



19 January 2023

Strata Review Team  
NSW Department of Customer Service  
4 Parramatta Square, 12 Darcy Street  
Parramatta NSW 2150

by email: [StrataReview@customerservice.nsw.gov.au](mailto:StrataReview@customerservice.nsw.gov.au)

Dear Strata Review Team

**Statutory Review of the Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015**

Thank you for the opportunity to comment on the consultation paper for this review.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers. 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 consultation paper that align with issues customers raise with EWON, or with our organisation's operations as they relate to this regulatory review.

If you would like to discuss this matter further, please contact Dr Rory Campbell, Manager Policy and 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**

### Utilities contracts

Section 132A of *Strata Schemes Management Act 2015* (the Act) sets out that utility supply contracts with an owners corporation expire at the first AGM or after three years (for contracts entered into before 1 October 2019, or after 10 years for older contracts). Section 132A does not currently apply to the supply of electricity through an embedded network.

EWON supports the Department's intention to amend the Act to include a broad definition of utility. This is consistent with recommendations 119 and 120 of the report of the statutory review:

**Recommendation 119** Redraft section 132A of the Management Act to provide greater clarity and certainty regarding its use.

**Recommendation 120** Extend the application of section 132A of the Management Act to contracts for the supply of electricity through an embedded network.

### The definition of 'utility' and embedded networks

The rise of embedded networks has seen a corresponding rise in separate billing for services such as centralised air-conditioning (thermal energy or chilled water) and centralised hot water. These services are not treated as energy under national laws and rules and do not attract the same consumer protections as other essential services such as energy and water. There are strong commercial reasons why developers install these services as embedded networks, but customer benefits are not considered by developers. Accordingly, it is critical that appropriate consumer protections are put in place.

The Department asks whether the definition of 'utility' in the Act should include, for example:

- communication services including, for example, the installation and supply of telephone, intercom, computer data and television
- domestic services including, for example, electricity, gas, water, garbage removal, air conditioning and heating, storm water.

The threshold test for the regulation of these services is their essentiality. The definition of utility should be broad and include, at minimum, those services that are essential including, but not limited to, electricity, gas, hot water, air conditioning, heating, water and storm water. There is also growing recognition that communication services are also essential given they are linked to security and safety (essential services contact).

Recommendation 120 proposes extending the application of Section 132A to contracts for the supply of electricity through an embedded network. Many EWON members own or manage embedded networks that supply not just electricity but also gas, hot water, air conditioning and recycled water. Hot water embedded networks, in particular, have grown significantly in number in the past few years.<sup>1</sup> We have recently received multiple complaints from customers living within hot water embedded networks who have received substantial price rises for which they have no redress due to the monopoly nature of the embedded network.

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<sup>1</sup> [EWON Submission - Legislative Assembly Committee on Law and Safety - Embedded Networks in NSW.pdf](#), p4

For this reason, we recommend that Section 132A apply to all embedded networks supplying a utility that is an essential service, but particularly to hot water embedded networks.

### NSW parliamentary review

The NSW Legislative Assembly Committee on Law and Safety recently concluded a review into embedded networks in NSW.<sup>2</sup> It addressed embedded networks that supply range of services such as electricity, hot and chilled water, and gas and recommended:

“That the NSW Government consider regulating embedded network contract provisions, including the term of the contract and conditions of termination, to ensure they are not unduly burdensome for consumers.”<sup>3</sup>

The Department’s proposal is consistent with this recommendation, as long as the definition of ‘utility’ is sufficiently encompassing and includes embedded networks of all types.

### Information provision to customers

The consultation paper also discusses implementing recommendation 122 of the report of the statutory review:

**Recommendation 122:** Introduce a requirement that, as part of any sale of strata scheme units, including off the plan sales, there is plain English disclosure of which services are provided as an embedded network, their ownership structure and what this will mean for residents, including in relation to access to alternative providers and ongoing capital costs.

We support this recommendation and believe it should be extended to prospective tenants, although we acknowledge that this may be out of the scope of this review.

This issue was also the subject of the NSW parliamentary inquiry, which recommended that the NSW government:

“ensure there are appropriate requirements to disclose embedded network services to a potential owner or tenant before they purchase or lease a property in an embedded network, including requiring real estate advertisements to disclose the average recurring costs of all services provided to that property through an embedded networks (for example, the sale of hot or chilled water)”<sup>4</sup>

EWON’s engagement with customers indicates there is still not enough information available to home buyers and prospective tenants about embedded networks. Owners and tenants often complain to EWON that they had not been aware that embedded networks existed until they found their new home was part of one.

Tenants 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.

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<sup>2</sup> [Report - Embedded Networks in New South Wales.pdf \(nsw.gov.au\)](#)

<sup>3</sup> Ibid, recommendation 10

<sup>4</sup> Ibid, recommendation 9

EWON welcomed the recent development requiring that landlords or agents include details of electricity or gas supply through an embedded network in residential tenancy agreements. Unfortunately, many customers are not aware what this means or that they may require multiple accounts. The following case study illustrates this.

#### Case Study

##### **Customer purchased an apartment and discovered the building had an embedded network**

A customer complained to EWON that they purchased a new apartment and discovered that the building had an embedded network. The customer said they had no prior knowledge of embedded networks. The customer complained that their recent monthly electricity bill was for \$160, when they had previously paid \$300 a quarter. EWON advised the customer about the regulation of embedded networks, the rights and responsibilities of embedded network customers, and the factors that may contribute to high electricity bills.

Further, this development does not extend to the selling of centralised hot water within embedded networks and how residents are charged for hot water. Customers also complain to EWON that they were unaware the building they were moving into had a hot water embedded network, as illustrated by the following case study.

#### Case Study

##### **Customer moved into an apartment and discovered the building had an embedded network for gas hot water**

A customer complained to EWON that she moved into an apartment complex and set up an account with the provider. When she received her first bill, she received a bill for hot water in kilolitres and not for gas which she thought was incorrect. She was not aware that the property was part of an embedded network for gas hot water. The customer complained that the price per kilolitre (\$13.60 per kilolitre) and the overall cost of her bill was too high, and was much higher than her previous property. The customer was also concerned about the lack of transparency in the advice she had received and the lack of competition. EWON advised the customer about the regulation of embedded network, the rights and responsibilities of embedded network customers and the difference in consumer protections for billing of gas hot water.

The NSW Government should make it mandatory for developers and real estate agents to provide clear plain English information to customers about embedded networks, and the requirement to open multiple accounts prior to the sale of a property and again, prior to contracts being signed. Further, real estate agents should be required to provide clear information to tenants about embedded networks, including centralised hot water, prior to leases being entered into.

#### Enquiries

Enquiries about this submission should be directed to Dr Rory Campbell, Manager Policy and Systemic Issues, on (02) 8218 5266 or via email [roryc@ewon.com.au](mailto:roryc@ewon.com.au).