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**SUBMISSION ON UPDATING THE NETWORK AND RETAIL EXEMPTION GUIDELINES
CONSULTATION PAPER, MAY 2021**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) 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, retailers and repairers of recreational vehicles (motorhomes, campervans, caravans, camper trailers, tent trailers, 5th wheelers and slide-ons), suppliers of camping equipment, manufacturers of relocatable homes and service providers to these businesses.

We currently have as members 720 businesses representing all aspects of the caravan and camping industry and residential land lease living industry. Of these, 480 members are holiday parks and residential land lease communities located throughout New South Wales (NSW).

Under the Australian Energy Regulator's (AER) *Electricity Network Service Provider - Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) and *AER (Retail) Exempt Selling Guideline, Version 5, March 2018* (Retail Guideline) our holiday park and residential land lease community members are classified as follows:

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy to occupants of holiday accommodation on a short-term basis	Class ND3 of the Network Guideline	Deemed classes of exemption. Do not need to register their details with the AER, however, are required to comply with Conditions attached to their exemption
Persons selling metered energy to occupants of holiday accommodation on a short-term basis	Class D3 of the Retail Guideline	

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there	Class NR4 of the Network Guideline	Registrable classes of exemption. Must register their details with the AER and comply with Conditions attached to their exemption
Persons selling metered energy in caravan parks, residential parks and manufactured home estates to residents who principally reside there (i.e. long term residents)	Class R4 of the Retail Guideline	

Embedded Network Type	AER Exemption Classes	Requirements
Persons supplying metered or unmetered energy to occupants of holiday accommodation on a short-term basis AND in caravan parks, holiday parks, residential land lease parks and manufactured home estates to residents who principally reside there (mixed parks)	Class NR4 of the Network Guideline	Registrable classes of exemption. Must register their details with the AER and comply with Conditions attached to their exemption <i>NOTE: 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, despite the majority of their customers being holiday makers.</i>
Persons selling metered energy to occupants of holiday accommodation on a short-term basis AND in caravan parks, residential parks and manufactured home estates to residents who principally reside there (i.e. long term residents) (mixed parks)	Class R4 of the Retail Guideline	

For the purpose of this submission, wherever we refer to 'holiday parks' we are referring to caravan parks that only supply/sell 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/sell 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 NSW is an important stakeholder in relation to the AER's review of the Retail Guideline and the Network Guideline. We welcome the opportunity to provide a response to the *Updating the Network and Retail Exemption Guidelines Consultation Paper, May 2021* (Consultation Paper).

NETWORK EXEMPTION GUIDELINE: WHAT DOES IT MEAN TO OWN, CONTROL OR OPERATE AN EMBEDDED NETWORK

Consultation Questions

- 1. Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?*
- 2. Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?*
- 3. Should we clarify the meaning of controlling and operating an embedded network?*

We agree with the AER's summation on page 14 of the Consultation Paper regarding the issues caused by the National Electricity Law (NEL) not defining what owning, controlling or operating a network means, nor determining an order of priority for embedded network owners, controllers and operators.

The multiplicity of network exemption holders can cause confusion as to who is (or should be) responsible for certain compliance obligations, and we agree that the requirement for every party to join an ombudsman scheme or appoint an Embedded Network Manager is impractical and unnecessary for the proper operation of these networks.

With the objective of providing clear lines of responsibility and accountability, the Association supports amending the Network Guideline to clarify the types of parties that may control or operate a network and to require there to be one registrant, with other parties subject to deemed exemptions.

Not all owners (i.e., persons who hold legal title) are active in running their embedded networks. Like other sectors, there are multiple ownership and operating structures involved in holiday parks and residential land lease communities, where owners do not necessarily have operational control of day-to-day business processes.

As one example, a residential land lease community with an embedded network could be owned by a local council but leased under a long-term lease to a community operator, who for the purposes of the *Residential (Land Lease) Communities Act 2013* (RLLC Act) will be the community operator. The council owns the land and infrastructure,¹ but it is the operator who undertakes financial planning for the community, has obligations under the residential site agreement, allocates resources, engages with customers, delivers products and services and therefore controls the day-to-day business processes. It is the operator who is the customer of the retailer and distribution network service provider at the parent connection point for the embedded network. It is also the operator who resolves customer enquiries or complaints and undertakes maintenance or responds to faults on the embedded network.

Some communities are owned and run by partnerships. Some are part of corporate group structures and others are contracted to management companies. Some communities have also opted to outsource the operation of their embedded networks to embedded network specialists.

