



Victoria Government Gazette

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Electricity Industry Act 2000 GENERAL EXEMPTION ORDER 2017

Order in Council

The Governor in Council makes the following Order under section 17 of the **Electricity Industry Act 2000**:

PART 1 – PRELIMINARY

1. Objectives

The objectives of this Order are:

- (a) to exempt persons from the requirement to obtain a licence under section 16 of the Act in respect of certain specified activities; and
- (b) to make consequential amendments to the General Exemption Order 2002 so that it applies only to individual exemptions existing on 1 April 2018.

2. Commencement

- (1) This Order, except clause 11, comes into operation on 1 April 2018.
- (2) Clause 11 comes into operation on 1 July 2018.

3. Definitions

In this Order:

approved meter means a meter that a holder of a licence under the Act is permitted by law to use to measure the 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;

explicit informed consent means consent is given by a customer to an exempt person where:

- (a) the exempt person, or a person acting on behalf of the exempt person, has clearly, fully and adequately disclosed, in plain English, all matters relevant to the consent of the customer, including each specific purpose or use of the consent; and
- (b) the customer gives the consent to the arrangement or transaction,
 - (i) in writing, signed by the customer; or
 - (ii) verbally, if the verbal consent is evidenced in a way that it can be verified and recorded; or
 - (iii) by electronic communication generated by the customer;

General Exemption Order 2002 means the Order in Council made under section 17 of the Act on 30 April 2002 and published in the Government Gazette No. S73 on 1 May 2002 as amended and in force immediately before this Order comes into operation;

Note: the General Exemption Order 2002 has been amended by the following Orders:

- Order in Council made on 25 November 2008 and published in the Government Gazette S315 on that day.
- Order in Council made on 26 October 2010 and published in the Government Gazette G43 page 2686 on 28 October 2010.
- Order in Council made on 8 December 2015 and published in the Government Gazette S393 on that day.

generation includes co-generation;

SPECIAL

Government agency includes:

- (a) a Commonwealth, State or Local Government department; and
- (b) a statutory authority or government owned corporations established under a law of the Commonwealth or a State or Territory; and
- (c) a university, but does not include a housing authority or a provider of student accommodation.

kVa means 1000 volt amps;

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

licensed distribution company means a person who is the holder of a licence under the Act to distribute electricity;

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

meter means any device that measures the quantity of electricity passing through it or that records the consumption of electricity at the customer's premises;

metered electricity means electricity measured by an approved meter;

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

MW means megawatts;

MWh means megawatt hours;

National Electricity Rules has the same meaning as in the National Electricity (Victoria) Law;

related company, in relation to a person that is a company, means a company that controls or is controlled by the first company, including:

- (a) a company that is a subsidiary of the first company or of which the first person is a subsidiary; and
- (b) a company that has a common holding company to the first company;

residential customer means a person who buys electricity principally for personal, household or domestic use at premises;

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

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

the Act means the **Electricity Industry Act 2000**.

PART 2 – RETAIL AND DISTRIBUTION EXEMPTIONS

Division 1 Retail exemption categories

4. Deemed exemption of retailers

- (1) A person carrying out an activity set out in Table 1 is exempt from the requirement to obtain a licence under section 16 of the Act in respect of that activity if:
 - (a) the electricity the person sells is obtained by the person as the customer of a licensed retailer; and
 - (b) in the case of the sale of metered electricity, the premises of each customer of the person is separately metered.

- (2) The exemption is subject to the conditions set out in Division 3 of this Part.

Table 1 Retail activity deemed exemption
Persons selling metered electricity to fewer than 10 small commercial/retail customers within the limits of a site that they own, occupy or operate.
Persons selling metered electricity to fewer than 10 residential customers within the limits of a site that they own, occupy or operate (excluding retirement villages, caravan parks, holiday parks, residential land lease parks and manufactured home estates).
Persons selling metered electricity to occupants of holiday accommodation on a short-term basis (excluding caravan parks, holiday parks, residential land lease parks and manufactured home estates).
Persons temporarily selling electricity on construction sites, where the sale is an incidental supply to facilitate bona fide construction and commissioning of new facilities on the same or an adjoining site.
Persons selling electricity to a related company.
Persons selling electricity on or within the person's premises to customers in conjunction with, or ancillary to, the provision of telecommunications services. Includes internet, telephone, mobile phone, fibre optic, hybrid fibre cable, television, radio, Wi-F or other communications technology.
Government agencies selling metered electricity to non-residential customers for purposes that are ancillary to their primary functions or objectives under the laws under which they are established.

