



31 March 2023

Energy Consumer and Competition Policy Team
Office of Energy and Climate Change

Via email: energy.consumerpolicy@dpie.nsw.gov.au

Dear Team

Draft Ministerial Statement of Expectations: Protecting NSW customers of embedded networks

Thank you for the opportunity to comment on the draft Ministerial Statement of Expectations.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of embedded networks in NSW, which are either authorised retailers or exempt sellers.

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 questions in the draft Ministerial Statement of Expectations that align with issues customers raise with EWON, or with our organisation's operations as they relate to this process.

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

Yours sincerely

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

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

Draft Ministerial Statement of Expectations: Protecting NSW customers of embedded networks

EWON welcomes the NSW Governments response to the recommendations made in Report No 3/57 of the Committee on Law and Safety – *Embedded networks in NSW*¹ and is strongly supportive of the NSW Governments response, Action Plan and Draft Ministerial Statement of Expectations as it works towards aligning consumer protections for customers living in embedded networks, with that of other energy residential and small business customers.

Expectations of embedded network operators

- 1) The NSW Government expects customers of embedded networks to have equivalent consumer protections to on-market customers.**

EWON strongly supports the expectation for customers living in embedded networks receiving consumer protections that are equivalent and aligned with on-market customers. Energy, hot water and chilled water are essential services, and customers of embedded networks should benefit from the same consumer protections that other retail energy customers are entitled to, including:

- rights to access energy services and obligations to offer supply
- informed consent requirements
- dispute resolution procedures
- minimum contractual standards
- minimum requirements for billing, tariff, and payment
- protections for customers at risk of financial vulnerability
- protections for disconnection and reconnection.

As equally important as the need to provide embedded network residents and small businesses with clarity, transparency and accountability, authorised retailers and embedded network operators require clear and transparent guidelines to understand the requirements under this expectation, including specifics around consumer protections and guidance on how to ensure compliance.

The NSW Government should consider the development of clear guidelines for embedded network operators on the specifics of this expectation.

- 2) As soon as possible, and by 1 December 2023, hot and chilled water embedded network operators should bill customers for the energy input to the hot or chilled water supply only (e.g. cents per kilowatt hour or megajoules). Compliance with this requirement is expected where the centralised hot or chilled water system has a dedicated water meter and gas or electricity meter, supporting the calculation of a common factor for the energy input.**

EWON strongly supports this expectation and EWON has long advocated for the sale of hot water and air conditioning to be billed as per the underlying energy source.

¹ [Report - Embedded Networks in New South Wales.pdf \(nsw.gov.au\)](#)



EWON has already seen the development of new business models that may enable embedded network operators to fall outside the scope of this expectation and circumvent providing equal protections to consumers residing in embedded networks.

To ensure that any future Statement of Expectations is able to adapt with innovation, we recommend that the NSW Government consider modifying the definition of centralised hot water that supports the calculation of a common factor for the energy input in order to future proof against new business models that do not operate through the mechanism of calculating a common factor.

Case Study – Emerging models for billing thermal energy

A customer moved into a newly built property in August 2022 which required him to establish accounts with a retailer as part of an embedded network. He received a bill for a period of 8 weeks for \$270. The bill for hot water reflected ‘gas and thermal’ charges and an unmetered daily usage charge for his gas cooktop.

He contacted the retailer to ask about the charges, as he was charged \$15 per kilolitre, which he considered to be too high. It advised him that the hot water comes from a centralised hot water system, however he considered that the system was not centralised and that it was metered individually.

We requested information from the retailer, and it advised us that the property was the first to have a separate gas supply for the hot water and was not centralised.

The retailer advised that the thermal energy rates are the same for a centralised and non-centralised system as the product and process was the same and associated costs does not differ much. It also advised that the gas was provided to an instantaneous hot water tank, with an individual unit for each town house. It then calculated the cost to heat the water that was used by the customer, which was reflected in the cost per kilolitre outlined in the contract agreed by the Owners Corporation.

EWON reviewed the billing of the account and found that it was in line with the meter data and the contracted rates. *As regulations are currently unclear, EWON was restricted to reviewing the bills in line with the customer’s contract. We supported this with advice to the customer about the NSW Government Inquiry.*

3) The NSW Government considers that the sale of hot and chilled water, when billed in the energy input, is the sale of energy.

EWON strongly supports this expectation of embedded network operators.

EWON has long called for the definition of electricity and gas under the National Energy Retail Law (NERL) to be updated to include the sale of other products retailed by embedded network operators/energy retailers, including hot water and air conditioning and for these to be billed based on the underlying energy source used to heat/cool the product, and not billed per litre of hot or cold water.

We do not consider billing customers for the hot water used (\$/L) rather than the gas consumed (\$/MJ or kWh), to be an accurate representation of the service provided to customers. Based on complaints investigated by EWON, there are no indicators/supporting information that hot water is a bundled product (water + energy) which is separate from the sale of energy.



Further, there is no evidence that embedded network operators are buying the water that is used in the centralised hot water system – which means customers are simply paying for the energy used to heat the water.

- 4) As soon as possible, and by 1 December 2023, hot and chilled water embedded network operators will apply the obligations for authorised retailers or exempt sellers under the National Energy Consumer Framework to the supply of hot and chilled water within the embedded network, ensuring customers are covered by basic consumer protections.**

EWON supports this expectation. As noted above, authorised retailers and embedded network operators will require clear and transparent guidelines to understand the requirements of this expectation, including specifics around consumer protections and guidance on how to ensure compliance.

