REPORT ON PROCEEDINGS BEFORE

LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND SAFETY

EMBEDDED NETWORKS IN NEW SOUTH WALES

At Jubilee Room, Parliament House, Sydney, on Friday 12 August 2022

The Committee met at 9:25

PRESENT

Mr Ray Williams (Chair)

Mr Geoff Provest (Deputy Chair)

PRESDENT VIA VIDEOCONFERENCE

Mr Edmond Atalla
Mr Adam Crouch

* Please note:
[inaudible] is used when audio words cannot be deciphered.
[audio malfunction] is used when words are lost due to a technical malfunction.
[disorder] is used when members or witnesses speak over one another.

The CHAIR: Before I start, I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of this land. I pay my respects to Elders past, present and emerging, and extend that respect to Aboriginal and Torres Strait Islander people present.

Today is the public hearing of the Legislative Assembly Committee on Law and Safety inquiry into embedded networks in New South Wales. I, Mr Ray Williams, Chair of the Committee and member for Castle Hill, am joined today by fellow Committee members Mr Geoff Provest, the Deputy Chair, member for Tweed Heads and Parliamentary Secretary for Police and Emergency Services; Mr Edmond Atalla, member for Mount Druitt; and Mr Adam Crouch, member for Terrigal and Parliamentary Secretary for the Central Coast. Apologies have been extended by Ms Tamara Smith, member for Ballina. I remind Committee members that Ms Smith is very busy with her constituents in light of the recent floods, so it is understandable that she is an apology today.

The hearing is being broadcast to the public via the Parliament's website. Witnesses will be attending in person and via videoconference. To assist Hansard in the preparation of the transcript, I ask all members and witnesses to please identify themselves when they begin speaking. I thank everybody who is appearing before the Committee today.

Ms KAREN APPLEBY, Acting Chief Executive Officer, Council on the Ageing NSW, affirmed and examined

Mr IAIN MAITLAND, Energy Advocate, Ethnic Communities' Council of NSW, affirmed and examined

The CHAIR: I take the opportunity to welcome our first panel of witnesses. Can you please confirm that you have been issued with the Committee's terms of reference and information about the standing orders that relate to the examination of witnesses?

KAREN APPLEBY: Yes, I can confirm that.

IAIN MAITLAND: I have, yes.

The CHAIR: Before we proceed, do you have any questions about the hearing process?

KAREN APPLEBY: No.

IAIN MAITLAND: No.

The CHAIR: We extend you the opportunity, if you would like, to make a two-minute opening statement before we begin. We will start with Ms Appleby.

KAREN APPLEBY: I don't have an opening statement.

The CHAIR: I'll shoot straight over to Mr Maitland, if he would like to make an opening statement.

IAIN MAITLAND: Just a short one. ECCNSW, which is the Ethnic Communities' Council of NSW, has been in existence for over 45 years now. We are a member of the Federation of Ethnic Communities Councils of Australia. We are the major peak body for culturally and linguistically diverse communities in New South Wales. In a world of many acronyms, we reduce that to CALD. It's a lot easier to say and takes half the time. I'm the representative as energy advocate for New South Wales and the rest of the national energy market, and I've been given that task through ECCNSW but also by the federation, which is abbreviated to FECCA. We've been doing this work for nearly two decades—a decade and a half, at least—with serious energy focus. We're the only ethnic communities council in Australia who does this work. For a short while ECC Victoria did do some work. We have worked with them in the past, but they don't have an energy focus anymore, and so often when agencies or businesses are looking for input into how to engage or consult with CALD consumers, they call on us.

That has been an interesting journey for me over the last eight years at least, in a part-time capacity, but my predecessors have been doing this, as I said, for nearly two decades. We've undertaken probably the only language-specific, ethno-specific research on energy that has been done. We've done that twice with domestic and small business consumers, and once in a longitudinal way with small businesses across New South Wales and Victoria—1,200 of them, in fact. It is probably the biggest bit of research done with ethno-specific businesses and also with CALD consumers, and we refer to that. It's getting a bit long in the tooth now; it was done in 2016, that last bit of work. I'll finish now. We have a set of guidelines that we have worked through to assist energy businesses, agencies and governments to consult and engage with CALD consumers on energy. I have indicated in this document, which I will table, the web links for those. It has been updated most recently in 2020.

The CHAIR: Fantastic. Thanks, Mr Maitland. Ethnic Communities is certainly a familiar association from my former life as Minister for Multiculturalism. I spent much time with them.

IAIN MAITLAND: Fantastic.

The CHAIR: We certainly thank you for the work you have been doing for those particular diverse communities.

Mr GEOFF PROVEST: Ms Appleby, on pages 3 and 4 of your submission you speak of the exploitation of older people residing in embedded networks. Could you elaborate further on that? How do you see this taking place?

KAREN APPLEBY: I'd probably restate it as more exploiting vulnerability. I think if you're living in an embedded network you do have the option to look for an energy retailer, but it is such a difficult process to do that. I personally went on to EWON's site the other day to try to read what the process was, and I had to reread it three times to try to digest how it can be done. A lot of older people that are living in caravan parks or retirement villages or even strata, they may not be tech savvy, so they might not be able to get online to do the research to know what their rights are. But they might be older anyway and find it really stressful and way too complicated to understand and not know where to go to.

I think there are a lot of older people, especially on fixed incomes, in places like caravan parks and retirement villages and even strata where they just don't have that option to invest in a new meter, for example, if they do manage to speak to a retailer that is willing to take them on. Consequently then, they're subject to the default process, which is very often not the cheapest price and we know that there's increased energy prices. That is obviously a really major concern to our supporters, and if you're on a fixed income, you'll be facing all sorts of hardships.

Mr GEOFF PROVEST: It is of particular interest to me because in my electorate I think I have one of the highest percentages of people in caravan parks, relocatable homes and so on.

KAREN APPLEBY: Indeed, yes.

Mr GEOFF PROVEST: Mr Maitland, in your submission you noted that many people of non-English-speaking backgrounds reside in apartments or have businesses, such as food outlets or dry cleaners, that have their energy sourced via embedded networks. There are two parts to this question. Could you share any real or potential personal or professional impacts this may have had on CALD individuals or community, and are you aware of any health or safety concerns arising from consumers in relationship to embedded networks?

IAIN MAITLAND: I will answer that but initially I'd say I often spend time in consultation and often in the same room as COTA representatives. We often have very similar points of view. Obviously, mine is focused around language and community rather than age, but often the same sorts of pressures and issues raise themselves with people who speak a language other than English at home. To answer the first bit, we have a body of research which has asked twice now—once in 2012 and once in 2016—a range of energy-related questions, particularly directed towards domestic and "small" small business communities. The last research, which was completed in 2016, engaged 150-odd domestic consumers across 10 language groups in New South Wales and in Victoria, and eight language groups and something like the same sort of number of small businesses. That data exists, and again it is in that thing that I am going to give you at the end of this.

There are some highlights from that data. Domestic consumers across language communities are not homogeneous, as you can probably imagine, nor are the businesses. But there are some similarities and there are some quite big differences. We've drawn some conclusions from that in the research we've done. The other work that we did, which has specific and targeted case studies was the Business Energy Smart Tips program—a notoriously difficult business demographic to get a handle on, small business, particularly those small businesses which have a staffing level below 20. It is almost impossible to get a hold of them because they're so busy and they don't generally, as I indicated, join peak body organisations, so their voices are often not heard at all. In the work that we have done over the decade and a half, most often we've come across, when people actually do consult small businesses and domestic consumers that have a language background other than English, they say, "Well, we've never been asked anything before. This is the first time" and "Thank you very much." They love to be asked.

Mr GEOFF PROVEST: But the specific problems?

IAIN MAITLAND: Specific problems—it's the same problem but magnified, that Karen Appleby just discussed. The information is complex, complicated and convoluted. When you translate that—even if you do the translations—if you do translate that into a language other than English, it becomes more complicated, more complex and indecipherable. An example, for instance, is a distribution business in New South Wales, which I will leave unnamed, sensibly produced their life support materials in English and then they also, probably through urging from me and my predecessor, produced it in the six most common languages in that distribution network. They had it translated by an accredited translator and published it. Now, what I did was take that translated material and give it to the bank of bilingual facilitators and educators that we have at ECC New South Wales. That work was given to them in the language and I said, "Tell me what it says, what it's asking you, or telling you what to do." They looked at it and they said, "Well"—and this was across four languages of the six—"look, we can understand every word of the document, it's in Arabic or it's in Vietnamese, but we cannot understand anything that they're saying. Like, it doesn't make sense."

Mr GEOFF PROVEST: So you think the process is too complex?

KAREN APPLEBY: Absolutely.

Mr GEOFF PROVEST: How would you fix it? Let's go to the end of the program.

IAIN MAITLAND: The guidelines suggest you have to go back to the beginning and say, "If you want to do the translation"—well, the explanation of complex matters, as you'll understand, of complex and complicated issues distilled into simple and understandable English is a skill in itself. But you have to do that first before you start, then taking that complex material and translating it into another language. Then, having done that—which

everybody does through accredited translation services—you then have to take that material, translate it and give it to a native speaker and say, "Tell me, what do I need to do to this to make it understandable?"

Mr GEOFF PROVEST: Yes, but—

KAREN APPLEBY: The actual process itself you're talking about?

Mr GEOFF PROVEST: Yes.

IAIN MAITLAND: I'm sorry?

Mr GEOFF PROVEST: How would you fix it?

IAIN MAITLAND: How would I fix it?

Mr GEOFF PROVEST: Obviously, there's a problem here.

KAREN APPLEBY: Yes.

Mr GEOFF PROVEST: It is articulated well in your submissions.

IAIN MAITLAND: The problem can be fixed and it's being done—again, the case studies that I'm talking about, the 13 of them, have been attempts and quite good attempts often at doing exactly that—taking complex material and making it understandable to people.

KAREN APPLEBY: I think you're talking about the whole system.

Mr GEOFF PROVEST: Yes.

IAIN MAITLAND: Yes, the whole system—

Mr GEOFF PROVEST: And you being an energy expert, if you had the power, how would you fix it?

IAIN MAITLAND: Oh dear.

KAREN APPLEBY: I think the AER has actually made recommendations at a Commonwealth level, that have been stalled for the past two years, and those recommendations are quite widely supported in terms of streamlining.

IAIN MAITLAND: Yes, they are.

Mr GEOFF PROVEST: Because Victorians have banned them, haven't they?

KAREN APPLEBY: Correct.

IAIN MAITLAND: We were part of the AMEC deliberations on that review in 2018 going into 2019 and it's been detailed elsewhere. I'm sure you'll hear a lot about it today. Those changes have been basically stalled since then. There is an appetite in the consumer advocacy space to make those changes but the changes have not been made.

Mr GEOFF PROVEST: Right.

IAIN MAITLAND: That's the start of it. It's not the end of it, I think.

Mr GEOFF PROVEST: You don't think there is an appetite for it?

IAIN MAITLAND: As I said, it's a complicated matter. It's not simple to fix and therefore requires someone to go, "Okay, let's devote these resources to it and we'll just have a go at fixing it."

The CHAIR: Could I ask the question, then, is the ambiguous nature of the information being provided to those culturally and linguistically diverse communities or individuals unfairly disadvantaging them as consumers in regards to the services that they need?

IAIN MAITLAND: Look, it's partly that. They don't have access to the information in language that makes sense to them. That's certainly a case for it. The other problem is that they don't actually know about it. It's a lack of easy access to the information but it's also a lack of knowledge that the information actually exists. I guess an illustration of that would be around payment assistance measures and something like the NSW EAPA voucher system, which I'm sure you are fully aware of. That system is exceedingly poorly utilised by CALD consumers. In fact, it's almost not used at all because they don't know about it and it's inordinately complicated to do. Even as a native English speaker, I've been through that process and I know how difficult it is to do. There are some cultural issues as well that I could add. They just don't—it's hands in the air and too hard.

There are cultural issues around asking for assistance as well, which has not really been explored. Our work looked at the reasons why CALD consumers—business and domestic—did not access payment assistance measures. There was a group of consumers, mostly the newly arrived immigrants and refugees, who knew about it and utilised it mainly because they had social welfare help in doing so. There was a group of people who didn't know about it and didn't use it, pretty obviously, and there was quite a considerable group of people across a number of language areas who knew about it and wouldn't use it. They just didn't. They wouldn't use it. I would like to do an exploration of that but I haven't got any money to do that at the moment. What are the barriers to people actually picking this stuff up or, in fact, knowing about the sorts of things that they are subjected to, which is being in an embedded network or being powered by an exempt seller?

