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29 January 2018

Ms Sherri Meade
Legal Counsel
Hamilton Island Enterprises Limited
PO Box 149
HAMILTON ISLAND QLD 4803

By email:
Sherri Meade: smeade@hamiltonisland.com.au

Dear Ms Meade

Re: Hamilton Island Services—application for an individual exemption

I refer to your application of 13 November 2017 for an individual exemption under the National Energy Retail Law (Retail Law) for Hamilton Island Services Pty Ltd / ACN 010 254 234 (HIS) to sell electricity to small electricity customers through an embedded network at Hamilton Island and Dent Island, Queensland.

I am writing to inform you that on 29 January 2018, the Australian Energy Regulator (AER) considered and approved HIS' individual exemption application in accordance with s. 110 of the Retail Law.

The AER has considered the policy principles relating to exempt selling in s. 114 of the Retail Law, being:

- regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to 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 this Law and Rules.

The AER's decision is guided by the objective of the Retail Law,¹ the exempt seller factors,² the customer related factors,³ and the assessment approach outlined in the AER (Retail) Exempt Selling Guideline.

Having regard to the considerations outlined above, the AER is satisfied that HIS should be exempt from the requirement to hold a national retailer authorisation for the sale of electricity to small electricity customers at Hamilton Island and Dent Island, Queensland.

If HIS decides to change the way it sells electricity, it should contact the AER as it may need to apply for an authorisation or another exemption to do so. Please be aware that selling energy outside of the scope of the present exemption may contravene s. 88 of the Retail Law and we may take enforcement action or otherwise seek to ensure compliance.

Please note that the exemption is subject to your acceptance of the conditions set out at Attachment A. HIS must advise the AER in writing by **28 February 2018** whether it accepts these conditions.

If you have any further queries, or would like to discuss this further, please contact Susan Faulbaum on (08) 8213 3463.

Yours sincerely



Sarah Proudfoot
General Manager, Retail Markets

¹ The national energy retail objective is to 'promote efficient investment in and efficient operation and use of energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy' (s. 13, National Energy Retail Law (Retail Law)).

² s. 115, Retail Law.

³ s. 116, Retail Law.

Attachment A

Instrument of Exemption

INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO HOLD A RETAILER AUTHORISATION

DATE OF ISSUE: 29 January 2018

FORM OF ENERGY: Electricity

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator on 29 January 2018 decided to grant Hamilton Island Services (ACN 010 254 234) an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to the conditions outlined below. This exemption applies to the sale of electricity to small electricity customers on Hamilton Island and Dent Island, Queensland.

Condition 1 – Obligation to supply

1. The exempt person cannot refuse to sell energy to an exempt customer at Hamilton Island and Dent Island, except in accordance with relevant disconnection provisions, or where the exempt customer's premises have been disconnected by the exempt person for a reason other than failure to pay a bill and the matter leading to the disconnection has not been rectified. The exempt person must reconnect the premises and offer to sell energy once the matter is rectified.

Condition 2 – Information provision

1. The exempt person must provide written advice to an exempt customer at the start of their tenancy/ sale agreement, and to existing customers on commencement of this exemption, of the following:
 - a. that the exempt person is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as they would if they were purchasing from an authorised retailer
 - b. the exempt customer's rights in relation to dispute resolution including:
 - i. any right that the exempt customer has to access the energy ombudsman scheme or any other relevant external dispute resolution body in the state or territory in which the exempt customer is located and,
 - ii. the exempt person's procedures for handling complaints and disputes
 - c. the conditions applicable to the exemption that the exempt person is operating under
 - d. the availability of relevant government or non-government energy rebates, concessions and relief schemes

- e. the forms of assistance available if the exempt customer is unable to pay energy bills due to financial difficulty, as well as the process the exempt customer should follow to seek these forms of assistance
 - f. the energy tariffs and all associated fees and charges that will apply to the exempt customer in relation to the sale of energy
 - g. any flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing)
- 1. Condition 2.1.g does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.**
- h. contact numbers in the event of an electricity fault or emergency.
2. Where the exempt customer is an employee of the exempt person (or its related companies) the customer must also be advised, on commencement of their employment, of:
- a. billing and payment arrangements. This includes advice that energy payments are made via payroll deductions and that employees paying via this method do not receive bills and will receive only limited information on payslips about energy usage and costs
 - b. the basis for energy bills if usage is unmetered, including a description of the method used to calculate bills.
3. The information required by conditions 2.1 and 2.2 must also be provided to the exempt customer or the AER at any time on request.

