SHOPPING CENTRE COUNCIL OF AUSTRALIA

SUBMISSION

AER NOTICE OF DRAFT INSTRUMENTS (MARCH 2025):

DRAFT RETAIL EXEMPTION SELLING GUIDELINE (VERSION 7)
DRAFT NETWORK EXEMPTION GUIDELINE (VERSION 7)

Thank you for the opportunity to comment on the AER's Notice of Draft Instruments for the proposed updated *Retail Exempt Selling Guideline (version 7)* and *Network Exemption Guideline (version 7)*. Our detailed comments appear from over-the-page.

Broadly, despite no 'issues' or documented unfavourable evidence with non-residential embedded networks, we remain concerned that there is a 'chipping away' at reducing operational efficiencies, and adding regulation, on the basis of: (1) ongoing identified issues in residential embedded networks; (2) broad principles and risk 'factors' (versus actual risks) and (3) what seems to be an ongoing ideological position against embedded networks given most commentary continues to be negative.

As an example, the use of the term '*monopoly structure of most embedded networks*' is a highly charged one, and claims in relation to risks – such as '*price exploitation'*, '*poor service*', and a lack of '*consumer protection'* are often not borne out in a real sense.

Any suggestion that licensed retailers, and traditional energy companies provide superior pricing or customer service, when compared with shopping centre embedded networks, would be unfounded.

While such issues might be the case for residential embedded networks, it would be appreciated if going forward if the AER could avoid the passive application of these claims to non-residential networks, and perhaps expressly flag that no adverse issues have been identified in non-residential networks.

We note specifically that the *Bastion Insights* report is specific to the residential sector.

When looking at our own metrics, our market continues to operate with largely minimal complaints, low churn and fair pricing. When we conducted a survey with our members, 100% of customers from sampled embedded networks are on contracts that are below the Default Market Offer (DMO). Looking at other datasets, it's clear they get a better pricing deal than on-market customers. This contrasts greatly to the conclusions and proposed changes that been drawn from the *Bastion Insights* report.

Broadly, we are concerned with the proposed removal of the R1, R2, ND1 and ND2 deemed Similar, the proposed changes to require notification for certain ownership changes before the change in ownership, and the proposed website pricing report. These proposals are not warranted, and in some cases unworkable.

The proposed changes will impose increased regulatory burden, for no material benefit and customer outcomes. The proposed changes appear to be more ideological – in that there is a view that '*more scrutiny*' is needed – which, while generally agreeable, doesn't specifically respond to an identified public policy or market failure.

We note that, like many previous reviews and updates, the majority of 'issues' continue to be identified in the residential sector; versus the non-residential sector.

We thank the AER for the opportunity to provide feedback, and we would welcome further discussion.

Angus Nardi, Chief Executive

SHOPPING CENTRE COUNCIL OF AUSTRALIA

COMMENTS

We provide the following comments for the AER's consideration:

REMOVAL OF <10 CUSTOMER DEEMED CATEGORIES

- **We do not support this removal (ND1, ND2, R1 and R2)**, including that the proposed justification is simplistic and will give rise to unnecessary unintended consequences.
- The AER is trying to address limited compliance visibility and transparency of smaller embedded networks operating under deemed exemptions, however by removing the deemed exemptions for <10 customers an unwarranted administrative and unnecessary cost burden for no material benefit – particularly noting some of the scenarios for which the deemed exemptions currently cover.
- The current deemed exemptions cover many ad-hoc circumstances where the 'customer' and compliance risk is low, and the additional regulatory and compliance burden outweighs any benefits.
- One of our members has a range of current scenarios under which the current deemed exemption is utilised, such as in casual mall leasing, vending machines, co-work space tenants and digital advertising screens.
- One SCCA members estimates that if the exemption is removed, it will require applications for around 20 registrable exemptions and amendments to more current exemptions to add additional parties.
- Further, we are concerned that the grandfathering provisions are ineffective – as currently drafted it is unclear if the exemption applies to (for instance) a site of 6 customers, that if 1 new customer was added post 1 January 2026 it would void the grandfathering, protection. Additionally, it is unclear of the process going forward to transition from a deemed exemption to a registrable exemption. We request specific clarity on the process from the AER.

