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# **Solar Power Purchase Agreements**

## **Retail Licence Exemptions**

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**Licence Exemption Application Guidelines**

**Department of Treasury | Public Utilities Office**

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## Table of Contents

<b>1. Introduction .....</b>	<b>5</b>
1.1 Purpose of the guidelines .....	5
1.2 Decision to grant individual licence exemptions.....	5
1.3 Licence exemption application guidelines .....	5
1.4 Licence exemptions granted to solar PPA suppliers .....	6
<b>2. Application Process.....</b>	<b>7</b>
2.1 How to apply for a solar PPA retail licence exemption .....	7
2.1.1 Lodgement.....	7
2.2 Application content and requirements.....	7
2.2.1 Application for public comment .....	7
2.2.2 Corporate information.....	8
2.2.3 Financial information .....	8
2.2.4 Disclosure statement.....	9
2.2.5 Relevant experience.....	9
2.2.6 Other equivalent licences, exemptions or authorisations to operate .....	9
2.2.7 Public interest information .....	9
2.2.8 Confidential information.....	10
<b>3. Decision making process.....</b>	<b>11</b>
3.1 Reviewing of applications.....	11
3.1.1 Considerations .....	11
3.1.2 Public consultation .....	11
3.2 Granting a licence exemption.....	11
3.2.1 Processing time .....	11
3.2.2 Notification of the outcome.....	12
3.2.3 Review of a decision .....	12
3.3 Licence exemption scope and associated conditions .....	12
3.3.1 Licence exemption scope.....	12
3.3.2 Licence exemption conditions .....	13
3.3.3 Licence exemption compliance .....	14
<b>Appendix A: Application Form .....</b>	<b>15</b>
<b>Appendix B: Exemption application check list.....</b>	<b>17</b>

## Abbreviations

Term	Definition
Act	<i>Electricity Industry Act 2004</i>
Minister	Minister for Energy
solar PPA	Solar Power Purchase Agreement

# 1. Introduction

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## 1.1 Purpose of the guidelines

The purpose of these guidelines is to provide guidance on the processes and requirements for obtaining a retail licence exemption to sell electricity to customers under solar power purchase agreements (**solar PPAs**) in Western Australia.

## 1.2 Decision to grant individual licence exemptions

In August 2016 the Minister for Energy (**Minister**) approved a licence exemption framework for solar PPA suppliers to apply for individual retail electricity licence exemptions subject to consumer protection and compliance reporting conditions. The Minister's decision followed the approach recommended by the Public Utilities Office in its Final Recommendations Report, published on 4 August 2016.

Information about the Public Utilities Office's review of licensing arrangements for solar PPA suppliers, including its Draft Recommendations Report and Final Recommendations Report, is available on the Department of Treasury website at [www.treasury.wa.gov.au](http://www.treasury.wa.gov.au).

## 1.3 Licence exemption application guidelines

An individual licence exemption for a solar PPA supplier to sell electricity to residential and commercial customers under a solar PPA will be granted on application. Solar PPA licence exemption applications should meet the requirements of these guidelines wherever possible.

A licence exemption will only be granted under section 8 of the *Electricity Industry Act 2004* (**Act**) if the Governor considers that it would not be contrary to the public interest to do so<sup>1</sup>. Licence exemptions are secondary legislation and require gazettal.

Solar PPA licence exemptions that are granted will be subject to consumer protection and compliance reporting conditions, explained in further detail in the associated *Industry and Consumer Guidelines*. The *Industry and Consumer Guidelines* are available on the Department of Treasury website and provide guidance and information to:

- industry (solar PPA suppliers) on compliance with licence exemption conditions, in particular the requirement to provide prospective customers with a Disclosure Statement; and

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<sup>1</sup> Section 8(5) of the Act contains the factors that the Governor must take into account when deciding whether or not a prospective licence exemption is contrary to the public interest. The Act is available on the State Law Publisher website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

- customers of solar PPA suppliers on licence exemptions and solar PPAs more generally.

