

Review of the General Exemption Order Issues Paper

Department of Economic Development,
Jobs, Transport and Resources

Review of the General Exemption Order

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Review of the General Exemption Order

1. Background

The Victorian government is reviewing the deemed licence exemptions framework in Victoria and is seeking feedback from stakeholders on potential amendments to the General Exemption Order.

1.1. Licensing framework

Section 16 of the *Electricity Industry Act 2000* provides that a person must not engage in the generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity unless that person holds a licence issued by the Essential Services Commission Victoria (ESC) or is exempted from the requirement to hold a licence.

1.2. Exemptions framework

Section 17 of the *Electricity Industry Act 2000* states that the Governor in Council may exempt a person from the requirement to obtain a licence through an Order in Council. An Order in Council that provides an entity with an exemption will typically list the entity, the customer, and the activities that are exempt including the site that is covered by the exemption. A typical exemption is one where a large business is supplying to another large business, usually due to convenience (for example, over-the-fence arrangements between related parties).

The Department of Economic Development, Jobs, Transport and Resources (the Department) receives exemption applications and can recommend to the Minister for Energy and Resources that an exemption should be granted.

Exemptions are assessed on a case by case basis. If an exemption has been previously provided for certain activities, it is no guarantee that another similar application will receive the same assessment.

The above relates to specific exemptions. In addition to this, the General Exemption Order creates a category of deemed exemptions, which can apply to residential or small business customers.

1.3. General Exemption Order

The General Exemption Order (GEO) is an Order in Council made under section 17 of the *Electricity Industry Act 2000* and published in the Government Gazette on 1 May 2002. Minor amendments were made to the GEO in 2008 and 2010. A consolidated version of the GEO is attached (see Appendix A¹).

¹ This consolidated version of the GEO has been prepared for the purposes of this consultation paper and should not be relied upon by entities in assessing whether they fall within the GEO conditions.

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The schedule to the GEO provides categories of deemed exemptions, which do not require an application to the Department. Entities must satisfy themselves that they fall within the activities covered by the GEO, before undertaking the generation of electricity for supply or sale or the transmission, distribution, supply or sale of electricity without a licence. These activities are outlined below.

Generation

The generation of electricity for supply or sale where the total output by that person (whether or not with another person), using a generator or generators connected to the transmission network or distribution network at a common point, is less than 30MW.

Distribution and supply of electricity in embedded networks:

The intermediary distribution or supply of electricity to a short term resident, long-term resident, small business customer or large business customer within the limits of a premises owned or occupied by the person engaging in that activity.

Sale of metered electricity in embedded networks:

The metered intermediary sale of electricity within the limits of the premises owned or occupied by the person engaging in that activity.

The above classes of deemed exemption are also subject to conditions that may impact on an entity's eligibility. If an entity does not comply with their conditions of exemption they are effectively operating without a licence, and may be subject to a penalty issued by the ESC.

1.4. Gas

The *Gas Industry Act 2001* contains a similar exemption framework to the *Electricity Industry Act 2000*. Entities seeking an exemption from the requirement to hold a licence in relation to gas activities can contact the Department seeking an exemption by Order made by the Governor in Council. Further information is available on the Department's website available [here](#).

Unlike the electricity framework, there is no equivalent to the GEO for gas activities. This means that all gas distribution, generation and sale must be undertaken either under a licence issued by the ESC or a specific exemption.

The Department will not consider the creation of a gas GEO as part of this review.

1.5. Need for review

The GEO has been in effect since 2002 with no substantial changes to the categories of deemed exemptions.

The energy market has undergone changes since the GEO was originally developed. The number of embedded networks has increased, with many embedded networks using a

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professional embedded network operator to undertake the exempt activities on behalf of the exempt entity. There have been concerns raised regarding a customer's choice of retailer and the availability of consumer protections to customers within these embedded networks and the limited regulatory oversight of these businesses.

Furthermore, new business models have also developed, such as the growth of "alternative energy sellers", entities that provide supplementary supply to a customer's premises on the customer's side of the meter. The Victorian licensing framework and the GEO were not developed with these new models in mind.

These developments have created a need to review and possibly update the GEO to ensure that it continues to operate in the interests of consumers.

1.6. ESC licensing review

The ESC is concurrently conducting a review of its licensing framework, in order to modernise its framework and make it proportionate to new business models.

The Department is aware that these reviews complement each other with examining the efficiency and effectiveness of the energy exemption and licensing framework in Victoria. Two separate but inter-related issues papers have been released calling for submissions. Both the reviews deal with encouraging access to new technology and innovation, while maintaining consumer protection.

The Department will work closely with the ESC to ensure that the review of the GEO aligns with the outcomes of the ESC's review.

1.7. Review Approach

The Department is seeking feedback from stakeholders on the future operation of the GEO.

The objective of this review is to consider the efficiency and effectiveness of the Victorian exemptions framework in light of industry, technology and regulatory developments.