The CHAIR: It's interesting you raise that because one of the constituents in my area—the Kellyville area—who first raised that particular matter was of Vietnamese background. They were linguistically challenged and they had entered as a tenant into a particular property and were completely unaware of what was contained within the energy provision of the embedded network. Ultimately, they saw costs spiral out of control to the point where they owed just under $10,000 over 14 months. Very fortunately, they got a good outcome and the company didn't adhere to the charges that it had applied. But I think it would be prevalent in those particular communities.

IAIN MAITLAND: We certainly have anecdotal evidence of that sort of stuff and with businesses as well. Particularly, the statistics around—and you will know this better than I—CALD representation in small business in New South Wales is around 40 per cent, and sometimes people have quoted 60 per cent. Convenience stores, hot bread shops, nail parlours, dry cleaners, small restaurants and those sorts of things are often high energy users and are often renting in large shopping complexes, which quite often have embedded networks for gas and electricity. So anecdotally we have got, "I just pay my rent. It includes the other stuff. I don't know how much I use." That's a potential for being exploited, I think. The other one is that particular communities will not rent a dwelling, unit or business that doesn't have gas connected because they are very comfortable with using gas, particularly restaurants. They have a double issue there, particularly around embedded gas networks.

The CHAIR: That is a good point.

Mr EDMOND ATALLA: Thank you both for attending the inquiry. I have a couple of questions. Both groups—aging groups and ethnic communities—are the most vulnerable when it comes to locking themselves into contracts and not understanding what they are locking themselves into. My question goes to both groups. What measures can you see or what protections can be put in place to ensure that people from those vulnerable groups are aware of what they are signing onto? How do you offer protections to ensure that these people aren't being forced into signing by being told, "If you don't sign, you don't get the accommodation"? What measures could be put in place to offer those protections?

KAREN APPLEBY: If people are buying into a strata unit, for example, or a retirement village or a caravan park, it needs to be disclosed during the conveyancing process that there is an embedded network in that facility, what their rights and responsibilities are, and what they can expect in terms of set charges, for example. There also needs to be more emphasis on compliance of the exempt providers. There are lots out there that actually haven't registered with EWON. There needs to be a greater push for them to actually register because they need to comply, then, with the different rights of and responsibilities to consumers. I think there are some who are still holding out on that, so we need to look at the regulations around that.

Obviously providing information to tenants and owners that is clear and easy to read will help. I know that EWON is working on a project at the moment on retirement villages and providing things in plain English. COTA is providing input into that. Obviously that needs to be extended to strata owners and people of residential parks as well. I think a lot of people don't actually know that EWON exists and that they can go and complain. There needs to be a greater publicising of that function and that option for people.

I think it's just daunting as well for a lot of older people and probably people from CALD backgrounds to even have to deal with that and make complaints. Sometimes they are living in a facility where the provider of energy is actually their landlord as well. Given how precarious renting is at the moment, they are not going to say anything if there is a risk of being evicted, for example. It's a really difficult situation but if we can mandate that information provision on purchase or when moving in as a tenant as a basic step and push the compliance of providers to join EWON to make sure that there is some oversight there, that will help.

Mr EDMOND ATALLA: Before Mr Maitland answers, I had never heard of embedded networks before this inquiry. I presume a lot of residents, whether in aging groups or from ethic communities, wouldn't know what embedded networks are and just think that this is the normal process of going into that accommodation and signing a commitment for energy and so forth. I find it difficult to understand who should be ultimately responsible if residents or tenants are locked into contracts that they don't understand and the obligations of the strata manager haven't been fulfilled. Can they hop out of these contracts? Can they complain that they haven't

been adequately informed? The obligation from whoever is responsible for informing them, if they can demonstrate that that hasn't happened, then they can opt out? Is there such an option for those people?

KAREN APPLEBY: I wouldn't think so.

IAIN MAITLAND: I can make a guess at that one—no, there isn't an option. I think a lot of it hinges around explicit informed consent, which is a very tricky concept and it's a very tricky concept if your third language is English. Often, this hinges around explicit informed consent. If you have it, as a provider of energy, you're somewhat protected. But if you don't have it, then you are subject to some of the provisions and complications of not providing energy in a particular way. But that compliance stuff doesn't happen very often in embedded networks; in fact, it doesn't happen very often at all.

It's less likely to happen in an embedded network because they don't have the avenues that they can pursue through EWON or others any of the dispute resolution processes—initially with the retailer, I guess. They don't have access to the retailer. So it's a complication that could be removed by—that's the Victorian option, which is, "Sorry, no more embedded networks." Again, there are some issue around grandfathering the ones that exist already. If you don't have an embedded network, then everybody is subject to retail law, energy law. The provisions of the National Energy Customer Framework—another acronym, NECF—protect consumers, but they don't protect consumers in embedded networks because they're often not subject to those particular provisions.

I would add to Karen's comments around dispute resolution. I was a director of EWON for the last six years. I've just stepped off the board. I've come to the end of my two periods on the board. They worked very hard to engage CALD consumers in their outreach work, as well as Aboriginal and Torres Strait Islander members. But it is a tricky one because you actually have to go out and do that work. You can't just expect CALD or ATSI consumers to read it on the webpage, because they don't.

I think that highlights the other area that we share with COTA, which is the necessity for a range of communication and engagement techniques. It's not just a one-size "We put it on the webpage and you can get it there", because they don't go—well, CALD consumers generally don't go to webpages. Particular subsets of CALD communities do, but they generally don't go directly to a website. well, in the past haven't accessed social media applications to get that information either. That's changing slowly. Again, COVID has made us aware of the intricacies of how we might do this stuff online, but it's a pretty new thing for CALD consumers and tricky, I suspect, for aged participants in the energy market.

One thing I might add is that where we have yet another conflation of interests is that as people whose first, second or third language is not English—again, anecdotally, particularly—as they age, they refer back to their first language, mostly. At this stage we've got people who in those first waves of migration—generally European migration, followed by the Vietnamese migrations of the seventies—are now getting to my age or older, and their first languages are not necessarily the same language as is currently spoken in Greece, Italy or Vietnam. They're an older version of that language. As they refer back to it, even the translated material doesn't work very well. So it involves a multitude of different avenues of communication. It's not just one or two, even. It's, again, detailed in our guidelines, if you like; I'm sure you would love to read them.

KAREN APPLEBY: Probably just to add to that, COTA actually has community volunteer speakers. We have provided training to them to go out and speak to different community groups about energy provision. It's obviously limited in what we can do, but we do speak about different issues. I think one of the avenues potentially to look at is that peer educator model where people are going to speak to seniors clubs or to Probuses and actually outline in plain English what the different options are for energy provision. I think that's really important. But another thing that we're quite concerned about is the lack of futureproofing that embedded networks are providing. A lot of older people are interested in, for example, putting solar panels on their roofs. If they are permitted to do that in the facility that they are in, they actually will get no benefit from that with an embedded network. So there are no options to get feed-in tariffs.

Mr ADAM CROUCH: My question is actually to both of you now, given what I've just heard about Mr Maitland's previous position on the board of EWON. One of the things the Committee has seen is the complexity around both Federal and State jurisdictions. Ms Appleby's submission acknowledges you have gone to both State and Federal governments on this issue. It's a two-part question to the both of you now. How would you see the New South Wales Government is successfully addressing the areas within its care and responsibility? Secondly, what collaboration would you like to see taking place to improve or reform the practice of embedded networks?

What has come to light to the Committee is the fact that, while there is a national framework, not everyone is signed up to it. We learnt that most recently. It's almost a bit of a piecemeal approach to a very complex issue. Whether that's deliberate or not, we don't know. How can the two jurisdictions work together? Obviously,

Mr Maitland, you had experience on the EWON board. You would have seen firsthand what has been brought to the Committee's attention.

KAREN APPLEBY: All I would said say is that obviously AER has put recommendations in at the national level. As I said before, it has stalled. I think there really needs to be a push for the energy Ministers to meet at a Federal level to try and progress.

Mr GEOFF PROVEST: I think they're meeting today, actually.

KAREN APPLEBY: Are they? Well, that's good news. Hopefully it's being discussed at that meeting.

Mr ADAM CROUCH: It's very timely.

IAIN MAITLAND: Probably not embedded networks.

KAREN APPLEBY: No.

Mr GEOFF PROVEST: No, I don't think so.

KAREN APPLEBY: But I think if it's not taken up at a Federal level, then I think it's really important that the State Government reviews those recommendations and takes on board going alone, in terms of implementing them at a State level, really.

The CHAIR: Given the forward approach that the Victorian Government is taking in banning embedded networks, do you see that as something that the New South Wales Government should look to do in the future?

KAREN APPLEBY: I mean, I think it might it be worth reviewing how that goes. That would possibly need to happen if all the recommendations from this inquiry are not implemented and don't make a change for people. I think there are some really good recommendations from PIAC and the Tenants Union to take on board improvements for tenants and owners. If they are implemented, then maybe it won't be necessary. But it's worth reviewing in a few years' time, I think.

The CHAIR: This is a question for both of you. Whether they're CALD communities or aging communities, do you think those particular communities at this point in time are being treated fairly and have the same access to the market in terms of their services as everybody else, especially those who are trapped within an embedded network?

IAIN MAITLAND: Short answer, no, they don't have. Just to follow on from Karen's comments, it's really important that the recommendations of the AMSE review are implemented, but they're not being implemented. They're not the end of it either; they're just the start of it. It's sort of a baseline approach. That's basically the minimum, and it hasn't happened. There's a dichotomy between the jurisdiction versus national approach. Victoria, because it's not part of the NECF process, has forged its own path, effectively, in a number of different areas. There are jurisdictional differences across all of the NEM and Victoria in a range of areas. I don't see that there would be a problem with New South Wales forging its own path, based on the work that has previously been done.

Whether or not New South Wales needs to stop embedded networks completely is beyond my pay grade, but it's an important thing to look at because New South Wales, or anywhere else across the NEM, has no easy access to the numbers of consumers in this spot. We don't have any real idea about the numbers of—we'd probably have, if we were to go through the AER, a fairly good indication about the number of retail exemptions, but we don't have the number of consumers affected. I anticipate it is probably in the hundreds of thousands, but you can't know that without having that data collected. I'm an ex-mathematician, I'm sorry. But data is one of the really important parts here. If you don't know who's at risk here, you can't help them.

Mr GEOFF PROVEST: The scary thing for us, Mr Maitland, is we saw some stuff about the exemptions—

IAIN MAITLAND: It went—

Mr GEOFF PROVEST: Like that.

IAIN MAITLAND: It's the duck curve, yes.

Mr GEOFF PROVEST: Yes.

IAIN MAITLAND: Well, the hockey stick or whatever it is they call it nowadays.

KAREN APPLEBY: Which is a major concern, isn't it?

IAIN MAITLAND: It is frightening.

Mr GEOFF PROVEST: It is. If there's money in it, it's attracting players to the field.

IAIN MAITLAND: In the past, exemptions and embedded networks were the place of caravan parks and small aged-care homes. Now it is massive high-rise consortiums. Why would those high rises be interested in doing this?

Mr GEOFF PROVEST: There's money in it.

IAIN MAITLAND: There's got to be a buck in it. That, unfortunately—I was talking to Karen earlier. I thought I was being very green. I bought a two-bedroom unit in a brand-new development in inner west Sydney, which had an embedded hot water service network in it. I thought, "Great," because I could tell it had solar hot water panels on the roof and I thought we'd get most of our hot water for a very low cost because of that. No, the developer had effectively put in second-rate panels which pre-heated the water certainly, but it was a gas hot water service. It was a massive expense. The metering was all over the place. The next-door unit was metered for us, and we were for them. It was all electronic. It was based on hot water rather than energy. It was one of those things where we just threw our hands up in the air and went, "We're out of here."

Mr GEOFF PROVEST: Because that hot water—

IAIN MAITLAND: It is hot water and chilled water. Some of the big developments in inner Sydney have got chilled water units as well, which they pipe around the building now. They are not at all transparent in their charging.

KAREN APPLEBY: I also wanted to raise—

Mr ADAM CROUCH: Mr Chair—

The CHAIR: Mr Crouch?

