



5 April 2022

Australian Energy Regulator  
GPO Box 3131  
Canberra ACT 2601  
By email: [AERInquiry@aer.gov.au](mailto:AERInquiry@ aer.gov.au)

To Whom It May Concern

**Re: Retail Exempt Selling Guideline Version 6, March 2022 (Draft) – Public Comment**

The Marina Industries Association (MIA), on behalf of Australia's 300 marinas, has been in negotiations with the Australian Energy Regulator (AER) both directly, and through our retained consultant, Fuller Strategic Consulting (FSC - Robert Fuller), for the last two years in regard to the National Energy Law.

Following inclusion of the word "marinas" as a class of activity which falls within the purview of this legislation, the AER and MIA met on a several occasions to discuss the MIA's concerns regarding the difficulty the industry was experiencing in trying to force-fit their marina operations into one or more of the exemption classes, including the associated conditions, within the legislation. This was compounded by the complexity and catch-all conditions within the regulations and how they may (or may not) apply to the various core services that make up marina operations, particularly on-water berths.

The MIA formally requested that marinas be afforded the same regulatory deemed exemption listing as "caravan parks." In our view, there is little difference between the operations of both industries – other than the obvious of caravans being land based and boats being water based.

This remains the MIA position, and we respectfully request the AER to further consider listing "marinas" as a deemed exempt industry category alongside "caravan parks."

Following release of the AER's Guidelines in 2021, the MIA had prepared by our consultant FSC, a comprehensive Industry Guidance Note for members to both explain the NEL and their obligations under the legislation. A copy of this, which also detailed MIA's concerns, was provided to the AER.

The MIA is aware that applications for individual exemptions by members have been lodged with the AER. The overwhelming response from marina owners and operators is that they wanted risk minimisation, business certainty, and to ensure that their operations complied with their obligations under the NEL. The only realistic way to achieve these criteria was to apply to the AER for an individual exemption.

The recent public release by AER of the draft Retail Exempt Selling Guideline changes have been considered by the MIA and its members. We are pleased that many, of the issues raised by the MIA have been considered and, positively addressed by the AER in the draft document. The MIA commends the AER and extends its appreciation for providing greater clarity and certainty for many marina operators throughout Australia. We have publicly endorsed the draft to our members.



Whilst the inclusion of the word “marina” in a number of exemption classes has provided a higher degree of certainty for the industry regarding elements of their operations, there remains one core aspect of marina operations which we urge the AER to consider in this review of the Retail Exempt Selling Guideline.

The provision of vessel storage, or on-water accommodation is a core function of marinas. Whilst the majority of berths provide electricity to boats for re-charging of on-board batteries, there is a mixture of metered and unmetered berths with unmetered being the majority. The provision of electricity is incidental, though essential to the overall aggregated package of services provided by the marina to boat owners and is not the main business of marinas.

The pricing method used by the majority of marinas is to charge an aggregated lease/rent containing a range of services provided by the marina (i.e. identical to renting a hotel room).

The MIA has sought to rely upon the AER’s expressed view that the provision of electricity (to unmetered berths) is “not selling electricity” (for this element of a marina’s business) and as such, it does not fall within the purview of the NEL. This aspect could be made clearer either by the AER including the words “or marina berths” after “hotel rent” in the Guideline’s example provided, or including marina berths in a deemed exemption class.

The MIA has communicated the AER’s draft Guideline to its members and asked them to respond directly with their comments to the AER. We have been copied into a number of these replies which demonstrates industry’s genuine interest and concern regarding this issue and their stated desire to achieve a workable and cost-effective solution for both the marina industry and the AER.

Finally, we thank the AER for positively responding to the matters raised in our previous submission and commit to working collaboratively in the future with the AER for any issues that may arise in implementing the changes (if adopted) in delivering cost-effective, certainty, and NEL compliance for our marina owners.

I look forward to hearing from you and am available anytime to discuss further on [REDACTED]

Yours sincerely

**THE MARINA INDUSTRIES ASSOCIATION**

A handwritten signature in blue ink, appearing to read "Suzanne", is positioned above the printed name.

Suzanne Davies  
**Chief Executive Officer**