

29 January 2024

Ms Jessica Robinson
Embedded Networks
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop
Sydney NSW 1240

Dear Ms Robinson

**CCIA NSW SUBMISSION ON INDEPENDENT PRICING AND REGULATORY TRIBUNAL
EMBEDDED NETWORKS DRAFT REPORT, DECEMBER 2023**

The Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW) welcomes the opportunity to provide comment on the Independent Pricing and Regulatory Tribunal's (IPART) *Embedded Networks Draft Report, December 2023* (Draft Report).

CCIA NSW is the state's peak industry body representing the interests of over 500 holiday parks¹ and residential land lease communities² (residential parks, including caravan parks and manufactured home estates). In addition, the association represents over 200 manufacturers, retailers and repairers of recreational vehicles (RVs, caravans, campervans, motorhomes, camper trailers, tent trailers, fifth wheelers and slide-ons), camping equipment suppliers, manufacturers of manufactured and relocatable homes, and service providers to these businesses.

Many holiday parks and residential land lease communities in NSW have embedded networks serving holidaymakers and/or residential customers. Under the Australian Energy Regulator's (AER) *Retail Exempt Selling Guideline, Version 6, July 2022* (Retail Guideline) and *Electricity Network Service Provider – Registration Exemption Guideline, Version 6, March 2018* (Network Guideline) our holiday park and residential land lease community members fall within Exemption Classes D3, ND3 and R4, NR4 respectively and must comply with the Conditions relevant to their exemption class.

IPART's review of the future of embedded networks in NSW, and the recommendations set out in the Draft Report, will impact the sector and are therefore of keen interest to CCIA NSW and its members.

Our submission is limited to those draft recommendations that would impact gas and electricity embedded networks, as NSW holiday parks and residential land lease communities do not include hot and chilled water embedded networks.

¹ Where we refer to 'holiday parks' we are referring to caravan parks that supply energy via an embedded network to occupants of holiday accommodation on a short-term basis.

² Where we refer to 'residential land lease communities' we are referring to residential parks, including caravan parks and manufactured home estates, that supply energy via an embedded network to residents who live there. This includes caravan parks that supply energy to as few as 1-2 residents (mixed parks) right through to those residential land lease communities that are exclusively residential.

CCIA NSW seeks to ensure that the regulatory framework for embedded networks in NSW holiday parks and residential land lease communities is fit for purpose, which includes applying rules and requirements that are easily understood, avoid duplication, avoid creating more complexity and minimise the administrative burden on these businesses.

Operators should also have the confidence to invest in and operate these networks, which are needed to supply energy to holidaymakers and residents.

Maximum prices for gas and electricity

IPART's draft recommendations are that maximum gas and electricity prices in NSW embedded networks should be set by benchmarking them to retail offers being advertised on the Australian Energy Regulator's (AER) Energy Made Easy website and be determined by the median of the lowest tariffs, fixed and consumption, of all active retailers. These would be updated six monthly.

Further, exempt sellers should be permitted to apply different consumption tariffs for different time periods (i.e. time-of-use tariffs), as long as the average price does not exceed the determined consumption charge when it is weighted by the AER's Default Market Offer (DMO) model annual usage profiles.

These draft recommendations are based on meeting the price setting objective (among others) of ensuring that embedded network customers do not pay more than non-embedded network customers and IPART's finding that the DMO, which is set to achieve competition outcomes, is not an appropriate price cap for embedded network customers who cannot easily shop around.

While we acknowledge IPART's reasoning and methodology,³ we do not support the recommendations on the basis that national consistency in the regulation of embedded networks would be further eroded.

As noted in our 7 September 2023 submission on IPART's *Industry Consultation Paper - Energy Prices in Embedded Networks*, Condition 7 of the AER's Retail Guideline already places a cap on what exempt sellers can charge embedded network customers for energy supply and usage.

It provides that an exempt person *'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.'*

As the DMO limits the price that retailers can charge customers on standing offer contracts, embedded network customers are indirectly protected in the same way as 'on-market' customers through the price cap created by Condition 7 of the AER Retail Guideline. This provides consistency in the energy market.

Although embedded networks in NSW residential land lease communities are currently subject to section 77 of the *Residential (Land Lease) Communities Act 2013*, this is a state-based pricing protection created by errors in legislative drafting, rather than well-considered policy

³ This is subject to our concern about Ausgrid and Endeavour Energy's proposals for specific embedded network tariffs in their 2024-2029 pricing proposals. While the AER is yet to approve these, they may undermine the embedded network business model. Coupled with implementation of IPART's recommendations, some embedded networks may become unviable leading to negative consequences for embedded network customers.

development. We have been calling on the NSW Government to restore the sector's consistency with national regulation⁴ for several years.