5. Exemption of registered retailers

- (1) A person carrying out an activity set out in Table 2 is exempt from the requirement to obtain a licence under section 16 of the Act if:
- (a) the person is registered in the Register of Exempt Persons under the Act in respect of that activity; and
 - (b) the person is the customer of a licensed retailer; and
 - (c) in the case of the sale of metered electricity, the premises of each customer of the person is separately metered.
- (2) The exemption is subject to the conditions set out in Division 3 of this Part.

Table 2 Retail activity registration exemption
Persons selling metered electricity to 10 or more small commercial/retail customers within the limits of a site that they own, occupy or operate.
Persons selling metered electricity to 10 or more residential customers within the limits of a site that they own, occupy or operate, excluding sales to residents of retirement villages, caravan parks, holiday parks, residential land lease parks and manufactured home estates.
Retirement villages selling metered electricity to residential customers within the limits of a site that they own, occupy or operate.
Persons selling metered electricity in all caravan parks, holiday parks, residential land lease parks and manufactured home estates.
Persons selling metered electricity to large customers.

Division 2 Network exemption categories**6. Deemed exemption of distributors**

- (1) A person carrying out an activity set out in Table 3 is exempt from the requirement to obtain a licence under section 16 of the Act in respect of that activity if:
- (a) the person is not a licensed distribution company; and
 - (b) the electricity is supplied through facilities of the person after it leaves a supply facility owned or operated by a licensed distribution company and before it is supplied to the customer.
- (2) The exemption is subject to the conditions set out in Division 3 of this Part.

Table 3 Network activity deemed exemption
Persons supplying metered or unmetered electricity to fewer than 10 small commercial/retail customers within the limits of a site that they own, occupy or operate.
Persons supplying metered or unmetered electricity to fewer than 10 residential customers within the limits of a site that they own, occupy or operate, excluding supply to residents of retirement villages, caravan parks, holiday parks, residential land lease parks and manufactured home estates.
Persons supplying metered or unmetered electricity to occupants of holiday accommodation on a short-term basis (excluding caravan parks, holiday parks, residential land lease parks and manufactured home estates).
Persons supplying electricity via plug-in or rack mounted equipment in any premises, where there is National Broadband Network equipment with an input current rating not exceeding 3 amps alternating current.
Persons supplying metered or unmetered electricity to a related company.
Persons supplying electricity on or within the person's premises in conjunction with, or ancillary to, or to facilitate, the provision of telecommunications services. Includes internet, telephone, mobile phone, fibre optic, hybrid fibre cable, television, radio, Wi-F or other communications technology.
Government agencies supplying metered or unmetered electricity to non-residential customers for purposes that are ancillary to their primary functions or objectives under the laws under which they are established.

7. Exemption of registered distributors

- (1) A person carrying out an activity set out in Table 4 is exempt from the requirement to obtain a licence under section 16 of the Act if:
- (a) the person is registered in the Register of Exempt Persons under the Act in respect of that activity; and
 - (b) the person is not a licensed distribution company; and
 - (c) the electricity is supplied through facilities of the person after it leaves a supply facility owned or operated by a licensed distribution company and before it is supplied to the customer.

- (2) The exemption is subject to the conditions set out in Division 3 of this Part.

Table 4 Network activity registration exemption
Persons supplying metered or unmetered electricity to 10 or more small commercial/retail customers within the limits of a site that they own, occupy or operate.
Persons supplying metered or unmetered electricity to 10 or more residential customers within the limits of a site that they own, occupy or operate excluding supply to residents of retirement villages, caravan parks, holiday parks, residential land lease parks and manufactured home estates.
Retirement villages supplying metered or unmetered electricity to residential customers within the limits of a site that they own, occupy or operate.
Persons supplying metered or unmetered electricity in caravan parks, holiday parks, residential land lease parks and manufactured home estates.
Persons supplying metered electricity to large customers.

Division 3 Conditions on retail and network exemptions

8. Compliance with Retail Code or Distribution Code

It is a condition of an exemption under this Part that the exempt person must comply with the provisions of the Retail Code or the Distribution Code that are specified by the Essential Services Commission in the relevant Code as provisions applicable to an exempt person of that category or class.

Note

Clause 26 provides for a transitional condition to apply until the Essential Services Commission specifies the provisions of the Retail Code that are applicable to an exempt person.