CHANGE OF OWNERSHIP NOTIFICATION REQUIREMENTS

- **We do not support this change, to notify the AER before the ownership change takes effect.** This is incredibly impractical and doesn't offer any public policy benefit or address any failure.
- This approach also gives rise to challenges in relation to the confidentiality of any change of ownership requirements.
- The current approach should be retained, noting that we support that notification should occur at the earliest opportunity once a change of ownership (or change in registration details) takes place

WEBSITE PRICING REPORTING

- **We do not support this change.**
- Similar to the proposed changes above, noting in any case that a recent survey highlighted that 100% of customers within SCCA member embedded networks have pricing below the DMO, the proposed changes are not based on any market or regulatory failure, and would impractical.
- We also note that the AER has flagged:

  While the price data indicates embedded network customers experience a range of price outcomes, there is no evidence of systemic price harms. The information we have indicates a material proportion of embedded network customers are paying comparable, or lower, prices than what they would pay if they were directly connected to the grid.

- We submit that the change should only be applied to residential embedded networks, noting that the only real problem on pricing issues that is cited in the AER's documentation relates to residential networks.

- Also, in the case of our industry:
  - We have not seen any complaints on pricing visibility;
  - All our customers receive clear tariff information, with regular billing;
  - Tariff information is complex and individualised, noting our customers operate quite different businesses (e.g. food preparation versus clothing retail) and different trading hours. As such there is no standard tariff or application, per se;
  - Given the variety of tariffs this could be confusing for customers would be a significant additional regulatory burden, while not addressing any clear failure.

FAMILY VIOLENCE / REQUIREMENT TO HAVE A FAMILY VIOLENCE POLICY

- We seek clarity that this proposed new requirement only relates to residential embedded networks, such as the R1 category.

CLARIFICATION OF EXEMPTIONS AVAILABLE IN RELATION TO ELECTRIC VEHICLES

- The application of the deemed exemption class for EV sales is unclear and needs further explanation in the Network Exemption Guideline, including the various entity scenarios on both a network (supply) and retail (sales) perspective.
- The Retail Guidelines makes no reference to EV sales and whilst we understand the application of the Retail Law, given the many ownership scenarios of companies providing EV charging and sales it would be desirable for the AER to clarity explicitly the exemptions available for EV supply and sale.
- For example, example 3 on page 10 of the Network Guide (version 7) is amended to state:

  Company A owns a shopping centre that supplies electricity to Company B (which operates electric vehicle charging stations ~~located~~ within the ~~a shopping~~ centre), via ~~which has~~ an embedded network.4 Company ~~A~~ B supplies electricity to customers of the charging stations.

  Company A would be eligible for deemed exemption under exemption class NDO3

- However, if Company A owns a shopping centre – it will invariably own the embedded network and have the relevant NR1 or NR5 exemptions. It would not need the NDO3.
- Further, Company B – may operate the electric vehicle charging stations located at a premises (the shopping centre) which then supplies electricity the customers of the vehicles. If Company B is a non-related party to Company A, it would be the party to which the NDO3 should be applicable; not Company A to apply for exemptions to be able to supply the customers.
- Sales of electricity from Company B would be outside of the of the AER, as per s88 *Energy Retail Law*– the sale here, is the sale of energy for vehicles. As such the relevance and applicability of the NDO3 is limited in this example.

CONDITION 5.2.1 EXTERNAL NETWORK CHARGES

- We request an amendment to the wording for shadow pricing, to enable the higher EN specific tariffs to be passed through. We submit that footnote '98' be amended to include the following text "at that embedded connection point" at the end of the first sentence.

