

Our Ref: #14,204,039
Contact Officer: Sarah Pinchuck
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22 December 2022

Ms Liza Maris
Director – Asset Management
Elanor Funds Management Limited
Level 38 259 George St
Sydney NSW 2000

By email: [REDACTED]

Dear Ms Maris,

Re: Elanor Funds Management Limited ATF Tweed Heads Property Trust – Tweed Mall Corners Wharf and Bay Street, Tweed Heads NSW 2485 – application for an individual exemption

I refer to your application, accepted on 19 October 2022, for an individual retail exemption under the National Energy Retail Law (**Retail Law**) for Elanor Funds Management Limited AFT Tweed Heads Property Trust / ABN 94 940 878 049 (**Elanor Funds**) to sell electricity through an embedded network at Tweed Mall Corners Wharf and Bay Street, Tweed Heads NSW 2485.

Pursuant to the delegation given to me by the AER, I have assessed Elanor Funds' application and am satisfied that it complies with rule 157(2) of the National Energy Retail Rules (**Retail Rules**) to grant an exemption to Elanor Funds from the requirement to hold a retailer authorisation.

The AER has considered the policy principles relating to exempt selling in section 114 of the Retail Law, being:

- Regulatory arrangements for exempt sellers should not unnecessarily diverge from those applying to retailers.
- Exempt customers should, as far as practicable, be afforded the right to a choice of retailer in the same way comparable to retail customers in the same jurisdiction have that right.
- Exempt customers should, as far as practicable, not be denied customer protections afforded to retail customers under this Law and Rules.

The AER's decision is guided by the objective of the Retail Law,¹ the exempt seller factors,² the customer related factors,³ and the assessment approach outlined in the Retail Exempt Selling Guideline.

If Elanor Funds decides to change the way it sells electricity, it should contact the AER as it may need to apply for an authorisation or another exemption to do so. Please be aware that selling energy outside of the scope of the present exemption may contravene section 88 of the Retail Law and we may take enforcement action or otherwise seek to ensure compliance.

Please note the exemption is subject to your acceptance of the conditions set out in the Instrument of Exemption. Elanor Funds must advise the AER in writing by **COB 30 January 2022** whether it accepts these conditions.

If you have any queries, please contact Mila Sudarsono on (03) 9658 6485.

Yours sincerely



Rowena Park
General Manager
Compliance and Enforcement

Sent by email on: 22.12.2022

¹ The national energy retail objective is to 'promote efficient investment in and efficient operation and use of energy services for the long term interests of energy consumers with respect to price, quality, safety, reliability and security of supply of energy' (s. 13, National Energy Retail Law (Retail Law)).

² s. 115, Retail Law.

³ s. 116, Retail Law.

Schedule 1: Instrument of Exemption

INDIVIDUAL EXEMPTION FROM THE REQUIREMENT TO

HOLD A RETAILER AUTHORISATION

DATE OF APPROVAL: **22 December 2022**

FORM OF ENERGY: **Electricity**

Pursuant to section 110 of the National Energy Retail Law, the Australian Energy Regulator (AER) decided on 22 December 2022, to grant Elanor Funds Funds Management Limited ATF Tweed Heads Property Trust / ABN 94 940 878 049 an exemption from the requirement to hold a retailer authorisation under section 88 of the National Energy Retail Law, subject to the conditions set out below.

This exemption applies to the sale of electricity to premises at Tweed Mall Corners Wharf and Bay Street, Tweed Heads NSW 2485.

Condition 1 – Obligation to supply

1. An exempt seller cannot refuse to sell energy to a customer who meets the criteria for this exemption class, except:
 - a) in accordance with relevant disconnection provisions under Conditions 9(2)–(7), and
 - b) where the exempt customer's premises have been disconnected by the exempt seller for a reason other than failure to pay a bill and the matter leading to the disconnection has not been rectified. The exempt seller must reconnect the premises and offer to sell energy once the matter is rectified.