9. Informed consent and provision of information

- (1) It is a condition of an exemption under Division 1 that the exempt person must obtain the explicit informed consent of the customer to an arrangement for the sale of electricity to that customer.
- (2) It is a condition of an exemption under Division 1 that the exempt person must provide the following information, in plain English, to the customer before obtaining the consent referred to in subclause (1):
- (a) that the customer has the right to elect to purchase electricity from a licensed retailer of their choice, and information on the options for metering that would allow this choice;
 - (b) that the exempt person is not subject to all the obligations of a licensed retailer and the customer will not receive the same protections as it would if it were purchasing from a licensed retailer;
 - (c) the customer's rights in relation to dispute resolution including:
 - (i) the contact details of the exempt person as the initial point of contact for disputes; and
 - (ii) the exempt person's procedures for handling disputes and complaints; and
 - (iii) from 1 July 2018, the right that the customer has to access an external dispute resolution service approved by the Essential Services Commission;

- (d) the forms of assistance available if the customer is unable to pay electricity bills due to financial difficulty, as well as the process the customer should follow to seek these forms of assistance;
 - (e) the electricity tariffs and all associated fees and charges that will apply to the customer in relation to the sale of electricity;
 - (f) the flexible payment options that are available to the customer in relation to the sale of electricity, such as arrangements for payment by periodic instalments (bill smoothing);
 - (g) contact numbers in the event of an electricity fault or emergency.
- (3) It is a condition of an exemption under this Part that an exempt person must also provide the information set out in subclause (2):
- (a) at any time at the request of the customer or the Essential Services Commission; and
 - (b) annually to the customer.

10. Pricing rule

- (1) It is a condition of an exemption under this Part that the price, or range of prices, at which electricity (and services related to the provision of electricity) may be sold or supplied under the exemption must not exceed the relevant maximum price formulated by the Essential Services Commission for the purposes of this Part and published on its website.
- (2) The Essential Services Commission must have regard to commercial market data in formulating a maximum price.

Note

Clause 27 provides for a transitional pricing rule to apply until a relevant maximum price is formulated under this clause.

11. Customer dispute resolution

- (1) It is a condition of an exemption under this Part that the exempt person must enter into a customer dispute resolution scheme approved by the Essential Services Commission.
- (2) In approving a customer dispute resolution scheme for the purposes of this Order, the Essential Services Commission must have regard to the matters set out in section 28(2) of the Act, with any necessary changes.

12. Provision of information to Minister or ESC

It is a condition of an exemption under this Part that the exempt person must provide (whether or not through an agent), to the Minister or the Essential Services Commission, any information requested by the Minister or Commission, that the Minister or Commission may reasonably require for the administration of this Part.

PART 3 – GENERATION EXEMPTIONS

Division 1 Generation exemption

13. Deemed exemption of generation

- (1) A person carrying out an activity set out in Table 5 is exempt from the requirement to obtain a licence under section 16 of the Act in respect of that activity.
- (2) The exemption is subject to the conditions set out in Division 2 of this Part.

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

Table 5 Generation exemption
Persons generating 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 30 MW.

Division 2 Conditions on generation exemptions

14. Export output

It is a condition of an exemption under this Part that the total exported output of the relevant generator or group of generators must be supplied or sold to a licensed retailer.

15. Compliance with Distribution Code

It is a condition of an exemption under this Part that the exempt person must comply with the provisions of the Distribution Code that are specified by the Essential Services Commission in that Code as applicable to an exempt person under this Part.

16. Provision of information to the Minister or Essential Services Commission

It is a condition of an exemption under this Part that the exempt person must provide (whether or not through an agent), to the Minister or the Essential Services Commission, any information requested by the Minister or Commission, that the Minister or Commission may reasonably require for the administration of this Part.

PART 4 – MULTIPLE ACTIVITY EXEMPTIONS

Division 1 Multiple activity exemptions

17. Exemption of registered persons carrying out generation, distribution, supply and sale of electricity

- (1) A person carrying out the activities set out in Table 6 is exempt from the requirement to obtain a licence under section 16 of the Act if the person is registered in the Register of Exempt Persons under the Act in respect of the activities.

Examples

1. A solar power purchase agreement under which a business provides, installs and maintains, at no initial cost, a solar panel system to a customer and in exchange, the customer buys the electricity provided by the solar panels for an agreed price and for an agreed period. Any electricity that is not used is sold to a licensed retailer.
 2. A community energy project under which a community group initiates, develops, operates and benefits from a renewable energy resource or energy efficiency initiative.
- (2) The exemption is subject to the conditions set out in Division 2 of this Part.

- (3) A registration of a person will cover all activities set out in Table 6 that are carried out by the registered person.