The Department has identified a number of key issues with the current GEO. These issues have been identified by the Department in discussions with consumers and the ESC. In addition, in 2012 the Consumer Utilities Advocacy Centre (CUAC) released a report into consumer issues for customers in embedded networks, which the Department has also considered in the development of this paper.

The key issues relating to exempt activity explored in this paper are:

- classes of exemptions;
- consumer protections;
- enforcement;
- choice of retailer;
- dispute resolution; and
- issues specific to Alternative Energy Sellers.

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This paper seeks input from stakeholders on the issues with the current exemptions framework and comments and suggestions on options to address these issues.

Submissions will be used to inform the drafting of a revised GEO, which will be provided to stakeholders for comment in 2015.

2. Submissions

The Department welcomes submissions to this paper via email to geo@ecodev.vic.gov.au

Submissions can also be sent via email to:

Joy D'Souza
Senior Policy Officer
Energy Sector Policy and Programs
joy.d'souza@ecodev.vic.gov.au

Submissions may be published on the Department's website unless marked confidential.

3. Key Issues - Retail

3.1. Consumer Protections

The GEO allows the sale of metered electricity within an embedded network without the embedded network seller holding a retail licence. It is a condition of the exemption that an entity complies with "applicable provisions of the Retail Code".

The Energy Retail Code is an ESC-administered Code that provides for the minimum terms and conditions of sale between a retailer and a customer. It contains important consumer protections relating to the content of energy bills, disconnection and reconnection and payment arrangements.

The GEO and the Energy Retail Code do not specify what consumer protections are "applicable" to customers of embedded networks sellers. The Department has been contacted by consumers who are confused about their rights when trying to resolve disputes with their embedded network seller.

Specification of consumer protections for advanced meters

While customers in embedded networks do not have smart meters, they may have meters with similar capabilities and functions, such as remote readings and remote de-energisation and re-energisation. The Energy Retail Code contains additional protections for customers of smart meters.

The GEO may need to contain conditions for exempt network sellers that include protections in the Energy Retail Code for smart meter consumers, including protections regarding remote

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re-energisation and de-energisation, and the requirement to include start and end readings on bills.

Questions for stakeholders:

1. How would consumers benefit from amendments to the GEO to specify what consumer protections should apply to consumers in embedded networks?
2. Is it appropriate for the GEO to specify consumer protections? What should these consumer protections be?

3.2. Classifying retail exemptions

Classes of retail exemptions

The GEO contains one class of retail activities that are subject to a deemed exemption.

The Department has received enquiries from entities seeking advice on whether their proposed activities are within the scope of the GEO. The Department advises these entities to obtain legal advice.

There are advantages to having specific classes for retail activities rather than one class. While it may increase the complexity of the framework, it can create greater oversight of activities. Having specific classes will increase clarity regarding what activities are exempted, leaving less opportunity for an entity to question whether they fall into a category of exemption or not. It will also assist the regulator in pursuing enforcement action if it is clear that an entity is acting outside of the GEO and therefore selling electricity without a licence.

It is noted that the Australian Energy Regulator has an exempt selling framework. It contains eight deemed classes and seven registrable classes. Many of the registrable classes are transitional and close on 1 January 2015, after which it is expected that entities seeking an exemption for similar activities will be required to apply for an individual exemption.

Registration requirements

Registration requirements are absent from the GEO, which means that there is very little information on the activities of embedded networks in Victoria. The Department considers that it is important for both the government and the ESC to have a greater understanding of the activities of embedded network seller.

If the GEO introduces a registration requirement, an appropriate body will be required to set up a public registration system. There may need to be transitional arrangements put in place to enable entities to register within a certain timeframe.

Questions for stakeholders:

3. Should the GEO be amended to specify different categories of deemed retail activities?
4. If yes, what categories should apply?
5. Should the Department introduce a registration system for exemptions?

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6. If yes, what registration categories should apply?
7. What transitional arrangements (if any) should apply if the GEO creates a registration system?

3.3. Choice of retailer

Customers in embedded networks are able to access full retail contestability if they choose to remove themselves from the embedded network. It is a condition of the retail exemption of the GEO that an exempt person must inform their small or large business customers in writing that they may purchase electricity from a licensed retailer of their choice.

The Department understands that in practice, customers within embedded networks find it difficult to exercise choice. First, they must find a licensed retailer who is willing to make an offer to them. This may be difficult, as there are often challenges in setting up an account for a customer within an embedded network, due to required changes to metering, associated wiring, and difficulties in accessing the building for meter readings.

If a customer does find a retailer that is willing to supply their electricity, they have to arrange for the removal of their embedded network meter and the installation of a meter from the distribution network service provider. This meter will be assigned a National Meter Identifier (NMI) and be visible in the settlement process as opposed to the meter used to supply the embedded network. The costs of replacing a meter can be high enough to discourage customer choice within embedded networks, particularly for those customers who are experiencing financial hardship or are a tenant.

These problems are particularly evident in apartment buildings with multiple tenants who do not have their own metering points therefore are unable to switch suppliers.

The Department is interested in exploring mechanisms that would facilitate or enable greater choice for these customers and would welcome comment from stakeholders on this issue.