SHOPPING CENTRE COUNCIL OF AUSTRALIA

ADDITIONAL CLARIFICATION OF COMMENTS / MINOR COMMENTS / CORRECTIONS

RETAIL EXEMPT SELLING GUIDELINE

Retail Exempt Selling Guide Version 7 – Key comments			
	Section	**Proposed Change / Impact**	**SCCA COMMENT**
Ret	**4.1 Deemed exemptions**	Note: Deemed exemptions classes D1 and D2 will be closed to on-sellers who commence selling energy to fewer than 10 small commercial/retail or residential customers after 31 December 2025	Reject change. See comments in previous section
Ret	**4.4 Other situations : network conversions (retrofitting)**	In all cases, AER approval is required before converting a site to an embedded network	Ok. Minor wording change to clarify AER position.
Ret	**Consent**	Consent must be retained for 7 years	Ok. Amended from 2 years
Ret	**5.1 Change of site ownership**	If you purchase a site from a seller who has a registered exemption in respect of that site, the existing exemption will continue to apply to the site after the change of ownership has taken effect. In this instance, you do not need to register for a new exemption. However, if you intend to rely upon the existing exemption in respect of the site, you must notify us **before the change in ownership takes effect. Updates should be submitted via the registrable exemptions portal on the AER website**	Reject change. See comments in previous section Similar to the change in the Network Guideline, the change from after to before the change in ownership takes effect is an issue. Property owners will not be able to comply with this.
Ret	**Change of Authorise representative**	You must advise us, via the registrable exemptions portal on the AER website, if the contact details for your authorised representative change.	Ok
Ret	**5.2 When you use an agent or third-party service provider**	As third-party service providers generally support an exempt seller, they are not required to hold a retail exemption. This is because they are not selling the energy themselves. However, these service providers should adhere to the relevant compliance obligations attached to an exempt seller's exemption, where relevant (for example, a billing agent should comply with the billing, and pricing conditions). **As the exemption holder, you are responsible for ensuring compliance with all the conditions of your exemption**. This includes ensuring any contracted service providers understand, and comply with, the compliance obligations attached to your exemption. Any exemption you hold should accurately reflect the arrangements in place between you and your contracted service providers. Registering an exemption does not in itself validate, or create, a service agreement or contract. Instead, the exemption serves as a compliance mechanism for the established arrangement.	Ok. New wording expanding discussion of the responsibilities and role of service providers

Ret	**6.2 Registrable Exemptions**	You can register an exemption via the registrable exemptions portal on the AER website.	Ok
Ret	**6.2 Registrable Exemptions**	~~For a site that changes ownership or whose ABN or ACN changes, the new seller should advise us before the change takes effect (see Section 5.1). The new seller should provide the ABN, legal name and contact details for both the old and the new seller and confirm the registrable exemption classes applicable to the site.~~	Ok Requirement to provide old and new information deleted.
Ret	**7.2.1(3)**	Records to be retained of explicit informed consent for 7 years	Ok Previously only 2 years
Ret	**Condition 7 (2)**	An exempt seller must provide notice to the exempt customer of any change in the exempt customer tariff at least 5 business days before the variation takes effect.	Reject change. Change in requirement to provide notice to the customer of a change in tariff. Previously notes as "as soon as practicable and no later than the exempt customers' next bill" Additional administrative costs for what benefit? Customers receive bills monthly, they would be notified at least monthly.
Ret	**Condition 7 (4)**	**An exempt seller must publish on its website,** or in the absence of a website, display this information in a location accessible to exempt customers (for example, a communal area): a) the exempt customer tariffs and charges b) a percentage comparison of the exempt customer tariffs to the local area retailer's standing offer. 3.5. The exempt seller must provide any or all information set out in Condition 7(4) as soon as practicable upon request by the exempt customer or the AER.	Reject change. See comments in above section. No failure to address – shopping centre customers below the DMO. Additional considerable compliance requirements. Could be confusing to customers given the number of tariffs.
Ret	**Appendix A-2**	**Condition 2 (k) The exempt seller must advise** exempt customers, in writing, at the start of their tenancy/ residency/agreement of the following: **the forms of assistance available if the exempt customer is affected by family violence**, as well as the process the exempt customer should follow to seek this assistance. The exempt seller must inform an exempt customer of the availability of its family violence policy, and offer to provide a hardcopy or electronic link to the policy in accordance with Condition 27	Reject change / clarify. See comments in previous section. New family violence policy and support. This applies to R1.
Ret	**Condition 27 Assistance for customers affected by family violence**	**Condition 27 – Assistance for customers affected by family violence 1**. An exempt seller must develop, implement, maintain, and comply with, a plain English family violence policy for exempt customers, that contains at a minimum, the standardised statements provided in the AER's Exempt seller family violence policy template, published on the AER website and as in force from time to time. An exempt seller's family violence policy must be	Reject change / clarify. See above. Applies to R1 category but the wording notes that it is only applicable to those "registration/approval date of the exemption to which this condition applies". Seek clarification on wording.

		implemented **no later than 3 months from the registration/approval date of the exemption to which this condition applies.**	
Ret	**Condition 28 – Notification requirement**	An exempt seller must notify the AER within 20 business days any revised contact details of the exempt seller's authorised representative, including their name, email address and telephone number.	Ok. Notification requirement of authorised representative details – no issue.