Condition 3 - Billing and payment arrangements

- 1. The exempt person must ensure that bills are issued to each exempt customer at least once every three months.
- 2. **Condition 3.1 does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.**
- 2. The exempt person must offer at least two payment methods to an exempt customer. However, if an exempt person offers direct debit as one payment method, they must also offer at least two other payment methods to an exempt customer (that is, at least three methods in total). In each case, at least one of the payment methods offered must be able to be effected without internet access. For example:
 - a. in person
 - b. by telephone
 - c. by mail

- d. by direct deposit into a bank account.

Condition 3.2 does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.

- 3. The exempt person must offer a payment plan to an exempt customer who has identified themselves as being in financial difficulty. Requirements for establishing a payment plan are specified in condition 12.
- 4. The requirements in condition 3(3) do not apply where the exempt customer:
 - a. has had two payment plans cancelled by the exempt person in the previous 12 months due to non-payment, or
 - b. has been convicted of an offence involving illegal use of energy in the previous two years
 - c. is an employee of the exempt person (or its related companies) who is billed for energy via payroll deductions.
- 5. An exempt person must include the following particulars in a bill for an exempt customer:
 - a. the name of the exempt customer
 - b. the address of the exempt customer's premises
 - c. date that the account was issued
 - d. the identifier of the meter for the exempt customer's premises
 - e. the pay-by date for the bill
 - f. date of the current meter reading or estimate, as applicable
 - g. the dates to which the meter reading or estimate applies (billing period)
 - h. current meter reading or estimate in kilowatt hours. Where the amount is an estimate, this must be clearly stated on the bill.
 - i. previous meter reading or estimate in kilowatt hours. Where the amount is an estimate, this must be clearly stated on the bill.
 - j. the amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours.
 - k. tariffs, fees and charges applicable to the exempt customer
 - l. the basis on which tariffs, fees and charges are calculated
 - m. any amount deducted, credited or received under a government or non-government funded energy charge rebate, concession or relief scheme or under a payment arrangement, where applicable

- n. details of the available payment methods
- o. a telephone number for account inquiries and complaints.

3. Condition 3.5 does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.

6. The exempt person must provide employees who are billed via payroll deductions and do not receive energy bills, with a receipt listing at a minimum:
 - a. the exempt customer's name and address
 - b. billing period
 - c. amount of energy used in the billing period by the customer
 - d. applicable tariffs and charges.

Condition 4 - Estimation as basis for bills

Condition 4 does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.

1. The exempt person must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
2. The exempt person cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
3. The exempt person may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt person is not able to reasonably or reliably base the bill on an actual meter reading.
4. Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
 - a. historical metering data for the exempt customer reasonably available to the exempt person, or
 - b. where this is not available, the average usage of energy by a comparable customer over the corresponding period.
5. If an exempt customer's bill is based on an estimation, this must be clearly stated on the bill.

Condition 5 - Pay-by date

4. Condition 5 does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.

1. The pay-by date for a bill must not be less than 13 business days from the date on which the exempt person issues the bill.

Condition 6 - Receipts

Condition 6 does not apply to employees of the exempt person (or its related companies) who are billed for energy via payroll deductions.

1. The exempt person must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
 - a. direct debit, or
 - b. credit card over the phone and the customer is provided with a receipt number.
2. The exempt person must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

Condition 7 – Pricing

1. The exempt person must provide notice to the exempt customer of any change in the exempt customer's tariff as soon as practicable, and no later than the exempt customer's next bill, or next payment deduction for employee exempt customers who do not receive bills.
2. The exempt person must limit any late payment fee to a recovery of reasonably incurred costs by the exempt person as a result of the customer's late payment.^{4 5}

Condition 8 – Undercharging and Overcharging

1. Where an exempt customer has been undercharged, the exempt person can recover the amount undercharged subject to the following:
 - a. where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to recovering the amount undercharged in the 9 months before the date on which the customer is notified of the undercharging
 - b. the exempt person cannot charge interest on the undercharged amount
 - c. the exempt person must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
2. Where an exempt customer has been overcharged, the exempt person must inform the customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
 - a. where the amount overcharged is \$25 or more, the exempt person must refund the

⁴ For clarification, a late payment fee can only be charged where it has not been excluded by jurisdictional legislation.