Condition 2 – Information provision

Note: This condition does not apply to large customers

1. The exempt seller must advise exempt customers, in writing, at the start of their tenancy/residency/agreement of the following:
 - a) the legal name, trading name (if relevant) and contact details of the exempt seller
 - b) any right of the exempt customer, under state or territory laws, to elect to purchase energy from a retailer of their choice and information on the options for metering that would allow this choice
 - c) that the exempt seller is not subject to all the obligations of an authorised retailer, and the exempt customer will not receive the same protections as it would if it were purchasing from an authorised retailer
 - d) the exempt customer's rights in relation to dispute resolution, including any relevant external dispute resolution body in the state or territory in which the exempt customer is located
 - e) the exempt seller's procedures for handling complaints and disputes
 - f) the forms of assistance available if the exempt customer is experiencing payment difficulties, as well as the process the exempt customer should follow to seek these forms of assistance.
 - g) the flexible payment options that are available to the exempt customer in relation to the sale of energy, such as arrangements for payment by periodic instalments (bill smoothing), and

- h) contact numbers in the event of a gas or electricity fault or emergency.
- 2. The exempt seller must provide any or all information set out in paragraph 1 of this condition as soon as practicable upon request by the exempt customer or the AER.
- 3. The exempt seller must provide the information set out in paragraph 1b of this condition as soon as practicable, following an enquiry from an exempt customer seeking to access retail competition.

Condition 3 – Billing and payment arrangements

Note: This condition does not apply to large customers

- 1. An exempt seller must ensure that bills are issued to each exempt customer at least once every three months.
- 2. An exempt seller must offer at least two payment methods to an exempt customer. However, if an exempt seller offers direct debit as one payment method, they must also offer at least two other payment methods to an exempt customer (that is, at least three methods in total). In each case, at least one of the payment methods offered must be able to be effected without internet access. For example:
 - a) in person
 - b) by telephone
 - c) by mail
 - d) by direct deposit into a bank account.
- 3. An exempt seller must include the following particulars in a bill for an exempt customer:
 - a) the legal name, trading name (if relevant) and contact details of the exempt seller
 - b) the name of the exempt customer
 - c) the address of the exempt customer's premises
 - d) date that the account was issued
 - e) the identifier of the meter for the exempt customer's premises
 - f) the pay-by date for the bill
 - g) date of the current meter reading or estimate, as applicable
 - h) the dates to which the meter reading or estimate applies (billing period)
 - i) current meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill
 - j) previous meter reading or estimate in kilowatt hours and/or cubic metres, as applicable. Where the amount is an estimate, this must be clearly stated on the bill
 - k) the amount of energy consumed, or estimated to be consumed, in the meter reading period. For electricity, consumption must be shown in kilowatt hours. For gas, consumption must be shown in cubic metres and mega joules and must note the heating value and pressure conversion factor that has been applied (these must be the same as those applied by the retailer from whom the exempt seller purchases gas for the site)
 - l) tariffs, fees and charges applicable to the exempt customer
 - m) the basis on which tariffs, fees and charges are calculated. This includes:

- i) the usage rate specified in cents per kilowatt hour (c/kWh) or cents per megajoules (c/MJ)
- ii) the daily supply charge in cents per day (c/day) (if charged)
- iii) the number of days in the billing cycle
- n) details of the available payment methods, and
- o) a telephone number for account inquiries and complaints.

Condition 4 – Estimation as basis for bills

Note: This condition does not apply to large customers

1. An exempt seller must use best endeavours to ensure that the meter for each exempt customer is read and used as the basis, or apportioned, for any bill issued.
2. An exempt seller cannot rely on an estimation of the meter value at the start of an energy supply arrangement with an exempt customer, or for the purpose of issuing a final bill to an exempt customer.
3. An exempt seller may base an exempt customer's bill on an estimation of the exempt customer's consumption of energy where the exempt seller is not able to reasonably or reliably base the bill on an actual meter reading.
4. Where an estimation is used as the basis for an exempt customer's bill, the estimation must be based on:
 - a) historical metering data for the exempt customer reasonably available to the exempt seller, or
 - b) where this is not available, the average usage of energy by a comparable customer over the corresponding period.
5. If a customer's bill is based on an estimation this must be clearly stated on the exempt customer's bill.