NETWORK EXEMPTIONS GUIDELINE

Network Exemption Guide- Version 7 – Key comments			
	Section	**Proposed Change / Impact**	**SCCA COMMENT**
Net	**4.1 Deemed exemptions and 4.2 Registrable exemptions**	4.1 **Removal of less than 10 small business customers for both Deemed and Registrable Exemptions** Closure of the deemed exemption classes ND1 and ND2 from 31 December 2025. Corresponding changes would be made to NR1 and NR2 and meaning that after the closure date, embedded networks that would have previously been deemed to be exempt will require registration, increasing visibility of these sites.	Reject change. See comments in previous section
Net	**Table 3 Registrable Exemption Classes – Electricity Supply**	Persons supplying metered or unmetered electricity to ~~**ten or more**~~ small business customers within the limits of a site, via a network that they own, control or operate. Additionally, persons that have appointed an Embedded Network Manager who would otherwise meet the ND1 class activity description* *Persons supplying metered or unmetered electricity to fewer than 10 small business customers, and the supply activity **commenced before 1 July 2025**, may rely on deemed exemption class ND1. The less than 10 small business customers has been removed (ie deemed) and is now registerable for small business customers. Does not effect existing deemed arrangements of less than 10 customers – ND1 will still apply for existing. Provisions grandfathered – will apply to new not existing – however 1 new supply/customer will void grandfathering.	Reject change. See comments in previous section
Net	**4.2 Deemed exemptions**	Addition of Registrable exemptions to apply to "(5) *Certain electricity generating systems and integrated resource systems (**including battery storage**) that are owned, control or operated by a third-party and connected to the national grid via an exempt network's connection point*"	Ok Clarifying position of battery storage – deemed exemption.
Net	**5.1 Primary Registrant**	Minor amends	Ok
Net	**Membership of ombudsman scheme/ Condition 1.18**	**Notifying changes to authorised representative** *Condition 1.19 requires an exempt person in a registrable class to notify updated contact details*	OK

		*of their **authorised representative within 20 business days of any changes**.* *An exempt network service provider must notify the AER within 20 business days of any changes to contact details of their authorised representative, including their name, email address and telephone number. Applies after 1 July 2026 to all registrable exemption classes.* The introduction of a new condition on exempt sellers to notify the AER, within 20 business days, of a change to any contact details for the exempt seller's authorised representatives, including their name, email address, and telephone number. Such details are said to be required by the AER to ensure that they can conduct effective educational campaigns, notify exempt sellers when they vary exemptions, and to address emerging compliance concerns.	
Net	**6.2 Registrable exemptions**	A person planning to retrofit an existing site cannot complete the online registration form for a registrable network exemption **without prior approval from the AER.** If you purchase a site from an owner who has a registered network exemption, the existing exemption will continue to apply to the site after the change of ownership has taken effect. In this instance, you do not need to register for a new exemption. However, if you intend to rely upon the existing exemption in respect of the site, **you must notify us before the change in ownership takes effect**. Updates must be submitted via the registrable exemptions portal on the AER website.	Reject change See above. This addresses the Notice of Acceptance process that has been introduced with the Portal, operationally you cannot register your registrable exemption without notifying and getting a Notice of Acceptance from the AER. Previous notification requirement which required notification within 20 business day of the change in ownership taking effect. Ie after. Practically how will this work – providing notification before the change in ownership?
Net	**6.3 Individual exemptions**	**Public consultation to usually run for 20 business days**	Ok. Amending previous 10-20 business days reference
Net	**6.3.3 Assessing an application**	**Assessment criteria will be guided by the National Electricity Objective (NEO)**	OK. Wording of NEO is now specifically included.
Net	**6.3.6 Change in circumstances**	Your exemption will specify the type of network you may operate and the scope of your supply activities. It cannot be varied to operate another network, or an additional network or to additional sites. You will need to apply for a new or separate individual exemption to do this. You must also contact us if your details change in any other way.	Ok. But more prescriptive than previous general statement
Net	**6.3.7 Change of ownership**	If you purchase a site from an owner who was granted an individual exemption, you **must** submit a new individual exemption application for that site as set out in section 8.3.	Ok. Change from **may** need to, to **must**. Has implications if new centres are acquired with existing Individual Exemptions they are not

