

19th December 2017

Ms Sarah Proudfoot
General Manager – Retail Markets Branch
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

By email: AERExemptions@aer.gov.au

Submission on Draft AER (Retail) Exempt Selling Guideline Version 5 November 2017

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA) is the State's peak industry body representing the interests of holiday parks, residential land lease communities (residential parks, including caravan parks and manufactured home estates), manufacturers and retailers of recreational vehicles (motorhomes, campervans, caravans, camper trailers, tent trailers, 5th wheelers and slide-ons), suppliers of camping equipment and manufacturers of relocatable homes.

We currently have as members 722 businesses representing all aspects of the caravan and camping industry and residential land lease community industry. Of these, 474 members are holiday park and residential land lease community operators in various areas of New South Wales (NSW).

Under the Australian Energy Regulator's (AER) *Electricity Network Service Provider Registration Exemption Guideline Version 5* (Network Guideline) and *(Retail) Exempt Selling Guideline Version 4* (Retail Guideline) our holiday park and residential land lease community members are classified as follows:

Embedded Network Type	AER Exemption Classes
Operator selling metered energy to occupants of holiday accommodation on a short-term basis in a caravan/holiday park	Class D3 of the Retail Guideline and Class ND3 of the Network Guideline Do not need to register their details with the AER, however are required to comply with Conditions attached to their exemption
Operator selling metered energy to residents who principally reside in the caravan park/residential park or manufactured home estate	Class R4 of the Retail Guideline and Class NR4 of the Network Guideline Must register their details with the AER and comply with Conditions attached to their exemption
Operator selling metered energy to occupants of holiday accommodation on a short-term	Class R4 of the Retail Guideline and Class NR4 of the Network Guideline

<p>basis as well as residents who principally reside in the caravan/holiday park (mixed park)</p>	<p>Must register their details with the AER and comply with Conditions attached to their exemption</p> <p>NOTE: <i>Even if a caravan park has only 1 permanent resident, they are required to register their details with the AER under Class R4 of the Retail Guideline and Class NR4 of the Network Guideline, even though the majority of their customers are holiday makers.</i></p>
--	---

For the purpose of these submissions, wherever we refer to “holiday parks” we are referring to caravan parks that only supply energy via an embedded network to occupants of holiday accommodation on a short-term basis (i.e. there are no permanent residents in these caravan parks). Wherever we refer to “residential land lease communities” we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who live there. This includes caravan parks that supply energy to as few as 1-2 residents (mixed parks) right through to residential land lease communities that are exclusively residential.

As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, the CCIA is an important stakeholder in relation to the *Draft AER (Retail) Exempt Selling Guideline Version 5 November 2017* (Draft Guideline). Accordingly, we welcome the opportunity to provide a response to the draft proposals. Our submissions on each of the proposed changes as relevant to our sector are set out below under corresponding headings.

Dispute Resolution & Membership of Energy Ombudsman Scheme – Conditions 16 & 17

We maintain that because NSW holiday parks and residential land lease communities are subject to additional regulatory controls at the State level, current external dispute resolution arrangements for embedded network customers in our industry are long-standing, appropriate and effective. There will likely be no additional benefit to exempt customers in our sector from expanding the NSW ombudsman scheme jurisdiction.

The primary relationship between embedded network customers and embedded network operators in NSW holiday parks is an arrangement for holiday accommodation. The primary relationship between embedded network customers and embedded network operators in NSW residential land lease communities is one of tenancy. This means these customers have multi layered protections under other legislation and their agreements, and have had effective dispute resolution mechanisms for a number of years.

As set out in previous submissions to the AER, most holiday parks and residential land lease communities in NSW are older developments that have evolved over time and the embedded networks within them have come about through circumstance. In most cases, there was no conscious business decision to create an embedded network. The infrastructure is generally older and owned by the operator.

Many caravan parks were originally camping grounds on reserves of Crown land in coastal areas outside the capital cities, squatted by people who had lost their homes and who had no housing alternative to living in tents, shacks and vans. The reserves were converted to

caravan parks after the Second World War and maintained by local councils, although most parks had little in the way of communal facilities.

In 1986 legislation was passed which legalised long-term occupancy of sites and set minimum standards for caravan park residency and in 1992 *State Environmental Planning Policy (SEPP) 21 – Caravan Parks* was introduced, encouraging “the orderly and economic use and development of land used or intended to be used as a caravan park catering exclusively or predominantly for short term residents (such as tourists) or for long-term residents, or catering for both.”¹

The *Residential Tenancies Act 1987* originally covered permanent residents of residential parks. However, it later became clear that there were so many differences between tenancies in parks and other residential tenancies that separate legislative provisions were necessary. As a result, the *Residential Parks Act* was enacted in 1998, and a range of protections were secured for residents, including effective dispute resolution mechanisms.

