

## Property Alert

# Owners, landlords and managers affected by changes in the Electricity Law

June 2012

### Outline

An owner, landlord or manager:

- distributes electricity if it allows someone to take electricity from wiring it owns, operates or controls; and
- on-sells electricity where someone is charged for the electricity that is passed through the private network.

If you are a property owner, landlord or manager involved in distributing and on-selling electricity to tenants and other customers, you should be aware of the new electricity law under the *National Energy Retail Law (South Australia) Act 2011* (SA). Under the National Energy Customer Framework (**NECF**), the legislation is reciprocal in each State except Western Australia and Northern Territory (**Electricity Law**).

The Australian Energy Regulator (**AER**) will be the regulator overseeing and granting retail licences and exemptions and replacing relevant State Regulators.

The Electricity Law imposes new and more onerous obligations on owners and landlords of properties such as office buildings, industrial estates, retirement villages, retail premises, shopping centres and residential developments and anyone else involved in distributing and/or on-selling electricity to tenants and other customers.

### You must register to distribute electricity

To distribute electricity, each owner and landlord must register the relevant private network with the Australian Energy Market Operator or obtain an exemption for the relevant site from the AER.

### You must register to on-sell electricity

There is a separate obligation on each owner and landlord to either:

- obtain a retail licence (which is a very complex process); or
- obtain an exemption from the requirement to hold a retail licence, to enable on-selling of electricity to tenants or customers under the Electricity law. This requirement applies from 1 July 2012 in South Australia, Victoria and Tasmania. We have been advised by AER that introduction has been delayed in New South Wales until 2014 and in Queensland indefinitely.

## Obligations on property managers

Where an owner or landlord engages a property manager or agent to operate or control the network, the property manager or agent must also itself obtain an exemption from the AER for both the distribution and any on-selling of electricity for each property it manages.

## Obligations on Sublessors

Where electricity is supplied by sublessors to subtenants, the sublessor must also obtain an exemption from the AER for both the distribution within the sub-network and on-selling of electricity.

## Exemptions

There are different types of exemption available to owners, landlords and property managers for the distribution and on-selling of electricity. Advice should be obtained in respect of which exemptions are available to you.

## Conditions apply

Owners, landlords and where applicable, property managers must comply with conditions for distribution and on-selling of electricity under the Electricity Law. These conditions are more onerous than under previous legislation.

## Penalties apply

There are substantial penalties for non-compliance with the requirements of the Electricity Law. For example, failure to obtain an exemption will incur a civil penalty for bodies corporate of \$100,000 plus \$10,000 for each day the breach continues.

## Points to note

If an owner or landlord of a registered site sells its property, the owner or landlord must notify the AER as soon as possible after the sale and the purchaser must submit a registration application.

Owners' and landlords' obligations to tenants that are classified as small customers under the Electricity Law include:

- by 1 October 2012 for existing tenants (by information sheet) or for new tenants at commencement of their tenancy/occupancy (by information sheet, within the lease disclosure statement (if applicable) or as an attachment to the lease letter of offer) (and also at any subsequent time at the tenant's request), the landlord must advise each tenant:
  - that it has a right to purchase energy from a retailer of its choice and provide information on the options for metering that would allow that choice;
  - that the landlord (exempt person) is not subject to all the obligations of an authorised retailer, and the exempt customer may not receive the same protections as it would if it was purchasing from an authorised retailer;
  - of its rights as an exempt customer in relation to dispute resolution;
  - of the conditions applicable to the particular exemption under which the exempt person is operating;
  - of the energy tariffs and all associated fees and charges that will apply; and
  - of the contact numbers in an event of a fault or an emergency.
- tenants must be provided with receipts for payment of electricity separate from rent and other payments;
- the due date for payment of an energy account can only be after 13 business days from the date the exempt person issues the account;
- an energy account must be issued to the tenant or customer at least once every 3 months;
- landlords must supply energy to tenants, unless they exercise their right of choice to purchase energy from a retailer of their choice;
- tenants cannot be disconnected for failure to pay their energy account unless a series of notices are issued; and
- tenants can only have their electricity disconnected after 8am and before 3pm on a business day (but not Friday or a public holiday or between 20 December and 31 December of any year).

The Electricity Law prevails over inconsistent provisions of leases. Where the opportunity arises, new clauses should be included in leases.

## How we can help you

We can provide you with advice regarding your obligations under the Electricity Law.

If you have tenants or customers taking electricity from your network or if you control or operate a network, you will have to obtain an exemption from the AER to distribute electricity. If you on-sell electricity to tenants or customers or if you control or manage the on-selling, you will have to obtain an exemption from the AER to on-sell electricity. We can assist you with such applications to the AER.

We can provide you with advice on your leases or other documents regarding on-selling electricity to tenants or customers.

We can assist you with drafting the required information sheet to be provided to existing tenants by 1 October 2012 or to new tenants at the commencement of their tenancy (provided as an information sheet or within the disclosure statement (if applicable) or as an attachment to the lease letter of offer) (and as may be required by tenants at later times).

For further information, please contact:

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