Mr ADAM CROUCH: Further to the statements you've just made, like the member for Tweed, I have a lot of residents who have been affected by this sort of procedure. They literally don't know what they're buying. Would I be right in saying that there is a complete lack of transparency for anybody buying either a residential apartment now or a tenancy—there is a failure to disclose that embedded network as well? Mr Maitland, you being an expert, you can imagine how the average person retiring would find it.

KAREN APPLEBY: Yes, there's no regulation for them to provide that information at the moment. There's no requirement. I think that should be a key recommendation—that if you're buying into a strata or you're a tenant going into a strata, or any other facility, that information should be given as a standard. There needs to be much greater regulation compliance and education if we are going to go forward with embedded networks. As the member for Tweed said, there are lots of players out there that are implementing it for profit.

The CHAIR: If I could just wrap up by asking you both, do either of your organisations disseminate any of the information regarding embedded networks through to your communities? If so, how do you do that?

KAREN APPLEBY: We do have volunteer energy advocates, as I said before, that do try to do talks with different community groups. We also have a newsletter that promotes the services of EWON as an area to complain. I also want to make a quick point around the bills as well. There's no standard bill provision either if you're an embedded network. What they get, compared to a normal energy retailer, can be very different. There's a really good program happening around better bill design for electricity. We need to have minimum standards in wave measures provided on people's bills as well.

IAIN MAITLAND: We were part of that process in the better bills work with the AER. We provided the access to CALD consumers in language to get them to tell us what they wanted. It was a really interesting process and not radically different to the normal run-of-the-mill consumer, but there were some differences. The bill stuff is very important. Our research would tell us that CALD consumers do read their bills, if they can, and, if they haven't got one, which is often the case in embedded networks and small business—they don't get a bill at all because their rent includes it. It's very difficult to modify your behaviour in that regard.

The CHAIR: That's a great point. Committee, are there any further questions? That being the case, I will release our witnesses and thank them. I appreciate your attendance and your information. It's valuable. Thank you once again. You're free to go.

IAIN MAITLAND: Thanks for the opportunity.

(The witnesses withdrew.)

Mr STEPHEN BRELL, President, Strata Community Association (NSW), sworn and examined

Ms KAREN STILES, Executive Director, Owners Corporation Network of Australia, affirmed and examined

The CHAIR: I welcome our next two contributors to our panel. If you would like to make a short, two-minute opening address before we ask questions, that'd be wonderful. I will start with Ms Stiles.

KAREN STILES: Thank you very much. What is an embedded network? An embedded network is effectively a contract between the building owners and an energy retailer for the latter to supply power to all the properties in that development—power, water, wi-fi. Embedded networks have the potential of becoming common in high-rise or large residential developments. Under current law, that growth will occur without the knowledge or consent of the off-the-plan purchaser and future purchasers and tenants. What are the pros and cons? The pros: convenient, takes the fuss out of choosing a provider. Cons: Some people like to change providers, decreased freedom of choice. Pro: increased purchasing power means you may be able to save money. Con: Because you're locked in to a retailer, there may be little incentive for them to be competitive. Pro: The embedded provider may have a suite of green initiatives, or it may have none, which is concerning for some customers.

Pro: Your embedded contract may work in your favour. Con: The contract could be long, inflated to cover installation costs that should have been borne by the developer, and hard to get out of. Disputes could make your time in the apartment really tough. Which is best? The pendulum swings against embedded networks. Why? It's important to note that the list of submissions to this Committee does not have a significant developer presence. Developers tend to have no moral compass pointing to future impact. They only have "now" and how the "now" impacts their financial interest. Submissions before you from those living with embedded networks reveal embedded network disclosure is likely to have a negative impact on capital values and a purchaser's decision to buy.

OCN anticipates compulsory disclosure of embedded networks in off-the-plan contracts is more likely to have a negative effect on sales than not. If the opposite was true, the developer lobby would be here with a megaphone. Of course, if you are a tenant who unknowingly moves into a building with embedded infrastructure, you will never have any say and you will pay dearly for that privilege. OCN subscribes to the fundamental principle that owners should have the democratic right to decide how their collectively owned property will be used and on the social agreement as to how people will live in their collective environment. Embedded networks get in the way of the democratic process.

What legislative reform is required? Like so many giving evidence to this Committee, OCN supports amendment of the following provisions of the Strata Schemes Management Act: firstly, section 132A to extend its operation to embedded network arrangements; two, section 26 to restrict entry into embedded network arrangements during the initial period; and, three, section 184 to provide certificates to purchasers making full and frank disclosure of existing embedded networks. It also supports amendment of conveyancing legislation to require disclosure of embedded network arrangements, especially in relation to off-the-plan sales. Failure to do so would be a breach of public confidence. In conclusion, since the turn of the century the New South Wales development industry has carefully characterised its interest as being in accord with the national economic interest to the point where consumer protection becomes roadkill in the corridors of parliaments. Support for the imposition of embedded networks without the legislative reform identified already further demonstrates how, contrary to public interest, consumer protection is being sidelined. Thank you.

The CHAIR: Thank you very much. Mr Brell, would you like to make some opening remarks?

STEPHEN BRELL: Thank you, Mr Chair. Thank you for the invitation to appear before this public hearing. Strata Community Association (NSW) believes that, while in theory embedded networks can provide many benefits to consumers—such as the opportunity to enter into bulk purchasing arrangements to save on consumption costs, savings on ongoing maintenance of essential common property plant and equipment, and capital savings for the replacement of upgrading plant and equipment—regrettably in practice many embedded network contracts are anti-competitive, are full of legalese that makes them difficult for consumers to understand, often contain expensive penalty clauses for early exit or termination of the contract, do not disclose what benefits or commissions may have been provided to developers or what commercial relationship may exist between developers and embedded network providers, and are entered into by consumers without fully understanding the long-term implications of the contract.

Many owners corporations are coerced into signing a lengthy embedded network contract at their first AGM without having any prior disclosure of the contract. There are several simple yet effective mechanisms that could be implemented by the Government that would greatly assist to provide greater transparency and protection for consumers. These include—and a lot of these mirror what Karen has said—amending the Conveyancing Act

requiring the disclosure of any embedded network contracts in off-the-plan sales, including the disclosure of any commission or benefit that is being received or any commercial relationship that may exist between the developer and the embedded network provider; amending the Strata Schemes Management Act requiring the disclosure of embedded network contracts in section 184 certificates to the purchasers prior to sale; extending the provisions of section 132A of the Strata Schemes Management Act that limits the contract period of embedded networks, whether they be for the supply of electricity or gas, hot water systems, NBN or internet services, or other common property infrastructure; and, finally, amending section 26 of the Strata Schemes Management Act to prohibit contracts being entered into by developers on behalf of owners corporations during the initial period. Thank you.

The CHAIR: Thank you, both, for your opening remarks. In regard to both your opening remarks, do you have—and I'm not asking you to disclose any names or any particular residents or areas. But do you have evidence from the people that you represent in any type of numbers that have suffered under the embedded network schemes that we see currently operating across New South Wales?

KAREN STILES: It's my great pleasure to phone new members just after they join OCN. Through that I've discovered several in very new schemes who've been landed with these unconscionable contracts—very long-term, very inflated—and told that they have no choice. I'm talking more now to two members in older developments like Raleigh Park and others in the city, where they've got communal hot water. They're now realising that they have very opaque systems in place for charging for hot water, for example. There's absolutely no transparency as to the cost, but the costs are significant.

STEPHEN BRELL: Yes, it's not uncommon—it's in fact very rare today that a new strata scheme, one that has just been completed and is being transferred from the developer to the owners corporation, isn't faced with one or a multiple number of embedded network contracts that they're asked to enter into at the first AGM. The problem with it is owners in new strata schemes—they're new to strata, so they don't understand necessarily what their rights and obligations are. They will often come to a first meeting and, as I said, be coerced by either the developer or the embedded network provider to enter into a long-term contract. Often it is under the guise of, "Well, you have no other choice, because we put the infrastructure in. Therefore, you must sign with us." If there was that disclosure piece beforehand—if you are buying off the plan and you knew exactly what you were getting into—then at least you have the choice to decide when you get to that first meeting.

There are many good embedded network providers—I must say that. When they are fitted retrospectively, they can provide many benefits for owners' corporations, particularly the replacement and maintenance of common property infrastructure, like hot water systems and so forth. In those situations, though, owners go in eyes open. They understand what they are getting into. They will often engage three or four different providers to get proposals and then negotiate the terms of the contract with them. Those types of contracts can work and they can be very beneficial. It is really, however, the contracts that are entered into off the plan, which, at the moment, as Karen said, is a very opaque situation where most owners don't understand what they are getting into.

Mr GEOFF PROVEST: Thank you for your addresses. I found them very informative. As you would be aware, Victoria just moved to ban embedded networks. Would you support a ban and, if so, have you given any thought to how you would grandfather existing contracts? Because the Committee has seen figures where a few years ago there were this many embedded networks and now it's a parabolic curve—it's heading for the roof. Obviously, as we all know, in business if there are dollars to be made a lot more interested people get involved. So do you support the ban in Victoria, and, if we do, how do we grandfather—because we have heard some pretty horrific stories of people getting massive bills they were unaware of?

KAREN STILES: OCN supports the ban on embedded networks being established by developers and we're also watching closely the Victorian conversation around providing the same consumer protections to owners and residents in existing buildings as there are for retail customers.

STEPHEN BRELL: SCA don't necessarily support a ban, but we certainly support amendments that will make it more transparent for consumers and provide more protections for consumers. So, as an example, limiting the term of contract to, say, a maximum of three years would provide owners with choice. Removing termination clauses that make it virtually impossible for owners' corporations to leave the contract would also be beneficial. And, as I said, disclosing to potential purchasers that they are buying into a scheme with an embedded network would also provide more transparency.

Mr GEOFF PROVEST: Just on that point, I took note of your point that at times they can be beneficial to replace expensive common property infrastructure. Are we not going to sort of get into another problem there where owners all of a sudden have to put their hand in their pocket to replace a hot water system?

STEPHEN BRELL: That's part of the benefit of retrospectively entering into an embedded network, because often with older plant and equipment the benefit that the provider is giving you is that they are replacing

that equipment at their expense. There is no capital outlay for the owners' corporation. They will then go on to maintain that equipment on behalf of the owners' corporation. But again, as long as that's disclosed to owners and they understand what they are getting into, I don't see that necessarily being an issue. It's when owners buy off the plan and they are unaware that they are getting into or buying into an embedded network, or a resident, a tenant moves into the building, and they're often told, "Well, yes, you can change providers if you like." However, there is no, what's called a national meter number on their electrical meter and they need to pay for the new provider to install that meter, which can often be thousands of dollars. Again, it makes it cost prohibitive for that particular resident to actually change the meter. To your point about where owners are entering into this with eyes open, it can be a good thing. When they are entering into it when they have no disclosure, that's when it can be a problem.

Mr GEOFF PROVEST: Just finally—hot water. I must admit that when I got involved in this Committee, that was a new thing for me. What are both of your experiences with the new charges for hot water? I have heard some pretty horrific stories of thousands of dollars over a few months for hot water.

KAREN STILES: Absolutely. That's happening a lot, I'm hearing, in the older buildings because they are charging on a per litre basis. It can take minutes for hot water to warm up, so there's a lot of litres that they are being charged for. To OCN that is completely unconscionable and it is completely opaque. I have media going back to, I think, 2017 with regard to a Sydney building that demanded that Jemena come out to talk to them about their gas meter readings, because the charges were just out of control. So, it's been going on for a long time, and it's happening in both new and old buildings.

Mr GEOFF PROVEST: We have heard for cooling too—cold water for air-conditioning systems.

STEPHEN BRELL: I'm not familiar with air-conditioning systems. However, to Karen's point, these things do occur. There are mechanisms that can be put in place to speed up the delivery. One thing which is very important with an embedded network is that each resident has their own metering system, so then the charges are specific for that lot and they are not common charges.

Mr GEOFF PROVEST: But that costs more money, doesn't it?

STEPHEN BRELL: It does, but these are the things that you negotiate with the provider before they go in.

Mr GEOFF PROVEST: So it all comes back to information before you sign on or before you purchase or get involved.

STEPHEN BRELL: Yes. What makes it attractive to many owners' corporations is that, particularly for older schemes, they often don't budget adequately to replace their plant and equipment. So they get to the end of the economic life of the apparatus and they find that they are up for tens of thousands of dollars to replace the apparatus. So the embedded network provider coming in and saying, "We'll replace this for you, we will bear the capital expense; however, the offset to that is that we are maintaining the network and we're charging for the network", can be attractive. However—and I must stress—it has to be done right. It has to be done so there is an individual meter for each lot; it has to be done so there are no delays with the supply of hot water.