National reform underway

In 2013, the Australian Energy Market Commission (AEMC) released a final report regarding energy market arrangements for electric and natural gas vehicles (available [here](#)). This report recommended that arrangements for metering within embedded networks be included in the National Electricity Rules (NER) (page. 38). In particular, embedded networks should be brought into the metering and settlements framework in Chapter 7 and rule 3.15, allowing these connection points to be settled in the NEM.

The COAG Energy Council (previously the Standing Council on Energy and Resources) has asked the Australian Energy Market Operator (AEMO) to prepare a rule change proposal to meet this rule change proposal. The AEMC received the rule change request from AEMO on 2 October 2014. The AEMC rule change process for the request remains pending at the time of publication of this paper.

Despite progress at a national level to increase competition within embedded networks, the Department is interested in feedback from stakeholders on ways in which amendments to the GEO may also improve competition.

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Better information for new developments

The Department understands that the number of embedded networks is increasing, particularly for new apartment developments. The Department is also aware of customers who have purchased properties off the plan, but were not advised that their building would be configured as an embedded network until settlement.

Consumers buying off the plan should be advised that their site will be configured as an embedded network and that they will be sold electricity from an exempt seller so that they can take action to ensure that they can take supply from a licensed retailer before they move into the property.

The GEO could prescribe information requirements that apply when a consumer buys off the plan, including what an embedded network is, and how the customer can exercise choice of retailer if they are unhappy with the proposed arrangements.

Questions for stakeholders:

8. Should exempt persons be required to provide written notice to all their customers stating that customers may purchase electricity from a licensed retailer of their choice?
9. Do stakeholders agree that the process of switching from an exempt seller to a licensed retailer is difficult for customers and should be improved?
10. What steps should be taken to facilitate choice of retailer for customers within embedded networks?
11. How can the process be improved so that it is efficient and cost effective for customers to transfer to a licensed retailer?
12. Do stakeholders agree that consumers buying property off the plan should be provided with information as soon as practicable if their property will be configured as an embedded network? If yes, what information should be provided?

4. Key issues - Networks

4.1. Obligations on exempt network operators

The ESC is responsible for distribution licenses and the Victorian Government will continue to be responsible for network licensing exemptions.

The GEO exempts bodies that are distributing electricity within an embedded network, subject to conditions, including that the exempt person must observe all applicable provisions of the Distribution Code as if that person was a licensed electricity distributor. Clause 1.3.5 of the ESC's Electricity Distribution Code (available [here](#)) sets out which obligations within the Code apply to exempt networks.

In addition to the GEO, exempt networks must comply with the AER's electricity network service provider registration exemption guideline (available [here](#)). The network guideline also

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outlines conditions in regards to matters such as metering, technical requirements and pricing.

The Department is not aware of any key issues in regards to the deemed distribution exemption category in the GEO, but is interested in collecting feedback from stakeholders.

For example, the current requirements on embedded networks in the Electricity Distribution Code have not been updated for some time. The Department is interested in feedback regarding whether the conditions on embedded network operators requires updating.

Questions for stakeholders:

13. Do stakeholders note any issues in regards to the deemed category of exempt networks in the GEO?
14. Do stakeholders agree that the obligations on embedded network operators in the Electricity Distribution Code should be updated?
15. If so, what clauses should apply to embedded network operators?

5. Key issues - Retail and Networks

5.1. Pricing

Customers in embedded networks are subject to a form of price regulation by the GEO, which states that exempt entities can charge a customer no more than the standing offer available by the local area retailer (otherwise known as the Pricing Rule). Price regulation is required due to limited competition in embedded networks.

Since the GEO was created, retail standing offer prices have been deregulated, and the variation between standing offers offered by the local area retailer and generally available market offers have increased. The ESC has estimated that a customer can save 12 per cent by switching from a standing offer to a market offer.

The Department is concerned that the local standing offer may no longer provide an appropriate benchmark for the Pricing Rule. As competition in embedded networks may not be as effective as for customers of licensed bodies, it is important that consumers within embedded networks are protected by some form of price cap. Further, that the obligation to offer supply remains.

Questions for stakeholders:

16. Should the Pricing Rule in the GEO be amended?
17. If it is amended, what form of price regulation should apply?

5.2. Enforcement

The enforcement regime under the Victorian exemptions framework does not provide the ESC with power to impose a range of non-administrative penalties.

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If an exempt entity does not comply with the conditions of their exemption, their exemption no longer applies and they may be undertaking activities without a licence. Under the *Electricity Industry Act 2000* the penalty for operating without a licence is 1000 penalty units and 100 penalty units for each day after the day on which a notice of contravention is served by the ESC.

This means that the ESC can take administrative enforcement action, such as entering into agreements with the entity to rectify the breach, or issue a notice of contravention. These enforcement options are limited compared to the enforcement regime that applies to licensed entities, which enables the ESC to:

- Serve a civil penalty notice for the contravention of an obligation (this is similar to what the ESC can already do in regards to exemptions).
- Serve a provisional order for contravention of an obligation. A final order may be served following 28 days' notice of the intention to serve the order and following an opportunity to make a submission or other objection to the order.
- Apply to the Supreme Court for an injunction or declaration in respect of a provisional order or final order.

