Submission to GEO framework review

September 2016

The Alternative Technology Association (ATA) welcomes the opportunity to respond to the Department of Environment, Land, Water, and Planning's Draft Position Paper on the General Exemption Order.

Founded 36 years ago, the ATA is a national, not-for-profit organisation whose 6,000 members are (mostly residential) energy consumers. About 2,500 of our members are Victorian.

Our extensive experience in energy policy and markets informs our advocacy and research which, amplified by our close collaboration with fellow members of the National Consumer Roundtable on Energy, makes the ATA an important voice for energy consumers Australia-wide.

ATA has a uniquely twofold perspective as a consumer advocate. With the continuing support of the Energy Consumers Australia (and formerly the Consumer Advocacy Panel) we represent all small energy consumers in advocacy that seeks to improve energy affordability and the structure and operation of the National Energy Market (NEM). Additionally, we speak with authority on behalf of the growing portion of the consumer base that has an interest in demand-side participation.

We thank the Department for preparing a comprehensive and thoughtful position paper, and for your endeavours to include a range of consumer advocates and actual customers of exempt entities in this important and timely discussion.

Overview

We are broadly supportive of the Department's position. Introducing clear exemption categories, with appropriate registration requirements and clear customer protection obligations, is a significant improvement to the current framework and a positive step for Victorian households and businesses who find themselves (in many cases, unexpectedly) outside of the mainstream competitive energy market.

However we have some further suggestions in some areas; and disagree with some of the Department's specific recommendations. These are outlined below for your consideration.

Classifying exemptions

We support the proposed exemption classes: in particular, the move toward registrable exemptions. However we have some suggested improvements to the proposed approach.

Duplication

The need for exempt networks to register separately with the Australian Energy Regulator (AER) and the Essential Services Commission (ESC) for the same activity is an unfortunate necessity of the commonwealth–state shared responsibility for network regulation in Victoria.

We understand that the Department is in discussions with the AER regarding how to minimise the administrative burden this places on exempt network operators, and we support a collaborative approach that can provide both the AER and the ESC with the information they requires on registrable activities, while avoiding double entry of data where possible.

The ATA recommends that a single portal system is developed where;

- **registrable exempt networks registering on the AER's system who indicate that they are operating in Victoria can enter the additional information required; and**
- **the data is shared with the ESC for use in their exempt network registration database.**

Size thresholds

Poor energy market outcomes happen to individual households, regardless of whether they are in a small or large residential community or apartment block. Given the growth of small residential multi-unit infill developments, we contend that categories VD2 and VND2 – persons selling metered energy to **fewer than ten** residential customers within the limits of a site that they own, occupy or operate – should rather be registrable exemptions, in the interests of greater regulatory oversight of the activities of exempt providers in the residential market. We note that the proposed self-service registration process as presented appears to place little burden on providers; but it presents a valuable opportunity to familiarise them with their obligations, and places them on the public record.

The ATA recommends that classes VD2 and VDN2 be subsumed into VR2 and VNR2 respectively. However if it is decided that fewer additional protections should apply to these very small retailers and networks, new registrable classes – or subclasses (e.g. VR2a and VNR2a) could be used instead for exempt retailers and networks serving fewer than ten residential customers.

We support the addition of specific exemption classes for solar power purchase agreements (SPPAs) and community energy projects (CEPs). We share our views on defining community energy projects in the relevant section below. As for how to classify CEPs that use SPPAs: CEPs are unique in the classification structure in that they are defined by the principles on which the activities are based, rather than the type of activity per se. Thus the CEP class (VMR2) should be paramount – with respect to the SPPA class (VMR1) as much as any other exemption class that would otherwise apply if the entity was not a CEP.

The ATA recommends that classification as a community energy project supersedes classification as a solar power purchase agreement (or other relevant class); and the additional consumer protections that apply to CEPs should include relevant protections from the superseded class(es) as applicable to the nature of CEPs.

Consumer protections

We support the proposed approach to define a core set of consumer protections that apply to all exempt sellers and additional protections that apply to particular classes. We also support the proposal for protections to be specified by referring to the relevant parts of the Victorian Energy Retail Code (ERC). This enables specific protections to be tailored to better fit exempt

sellers where necessary (through subclauses in the relevant section of the ERC) and ensures that any code revisions will be reflected in the obligations of exempt sellers.

