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SUBMISSION ON AUSTRALIAN ENERGY REGULATOR DRAFT RETAIL EXEMPT SELLING GUIDELINE VERSION 6, MARCH 2022

The Caravan Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) is the peak industry body in this State 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 (RVs, including caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufactured home builders and service providers to these businesses.

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

Under the Australian Energy Regulator's (AER) current *(Retail) Exempt Selling Guideline, Version 5, March 2018* (Retail Guideline) our holiday park and residential land lease community members fall within Exemption Classes D3 and R4 respectively.

As the peak industry body representing these exempt sellers in NSW, we welcome this opportunity to provide feedback on the proposed amendments in the draft *Retail Exempt Selling Guideline, Version 6, March 2022* (Draft Retail Guideline), as well as the AER's draft factsheet '*How to access retailers for your energy needs if you live in an embedded network*' and draft '*Exempt Seller Hardship Policy template*.' In developing this submission, we have sought feedback from our members via survey to inform the issues raised and our recommendations for further amendments.

Wherever we refer to 'holiday parks' we are referring to caravan parks that only 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 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.

AMENDMENTS TO SECTION 3.2 RETAIL EXEMPTIONS

We note the following amendment set out on page 7 of the Draft Retail Guideline providing clarification on selling energy to residents/tenants that fall within more than one exemption class:

‘If you sell energy to residents/tenants that fall within more than one exemption class (for example, you sell energy to both commercial and residential customers within the same site), you must apply each class of exemption that is relevant to the site. It is your responsibility to ensure your exemption covers each of the appropriate exemption classes for your energy on-selling arrangements.’

We have raised in previous submissions that it would be helpful to have clarification in the Retail Guideline for mixed parks. The amendment on page 7 of the Draft Retail Guideline could be further amended to provide that clarification.

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

For example, in on-selling metered energy to occupants of accommodation on a short-term basis in the context of a mixed park the Retail Guideline should make it clear that conditions attached to class D3 apply to that relationship. Alternatively, in on-selling metered energy to residents, the Retail Guideline should make it clear the conditions attached to class R4 apply to that relationship.

Having this clarification clearly expressed in the Retail Guideline and in the next iteration of the AER’s *Electricity Network Service Provider Registration Exemption Guideline* would remove any confusion that holiday and other short-term occupants have the same entitlements as residents in mixed parks.

It may also assist to have an additional example on page 8 of the Draft Retail Guideline clarifying that where an exempt seller plans to on-sell electricity in caravan parks to occupants of accommodation on a short-term basis and to residents who principally reside there, the exempt seller only needs to register an exemption referring to class R4.

AMENDMENTS TO SECTION 5 WHO SHOULD HOLD THE EXEMPTION

In relation to the additional information provided in section 5 of the Draft Retail Guideline to clarify that only legal persons may hold an exemption, some of our members have indicated there are exemptions currently held by trusts and partnerships.

If, according to the Draft Retail Guideline *‘a legal person includes an individual or a corporation’* and *‘trusts are not capable of holding an exemption,’* what do current exemption holders that are trusts and partnerships need to do to maintain their existing exemptions? We are concerned that there is no guidance from the AER on this issue, particularly as page 14 of the Draft Retail Guideline states exemptions *‘cannot be extended or transferred to related businesses or subsidiaries.’*

If this change is to apply to existing exemption holders, we request a clear process from the AER for trusts and partnerships to resolve the issue so that there is no detrimental impact to their exemption.

As part of this, we request assurance from the AER that original registration dates for existing exemptions will continue to apply. This will be critical should the Australian Energy Market Commission (AEMC) seek to resume work on its proposals to elevate embedded networks into the national framework.

AMENDMENTS TO SECTION 7 ASSESSING APPLICATIONS FOR INDIVIDUAL EXEMPTIONS

Although not relevant to our sector, we note in section 7.3 *Making a decision* there is no amount of business days specified in the proposed amendment to the paragraph. This appears to be a typographical error.

NEW SECTION 9 CONDITION VARIATION

We have no issues with the clarifications set out in the new section 9 *Condition variation* other than to suggest that the word 'registered' in the header and first sentence of section 9.1 *Deemed and registered exemptions* be replaced with 'registrable' for consistency.

AMENDMENTS TO CONDITION 16 DISPUTE RESOLUTION

We do not support the variations to Conditions 16 (2) and (3) in the Draft Retail Guideline to remove the title of the Australian Standard dispute resolution guideline and the sentence *'and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant.'*

There are thousands of Australian Standards, and a database search can lead to multiple results depending on the relevant search terms used. Not specifying which Standard applies will lead to uncertainty and confusion, particularly for less sophisticated operators. Condition 16 (2) already takes account of new editions being published by the words *'as amended and updated from time to time.'* We recommend that the Condition is varied to reflect the current *AS 10002:2022 Guidelines for complaint management in organizations*.