¹ We note community operators under lease arrangements can also own infrastructure (e.g., manufactured homes).

We note the observation on page 15 of the Consultation Paper that *'Some professional embedded network specialists such as on-sellers with retailer authorisations and billing agents do not consider themselves to be engaged in the activity of owner, controlling or operating an embedded network. The owner of the network, who has engaged a professional embedded network specialist may be unaware of his or her own compliance obligations and assumes the professional specialist carries all responsibility for regulatory compliance.'*

We agree this can happen, although there are some professional embedded network specialists who hold out as offering an 'all inclusive' solution and we would argue that they are involved, at least to some extent, in 'owning, controlling or operating' an embedded network, particularly in service arrangements that include installation and management of network infrastructure and on-site generation.

Adopting the AER's approach that *'someone who controls a network influences or determines how it works, while someone who operates it is applying the directions of the controller and making it work,'* it follows that the sole registrant should be the controller. However, in relation to the requirement that the sole registrant should have the capacity to resolve customers' complaints, this could be a controller or an operator of an embedded network. The words 'control' and 'operate' are synonyms in some contexts.

It would be useful for the Network Guideline to clarify the meanings of 'owning,' 'controlling' and 'operating' an embedded network in a way that allows for the various ownership and operating structures of embedded networks. If there are multiple parties involved in the ownership, control and operation of an embedded network they should have the ability to nominate the person best placed to be the sole registrant, and there should be flexibility to ensure that the conditions attached to the deemed exemptions held by other parties are appropriate to the functions of those parties.

NETWORK EXEMPTION GUIDELINE: EMBEDDED NETWORK MANAGER REQUIREMENTS

Consultation Questions

6. What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?

7. Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?

8. Do stakeholders agree that the appointment of Embedded Network Managers should be deferred in if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?

9. Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?

Successful procurement processes require sufficient time for principals to define the goods or services to be delivered, consider a list of suppliers, negotiate commercial contract terms with their chosen supplier and finalise that supplier's onboarding.

For residential land lease communities operating under activity class NR4 of the Network Guideline, preliminary feedback is that up to 90 days should be sufficient for a successful procurement process and in consideration of the mechanism available for eligible communities to not appoint an Embedded Network Manager (ENM) immediately.

In relation to ENM appointments for unmetered sites, we agree that the requirement to appoint an ENM should not apply. If the ENM cannot perform their functions, requiring an appointment is pointless and imposes an unnecessary cost.

We also agree that where an ENM is no longer required because there are no longer any on-market customers in an embedded network, embedded network operators who hold exemptions from any of the deferred ENM appointment classes should be permitted to revert to deferred appointment.

It is our understanding that Condition 4.7.2 of the Network Guideline already allows particular embedded network operators (e.g., *'those serving eligible community based groups registered in activity classes ND2, NR2, NR3, NR4'* and *'other bona fide bulk purchasing groups with approval from the AER'*) to cease to engage an ENM if no community member is served by a market retailer offer. As such, provisions for reversion will need to be streamlined.

In response to consultation question 9 regarding eligible communities and counter offer provisions, we note page 24 of the Consultation Paper states:

'The network exemption guideline generally does not allow embedded network operators to recover the costs of appointing an Embedded Network Manager from customers. There is one exception, namely where an 'eligible community' has formed to share the costs and benefits of bulk purchasing across all community members. An embedded network operator must apply to the AER to be eligible. To date we have not received any applications.'

We take issue with the statement that *'an embedded network operator must apply to the AER to be eligible.'* In relation to residential land lease communities, nowhere in the Network Guideline is it expressly stated that an embedded network serving community-based groups registered in activity class NR4 'must apply to the AER' to be considered eligible.

Condition 4.7.2 can be interpreted as providing embedded networks serving community-based groups registered in activity classes ND2, NR2, NR3, and NR4 with automatic eligibility if they are *'participating in a group purchasing scheme whereby the benefits of bulk purchasing are shared across all members of the community.'* It is *'other bona fide bulk purchasing groups not in the list of eligible activity classes'* that may *'apply to the AER for dispensation to also be treated as an eligible community.'* It is Condition 4.7.3 of the Network Guideline which then sets out poll requirements and reporting to the AER.

Following publication of the Consultation Paper we contacted the AER regarding this issue. It was acknowledged by AER representatives that while the intent of the Network Guideline is that persons wishing to form eligible communities apply to the AER, it does not explicitly state this. This might explain in some part why the AER has not received any applications.