⁵ Late payment fees cannot be charged to employees who pay for energy to the exempt person or related companies via payroll deductions.

amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill.⁶ Where the exempt customer no longer purchases energy from the exempt person, the exempt person must use best endeavours to refund the amount within 10 business days

- b. where the amount overcharged is less than \$25, the exempt person must credit that amount to the exempt customer's next bill⁷
- c. no interest is payable on the overcharged amount
- d. where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt person is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

Condition 9 – De-energisation or disconnection of premises

1. Where an exempt customer informs the exempt person that they are unable to pay energy bills due to financial difficulty, the exempt person must:
 - a. direct the exempt customer to the Australian government energy efficiency website or another information resource with energy efficiency advice, and
 - b. ensure that the exempt customer is aware of relevant government or non-government energy rebates, concessions and relief schemes, and
 - c. offer the exempt customer the option of a payment plan, and
 - d. not charge the exempt customer a late payment fee, and
 - e. not charge the exempt customer a security deposit.
5. **Condition 9.1 does not apply to employees of the exempt person (or its related companies) who pay for energy via payroll deductions.**
2. Subject to condition 10, the exempt person must not proceed with disconnection or de-energisation of an exempt customer unless the following requirements have been met:
 - a. the exempt customer has requested disconnection, or
 - b. continuity of supply to the premises would be unsafe, or
 - c. the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises, or
 - d. the exempt customer has not paid a bill by the pay-by date or has not adhered to the terms of a payment plan, and:

⁶ For employees of the exempt person or related companies who pay for energy via payroll deductions, overcharges may be refunded via a direct payment to the employee.

⁷ For employees of the exempt person or related companies who pay for energy via payroll deductions, overcharges may be refunded via a direct payment to the employee.

- i. following non-payment by the pay-by date, the exempt person has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, and, in the case of residential exempt customers, has offered to establish a payment plan with the exempt customer and has restated the forms of assistance available if the non-payment is due to financial difficulty, and
 - ii. following non-payment by the date specified in the reminder notice, the exempt person has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
 - iii. the exempt person has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
 - iv. the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
3. Where an exempt customer is disconnected in accordance with condition 9(2)(b), the exempt person must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
 4. This condition does not apply where state tenancy legislation sets out the process and requirements for the disconnection or de-energisation of energy supply by the exempt person on the basis that they are a landlord.

Condition 10 - When de-energisation or disconnection is prohibited

1. The exempt person must not de-energise or disconnect an exempt customer's premises in the following circumstances:
 - a. for residential customers only, a person residing at the exempt customer's premises requires life support equipment that depends on energy for its operation, or
 - b. for residential customers only, an application has been made by or on behalf of the exempt customer for assistance to an organisation responsible for a rebate, concession or relief available under any government or non-government funded energy charge rebate, concession or relief scheme and a decision on the application has not been made, or
 - c. the exempt customer has made a complaint directly related to the proposed reason for de-energisation or disconnection, to the exempt person, the energy ombudsman or another relevant external dispute resolution body and the complaint remains unresolved, or

- d. the de-energisation or disconnection would occur on:
 - i. a business day before 8am or after 3pm, or
 - ii. a Friday or the day before a public holiday, or
 - iii. a weekend or a public holiday, or
 - iv. the days between 20 December and 31 December (inclusive) in any year.
- 2. The exempt person must contact its electricity distributor to ask whether de-energisation or disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the de-energisation or disconnection of a retail customer would be prohibited on that day, the exempt person must not de-energise or disconnect the exempt customer's premises.
- 3. This condition does not apply where the exempt customer has requested de-energisation or disconnection.
- 4. This condition does not apply where the energy supply agreement between the exempt person and the exempt customer has been terminated.

Condition 11 - Re-energisation or reconnection of premises

- 1. Where an exempt customer is de-energised or disconnected in accordance with conditions 9 and 10 and the customer makes a request for re-energisation or reconnection, the exempt person must re-energise or reconnect the premises as soon as practicable after:
 - a. a request for re-energisation or reconnection is made. A request for re-energisation or reconnection may be made ten business days after de-energisation or disconnection, or as soon as the matter that led to the de-energisation or disconnection is rectified, and
 - b. any charges for re-energisation or reconnection are paid, and
 - c. if the customer still has outstanding amounts owed under the exempt customer's energy account, the customer agrees to enter into a payment plan with the exempt person.
- 2. Subject to condition 11.1, the exempt person must re-energise or reconnect the premises (or, where required, arrange with the distributor to re-energise or reconnect the premises) as soon as practicable, and no later than two business days from when the request was made.
- 3. Subject to condition 11.1, the exempt person cannot refuse to supply an exempt customer on the grounds that they owe outstanding amounts on their energy account.

Condition 12 - Payment plans

- 1. In establishing a payment plan the exempt person must have regard to:
 - a. the exempt customer's capacity to pay; and

- b. any outstanding amounts owed by the exempt customer; and
 - c. the exempt customer's expected energy consumption needs over the following 12 month period.
- 2. An exempt person who offers a payment plan to an exempt customer under this condition must inform the exempt customer of:
 - a. the duration of the plan; and
 - b. the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid.