The Department wants to ensure that the ESC is empowered to take appropriate enforcement action where required against exempt entities so that it can take action in response to breaches in the interests of consumers.

Questions for stakeholders:

18. Are the current enforcement powers of the ESC adequate to enable it to take appropriate compliance action against an exempt entity?
19. If not, what powers does the ESC require in order to take action against an exempt entity?

5.3. Dispute resolution – Network and retail

The jurisdiction of the Energy and Water Ombudsman (Victoria) (EWOV) only extends to customers of licensed retail, distribution and transmission bodies. This is because membership of an external alternative dispute resolution scheme is a licence condition under the *Electricity Industry Act 2000* and the *Gas Industry Act 2001* and therefore does not apply to customers of exempt bodies.

Instead, consumers within embedded networks can utilise the Victorian Civil and Administrative Tribunal (VCAT) to resolve disputes that cannot be resolved directly with the embedded network operator. Customers who contact EWOV are often referred to Consumer Affairs Victoria for advice.

The Department believes that EWOV has many advantages over VCAT in the resolution of energy disputes. EWOV is accessible, free for consumers, less litigious in its approach to resolving complaints and has expert knowledge of the energy regulatory framework, including fair and reasonable outcomes for energy disputes.

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In order to extend the scheme's jurisdiction, EWOV must undertake a feasibility study to determine the impact of extending the scheme on its operations. It is difficult to do this as the number and nature of embedded networks in Victoria is unknown. This issue may be addressed as part of the implementation of a registration system for exempt bodies in Victoria (see section 3.2 of this paper, above)

20. What dispute resolution processes should apply to consumers in embedded networks?

6. Alternative Energy Sellers

The energy market has seen the entry of companies or environment groups seeking to provide customers with services that supplement their typical supply of energy from the grid.

The most common example is companies seeking to install solar panels on customer's rooves at little to no cost to the customer. The solar panels are owned and maintained by the company not the consumer, and the customer pays for the energy generated by the panels, which are metered. This gives customers who may not otherwise be in a position to invest in solar panels, the opportunity to access the benefits of renewable energy, for example businesses, renters or low-income households.

This business model, referred to as solar power purchase agreements (SPPAs), gives customers access to solar panels through a leasing arrangement with the solar PV provider.

Other models of innovative purchasing and leasing arrangement for solar PV include consideration of rates-based schemes employed by local Government, other financing and contracting models (such as South Australia's three-way contracting model to support public housing tenants) and ideas such as 'roof register' matching potential solar investors with parties with available roof space to accommodate PV systems.

These new innovative energy models are referred to as "Alternative Energy Sellers" although the activities of these businesses may not be limited to retailing. In many cases the company is also undertaking generation and distribution activities.

The Department also notes that there appears to be a number of proposed "precinct-scale" projects, particularly in the Melbourne CBD.

Precinct-scale projects are generally considered to have the following features:

- inclusion of multiple buildings;
- inclusion of multiple titles; and
- one or more property owners.

The primary purpose of precinct-scale distributed generation developments is to sell electricity (and/or heating and cooling) to surrounding buildings/customers using a local grid. Precinct-scale projects can involve a number of parties often including, but not limited to, the proponents of large-scale urban renewal land developments, local government, businesses, community groups, utilities (electricity, gas and water), building designers, architects and alternative technology proponents.

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Victorian framework

The GEO currently does not contain a deemed category that covers the activities proposed by alternative energy sellers.

The Victorian framework allows the Department to assess and recommend to the Minister for Energy and Resources that an individual exemption is made for a particular activity. However, these in the past have been for site-specific, customer-specific activities between large businesses, and often are commercially related. Individual exemptions for business models that involve selling to small business and residential customers have not been granted.

There is a demand for the business activities being proposed by alternative energy sellers, who operate under a diverse range of business models. The authorising framework for these activities is currently unclear, and there is evidence that this lack of clarity is deterring investment, as well as giving rise to the consumer protection issues already explained in this paper.

Instead of an exemption, an alternative energy seller may wish to apply for an ESC licence. The Department notes that a small number of alternative energy sellers have approached the ESC in regards to a licence. The ESC has the flexibility to issue small scale licenses, and this type of licence may be an option for alternative energy sellers where a full licence is not appropriate.

Despite the ESC's ability to issue small scale licenses, there are obligations in the *Electricity Industry Act 2000* that must be in all ESC retail and distribution licences.

These obligations include:

- membership of EWOV;
- availability of a standing offer (including publication requirements);
- publication of market offers;
- the wrongful disconnection payment; and
- feed-in-tariffs.

Alternatively, these alternative energy sellers could receive exemptions from the Victorian Government through application to the Department. This would be at odds with past practice, and it would be up to the discretion of the Executive Council as to whether each exemption application should be granted. This process does not create certainty for businesses.

