

General Exemption Order Review
National Energy Market Development
Department of Environment, Land, Water and Planning
GPO BOX 4509
Melbourne VIC 3001

Lodged (by online/email): geo@ecodev.vic.gov.au

29th August 2016

General Exemption Order Draft Position Paper

The Australian Energy Council (the Energy Council) welcomes the opportunity to make a submission to the Department of Environment, Land, Water and Planning (the Department) General Exemption Order (GEO) Draft Position Paper

The Energy Council is the industry body representing 22 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

The Energy Council supports the Department's efforts to identify a number of key issues with the current GEO to enable greater efficiencies in evaluating licence and exemption applications, transparency and oversight of exempt entities and the consistent application of conditions attached to the sale and supply of energy to small consumers. The Energy Council submits that the Department should:

- model the Victorian licensing and exemption regimes on the Australian Energy Regulator (AER) framework;
- *not* amend the Pricing Rule to formulate a new price cap and remove it; and
- provide a clear definition of a community project.

Consumer protections

The Energy Council supports a nationally consistent approach to the exemptions framework. The AER licensing and exemption framework is currently considered to provide best practice across industry. Should Victoria not seek to adopt the National Energy Customer Framework (NECF) and devolve licensing to the AER, the Energy Council recommends the Victorian licensing and exemption regimes be modelled, are consistent with the AER framework. Specifically, the AER Exemption Guideline sets out in Appendix A core consumer protection measures that apply to registrable and deemed exempt sellers. The GEO should adopt the same core consumer protection measures. Any change to these core measures should be based on unique differences that exist in the Victorian energy market that would require a variation to the AER core measures.

The Energy Council believes that Victorian energy customers should have access to the same consumer protections as other jurisdictions. Specifically customers of exempt sellers should be able to access clear, definitive information about what consumer protections apply. Adopting nationally-consistent arrangements will encourage and provide confidence to licensed retailers to enter and operate in embedded networks in Victoria. However consumer protections should remain consistent between the embedded networks and retailers. We note the recommendations of the draft position paper which states that the Essential Services Commission (Commission) will be tasked with specifying which provisions of the Energy Retail Code (and other codes and guidelines as necessary) will apply to all exempt sellers (as core protections) and particular classes of exempt sellers (as additional protections). We would expect that in making such a determination the Commission would run the normal participant consultation process in determining the appropriate provision to apply to exempt sellers.

Consumer Information / Customer Choice

Competitive markets deliver better outcomes for consumers, not only in terms of cost but also in terms of innovation in products and services. Market developments that better facilitate the freedom of choice of retailer to all customers, including those in embedded networks, should be further developed. Whilst the intrinsic nature of embedded networks can (in some instances) create barriers to customers actively participating in the competitive market these issues can be addressed in the longer term through progressive changes in setting minimum design/configuration standards for embedded networks and metering arrangements that facilitate customer choice. In the short term, barriers from lack of awareness of retailer choice may be addressed through the mandatory pre-contractual disclosure of relevant information to potential customers by exempt sellers. This information would include the right to exit and/or the right to purchase electricity from a licenced retailer of the customers choosing.

Pricing

The Energy Council does not support the proposal by the Department to amend the Pricing Rule to formulate a new price cap benchmark for exempt sellers based on commercial market data and believe it should be removed. Price caps, particularly when set at uneconomic rates, can act as a barrier to new entrants and frustrate the consumer choice that retail competition provides. The Energy Council is concerned that under the proposal, whatever benchmark cap is set would influence the market and may even have a perverse outcome which limits competitive market offers. The price cap could also stagnate and would quickly become not reflective of the market at any future point in time. The Energy Council therefore supports the removal of a price cap.

There is no need for a price cap in a well-designed exemptions framework that facilitates consumer choice and access to competitive offers. The basic premise of any best practice exemptions framework is that it should not impede a customer's ability to make choices as to how they receive their energy.

Ensuring consumers are able to exercise choice and have access to the best available offers (& price) is to ensure that network and metering configuration facilitate customer choice. This will place a competitive discipline on owners of embedded networks to compete to retain the customer. The Embedded Network (EN) Rule change that establishes an embedded network manager (ENM) from 1 December 2017 will be an important reform that will provide clarity to the responsibilities of parties to facilitate customers becoming on market customers.

Community energy projects

The Energy Council submits that the Department should clarify the definition of a community project. The Energy Council notes the authorizing framework for community energy projects will be developed under a registrable exemption and will be subject to a condition that requires the Commission to be reasonably satisfied that the principle purpose of the provision of services by the exempt entity is to benefit the community it is servicing. This raises the question as to the criteria the Commission will use in making its assessment. Where the Commission is charged with such a duty there needs to be clear and transparent guidelines as to the assessment process and criteria that is to be used by the Commission. Any such guideline should be developed through the normal regulatory consultation process. The Energy Council believes that community projects should not get relief from mandated (essential) consumer protection and safety mechanisms that licensed market participants are obliged to deliver.

Other

The Energy Council is concerned that extending Energy and Water Ombudsman of Victoria's (EWOV) jurisdiction, making it available to customers of embedded network operators and associated exempt sellers may result in existing members of EWOV cross subsidizing the entry of embedded network operators (ENO) to the EWOV scheme. Whilst supporting the premise that customers should have access to an independent dispute resolution body, if that body is to be EWOV, considerably more work needs to be done to determine the most cost effective and administratively effective membership structure for ENO's to join EWOV. Energy Council members would look to actively participate in this aspect of the proposed reforms.

Any questions about our submission should be addressed to Panos Priftakis, Policy Adviser by email to panos.priftakis@energycouncil.com.au or by telephone on (03) 9205 3115.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'S. McNamara', with a long horizontal stroke extending to the right.

Sarah McNamara
General Manager Corporate Affairs
Australian Energy Council