Mr GEOFF PROVEST: Would you like to see that mandatory?

STEPHEN BRELL: If it was possible, yes. If you install a continuous hot water system in these systems—that is, a system with the hot water pumping around the building all the time—the delays that are referred to by Karen are generally offset. The cost of supply is not that—yes, it can actually be beneficial. But, again, it's the manner in which these systems are installed.

The CHAIR: Can I just come back, Ms Stiles, to the comment you made in regards to the request for Jemena to meet with a particular community. Was that request fulfilled? Did they come out and meet with that community?

KAREN STILES: They did, and I believe all the meters were changed. So, there were very high—and I'm happy to share with the Committee that media. The owners' corporation was paying a very high price for it, unreasonably high, as were each of the residents in that building.

The CHAIR: And that was resolved?

KAREN STILES: Well, it was the result of an embedded network and incorrect meter—well, no meter reading whatsoever.

The CHAIR: And yet customers, consumers and residents were being charged prices even though the correct meter readings were not there?

KAREN STILES: Yes.

Mr EDMOND ATALLA: Ms Stiles, in your opening remarks you have gone through some pros and cons of embedded networks. If embedded networks were banned in New South Wales can you give us your view—I know you support banning developers, but if embedded networks were totally banned in New South Wales can you give us some pros and cons from your perspective?

KAREN STILES: Probably not. I'd have to think about that more deeply. May I take that on notice?

Mr EDMOND ATALLA: Yes, sure. I understand the concept that Mr Brell is indicating that embedded networks can be good because they can provide bulk purchases which provide cheaper energy when purchased in bulk. But given that it's not really working, what can you see, Mr Brell, as the solution if embedded networks were not banned in New South Wales? What would you want to see that will bring the benefits back to the residents entering into the embedded network system?

STEPHEN BRELL: It'd be providing the owners with choice. First of all, again, if you limit the contract terms—at the moment, owners corporations can often be entering into contracts that are sometimes 10, 20 years long and when you enter into a contract that long, it limits your choice. Those types of contracts will often have extraneous termination clauses that make it virtually impossible for the owners corporation to get out if they actually can. If you limit the term of the contract, it will allow the owners corporation to go to market every few years and make sure that they are actually getting the most competitive prices for their energy supply.

The other thing is transparency. Again, I'm going to come back to the new development market. Owners need to be made aware, or purchasers in new schemes need to be made aware, if there is an embedded network in place and what benefits, if any, have been given to the original owner or developer for installing the network. Again, if they come in with eyes open, at least they have the opportunity to make a choice, and they also need to understand that they don't necessarily have to enter into a contract at their first meeting but they do have the ability to shop it around. Regrettably at the moment, though, often the practice is that they are told, "You must go with the provider because they are the ones who installed the equipment." If they're made aware that they do have choice, then that again provides benefits.

Mr EDMOND ATALLA: Can I just get an understanding? You're referring to the long-term contract between the owners corporation and who? The energy providers?

STEPHEN BRELL: Yes.

Mr EDMOND ATALLA: Who are the long-term contracts with?

STEPHEN BRELL: The practice is that in the new development market a network provider—and I don't want to name any names but there are some very good ones. The trade off is that they will approach the developer and say, "We will install our network to your development for free," so there's no cost to the developer. In theory, if the developer passed those savings on to the owners, that would be beneficial, but in practice that doesn't happen. What the terms of the contract between the developer and the embedded network provider will often say is, "You must ensure that at the first meeting of the owners corporation, they enter into a long-term contract for the supply of energy for the infrastructure that we installed. What happens is that if the owners corporation enters into that contract, the developer basically pays nothing for the infrastructure and then the owners bear the 20-year contract. If at the first AGM the owners say, "No, we do not want to enter into this contract," often what will happen is that will trigger a clause in the contract between the developer and the energy provider that the developer now must pay for the infrastructure, and again it's these types of clauses and disclosures that owners are not made aware of when they're purchasing off the plan.

The CHAIR: Have you seen any instances where that has been the case?

STEPHEN BRELL: Yes. I'm not privy to the contracts between the developer and the embedded network provider. I've never seen one of those, but I have seen many embedded network contracts presented to owners corporations at the first AGM.

The CHAIR: I meant, have you ever seen at the owners—

STEPHEN BRELL: Say no?

The CHAIR: Yes.

STEPHEN BRELL: Yes, I have.

The CHAIR: You have?

STEPHEN BRELL: Yes.

Mr EDMOND ATALLA: What happens in that situation?

STEPHEN BRELL: Effectively, they then go into a negotiation with the embedded network provider but under revised terms or they go shopping around the market, and often the, let's say, stick that is provided to owners at the first meeting is, "Unless you sign this contract here tonight, you will not have power supply tomorrow," which is not correct. They do have choice. It's just that it's the way that it's often coerced at the first meeting by the embedded network providers when they're presenting to owners at those meetings. To answer your question, yes, I have seen owners say, "No, we're not going to enter into this."

Mr GEOFF PROVEST: But they're informed owners.

KAREN STILES: Absolutely.

STEPHEN BRELL: Yes.

Mr GEOFF PROVEST: That's the key.

KAREN STILES: There's an enormous information asymmetry. The case study that OCN provided in its submission was a case where one of the new owners happened to have a procurement background and they were very aware of the inflated prices. In particular, the embedded network relating to stormwater management was 15 years at a total of about $90,000. They were told that there was no other provider in Australia for that service. When that was questioned, they were told that if they went with anybody else, their warranties would be voided. They managed to convince the other owners to not accept that contract and promptly found another provider who was prepared to sign a contract on a yearly basis for about $1,500 a year—very big difference.

Mr GEOFF PROVEST: Massive.

Mr EDMOND ATALLA: Mr Brell, the same question I asked Ms Stiles. If embedded networks were banned in New South Wales, what problems do you foresee? Not the grandfathering of existing contracts but moving forward, what problems do you foresee if there were no embedded networks permitted in New South Wales?

STEPHEN BRELL: Immediately, off the top of my head, you would be limiting a consumer choice. I don't think embedded networks are necessarily evil and they shouldn't be demonised because, as I said in my opening statement, in theory they work quite well. They can be beneficial. It's just how they're being applied in the marketplace which is making them—again as Mr Provest said, where suppliers see opportunity to exploit the market, they will, but when suppliers are regulated and consumers are protected, that's when they can provide benefit.

The CHAIR: You've both stated the need for full disclosure and the failure to disclose what subsequent costs tenants or owners will face once they become the tenants or the owners within an embedded network. I'm sensing that, given the fact that the contracts are needed to be signed at the very first meeting, there may be a legal loophole whereby they don't have to advertise anything at the time of sale of the unit or the lease of the unit because there is nothing in place. Would that be a fair statement?

STEPHEN BRELL: Yes.

The CHAIR: Interesting.

Mr GEOFF PROVEST: It seems to come down with that disclosure to begin with, doesn't it?

STEPHEN BRELL: Yes.

Mr GEOFF PROVEST: My electorate's up in Tweed Heads. We've got lots of large buildings and things like that. It's very salty. Owners get whacked for new lifts every so often—guttering. It's a very corrosive type of thing. There are embedded networks for wi-fi now. As I said before, I only found out about hot water a few months ago. So there's wi-fi, hot water, gas, electricity—

KAREN STILES: Stormwater.

STEPHEN BRELL: Stormwater.

Mr GEOFF PROVEST: Stormwater. Firefighting stuff?

STEPHEN BRELL: No, not really for fire.

KAREN STILES: Not yet.

Mr GEOFF PROVEST: But it is growing exponentially.

STEPHEN BRELL: Yes, and again the concepts of stormwater—and I think it is important for this Committee to understand the delineation between an embedded network for the supply of services versus

infrastructure that's installed free of charge again with the impetus being that the owners sign a long-term contract. A classic embedded network provides a service to the building, so to your point, electricity, gas, hot water, NBN. When we look at other services like a stormwater system, that is not actually providing a service to the residents apart from it's part of the infrastructure of the building. Those types of contracts, which again are under the exact same guise as what an embedded network contract should be, should be disclosed to owners at the point of sale and in their contracts and at the meeting so they understand what the service actually is. That common property infrastructure is slightly different to the concept of an embedded network.

Mr GEOFF PROVEST: Like a maintenance thing for the lifts.

STEPHEN BRELL: That's right, yes. That's not an embedded network per se.

Mr GEOFF PROVEST: Right. Okay, but the owners have to sign off that they are going to use a particular company to maintain the lifts.

STEPHEN BRELL: Lifts are a really interesting one because at the moment there is still choice for owners corporations. Often when they go into a new scheme, the lift that is provided—lift companies aren't giving the lift to the developer for free.

Mr GEOFF PROVEST: No.

STEPHEN BRELL: They're saying, "No, Mr Developer, if you want a lift, you need to pay for it." What they will then give to the developer is a warranty period for that lift, which is often 12 months from the date of installation. At the end of that warranty period, the owners corporation is then free to choose to go to market and get a lift service contract with either the manufacturer of the lift or another manufacturer who can service that lift. Again, the choice is the owners corporations, to either go with the incumbent provider or go to market. If developers weren't having this infrastructure provided for free, we wouldn't be having this issue.

KAREN STILES: Or, in fact, being paid to have it installed.

The CHAIR: Sorry, Ms Stiles?

KAREN STILES: Or, in fact, being paid to have it installed, in some cases—anecdotally.

The CHAIR: Can you identify a particular consumer or demographic that are most vulnerable to the impact of embedded networks and what makes them vulnerable and why.

STEPHEN BRELL: Do you want to answer that one?

KAREN STILES: I'll start with people on life support are not warned of outages. If they're a retail customer, they must be warned of an imminent electricity outage. But, if they're in a building with an embedded network, that's not the case. Going down the scale from life-threatening—obviously, people on fixed incomes. We're all struggling with the cost of living at the moment. So I think everybody really is affected by these.

The CHAIR: What do you believe is the best way of educating them in regard to embedded networks in the future? I know we've covered full disclosure. But do you see anybody else as playing a role in that education?

KAREN STILES: I think Fair Trading has a very strong role in this. It's very important. But educating people and having the information, being completely transparent, doesn't alter the fact that they may be locked into long-term contracts that they can't get out of and they can't switch providers or get better deals.

STEPHEN BRELL: Yes. The other area here, which is often overlooked, is tenants in the building. A building may have embedded network infrastructure. When a tenant goes to lease a property in the building, they're not aware that, essentially, they've only got one provider they can go to. If there was some type of disclosure in a lease document or made by the landlord to the tenant at the time of signing the lease, that would also be beneficial as well.

The CHAIR: Subsequently, as you've suggested and as we all know, any outgoing costs have to be identified to those particular tenants. We've seen or I've seen, particularly out in my area, a couple of extreme cases. We had one particular family that faced charges, of just hot water alone, of just under $10,000 over a 14-month period, completely unable to pay for that and, within the same complex, another person, who faced charges over only less than six months of some $2,000. This was just for hot-water charges alone, over and above all the other expenses that they pay for electricity and water. One of those tenants took their case to NCAT and was very, very successful in having NCAT rule that they did not have to pay for hot water. As I've discussed with the Committee going forward, that is certainly now my response to anybody who comes back, who has exorbitant bills. I've just simply said, "Go through NCAT." It shouldn't need to be that difficult, although it's great to see that NCAT is supporting consumers out there.

Mr GEOFF PROVEST: With both your organisations, do you also represent commercial tenants? I know a lot of high-rise will have a coffee shop or a hairdresser within the building.

STEPHEN BRELL: Strata Community Association is an organisation that represents strata managers, suppliers and owners. Within that, yes, there are commercial tenants in there.

Mr GEOFF PROVEST: We were told by previous witnesses, often with the commercial ones it's all contained in their rent. They really don't know how much they're paying for electricity or hot water. It's just, "This is the rent, and this is what you have to pay."

STEPHEN BRELL: Yes.

The CHAIR: Are you hearing from businesses in that circumstance? We are also hearing from businesses in those circumstances, commercial businesses now, that are in larger facilities, who now are contained within embedded networks. The charges are starting to become quite exorbitant.