			automatically transferred to new owners.
Net	**8.2 Revoking an exemption**	Extensive revision of provisions and more detail as to process and of revocation.	Ok. More prescriptive provisions.
Net	**Deemed Exemption Class NDO3**	**Electric vehicle charging stations within an exempt network** (for example, a privately owned charging station located in a public area, hotel, **shopping centre**, university). No registration required for EV business – deemed exemption class ND03.	See above
Net	**Condition 1.18**	**New expanded reporting requirements for NR2 exempt persons** (Persons supplying metered or unmetered electricity to residential customers). This category is amended to remove the less than 10 customers, so it covers, an exempt person supplying any retail customers. And requires them to in Condition 1.18 on the number of residential customers.	Reject Change.
Net	**Condition 2.4 Metering Installation**	Table included to describe who pays for the child meter within an existing embedded network	Ok New table but no change from existing requirements.
Net	**Condition 2.4 Metering Installation**	**Metering changes – Condition 2.4 Metering Installation** the amended provisions apply to entirely new or changed (repaired and replaced) child metering installations within a existing exempt network and detail the conditions under which an exempt network service provider must repair and replace at their cost deficient child meter.	OK. Clarity on who is liable to pay for repairs. A meter installation /upgrade of a CT can be very expensive. Parties can agree to the costing on a case-by-case basis.
Net	**Condition 5.2 External and internal network charges**	An exempt network service provider must: 5.2.3 Provide notice to the customer in the embedded network of any change in the customer's network tariff as soon as practical, ~~and no later than the customer's next bill~~at **least five business days before the varied tariff is to apply to the customer.**	Reject change. Change in requirement to provide notice to the customer of a change in tariff. Additional administrative costs for what benefit? Customers receive bills monthly, they would be notified at least monthly.
Net	**Condition 5.2.1 External Network charges**	*The following methods may be used by an exempt network service provider to recover external network charges from customers within an exempt network:* 1. ***direct attribution method*** *- These are known variously as transmission use of system (TUOS) charges, distribution use of system (DUOS) charges and network use of system (NUOS) charges, depending on the State or Territory in which the network is located* 2. ***'causer pays' method*** *- This involves passing through external network charges incurred by the exempt network service provider to meet a particular customer's needs at cost. The charges must be directly attributable to that customer.*	Request wording amendment We request that the higher EN specific tariffs can be passed through. Request the footnote [98] be amended to include the following text "at that embedded connection point" at the end of the first sentence.

		3. ***shadow price method*** [98] *- This involves passing through external network charges incurred by the exempt network service provider with a NSP at their parent meter and billed to customers in proportion to electricity consumed at their respective child meters* [98] This involves passing through external network charges that would have been incurred by customers with the relevant NSP if they were directly connected to the grid at that embedded connection point. This is based on the NSP's published regulated charges. The charging methodologies are prescribed. Each is defined.	
Net	**Appendix B Applying for an individual exemption or condition variation**	Multiple amends *Where an approval, licence or exemption from other legal requirements is applicable to own or operate the network within the relevant jurisdiction, the AER may not accept an individual exemption application until the applicant(s) provide evidence that these have been granted.*	Reject change. We suggest that this could be in a circular (ie State Regulator ie Energex waiting on AER and AER waiting on Energex)? Changes are proposed with respect to individual exemption applications, including that the AER may refuse an application that does not provide evidence that the proposed embedded network has met jurisdictional requirements (e.g., where an applicant requires a state licence). Additionally, new requirements include: 1. Contingency arrangements to ensure continuity of supply for customers if the network service provider ceases operations **2. Independent assessment of design and installation standards for large-scale networks to ensure that they are fit for purpose** – adding costs for what benefit? An additional cost and consultant/ party involved (independent consultant).
Net	**Part 2 General application details**	*Note* *We may also require details of panel layouts and wiring diagrams for the retrofit (EN wiring information) showing metering arrangements for each connection to the DNSP and each customer to be served by the installation, and all intermediary wiring between the relevant DNSP's supply point and each customer).*	