Condition 5 – Pay-by date

Note: This condition does not apply to large customers

1. The pay-by date for a bill must not be less than 13 business days from the date on which the exempt seller issues the bill.

Condition 6 – Receipts

Note: This condition does not apply to large customers

1. An exempt seller must provide each exempt customer with a receipt for any amount paid for energy, except where payment has been made by:
 - a) direct debit, or
 - b) credit card over the phone and the customer is provided with a receipt number.
2. An exempt seller must provide the exempt customer with a separate receipt if a payment for energy was made together with a rent payment but has not been separately identified on the rent receipt.

Condition 7 – Pricing

Note: This condition does not apply to large customers

1. An exempt seller must not charge the exempt customer tariffs higher than the standing offer price that would be charged by the relevant local area retailer for new connections, if the local area retailer were to supply that quantity, or estimated quantity, of energy directly to the premises of the exempt customer.⁴
2. An exempt seller must provide notice to the exempt customer of any change in the exempt customer tariff as soon as practicable and no later than the exempt customer's next bill.
3. An exempt seller must not impose any charge on an exempt customer that is not charged by the relevant local area retailer for new connections under a standard retail contract. A 'charge' includes, but is not limited to, account establishment fees, late payment fees, debt collection fees, disconnection and reconnection charges and security deposits.⁵ The amount of any allowable charge must not be greater than that charged under the relevant local area retailer's standard retail contract.

Condition 8 – Undercharging and overcharging

Note: This condition does not apply to large customers

1. Where an exempt customer has been undercharged, an exempt seller can recover the amount undercharged subject to the following:
 - a) where the undercharging was not the result of the exempt customer's fault or unlawful act or omission, the exempt seller is limited to recovering the amount undercharged in the 9 months before the date on which the exempt customer is notified of the undercharging
 - b) the exempt seller cannot charge interest on the undercharged amount
 - c) the exempt seller must offer the exempt customer time to pay the undercharged amount by instalments, over a period nominated by the customer (up to 12 months, but no longer than the period of the undercharging).
2. Where an exempt customer has been overcharged, an exempt seller must inform the exempt customer within 10 business days after becoming aware of the overcharging and repay the amount overcharged subject to the following:
 - a) where the amount overcharged is \$50 (or such other amount as the AER determines) or more, the exempt seller must refund the amount to the exempt customer if requested, or if no such request is made, credit the amount to the exempt customer's next bill. Where the exempt customer no longer purchases energy from the exempt seller, the exempt seller must use best endeavours to refund the amount within 10 business days
 - b) where the amount overcharged is less than \$50 (or such other amount as the AER determines), the exempt seller must credit that amount to the exempt customer's next

⁴ The standing offer price includes the supply price and the usage price. Exempt sellers must ensure that the price they charge for each of these parts does not exceed the price charged for the equivalent part of the standing offer.

⁵ The fees and charges allowable under a standard retail contract are governed by Division 6 of the National Energy Retail Rules (which sets out the requirements for charging a security deposit under a standard retail contract) and may also be governed by jurisdictional legislation.

bill. Where the exempt customer no longer purchases energy from the exempt seller, the exempt seller must use best endeavours to refund the amount within 10 business days

- c) no interest is payable on the overcharged amount, and
- d) where the overcharging was the result of the exempt customer's fault or unlawful act or omission, the exempt seller is limited to repaying the amount overcharged in the 12 months before the date on which the error was discovered.