KAREN STILES: I don't hear from the businesses. But I hear from owners. There are a lot of estates now. So you have a number of schemes sitting under an umbrella of a community association. The community association may be providing the hot water to the schemes and to their residents. Whatever changes we make in the Strata Schemes Management Act have to apply to community associations to make sure that's captured. I know one member spent seven years trying to understand exactly what is being charged and why.

STEPHEN BRELL: Yes. I suggest to you that, whatever impacts residential owners are facing, commercial owners would also be facing the same.

The CHAIR: Committee, are there any further questions? On that basis, we will thank you again for your attendance and your valued information. I wish you all well. Thank you so much.

STEPHEN BRELL: No worries at all. Thank you for the invitation.

KAREN STILES: In my inimitable style, may I say one more thing?

The CHAIR: Absolutely.

KAREN STILES: Victoria is banning embedded networks in new buildings as from January 2023, except where it's 100 per cent renewable energy. I suggest to this Committee that that exemption will be exploited. We all want green energy, but there will be loopholes found, and it will be exploited, just as the existing market is being so.

The CHAIR: Thank you so much for the comment, Ms Stiles. I guess, going forward, any regulation in this particular space needs to ensure that it encapsulates renewable energy as well. It should encapsulate all energy provided in any changes to future regulation.

KAREN STILES: Yes.

Mr GEOFF PROVEST: We heard from another witness the fact that they bought into a new green building but once they were there they realised that all that renewable stuff contributed nothing to their bills. It looked really nice on the roof and it was a big selling point but it was a second-grade system that was installed. So their bills continued to rise. The purpose of buying it was that they felt strongly about renewable energy.

The CHAIR: I think sadly the flip side of that too is what we've heard from other witnesses, that there are many people—this seems to be quite prevalent in retirement villages—who eagerly seek government grants, whether it's Federal or State, to put solar panels on their roofs but they are unable to do so because they are trapped in the contract. So we actually have a catch 22. We can't improve our environment and they also have the exorbitant costs that they're locked into with long-term contracts.

KAREN STILES: Yes. I think, unfortunately, strata owners are seen as cash cows to be milked by many service providers. Chair, your comment about NCAT, that people shouldn't have to go to that, is absolutely true, which is why we strongly advocate for a strata commissioner who would have the dual role of education and arbitration.

The CHAIR: I would have thought that Fair Trading perhaps should have played a role in that space. But we now seem to have many commissioners based under Fair Trading. I think we'll just get to the situation one day where we may not a Fair Trading department but just commissioners in place. That's just a comment from me. Thank you so much for your attendance.

STEPHEN BRELL: No worries. Thank you.

KAREN STILES: Thank you.

(The witnesses withdrew.)

(Short adjournment)

Ms LIZ LIVINGSTONE, CEO, IPART, sworn and examined

The CHAIR: I welcome our next witness, Ms Liz Livingstone, the CEO of IPART. I thank her for appearing before the Committee today to give evidence. Can you confirm that you have been issued with the Committee's terms of reference and information about the standing orders that relate to the examination of witnesses?

LIZ LIVINGSTONE: Yes, I have. Thank you.

The CHAIR: Before we proceed do you have any questions of the Committee?

LIZ LIVINGSTONE: I don't.

The CHAIR: Ms Livingstone, would you like to make an opening statement?

LIZ LIVINGSTONE: I will, thank you. Thank you for the opportunity to appear before the inquiry. IPART welcomes the Committee's interest in this issue. I wanted to share some insight into IPART's role in the regulation of the energy sector in New South Wales just to provide some context for our contribution to this inquiry. IPART's role has narrowed over time as the national electricity market has evolved and national regulators have been established who develop policy and rules, regulate prices and oversee operation of the market. However, IPART does monitor the energy market under the National Energy Retail Law (NSW) and each year provides a report to the Minister for Energy about the performance and competitiveness of the retail electricity market and the retail gas market for small customers. It is in this capacity that in recent years we have highlighted issues raised with us by stakeholders, particularly the Energy and Water Ombudsman NSW and the Public Interest Advocacy Centre, about embedded networks.

In our last report we also included analysis of publicly available or voluntarily provided information about prices for customers where services were provided using embedded networks. Some of our observations from our 2020-21 report are as follows. We did not directly observe embedded network offers above the default market offer for the 2020-21 year. However, there are significant constraints on the information available to us. The information we access does not reflect the full range of prices and other fees consumers may be charged. The Public Interest Advocacy Centre made a submission to our draft 2021 report raising concerns about the protections available to consumers in embedded networks. We highlighted in our report the various reviews by national and State regulators that had considered or were considering some of the issues PIAC raised. We are currently undertaking work to prepare our annual market monitoring report for 2021-22 and intend again this year to explore available information about pricing and market offers for embedded networks.

The National Energy Retail Law limits the information we can have regard to in preparing our report, which means our analysis of embedded network prices is not comprehensive and does not cover the full range of prices that may be offered. As others have identified there has been rapid growth in embedded networks. They can be an innovative, sustainable and cost-effective way to provide energy services to consumers. However, we are conscious of the concerns of customers and stakeholders about the adequacy of the current regulatory framework for them. The evolution and complexity in business models and scale of operations has challenged existing regulatory frameworks in providing consistent and adequate protections for all consumers. This has been highlighted in various reviews, although we have not been directly involved in these. Effectively addressing remaining regulatory gaps will require careful regulatory design that targets identified problems so that the interests of consumers are protected for the long-term and that any additional regulatory obligations for embedded networks is proportionate. Thank you again for the opportunity to discuss these issues with you.

The CHAIR: Thank you very much, Ms Livingstone. We greatly appreciate that. Deputy Chair, would you like to ask some questions?

Mr GEOFF PROVEST: Yes, I would like to start. Thank you for coming in. In relation to the New South Wales Government statutory review of the Residential (Land Lease) Communities Act 2013 your submission noted that one option being considered was setting a maximum price that a consumer could be charged at a median retail market price. This would include separate usage supply charges that are contained in any market offer for each distribution area. However, the submission noted that this approach could result in price increases for consumers. Could you elaborate on why this is and in your view what would be a better approach?

LIZ LIVINGSTONE: Sure. So for land lease communities the embedded network operators are limited in what they can charge customers to no more than the amount they have paid for what the consumer consumes.

Mr GEOFF PROVEST: Are they limited?

LIZ LIVINGSTONE: They are.

Mr GEOFF PROVEST: I'm sorry to interrupt because we have heard other horror stories of thousands of dollars more.

LIZ LIVINGSTONE: There are a range. This is where the complexity in the sector I think arises. There are a lot of different business models but in this particular case, and we have set that out in our submission on page 5, the Act limits the amount that land lease community operators may charge consumers for electricity. So they can't charge more than the operator themselves have been charged for electricity used by the consumer. In that way there is some level of consumer protection on prices in those communities. However, there is a challenge for the operators of those networks because they incur additional costs for things like reading meters, providing the infrastructure to onsell the electricity from the point that they purchase it to consumers, paying EWON membership fees, et cetera. Those kinds of costs outside embedded networks are recovered by regular distributor energy network businesses. In this case—it's almost like a mini network in a caravan park or other types of land lease communities—the operator can't recover those costs.

So in fact consumers may be paying less for electricity than they otherwise would in those circumstances. So one of the proposals has been is it fairer—so that the network operator can recover more of their costs—to change the constraint around the maximum they can charge the consumer to be the median price of the retail offer, default market offer in that area. It's complicated. I'm not sure if you want me to elaborate on that a bit more. But it may well mean that, if you went down that path, prices would increase for consumers. We also noted in our report that the impact on customers should be further explored before a decision was taken to move towards that to see what the impacts on customers were and if you might need to put some mitigation strategies around it in case it caused undue hardship for customers.

Mr GEOFF PROVEST: Ms Livingstone, one issue that's come up—I don't know whether this is IPART's part or not—is that these contracts are often signed at the beginning, at the first strata meeting?

LIZ LIVINGSTONE: Yes.

Mr GEOFF PROVEST: There is no disclosure on the purchase contract—

LIZ LIVINGSTONE: Sure.

Mr GEOFF PROVEST: —or particularly off-the-plan purchases. They don't know that until they get to a meeting and then bang.

LIZ LIVINGSTONE: What I was just talking about there was land lease communities, so that doesn't fit under that strata model.

Mr GEOFF PROVEST: Right, okay.

LIZ LIVINGSTONE: This is where, again, the complexity comes in in this sector. There are lots of really variable models for how embedded networks are supplied. In that strata case, you're absolutely right. There is potential for a developer to have as part of the development some contractual arrangement with another company to provide an embedded network or sign a long-term contract, even before a strata committee is formed, that then constrains what that strata committee can do in terms of pricing or having alternate retailers and so forth. So a separate issue—it's not covered in that land lease legislation. There are challenges in that space, I agree.

Mr GEOFF PROVEST: Would IPART have a view on how long the contracts should be? We've heard 15 years; we've heard from other people three years, and then that would give the consumer the ability to get out or to shop around after three years.

LIZ LIVINGSTONE: IPART hasn't formally considered this issue, and I can't speak for our independent tribunal, who have never made a decision or offered a view on that point. But as I understand it, the Strata Schemes Management Act was changed so that outside embedded networks, the limit was a three-year contract. But embedded networks were exempt from that provision. You would think that consistency would be a good thing. But I also understand that there's an argument that once you've invested in an embedded network—which may have benefits for the development; they can be beneficial for consumers—a three-year contract may not be long enough—

Mr GEOFF PROVEST: To recoup the costs.

LIZ LIVINGSTONE: —to recover the costs. So before offering a considered view, we would need to do more analysis and consultation and understand the issues at a deeper level. But I do think that some limit on the length of contract is appropriate to avoid locking in consumers for a very long time.

Mr GEOFF PROVEST: From what we've seen, the amount of these embedded contracts or exemptions has gone through the roof. This is probably putting you on the spot here, but do you think people are exploiting a loophole within the current rules and regulations?

LIZ LIVINGSTONE: Yes, again, we've had a limited role, so only in our annual reports on the energy monitoring market or our energy monitoring role have we made some commentary on this. I'm sure there are going to be other witnesses today who'll provide richer insight into some of these issues. But there has been rapid growth in the provision of embedded networks according to quite a number of the submissions that you've had to the inquiry. I think at the time regulatory frameworks were set up, that wasn't anticipated, nor the models that evolved over time. I think in any market people will look for loopholes and ways to maximise their profit while they maintain a viable business. That's a natural behaviour in a market, so it doesn't surprise me that those kinds of issues are emerging, at least in some cases.

Mr GEOFF PROVEST: You'd be aware that the Victorian Government's moved to ban embedded networks.

LIZ LIVINGSTONE: I am aware of that. I think, again, we haven't done the detailed work on this; we could if Government asked us to. But there is potential for these models to provide benefits for consumers. I don't know that necessarily banning them outright would be the most beneficial. I don't have a view, but I don't know. One risk of that is that you, in a rapidly changing electricity market, will stifle some innovative options that may actually help build some resilience and lower the cost of electricity services in some cases.

Mr EDMOND ATALLA: In your remarks, you indicated that the recent review that was done did not find embedded network prices are above the default market offer. Can you elaborate on that?

LIZ LIVINGSTONE: Yes, I can. When we do our annual market monitoring report, last year we decided to look at available prices for embedded networks—when I say "available," where they were published via the Energy Made Easy website, and we did approach some retailers and ask them to provide us with information about their offers. On the basis of a very limited sample, we didn't find that the particular retailers we had data for had offered prices above the default market offer. However, that is by no means comprehensive, and it doesn't reflect the full range of prices that may be offered. It's what we were able to find in publicly available data or from a small sample of retailers who voluntarily provided information to us. So that finding doesn't mean that there aren't prices above the default market offer, but we didn't identify them.

Mr EDMOND ATALLA: If there are prices that you find that are above the default market offer, are you in a position to regulate that?

LIZ LIVINGSTONE: No, we're not. IPART has no role in regulating prices for electricity anymore. That's now done at a national level.

Mr EDMOND ATALLA: Also in your submission, you noted that some embedded network consumers may be indirectly protected by the default market offer. Can you elaborate on that, please?

LIZ LIVINGSTONE: Yes, and again, this goes to the different models as to how these embedded networks operate. If the owner of the embedded network themselves onsells their electricity to customers, under the exempt selling guidelines that the AER has in place, they're not allowed to charge customers more than the default market offer. However, in some cases they may, as the owner, contract a retailer to do the onselling of services, and this is where there may be a regulatory gap. The embedded network customers in that scenario are not considered small customers and therefore aren't protected by the default market offer, and so there isn't that same constraint on the price that could be charged.

