



**DRAFT Decision
to grant an individual
retail exemption
South Stradbroke Utilities Pty
Ltd**

September 2020

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1 Introduction

On 3 July 2020, the AER accepted an application from South Stradbroke Utilities Pty Ltd (**SSU**) / ABN 49 636 726 497 for an individual exemption under the National Energy Retail Law (**Retail Law**) to sell energy at Couran Cove Resort, Queensland.

This is our **draft decision** on SSU's application. We invite submissions from interested stakeholders by 10 November 2020. We will consider submissions when making a final decision on whether to grant SSU an individual exemption from the requirement to hold a retailer authorisation. We also welcome views on whether the conditions we have proposed should apply to this individual exemption.

Our draft decision is to grant SSU an individual retail exemption subject to the conditions specified in Schedule 1 of the Draft Instrument.

1.1 The nature of retail exemptions & the AER's role

Energy is an essential service. The AER regulates retail electricity and gas markets in jurisdictions that have commenced the Retail Law. Queensland adopted the Retail Law in 2015. Under section 88 of the Retail Law, a person or business must not sell energy unless they either have a retailer authorisation or are exempt from this requirement. The AER is responsible for assessing authorisation applications¹ from businesses that want to become energy retailers, and exempting businesses from authorisation requirements.² The AER does not have the power to adjudicate contractual disputes between parties.

There are important differences between retailer authorisations and retail exemptions. An exemption provides relief, subject to certain conditions, from the requirement to hold a retailer authorisation. Whereas a retailer authorisation allows a business to sell electricity or gas in all states and territories where the Retail Law applies, a retail exemption usually restricts sales to a defined group of customers at one site. Retail exemptions may be appropriate where the seller has an existing relationship to a particular site and the sale of energy is secondary to other functions that they perform (for example, a caravan site manager selling energy to occupants of a caravan park or a body corporate selling energy to the occupants of an apartment building). An exemption entitles the exempt seller to sell energy on the conditions, and within the scope, of the exemption. It is a means of providing consumers with protections under the Retail Law.

Any person who seeks to engage in the activity of selling energy to a person for premises can register or apply for an exemption. In this instance, it is also open to the body corporate to register or apply for an individual exemption. In practice only the person who controls the site's embedded network can actually on-sell energy to those customers who live in the premises.

¹ See the AER's Retailer Authorisation Guideline: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retailer-authorisation-guideline-december-2014>

² In accordance with the AER's Retail Exempt Selling Guideline: <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018>

Individual exemptions are required when a seller is ineligible for one of the classes of exemption defined in the AER's (Retail) Exempt Selling Guideline.³ A person requiring an individual exemption must submit an application to be assessed by the AER. The application must be published for consultation. The AER considers the application alongside any submissions received in making its decision whether or not to grant the individual exemption. The AER has the ability to impose conditions on the exemption to ensure that customers of the exempt seller have appropriate protections (similar to the requirements that apply to authorised retailers under energy laws).⁴

The AER has the power to grant an individual exemption and having received an application from SSU, the AER must make a decision on whether to grant or refuse it.

1.2 Application Summary

South Stradbroke Utilities Pty Ltd (SSU) has sought an individual exemption under the Retail Law to sell energy at Couran Cove Resort, Queensland. Couran Cove Resort comprises a mix of holiday rental and private units. There is a total of 354 properties.

SSU sought an individual exemption on the grounds that electricity is supplied off-grid, and is unable to comply with core pricing exemption conditions. In particular, no comparable prices are able to be used as a benchmark, as there is no local area retailer.

1.3 Submissions received

SSU's application was published on 3 July 2020 for consultation over 20 business days. The AER received 33 submissions during the consultation period. In summary, the submissions we received were all from lot owners at Couran Cove Resort. Most objected to the approval of an individual exemption, expressing concerns about:

- electricity infrastructure ownership - lot owners claim they own the infrastructure and that SSU is seeking to charge electricity costs (running and capital) that they have paid for, or are paying for, through body corporate levies and an infrastructure sinking fund
- metering arrangements, including the lack of meters to common areas and commercial buildings, and the cost of a proposed metering infrastructure upgrade
- the continuity of power supply, noting previous black-outs and service disruption, and
- SSU's authority to supply energy, its utility management experience and capability, including whether SSU is profiting from the supply and sale of energy.

The 8 submissions in favour of the application were raised by the same individual, noting that:

- the proposed arrangement is fair and more efficient than the current arrangement, through the imposition of individual billing arrangements based on consumption, and
- individual billing would further secure the reliability of essential services.