#### 1.4 Licence exemptions granted to solar PPA suppliers

On 23 December 2016, the *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* was published in the Government Gazette. It includes details of the retail licence exemptions that have been granted to solar PPA suppliers to date.

The *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* can be downloaded from the State Law Publisher's website at [www.slp.wa.gov.au](http://www.slp.wa.gov.au).

Details of licence exemption applications from solar PPA suppliers that the Public Utilities Office has considered are available on the Department of Treasury website.

## 2. Application Process

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### 2.1 How to apply for a solar PPA retail licence exemption

#### 2.1.1 Lodgement

Solar PPA licence exemption applications must be made by a person, body or agent with the authority to make the application. Electronic applications are preferred and should be emailed to: [licence-exemptions@treasury.wa.gov.au](mailto:licence-exemptions@treasury.wa.gov.au).

Alternatively, printed applications may be posted to:

Licence Exemptions  
Markets and Regulation Division  
Public Utilities Office  
Department of Treasury  
Locked Bag 11  
Cloisters Square WA 6850

### 2.2 Application content and requirements

A solar PPA licence exemption application should include:

- a completed application form (Appendix A);
- a version of your application to be made available for public comment (see 2.2.1);
- a copy of the applicant's proposed Disclosure Statement (see 2.2.4);
- supporting commercial, contractual and public interest information (see 2.2.2 to 2.2.7); and
- identification of confidential information in the application and why it is confidential (see 2.2.8).

It is a serious offence to provide false or misleading information, including omitting to provide relevant information to a State Government agency. The Public Utilities Office reserves the right to contact any relevant regulator or government authority to verify details provided by an applicant.

#### 2.2.1 Application for public comment

As the Public Utilities Office may undertake public consultation on a licence exemption application as part of the review process, applicants should provide a version suitable for publication on the Department of Treasury website. Ideally, applicants should aim to provide a single version of their application to be used both internally by the Public

Utilities Office to assess the applicant's suitability to hold a licence exemption and externally for public comment.

However, the Public Utilities Office recognises that this may not always be possible, depending on the information being submitted in the application. If there is information in the application that the applicant does not wish to be made public, it must be clearly identified and reasons given for why it is confidential (further information on making a claim of confidentiality is in section 2.2.8).

### **2.2.2 Corporate information**

The application should include the following corporate information:

- the identity of the applicant:
  - legal name and trading name (if this different to the legal name); and
  - Australian Business Number (ABN) or Australian Company Name (ACN).
- registered postal address and contact details of the applicant for correspondence;
- a nominated contact person, including their name, position in the organisation and contact details;
- a description of the company and the company's main business activities;
- company type (public, private, joint venture, other body corporate, partnership, sole trader or other entity);
- a list of associated or controlled entities, including the degree of control exercised; and
- a description of the applicant's business model, including the forecasted number of customers expected to be serviced under a solar PPA over the next three (3) years.

### **2.2.3 Financial information**

The application should include a written declaration from the applicant that:

- an administrator, receiver or insolvency official has not been appointed to control any part of the business or its property;
- no application or resolution has been passed or steps taken to wind up the applicant's company; and
- the applicant is not aware of any other factors that may impede its ability to treasury and service solar PPA customers under the proposed business model.



### 2.2.4 Disclosure statement

The application should include a copy of the applicant's proposed Disclosure Statement (the *Industry and Consumer Guidelines* contain advice on the information to be included in the Disclosure Statement). The Disclosure Statement should be written in plain English and make the customer aware of contractual and product arrangements associated with the solar PPA.

The applicant is strongly encouraged to review the *Industry and Consumer Guidelines* before completing the Disclosure Statement. If an applicant's Disclosure Statement does not meet the requirements of the *Industry and Consumer Guidelines*, it could delay the processing of the application, or even result in the application being refused.