Questions for stakeholders:

21. What is the appropriate mechanism for authorising alternative energy seller models in Victoria, exemption or licence?
22. What are the regulatory barriers to the establishment of Alternative Energy Sellers?
23. At what scale, and for which electricity supply activity, is an exemption appropriate?
24. If the Department were to grant an exemption to an alternative energy seller, what conditions should apply ?

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Appendix A – Consolidated version of the GEO

This consolidated version of the GEO has been prepared for the purposes of this consultation paper and should not be relied upon by entities in assessing whether they fall within the GEO conditions.

ELECTRICITY INDUSTRY ACT 2000

EXEMPTION ORDER UNDER SECTION 17

ORDER IN COUNCIL

The Governor in Council acting under section 17 of the **Electricity Industry Act 2000** (the "Act") hereby makes the following Order:

1. Date of effect

This Order comes into effect on 1 May 2002.

2. Exemptions

A person identified in Column 1 of the Schedule, or falling within a class of persons identified in Column 1 of the Schedule, is exempt from the requirement to obtain a licence under section 16 of the Act in respect of each activity identified opposite that person's name, or the class of persons in which that person is included, in Column 2 of the Schedule, subject in each case to the terms, conditions and limitations (if any) specified in Column 2 of the Schedule.

3. Revocation of Existing Orders

The General Exemption Order is revoked on 1 May 2002. It is the intention of this Order not to affect the revocations made by the General Exemption Order.

4. Definitions

In this Order, including the Schedule, the following terms have the following meanings unless the contrary intention appears:

"approved meter" means any device that is of a type that the holder of a licence under the Act is permitted by law to use to measure consumption of electricity for the type of person to whom electricity is being transmitted, distributed, supplied or sold;

"Distribution Code" means the Electricity Distribution Code from time to time approved by the Essential Services Commission;

"Electricity Customer Metering Code" means the Electricity Customer Metering Code from time to time approved by the Essential Services Commission;

"electricity distribution area" means an area in which a licensed electricity distributor is licensed to distribute and supply electricity.

"ETSA Utilities" means ETSA Utilities Pty Ltd (ACN 082 711 895) and any person who in accordance with the laws of South Australia succeeds to the entitlements of ETSA Utilities;

"General Exemption Order" means the Order made under section 160 of the Electricity Industry Act 1993 and published in the Government Gazette on 27 June 1996 and varied by an Order made on 19 December 2000 and published in Government Gazette G51 on 21 December 2000;

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"generation" includes co-generation;

"Hume Power Station Agreement" means the agreement for the construction, operation and maintenance of the Hume power station and associated works between the State Electricity Commission of Victoria and the Electricity Commission of New South Wales dated 25 July 1957;

"intermediary distribution or supply", in relation to a supply of electricity to a customer, means the conveyance of electricity through facilities of a person other than a distribution company after the electricity leaves a supply facility owned or operated by a distribution company and before being supplied to the customer in premises of a kind which, as at the date of this Order, it is customary for electricity to be so supplied;

"kVa" means means 1,000 volt amps;

"large business customer" means a person to whom peak demand of not less than 500 kVa, or consumption of not less than 160MWh per annum, is distributed, supplied or sold for commercial or industrial purposes;

"licensed electricity distributor" means the holder of a licence to distribute or supply electricity under the Act;

"licensed retailer" means the holder of a licence to sell electricity under the Act otherwise than through the wholesale electricity market;

'local retailer' means:

(a) AGL Sales Pty Limited (ABN 88 090 538 337) where the licensed electricity distributor in relation to the electricity distribution area is Jemena Electricity Networks (Vic.) Ltd (ABN 82 064 651 083);

(b) Origin Energy Electricity Limited (ACN 071 052 287) where the licensed electricity distributor in relation to the electricity distribution area is Citipower Pty (ACN 064 651 056);

(c) TRUenergy Pty Ltd (ABN 99 086 014 968) where the licensed electricity distributor in relation to the in relation to the electricity distribution area is SPI Electricity Pty Ltd (ABN 91 064 651 118);

(d) Origin Energy Electricity Limited (ACN 071 052 287) where the licensed electricity distributor in relation to the electricity distribution area is Powercor Australia Limited (ACN 064 651 109); and

(e) AGL Sales Pty Limited (ABN 88 090 538 337) where the licensed electricity distributor in relation to the electricity distribution area is United Energy Distribution Pty Ltd (ACN 064 651 029).