In relation to our sector, we reiterate that residential land lease communities in NSW are subject to price control effects of the RLLC Act resulting in customers being unlikely, if ever, to seek to go on-market, rendering ENM services as unnecessary at this time. This would be the reason for a lack of take up of the eligible communities and counter offer provisions in our sector, not because *'embedded network operators are not interested in forming eligible communities'* as suggested on page 24 of the Consultation Paper.

Nevertheless, we do not support deleting the eligible communities and counter offer provisions from the Network Guideline. We do, however, support redrafting the provisions to reduce their complexity and improve their suitability, because these provisions provide a benefit to embedded network customers who do not utilise the service of an ENM.

During consultation on version 5 of the network guideline in 2016, stakeholders who objected to the proposal that ENM costs should be absorbed by embedded network operators, and those who supported a user pays cost recovery model, raised a number of points that are still relevant.² These include that bulk purchasing schemes offer the most benefit if all customers remain inside the embedded network. In its Reasons for Decision the AER concluded –

‘Our final position remains that the exempt embedded network service provider will be required to absorb the ENM costs, except in the limited case of an eligible community bulk purchasing scheme. We consider this position will provide the lowest barrier to effective competition in embedded networks and thereby ensure embedded networks seek to operate on a competitive basis.’³

We also note that the NSW Department of Customer Service is currently considering a range of policy options to address the regulation of electricity charging in residential land lease communities. The result of this review could be that the price control effect of the RLLC Act changes to allow operators to charge home owners prices for electricity supply and usage more akin to prices paid by on-market customers. If this happens, ENM services may become more likely for residential land lease communities and the flow on effect could be that ‘eligible communities’ become more prevalent.

It is too early to tell, however, whether operators would continue to be prevented from recovering ENM costs through utility charges (see next section). In any event, they are unlikely (nor should they be required) to just absorb these and other costs. The result will be increased site fees for all home owners.

We submit that removing the eligible communities and counter offer provisions from the Network Guideline at this time would be premature.

NETWORK EXEMPTION GUIDELINE: ALLOWING UNMETRED SUPPLY FOR NETWORKS ESTABLISHED BEFORE 2012

We note the AER proposes to clarify that unmetered connections in embedded networks that existed before 2012 may continue to be unmetered, unless a customer requests a meter be installed. If a customer requests a meter be installed, the actual cost may be passed directly to that customer provided they were informed what this cost is and that they would bear this cost at the time of their request.

We generally support not requiring existing unmetered embedded networks to be upgraded unless a customer requests a meter be installed. Any unmetered supply in holiday parks or residential land lease communities usually has low consumption and an all-inclusive site fee or accommodation tariff is applied, regardless of how much energy is consumed.

² Australian Government, Australian Energy Regulator, *Reasons for Decision – Amended Network Exemption Guideline – Version 5*, Commonwealth of Australia, 2016, p24, accessed at <https://www.aer.gov.au/networks-pipelines/guidelines-schemes-models-reviews/network-service-provider-registration-exemption-guideline-revoked-december-2016>

³ Ibid, p 25.

However, in relation to cost recovery from the customer we reiterate that under the RLLC Act residential land lease communities in NSW are prohibited from recovering any costs from home owners not expressly set out in the legislation. In addition, the option to install a meter lies with the operator rather than a home owner.

Section 76 of the RLLC Act states –

‘76 Limit on amounts payable by home owner

- (1) The only fees and charges that may be required or received by the operator of a community from a home owner in connection with the occupation of a residential site, or the use of any of the facilities of a community, are as follows—
 - (a) site fees, including site fees payable in advance as permitted under section 57,*
 - (b) the cost of registering or recording the site agreement under the Real Property Act 1900 if any fixed term period exceeds 3 years,*
 - (c) a refundable deposit for a key or any other opening device to access the community, not exceeding \$25 or another amount prescribed by the regulations,*
 - (d) other fees, charges and deposits required or permitted by this Act or the regulations.**
- (2) The regulations may require or permit payment of fees, charges and deposits that are specified or of a kind specified by the regulations and, in particular, may (but need not) provide that they are not payable by a home owner unless required by the site agreement to be paid by the home owner.*
- (3) An operator of a community must not require or permit the payment of any fee, charge or deposit from a home owner in contravention of this section.*

Maximum penalty—20 penalty units.’