In relation to the proposed variation of Condition 16 (3) we are confused by the AER's justification of the change *'to be consistent with the dispute resolution requirements of the network guideline.'* The current Network Guideline still contains these words, and they are important for energy complaints and disputes in residential land lease communities. If a matter is brought before the NSW Civil and Administrative Tribunal (NCAT) for determination, an operator must follow the directions and orders of the NCAT.

To ensure exempt sellers comply with this Condition without removing this acknowledgement of a Tribunal's jurisdiction, we recommend the following amendments to Condition 16 (3):

'3 In the event of a complaint or dispute concerning the sale of energy to an exempt customer, ~~and consistent with in the absence of any~~ determination of the ~~complaint or dispute by the~~ relevant tenancy tribunal if the customer is a tenant, the exempt ~~seller person~~ must:

a. deal with the complaint or dispute in accordance with the exempt ~~seller person~~'s procedures for handling complaints and disputes, and

b. make reasonable endeavours to resolve the dispute, and

c. advise the exempt customer:

i. of any right the exempt customer has to access an energy ombudsman (if

applicable), including to lodge a complaint or for free independent information and advice, or any other external dispute resolution body in the state or territory where the exempt customer is located, and

ii. of the telephone number and other contact details of the energy ombudsman (if applicable).'

GLOSSARY AND CLASS VARIATIONS

We support the minor variations to classes D3 and R4 and the associated deletion of the definition of *'long term resident of a caravan park, residential park or manufactured home estate/park'* as it no longer forms part of the R4 exemption class definition.

In relation to the definition of exempt seller, we again suggest replacing the word *'registered'* with *'registrable'* for consistency.

PROVISION OF A FACTSHEET TO EMBEDDED NETWORK CUSTOMERS

We maintain 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.

A factsheet from the AER in plain English and other languages, describing the process that an embedded network customer must follow to enter into a market retail contract, would be useful and we agree with Caravan Parks Association of Queensland's previous submission that having this information branded by the AER would provide additional credence.

The draft factsheet *'How to access retailers for your energy needs if you live in an embedded network'* developed by the AER for residential customers provides some useful information about accessing retail competition on a broad scale, however members of our Association have expressed concern about its usefulness in the context of embedded networks in NSW residential land lease communities.

There is little detail about the limitations of older embedded network infrastructure, the full extent of the costs of changing energy supplier (which can be thousands of dollars) and the low likelihood of retailers offering 'energy only' contracts to residents in residential land lease communities.

Strict price controls under the NSW *Residential (Land Lease) Communities Act 2013* (RLLC Act) also mean many residents of caravan parks and manufactured home estates enjoy electricity prices significantly cheaper than other residential customers, removing the incentive to go 'on-market' in the first place. Our members are therefore questioning whether the factsheet will just cause confusion and add no real value for residents.

We note the statement on page 12 of the *Notice of Draft Instrument: Retail Exempt Selling Guideline, Version 6, March 2022* (Notice) that *'exempt sellers may contribute any additional supporting materials and information that they consider would assist exempt customers in understanding the process required to exit an embedded network'* and the Association can assist our members in this regard.

However, to avoid confusion, manage expectations, maintain consistency with the Network Guideline and not disparage older embedded networks, we request the following amendments be to the draft factsheet:

1. Section on 'How to buy from an authorised retailer'

'If an authorised retailer has agreed to give you an 'energy only' ~~offer market retail contract~~, you will need to contact your current energy supplier (the exempt seller) and advise them that you wish to buy electricity from an authorised retailer. This is often referred to as going 'on market'.

To facilitate your request, the exempt seller must appoint an 'Embedded Network Manager'. The exempt seller is only required to appoint an Embedded Network Manager once you have found an authorised retailer who has agreed to provide you an 'energy only' ~~offer market retail contract and the cooling off period for that market retail contract has expired.~~

2. Section on 'Cost of changing energy supplier'

'When you choose to go 'on market' and buy your electricity from an authorised retailer, you may need to pay for your existing meter to be replaced. This will be required if the meter does not meet ~~required current~~ specifications in your state or territory.

If the meter does meet the ~~required standard current specifications~~, the embedded network owner/operator may offer to sell or rent the meter to you or your authorised retailer.

The embedded network owner or operator must not prevent you from making any changes necessary, including to infrastructure (wiring and metering) to facilitate this but you will have to bear the costs of these changes. There can be significant costs involved if you live in an older embedded network because the metering infrastructure and wiring may require an extensive upgrade to meet ~~the required current~~ specifications in your state. Costs can amount to thousands of dollars.

3. Section on 'More information'

We suggest additional space for, or a reference to, additional supporting materials and information that an exempt seller chooses to provide be included in this section of the factsheet, as referred to on page 12 of the Notice.