Classes of protections

We look forward to participating in the ESC's consultation on which provisions of the ERC should apply to exempt sellers as core and additional protections. We offer the following as a non-exhaustive list of suggestions for types of protections that should be included.

Safety, reliability, and quality of supply

Core protections for all the network exemption categories should include those relating to:

- safety and minimum performance of wiring and equipment
- supply service standards including voltage variation and downtime
- notification of planned supply interruptions
- relevant protections for customers with life support systems (with regard to maintaining up-to-date records, notice of planned interruptions, and information and support given to customers regarding unplanned interruptions)

Metering

Core protections for networks and retailers with metered customers should include those relating to:

- standards for meter accuracy
- frequency of readings
- rules for use of estimated or substituted data
- consumer access to meter data
- provision of meters (for new builds and replacements) that enable retailer choice.

Dispute resolution

Customer access to appropriate dispute resolution processes should be a core protection.

- All exempt entities should have an internal dispute resolution framework that includes documentation and reporting of complaints and disputes
- All consumers should have access to external dispute resolution (discussed below in the *Dispute resolution* section)

Concessions and the hardship framework

Hardship frameworks and concessions programs are premised on the principle that low income households should be assisted with meeting the cost of their energy supply and given support and flexibility if they encounter payment difficulties, with disconnection of supply for non-payment a last resort. Access to concession for customers of exempt entities needs to be given by the Victorian Government, with obligations on exempt sellers to facilitate that access.

- All eligible consumers should have access to concessions for their energy costs, and the Utility Relief Grants Scheme for reducing accumulated debt. (Ideally, the Annual Electricity Concession would be delivered as a proportional discount on bills, with exempt retailers reimbursed by DHHS as per the usual practice. Where this process is

impracticable or too onerous for small exempt sellers, customers should have access to the Non-Mains Energy Concession.)

- Exempt entities' requirement to deliver elements of the hardship framework to customers should be contingent on the existence of recurrent charges (whether fixed or variable) and be reflective of the impact non-payment could have on customers' wellbeing, financial situation, and energy supply. Protections against – and remediation for – wrongful disconnections should be included.

The ATA supports the approach proposed to determining and specifying the customer protections applicable to the various exemption categories, and urges the Department and the ESC to consider the types of protections outlined above when developing the new framework.

Choice of retailer

The Victorian energy market and the regulatory framework it operates within are predicated on the existence of effective competition that minimises the need for retail regulation. Offering retailer choice wherever possible to customers in embedded networks is the best way to extend the benefits of competition to these households.

The ATA agrees that improving information provision to prospective residents of embedded networks, and obtaining explicit informed consent from new customers, are vital. We fully support any work undertaken to ensure as much as possible that:

- **retailer choice be extended to customers in embedded networks where the metering can support it**
- **new and redeveloped embedded networks are configured and metered in such a way as to enable retailer choice.**

Obligations on embedded network operators

We broadly support the proposals relating to embedded networks.

Small-scale licensing for onsellers

In particular, we believe that a shortcoming of the approach to off-market energy selling embodied by the exemptions framework is its focus on exempt *activities* rather than the *businesses* that conduct them. *We see considerable merit in exemptions (or, preferably, small-scale licensing) applying on a per-business rather than per-site basis for businesses that manage multiple embedded networks*. While an activity-based approach is most appropriate for situations where energy is sold by a business itself as a consequence of its primary business activity (such as caravan parks themselves selling energy to residents), a business-based approach seems far more appropriate for situations where energy is sold by specialist energy-selling or network-management businesses that operate across multiple sites. As discussed in the consultation and position papers, the original exemptions framework was designed for the market as it stood at the time the framework was developed, and this review is a response to rapid growth in exempt activities that has occurred as the market has changed. We contend that the approach of regulating on a site-oriented basis rather than network operator-oriented basis is out of step with the way the market has evolved.

The ATA supports the proposal to develop a small-scale licensing regime for embedded network managers and exempt sellers by entities whose primary business is the distribution and sale of electricity. In the meantime, these entities should operate under an appropriate exemption category that is applied on an entity-oriented, rather than site-oriented basis.