"long term resident " has the same meaning as **"resident"** in the Residential Tenancies Act 1997 and the Retirement Villages Act 1986, but does not include a person who was a resident of a retirement village but who has left the retirement village or who has died, or their legal personal representative;

"metered intermediary sale of electricity" means the sale of electricity by a customer of a licensed retailer to a short term resident, long term resident, small business customer or large business customer where consumption by each such person is measured by an approved meter;

"Minister" means the Minister responsible for the Electricity Industry Act 2000;

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"MW" means megawatts;

"MWh" means megawatt hours;

"National Electricity Code" has the meaning given to "Code" in the National Electricity (Victoria) Law as defined in the National Electricity (Victoria) Act 1997;

"related body corporate" has the same meaning as in the Corporations Act;

"Pricing Rule" means the price or prices determined by reference to clause 7 of this Order;

"Retail Code " means the Electricity Retail Code from time to time approved by the Essential Services Commission;

"short term resident" means any person, other than a person who is a long term resident, who resides in a premises used for residential purposes only (such as a retirement village, a rooming house or a site in a caravan park) whether or not on a temporary or intermittent basis;

"small business customer" means a person to whom peak demand of less than 500kVa, and consumption of less than 160MWh per annum, is distributed, supplied or sold for commercial or industrial purposes;

"Snowy Mountains Hydro-electric Agreement " means the agreement for the construction, operation and maintenance of the Snowy Mountains Hydroelectric Scheme between the Commonwealth of Australia, the State of New South Wales and the State of Victoria dated 18 September 1957;

'supply point' means, in relation to a supply of electricity to a person, the point at which that supply of electricity last leaves a supply facility owned or operated by a licensed electricity distributor before being supplied to the person, whether or not the electricity passes through facilities owned or operated by any other person after leaving that point before being so supplied.

"System Code" means the Electricity System Code from time to time approved by the Essential Services Commission;

5. Certification by Commission

The Essential Services Commission may, on application by any person whose interests are affected, issue a certificate stating that, in the opinion of the Essential Services Commission, a particular activity does or does not constitute:

- (a) the intermediary distribution or supply of electricity; or
- (b) the metered intermediary sale of electricity, and, if it does so, that activity does or does not, as applicable, constitute the intermediary distribution or supply of electricity or the metered intermediary sale of electricity, as the case may be, for the purposes of this Order.

6. Condition for all circumstances

It is a condition of each exemption granted under this Order that the person to whom the exemption applies must provide (whether or not through an agent), to the Minister or the Essential Services Commission, any information requested by the Minister or the Essential Services Commission, respectively, that either may require for the reasonable administration of this Order.

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7. Pricing Rule

The price, or range of prices, at which electricity (and services related to the provision of electricity) may be distributed, supplied and sold to a short term resident, long term resident or small business customer pursuant to an exemption granted under this Order must not be more than the tariff that would apply to the customer if the customer purchased the electricity and related services, pursuant to an offer made in accordance with the requirements of section 35 of the Act, from a licensee who is the local retailer for electricity supplied in the electricity distribution area in which the supply point for the supply of electricity to the customer is located, in accordance with any guidelines that may be issued by the Essential Services Commission.'

8. Safety

A person to whom an exemption under this Order applies is not, by reason of this Order, exempt from any provisions of the Electricity Safety Act 1998 or the Regulations or any other instruments made under that Act.

SCHEDULE

PART A – GENERIC SITUATIONS

1. GENERATION

Exempt Persons

Any person

Exemption

The generation of electricity for supply or sale where the total output by that person (whether or not with another person), using a generator or generators connected to the transmission network or distribution network at a common point, is less than 30MW.

Conditions

This exemption is subject to the conditions that:

- (a) the total exported output of the relevant electricity generator or group of generators must be supplied or sold to a licensed retailer; and
- (b) the exempt person must observe all applicable provisions of the Distribution Code.

Limitations

This exemption does not apply to the generation of electricity for supply or sale if the relevant electricity generator or group of generators is required by the National Electricity Code to be centrally dispatched.

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2. DISTRIBUTION AND SUPPLY OF ELECTRICITY IN EMBEDDED NETWORKS

Examples of such networks include caravan parks and office buildings.

Exempt Persons

Any person

Exemption

The intermediary distribution or supply of electricity to a short term resident, long term resident, small business customer or large business customer within the limits of the premises owned or occupied by the person engaging in that activity.

Conditions

This exemption is subject to the condition that the exempt person must observe all applicable provisions of the Distribution Code as if that person was a licensed electricity distributor.

This exemption is subject to the additional condition that in the event of a dispute concerning the distribution or supply of electricity to a short term resident, long term resident or small business customer, and in the absence of any determination of the Victorian Civil and Administrative Tribunal, that the exempt person must:

- (a) make reasonable endeavours to resolve the dispute;
- (b) advise the person to whom electricity is distributed or supplied, of his or her right to apply to have a matter heard by the Victorian Civil and Administrative Tribunal; and
- (c) continue to distribute or supply electricity to that person.

Limitations

This exemption does not apply to the intermediary distribution or supply of electricity in respect of any premises where:

- (a) in relation to any existing premises, the supply arrangements are restructured; and
- (b) in relation to any new premises, the supply arrangements are structured, in such a way as may have the effect of denying:
 - i. a person any rights they may have if the supply arrangements were not so structured or restructured; or
 - ii. a licensed retailer the ability to sell electricity to a customer with an

approved meter.