Table 6 Multiple activity exemption	
Persons:	
(a)	generating or distributing electricity on:
	(i) premises not owned or occupied by the person; or
	(ii) a portion of premises occupied by the person for the purpose of the generation and distribution, where the premises are not owned by the person and the remainder of the premises is not occupied by the person; and
(b)	supplying or selling the electricity:
	(i) to the owner or occupier of the premises on which the generation occurs (the customer); or
	(ii) to a licensed retailer.

Division 2 Conditions on multiple activity exemption

18. Pricing rule

- (1) It is a condition of an exemption under this Part that the price, or range of prices, at which electricity (and services related to the provision of electricity) may be sold or supplied under the exemption must not exceed the relevant maximum price formulated by the Essential Services Commission for the purposes of this Part and published on its website.
- (2) The Essential Services Commission must have regard to commercial market data in formulating a maximum price.

Note

Clause 27 provides for a transitional pricing rule to apply until a relevant maximum price is formulated under this clause.

19. Generating capacity

It is a condition of an exemption under this Part that the installed or name-plate generating capacity of the generator or generators installed at the relevant premises is less than 5 MW.

20. Financially responsible market participant

It is a condition of an exemption under this Part that:

- (a) the exempt person is not the financially responsible market participant for the relevant premises; and
- (b) the financially responsible market participant for the relevant premises is a licensed retailer.

21. Wholesale market registration

It is a condition of an exemption under this Part that the exempt person is not registered in the wholesale electricity market for the purposes of purchasing electricity.

22. Sale of output of generation

It is a condition of an exemption under this Part that:

- (a) some or all of the output of the relevant generator or generators must be sold to the customer; and
- (b) any output of the relevant generator or generators not sold to the customer must be supplied or sold to a licensed retailer.

23. Notice of application of Australian Consumer Law

- (1) It is a condition of an exemption under this Part that the exempt person must provide the customer with written notice at the time of entering into the agreement for the supply and sale of electricity that the agreement is:
 - (a) covered by the Australian Consumer Law; and
 - (b) separate from the customer's contracts with their licensed retailer and licensed distribution company, which are subject to the **Electricity Industry Act 2000**.
- (2) The notice must:
 - (a) be in plain English; and
 - (b) include a summary of the relevant rights of the customer under the Australian Consumer Law.

24. Compliance with Distribution Code

It is a condition of an exemption under this Part that the exempt person must comply with clauses 7.2 to 7.8 and clause 9.3 of the Distribution Code and any other clauses of that Code that apply to embedded generators.

25. Provision of information to Minister or ESC

- (1) It is a condition of an exemption under this Part that the exempt person must provide (whether or not through an agent), to the Minister or the Essential Services Commission, any information requested by the Minister or Commission, that the Minister or Commission may reasonably require for the administration of this Part.
- (2) It is a condition of an exemption under this Part that the exempt person must provide the Essential Services Commission, on request, with information regarding the scale and nature of the exempt person's activities to which the exemption applies.

PART 5 – TRANSITIONAL PROVISIONS**26. Compliance with Retail Code**

Despite clause 8, until the Essential Services Commission specifies in the Retail Code the provisions applicable to an exempt person of a category or class, it is a condition of an exemption under Division 1 of Part 2 that the exempt person must comply with all applicable provisions of the Retail Code as if the person were a licensed retailer.

27. Pricing rule

Despite clauses 10 and 18, until the Essential Services Commission formulates a maximum price under clause 10 or 18 in respect of a particular category of exemption or customer, the price, or range of prices, at which the exempt person may sell or supply electricity (and services related to the provision of electricity) to that customer 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:

- (a) in accordance with section 35 of the Act; and
- (b) by 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; and
- (c) in accordance with any guidelines issued by the Essential Services Commission.

PART 6 – AMENDMENT OF GENERAL EXEMPTION ORDER 2002

28. Definitions

In clause 4 of the General Exemption Order 2002, the definitions of **approved meter, intermediary distribution or supply, metered intermediary sale of electricity, National Electricity Code and Supply Code**, are **revoked**.

29. Revocation of clause 5 (Certification by ESC)

Clause 5 of the General Exemption Order 2002 is **revoked**.

30. Clause 8 revoked

Clause 8 of the General Exemption Order 2002 is **revoked**.

31. Revocation of Part A of the Schedule

Part A of the Schedule to the General Exemption Order 2002 is **revoked**.

Dated 15 November 2017

Responsible Minister

HON. LILIANA D'AMBROSIO MP

Minister for Energy, Environment and Climate Change

ANDREW ROBINSON
Clerk of the Executive Council

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