Condition 13 - Choice of retailer

- 1. Where an exempt customer is eligible under state legislation to purchase energy from a retailer of their choice, the exempt person must not do anything to discourage or prevent them from exercising this choice, whether by:
 - a. requiring the exempt customer to waive their ability to choose a retailer
 - b. unreasonably hindering their efforts to find another retailer, or
 - c. unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 14 – Concessions and rebates

- 1. Where an exempt customer is eligible to receive a government or non-government energy rebate, concession or assistance under a relief scheme, the exempt person must not hinder an exempt customer's attempts to establish eligibility.
- 2. If the government or non-government energy rebate, concession or assistance under a retail scheme can only be claimed by the exempt person on behalf of the eligible exempt customer, then, assuming there is no legal impediment, the exempt person must make that claim and, if successful, must apply the rebate, concession or assistance to the exempt customer's bill, or next payroll deduction for employees of the exempt person or related companies.

Condition 15 – Life support customers

- 1. Where an exempt customer provides an exempt person with confirmation from a registered medical practitioner that a person residing at the exempt customer's premises requires life support equipment, the exempt person must:
 - a. advise the person whose embedded distribution network and sale of energy is occurring within (if different from the exempt person) that a person residing at the premises requires life support equipment, and
 - b. advise the exempt person's authorised retailer and distributor that the person residing at the premises requires life support equipment, and
 - c. provide the exempt person's authorised retailer and distributor with any relevant

information about the premises for the purposes of updating their records and registers.

2. An exempt person must maintain records of any exempt customers who have life support equipment that depends on energy for its operation on their premises.

Condition 16 - Contact details

1. The exempt person must provide a means of contact for account inquiries and complaints that can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

Condition 17 – Dispute resolution

1. An exempt person must develop and make a set of procedures detailing the exempt person's procedures for handling complaints and disputes, and those procedures must be provided to exempt customers in accordance with condition 2(1)(c).
2. The procedures must be consistent with the Australian Standard AS/NZS 10002:2014 (*Guidelines for complaint management in organisations*) as amended and updated from time to time.
3. In the event of a complaint or dispute concerning the sale of energy to an exempt customer, and in the absence of a determination of the relevant tenancy tribunal if the customer is a tenant, the exempt person must:
 - a. deal with the complaint or dispute in accordance with the exempt 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 that the exempt customer has to access an energy ombudsman (if applicable) or any other external dispute resolution body in the state where the exempt customer is located, and
 - ii. of the telephone number and other contact details of the energy ombudsman (if applicable).

Condition 18 – Member of energy ombudsman scheme

1. An exempt person must, if permitted by an energy ombudsman scheme,
 - a. be a member of, or subject to, the energy ombudsman scheme, and
 - b. comply with the requirements of that scheme.

Condition 19 – Planned interruptions to supply

1. For planned interruptions, the exempt person must notify each affected exempt customer at least four business days before the date of the interruption.

2. The notification must:
 - a. specify the expected date, time and duration of the interruption; and
 - b. include a telephone number for enquiries (the charge for which is no more than the cost of a local call); and
 - c. include a statement that any enquiries regarding planned interruptions are to be directed to the exempt person.
3. The exempt person must use its best endeavours to restore the exempt customer's supply as soon as possible.

Condition 20– Unplanned interruptions to supply

1. In the case of an unplanned interruption, the exempt person must:
 - a. within 30 minutes of being advised of the interruption, or otherwise as soon as practicable, make available information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available; and
 - b. if providing a telephone response that is automated, provide options for exempt customers options for exempt customers who call the service to be directly connected to a telephone operator if required; and
 - c. use its best endeavours to restore supply to affected exempt customers as soon as possible.

Condition 21 – Termination of energy supply agreement

1. An energy supply agreement between the exempt person and an exempt customer will terminate:
 - a. on a date agreed by the exempt person and exempt customer, or
 - b. five business days (or a different time agreed by the exempt person and exempt customer) from the date when the exempt customer gives the exempt person a termination notice, or
 - c. at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied, or
 - d. when the exempt customer starts receiving energy retail services from a different retailer or exempt person, or
 - e. when a different exempt customer moves in and starts receiving customer retail services for the premises, or

- f. at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
2. Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

Condition 22 - Maintaining records

1. The exempt person must maintain records of the following for each of its exempt customers:
 - a. the name of the exempt customer.
 - b. the address of the exempt customer's premises.
 - c. the identifier of the meter for the exempt customer's premises (if applicable).
 - d. the date that the customer account was created.
 - e. copies of any bills issued for the previous 12 months.
 - f. the date of the most recent meter read for the customer (if applicable).
 - g. the basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.