The Essential Services Commission may, on application of any person whose interests are affected, issue a certificate stating that in the opinion of the Essential Services Commission the structuring or restructuring of supply arrangements may have an effect specified in the preceding paragraph and, if it does so, then the arrangements have that effect for the purposes of this Order.

3. SALE OF METERED ELECTRICITY IN EMBEDDED NETWORKS

Exempt Persons

Any person

Exemption

The metered intermediary sale of electricity within the limits of the premises owned or occupied by the person engaging in that activity.

Conditions

This exemption is subject to the conditions that:

- (a) the exempt person must observe all applicable provisions of the Retail Code as if that person was a licensed retailer;
- (b) in the case of the sale of electricity to a short term resident, long term resident or small business customer, the exempt person must observe all applicable provisions of any Pricing Rule;
- (c) in the case of the sale of electricity to a large business customer or a small business customer, the exempt person must, when it commences selling electricity to the customer, inform the customer in writing that it may have the right to elect to purchase electricity from a licensed retailer of its choice; and
- (d) the exempt person must not, by reason only that the exempt person has changed its licensed retailer, cease to sell electricity to any relevant short term resident, long term resident, small business customer or large business customer unless that customer has elected to purchase electricity from a licensed retailer.

This exemption is subject to the additional condition that in the event of a dispute concerning the sale of electricity to a short term resident, long term resident or small

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business customer, and in the absence of any determination of the Victorian Civil and Administrative Tribunal, the exempt person must:

- (a) make reasonable endeavours to resolve the dispute, and
- (b) advise the person to whom electricity is sold, of his or her right to apply to have a matter heard by the Victorian Civil and Administrative Tribunal.

4. SALE OF ELECTRICITY BETWEEN RELATED COMPANIES

Exempt Persons

Any person

Exemption

The sale of electricity by the exempt person to a related body corporate of the exempt person.

5. SUBDIVISION OF LAND

Exempt Persons

Any person or premises owned

Exemption

The distribution, supply and sale of electricity outside occupied by the person engaging in the activity to a large business customer with an approved meter as the direct consequence of a subdivision of a property.

Conditions

This exemption is subject to the conditions that the exempt person:

- (a) must not engage in the exempt activities other than incidentally to its core business function, which function must not be related to the distribution, supply or sale of electricity;
- (b) must cause an easement to be recorded on the titles of all affected properties in accordance with the Transfer of Land Act before the distribution, supply or sale of electricity occurs;
- (c) must cause the distribution, supply or sale arrangements to be noted on any statements provided under section 32 of the Sale of Land Act relating to all affected properties;
- (d) must observe all applicable provisions of the Distribution Code as if the person was a licensed electricity distributor;
- (e) must not take any action which prevents the large business customer from purchasing electricity from a licensed retailer of its choice;
- (f) must not take any action which prevents a licensed retailer from selling electricity to the large business customer;

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- (g) unless otherwise agreed, must provide, at the request of any person who occupied the subdivided property at the time of subdivision, a separate point of supply (as defined in the Electricity Safety Act) from the licensed distribution company at no cost to that person if such a separate point of supply does not already exist; and
- (h) accepts full liability for any claims, losses, damages or costs incurred by any materially affected person as a direct result of any breach by the exempt person of any of these conditions.

Limitations

This exemption ceases to apply where there is any restructuring of the distribution or supply arrangements other than like-for-like replacement in the course of maintenance, or the replacement of an approved meter with another approved meter.

6. SALE OF ELECTRICITY TO CUSTOMERS CONNECTED TO THE COUNTRY ENERGY DISTRIBUTION NETWORK

Exempt Persons

Any person

Exemption

The sale of electricity in the areas of Bonang, Tebbutt, Dedick, Goongerah, Delegate River, Bendoc, Lower Bendoc, Jingellic, Bongilla Island and Tocumwal.

Conditions

This exemption is subject to the conditions that the exempt person:

- (a) must hold a licence under the **Electricity Supply Act 1995 (NSW)** for the retail supply of electricity;
- (b) must comply with the **Electricity Supply Act 1995 (NSW)** as if a customer in these areas was a customer under that Act;
- (c) agrees that the Energy and Water Ombudsman of New South Wales has jurisdiction to hear and determine disputes in accordance with its functions;
- (d) must not take any action that would affect the ability of a customer to purchase electricity from an electricity retailer licensed in New South Wales or Victoria to sell electricity to a customer in these areas; and

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- (e) must not take any action that would affect the ability of an electricity retailer licensed in New South Wales or Victoria to sell electricity to a customer in these areas.'

PART B – SPECIFIC SITUATIONS

Exempt Persons

1. Country Energy

Exemption

The distribution and supply of electricity in the areas of, Bonang, Tebbutt, Dedick, Goongerah, Delegate River, Bendoc, Lower Bendoc, Jingellic, Bongilla Island and Tocumwal.

