factors (under section 115 of *the Law*) and the customer related factors (under section 116 of *the Law*) in making any decision relating to exemptions; and

- (e) the categories of deemed and registrable exemptions, and any associated conditions of exemption that are to apply; and
- (f) any other matters that the AER considers relevant.

Division 4 Provisions relating to individual exemptions

155 Application for individual exemption or variation of individual exemption

(1) Application may be made

A person may apply to the AER for:

- (a) an individual exemption; or
- (b) the variation of an individual exemption granted to the person.

(2) Required information to be provided

The information required by the AER Exempt Selling Guidelines must be provided in the application or, at the request of or with the concurrence of the AER, by way of supplementary advice.

(3) Application to be published

The AER must publish an application on the AER's website.

156 Public notice and submissions

Before deciding an application for an individual exemption or variation of an individual exemption, the AER must:

- (a) publish on the AER's website a notice:
 - (i) setting out a copy of or the details in the application; and
 - (ii) stating that written submissions about the application may be made to the AER within a period of at least 20 business days that is specified in the notice; and
 - (iii) containing such other information as the AER considers appropriate; and
- (b) consider all written submissions received by it within that period before deciding whether to grant or refuse the application.

157 Deciding application

(1) Duty to decide application

The AER must decide whether to grant or refuse an application for an individual exemption or variation of an individual exemption.

(2) Application may be granted if guidelines and principles satisfied

The AER may grant the application if the AER is satisfied that the application meets any applicable requirements of *the Law* and the AER Exempt Selling Guidelines.

158 Conditions for individual exemptions

(1) Conditions

If the AER grants an application for an individual exemption or variation of an individual exemption, the AER may impose conditions in relation to the sale of energy by the exempt seller to exempt customers.

(2) When conditions may be imposed

Conditions may be imposed when the exemption or variation is granted or during the currency of the exemption as granted or as varied.

(3) Variation or revocation of condition

The AER may vary or revoke a condition.

(4) Variation or revocation of conditions to be treated as variation of exemption

For the purposes of this Part, a variation or revocation of a condition imposed on an individual exemption is a variation of the exemption, and is to be dealt with accordingly.

159 Form of energy to be specified

(1) Form of energy to be specified

If the AER grants an application for an individual exemption, the instrument of exemption must specify the form of energy to which the exemption relates.

(2) Form of energy cannot be varied

An individual exemption cannot be varied to change or add to the form of energy to which the exemption relates.

Note:

Subrule (2) does not prevent an application for or the grant of another exemption.

160 Notice of decision to grant application

If the AER decides to grant an application for an individual exemption or variation of an individual exemption, the AER must, as soon as practicable, give the applicant a notice:

- (a) stating the decision; and
- (b) specifying the conditions (if any) that the AER has decided to impose on the exemption or variation; and
- (c) stating any other matter relevant to the grant of the exemption or variation.

161 Deemed refusal

(1) **Application of this rule**

This rule applies if the AER specifies conditions in a notice under rule 160.

(2) **Deemed refusal if applicant does not accept conditions**

The AER is taken to have decided to refuse an application for an individual exemption or variation of an individual exemption if, within:

- (a) the period of 20 business days after the day the notice is given by the AER;
or
- (b) that period as extended by the AER,

the applicant has not given the AER a notice of acceptance of the conditions specified by the AER or those conditions with changes to which the AER has agreed.

162 Issue and public notice of individual exemption

(1) **Application of this rule**

This rule applies if:

- (a) the AER decides to grant an application for an individual exemption or variation of an individual exemption without conditions; or
- (b) the AER decides to grant the application with conditions and the applicant gives the AER a notice of acceptance of the conditions within:
 - (i) the period of 20 business days after the notice of the AER's decision is given by the AER; or

- (ii) that period as extended by the AER.

(2) **Issue and publication of individual exemption or variation**

The AER must, as soon as practicable:

- (a) issue to the applicant:
 - (i) an instrument of exemption; or
 - (ii) in the case of a variation—an instrument of variation or an instrument containing the exemption as varied; and
- (b) publish the terms of the exemption or variation on the AER’s website.

163 Notice of refusal

If the AER decides or is taken to have decided to refuse an application for an individual exemption or variation of an individual exemption, the AER must, as soon as practicable, give the applicant a notice stating the decision and the reasons for the decision.

Division 5 Public Register of Authorised Retailers and Exempt Sellers

164 Public Register of Authorised Retailers and Exempt Sellers

- (1) For the purposes of section 119 of *the Law*, the Public Register of Authorised Retailers and Exempt Sellers must include the following particulars:
 - (a) the names and business addresses of persons who hold retailer authorisations;
 - (b) the names and business addresses of exempt sellers who are subject to an individual exemption;
 - (c) a list of the classes of persons in respect of whom deemed exemptions are in force;
 - (d) a list of the classes of persons in respect of whom an exemption is registrable;
 - (e) the names and business addresses of exempt sellers who have registered with the AER as belonging to a class of persons subject to a registrable exemption.
- (2) The Public Register of Authorised Retailers and Exempt Sellers may include other particulars and information relating to authorised retailers, exempt sellers and associated matters that the AER considers relevant.