

5 March 2021

Strata Schemes Statutory Review
Policy & Strategy, Better Regulation Division
Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Dear Strata Schemes Statutory Review Team

Statutory Review of the NSW Strata Schemes Laws Discussion Paper November 2020

Thank you for the opportunity to comment on this discussion paper.

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 embedded networks relating to retailer and distributor activities. Our comments are informed by our investigations into these complaints, and through our community outreach and stakeholder engagement activities.

Our response aligns with issues customers raise with EWON, or with our organisation's operations as they relate to the utility section of the discussion paper.

In August 2018 EWON responded to the NSW Fair Trading consultation paper *Easy and Transparent Trading - Empowering Consumers and Small Business*¹. In that submission I pointed out that EWON had received complaints related to developers entering into long term contracts prior to the establishment of a building's owner's corporation. When this occurs owners and residents are bound into long term utility contracts through the upfront agreements made by developers. Such contracts can be beneficial providing cheap energy and innovative services. Conversely, they can also cause 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 Owner's Corporation enquiring about pricing and charges by an exempt network. They explained that a developer had entered into a long-term utility management contract.

The contract between the Owner's 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 established that the network exemption and the retail exemption had been set up by the developer in the name of the Owner's Corporation, of which it was unaware.

¹ [EWON Submission to NSW Fair Trading consultation paper *Easy and Transparent Trading - Empowering Consumers and Small Business* August 2018](#)



EWON advised the Owner's Corporation that the energy rates that the management service was charging per the contract were above the maximum allowable under the Exempt Retail Guidelines, and that individual resident's bills would need to be reduced to below what the management service was charging the Owner's Corporation. EWON also noted that the service contract included a monthly \$10 meter reading fee for every meter in the complex (excessive when compared to meter reading fees charged by distributors and metering co-ordinators).

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

EWON made a further submission on this issue in December 2018 to the *Better Business Reforms – Implementation Options Paper*². In this submission EWON pointed out that:

“The proposal to exclude agreements for the supply of electricity to residents in strata schemes through an embedded network from these laws, does not have regard to the evolving energy retail market environment. NSW consumers are therefore at risk of having reduced access to competition and essential consumer protections.”

Since that time, the Australian Energy Market Commission (AEMC) has completed its review of embedded networks, with the outcome currently being considered by ministers. The recommendations, if adopted, will improve protections for individual customers but will not address the issue of contracts entered into by developers which bind strata corporations.

In the last few years there has been rapid growth in embedded networks. Without proper regulatory protection, which only the Strata Laws can provide, there is the potential for significant consumer detriment.

The decision implemented in 2019 to place limits (including length of terms) on developers entering utilities contracts, is the correct approach and should be maintained.

However the exemption allowed for embedded electricity networks was inappropriate. This remains the case - the exemption should be removed and the protections for other utility provision should be extended to energy.

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

Janine Young
Ombudsman
Energy & Water Ombudsman NSW

² [EWON Submission to Better Business Reforms – Implementation Options Paper](#) December 2018