

27 August 2018

Regulatory Policy Branch, Better Regulation Division
Department of Finance, Services and Innovation
Level 5, McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

By email: policy@finance.nsw.gov.au

Dear Sir/Madam

Easy and Transparent Trading - Empowering Consumers and Small Business

Thank you for the opportunity to comment on the NSW Fair Trading consultation paper *Easy and Transparent Trading - Empowering Consumers and Small Business*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. EWON also receives and responds to complaints from customers (residing in embedded networks) of exempt sellers, and those entities will become members of EWON over the next year or so. Our comments are informed by these complaints and also from our community outreach and stakeholder engagement activities.

We are commenting on section 2.8 *Allowing strata lots to choose their own utilities provider*, given its relevance to our work in embedded networks.

Context

Many new developments are being constructed with their own internal energy and water networks. Embedded water infrastructure and associated retail activity is regulated through the New South Wales Water Industry Competition Act. Energy infrastructure and retail activity in these developments is regulated through the Australian Energy Regulator's (AER) *Network Service Provider Registration Exemption Guideline* (Network Exemption Guideline) and the *Retail Exempt Selling Guideline*. EWON is now the relevant external dispute resolution body for customers under both Guidelines.

In 2016 there were 50 registered retail exemptions for residential complexes in NSW. By early 2018 the AER Public Register of Retail Exemptions listed 151 retail exemptions for this category. This level of growth is expected to continue.

Policy objective

The consultation paper states that the aim of the business laws should be for it to be easy to do business, to allow competition and for transparency and consumer choice¹. The specific policy objective of Section 2.8 is to facilitate individual owners and tenants in strata schemes to access the competitive energy market.

¹ P5 NSW Fair Trading Easy and Transparent Trading Consultation Paper July 2018

The business model of exempt energy networks has developed rapidly and has the potential to offer innovative and cheap energy supply. This model also has the potential to reduce competition and consumer choice.

In recognition of this possibility the Australian Energy Market Commission (AEMC) made a number of changes to the Energy Rules which the AER has implemented in the Guidelines. These reforms go a long way to meeting the policy objective discussed under section 2.8 of the consultation paper.

Currently any exempt network with more than 30 customers is required to appoint an Exempt Network Manager whose role is to facilitate customer access to the retail market if requested. Thus an individual living in a medium to large strata scheme currently has guaranteed access to the competitive market.

Outstanding issue

The outstanding issue not covered by the Exempt Network Guidelines is clearly identified in the consultation paper. This occurs when owners and residents are bound into long term utility contracts through up front agreements made by developers. Such contracts can be beneficial providing cheap energy and innovative services. In other instances such arrangements can have significant detriment to owners and residents, as illustrated by the case study below.

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 contract 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.

The exemption framework provides key consumer protections for residents within an exempt network including price protection and access to the market. What the exemption framework does not provide is protection for strata corporations regarding contracts entered into under their name by developers. This protection needs to be implemented by reform of the *Strata Schemes Management Act 2015*.

Options for reform

EWON supports Option 3 as the legislative reform that best addresses the problem that owners corporations can face in the exempt energy environment.

Option 1, maintaining the status quo does not provide for the relevant protections that are needed to provide transparency and consumer choice. Option 2 looks only at individual consumer choice that is already guaranteed by the energy rules.

Option 3 moves the long-term decisions regarding energy supply contracts from the developer and places the decisions with an owners corporation. This is appropriate and ensures that owners corporations can enter into contract arrangements that are fit for purpose and provide concrete benefits for both the organisation and the future residents. It also brings long term energy supply contracts into line with other strata management contracts. If this option is chosen then a provision could be put in place allowing owners corporations currently bound to long term contracts to end these arrangements and to renegotiate a new contract.

Option 4 proposes limits on utility contracts enabling the ending of such contracts if better terms and conditions can be established with another provider. While meeting policy objectives of choice, this option could have an adverse impact of reducing innovative schemes which deliver genuine savings to consumers, but which require long term commitments to recover capital expenditure.

Another strata issue

For customers living in apartment buildings, the problem of estimated reads of utility meters is an ongoing problem. This occurs because of access issues to common utility areas encountered by meter readers. A simple solution could be achieved by mandating the use of a standard utility industry Abloy lock. Such a proposal was put to the AEMC in a consultation it has recently held on estimated billing. The AEMC's response was:

The Commission agrees that the use of Abloy locks could assist in the minimisation of chronic meter access issues. However, the AEMC cannot impose such obligations on body corporates or commercial buildings through the Rules.²

If there are to be changes to the *Strata Schemes Management Act 2015* and the associated regulations, then consideration should be given to mandating the use of a standard utility industry Abloy lock to facilitate timely and accurate billing for residents.

² P38 AEMC, Estimated Meter Reads, Draft Rule Determination, August 2018

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 blue ink, reading "Janine Young". The signature is fluid and cursive, with the first name "Janine" and the last name "Young" clearly distinguishable.

Janine Young
Ombudsman
Energy & Water Ombudsman NSW