Condition 9 – Payment difficulties and disconnection or de-energisation

Note: This condition does not apply to large customers

1. Where an exempt customer informs the exempt seller that they are experiencing payment difficulties, the exempt seller must:
 - a) not charge the exempt customer a late payment fee, and
 - b) not charge the exempt customer a security deposit.
2. Subject to Condition 10, an exempt seller must not proceed with disconnection or cessation of energy supply to an exempt customer unless the following requirements have been met:
 - a) the exempt customer has requested disconnection, or
 - b) continuity of supply to the premises would be unsafe, or
 - c) the exempt customer's tenancy/residency/agreement has ended and the exempt customer is vacating the premises, or
 - d) the exempt customer has not paid a bill by the pay-by date, and has not agreed to a payment plan, or having agreed to a payment plan has failed to adhere to the plan and:
 - i) following non-payment by the pay-by date, the exempt seller has given the exempt customer a reminder notice requesting payment by a date at least 6 business days from the date of issue of the reminder notice, and
 - ii) following non-payment by the date specified in the reminder notice, the exempt seller has given the exempt customer a disconnection warning notice informing the exempt customer that disconnection may occur if payment of the outstanding bill is not made by a date at least 6 business days from the date of issue of the warning notice, and
 - iii) the exempt seller has, after issuing the disconnection warning notice, used its best endeavours to contact the customer in person or by telephone in connection with the failure to pay, and
 - iv) the exempt customer has, by the date specified in the disconnection warning notice, refused or failed to take any reasonable action towards settling the debt.
3. A reminder warning issued pursuant to Condition 9(2)(d)(i) must:
 - a) state the date of its issue, and
 - b) state the date on which the reminder notice period ends, and
 - c) include details of the exempt seller's telephone number for complaints and disputes.
4. A disconnection warning notice issued pursuant to Condition 9(2)(d)(ii) must:
 - a) state the date of its issue, and

- b) state the date on which the disconnection warning period ends, and
 - c) inform the exempt customer of applicable re-connection procedures and (if applicable) that a charge will be imposed for reconnection, and
 - d) include details (where applicable) of the existence and operation of the energy ombudsman, including contact details, and
 - e) include contact details for the exempt seller.
5. Where an exempt customer is disconnected in accordance with paragraph 2(b) of this condition, the exempt seller must use its best endeavours to notify the exempt customer in person or by telephone prior to the disconnection, and must arrange for reconnection of the premises as soon as practicable.
6. This condition does not apply where state or territory legislation sets out the process and requirements for the disconnection or cessation of energy supply by the exempt seller on the basis that they are a landlord, body corporate or similar.
7. This condition does not apply to interruptions under Conditions 15 and 16.

Condition 10 – When disconnection or de-energisation is prohibited

Note: This condition does not apply to large customers

1. An exempt seller must not disconnect or cease energy supply to an exempt customer's premises where:
- a) the exempt customer has made a complaint directly related to the proposed reason for disconnection or de-energisation to the exempt seller or another relevant external dispute resolution body and the complaint remains unresolved, or
 - b) the disconnection or de-energisation would occur on:
 - i) a business day before 8 am or after 3 pm, or
 - ii) a Friday or the day before a public holiday, or
 - iii) a weekend or a public holiday, or
 - iv) the days between 20 December and 31 December (inclusive) in any year.
2. For electricity, the exempt seller must contact its distributor to ask whether disconnection of a retail customer in the relevant jurisdiction would be prohibited on that day due to extreme weather conditions. Where the distributor confirms that the disconnection of a retail customer would be prohibited on that day, the exempt seller must not disconnect the exempt customer's premises.
3. This condition does not apply where the exempt customer has requested disconnection.
4. This condition does not apply where continuity of supply to the premises would be unsafe.
5. This condition does not apply where the energy supply agreement between the exempt seller and exempt customer has been terminated.

Condition 11 – Reconnection or re-energisation

1. Where an exempt customer is disconnected in accordance with Conditions 9 and 10 and the customer makes a request for reconnection, the exempt seller must reconnect the premises as soon as practicable after a request for reconnection is made. A request for reconnection may be made ten business days after disconnection, or as soon as the matter that led to the disconnection is rectified, and
- a) any charges for reconnection are paid, and

- b) if the exempt customer still has outstanding amounts owed under the exempt customer's energy account, the customer agrees to enter into a payment plan with the exempt seller.^{6, 7}
- 2. Subject to Condition 11(1), the exempt seller must reconnect the premises (or, where required, arrange with the distributor to reconnect the premises) as soon as practicable, and no later than two business days from when the request was made.
- 3. Subject to Condition 11(1), the exempt seller cannot refuse to supply an exempt customer on the grounds that they owe outstanding amounts on their energy account.