The CHAIR: Ms Livingstone, given IPART sets fair market prices or guidelines for governments to institute, how does IPART feel about the charging for hot water under the embedded network providers—which is a charge over and above what consumers are already paying for electricity, gas and water?

LIZ LIVINGSTONE: Thank you for that question. I'll just clarify: In the energy market, we have no role in setting prices anymore. But I'll take your point that as a pricing regulator we have lots of experience in working out a fair price, particularly for monopoly services like water in New South Wales—essential services that people do rely on. We've had submissions from stakeholders who've done some careful consideration of this—and I know that you'll be able to talk to some of them later—like PIAC and the Energy & Water Ombudsman NSW. Again, I think there is a regulatory gap here because, depending on how that hot or cold water is sold and the units it's measured in, the consumer protections may be limited. If that's the source of hot water that a consumer is relying on and they don't have choice around that then there ought to be similar, I would expect, consumer protections as there are for other essential services.

The CHAIR: We've had some information passed on to us that people have been charged almost $10,000 for hot water alone over a 14-month period. Would you consider that to be an excessive charge for hot water?

LIZ LIVINGSTONE: I don't have any details of a particular case. At face value that does sound an extraordinary amount if it was a residential customer, for example. But without the details, I wouldn't want to be definitive about whether that was appropriate.

The CHAIR: You noted in your submission, in regard to provisions introduced in 2018 to the Strata Schemes Management Act 2015 to protect strata schemes from being locked into unfair long-term utility supply contracts, that they didn't apply to embedded networks. The 2021 review of this Act has recommended that section 132A be extended to apply to contracts for electricity in embedded networks. Could you elaborate on that and on what effect that change may have?

LIZ LIVINGSTONE: Yes. Again, this isn't a review that we did ourselves. We're really making an observation about a review that the New South Wales Government has undertaken. At the time, when they did the original review, they identified a problem of strata schemes being locked into long-term contracts and decided that providing a limit on the length of that time was an appropriate thing to do. They excluded embedded networks at the time, as I understand it, because there was some national work being done on embedded networks that may have been anticipated to address this issue in a different way. That didn't occur in practice. So, as I understand it, the New South Wales Government, in November 2021, when it did complete its statutory review, recommended embedded networks be included, which would provide some protection—to the Deputy Chair's point earlier—more time constraints for embedded networks.

The CHAIR: Ausgrid, Endeavour Energy and Essential Energy all recommended that IPART licence and regulate certain types of large embedded networks like it does for the embedded water network industry. What is your view on that particular recommendation? They actually made that recommendation via submissions to this inquiry.

LIZ LIVINGSTONE: Yes, I did see that. Look, again, we haven't done the detailed work to understand the scope of what that might involve. Licensing can be appropriate where there are regulatory gaps—where you do want to ensure that providers are able to provide a safe and reliable service that meets certain standards and have the financial capacity, and so forth, so customers can have confidence that that provider will be able to provide them a service over the long term. Certainly, in the water sector, where there are providers of relatively small networks that are separate, say, from Sydney Water but might rely on parts of Sydney Water's network, there is a licensing framework in place. So there probably are parallels.

I think you would need to consider whether a whole new licensing regime is needed at a State level or whether you want to complement what exists at a national level, and whether consumers are going to be better off if the regulation is national versus State. I think that's another of the complexities in this space—that there have been reviews and initiatives at national level that have a got a little bit stuck and there might need to be decisions to decide what we do, in that case, at a State level, if we're not confident that things might progress elsewhere.

The CHAIR: Would you like to comment on the recommendation of the 2019 AEMC review to the regulatory framework of embedded networks, and what effect the recommendations, if implemented, might have on pricing and competition?

LIZ LIVINGSTONE: Could you repeat that question? Or could I test whether I understood the question? Were you asking what might the impacts be of the AEMC recommendations if implemented—

The CHAIR: In regard to its review—

LIZ LIVINGSTONE: —on pricing and competition? I haven't considered those in detail. I don't think I'm in a position to make informed comment on it.

The CHAIR: That's fine. Are there any other questions from the Committee?

Mr GEOFF PROVEST: I think you have answered our inquiries.

The CHAIR: Ms Livingstone, thanks so much for appearing before the Committee today. You will be provided with a copy of the transcript of today's proceedings for corrections. Any questions on notice taken today will be forwarded to you by the Committee. The Committee may wish to send you some additional questions in writing, the replies to which will form part of the evidence and will be made public. Would you be happy to provide a written reply to any further questions?

LIZ LIVINGSTONE: I would be happy to, yes.

The CHAIR: We greatly appreciate it so much. Thank you for being a witness here today.

(The witness withdrew.)

Mr DOUGLAS McCLOSKEY, Program Director – Energy and Water, Public Interest Advocacy Centre, affirmed and examined

Ms JEMIMA MOWBRAY, Policy and Advocacy Manager, Tenants Union of NSW, affirmed and examined

Ms ELOISE PARRAB, Residential Land Lease Communities Officer, Tenants Union of NSW, affirmed and examined

Ms JANINE YOUNG, Ombudsman, Energy and Water Ombudsman NSW (EWON), affirmed and examined

The CHAIR: I welcome our next panel of witnesses. Thank you so much for attending the Committee to give evidence today. Could you all confirm whether you have been issued with the Committee's terms of reference and information regarding the standing orders that relate to the examination of witnesses?

JANINE YOUNG: Yes, we have.

ELOISE PARRAB: Yes.

JEMIMA MOWBRAY: I have.

DOUGLAS McCLOSKEY: Yes, we have.

The CHAIR: Would any of you like to make some opening remarks?

JANINE YOUNG: Thank you, Chair. Thank you, everyone, for the invitation to talk to you today. Our 25-page submission includes 12 calls to action. They're all needed, but I have three priorities to chat with you today about. Firstly, centralised hot water. The New South Wales Government should regulate the sale of hot water in apartment buildings. Energy retailers should bill customers for the energy used to heat water, not litres of water used. They are not water retailers. Customers will then receive some energy consumer protections. This should also apply to chilled water for air conditioning. This will put all embedded network customers on an even footing from a consumer protection perspective—but that's not good enough. Embedded network customers also need regulation covering estimated meter reads, limits on back billing, affordability/financial hardship assistance, cost protections and access to free, independent dispute resolution.

Secondly, the AEMC reform. In 2019 the AEMC found that the embedded network framework was not fit for purpose. Three years have passed, and we have only now learnt that there are contradictions about the status of remedial work. We will seek clarification post today's hearing about that. Regardless, the New South Wales Government should lead this work and introduce appropriate legislative reforms that address the not-fit-for-purpose gaps identified by the AEMC. Thirdly, Energy Accounts Payment Assistance: The New South Wales Government should fast-track its work on providing access to Energy Accounts Payment Assistance (EAPA) for all embedded network customers. This work is in play, but please make it happen soon. In closing, banning future embedded networks, like Victoria, is not a total solution. Too many New South Wales citizens, from Ballina to Kellyville, the Tweed to Redfern, will continue to experience ongoing disadvantage because they live in embedded networks. I look forward to your questions.

The CHAIR: Mr McCloskey, I'm going to allow you to go second.

DOUGLAS McCLOSKEY: Thank you very much. I will just make a very short statement. Embedded networks are not designed to serve or support the interests of the people living in them. They are allowed in the hope that innovative operators will pass benefits on to residents, but they have become a mechanism for additional profit for developers and operators, leading to the rapid growth in their employment as you've referenced. Embedded network arrangements have created a wide range of inconsistencies in people's access to affordable energy and price protections; access to information about their energy; access to retail payment plans and hardship assistance; access to government rebates and supports, such as EAPA; access to independent dispute resolution; access to alternative energy options; and consistent access to government regulatory oversight.

Where energy is an essential service and increasingly central to health, wellbeing and social participation, this is not acceptable. Continuing to allow embedded networks to operate as they are now prioritises the interests of the business who set them up over the people who live in them. The New South Wales Government should not assume that the national energy regulations or reforms that have been noted will address the issues with embedded networks and should act now to ensure all New South Wales households have equal rights to access energy services that are safe, affordable and protected by regulation and government assistance measures.

The New South Wales Government should act to ensure there is comprehensive and accurate information regarding who in New South Wales is living in embedded network arrangements and what their circumstances are. They should act to halt the creation of new embedded networks, as Victoria has done, but this is not enough.

They should prioritise measures to ensure those currently living in embedded networks can equally and consistently be protected and supported in their access to energy, and PIAC encourages this review to recommend the Government take these actions and those outlined by the Ombudsman.

The CHAIR: Ms Mowbray?

JEMIMA MOWBRAY: I will also give an opening statement. First I would like to thank you very much for having Eloise and me here to provide evidence today. We welcome the Committee's consideration of the problems that are coming up for people who are consumers of embedded networks. I would also like to acknowledge our presence on Gadigal country in the Eora nation and pay respects to the Elders of this country. The Tenants' Union of NSW is the peak body that represents the interests of renters across New South Wales. That is one in three of us who rent our homes. We are also the resourcing body for the network of tenants' advice services and alongside them we provide direct advice to renters, including renters in strata complexes and residents of residential land lease communities. As you are probably aware from our submission, these two groups of renters are increasingly finding themselves locked into embedded networks for energy and for water as part of their renting agreements.

These renters face significant structural disadvantages compared to other energy consumers, often finding themselves locked into uncompetitive pricing arrangements and they often have much more limited access to information about their energy agreements or their energy billing and the energy that they're going to be provided and often they have fewer protections or it's harder to access protections for these renters. We speak in greater detail in our submission on a broader range of issues, but we wanted to highlight four key issues for consideration by the Committee today. That is the lack of disclosure about embedded networks for people who are renting and entering into their tenancy agreement or their site agreement but just don't know that they're going to be locked into an embedded network; and the very live issue of the charges or the pricing for energy for residents who are in residential land lease communities. It's quite a complex space. There has been a lot of consultation and discussion about this but we haven't really seen progress around some of that price charging for residents in land lease communities.

There are some very real infrastructure and supply issues for a lot of people who are living in residential land lease communities, and that is something that we'd like to highlight and we tried to give focus to in our submission—also, like Janine our colleague from EWON, the importance of making sure that renters or residents who are locked into embedded network contracts also have access to EAPA vouchers. They need assistance and they shouldn't be treated any differently just because of their tenure or where they reside. We talked a little bit about how we think these problems could be addressed within our submission and we really look forward to exploring some solutions today with you.

The CHAIR: Ms Parrab?

ELOISE PARRAB: Jemima's spoken for the Tenants' Union.

The CHAIR: I'm going to go against the grain as I promised my Committee I would not ask questions first, but I am just going to raise something. Please don't see this as a criticism in any way, shape or form. I was first alerted to problems in my area, a significant problem of an exorbitant charge for hot water by a group of residents within an apartment block in the suburb of Kellyville back at the beginning of this year. I then, fortunately—and I say fortunately—fell into the role of being Chair of this Committee and requested that we undertake to do an inquiry into this issue. Apart from the knowledge of land lease communities by I think three members of the Committee who have significant residents living in those types of communities, we are a very diverse range of people on this Committee from all political persuasions—and I mean all political persuasions. I've often stated that government is only as good as the information that it receives to take on board those issues and try to address them. I think every person on this Committee—and I will include myself in that up to the beginning of this year—had no idea about embedded networks and the inherit problems and risks that are now involved in embedded networks.

My question therefore is—and as I said before this is not a criticism because we want to go forward and find some resolutions—what has your role been in relation to government in bringing that to the attention of government and if that has been by way of Ministers, have representations been made to them because we certainly have not received that information? I guess there's an apology on our part because of our lack of understanding. We are learning more as we go through this process, but it is an issue on behalf of consumers and we all want to see consumers treated fairly and that's exactly what you people represent. I just throw that out to any or all of you if you'd like answer that.

JANINE YOUNG: I'm happy to respond from an EWON perspective. I first became aware of the issues that embedded network customers were facing when I actually worked for the Energy and Water Ombudsman

Victoria in 2008-09. We put some submissions to the Victorian Government back then at the same time EWON, my predecessor, was putting some submissions to the New South Wales Government about the exemptions framework and the fact that more and more consumers, people, families were finding themselves in residence in embedded networks and without the same protections and without the same choice.