While basic consumer protections will be a significant improvement to consumers of hot and chilled water in embedded networks, the Embedded Network Action Plan, outlines that the new reforms are designed to ‘bring outcomes for embedded network customers in-line with those in traditional energy supply arrangements’. Fairness dictates that all customers should enjoy the same level of protection and there is an opportunity for the NSW Government to extend protections to not just basic consumer protections.

- 5) From 1 July 2023, authorised retailers selling electricity through embedded networks should comply with the relevant Default Market Offer (DMO) maximum price set out by the Australian Energy Regulator under the Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019.**

EWON strongly supports the application of the DMO as a maximum price for authorised retailers selling electricity through embedded networks.

Compliance

EWON reports deidentified issues of non-compliance of the National Energy Retail Law and National Energy Retail Rules to the Australian Energy Regulator and we share information with the NSW Government, where appropriate.

We acknowledge the provisions under Clause 13 (2)(c) of the *Electricity Supply (General) Regulation 2014* that provides scope of an approved energy ombudsman scheme to report on compliance with obligations under the scheme by bound licence holders and we look forward to engaging with the NSW Government on developing a suitable reporting framework.

While EWON receives complaints from customers that reside in embedded networks within NSW, not every customer will contact us, therefore there is risk in issues of non-compliance not being reported. The NSW Government should consider other mechanisms for reporting compliance, such as a requirement for self-reporting by embedded network operators.

EWON recommends that the NSW Government review the new framework after a period of two years to further assess compliance and whether there is any need for further compliance measures.



Residential (Land Lease) Communities

We acknowledge the NSW Governments response to recommendation 22 in the Report No 3/57 of the Committee on Law and Safety – *Embedded networks in NSW*² and note that it is not included in the *Embedded Network Action Plan – Improving outcomes for customers of embedded networks*.³ EWON supports the implementation of the Action Plan coinciding with the fast track reforms of the electricity charging provisions of the Residential (Land Lease) Communities Act 2013 to deliver certainty to residents of land lease communities and operators.

² Ibid

³ [Embedded Network Action Plan – Improving outcomes for customers of embedded networks \(nsw.gov.au\)](#)

Embedded Network Action Plan – Improving outcomes for customers in embedded networks

Action	EWON comment
Immediate Actions	
Commit to introducing a maximum price for energy sold to customers of hot and chilled water embedded networks and for gas embedded networks to protect customers from unreasonably high prices	EWON strongly supports this action.
Release a Ministerial Statement of Expectations that outlines the NSW Government's expectations that: <ul style="list-style-type: none"> - Hot and chilled water embedded networks customer should have access to equivalent consumer protections to on-market customers under the National Energy Customer Framework; and - all electricity embedded network operators should abide by national default market offer (DMO) maximum prices, protecting customers from unreasonably high prices 	EWON strongly supports this action.
Medium Term Actions	
Pursue regulatory and legislative changes to provide enforceable consumer protections to customers of hot and chilled water embedded networks, giving effect to the Ministerial Statement of Expectations	EWON strongly supports this action.
Expand the Energy Accounts Payment Assistance scheme to ensure customers in embedded networks have equal access to emergency financial support at times of crisis.	EWON strongly supports this action and we look forward to engaging with the NSW Government in the next phase of the Energy Accounts Payment Assistance scheme review.
Initiate a review by the Independent Pricing and Review Tribunal (IPART) NSW to: <ul style="list-style-type: none"> - determine the appropriate method for setting the maximum prices for hot and chilled water services, and gas services, in embedded networks; - consider whether new hot and chilled water embedded networks are in the long-term interest of customers, and 	EWON strongly supports this action. We will be making a submission to the IPART Draft Terms of Reference and will continue to engage in this process.

<p>whether the NSW Government should ban their establishment by third party operators; - consider whether a maximum price that is below the DMO price for electricity embedded networks is required, and a preferred methodology for such a maximum price.</p>	
<p>Improve disclosure and consumer awareness by ensuring prospective purchasers and tenants of a strata property are aware of the existence of embedded network arrangements prior to purchase or leasing.</p>	<p>EWON strongly supports this recommendation.</p> <p>EWON's engagement with customers indicates there is still not enough information available to home buyers and prospective tenants about embedded networks. Customers often complain to EWON that they had not been aware that embedded networks existed until they found their new home was part of one. They also tell EWON that they were not given adequate information from their real estate agent about opening energy, hot water or air conditioning accounts with the embedded network operator.</p> <p>EWON welcomed the March 2020 development requiring that landlords or agents include details of electricity or gas supply through an embedded network in residential tenancy agreements.</p> <p>Unfortunately, many tenants are not aware of what this means or that they may require multiple accounts. Further, this inclusion does not extend to the selling of centralised hot water within embedded networks and how residents are charged for hot water.</p>
<p>Implement recommendation 120 of the Statutory Review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015, protect electricity embedded network customers in strata schemes from long contract terms.</p>	<p>EWON strongly supports this recommendation.</p> <p>In November 2020 the NSW Government released a discussion paper on the continued exclusion of embedded networks from time limits on contracts. EWON submitted to the review that the exemption for embedded networks under Section 132A should be removed and the protections for other utility provision should be extended to energy.</p> <p>The 2021 Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015, recommended extending the application of section 132A of the Management Act to contracts for the supply of electricity through an embedded network.</p>
<p>Continue national advocacy with the view to:</p>	<p>EWON strongly supports this recommendation and will continue to engage with the NSW Government and the Australian Energy regulator on this issue.</p>



- amend the AER Retail Exempt Selling Guideline to improve consumer protections for embedded network customers,
- improve embedded network customer access to retail competition, including through changes to the process for securing a National Meter Identifier, and
- enhance the national approval process for new retailer and network exemptions to ensure any new embedded networks are in the long-term interests of consumers.