Network charging

We agree with the proposal to disallow network charging within embedded networks. Additionally, it has come to our attention that there is some lack of consistency in how network use-of-system (NUOS) charges for the wider distribution network (to which the embedded network is connected) are allocated to customers in embedded networks. It appears that some embedded networks charge NUOS separately and that some on-market customers within embedded networks are also paying NUOS to retailers.

The ATA recommends that licensing or exemption conditions for embedded networks should stipulate how NUOS charges should be allocated, to ensure that customers do not pay twice.

Caravan parks, adjacent properties, district scale schemes

We support the approach to caravan parks, retaining a deemed exemption for short-term residents but requiring a registrable exemption where selling to long-term or permanent residents. We also support the proposed approach to adjacent properties and district scale schemes.

Home generation

Customers of exempt sellers should be entitled to an appropriate feed-in tariff (FiT) if they have solar PV or other home generation equipment. This need not necessarily be the same FiT applicable to customers outside embedded networks, but should be similarly reflective of the energy and network value of the home generation to the embedded network.

The ATA recommends that licensing conditions for embedded networks include a requirement to pay an appropriate FiT for customers with home generation.

Pricing

The lack of retailer choice and thus competition for most customers in exempt networks puts them at risk of being price-gouged by exempt sellers. While facilitating retail choice is the best solution, a good pricing rule is a necessary backstop when choice cannot be delivered.

The standing offer has long since ceased to function as a benchmark price and, by virtue of functioning as 'the price to beat' in the competitive market, is now generally the residual highest price paid by people who do not periodically (or ever) engage with the market. A weighted average of market offers would probably better represent a typical price faced by retail customers in the mainstream market.

The ATA supports the proposal to have the ESC formulate a new price cap based on market data. This will need to be able to be recalculated periodically (perhaps six-monthly or yearly) to ensure that it follows market price trends – so as to give customers the benefit of any sustained price reductions, and allow exempt sellers to remain viable if there are sustained price increases.

We recognise that some customers may wish to pay more for specific energy products or services such as renewable electricity or a specified community benefit. In our view this does not require a variation to the pricing formula, but provision for a price premium for stipulated additional product qualities or services to be applied to the base price.

The ATA recommends that as part of formulating the new price cap, the ESC also develops a framework for allowable price premiums that:

- **defines the types of additional product qualities or services for which price premiums can be used and the circumstances in which they apply**
- **stipulates minimum requirements for informing customers about them and obtaining customer consent**
- **ensures customers' right to forgo the premium product or service and face only the base price.**

Enforcement

We recognise that in the absence of information about the shape and size of the exempt selling industry (and the size of exempt sellers themselves), it is difficult to establish an appropriately-scaled enforcement regime. Nevertheless the existing regime – comprising an absolute penalty and little else – is clearly unworkable. An appropriate penalty regime will be critical under the new GEO. The Department's proposal to not amend the enforcement regime for now and consider amending it at some time in the future is an overly cautious approach.

The ATA is comfortable with the enforcement regime for exempt entities not being amended immediately; but recommends that:

- **the power to take administrative enforcement action is used more proactively when breaches of exemption conditions are known to have occurred**
- **development commences on a framework for an appropriate enforcement regime**
- **a target date for when sufficient information about exempt entities is expected to be available is identified, for commencement of a process to amend the enforcement regime for exempt entities based on the framework already developed, with penalties appropriately scaled**
- **where entities are engaged in multiple exempt selling activities, the enforcement regime should deal with them on a per-entity rather than per-activity basis.**

Dispute resolution

The external dispute resolution framework is a fundamental part of the Victorian energy market and a significant consumer benefit. The Energy and Water Ombudsman Victoria (EWOV) is free of cost for consumers, easily to access by phone and online, and empowered to make decisions based on not only strict adherence to the market rules, but also what's fair and reasonable. All of this makes it much more suited to meeting the needs of energy customers – especially low-income and vulnerable ones – than VCAT. In particular, we note that VCAT rulings apply only to the individual customer who brought the action to the tribunal, with no pathway for identifying and rectifying systemic issues or unreported harm – whereas the ombudsman is empowered to identify and make recommendations for action on systemic issues.

