

DRAFT AER (RETAIL) EXEMPT SELLING GUIDELINE: VERSION 5 (NOVEMBER 2017)

EXECUTIVE SUMMARY

The Shopping Centre Council of Australia (SCCA) represents Australia's major owners, managers and developers of shopping centres.

We welcome the opportunity to provide a submission on the Australian Energy Regulator's (AER) *Draft AER (Retail) Exempt Selling Guideline: Version 5 (December 2017)*. We have also reviewed the related *Notice of Draft Instrument*.

Our previous submission on the AER's *Issues Paper: Access to dispute resolution services for exempt customers* outlined various issues in relation to dispute resolution. In this regard, we do not intend to re-raise our previous arguments.

We welcome the AER's final policy position and proposed approach to dispute resolution for customers in non-residential embedded networks, by not requiring such embedded network owners to become members of Ombudsman schemes.

We agree with the AER's assessment, however, that customers of residential embedded networks, should be caught as a priority. This includes the AER's assessment (at page 9; *Notice of Instrument*) that: "the characteristics of residential exempt customers in particular are such that we consider they are in greatest need to access ombudsman schemes"

We also welcome the AER's coordinated and harmonised approach with the Australia and New Zealand Energy and Water Ombudsman Network (ANZEWO) on this issue. We remain concerned that the Victorian Government has seen fit to advance on its own under its recently finalised updated General Exemption Order (GEO).

Based on the analysis and arguments in our previous submission, we believe that the AER's proposed approach is appropriately risk-based, fit-for-purpose and cost-effective.

We are pleased to provide the following comments on the proposed changes to the *Exempt Selling Guideline*. We would welcome an opportunity to discuss our interpretation of certain issues with the AER and seek clarification.

OMBUDSMAN SCHEMES

- As noted above, we support the AER's proposed approach, as outlined in its 'final policy position' (section 3.2) to not require exempt sellers that sell energy to non-residential customer to be members of, or subject to, energy Ombudsman schemes.
- We note that the AER did not receive any evidence to date which suggests a need to extend this protection to small business customers. As we addressed this issue comprehensively in our previous submission, if the AER receives any contrary submissions on the *Draft Exempt Selling Guideline*, we would appreciate an opportunity to respond to any fresh issues raised.

OTHER AMENDMENTS

1. **Consent to proposed retrofit**

We have no concerns with the proposed amendment to clarify that a customer's agreement to a proposed network conversion is not the same as their agreement to join the network.

We also note that for the purposes of approving an application for individual exemption, the AER is concerned only that consumers have been consulted on, and agree to, the proposed retrofit.

2. **Who should hold the exemption**

We have no in-principle objection to the proposed clarification that the person or business selling the energy should hold an exemption – and cannot be transferred to related businesses or subsidiaries. We support the need for the AER to be able to correctly identify and ensure compliance with exemption conditions.

Where energy selling is undertaken by an agent or service provider, we note that they should hold the exemption.

We are keen to ensure, however, that this approach does not limit sensible approaches to embedded network management.

3. Applications for retrofits

Retail contestability

We have some concerns with the proposed four criteria, whereby there are issues beyond the applicant's control, and reasonable steps have been taken by an applicant to address and resolve a particular issue. As an example, at section 7.2.1. of the Draft Guideline, it is proposed that evidence is needed to highlight 'ongoing cooperation with retailers and distributors to facilitate access to competition' – and 'processes to ensure customers who choose to purchase from an authorised retailer do not pay double network charges, and acknowledgement that financial responsibility lies with the exempt seller to rectify any double charging (i.e. the applicant)'.

We have raised the issue of double billing on network charges in previous submissions to the AER, whereby it can be the retailer/distributor at fault; rather than the exempt seller. An exempt seller should not be responsible for issues beyond their control. We have requested previously that if an exempt seller is to have such responsibility, they should be afforded appropriate protections and/or powers to rectify the issue with the retailer/distributor. We again request the AER to provide appropriate safeguards for exempt sellers.

Dispute resolution

We note that the need for ombudsman scheme access will be assessed on a 'case-by-case' basis, and that where such a requirement is not imposed, that evidence will be needed that there is a dispute resolution process consistent with *AS/NZS 10002: 2014 Customer Satisfaction – Guidelines for complaints handling in organisations*.

As stated previously, we do not believe that exempt sellers to non-residential customers should need to be members of Ombudsman schemes.

We are concerned, however, that the proposed wording to reflect the AER's final policy position could inadvertently require non-residential schemes to be members of Ombudsman schemes. As an example, Core Condition 17 states that an exempt person must, if permitted by an energy ombudsman scheme, be a member of, or subject to, that scheme. We believe that this condition should be amended to expressly provide that 'unless it is a non-residential scheme', there is a requirement to be a member of an Ombudsman scheme.

State or territory legislation

We have no major concerns with the proposed approach.

Explicit informed consent

As we have raised during previous AER consultation on the notion of 'explicit informed consent', the process and expectations need to be clear from an applicant's perspective.

While supporting the need for obtaining consent, and the need for the provision of appropriate advice and communication, we are concerned with the notion (at note 28 – page 17) that an applicant needs to ensure that an affected consumer will be 'fully informed'. We are concerned that this is subjective, and also hard to know when a consumer feels 'fully informed'; even if the AER's general guidance is followed (e.g. communication about a customer's rights; capacity of affected customer's such as English literacy skills).

In addition, similar to a previous issue we've raised, is the notion that an applicant needs the written consent from *all* customers. We are keen to ensure that the AER takes a practical approach to this issue, whereby some customers can choose not to engage in the process, or can unreasonably withhold their consent. We also do not want to be in the position whereby an applicant taking reasonable steps to 'chase up' a customer's response – and potential consent – could be considered or interpreted as placing undue pressure or harassment on the customer. In such circumstances, an applicant should be able to outline to the AER where issues have occurred in seeking the written consent from all customers – but a response / consent has not been forthcoming.

4. Grounds for refusal

We note the grounds for refusal, including the additional illustrative example whereby an applicant has not demonstrated why they should be granted an exemption or have not provided evidence that must be included in the application. We are concerned about the intention of the proposed examples, to the extent that such as whereby a refusal may be issued even where (for instance) an application meets all relevant criteria (e.g. exempt seller factors) and is consistent with the achievement of the national energy retail objective.

5. Glossary

We have no objection to having a definition of embedded network in the Glossary, and note that the definition has been taken from the body of the Guideline. It may be something we have overlooked previously, however we believe the proposed definition is problematic. Firstly, there can be more than a single meter providing 'all' energy for a site – in the case of shopping centres, this can be due to the ongoing nature of redevelopment and expansion of shopping centres, which is unique compared with other assets (e.g. office towers). To cite two examples, Chadstone shopping centre in Melbourne has had several separate stages of redevelopment – as had Westfield Chermside since it opened as Australia's first shopping centre in the late 1950's. Secondly, similar to the point above, there may be other meters providing energy to the site outside the embedded network (e.g. a Coles meter). We believe the definition should be amended to reflect these issues. We don't believe this would materially impact the definition or its application, or affect any policy intent or related issues.

CONTACT

We would be pleased to discuss this submission with you, and appreciate the AER's ongoing consultation with our industry.

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