### 2.2.5 Relevant experience

The application should include information on the applicant's relevant experience, including a description of the applicant's previous experience selling energy or solar PPA products, for example:

- date/s and location/s of previous operations;
- form/s of energy sold (for example, electricity and/or gas);
- scale of operations (number, size and type of customers).

### 2.2.6 Other equivalent licences, exemptions or authorisations to operate

The application should include details on other energy licences, licence exemptions or retailer authorisations that the applicant holds, or has previously held or been subject to, in any Australian state or territory, including Western Australia. These details should outline:

- any breaches of those licences, exemptions or authorisations, where a penalty or enforcement order was applied; and
- any current or ongoing investigations about an alleged breach of a licence, exemption or authorisation.

### 2.2.7 Public interest information

The application should address the public interest test in section 8 of the Act.

- Under section 8 of the Act, the Governor must not grant a licence exemption unless he or she is satisfied that it would not be contrary to the public interest to do so.
- Without limiting the other matters that may be taken into account, the Governor must take into account the following when deciding whether granting a licence exemption would be contrary to the public interest:

- environmental considerations;
- social welfare and equity considerations, including community service obligations;
- economic and regional development, including employment and investment growth;
- the interests of customers generally or of a class of customers;
- the interests of any licensee, or applicant for a licence, in respect of the area or areas to which the exemption order, if made, would apply;
- the importance of competition in electricity industry markets; and
- the policy objectives of government in relation to the supply of electricity.

Applicants must address all relevant public interest considerations, including those outlined above, as part of their application.

### 2.2.8 Confidential information

If an application contains confidential information, an applicant should:

- clearly identify all information considered to be confidential;
- provide reasons for each confidentiality claim;
- give details about the potential commercial harm that disclosing the information may cause; and
- provide a version of the application suitable for public disclosure.

The public version of the application should be sufficiently detailed to allow a member of the public to comment on the application should they wish to do so. For this reason, only genuinely commercially sensitive information should be removed from the public version of the application.

Please note a claim of confidentiality may not, in itself, be sufficient to prevent disclosure. The Public Utilities Office is required to comply with the *Freedom of Information Act 1922* (WA). Under section 33 of the Act, the Public Utilities Office is required to consult with a party who has provided commercial or business information before providing access to a third party.

## 3. Decision making process

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The following section explains the matters the Public Utilities Office will take into account when considering a solar PPA licence exemption application and the indicative time for a decision to be made by the Governor on whether or not a licence exemption should be granted.

Please note there are no fees or charges associated with making an application.

### 3.1 Reviewing of applications

#### 3.1.1 Considerations

The Governor decides whether or not to grant a solar PPA licence exemption. This decision will take into account the Minister's recommendation.

Before advising the Minister to recommend that the Governor grant a licence exemption, the Public Utilities Office will assess a solar PPA supplier's exemption application. In assessing the application, the Public Utilities Office will consider whether:

- the applicant has and will retain the resources and capabilities to provide solar PPA-related services to its intended customer base under the licence exemption;
- the Disclosure Statement provides adequate information to advise customers of their rights, obligations and liabilities under the solar PPA contract; and
- the grant of the licence exemption would not be contrary to the public interest.

#### 3.1.2 Public consultation

On receiving an application, the Public Utilities Office may publish it on the Department of Treasury website for public comment.

The purpose of the public consultation process is to inform assessment of whether granting the licence exemption would be contrary to the public interest.

It is important to clearly identify and justify why any information provided to the Public Utilities Office should remain confidential.

### 3.2 Granting a licence exemption

#### 3.2.1 Processing time

The Public Utilities Office will take all reasonable steps to consider and make a recommendation to the Minister within 90 days of receiving a completed application (this includes any public consultation that may be conducted).

During the application process, the Public Utilities Office will consult with applicants and advise them if further information is required.

