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31 January 2020

Regulatory Impact Statement – Embedded Networks
Consumer Strategy and Innovation
Department of Natural Resources, Mines and Energy
PO Box 15456
City East Qld 4002

BY POST / EMAIL – [redacted]

Dear Sir/Madam,

RE: Regulatory Impact Statement – Embedded Networks and Review of Queensland's energy legislation

The Urban Development Institute of Australia Queensland (Institute) writes in relation to the discussion paper Dispute resolution for residential embedded network customers—Regulatory impact statement and Review of Queensland's energy legislation (discussion paper).

The development industry is a major contributor to the Queensland economy. As the third largest industry of employment within the State, it directly employs 10% of the Queensland workforce, and indirectly supports a further 13%. Underlining its importance to the State's economy, the development industry directly contributed $26 billion to the Queensland economy in 2017, or 8% of Queensland's GSP, and a further $35 billion through indirect economic impacts (11% of GSP).[1]

The Institute is the peak body for the development industry in Queensland. Our vision is to support and grow the property development industry to create world class communities for Queenslanders. A key part of the Institute's work is working with government at all levels to stimulate both the development industry and the economy.

Queensland Treasury projects that there will be around 2.3 million more people in Queensland and one million additional dwellings over the next 25 years, much of which will likely be in the form of attached dwelling homes. The Institute is keenly aware of the task required to deliver this growing housing sector. The Institute's comments below stem from acknowledgement of the task ahead as well as a wish to assist in making the arrangements as usable, consistent, and clear as possible.

Consultation with our members has identified significant concern in relation to developments regulated by the *Manufactured Homes (Residential Parks) Act 2003* (MHRPA). The proposals relative to *Body Corporate and Community Management Act 1997* (BCCMA) are in general supported, but the position is quite the opposite for the MHRPA. We also note that the discussion paper focuses largely on MHRPA descriptions and matters but misses critical elements which is problematic.

[1] *The Institute's Research Foundation - The Contribution of the Development Industry to Queensland, Urbis, March 2018*

Manufactured Homes (Residential Parks) Act 2003

The Institute's view is that the proposals should not apply to residential parks regulated by the MHRPA at all. To some extent what the proposal is covering and what the MHRPA deals with are the same thing. Further, the existing effective, cost-free dispute resolution arrangements of the MHRPA should be retained rather than creating additional complexities. Critically, the MHRPA already gives homeowners and park owners access to low cost and binding dispute resolution services via a compulsory three step process of negotiation, mediation and then the Queensland Civil and Administrative Tribunal (QCAT). However, the proposals struggle to provide adequate arrangements, will impose substantial costs on these communities, and will likely emerge as an overwhelmed and non-expert service for the limited number of likely MHRPA disputes. The proposals do not take into account Section 99A of MHRPA, which creates more stringent requirements with respect to charging for homeowners' electricity usage; more so than what the national electricity legislation requires.

The compulsory dispute resolution procedures provided by the MHRPA are more than capable of dealing with such matters where, importantly, the park owner does not have to pay each and every time an application is made. More so, the tribunal members have expertise and experience in the area. Park owners and home owners should be permitted to utilise these existing avenues for such disputes to be resolved, rather than having to deal with a separate, different and more costly alternative.

Under the proposal, what amounts to a "vexatious or frivolous claim" is not defined, but we anticipate that such a determination will not be made lightly with the result that the majority of all claims will be investigated, resulting in a fee being payable by the park owner in each case. Such a process could easily be abused to the detriment of the park owner, especially where there are no consequences if an investigation does not reveal any breach of the relevant requirements. The proposal does not provide a fair balance of the rights of all stakeholders in this regard.

The result of the above will simply add to the already significant financial burden of the exempt seller, but park owners regulated by the MHRPA will not be permitted to recoup those costs.

Additionally, the proposal does not make clear what can form the basis of a dispute to be determined by the ombudsman. Any overlap between the above existing dispute resolution arrangements under the MHRPA and the proposal is unnecessary and ought to be avoided.

Ombudsman arrangements

It appears that under the proposal each and every investigation by the ombudsman for a small to medium sized residential park will have a fee starting at $200 with maximum fees at very high levels (with even higher fees for larger residential parks).

We consider that ombudsman services sit very uncomfortably in such an environment. We point out that the Ombudsman Association describes an ombudsman as follows:

> *Ombudsmen are independent, impartial and provide a free service. They investigate complaints that haven't been solved by the organisation complained against.*

Payment for their service seems at odds with this and naturally changes the balance of their activity to a fee for service activity. Should fees be charged, they should only apply against any maladministration or vexatious claim so as to achieve a fair balance. We note that government and related agencies do pay fees for ombudsman services in Queensland, but funds are drawn from a large pool and are generally an intra-government community service obligation style payment.

Also, arrangements for an ombudsman should not result in overlapping arrangements for the one site that may include, retirement village, body corporate units and other elements, exempt sellers, differing exempt classes, or separate caretaker or management rights.

Body Corporate and Community Management Act 1997

In terms of the BCCMA, the Institute supports improved Embedded Network arrangements for consumer access, power of choice, protections, and compliant metering in new developments. We understand it is proposed that embedded network energy sales will be serviced by an Authorised Retailer or off-market retailer. Developers setting up embedded networks in new developments will need to align with a retailer to handover the building owner or body corporate responsibility.

The Institute foresees significant difficulties in resolving legislative issues in delivering the ombudsman arrangements for BCCMA. For example, given the complexity of the BCCMA it will be difficult to align interests of service providers with those of bodies corporate and consumers around comparable rates, termination, ownership transfer to bodies corporate, and rights to disconnect supply. Disclosure of benefits also presents issues in enabling an exempt seller license and certainty as demonstrated in the Arrow Case[2]

We are aware of an example where the caretaker of a complex has obtained a retail exemption despite not having the support of the body corporate committee. Further careful consideration will be needed if the legislation is to avoid unintended consequences. We also recommend:

- introducing a retail energy tariff structure that reflects the residential component, regardless of the size of the consumption (i.e. the equivalent of a Tariff 11 for Bodies Corporate);
- introducing Queensland electrical rule changes to permit child meters with their own NMIs to be installed behind the parent meter to allow individuals inside embedded networks to be able to choose their own retailer. Residents in embedded networks would be more able to see and control their individual power use, install solar, and personally gain the benefits;
- setting allowances for embedded networks to recover costs from i customers for distribution, charging, life support measures, and provision of pension discounts;
- ensuring customers in embedded networks pay no more for power than comparative individual customers through maximum revenue cap in line with QCA regulated charges or other fair measures;
- enabling individual embedded network customers to pursue competitive supply where available; and
- permitting the Energy Ombudsman to investigate matters 'behind the meter' and provide protection to residents of embedded networks that currently have no protection.

Conclusion

The Institute's view is that the proposals should not apply to residential parks regulated by the MHRPA as the MHRPA already gives homeowners and park owners access to low cost and binding dispute resolution services.

The Institute does not support the imposition of fees for the provision of an ombudsman service given its cost to homeowners and inconsistency with the role of an ombudsman. The Institute foresees significant difficulties in bringing the ombudsman arrangements to the BCCMA but encourages a number of reforms in this area.

Thank you for the opportunity to comment on the proposals. If you have any questions regarding this letter, please contact [redacted]

Yours sincerely,
Urban Development Institute of Australia Queensland

Kirsty Chessher-Brown
Chief Executive Officer

[2] *Community Association DP No. 270180 v Arrow Asset Management Pty Ltd & Ors* [2007] NSWSC 527