³ <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/retail-exempt-selling-guideline-march-2018>

⁴ National Energy Retail Rules, r.152(3).

1.1.1 Response from South Stradbroke Utilities

The applicant was provided with an opportunity to respond to the published submissions, and noted that with respect to:

- Electricity infrastructure ownership – Island Resorts (Infrastructure) Pty Ltd ('Island Resorts') is the current owner and supplier of power to Couran Cove Resort.
- Metering Arrangements – SSU intends to meter all premises except common areas. In the short term it intends to install meters where currently there are none and then eventually replace all existing meters with smart meters. SSU states that the current meters are old and are not in use so it is unsure whether they are functioning. It expects that installing all premises with smart meters will assist the billing process and improve efficiency. SSU has indicated that the cost of meter installation will be borne by customers, with a meter reading charge imposed on old meters to reflect the cost of reading meters.
- Continuity of supply – there have been three unplanned outages this financial year; two of which were minor (less than 30 minutes), and one major outage related to a transformer (outage for at least 1 ½ days). SSU advised that there are two on-site diesel mechanics who are able to respond quickly.
- Utility management experience - Island Resorts has appointed SSU as the billing agent.
- Double charging / profiting from supply and sale of energy – billing issues arise from strata committees failing to pass collected levies to Island Resorts (the power operator). SSU suggests that billing individual lots is more equitable and efficient, and will ensure continuity of electricity supply. SSU states it will stop recovering electricity through body corporate levies as soon as it is granted a retail exemption – there will not be any double-charging.

1.2 Reasons for issuing a draft decision

The number of submissions and stakeholder interest makes this application for an individual exemption atypical. For this reason, and given the contentious nature of some of the issues, the AER has decided to issue a draft decision. By publishing a draft decision the AER is providing stakeholders the opportunity to respond to the AER's preliminary position, that is, to grant SSU an individual retail exemption with specific conditions, prior to the AER making its final decision. This allows all parties concerned to provide their views. The AER will consider any submissions received when making its final decision.

2 Draft decision to grant SSU an individual exemption

The AER's draft decision is to grant SSU an individual exemption from the requirement to be an authorised retailer, subject to specific conditions.

2.1 Relevant legislation

In making its draft decision, the AER has considered the policy principles relating to exempt selling set out in section 114 of the Retail Law, being:

- regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to authorised retailers,
- exempt customers, should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable retail customers in the same jurisdiction have that right, and
- exempt customers, should, as far as practicable, not be denied customer protections afforded to retail customers under the Retail Law and Rules.

The AER's decision has also been guided by the objective of the Retail Law,⁵ the exempt seller factors,⁶ the customer related factors,⁷ and the assessment approach outlined in the AER (Retail) Exempt Selling Guideline.⁸

2.2 Matters that extend beyond our assessment and role

We carefully considered the content of SSU's application and the submissions we received. We acknowledge there are ongoing billing issues in dispute between SSU and some bodies corporate at Couran Cove Resort.

In particular, we have carefully considered the pricing issues raised by lot owners and how best, within the AER's remit, to provide appropriate protections to customers at Couran Cove Resort.

The billing issues and monies owed under the current electricity charging arrangements are separate to the AER's role in granting a retail exemption. The AER notes that there are matters between SSU and Couran Cove Resort bodies corporate which are to be considered by the courts. By proposing to grant SSU an individual exemption the AER is not making a decision or expressing a view on any of these matters.

Submitters have asked that the AER defer making a decision and investigate Couran Cove's power supply arrangements, including the proposed pricing structure and additional metering

⁵ National Energy Retail Objective, s 13, National Energy Retail Law (South Australia) Act 2011.

⁶ Section 115, Retail Law.

⁷ Section 116, Retail Law.

⁸ AER Exempt Selling Guideline, <https://www.aer.gov.au/system/files/AER%20Retail%20Exempt%20Selling%20Guideline%20-%20version%205%20-%20March%202018.pdf>

costs. They note that the neighbouring resort, Couran Point, also generates and supplies energy and that a competitive generation arrangement and pricing structure be explored. Several submissions also asked that the AER oversee costing structures and prices, and apportionment arrangements.

In assessing SSU's application for individual exemption the AER must decide whether to approve or refuse the application and, if it decides to approve the application, it must determine exemption conditions. The AER is not specifically required to investigate alternative energy supply arrangements (current or proposed) as part of this process, nor can it. The AER can require that tariffs be based on the actual costs of generating and supplying electricity to customers. However, it does not have a role in setting the tariffs.