The length of this process may vary depending on the quality of the information contained in the application. The Public Utilities Office cannot recommend a Solar PPA licence exemption be granted unless it is satisfied that all considerations listed above in section 3.1 have been met.

As licence exemptions are made in orders that are secondary legislation, they are subject to the Department of Treasury, Regulatory Gatekeeping Unit's [Preliminary Impact Assessment](#) process, which assesses whether new or amended legislation will have any major negative effects on business, government or consumers. A new licence exemption must go through this process before it can be submitted to the Governor for approval. The Regulatory Gatekeeping Unit aims to consider a Preliminary Impact Assessment within 10 working days.

Once a recommendation has been made to the Minister by the Public Utilities Office and the Preliminary Impact Assessment process satisfied, it may take up to a further 30 days for the Governor (in Executive Council) to grant or refuse the licence exemption.

A licence exemption comes into operation on the day it is published in the *Government Gazette*.

### **3.2.2 Notification of the outcome**

The Public Utilities Office will aim to advise an applicant of the Governor's decision to grant or refuse a solar PPA licence exemption within five working days of the decision.

### **3.2.3 Review of a decision**

Even if the Public Utilities Office endorses an application, there is no guarantee that the Governor will grant the licence exemption. The power to grant or refuse a licence exemption resides in the Governor alone.

As with all administrative decisions, an applicant has the right to seek judicial review if he or she considers that the relevant legislative processes and procedures under the Act were not followed.

## **3.3 Licence exemption scope and associated conditions**

### **3.3.1 Licence exemption scope**

Solar PPA licence exemptions are granted based on an applicant's proposed business model, and do not provide a blanket exemption to sell electricity to customers in Western Australia. As a licence exemption only authorises the sale of electricity to customers under solar PPAs, a service supplier wishing to expand the scope of their retail activities beyond what is permitted by the solar PPA licence exemption will need to apply for a licence or further licence exemption to do so.

For further information about electricity licensing requirements, please contact the [Economic Regulation Authority](https://www.era.gov.au) on (08) 6557 7900 or via email [records@era.gov.au](mailto:records@era.gov.au).<sup>2</sup>

### 3.3.2 Licence exemption conditions

A solar PPA licence exemption will be subject to several conditions:

- A solar PPA supplier will be required to give prospective customers a Disclosure Statement that contains prescribed information (the Public Utilities Office's *Industry and Consumer Guidelines* provide detailed information on what a Disclosure Statement must include).
- A solar PPA supplier will be required to have regard to relevant guidelines published by the Coordinator of Energy (for example, the *Industry and Consumer Guidelines*).
- A solar PPA supplier will be required to provide performance data annually to the Coordinator of Energy by 31 August each year on the:
  - number of solar PPAs agreed during the reporting year;
  - number of solar PPAs active at 30 June of the reporting year;
  - number of solar power systems installed under solar PPAs during the reporting year;
  - number of solar power systems covered by solar PPAs that are active at 30 June of the reporting year
  - amount of solar power system capacity (kWh) under solar PPAs at 30 June of the reporting year; and
  - number and type of customer complaints<sup>3</sup> received.

The *Industry and Consumer Guidelines* contain a compliance reporting template to assist solar PPA suppliers in providing their annual performance data returns to the Coordinator of Energy.

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<sup>2</sup> Licences are administered by the Economic Regulatory Authority, while licence exemptions are administered by the Public Utilities Office.

<sup>3</sup> The definition of complaint in the *Electricity Industry (Solar Power Purchase Agreements) Exemption Order 2016* is: **complaint** means an expression of dissatisfaction made in writing and given to a supplier where a response or resolution from the supplier is explicitly or implicitly expected or legally required.

### **3.3.3 Licence exemption compliance**

The Governor has the right to revoke or amend a licence exemption at any time should there be evidence of serious or continued non-compliance committed by a solar PPA supplier. Solar PPA suppliers may also face prosecution for operating without a retail licence if they fail

It is a serious offence to provide false or misleading information, including omitting to provide relevant information to a State Government agency. The Public Utilities Office reserves the right to contact any relevant regulator or government authority to verify details provided by an applicant.

