

SHOPPING CENTRE COUNCIL OF AUSTRALIA

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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000
And by email: sdiic@parliament.qld.gov.au

National Energy Retail Law (Queensland) Bill 2014

Dear Sir or Madam

Thank you for the opportunity to comment on the *National Energy Retail Law (Queensland) Bill 2014* ('the NERL Bill'). We are also aware of the related *Electricity Competition and Protection Legislation Amendment Bill 2014* to amend the *Electricity Act 1994* and avoid duplication with the NERL Bill and related reforms.

We represent Queensland's major owners, managers and developers of shopping centres, which includes interests across the state's urban, regional and rural areas (and, therefore, the Energex and Ergon distribution areas). Our members include AMP Capital, Charter Hall Retail REIT, Colonial First State Retail Property Trust, DEXUS, Eureka Funds Management, Federation Centres, ISPT, Jen Retail, Jones Lang LaSalle, Lend Lease, McConaghy Group, McConaghy Properties, Mirvac, QIC, Savills, the Scentre Group (formerly the Westfield Group and Westfield Retail Trust) and Stockland.

SUPPORT FOR NECF

As the principal objective of the NERL Bill, we support the Queensland Government's decision to transition to the National Energy Customer Framework (NECF). This follows similar reforms in other jurisdictions, as well as the Inter-Departmental Committee (IDC) on Electricity Sector Reform.

Broadly, we understand this will see the regulation of embedded networks and electricity onselling (see below) transitioned from current Queensland laws and regulations to the Australian Energy Regulator's (AER) framework. The AER is established under the *Competition and Consumer Act 2010* and part of the Australian Consumer and Competition Commission – or ACCC.

EMBEDDED NETWORKS / ELECTRICITY ONSELLING

A critical issue under the proposed adoption of the National Energy Retail Law (and NECF) is the operation of embedded networks and associated onselling of electricity. An 'embedded network' is a privately installed, owned, operated and maintained electricity network connected to the local distribution network. Embedded networks and associated electricity onselling are common practice across Australia, and occur across various property types and facilities (in addition to shopping centres) such as retirement villages, commercial office buildings, boarding houses, caravan parks and airports.

As described in the Government's *Electricity On-Supply in Queensland: Discussion Paper*, which formed part of the IDC review process, the "on-supply of electricity involves the owner, occupier or user of premises ('on-supplier') buying electricity from a retailer and supplying and selling it to the occupants of the premises ('receivers')". In shopping centres, retail tenants can be small electricity customers (that consume up to 100 MWh of electricity per annum) (e.g. clothing, footwear stores) and large electricity customers (that consume more than 100MWh of electricity per annum) (e.g. supermarkets, bottle shops, bakeries).

Embedded networks represent a substantial investment which operate with common investment risks such as regulatory, operational and commercial risks. As income producing assets within a shopping centre, their operation can also impact property valuation.

The operation of our members' embedded networks can be contracted to independent experts to assist with regulatory compliance issues, technical issues, meter reading and billing. In this regard, there is now a mature embedded network and electricity onselling industry.

Major investment risks for embedded networks were presented in recent years through the Queensland Government's electricity retail market reforms introduced on 1 July 2012, which included the tariff deregulation of large 'non residential customers' in the Energex distribution area and the way the Queensland Competition Authority (QCA) set regulated electricity tariffs for the 2012-2013 period.

These two changes created major uncertainty, in terms of what large customers in the Energex area could be charged (as enshrined in section 20J(3) and (4) of the *Electricity Act*), and a loss of income for embedded network operators in the Ergon area where there was a significant disconnect between what shopping centre owners were charged for electricity (as large customers) and what they could onsell it for (i.e. small customers).

IDC REVIEW PROCESS

As noted above, embedded networks and electricity onselling were reviewed as part of the IDC review process. We were involved in the review which was undertaken by the Department of Energy and Water Supply (DEWS). We met with Departmental officers and also lodged a formal submission in February 2013 in response to the *Electricity On-Supply in Queensland Discussion Paper* referred to above. Consistent with the IDC review, the Government had a strong focus on customer protection and retail competition.

In our submission, we recommend the Queensland Government transition to the NECF framework and hence, the AER's framework, for the regulation of embedded networks and electricity onselling. This framework provides for customer protection and retail competition.

QLD REGULATION OF EMBEDDED NETWORKS

Currently, the Queensland Government regulates electricity onselling under Chapter 1, Part 6 of the *Electricity Act 1994*. In recognition of the fact that embedded networks are generally 'incidental' to the main operation of the relevant business (e.g. shopping centre management), embedded networks are generally exempt from the need to be a registered electricity Network Service Provider (NSP) or an authorised Electricity Retailer (subject to compliance with certain conditions). This, however, can mean embedded network customers are not considered to be 'customers' as defined in the Act. While this means that there is a lack of access to customers protections under the Electricity Act – principally access to the Energy and Water Ombudsman Queensland (EWOQ) – it should be noted that the *Queensland Retail Shop Leases Act 1994* provides retail tenants with relevant protections (and will continue to do so). Further, embedded network customers have tariff protection and, we understand the Government intends to continue such protections under the transition to the NECF framework. Currently, customers can be charged no higher than the regulated (electricity) retail tariff that would be applied if they were a customer of an electricity retailer (i.e. what they would be charged if they were an individual customer).