Section 80 of the RLLC Act states -

‘80 Separate measurement or metering of supply of utility

- (1) This section applies if—
 - (a) the use by the home owner under a site agreement of a utility at the residential site is not separately measured or metered, and*
 - (b) the operator wishes to separately measure or meter the use of the utility at the residential site.**
- (2) The operator of a community must pay the cost of installing a measuring device or meter to measure the use of the utility at the residential site.*

Maximum penalty—100 penalty units.’

There are no provisions in the RLLC Act or the *Residential (Land Lease) Communities Regulation 2015* (Regulation) permitting cost recovery of meter installations or ENM services from home owners.

Therefore, unless the NSW legislation is amended, the AER’s proposal regarding unmetered connections in NSW embedded networks that existed before 2012, and which are registered under activity class NR4, will impose on operators yet another obligation with no access to recover costs through utility charges, despite allowances under the Network Guideline.

Should the AER proceed with this change, provision should be made for embedded networks registered under activity class NR4 if state-based legislation does not allow for the actual cost of the meter installation to be passed onto the customer.

NETWORK EXEMPTION GUIDELINE: DISCONNECTIONS FOR ENERGY ONLY CUSTOMERS

We have no issues with the proposal to amend the Network Guideline to include the Retail Guideline's disconnection obligations (Conditions 9-11) for on-market customers.

Many residential land lease communities in NSW with embedded networks are already bound by these obligations under the Retail Guideline. In addition, residential land lease communities are also bound by section 78 of the RLLC Act, which states -

'78 Unpaid utility charges

- (1) If a home owner is required to pay a utility charge to the operator of a community under this Part, the operator may charge a fee for late payment or a dishonoured payment, not exceeding the amount that could have been charged if the service was supplied directly to the home owner by the local utility service provider or regulated offer retailer.*
- (2) The operator may apply to the Tribunal for an order requiring the home owner to pay to the operator—
 - (a) any unpaid utility charge, or*
 - (b) any unpaid fee for late payment, or*
 - (c) any unpaid fee for a dishonoured payment.**
- (3) The Tribunal may, on application under this section, make—
 - (a) an order requiring the home owner to pay the unpaid charge or fee (or a specified part of it) within a specified period, and*
 - (b) any ancillary order that the Tribunal, in the circumstances, thinks appropriate.**
- (4) The Tribunal may determine the application without conducting a hearing with the consent of the parties.'*

The protections provided by section 78 effectively mean a home owner's electricity supply in a NSW residential land lease community cannot be disconnected without an order from the NSW Civil and Administrative Tribunal (NCAT). We are not aware an order like this has been made by NCAT.

RETAIL EXEMPTION GUIDELINE: MANDATORY INFORMATION DISCLOSURE BY EXEMPT SELLERS

We agree that clear guidance on how to exit an embedded network could assist customers, as well as embedded network operators (particularly those where the supply of energy is not their core business), to better understand the process.

It would be very useful if the AER developed a factsheet describing the process that an embedded network customer must follow to enter into a market retail contract. Clear, straightforward guidance in Plain English and other languages should be available to all parties involved in an embedded network customer going on-market.

In addition, we have no issues with the AER amending the Retail Guideline to require exempt sellers to provide a copy (should not be limited to 'hard copy') or a link to the factsheet to customers –

- at the start of their tenancy, residency or supply agreement,
- when the customer requests this information, and
- following an enquiry from a customer to leave an embedded network.

Residential land lease communities in NSW with embedded networks are already required to comply with the requirements of *Condition 2 – Information provision* in the Retail Guideline. There are also extensive disclosure obligations under the RLLC Act. Providing an additional factsheet or link as part of tenancy disclosure documents is not unreasonable to assist all parties to better understand the process. Our Association can also help to automate the process for our members via our Residential (Land Lease) Communities Portal (www.cciamembers.com.au/rllc-home/).

We note, however, that clarification will be needed on what constitutes 'an enquiry' and amendments to the Retail Guideline will need to ensure that this requirement is also marked as 'not applicable' in the exemption class conditions for deemed activity class D3.

RETAIL EXEMPTION GUIDELINE: HARDSHIP ASSISTANCE

Consultation Questions

16. Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?

17. What key protections should be included in a hardship policy template for exempt sellers?

18. What additional obligations should the core exemption conditions include?

We acknowledge that providing additional hardship supports, such as requiring exempt sellers to identify appropriate financial counselling services or offer hardship plans or both, would provide benefits for embedded network customers. The AER could also look at ways to reduce the administrative burden of these requirements, such as developing a hardship plan template.