If there is a need for additional pricing protection for embedded network customers, because they *'cannot influence the price that they pay in the same way that on-market customers are able to,'*⁵ then this is matter that should be examined and determined by the Federal Government, mandated through the AER's Retail Guideline and enforced by the AER. The AER is already responsible for regulation of the retail sale and supply of electricity and gas in jurisdictions that have adopted the National Energy Retail Law.

If pricing protections need to be extended to hot and chilled water embedded network customers, then the National Energy Customer Framework should be expanded, with commensurate powers given to the AER.

A national approach is the preferred way to introduce additional protections for embedded network customers, as it would prevent the creation of more state-based legislation that is inconsistent with the AER Retail Guideline and embedded network customers in other jurisdictions, not just NSW, would receive these additional pricing protections.

IPART as Pricing Determination Authority and Regulator

Similarly, we do not support draft recommendations 11, 13, 15, 16, 17 or 18, which would authorise IPART to be the pricing determination authority and regulator, with powers to investigate and enforce compliance with its pricing determinations. This includes directions to take specified action and monetary penalties.

While we have great respect for the work that IPART does and believe the proposed regulator powers set out in recommendations 13, 15, 16 and 17 to be fair and reasonable in principle,⁶ we do not agree that IPART is the appropriate body to determine maximum prices for embedded network customers, nor to be authorised as a regulator.

If IPART's recommendations are implemented, NSW embedded networks would be faced with separate and additional pricing regulation⁷ and yet another regulator, increasing complexity and costs, particularly for those who operate in NSW as well as across jurisdictional borders.

This would be amplified for our sector as embedded networks in NSW holiday parks and residential land lease communities are already subject to several federal and state-based laws, regulators and complaint handling bodies, including the AER, the NSW Civil and Administrative Tribunal, NSW Fair Trading and EWON.

Pricing protections, compliance and enforcement could be improved for embedded network customers more appropriately, more efficiently and more consistently across jurisdictions by the Federal Government reviewing energy laws and providing additional authority and resources to the AER.

⁴ Pricing arrangements for energy in residential land lease communities prior to the Reckless case were the same as what is currently permitted under Condition 7 of the AER Retail Guideline, notwithstanding discounts on service availability charges for residential sites with less than 60 amps.

⁵ IPART, *Embedded Networks Draft Report, December 2023*, p4 and p26.

⁶ Education in the first instance is an important compliance tool. Should IPART confirm its draft recommendations in its Final Report, a requirement for education and guidance about responsibilities and compliance action that may be taken if non-compliance is not remedied should be considered and added to recommendations 15 and/or 16.

⁷ The NSW Government would need to amend section 77 of the Residential (Land Lease) Communities Act 2013 for IPART's pricing determinations to apply to residential land lease communities.

Page 74 of IPART's Draft Report comments on the 2022 NSW Parliamentary Inquiry into embedded networks, which found *'under the current framework, it is difficult for the AER to monitor and enforce compliance of electricity and gas embedded network operators with customer protections. This is because the embedded network operators are not required to undertake compliance reporting or self-report breaches of their obligations.'*

In response to this, we note the AER is currently undertaking a review of the exemptions framework for embedded networks which includes options to increase visibility through mandatory compliance and performance reporting.⁸

Authority of EWON (draft recommendation 12)

EWON currently works with government and regulators to update them on issues identified through EWON's complaint handling processes. For example, under its Charter EWON is required to identify possible systemic issues, and other important issues, and investigate these. They may refer them to an EWON member's senior management team and/or a relevant government Minister or regulatory authority.⁹

Accordingly, we have no issues with the premise of IPART's recommendation 12, that EWON refer complaints about breaches of an embedded network pricing determination, because EWON already exercises a complaint referral function. We do not, however, support the recommendations noted above that would authorise IPART to be the pricing determination authority and regulator to which EWON makes such referrals.

We reiterate that additional protections for embedded network customers should be examined and determined by the Federal Government and regulated by the AER, with more authority and resources provided to the AER to undertake compliance and enforcement functions. EWON is already able to refer matters to the AER under its existing Charter.

Information Disclosure (draft recommendations 14 and 20)

In relation to draft recommendation 14, which proposes embedded network sellers be required to publish their current prices on their websites, we submit that such a requirement should be less prescriptive and more flexible to take account of embedded network sellers that may not have a website (e.g., owners corporations, older style caravan parks) or where there are other more effective means of communication.

For example, many residential land lease communities have a community noticeboard, or a regular newsletter (email or hard copy) where important information is shared with residents. As many residents are 65 years and older, such sources of information are often preferable to a company website and the messages shared are more likely to be received.

In relation to draft recommendation 20, being *'the NSW Government consider imposing additional disclosure requirements as part of its action to improve disclosure and consumer awareness for prospective purchasers and tenants under the Embedded Network Action Plan,'* our understanding is this recommendation is aimed at increasing transparency for hot and chilled water embedded networks.