Condition 12 – Choice of retailer

- 1. Where an exempt customer is eligible under state or territory legislation to purchase energy from a retailer of their choice, the exempt seller must not do anything to discourage or prevent them from exercising this choice, whether by:
 - a) requiring the exempt customer to waive their ability to choose a retailer, or
 - b) unreasonably hindering their efforts to find another retailer, or
 - c) unreasonably hindering any metering or network changes required to enable choice of retailer.

Condition 13 – Contact details

Note: This condition does not apply to large customers

- 1. An exempt seller must provide a means of contact for account inquiries and complaints that can be readily accessed by exempt customers. Where a telephone number is provided, the charge for this call must be no more than the cost of a local call.

Condition 14 – Dispute resolution

Note: This condition does not apply to large customers

- 1. An exempt seller must develop and make a set of procedures detailing the exempt seller's procedures for handling complaints and disputes, and those procedures must be provided to exempt customers in accordance with Condition 2(1)(d).
- 2. The procedures must be consistent with the Australian Standard *AS10002:2022 Guidelines for complaint management in organizations* (or subsequent versions).
- 3. In the event of a complaint or dispute concerning the sale of energy to an exempt customer, and consistent with any determination of the complaint by the relevant tenancy tribunal if the customer is a tenant, the exempt seller must:
 - a) deal with the complaint or dispute in accordance with the exempt seller's procedures for handling complaints and disputes, and

⁶ The requirement for exempt customers to wait 10 days before requesting reconnection does not preclude an exempt seller from reconnecting prior to this date where it is directed to do so under jurisdictional legislation.

⁷ The AER recommends that exempt sellers consider the [AER Sustainable Payment Plans Framework](https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework) when agreeing a payment plan with an exempt customer. The framework can be found at <https://www.aer.gov.au/retail-markets/retail-guidelines-reviews/aer-sustainable-payment-plans-framework>

- b) make reasonable endeavours to resolve the dispute, and
- c) advise the exempt customer:
 - i) of any right the exempt customer has to access an energy ombudsman (if applicable), including to lodge a complaint or for free independent information and advice, or any other external dispute resolution body in the state or territory where the exempt customer is located, and
 - ii) of the telephone number and other contact details of the energy ombudsman (if applicable).

Condition 15 – Planned interruptions to supply

Note: This condition does not apply to large customers

1. For planned interruptions, the exempt seller must notify each affected exempt customer at least two business days before the date of the interruption.
2. The notification must:
 - a) specify the expected date, time and duration of the interruption, and
 - b) include a telephone number for enquiries (the charge for which is no more than the cost of a local call), and
 - c) include a statement that any enquiries regarding planned interruptions are to be directed to the exempt seller.
3. The exempt seller must use its best endeavours to restore the exempt customer's supply as soon as possible.

Condition 16 – Unplanned interruptions to supply

Note: This condition does not apply to large customers

1. In the case of an unplanned interruption, the exempt seller must:
 - a) within 30 minutes of being advised of the interruption, or otherwise as soon as practicable, make available information on the nature of the interruption and an estimate of the time when supply will be restored or when reliable information on restoration of supply will be available, and
 - b) if providing a telephone response that is automated, provide options for exempt customers who call the service to be directly connected to a telephone operator if required, and
 - c) use its best endeavours to restore supply to affected exempt customers as soon as possible.

Condition 17 – Continuity of supply

1. If an exempt seller is (or expects to be) disconnected, or there is any likelihood that they will be unable to continue selling energy, they must notify the exempt customers and the AER immediately. As part of this notification, the exempt seller must advise the steps they are taking to arrange an alternative supply.

