

AUSTRALIAN ENERGY REGULATOR: UPDATING THE NETWORK AND RETAIL EXEMPTION GUIDELINES – CONSULTATION PAPER MAY 2021

COMPLIANCE STATEMENT - COMPETITION AND CONSUMER ACT 2010

In preparing this submission, the SCCA has taken steps to ensure that it is not contravening the spirit, intent or application of the *Competition and Consumer Act 2010*, including by engaging in or facilitating any conduct or behaviour that is anti-competitive or would substantially lessen competition, including through collusion, cartel conduct or by engaging in a concerted practice. This includes that the SCCA did not act, and will not be acting, as an intermediary for the communication of commercial sensitive information between members and/or competitors. Nor will the SCCA be using or enabling the use, by its members, of the information collected in ways as might replace or reduce competitive, independent decision making by shopping centre owners including as embedded network owners and operators.

EXECUTIVE SUMMARY

The Shopping Centre Council of Australia (SCCA) thanks the Australian Energy Regulator (AER) for the opportunity to comment on the *Updating the Network and Retail Exemption Guidelines Consultation Paper*, seeks to improve the improve clarity and readability of exemption requirements, streamline the current guidelines and remove redundancies. We have reviewed the *Consultation Paper*, and provide a brief response to the questions raised by the AER as a basis for further discussion. As the AER is aware, the SCCA has engaged on reviews of the retail and network exemption guidelines for a long period of time. As we have observed with previous reviews, much of the concerns raised by the AER relates to 'residential' embedded networks versus 'non-residential' embedded networks such as those in shopping centres. As always, we would welcome the opportunity to discuss the detail further with the AER.

Question 1

Do stakeholders agree that responsibility for meeting certain network exemption conditions should be restricted to one person, for example the network owner or controller? If stakeholders agree, which person should be the sole registrant, noting this person should have the capacity to resolve customers' complaints?

Whilst we understand the challenges raised on this issue and the AER's proposed approach, which may be appropriate for residential situations (which appears to be the area of concern), this approach does not relate to the legal ownership structure of many shopping centre embedded networks, which often have multiple owners (legally, tenants in common) with a manager operating the centre. We would be pleased to meet and discuss the complexities around these ownership structures and how to assist you in the resolution of this issue.

Question 2

Ombudsman membership is an example where designating responsibility is likely to be helpful. Are there other examples?

A commercial arrangement may be made with a Billing Agent or ENM third party to designate responsibility where they have expertise and knowledge of exempt seller arrangements. i.e. Managing agent.

Question 3

Should we clarify the meaning of controlling and operating an embedded network?

We believe that additional clarity would be worthwhile. We would an opportunity to discuss this issue, noting our response to Q1. above in relation to shopping centre ownership and legal structures.

Question 4

Do stakeholders consider there is a need to regulate small generator aggregators under the network exemption guidelines?

This has not presented as a material issue for shopping centres to date. If this is already being captured within the post-2025 Electricity Market Design project, then this should only be included in one set of regulations. Either way we believe it should be expressly clear if it is to be included or not in the guidelines.

Question 5

Do stakeholders interpret small generator aggregators as being captured under the NER?

This has not presented as a material issue for shopping centres to date.

Question 6

What do stakeholders consider a reasonable timeframe to procure and appoint an Embedded Network Manager?

For existing sites, we believe that the timeframe should be 90 days from supply taking load through an embedded network arrangement. For greenfield sites we submit that this should be longer as customers may not have signed leases / occupy the tenancy for some time after the network is supplied.

Question 7

Do stakeholders agree the appointment of Embedded Network Managers should be deferred in regional Queensland and legacy unmetered sites?

We agree with the proposed approach by the AER for an embedded network. Where there are no meters we don't believe there is a substantial reason to appoint an ENM.

Question 8

Do stakeholders agree that the appointment of Embedded Network Managers be deferred if they are no longer required, for example when all on-market customers have reverted to off-market? Are there other situations when Embedded Network Manager services are no longer required?

We see merit in the approach that once an ENM is required it should remain. This supports the ability for customers to engage in competitive energy market if/and when they wish too. We believe there is generally an ability to manage through commercial arrangement the scenarios where an ENM is appointed but no obligations are required.

