



19 December 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 options paper *Better Business Reforms – Implementation Options 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 also receives and responds to complaints from customers (living in embedded networks) of exempt sellers, and those entities will become members of EWON over the next year. Our comments are informed by these complaints and also from our community outreach and stakeholder engagement activities.

We are commenting on section 4 *Utilities supply agreements in Strata*, given its relevance to our work in embedded networks.

Context

In July 2018, the NSW Fair Trading consultation paper *Easy and Transparent Trading - Empowering Consumers and Small Business* identified the issue of owners and residents being bound to long term utility contracts entered into by developers. The consultation paper identified the policy objective for reform as:

“Individual home owners and tenants living in strata schemes should be able to choose their own utility provider. This would enable them to take advantage of special offers or to change providers if they are dissatisfied with the service they are receiving.”¹

The paper identified a number of options for addressing this issue.

In our response EWON agreed that this was a pertinent issue and provided a case study 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. We supported the option of extending the current provisions of the Strata Schemes Management Act, which provide protection for maintenance, gardening and repair long term contracts. Essentially this proposed that all contracts entered into by developers are reviewed at the first AGM of the Strata Corporation.

¹ *Easy and Transparent Trading - Empowering Consumers and Small Business*. July 2018, p49

Implementation Response

The Implementation Options Paper states the following:

*“These contracts then commit future owners’ corporations such that the owners of these properties can collectively find themselves ‘locked in’ to long term supply contracts for the common property. This means they are not able to choose the offering that best suits the needs of the owners in the strata plans.”*² [Emphasis added].

The Options Paper then proposes to limit agreements entered into by developers by limiting such agreements to an initial period which then allows owners’ corporations to review such arrangements.

However, the Options Paper also proposed:

*“In some sites, usually apartment complexes, retirement villages and caravan parks, the electrical wiring is organised in a way to enable the owner of the site to sell energy to the tenants and residents who live there. This is known as an embedded network. The new laws will not apply to agreements for the supply of electricity to residents in strata schemes through an embedded network.”*³ [Emphasis added].

The issue identified in the original paper was not about long-term contracts for common areas but rather about individuals and tenants being tied into long term contracts and left without choice, an anti-competitive position now proposed to be enshrined in NSW law.

Embedded networks exemption

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.

Conclusion

The proposal to exclude embedded networks from additional protections does not address the situation where Strata Corporations own the embedded network and are 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 owners’ corporations 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 corporation for either or both functions. Locking in owners’ corporations to

² *Better Business Reforms- Implementation Options Paper. November 2018, p16*

³ *Ibid, p17*

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.

Currently, many individual residents within an embedded network have limited access to competition from authorised retailers. This situation is under review by the Australian Energy Market Commission and is planned to be addressed by changes in laws and rules in the near future.

Accordingly, 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.

Additionally, consideration should be given to including not only exempt embedded networks that supply electricity , but also extending the proposed changes to gas, water and telecommunications embedded networks.

Yours sincerely

Janine Young
Ombudsman
Energy & Water Ombudsman NSW