## Appendix A: Application Form

Solar PPA licence exemption applicants are required to complete this form. Further information on how to complete the form is outlined in section 2 of these Guidelines. It is advised that applicants read section 2 before completing this form.

Please add more space to the application form as required.

Applicant Details	
Legal name	
Trading name (if different to legal name)	
Registered office (if a corporation)	
Principal place of business (if different to registered office)	
Contact Details	
Name of primary contact	
Postal address	
Telephone number	Business:
	Mobile:
Email	
Company Structure	
ABN or ACN	
Legal structure (corporation, partnership, or sole proprietor)	
Company directors	
Description of primary business activities	
Associated entities	
Business requirements	
Brief description of the business model, including forecasted type (commercial and residential) and number of customers	

Applicant Details	
Details of experience in selling energy products and services	



## Appendix B: Exemption application check list

In order to assess a solar PPA retail licence exemption application, specific corporate, financial and technical information is required. Please include a completed copy of this document along with your application.

### Application summary

#### Guideline reference 2.2.1

Information required	Information provided	Application reference	
A version of the application suitable for publication on the Department of Treasury website	<input type="checkbox"/>	Doc	Page

### Corporate information

#### Guideline reference 2.2.2

Information required	Information provided	Application reference	
An overview of the applicant's corporate structure.	<input type="checkbox"/>	Doc	Page
Identity information, including legal and trading name (if relevant) and ABN or ACN.	<input type="checkbox"/>	Doc	Page
Registered postal address and contact details of the applicant.	<input type="checkbox"/>	Doc	Page
Name and contact details of the applicant's main contact person.	<input type="checkbox"/>	Doc	Page
An overview of the applicant company's profile and a description of the company's main business activities.	<input type="checkbox"/>	Doc	Page
Description of the company type (public, private, joint venture, other body corporate, partnership, sole trader or other entity).	<input type="checkbox"/>	Doc	Page
A list of associated or controlled entities, including the degree of control exercised.	<input type="checkbox"/>	Doc	Page

Information required	Information provided	Application reference	
A description of the applicant's business model, including forecasts for the number of customers expected to be serviced under a solar PPA over the next three (3) years.	<input type="checkbox"/>	Doc	Page

## Financial information

### Guideline reference 2.2.3

Information required	Information provided	Application reference	
A written declaration from the applicant attesting to the applicant's financial solvency.	<input type="checkbox"/>	Doc	Page

## Disclosure statement

### Guideline reference 2.2.4

Information required	Information provided	Application reference	
A copy of the applicant's proposed solar PPA Disclosure Statement.	<input type="checkbox"/>	Doc	Page

## Relevant experience

### Guideline reference 2.2.5

Information required	Information provided	Application reference	
A description of the applicant's previous experience selling energy or solar PPA products.	<input type="checkbox"/>	Doc	Page

## Other equivalent licenses, exemptions or authorisations to operate

### Guideline reference 2.2.6

Information required	Information provided	Application reference	
Details of whether the applicant holds, or has previously held or been subject to, an energy selling retail licence, licence exemption or retailer authorisation in any Australian state or territory, including Western Australia.	<input type="checkbox"/>	Doc	Page
Details about any breaches of those licences, exemptions or authorisations, where a penalty or enforcement order was applied.	<input type="checkbox"/>	Doc	Page
Details of any current or ongoing investigations about an alleged breach of a licence, exemption or authorisation.	<input type="checkbox"/>	Doc	Page

## Public interest information

### Guideline reference 2.2.7

Information required	Information provided	Application reference	
Statements and evidence to enable the Governor to consider whether granting a licence exemption would be contrary to the public interest.	<input type="checkbox"/>	Doc	Page