12 January 2016

Ms Sandy Pitcher
Chief Executive
Department of Environment, Water and Natural Resources
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via email: climatechange@sa.gov.au

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Working for your business.
Working for South Australia

Dear Ms Pitcher

I write in response to the consultation regarding regulations for the implementation of the Government's Building Upgrade Finance Mechanism under the *Local Government (Building Upgrade Agreements) Amendment Act 2015* (the Act). As you would appreciate, while Business SA has shown in principle support for the concept of building upgrade finance, we also raised strong concerns over 2014 and 2015 about the fact that tenants would not be voluntarily contributing to building upgrade finance projects, despite any mechanisms to ensure that such funds were only recovered against proven savings. We were also concerned about the abrogation of tenant rights and the removal of protection under the *Retail and Commercial Leases Act 1995*.

While the legislation has since passed and we have provided some informal feedback to your consultant Common Capital over the past year, we now turn to providing some brief comments in relation to the draft regulations to ensure there is no unnecessary confusion for tenants, many of whom are small businesses and do not have the time, inclination or resources to employ external advice to understand their rights and responsibilities under this legislation:

- It is not clear how the regulations operate in buildings which accommodate a mix of net and gross tenants but we would assume each net lease tenant only pays their net lettable area equivalent proportion of the total building's cost of the building upgrade finance project.

- While the regulations rule out consideration of non-variable utility charges in so far as calculating tenant contributions, it should be more explicit in so far as explaining that this means electricity supply charges. We agree that such charges should be excluded from any calculations related to tenant contributions given they would not relate to the efficiency or otherwise of the building's lighting or plant.

- We support the draft electricity savings mechanism taking into account demand costs (KVA charges) which are increasingly being passed onto business customers through cost reflective tariffs. Given the demand component of SA Power Networks costs equates to approximately half their long run costs, the balance being usage, this must be addressed by the regulations however a weighted average approach to large market customers may not accurately reflect the changing nature of their electricity costs when comparing savings against benchmarks. For example, if the relativity of energy versus demand charges changes over time, how will this be accurately reflected in the calculation of tenant contributions?

Furthermore, South Australia along with other States is in process of shifting cost-reflective tariffs onto small (sub 160 MWh per annum) customers over coming years and any implications for electricity costs in building upgrade finance arrangements needs to be considered for given the likelihood that all customers will be on cost-reflective tariffs by 2025 which is fast approaching when considering the payback period of building upgrade projects.

- It needs to be clear in all language relating to the tenant being no worse off that 'no worse off' is gross of contributions to finance costs. In other words, that after paying any contribution including finance costs, the tenant is no worse off.

- Under the Building Upgrade Finance Cost Savings Methodology, subsection 4, the listed examples relate to common area upgrades. The final regulations and explanatory material should clarify how the Act works in respect to tenant's savings in relation to both tenancy and common areas.

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Should you require further information, please contact Andrew McKenna, Senior Policy Adviser, on (08) 8300 0009 or andrewm@business-sa.com.

Yours sincerely,

Anthony Penney

Executive Director, Industry and Government Engagement