

DRAFT RETAIL EXEMPT SELLING GUIDELINE REVIEW 2021-2022

EXECUTIVE SUMMARY

Thank you for the opportunity to provide a submission on the Australian Energy Regulator's (AER) *Draft Retail Exempt Selling Guideline Review 2021-2022*.

This submission raises various issues we believe the AER needs to address in finalising the Guideline, including providing clarification.

As the AER is aware, we have engaged on previous reviews of the Guideline including going back to the original version more than ten-years ago. This includes a submission on the previous Consultation Paper in July 2021.

While we note that the intent of this update is to 'fine tune' the Guideline, we believe that some of the amendments go further than this and require change and/or clarification.

As we have submitted on previous reviews, we are concerned that some of the changes are driven by issues in the residential sector versus the non-residential (e.g. shopping centre) sector.

We do appreciate where the AER separates residential from non-residential requirements, and also note the AER's comment page 28 of the *Notice of Instrument* that 'minimal complaints are received from small business customers in embedded networks' and as such the AER doesn't 'consider it necessary at this stage to extend external dispute resolution requirements to small business customers'.

We are pleased to provide the following comments:

- We support the AER's position in relation to chilled and bulk hot water being out of scope.
- Noting the changes at section 2 (*Are you an energy seller?*), we are keen to ensure that the proposed changes don't unintentionally pick up / overlap with / duplicate arrangements covered under State retail lease legislation which relates to 'outgoings'. Outgoings are operating costs that a shopping centre owner can recover – in line with requirements under retail lease legislation - from a tenant for common area charges which include (but are not limited to) electricity costs (along with other costs such as cleaning, security and repairs and maintenance). We recommend that the AER provides express clarity to ensure there is no confusion.

We note that the Guideline provides (at page 7) that 'where State and Territory laws conflict with the conditions in this guideline, those State or Territory laws take precedence over the guideline's conditions'.

- We would welcome clarity on the additions to section 4.4 (*Other situations: network conversion (retrofitting)*), including the intended meaning behind the amended terminology going from 'network conversion' to 'retrofit'. We are keen to discuss with the AER the different scenarios in our sector such as when shopping centre expansions take place, and what would be considered to be a 'retrofit' noting this new terminology. Similar, we are not clear as to the meaning of certain references including (e.g. at page 12) '...by expanding an existing commercial and/or residential retrofit within the same site...' or 'retrofit expansion...'. We believe this new section should separate residential vs non-residential, as the scenarios can be quite different (including from a land title perspective).
- In relation to section 5 (page 14), we are keen to ensure that the terminology 'only a legal person may hold an exemption' does not affect the common ownership of shopping centres which are typically registered entities as either a corporation or trustee.
- In relation to section 5 (page 14), we submit that the proposed 20 business days should be 60 business days.
- In relation to Core Exemption Condition No. 16, we are comfortable with the removal of the reference to AS/NZS 10000.2, however we believe that this condition should be amended to provide that 'procedures should be consistent with a relevant Australian Standard or accepted industry practice'. Our concern is that the reference to 'the' Australian Standard could give rise to 'any' Australian Standard which may not be relevant.
- In relation to Appendix A-1, we note there are changes in relation to the Deemed and Registrable classes of exemption. We note the slight 're-write' at R1, and we again submit that the AER issue should provide that a tenant cannot 'unreasonably' withhold their consent which can include for other commercial reasons (alternatively the 100% threshold could be reduced to 95%). We note the change from 'pa' to 'per annum' at R5.

- In relation to the Core Exemption Conditions (e.g. Appendix A-2), we recommend that the AER provide express clarity in relation to the application to residential and non-residential customers (e.g. the proposed Condition 26 'Hardship Policy'). Some of the current conditions and proposed changes are not applicable to non-residential customers.
- Noting our previous submission on the AER's *Issues Paper: Access to Dispute Resolution Services for Exempt Customers (June 2017)*, we would welcome an opportunity to discuss and clarify the potential new expectations/requirements in relation to Ombudsman scheme membership where applicable (noting that at Appendix B, this is limited to residential networks).

We would welcome the opportunity to discuss the above issues with the AER. Once again, thank you for the opportunity to provide a submission on the review.

CONTACT

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