Under the NSW Fair Trading *Customer Service Standards for the Supply of Electricity to Permanent Residents of Residential Parks* residents were able to make an application to the NSW Civil and Administrative Tribunal (NCAT) (previously the Consumer, Trader and Tenancy Tribunal) regarding electricity disputes or make application to the Energy and Water Ombudsman (NSW) Ltd (EWON) for investigation of complaints.

These dispute resolution mechanisms have been maintained under the current legislation, the *Residential (Land Lease) Communities Act 2013* (RLLC Act) and the *Residential (Land Lease) Communities Regulation 2015* (RLLC Reg). NCAT is also able to hear and resolve disputes for holiday park customers under the *Holiday Parks (Long-term Casual Occupation) Act 2002* (HP Act).

Further, NSW Fair Trading provides free information about consumer rights and options to resolve disputes with traders, including embedded network customers in holiday parks and residential land lease communities, and in some cases can contact the operator and attempt to negotiate a settlement. We, as the peak industry body, also provide members with advocacy services and resources and legal information regarding their obligations and we estimate that this coverage extends to approximately 75% of long-term and short-term sites within NSW holiday parks and residential land lease communities.

Accordingly, under NSW legislation customers of embedded networks in holiday parks and residential land lease communities already have access to free and independent dispute resolution provided by EWON and NSW Fair Trading, as well as access to NCAT.

The operators of residential land lease communities know their residents well and in many cases, managers live on site. They are not large, faceless landlords who try and avoid their obligations to properly manage the embedded network and facilitate customer access to dispute resolution. These businesses are highly regulated by State legislation and it is in their interest to minimise disputes.

In order to take proper account of exempt entities such as NSW holiday parks and residential land lease communities, and maintain a proportionate regulatory burden, dispute resolution requirements in the exemptions framework should continue to take a hierarchical approach. An exempt entity should only be required to join an ombudsman scheme where a relevant external dispute resolution body does not already exist.

¹ Clause 3, *State Environmental Planning Policy No 21 – Caravan Parks*

NSW Fair Trading and EWON already provide high quality, independent dispute resolution services and information to residents and occupants in holiday parks and residential land lease communities. Operators generally comply with any decision of EWON in relation to a complaint or dispute regarding the provision of connection services or the supply of electricity. The issue appears to be EWON's ability to recover fees and charges and growing retailer and distributor concerns about the cross-subsidy to exempt sellers, even though the proportion of complaints from our industry is extremely low.

Requiring NSW holiday parks and residential land lease communities to become members of EWON would not in any way improve their customers' access to effective external dispute resolution. They already have it. All this will do is impose yet another cost burden on businesses that are restricted in their ability to recover costs associated with their embedded networks.

We reiterate that in NSW holiday parks and residential land lease communities energy on-selling is generally not a source of profit when all costs are taken into account. There are limits imposed on charges by the AER guidelines, as well as state legislation, and any savings which are made are more likely used to cover ongoing costs of running the business.

While there may be growth in the embedded network sector generally, with landlords looking to energy on-selling as a means of supplementing their rental income, there is no rapidly increasing development of holiday parks and residential land lease communities in NSW with dedicated embedded networks. As such, the number of energy disputes in this sector of the embedded network space is unlikely to escalate.

Changes to the existing system in our industry are unnecessary for the overall net benefit and would be disproportionate to the risk being managed by the AER. Accordingly, we do not support proposed Condition 16 and Condition 17 of the Draft Guideline.

We also raise the following issues:

1. The reference to "Australian Standard AS ISO 10002-2014 (*Customer satisfaction-Guidelines for complaints handling in organisations*)" in Condition 16 requires clarification.

As indicated at the AER Exemption Guidelines Review Forum on Thursday 14th December 2017, International Standard ISO 10002:2014 (*Customer satisfaction - Guidelines for complaints handling in organizations*) and the Australian Standard AS/NZ 10002:2014 (*Guidelines for complaint management in organizations*) are different documents.