Condition 18 – Termination of energy supply agreement

Note: This condition does not apply to large customers

1. An energy supply agreement between the exempt seller and an exempt customer will terminate:

- a) on a date agreed by the exempt seller and exempt customer, or
 - b) five business days (or a different time agreed by the exempt seller and exempt customer) from the date when the exempt customer gives the exempt seller a termination notice, or
 - c) at the conclusion of the exempt customer's lease for, or occupancy of, the premises to which the energy is supplied, or
 - d) when the exempt customer starts receiving energy retail services from a different retailer or exempt seller, or
 - e) when a different exempt customer starts receiving customer retail services for the premises, or
 - f) at the end of a period of 10 business days commencing on the day the exempt customer's premises are disconnected, where the conditions for reconnection have not been met.
2. Termination of an arrangement to supply energy does not affect any rights or obligations that have already accrued under the agreement.

Condition 19 - Maintaining records

Note: This condition does not apply to large customers

1. An exempt seller must maintain records of the following for each of its exempt customers:
 - a) the name of the exempt customer
 - b) the address of the exempt customer's premises
 - c) the identifier of the meter for the exempt customer's premises (if applicable)
 - d) the date that the customer account was created
 - e) copies of any bills issued for the previous 12 months
 - f) the date of the most recent meter read for the customer (if applicable), and
 - g) the basis for determining any estimates of consumption for the purpose of billing where a meter read could not be obtained.

Condition 20 – Offer matching for small customers

Note: This condition only applies if the small customer was a tenant at the time of the creation of the embedded network.

1. If a tenant, who would be categorised as a small electricity customer, does not consent to becoming part of the embedded network, the exempt seller must fulfil a request made by the tenant that the exempt seller match any genuine electricity offer that would be available to the particular tenant if they were still a grid-connected customer.
2. The exempt seller must fulfil any subsequent request by a tenant to match an electricity offer if the request is made 12 months or more after a previous request.
3. In the absence of a subsequent request to match an electricity offer, the exempt seller need only apply the matched offer for a period of 12 months.
4. The exempt seller's obligation to match an electricity offer expires upon termination or renewal of the customer's tenancy/lease.

Condition 21 – Offer matching for large customers

Note: This condition only applies if the large customer was a tenant at the time of the creation of the embedded network.

1. If a tenant, who is categorised as a large electricity customer, does not consent to becoming part of the exempt network or is a member of an eligible community, the exempt seller must:
 - a) facilitate, within the exempt network, the continuation of the tenant's electricity contract with their current retailer, or
 - b) facilitate the tenant's direct connection to a registered distributor, or
 - c) if a), or b) do not apply, fulfil a request made by the tenant that the exempt seller match any genuine electricity offer that would be available to the particular tenant if they were still directly connected to the local distribution network service provider.⁸
2. The exempt seller must fulfil any subsequent request by a tenant to match an electricity offer if the request is made 12 months or more after a previous request.
3. In the absence of a subsequent request to match an electricity offer, the exempt seller need only apply the matched offer for a period of 12 months.
4. The exempt seller's obligation to match an electricity offer expires upon termination or renewal of the large customer's tenancy/lease.

Condition 22 – Duplication of network charges

Note: This condition only applies if the customer was a tenant at the time of the creation of the embedded network.

1. The exempt seller must ensure that a tenant who enters into an energy only contract with an authorised retailer is not billed twice for network charges.
2. The exempt seller must take steps to remedy any duplication of network charges experienced by tenants who have entered into an energy supply contract with an authorised retailer.
3. The exempt seller must reimburse the tenant for any duplicate network charges incurred by them as a result of an energy only contract.
4. The exempt seller must not charge a connection charge to any tenant who enters into an energy supply contract with an authorised retailer.

Condition 23 – Metering arrangements

1. The exempt seller must not charge a tenant the cost of any changes to metering and other network alterations that take place in the course of converting the embedded network.
2. The exempt seller must ensure that metering arrangements within the embedded network allow for tenants to access retail competition.

⁸ Condition 20(1)(c) applies by mutual consent. The exempt embedded network service provider may offer to price match or may negotiate an alternative pricing arrangement with a customer if the exempt embedded network service provider determines conditions 20(1)(a) or 20(1)(b) are not feasible or are too costly.