The ATA supports the proposal to extend EWOV's jurisdiction to make it available to customers of exempt sellers in embedded networks, and require these exempt entities to be members of EWOV via a new membership category.

We question the reluctance to extend these requirements to customers of solar power purchase agreement (SPPA) providers and community energy projects. SPPA providers are likely to be of similar size and scale as many exempt sellers – presenting similar challenges and requiring a similarly tailored membership category. The same will be true for community energy projects (CEPs) – and just because CEPs will likely be not-for-profit and function with a community benefit orientation, does not mean that there will not be disputes.

Accordingly, **the ATA also recommends that the same extension of EWOV's jurisdiction and membership requirement on exempt sellers be extended to SPPA and CEP providers.**

Alternative energy selling

We welcome the greater attention being given to solar power purchase agreements (SPPAs). This is a growing industry in Victoria and in particular is opening up the benefits of home generation to lower income households. In fact, some energy retailers are offering SPPAs to customers experiencing ongoing hardship in order to reduce their energy bills. Additionally, as noted in the position paper, it is expected that in the near future a growing number of households will source the majority of their essential energy supply via an SPPA.

These two factors – the growing use of SPPAs by vulnerable households, and the potential for SPPAs to provide a household's primary source of energy – represent a strong rationale for appropriate and effective consumer protections. This is why we strongly recommend that EWOV membership for SPPA providers should be required, not voluntary, once the implementation issues (as referred to above) have been addressed.

There is another issue with SPPAs that needs to be addressed with appropriate regulation. If a solar PV system has more generation capacity than the household can use, excess energy is sold into the grid for a feed-in tariff (FiT). However SPPA customers are still required to purchase the energy generated for the agreed price – which is lower than typical retail prices, but probably still significantly higher than typical FiTs. A household could find itself significantly out of pocket thanks to purchasing many kWh at, say, 15¢ each and selling them for 5¢ or 6¢. Ideally, an SPPA provider would discount the cost of unused kWh to the level of the FiT; however this is not required. When SPPAs are being used as a tool to help households in hardship, this is a particularly perverse outcome.

This issue is best addressed by requiring that SPPA providers:

1. assess households' energy needs and usage patterns prior to installation in order to appropriately scale the system
2. give detailed information to new customers explaining how household energy use varies over the day and evening, and that generation not used immediately is sold to the grid at the FiT rate
3. discount the cost of unused kWh to the level of the FiT so that, in effect, the provider (as the owner of the system) earns the FiT, and the household (as the purchaser of energy generated by the provider's system) pays for their usage.

If these requirements are considered too onerous, requirement #3 is sufficient to protect customers from adverse outcomes while creating a financial incentive for many providers to deliver #1 and #2.

The ATA recommends that SPPA providers be:

- **required to have a documented internal dispute resolution process in line with that required for other exempt entities**
- **required to be members of EWOV via a new membership category**
- **prohibited from charging more than the applicable FiT for energy generated but not consumed.**

Community energy projects

We agree with the Department that community energy projects should be encouraged and that the regulatory environment for these projects should be reflective of their small scale and community-benefit ethos. We agree that a small-scale license is unnecessary, providing the definition of CEP is appropriate. (However a small-scale license may well be appropriate for social enterprises that operate community energy projects across multiple sites if these fall under the CEP definition.)

Nevertheless, households in CEPs still require a basic suite of consumer protections. In particular, just because CEPs are community benefit organisations does not mean that there will be no disputes between member or participant households and the CEP managers over service provision, billing, or other matters.

The ATA recommends that community energy projects be:

- **required to have a documented internal dispute resolution process in line with that required for other exempt entities**
- **required to be members of EWOV via a new membership category.**

The ATA also recommends that in developing a definition for community energy providers, the following should be considered:

- **whether community benefit as an objective of the project**
- **whether project governance is inclusive of and accountable to community members**
- **whether the entity is not for profit.**

Conclusion

Thank you for the opportunity to respond to the position paper on the review of the General Exemption Order, and for giving us a time extension to lodge our submission. We also appreciate the Department's initiative in holding public forums on the position paper – our attendance at these forums helped inform our submission.

If you wish to discuss anything raised in this submission further, please contact Dean Lombard. Senior Energy Analyst, at dean@ata.org.au or on (03) 9631 5418.