An article by CompliSpace "Two new '10002' complaint handling standards – now that's confusing" provides a useful summary, noting that ISO 10002:2014 is "client focussed" whereas AS/NZS 10002:2014 is "process-driven."²

Is the AER's intention that AS/NZ 10002:2014 applies? Page 10 of the *Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5 November 2017* (Notice of Draft Instrument) appears to indicate this is the case and Condition 4.1.6 (c) (ii) of the current Network Guideline references AS/NZS 10002:2014.³ The preface to that Standard states:

² <https://www.complispace.com.au/blog/financial-services-updates/two-new-10002-complaints-handling-standards-now-thats-confusing/>

³ We note that the AER's Draft Electricity Network Service Provider Registration Exemption Guideline Version 6 November 2017 also seeks to reference Australian Standard AS ISO 10002-2014 (*Customer satisfaction-*

“This Standard is based on but not equivalent to ISO 10002:2004, Customer satisfaction—Guidelines. This revised edition is intended for complaint management in organizations, incorporating new perspectives and approaches to complaint handling that have proved effective over recent years, and reflects the trend away from quality management approaches in the complaint management/dispute resolution field.”

Before we can comment on suitability, clarity is needed regarding the exact standard to apply. For example, we are concerned that less sophisticated embedded network operators may struggle with some aspects of a standard that, in any event, may not be critical to an effective internal dispute resolution system for their business and customers. We also want to avoid any unnecessary administrative burden.

2. Should the AER proceed with the proposals, the wording of Condition 17 will need to take account of flexible arrangements for ombudsman membership. For example, in our recent discussions with EWON, consideration is being given to a ‘peak body’ membership for holiday parks and residential land lease communities – our Association would become a member of EWON and this membership would extend to each of our residential land lease community members.

The proposed wording “*be a member of, or subject to, an energy ombudsman scheme...*” in Condition 17. 1. a. appears to suffice and should remain consistent in the Retail Guideline and Network Guideline.

Other Core Condition Variations

Condition 1 – Obligation to supply

We note the proposal to vary Condition 1 so that exempt sellers are obliged to offer supply, including if the customer owes monies on their energy account.⁴

We strongly oppose this variation and disagree that the proposed amendments to Condition 11 to “*limit when customers can request reconnection to 10 days after the disconnection, unless the matter that led to the disconnection is remedied earlier*” and “*make the obligation to reconnect or re-energise supply conditional on customers agreeing to enter into a payment plan*” is a sufficient amendment to “*lessen the impact*” on the seller’s ability to recover energy debts.

‘Agreement’ to enter into a payment plan is not the same thing as actually making payments to lessen a debt. We fear that this change (as currently drafted) will lead to an escalation of customer debts to the detriment of residential land lease community operators, as well as customers.

We understand the point that exempt customers may be without supply until they pay their arrears given the limitations in choice of supplier,⁵ but this is one area where it is simply not practical, fair or reasonable, to try and align the exempt framework with the retail framework.

Guidelines for complaints handling in organisations) instead of AS/NZS 10002:2014 and will query same in our submission to that review.

⁴ Notice of Draft Instrument: AER (Retail) Exempt Selling Guideline Version 5 November 2017 p 14.

⁵ *Ibid*

Should Condition 11 be subject to further amendments that are similar to Condition 9. 2. d. i – iv (i.e. provisions that give customers multiple opportunities with notice to clear a debt before disconnection, but which do not completely absolve them of that responsibility) this may be something that is fair and reasonable to all parties.

However, as currently proposed, Condition 11 is simply an unacceptable impost on embedded network operators. We request urgent and further consultation by the AER on this issue.

Condition 2 – Information provision

We have no issue with the proposed change to Condition 2, as it is only a minor drafting amendment.

Condition 3 – Billing and payment arrangements

We have no issue with the proposed amendments to Condition 3 requiring exempt sellers to present supply charges as a daily amount, which includes:

- i. the usage rate specified in cents per kilowatt hour (c/kWh)*
- ii. the daily supply charge in cents per day (c/day) (if charged)*
- iii. the number of days in the billing cycle.⁶*

The information at point i and point iii is already provided on customer bills and in relation to point ii, a supplier to the industry has advised that a system change can be made to allow operators of residential land lease communities to display a daily supply charge in cents per day. We agree this would be helpful information for residents.

However, we do not believe the information is necessary for holiday makers and request that an amendment be made to Table 3 – *Exemption class conditions* Class D3 to exempt holiday parks from this requirement. Information about “*the basis on which tariffs, fees and charges are calculated*” (as per current requirements) is sufficient in the context of holiday accommodation.

Condition 7 - Pricing

We have no issue with the proposed change to Condition 7, as it is only a minor drafting amendment.

Condition 11 – Reconnection or re-energisation

We strongly oppose this variation (as set out above in response to proposed Condition 1) and request urgent and further consultation by the AER on this issue.

⁶ Proposed Condition 3.5.1. Draft AER (Retail) Exempt Selling Guideline Version 5 November 2017 p35.