Conditions

This exemption is subject to the conditions that Country Energy:

- (a) must distribute and supply electricity to persons in these areas on the same terms and conditions of any licence it holds that enables it to distribute electricity to customers in New South Wales;
- (b) agrees that the Energy and Water Ombudsman of New South Wales has jurisdiction to hear and determine disputes in accordance with its functions;
- (c) must not take any action that would affect the ability of a customer to purchase electricity from an electricity retailer licensed in New South Wales or Victoria to sell electricity to a customer in these areas; and
- (d) must not take any action that would affect the ability of an electricity retailer licensed in New South Wales or Victoria to sell electricity to a customer in these areas.'

2. ETSA Utilities

The distribution, supply and sale of electricity by ETSA Utilities to another licensed electricity distributor or licensed retailer in Victoria, and existing customers of ETSA Utilities in Victoria as at the date of this Order, subject to the conditions that ETSA Utilities:

- (a) distributes, supplies and sells electricity to persons in these areas on the same terms and conditions of any licence it holds that enables it to distribute, supply and sell electricity to customers in South Australia; and
- (b) provides customers in Victoria with access to the same dispute resolution

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process it provides to comparable customers in South Australia.

3. Federal Airports Corporation

The distribution, supply and sale of electricity at Melbourne International Airport, Tullamarine.

This exemption is subject to the conditions that Federal Airports Corporation must:

- (a) observe the Pricing Rule;
- (b) observe all applicable provisions of the Distribution Code, the Electricity Customer Metering Code and the Retail Code;
- (c) not take any action which prevents a customer from purchasing electricity from a licensed retailer of the customer's choice; and
- (d) not take any action which prevents a licensed retailer from selling electricity to a customer.

4. Melbourne Exhibition Centre

The distribution, supply and sale of electricity within the exhibition centre owned and operated by Melbourne Exhibition Centre.

Conditions

This exemption is subject to the conditions that:

- (a) Melbourne Exhibition Centre must observe the Pricing Rule;
- (b) Melbourne Exhibition Centre must observe all applicable provisions of the Distribution Code;
- (c) any dispute relating to the distribution, supply or sale of electricity between Melbourne Exhibition Centre and a person to whom it distributes, supplies or sells electricity must, except where both parties otherwise agree, be resolved in accordance with any dispute resolution process that has been agreed between them; and
- (d) Melbourne Exhibition Centre supplies electricity to its exhibitors at cost and does not seek to make a profit on the re-sale of electricity.

5. HRL Treasury Pty Ltd (ACN 062 076 279) ("HRL")

The distribution, supply and sale of electricity within the limits of the premises owned or occupied as at the date of this Order by HRL or one of its related bodies corporate at Tramway Road, Morwell.

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Conditions

This exemption is subject to the conditions that HRL observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) the Pricing Rule.

6. Loy Yang B Power Station Pty Limited (ACN 052 530 551) Mission Energy Australia Ltd (ACN 055 563 785) as managing partner of the Latrobe Power Partnership

The generation of electricity by the Loy Yang B power station for supply or sale to the State Electricity Commission of Victoria, Mission Energy Management of Australia Pty Ltd (ACN 055 563 696) as the operator of the Loy Yang B power station and any other person appointed in its place as operator of the Loy Yang B power station by Loy Yang B Power Station Pty Ltd and Mission Energy Australia Ltd as managing partner of the Latrobe Power Partnership

7. Electricity Trust of South Australia ("ETSA") and any person who in accordance with the laws of South Australia succeeds to the entitlements of ETSA

The generation of electricity for supply or sale pursuant to any remaining entitlements under the former Interconnection Operating Agreement dated 14 July 1986.

8. Electricity Commission of New South Wales ("ECNSW") and any person who in accordance with the laws of New South Wales succeeds to the entitlements of ECNSW under the Snowy Mountains Hydro-electric Agreement or the Hume Power Station Agreement

The generation of electricity for supply or sale to any licensed distributor or licensed retailer in Victoria pursuant to the Snowy Mountains Hydro-electric Agreement or the Hume Power Station Agreement.

9. Department of Natural Resources and Environment

The generation of electricity for supply or sale, the transmission, distribution, supply or sale of electricity, in each case within Wilson's Promontory National Park in the manner and to the extent such activities are engaged in as at the date of this Order.

Conditions

This exemption is subject to the conditions that the Department observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) the Pricing Rule.

10. Alpine Resorts Commission

The generation of electricity for supply or sale, the transmission, distribution, supply or

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sale of electricity, in each case in the areas of Lake Mountain and Mount Baw Baw in the manner and to the extent that such activities are engaged in as at the date of this Order.

Conditions

This exemption is subject to the conditions that the Alpine Resorts Commission observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) Pricing Rule.

11. Lions Village Licola Incorporated

The generation of electricity for supply or sale, the transmission, distribution, supply or sale of electricity, in each case in respect of Licola Village in the manner and to the extent that such activities are engaged in as at the date of this Order.

Conditions

This exemption is subject to the condition that Lions Village Licola Incorporated observes:

- (a) all applicable provisions of the Distribution Code; and
- (b) Pricing Rule.

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Authorised by the Hon. Lily D'Ambrosio
Department of Economic Development, Jobs, Transport and Resources
1 Spring Street Melbourne Victoria 3000

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