When I started in my role in November 2014 as one of the interview questions I asked the chair, "What's happened with them? Are they in jurisdiction yet?" and the answer was no. At that point in time, jointly with the other energy and water ombudsmen from Queensland, Victoria and South Australia, we engaged with regulators—for us, the Australian Energy Regulator, the Australian Energy Market Commission—and it took us until 2018 to get the exemption guidelines changed and we changed our constitution at that point in time and went to the energy Minister because changes to constitution need to be signed off and let them know that we now could take complaints, and more to the point we could take complaints from customers who lived in residential parks previously but the network operator wasn't a member, so at least jurisdiction opened up.

But then further changes happened in 2015—I'm looking at my colleague Bryce, who'll let me know if I've got this wrong—when Jemena changed the structure of gas in embedded networks. That's when the issue of customers being charged by cents per litre rather than for the energy used to heat that water began. There isn't any price protection for those customers. My office put out a report in early 2021 bringing as many stakeholders to the table to actually talk about that. All the regulators, including IPART, AEMC, AER, some of our other colleagues too, came to the table to say, "What can we do?"—New South Wales Government representatives. We've been working on that and trying to get as much publicity since because there are issues there that need to be fixed. If we've missed you, I'm sorry. But it's not through want of trying.

DOUGLAS McCLOSKEY: I might add just something briefly. I haven't had as long as an involvement as Janine. But in the eight years that I've been working in energy advocacy, both for PIAC and for NCOSS prior to that, this has been an issue that has been raised by direct advocates and service providers. It's been well known. I myself participated in the review via the AEMC and the recent statutory review of land lease community charging. One thing that has been consistent throughout all of this is people recognise it's a problem. Everybody knows the problem is there. But the issue has been part of the gap between jurisdictional legislations and regulations and national ones, and the response that it's easier to assume that somebody else will fix the problem. As part of the AEMC process, there were a lot of issues that were identified. It's like, "Those are jurisdictional issues. We can't touch those." Then we often have, in another review at the State levels—"Where there's a national energy regulation, that's not our responsibility." I think this has been a case of—the sorts of circumstances that we're in now is perpetuated by that.

I think it's fantastic that attention is on this now. It is within the wherewithal of the New South Wales Government and its bodies to make some significant changes to this. We highlighted this to Liz previously at IPART. We've highlighted this to IPART for a number of years as part of their retail reporting. They are increasingly investigating this. We think that there is scope for them to have a much greater role in providing information around just how big the problem is and what outcomes people are getting. But I think we would raise the issue that it's very much not beyond the New South Wales Government's scope to solve these problems. I think it's past time for attention, such as what you're bringing to this issue, to actually have some results.

JEMIMA MOWBRAY: I think it's really interesting that you talked about this coming on your radar after hearing directly from people. I think the value of the Tenants' Union is we're a community legal centre and we're providing direct advice and we're part of this network of tenancy advice services. That's essentially how we identify problems. We have people come to us, and they say, "This isn't working." That's actually exactly what happened with the Residential (Land Lease) Communities Act. It was a new Act in 2013. Almost immediately we could see there were problems around the energy pricing and the charging framework, because residents were coming and saying, "We're looking at this. We don't feel like our energy prices are working. We're paying quite a lot. We don't think the protections are in place here. How do we do this?"

Essentially, the residential land lease communities team at the Tenants' Union has been working alongside residents for a really good three, four, five years since then to take through the tribunal and the dispute resolution processes these concerns that they're having around energy and the problems that they've identified. I think one of the things we really tried to highlight within the submission is the problems that come up in practice and for people when you have some of the lack of protections and the lack of clarity around the charging as for residents in residential land lease communities.

I think in relation to renters in strata, which is a very big group of people really and a growing group of people who are going to find themselves, potentially, in this sort of embedded network relationship, one of the clear problems—we raised this in the strata review—is that, in a lot of ways, renters don't have access to be helping make decisions. There has been this potential reform where strata committees can now—there'll be a time limit

on how long a contract can go for. In a way, the strata committee will be able to go in and make a decision and think through, "Is this competitive? Is this working for us? Are we getting the services that we need?" But renters are still locked out of that discussion, despite being consumers who are really impacted by it and having very little choice at the point of tenancy. They're not feeling like they can negotiate around that. Sometimes they're not even aware that they're signing into an embedded network. So I think that point—we've been trying to raise it within the renting spaces. But I think it's absolutely appropriate that we're looking at it at this broader level of how can we create a better framework that then feeds through down into the some of the tenancy legislation that we then interact with, to try to provide renters with ways in which they can get a better outcome for themselves.

I think I'd be remiss—we didn't do this within our submission. But in some ways, when we talk about embedded networks, we can also miss groups of people. I think PIAC might have raised this in their submission. But certainly we'd consider residents, for example, in boarding houses who don't formally sign on to an embedded network and aren't formally paying for their energy cost—that energy cost is really packed into the fee that they're paying for their accommodation. In a lot of ways, they're even more disadvantaged but not recognised as consumers of embedded networks. Really, that relationship is very similar to some of the relationship that we see with residents in residential land lease communities. That is residents in boarding houses, the registerable boarding houses that we know of and we think of traditionally but also things like group homes and some of the other kinds of accommodation like that. I might pass to Eloise, who is our residential land lease communities officer, because she can talk in a little bit more detail about parts.

ELOISE PARRAB: One of the ways that we've been trying to improve outcomes for land lease community residents who are in embedded networks is through the five-year statutory review of the Residential (Land Lease) Communities Act, which commenced around 2018, 2019. A lot of the work from the Tenants' Union and other stakeholders involved is trying to get some changes to how electricity is being charged for those home owners and residents. A lot of work was done between all the stakeholders. There was a lot of working on coming up with the best solution for how they should be charged. There was agreement with all the stakeholders of a method to be used to charge land lease community residents who are in embedded networks. It was flagged by the Government as an urgent issue and that we should have some reforms to the legislation. Unfortunately, there's been no further action on that. There is a way that we could push through some changes to that legislation now, which would improve some of the outcomes for those residents in terms of how much they're being charged for electricity and the types of bills they're receiving. There are some solutions that are possible in that way.

The CHAIR: That's a great overview. Thank you. I throw it over to perhaps the Deputy Chair, Mr Provest, to ask some questions.

Mr GEOFF PROVEST: First I would like to thank you for coming in. It has been very informative. Like the Chair, in my electorate of Tweed I have a high percentage of renters. I have a high percentage of caravans, residential land leases and so on. But I must admit I wasn't aware of this two or three months ago. I always get concerned when I see the number of exemptions that are being granted growing. Obviously there is a quid to be made and obviously somebody has to pay. It is usually those that probably least can afford it at the other end. We heard before from the strata people that embedded networks can be good in theory. But obviously there are enough loopholes within it and people will exploit it. I note—and this you have brought up already; you have answered one of my questions—that Victoria has banned it. Is that a good thing or is it not a good thing? I am still right in the middle there. But I also note, Douglas, that you advocate rolling back the other ones. So my first question to you is: How do you unscramble an egg?

DOUGLAS McCLOSKEY: I think it's a really good question, Deputy Chair. We're not denying that there are complexities involved. But it's not beyond us to solve those problems. I think sequentially is really important. I think the sale of the concept of embedded networks, that I'll create this space of exemption and innovation will bloom and people will be better off, I think it's a lovely hope. But it's absolutely unacceptable that the people who live in those arrangements take the risk that it won't be delivered and pay the penalty for when it isn't.

What we have seen, as you have mentioned, is a rapid increase in the number of arrangements that are being put in place and a likely continuant increase because, as you say, there is scope to make money. I think we do support stopping the problem from getting bigger and I think we do support Victoria's measure to ban prospective embedded networks that don't demonstrably prove that they will benefit consumers within that embedded network. They have selected a renewable energy target as part of that because the theory there is that it will lead to more sustainable and lower prices for the people who reside in it. But I think what we would suggest is that the problem won't get any easier to solve or smaller if we allow it to continue to grow. The first thing we should do is to stop the problem from getting bigger. I think there is a real discussion to be had around what the terms of any potential embedded network might be and I think the burden of proof should be on the proposer to

show how and to guarantee that the residents will actually see some benefit from it. But as you say there is then the question of the omelette that we have already created.

We do think that there are a number of reforms proposed in the AEMC framework that should be implemented. We don't think it goes far enough because it does still propose to leave many of the most vulnerable out of those proposed reforms and particularly at the smaller end around land lease communities around potentially nursing homes and other arrangements like boarding homes. We think that needs to be solved. We think, as our colleagues from EWON do, that the start should be to implement those reforms. It cannot be something that the New South Wales Government can wait for those reforms to progress. If it does not appear that other States such as Queensland have no desire to do these reforms then New South Wales should proceed with them on their own. We think that is possible. It may not be desirable for a government to take back some of that responsibility but between the organisations and frameworks that exist that is something that can be done and we would recommend it if no progress is possible nationally.

JANINE YOUNG: In the work that we did when scoping out expanding our jurisdiction we visited a number of different embedded networks. We came across one or two that were retirement villages run on a not-for-profit basis and with a focus on the embedded network. One half of it, one wing, was an embedded network and one wasn't. The residents had all voted to have the other wing converted into an embedded network because they saw that their neighbours in the one that was set up as an embedded network were saving money on energy. So it can work depending on who is managing it, who is running it and for what purpose they have set it up. What we have seen happen though is it has become a very commercial environment and in fact our work has identified that the majority of them now have authorised energy retailers that are actually the billing agents or the operators of the embedded network. Now I guess they are only doing that because it is a profitable business to be in and the consumers are not getting the lower prices particularly around if they are being charged by the litre. There is no pricing regulation whatsoever and I've not had any—I've asked questions but no-one has—

Mr GEOFF PROVEST: Do you think they have just done that to get around the legislation? To me it appears that they've just done that—to charge by the litre—because they get around the regulation.

JANINE YOUNG: Historically I know that customers were charged by the energy used to heat the water, not by the litre. There is a framework there that provides the structure for it, the billing structure. It is complex but it can happen. Of course, if it is gas customers get the consumer protections they are entitled to under gas. It's easier I think for entities not to follow the regulated path.

Mr GEOFF PROVEST: I think there are some pluses there. I refer to the point about it being national. I have been a member for a bit. I have gone through many other inquiries that were waiting for the Federal Government to nationalise it and to get the States to agree on anything. I think that was very apparent during COVID but that is a long way off. I am quite happy for this Government to go ahead with something because I think there is a definite need for it. I think the scary thing for me even today is when I hear that it is being expanded into wi-fi networks. I would imagine that anything we can sell on common property we will sell. I agree with you; the Tenants Union does a really good job. I refer lots of people to you all the time. I think it usually hits those that can least afford it and who don't know.

We heard from other witnesses today that there is a lack of disclosure. If I go to buy a premise and it's in an embedded network I don't really know until I get there. If I go to lease or rent a property there is no onus on anyone to tell me that it's an embedded network. If I did that I would go in and think, "I could go through EWON. I will search around for a retailer. I will get the best price here", but all of a sudden I have signed the lease. Do you think there is work to be done in disclosures both on rental agreements and sale agreements? And the whole thing about buying off the plan is that you don't know until you get right to the end of the first meeting and obviously there would be pressure from the retailer to sign up now. We heard stories even today that they have said, "We are going to turn the power off tomorrow if you don't sign this one today." That part of disclosure is probably the role of Fair Trading. I would be interested to see that disclosure issue.

JEMIMA MOWBRAY: I might speak to residential tenancy agreements and strata and then pass to Eloise to talk about residential land lease communities because there are slightly different situations or different Acts and different contexts when you go. Under the Residential Tenancies Act there is now a requirement at the point—exactly what you're talking about—of signing the tenancy agreement where within the lease there is information about you being an embedded network. That's really a bit too late. You are at the point of signing the lease.

Mr GEOFF PROVEST: Is that new or has it been there for a while?

JEMIMA MOWBRAY: No, that's quite new. It came through in the last round of reforms coming out of the statutory review. There was a recognition that actually there has been a complete failure around disclosure

around this and that we need to put it into the agreements. So Fair Trading and Government moved and have included that in the agreements. The importance of knowing when you are looking at a property and knowing what it means, because I think there is also this issue of informed consent which has come up a little bit around signing onto agreements or signing into an embedded network. It certainly looks different in different contexts.

