



28 February 2020

Community Schemes Law Reform
Better Regulation Division, Department of Customer Service
Level 5, McKell Building, 2-24 Rawson Place
SYDNEY NSW 2000
By email: communityscheme@customerservice.nsw.gov.au

To whom it may concern

Community Schemes Reforms

Thank you for the opportunity to comment on the Community Schemes Reforms Explanatory Paper December 2019.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON receives and responds to complaints from customers of exempt retailers and networks and at least one organisation established as a community scheme is a member of EWON. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

We have only responded to those issues in the explanatory paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to these proposed changes.

If you would like to discuss this matter further, please contact me or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

Yours sincerely

A handwritten signature in black ink that reads "Janine Young".

Janine Young
Ombudsman
Energy & Water Ombudsman NSW



Community Schemes Reforms Explanatory Paper

As the explanatory paper made clear, the amendments to the *Community Land Development Bill 2019* and *Community Land Management Bill 2019* are aimed at modernising legislation that is thirty years old. EWON also notes that key changes reflect key reforms introduced to strata schemes.

EWON provided two submissions to the consultation process on the *Fair Trading Legislation Amendment (Reform) Act 2018* which amended the *Strata Schemes Management Act 2015* focusing on the section dealing with the provision of utilities. This submission has the same focus.

Proposal 1.20 Provision for the expiry of agreements for the supply of utilities

This provision provides that agreements for the supply of utilities automatically expire at the first AGM of a corporation or three years after it commenced, whichever comes first. EWON strongly supported the inclusion of this provision in the *Strata Schemes Management Act* but was disappointed that the provision did not apply to embedded networks supplying electricity to residents. The current proposal proposes to replicate this exemption.

Embedded networks

Embedded networks exist not only for electricity supply but can and do exist for other utilities including gas, water and telecommunications. The need for regulatory change and protection of Strata Corporations needs to take into account the variety and complexity of ownership models for embedded networks. These include, but are not limited to, the developer:

- building the network as part of the construction and ownership and then passing it to the Strata Corporation; or
- contracting a third party which constructs the embedded network and retains ownership of that network.

The Australian Energy Market Commission (AEMC), in its review *Updating the regulatory frameworks for embedded networks* found that:

“...the current regulatory arrangements for embedded electricity networks are no longer fit for purpose, resulting in some customers not being able to access competitive prices or important consumer protections.”¹

It further stated:

“The Commission's view is that consumer protections should be driven by the needs of customers and not the business model of suppliers.”²

The AEMC proposed a suite of regulatory changes to address issues relating to consumer protections for customers in embedded networks. These changes are being considered by COAG and may be implemented as early as 2021.

The Australian Energy Regulator (AER) also recognised that consumer protections for customers within embedded networks were not commensurate with customers of traditional retailers, and partially addressed this by revising two guidelines in 2018, the *AER (Retail) Exempt Selling Guideline* and the *Electricity Network Service Provider - Registration Exemption Guideline*.

¹ AEMC, *Updating the regulatory frameworks for embedded networks*, Final Report, page i

² Ibid



Embedded networks exemption

The proposal to exclude electricity embedded networks from the additional protections of proposal 1.20 does not address the situation where a community scheme is locked into long term contracts established by a developer, or for individual residents who may be locked into long-term, high priced contracts for supply.

There is competition available to community schemes within an embedded network with respect to the operation of the network and the management of bills, where an exempt or authorised entity can act as agent for the scheme for either or both functions. Locking in community schemes to long term contracts with a specified exempt or authorised service provider will prevent them from getting the best available deal for common areas and for individual residents. This is a perfect example of the customer detriment the AEMC and AER have both identified.

EWON does not understand why this exemption was included in the *Strata Schemes Management Act*. In our original submission we provided a case study³ illustrating the problems which arise. This case study demonstrated how strata corporations, which own and operate an embedded network, can be adversely impacted by contracts entered into by a developer. The case study is included as an attachment.

While EWON understands the desire to harmonise these similar pieces of legislation we would encourage the removal of the electricity embedded network exemption from proposal 1.20. This will provide the necessary level of protection to ensure that going into the future, community precinct and neighbourhood schemes are given protection from detrimental agreements entered into by developers and third parties.

Enquiries about this submission should be directed to Janine Young, Ombudsman on (02) 8218 5256 or Rory Campbell, Manager Policy and Research, on (02) 8218 5266.

³ EWON Submission NSW Fair Trading consultation paper Easy and Transparent Trading - Empowering Consumers and Small Business, 27 August 2018, p2



Case Study

Developer enters strata into long term contract which breached the exempt retail guidelines

EWON was contacted by the Secretary of the Executive Committee of an Owners Corporation enquiring about pricing and charges by an exempt network. It was explained to EWON that a long-term utility management contract had been entered into by the developer.

EWON established that the network exemption and the retail exemption had been set up by the developer in the name of the Owners Corporation, something it was unaware of.

In examining the details of the contract, EWON was able to advise the Owners Corporation that the energy rates that the management service was charging were above the maximum allowable under the Exempt Retail Guidelines and that each individual resident's bills would need to be reduced to below what the management service was charging the Owners Corporation. EWON also noted that the service contract included a monthly \$10 meter reading fee for every meter in the complex which seemed excessive, when compared to meter reading fees charged by distributors and metering coordinators.

The contract between the Owners Corporation and the utility management company carried a 10-year term with an option for the utility management company to renew the contact for a further 10 years.

EWON provided the Owners Corporation with details of the Australian Energy Regulator and the exemption framework which it was required to meet. EWON also recommended that the Owners Corporation seek legal advice to address the contract that the developer had entered it into with the utility service management company.