Condition 12 – Payment plans

While some direction on factors to consider in relation to payment plans is welcome, we are concerned that Condition 12. 1. a. presents a problem for operators of residential land lease communities. With no legal obligation for residents to supply information about their finances (i.e. income versus financial commitments and basic living expenses) an operator may not have sufficient information in order to have proper regard to their “capacity to pay.”

The factors in Condition 12.1. b. and c. the operator will already have the information, therefore the requirement in 12.1.a. should be restricted to where sufficient information has been supplied by the customer. Otherwise, we have no issue with the proposed Condition 12.

Condition 18 – Planned interruptions to supply

While in principle we have no issues with new Condition 18 on notifications of planned interruptions to supply, we seek clarification on how an exempt seller is able to notify each affected exempt customer? As this would be an additional administrative burden, operators of residential land lease communities should be able to provide such notice via email and/or SMS where those details are available for customers.⁷

Condition 19 – Unplanned interruptions to supply

Similar to new Condition 18, in principle we have no issues with new Condition 19 regarding unplanned interruptions to supply, however we seek clarification on how an exempt seller is to “make available” information about the interruption, as required in the Condition. Given the nature of an unplanned interruption to supply, it would make sense for this to be done via email and/or SMS where those details are available for customers. However, in situations where those details are not available, what other reasonable means of communication are available to exempt sellers?

Other Proposed Variations

We seek clarification of other proposed amendments as follows:

Glossary

The draft definition of an embedded network requires clarification:

“Embedded network means a privately owned electricity network where a single meter (which is supplied by a retailer) provides all energy for the site. Energy is then delivered to customers via the private network. For the purposes of the retail exemption framework, a private network connected to another private network is considered an embedded network.”

It is possible for an embedded network to have more than one parent meter providing energy for the site (e.g. holiday parks and residential land lease communities that have grown in size over time). The proposed definition may not be appropriate in these cases.

We also seek clarification on what is meant by “a private network connected to another private network is considered an embedded network.”? Could this account for sites with multiple parent meters? If yes, what is meant by the word “connected”?

⁷ We note that section 184 (e) of the RLLC Act allows for notice or documents to be given by email.

Change of Ownership

Page 13 of the Draft Guideline contains the following new wording:

“For a site that changes ownership or whose ABN or ACN changes, you should advise us as soon as the change takes effect by sending an email to: AERExemptions@aer.gov.au. You need to provide the ABN, legal name and contact details for both the old and the new applicant, and confirm the registrable exemption classes applicable to the site.”

Clarification is sought on who is required to comply with this obligation - is the reference to “you” a reference to the outgoing owner of the embedded network or is it the new owner?

Further Suggested Change

Class R4 – Class Criteria

Table 2 – Registrable classes of exemption of the Draft Guideline states the following for Class R4:

Registrable exemption class	Application	Class criteria	Class Restrictions
Class R4 Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (ie long term residents)	Owners or operators of caravan parks, residential parks and manufactured home estates.	Energy is used for premises within the limits of a caravan park, residential park or manufactured home estate site owned, occupied or operated by the person, and Each premises is separately metered, and The premises are the residents’ principal place of residence, that is, it is where the person lives most of the time and / or the person has no other place of residence.	Class remains open

We note that section 45 of the RLLC Act allows a home owner to enter into a tenancy agreement for, or otherwise sub-let, the residential site or the home located on it, with the written consent of the operator of the community.

As currently drafted, the class criteria for Class R4 may inadvertently not account for customers that have sub-let their residential site or dwelling.

Conclusion

Thank you to the AER for considering our responses to the Draft Guideline. As the peak industry body representing holiday parks and residential land lease communities in NSW with

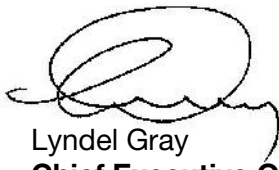
embedded electricity networks, the CCIA is an important stakeholder in relation to the retail exemptions framework.

We would like to discuss this submission further, particularly the proposed amendments regarding an exempt seller's obligation to supply (Conditions 1, 11 and 12) and to workshop with the AER proposed solutions to the issues we have raised.

We would be grateful if someone from your office could make contact with Shannon Lakic, our Policy, Training and Executive Services Manager, on (02) 9615 9940 or via email shannon.lakic@cciansw.com.au to advise your availability in the near future.

We look forward to hearing from you soon and our continued involvement in the consultation process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lyndel Gray', with a large, stylized flourish at the end.

Lyndel Gray
Chief Executive Officer