However, it is important to note that if a home owner or tenant living in a NSW residential land lease community is behind on their utility bills, they are usually also behind on their site fees or rent and so the issue is much broader than providing additional support for non-payment of energy bills due to financial hardship.

As noted above, embedded network customers in residential land lease communities are protected by section 78 of the RLLC Act - a home owner's electricity supply cannot be disconnected without an order from the NCAT. The NCAT also frequently makes orders for payment plans to enable home owners, as well as tenants under the *Residential Tenancies Act 2010* (RT Act), to catch up on arrears for site fees/rent and utilities.

In addition, the NCAT always seeks to preserve tenancy and site agreements, and by extension the supply of utilities. Payments for site fees or rent cannot be used to pay utility charges (see section 79 of the RLLC Act and section 33 (3) of the RT Act).

Page 34 of the Consultation Paper states that the AER considers it appropriate to provide hardship supports for customers of exempt sellers to the extent possible but is also *'mindful of the practicalities of requiring exempt sellers, particularly small ones, to provide such support.'* In supporting that approach, we submit that embedded network customers already covered by protections that are similar or provide equivalent outcomes under state-based legislation should be considered to avoid any further regulatory duplication.

OTHER IMPROVEMENTS

Simplifying the Guidelines

The Consultation Paper acknowledges on page 7 that the *'network exemption guideline, in particular, is technical and difficult to follow and could benefit from simplifying and fine tuning.'* We strongly agree.

In previous consultations, we have requested the AER restructure the Network Guideline for the purpose of reducing its complexity and making it more user-friendly. A good way to do this would be to structure the guideline accordingly to class activity.

At the moment, the Network Guideline is structured in terms of conditions. It nominates all the relevant activity classes within the text of these conditions and then attempts to make distinctions between the activity classes. This causes a lot of confusion.

Restructuring the Network Guidelines according to class activity will involve some repetition of content and it would make the guideline a longer document. However, it would make the guideline so much easier for less sophisticated embedded network operators to navigate and understand. If structured according to class activity, operators could simply refer to their section of the guideline for all the requirements and conditions that apply to them. The Retail Guideline could benefit from similar improvements.

Additional Resources

We also ask that the AER develop additional resources (e.g., factsheets, guidelines, process maps, etc) in Plain English explaining the requirements of the guidelines to assist less sophisticated embedded network operators to fully understand their obligations. This would also assist embedded network customers.

We note the Australian Energy Market Commission regularly provides useful information sheets and infographics as part of its reviews and on a range of energy market topics.

Mixed Parks

We reiterate it would be helpful to have some clarification in the Network Guideline and the Retail Guideline for mixed parks.

Although operators of mixed parks must register their exemption in class R4 of the Retail Guideline and class NR4 of the Network Guideline, the conditions with which they have to comply should be dictated by their relationship with the relevant exempt customer.

For example, in supplying metered or unmetered energy to occupants of holiday accommodation on a short-term basis in the context of a mixed park the Network Guideline should make it clear that conditions attached to class ND3 apply to that relationship. Alternatively, in supplying metered or unmetered energy to residents, the Network Guideline should make it clear in the conditions attached to class NR4 apply to that relationship.

Having this clarification would remove any confusion that holiday occupants have the same entitlements as residents in mixed parks.

Consistent Terminology

As currently drafted, the terminology used in the Network Guideline for class NR4 and the Retail Guideline for R4 is inconsistent. We suggest the below amendments:

Guideline	Class	Activity
Network Guideline	NR4	Persons supplying metered or unmetered energy in caravan parks, holiday parks, residential land lease parks and manufactured home estates <u>(also known as residential land lease communities)</u> to residents <u>(home owners and tenants)</u> who principally reside there.
Retail Guideline	R4	Persons selling metered energy in caravan parks, residential land lease parks and manufactured home estates <u>(also known as residential land lease communities)</u> to residents <u>(home owners and tenants)</u> who principally reside there. (ie long term residents)

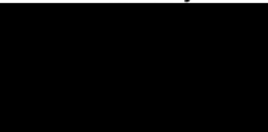
CONCLUSION

Thank you for considering our responses to the Consultation Paper. As the peak industry body representing holiday parks and residential land lease communities in NSW with embedded electricity networks, CCIA NSW is an important stakeholder in relation to the network exemptions framework.

Should you wish to discuss the issues raised please contact [REDACTED]

We look forward to our continued involvement in the consultation process.

Yours sincerely



Lyndel Gray
Chief Executive Officer