Question 9

Do stakeholders agree to removing the 'eligible communities' and counter offer provisions from the network exemption guideline?

As this does not apply to shopping centres, we have no concerns with the proposed changes.

Question 10

Should the information embedded network owners/operators provide prospective customers be standardised?

We believe the guidelines should provide clear and easy to understand guidance on the information exempt sellers are required to provide to customers. We do not, however, agree it should be wholly standardised as relationships and scenarios are unique depending on embedded network setup and there is a risk that any standardised text would not be in context for every scenario. This is most particularly the case in relation to the difference between residential and non-residential embedded networks, noting a key difference that apartments within residential apartment buildings are freehold property and generally owned by individuals and there is an owners' corporation in place, whereas retail tenancies within a shopping centre are under leasehold arrangements (short and longer-term tenure) and the 'tenancy' or 'space' is still owned by the shopping centre owner.

Question 11

Should the network exemption guideline's term 'express written consent' be replaced with 'explicit informed consent', and be provided in writing?

We agree there should be consistency between the Retail and Network exemption guidelines where possible, including in relation to consent. In our experience, explicit informed consent and express written consent are handled in the same way; being 'in-writing'.

Question 12

Should record keeping requirements explicitly apply to all situations where consent is required under the network and retail guidelines?

We note the same as above in relation to the need to consistency between the Retail and Network exemption guidelines. We believe that the record keeping requirement should expressly allow for electronic records

Question 13

Do stakeholders support proposed clarifications to the retail and network exemption guidelines' retrofit requirements? If not, what are reasons for not supporting the changes? For discussion

We support the removal of the requirement to provide 'an undertaking to observe' to avoid confusion from the network exemption guideline. We support more guidance on calculation of retrofit consent figures for retrofit conversions. We do not support additional exemptions for one site as obligations under the guideline are outlined in the exemption that is already in place. We maintain that multiple exemptions for one site cause confusion for customers and compliance monitoring.

Question 14

Are there any other provisions or requirements that need to be clarified in either the retail or network exemptions guidelines?

We believe there should be allowance for the application in Victoria of the energy retail code, which is applicable for retail, and whereby the network exemption guideline is applicable for network issues.

Question 15

Is there any other information exempt sellers should provide embedded network customers to help them access retail competition?

We do not believe any other information is required. We provide extensive information to customers under existing requirements.

Question 16

Do stakeholders have a preference – for a broader set of hardship assistance conditions or an exempt seller hardship plan?

This has not presented as a material issue for shopping centres to date. We believe this issue is less relevant to shopping centres where each customer is subject to a separate legal relationship for the premises, under an agreed retail lease.

Question 17

What key protections should be included in a hardship policy template for exempt sellers?

See our response to Q.16 above

Question 18

What additional obligations should the core exemption conditions include?

As Above

Question 19

Are there other measures that would facilitate exemption holders' taking up membership of ombudsman schemes?

We believe that the AER should obtain the information from the relevant ombudsman in the first instance. Noting that ombudsman membership will continue to be handled at a jurisdictional level, exempt sellers will inevitably work with the ombudsman and customer to assist with enquiries and issues regardless of membership. To our knowledge business customers have minimal contact with ombudsman and we are not aware of any major issues within shopping centres.

Question 20

Do stakeholders support regulation of the sale of energy to chill water?

We support a deemed exemption as per the proposed change by the AER for clarity. Whilst chilled water is sometimes billed as 'kWh' it is usually called 'kWh thermal' and hence not really in our view electricity supply. We would appreciate opportunity to discuss further with the AER the inclusion of chilled water.

Question 21

What are the main issues for this type of energy sale and what sorts of conditions should apply?

Noting our response to the above, we see a number of issues including in relation to metering and billing. In relation to what sort of conditions could apply, we submit the following:

Network guidelines

- *Condition 2,6,7 apply all other conditions are N/A*

Retail guidelines

- *Condition 3,4,5,6,7,8,15,16 apply all other conditions are N/A*

CONTACT

Please don't hesitate to contact me to discuss this submission.

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