In relation to when the AER factsheet must be provided to an exempt customer who is also a residential customer, we have no issues with the amendment to Condition 2 (1) (b) of the Draft Retail Guideline.

Residential land lease communities in NSW with embedded networks are already required to comply with the requirements of Condition 2 in the Retail Guideline and there are 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/).

However, we reiterate that clarification is needed on what constitutes 'an enquiry' from an exempt customer and a 'request' by an exempt customer or the AER. To avoid confusion and disputes, we request the following further amendments to Condition 2 (2) and (3) of the Draft Retail Guideline:

'2 The exempt seller must provide any or all information set out in paragraph 1 of this condition as soon as practicable upon written request by the exempt customer or the AER.'

'3 The exempt seller must provide the information set out in paragraph 1b of this condition as soon as practicable, following an enquiry a written request from an exempt customer seeking to access retail competition.'

EXEMPT SELLER HARDSHIP POLICY

We have previously acknowledged that requiring all exempt sellers to provide additional hardship supports, such as identifying appropriate financial counselling services or offering hardship plans or both, would provide benefits for embedded network customers. This would also better align obligations between the different types of exempt sellers.

In NSW residential land lease communities, embedded network customers already benefit from a legislative framework that provides support where a person is experiencing financial difficulties due to hardship.

In addition to exempt sellers' existing obligations for addressing payment difficulties, disconnection and reconnection under the AER's Retail Guideline, home owners in residential land lease communities are protected by section 78 of the RLLC Act, which provides that 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.

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.

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).

As such, we generally support the new requirements in Condition 9 for exempt sellers to provide customers who are unable to pay energy bills due to financial difficulty information about counselling services as well as a hardcopy or link to the exempt seller's hardship policy in accordance with Condition 26.¹

For NSW residential land lease communities these measures will support existing processes and new Condition 26, which introduces the requirement for all exempt sellers to develop and implement a hardship policy in accordance with the AER's *Exempt Seller Hardship Policy template*, is the preferred approach. We agree with AER's policy position that a fulsome hardship program would be too onerous for small-scale operators to administer.

¹ Also a requirement in Condition 2 (1) (g) for exempt customers to be given a hardcopy or link at the start of their tenancy/residency/agreement

Further, we agree that requirements for processes to proactively identify residential customers experiencing payment difficulties due to hardship and pre-approval of hardship policies from the AER should not apply to exempt sellers.

Overall, the AER's *Exempt Seller Hardship Policy template* should assist exempt sellers to more effectively engage with a residential exempt customer who is experiencing payment difficulties due to hardship and comply with their existing obligations for addressing payment difficulties, as well as disconnection and reconnection.

For the few cases of electricity arrears that occur in residential land lease communities, providing structure and guidance to operators on how to give clear information to residents experiencing hardship about what help they are able to provide, payment options, rights and responsibilities of both parties and other supports such as financial counselling, rebates and energy saving measures, should help to increase the number of matters resolved proactively and cooperatively without the need for orders from the NCAT. If not, operators may be in a better position to obtain orders where they can show they have provided all reasonable assistance to a resident.

In relation to the content of the *Exempt Seller Hardship Policy template* there are two (2) issues we wish to raise:

1. The standardised statements are clear and reasonable, however we note the references to a '*disconnection warning notice*' on page 1 and '*we might disconnect your energy*' on page 3.

We reiterate that under section 78 of the RLLC Act a home owner's electricity supply in a residential land lease community cannot be disconnected without an order from the NCAT. As such, the AER should allow for content changes to be made by exempt sellers where state-based legislative requirements need to be taken into account.

2. New Condition 9 (d) requires exempt sellers to provide exempt customers experiencing financial difficulty '*information about financial counselling services*' and page 4 of the draft *Exempt Seller Hardship Policy template* states:

'We refer you to the following websites that tell you about other ways you can get help to pay your energy bill, such as:

...

- *financial counselling services:*
[www.financialcounselingaustralia'](http://www.financialcounselingaustralia.org.au/)

Our understanding is the correct URL for Financial Counselling Australia is <https://www.financialcounselingaustralia.org.au/>, so this should be referenced in full. In addition, we request confirmation from the AER that providing this URL will be sufficient to satisfy Condition 9 (d) and 26.

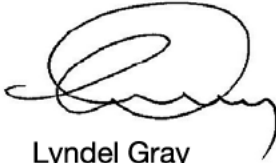
CONCLUSION

Thank you for considering our responses to the Draft Retail Guideline as the AER's draft factsheet '*How to access retailers for your energy needs if you live in an embedded network*' and draft '*Exempt Seller Hardship Policy template*.' 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 Shannon Lakic, Policy, Training and Executive Services Manager, on [REDACTED] or email [REDACTED].

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

Yours sincerely

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

Lyndel Gray
Chief Executive Officer