SSU has also applied for an exemption to sell bottled gas to Couran Cove Resort lot owners. The AER does not regulate bottled gas and therefore cannot grant a gas exemption.

2.3 Relevant factors

The following factors informed our draft decision:

1. The AER has received one application under section 88 of the Retail Law in relation to the sale of energy at Couran Cove Resort. We have not received any applications from anyone else who might have infrastructure ownership claims.
2. Customers of exempt sellers, should, as far as possible, receive the same protections that they would as customers of authorised retailers. The sale of energy at Couran Cove Resort is currently unregulated. In the event the AER decides to grant SSU an individual exemption, SSU will need to comply with certain conditions. This will give customers access to rights and protections similar to those available to other customers under the Retail Law which they currently do not have.
3. Electricity customers at Couran Cove Resort will have more tailored consumer protections through the AER specifying conditions of the retail individual exemption. See section 2.4 below.
4. Individual exemption conditions generally include a prohibition on charging customers electricity tariffs greater than the standing offer price.⁹ The exception is off-grid exemptions, such as in this case, as there is no comparable local area retailer standing offer on which to base a price cap.

Our view is that sellers should be able to recover their energy generation and supply costs, even though these could result in electricity costs that are higher than the current regulated price for Queensland customers.

5. SSU will need to comply with the conditions at Schedule 1 of the Draft Instrument. The AER may deal with a breach of an exemption condition as if it were a breach of the Retail Rules and is a civil penalty provision.¹⁰ The AER can take enforcement action for

⁹ Where the AER determines it is appropriate to impose a condition relating to prices an exempt seller may charge, it must ensure they are no more than the standing offer of the relevant local retailer (152(4) Retail Rules).

¹⁰ Section 112(3) Retail Law.

breaches of the Retail Law or Rules, including issuing infringement notices. The AER also has the power, in limited circumstances, to revoke a retail exemption.

2.4 Summary of proposed exemption conditions

The conditions that the AER proposes to attach to SSU's individual exemption are set out in Schedule 1 of the Draft Instrument issued alongside this draft decision document. The AER has the ability to tailor the conditions of SSU's individual retail exemption. We consider this is the most appropriate way to address the concerns raised in the submissions we received that fall within our remit. The conditions also reflect the unique nature of the sale of electricity at Couran Cove Resort and include the following:

- The exempt person's tariffs must be based on the actual costs of generating and supplying electricity to exempt customers.
- The exempt person must outline to exempt customers in written communication, how the proposed tariffs are based on actual costs of generating and supplying electricity to exempt customers, with evidence of the actual cost to be incurred, every time that tariffs are set.
- The exempt person must provide written notice to exempt customers of any change in tariffs at least 10 business days prior to the new tariffs taking effect.
- The exempt person may replace or upgrade electricity infrastructure, including metering infrastructure, if and when it comes to the end of its operating life. The exempt person may only recover the actual infrastructure replacement or upgrade costs from exempt customers. The exempt person must be able to provide written evidence of these costs, and demonstrate to exempt customers how these costs are recovered through relevant charges and/or tariffs.
- The exempt person must develop and adhere to a dispute resolution and complaints handling procedure. Where the exempt person and a customer/s are unable to reach an agreed solution to an electricity dispute, the matter shall be settled by commercial arbitration in accordance with the *Commercial Arbitration Act 2013* (Qld). Arbitration will not be required for any dispute that can be resolved, by way of a binding determination, under Queensland's energy ombudsman scheme.
- The exempt person must become a member of Queensland's energy ombudsman scheme if it is permitted to do so.

3 Next steps

The AER is seeking submissions on this draft decision from interested stakeholders until 10 November 2020. We will consider these submissions when making our final decision. No late submissions will be considered.

Submissions should be sent to: AERExemptions@aer.gov.au, attention Arek Gulbenkoglu.

Alternatively submissions can be sent to:

Arek Gulbenkoglu
A/g General Manager
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001

Submissions should be in Microsoft Word or another text readable document format.

We prefer that all submissions be publicly available to facilitate an informed and transparent consultative process. Submissions will be treated as public documents unless otherwise requested. Parties wishing to submit confidential information should:

- clearly identify the information that is the subject of the confidentiality claim
- provide a non-confidential version of the submission in a form suitable for publication.

All non-confidential submissions will be placed on our website.¹¹

¹¹ For further information regarding our use and disclosure of information provided to us, see the *ACCC/AER Information Policy* (June 2014), which is available on our website: <https://www.aer.gov.au/publications/corporate-documents/accc-and-aer-information-policy-collection-and-disclosure-of-information>