Further, the Embedded Network Action Plan lists as a medium-term action improving *'disclosure and consumer awareness by ensuring prospective purchasers and tenants of a*

⁸ AER, *Issues Paper - Review of the AER exemptions framework for embedded networks*, November 2023, accessed 25 January 2024 at <https://www.aer.gov.au/industry/registers/resources/reviews/review-aer-exemptions-framework-embedded-networks>

⁹ Energy & Water Ombudsman (NSW) Limited, *Charter*, March 2012 and subsequent amendments, p8, accessed 25 January 2024 at <https://www.ewon.com.au/content/Document/About%20us/EWON-Charter.pdf>

*strata property are aware of the existence of embedded network arrangements prior to purchase or leasing.*¹⁰

If this is the case, we expect no impact on our sector. Embedded networks in NSW holiday parks and residential land lease communities do not have hot and chilled water embedded networks and they already have comprehensive disclosure obligations, including disclosures about energy prices, under the AER's Retail Guideline, *Electricity Network Service Provider – Registration Exemption Guideline, Version 6, March 2018* (Network Guideline), the Australian Consumer Law and respective state-based laws and regulations.

However, if this is not the case, then clarification on this issue is required from IPART in the Final Report.

Impact of Maximum Prices on Holidaymakers

It is unclear in IPART's Draft Report what the impact of the draft recommendations would be on embedded network customers who are occupants of holiday accommodation on a short-term basis, such as holiday guests and long-term casual occupants¹¹ staying in caravan parks.

IPART has considered in its Draft Report small business customers and customers (i.e., home owners) in residential land lease communities, but the Draft Report is silent on holidaymakers in embedded networks within holiday parks and residential land lease communities. These customers are not residential customers, and they are not business customers.

In directing this review by IPART, it is our understanding that the NSW Government's Embedded Networks Action Plan is aimed at addressing gaps in consumer protections and improving outcomes for residential and business embedded network customers.¹²

We note the discussion points, concepts and examples raised in the Draft Report, indicate that IPART's recommendations are in fact aimed at residential and business customers. However, IPART's position on holidaymakers is silent and there is no glossary or list of terms in the Draft Report to confirm what IPART means by "embedded network customers."

Clarification is therefore needed on whether it is IPART's intention that its recommendations would impact all types of embedded network customers as contemplated by the AER's Retail Guideline and Network Guideline, or whether occupants of holiday accommodation on a short-term basis would be excluded.

Our position is that they should be excluded on the basis that holiday parks and residential land lease communities that are mixed-use caravan parks are tourism businesses, and the primary relationship between an embedded network customer and an embedded network operator in this context is an arrangement for holiday accommodation.

It is not a residential or tenancy arrangement. The supply of energy is not to someone's home or business, but incidental and on a temporary basis for holiday purposes. Regulators have identified that these arrangements need minimal regulatory oversight.

¹⁰ NSW Climate and Energy Action, NSW Government, *NSW Embedded Network Action Plan*, accessed 25 January 2024 at <https://www.energy.nsw.gov.au/nsw-plans-and-progress/regulation-and-policy/nsw-embedded-network-action-plan>

¹¹ A long-term casual occupant means an occupant under an occupation agreement to which the Holiday Parks (Long-term Casual Occupation) Act 2002 applies. These occupants rent a site for their caravans and use the site for holidays only. They have a principal place of residence somewhere other than the site.

¹² NSW Embedded Network Action Plan, *Op. cit.*

As IPART's finding is that the DMO is not an appropriate maximum price for electricity embedded networks, because is a price cap that *'is set to achieve competition outcomes'* and that is *'not suitable for embedded networks where most customers cannot easily shop around,'* we do not believe the finding is applicable in the context of embedded network customers who are holidaymakers.

This is because these customers make use of the embedded network only occasionally and for holiday purposes, and they are free to shop around for alternative holiday accommodation if they are not happy with the price, including the price of gas or electricity if charged separate to the accommodation tariff.

Accordingly, our view is the pricing protection provided by Condition 7 of the AER Retail Guideline remains sufficient for these arrangements and should remain in place for these types of embedded network customers.

In preparing the Final Report, the sector requests clarification on this issue from IPART. We are happy to discuss this issue further with the project team.

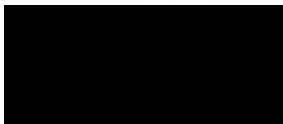
Conclusion

On behalf of the industry represented by CCIA NSW, we thank you for your consideration of the issues we have raised. We hope this submission has assisted IPART to understand the issues of importance to the sector.

To meet and/or discuss any aspect of this submission please contact Shannon Lakic, Policy, Training & Executive Services Manager, [REDACTED]
[REDACTED]

We look forward to our continued involvement in the consultation process.

Yours sincerely



Lyndel Gray
Chief Executive Officer