AER FRAMEWORK/REGULATION OF EMBEDDED NETWORKS

The transition to the NECF will mean that electricity onselling, along with embedded networks, will be regulated by the AER. Like the current arrangements in Queensland, the AER treats the operation of embedded networks as being 'outside' the normal electricity networks and retailing and therefore exempts them from the need to be an authorised NSP or electricity retailer. This reflects the fact that embedded networks are incidental to the owner's main business (e.g. shopping centres).

The AER has a set of stringent guidelines, which are updated from time to time, and associated registrations and conditions that apply to both embedded networks and electricity onselling. These currently apply in the jurisdictions that have adopted NECF such as SA and NSW.

The AER framework has a strong focus on customer protection.

THE AER guidelines were developed in consultation with all jurisdictions and relevant stakeholders. Importantly, these guidelines provide consistency which benefits companies, such as our members, that operate across multiple jurisdictions as national businesses.

The AER framework has three broad exemption classes (within with there are a number of situation specific exemptions):

1. Deemed exemptions,
2. Registrable exemptions, and
3. Individual exemptions

Our members require exemptions from the AER as both Network Services Providers (NSPs) and Electricity Retailers.

All of these exemptions impose conditions on the operation of embedded networks and onselling of electricity, which are outlined in the AER's *Network Service Provider Exemption Guidelines* and *Exempt Selling Guidelines*, and include conditions which relate to issues such as:

- The right of customers to access their electricity provider of choice,
- Metering arrangements,
- Dispute resolution,
- General customer protections.

Consistent with the broad aims of the NECF to harmonise and provide consistency, the regulation of embedded networks and electricity onselling by the AER provides this outcome. The AER also operates a publicly available register where details of each scheme are available online.

QLD SPECIFIC ADDITIONS

Despite the comprehensive nature of the AER guidelines and conditions referred to above we understand that the Queensland Government intends to apply additional 'customer protection' conditions in the form of tariff protections for small electricity customers across the state and large electricity customers in the Ergon area. This is to ensure that (we have been advised) such embedded network customers cannot be charged more than the standing offer price that would be charged by the relevant local area retailer for new connections. This will occur in both the deregulated SEQ market (for small customers-but additional protections will not be applied for large customers in addition to the current AER conditions) and other parts of the state where regulated (set by the QCA) tariffs will still apply. These are not contained in the Bill, however we have been advised they will be in associated Regulations which have not yet been developed.

We have not major opposition to these additional customer conditions however we obviously remain cautious whereby such tariffs will still be determined through the QCA process (and the local area retailer in the deregulated areas through their 'standing offer prices'). As has happened previously, this presents a further regulatory risk, could create uncertainty, and result in a loss of income for embedded network operators. Further, it could detract from the broader benefits of harmonisation and consistency otherwise achieved through the NECF reforms.

AUSTRALIAN ENERGY MARKET OPERATOR (AEMO) RULE FRAMEWORK

In addition to the introduction of the NECF, the Australian Energy Market Operator (AEMO) is currently developing a framework to better enable embedded network customers to have access to their electricity retailer of choice; principally through the metering process. In the *IDC's Report to Government (May 2013)*, metering issues were raised as a barrier to energy reform on various accounts; but also an issue for improved retail competition in embedded networks. Metering issues were also noted in the *Queensland Government Response* to the IDC report (section 3.4-Metering Reform). The Government also committed to "increased retail competition as a key energy policy goal" (section 4.6-Retail Competition). We are a member of the AEMO's Reference Group working on this issue. The AEMO is scheduled to submit a 'rule change' to the Australian Energy Market Commission (AEMC) later this year and, if approved, could establish the rules for a framework to enable embedded network customers to better access their electricity retailer of choice; whilst recognising embedded network operator issues.

TRANSITION

We are keen to ensure that the transition to the NECF in Queensland is smooth and that new obligations are clear and transparent. For this reason, our members should be provided with adequate time to register their embedded networks and electricity onselling arrangements through the AER processes, and also have clear guidance in terms of what 'Qld' specific additions are in place, including the interaction with other laws and regulations.

CONCLUSION

The NECF will improve certainty, consistency and the efficiency in the operation of embedded networks in Queensland.

We would gladly appear before the Committee to assist in its investigations.

Please do not hesitate to contact me on anardi@scca.org.au or 0408 079 184 to discuss this submission.

Yours sincerely

Per: 

Angus Nardi
Deputy Director