But here essentially you sign the tenancy agreement; it is in the standard form agreement rather than the information statement and you don't get a whole lot of information about what it means when you see on your lease that you are in an embedded network. I don't know that a lot of consumers or renters when they are going to sign a housing agreement, a tenancy agreement, are thinking through, "What does this look like in terms of my utilities? I wonder what the energy rates are here? I wonder what my protections are? I might get a saving on my energy bill but will I have access to these kinds of things?" So all of those questions aren't answered and they're certainly not laid out for you. And then there's the pressure at the point of signing a tenancy whether or not you have the power to then be talking about what the utilities—

Mr GEOFF PROVEST: I suppose with the tight market you want to get your signature on that as soon you can.

JEMIMA MOWBRAY: Exactly that. Putting a disclosure in won't solve the problem of that tight market and the lack of power but what it does do is give the renter or consumer a little bit more information going into the process to work out, "Is this the best choice for me?" They might be locked in to having to get it anyway but they have actually the information in front of them. I think that's a really important part of this and we've got recommendations around that.

ELOISE PARRAB: Yes. With residential land lease communities there is nothing in the legislation that requires it to be disclosed to them. So often we hear from home owners that it's only at the point that they have purchased the home and moved in, they've called up their chosen service provider and that's when they find out they're in an embedded network. There is also a number of communities where half the community, which is newer, are not on an embedded network so it wouldn't be clear to somebody if they are moving into a park because there is inconsistency. Operators when they're selling, if someone is going to buy a home and move into a community, they are required to provide a disclosure statement to a new purchaser. It could be in that disclosure statement that information is added where it tells them that they are in an embedded network. It could also include—

Mr GEOFF PROVEST: But currently they don't have to do that, do they?

ELOISE PARRAB: No, currently there is nothing. So they don't find out until they've moved in.

Mr GEOFF PROVEST: So you don't find out until you move in and try to do something and then you get whacked?

ELOISE PARRAB: Yes. Then you're in a situation where the operator of the community you are living in is now also your provider for electricity which has a number of complexities with the power imbalance.

Mr GEOFF PROVEST: Just to interrupt, we had a witness this morning who made a decision to purchase and go into a place that had all these statements about green energy and solar panels on the roof. It wasn't until they got in that they found that their energy prices didn't change, and it was really an out-of-date thing on the roof and it didn't do anything anyway. But they were already in there.

ELOISE PARRAB: Yes.

DOUGLAS McCLOSKEY: The issue, we would say, is that disclosure is an absolute no-lose. Regardless of whatever else that we may do, we must improve the disclosure, not just using the words "embedded networks". But because of the variety of ways that that can impact someone, you actually need to tell people in terms of the outcome—to say, "This is an embedded network and there is a 10-year contract on this" or that you will not be able to change retailers.

Mr GEOFF PROVEST: That's going to be a problem, isn't it?

DOUGLAS McCLOSKEY: Those are the things that you need to put out there so that people understand on an outcome basis rather than on a concept basis.

The CHAIR: Mr McCloskey, could I just push you on that? Who is best placed to provide that information?

DOUGLAS McCLOSKEY: The disclosure to a tenant?

The CHAIR: Yes, whether it's to a tenant or whether it's to a prospective purchaser of the apartment.

DOUGLAS McCLOSKEY: Things on tenancy and real estate and transfer law are not my speciality, but I do know that you have to disclose other things. I think one thing—and please correct me if I'm wrong—is that you may have to disclose whether something is strata or company title. If you're in a sale, there are certain things that are required to be disclosed. I don't believe that that is particularly complex to insert into the various forms of law consistency so that, at an appropriate point at advertising a sale or lease, there is information that explains what the arrangements are for that property.

JANINE YOUNG: Chair, I'd suggest it should be spread across a number of entities. If you're inspecting an apartment, there should be signs on the door. There should be signs on it about, "This is in an embedded network. This is what an embedded network is. These are the implications." It should be the real estate agent. It should be so that consumers can get that information. You can't rely just on—

Mr GEOFF PROVEST: So that's like when I'm going to buy a unit—"Often this is the price but, by the way, the strata corporate fees are X, Y, Z every quarter" or something like that. My concern is, as we said, three months ago we had never heard of it before.

JANINE YOUNG: Customers come to us and they say, "I've rung X retailer to move and they say they can't take me" or "Y retailers say, 'No, you can't go.'" In theory, you can move; you can change retailers. But that would require you to change a meter in most cases. It would require you to find an energy retailer that will offer you a retail-only and not a network. All of us pay both for the energy we use plus the service-to-property charge, so to speak. You can't do it; it's just nigh impossible to do it.

Mr GEOFF PROVEST: If I could, Mr Chair, just one quickie.

The CHAIR: Happy to indulge you further, Mr Provest.

Mr GEOFF PROVEST: We were told today that the embedded network, the operator, obviously recoups the cost of putting the infrastructure in place first. It saves the developer, et cetera. That's in basic terms. We were told that if we reduce it down to three, four or five years, there wouldn't be any financial incentive for the operator to wear the cost of putting that infrastructure in.

DOUGLAS McCLOSKEY: The comment that I would make about that—and we do a lot of work with—

Mr GEOFF PROVEST: I am saying we might be able to do it by default by saying you have five years on it and then you have to go back to the body corporate to work out the future.

DOUGLAS McCLOSKEY: We would certainly—that's not the way that we would prefer to solve those issues, because we think if you still retain ways for people to take advantage of the arrangement that they will find a further loophole to exploit. I think that it is simpler not to allow people to lock in those sorts of arrangements. I would say that my experience of dealing with energy network businesses is they have a lot of trouble with developers creating these circumstances. What we are finding is that because there is a lot of responsibility to make certain connections and to meet certain standards, they are afraid that developers will start creating embedded networks en masse for a lot of developments, because it is a way to save from them the responsibilities and fees that they are already being charged.

I'm not sure that a shorter period helps get around those things. I think what it does is potentially create a different issue. But we would say that the process needs to consider what are the outcomes that are most important for us and what are the ways that we can address it. What we tend to believe and advocate for in principle is that people should have an equal expectation for their energy services and the protections and the choice that they can exercise. We currently rely on market competition for people to be able to theoretically get a fair price for energy, and people in embedded networks do not have that consistent access. We should start from that point.

The CHAIR: We heard interesting evidence from some witnesses earlier today about the structure that is put in place when a block of units or apartments may have been sold. At the first body corporate AGM, the contract is then entered into. As a matter of fact, it is a requirement of all owners that are on the body corporate, and on behalf of all those owners, that that contract for the embedded network or the provider of the energy is actually signed at that time. I took the view from that that when we talk about the full disclosure—if we looked today at realestate.com, you could go through there and see the price of a unit, the strata, the council and whatever on-costs were there, whether that was for the lease of an apartment or the purchase of an apartment. But there are no on-costs in relation to, say, if I peaked out in hot water, which is now given to be a significant cost within an embedded network.

The interesting thing is that if the contract hasn't been entered into then there is no on-cost at that particular point of sale or lease. Maybe this is a question for the Ombudsman. Going forward, once that contract has been entered into and the owners want to onsell, if that is not disclosed then, is there a legal issue in regard to

the sale of that property not disclosing current contracts pertaining to the ownership of that property? That was just another area that we had not discussed yet as a Committee. It just came up this morning.

JANINE YOUNG: It think that would come under strata law rather than my jurisdiction. It would be very challenging. My understanding is at that 12-month mark, that first AGM, that the owners corporation—which is a volunteer of people that have moved into that property with goodness knows with what range of experience and knowledge about all these things—is really ratifying all the contracts that were established by the developer in settling the building. I'm sure my colleagues will say if that's incorrect. I don't know what the capabilities of the owners corporation would be at that time to have considered tenders from perhaps three other energy retailers about taking over and comparing the rates. I think you're putting a lot on an owners corporation.

The CHAIR: I tend to agree with you 100 per cent, and it is also the case in many large apartment blocks that 51 per cent can potentially be owned by a particular group. That may therefore be reflected in the vote for how that choice of embedded network goes forward.

JEMIMA MOWBRAY: I was just going to say in relation to the responsibility for disclosure, I think that there are some clear points at which responsibility can be given to different actors in terms of disclosure prior to entering into an agreement, just as with sale there should be an obligation. You can very easily do this within the Residential Tenancies Act, for example, making sure that it's not just part of the agreement but part of the information statement. You can give guidance on what kinds of information need to be provided, not just that you will be signing into an embedded network but, as Douglas was saying, what will the outcomes of that be? What does it mean to do that? You can put that responsibility on a landlord within the Act. What that then does is put an obligation on the embedded network and the provider to be able to provide that information that will be legally required by anybody who's about to onsell or anybody who is about to enter into an agreement to be able to share.

Equally, in terms of the listing, that obligation can be put on a landlord but probably in most arrangements also on the real estate agent. We have the Property and Stock Agents Act that governs the relationship with the real estate agent and their responsibilities and obligations. I think that there would be room within there to put a responsibility, in terms of the material facts that you disclose, both at point of sale—say it's for a property—or for leasing. I think those are two really appropriate places where you can add in responsibility on the part to disclose, which will then have a flow-on effect. Because anybody who is locking into a contract will have to have an interest in having that information, and I think any embedded network will be required to provide that information. I think that kind of outcome information is really important to be providing at that point of listing.

Just to go back one step, I should have mentioned, too, that there isn't an obligation at the moment, even in tenancy agreements, to disclose around hot water embedded networks, as I understand it. I think that that is something that needs to be disclosed, and that if it was to come under the Residential Tenancy Act and be—so EWON has recommended, and we recommend, that you charge it as an energy bill. There actually are some good protections within the Residential Tenancy Act that would start to regulate how you're being charged as a renter. I think that's some of what has been missed, is that embedded networks have sort of spread—is how those implications haven't fed through into our State legislation; how we haven't thought through what it really looks like. Because maybe we weren't aware of what it would look like in practice for consumers, and sort of the reach that it would have across a lot of our different agreements, or legal arrangements that we make.

The CHAIR: My colleague, the member for Mount Druitt, has been incredibly patient. Mr Atalla, would you like to ask some questions? Sorry for ignoring you for so long.

Mr EDMOND ATALLA: No, it has been interesting listening. This question can be to all of you. If we follow the Victorian model and ban embedded networks, what problems do any of you foresee if this happens in New South Wales?

JANINE YOUNG: As I mentioned earlier, if that's all you did, then we've got all of the existing embedded networks, where we've got ongoing problems. So that's only part of the solution, I guess. If we take away the—

Mr EDMOND ATALLA: Yes, I understand that there's no solution for the existing ones. But if embedded networks were banned for any future agreements or tenancies, what problems do you see for those?

JANINE YOUNG: As I mentioned earlier, we have seen some where they are run as not for profit and therefore the residents in there actually get the benefit of low—you know, no-profit energy costs. You could have some small entities—some of those not-for-profit entities—missing out on what they're getting. That might expand in future. But that's probably the only thing I can see.

DOUGLAS McCLOSKEY: I would probably say, to echo the Ombudsman's answer, that, short of some scope to provide demonstrated benefits to residents, I don't think there would really be any cost from our

perspective. We think that the arrangement was created on a false premise—that it's acceptable for a business operator, or the creator of a network, to say, "Well, I'm not providing energy as a primary business. Therefore, we can put in place an arrangement that allows me to do this and we will provide a benefit to you." I think what that sets up is a differentiation between, as we have seen, people who live outside them and people who live in them. Which, on principle, we should agree that that's not acceptable. I think what a ban does is put the Government in a position to say, "Well, if we've said it's not acceptable going forward," as Janine said, "what do we do about the people that currently exist?" That is the main issue that a ban creates.

Where we recommend that a ban is put in place, but that we do allow scope for the intent of exemptions to be delivered—and we think that there are some pretty clear guidelines and criteria that could allow for the types of arrangements that the Ombudsman has mentioned—we think that that is appropriate, because we would like scope to be able to put in place positive energy arrangements, or other arrangements that could benefit the residents or potentially reduce the climate impacts of buildings, et cetera. But it should be up to the proposer to demonstrate and guarantee that those benefits will be delivered and to be responsible for the costs if they do not.

Mr EDMOND ATALLA: The issues faced by embedded network customers in residential land lease communities—what could the New South Wales Government do to address this issue?

ELOISE PARRAB: I guess the first things that could be done, that could provide a quicker resolution, is to push forward with the reforms to the Residential (Land Lease) Communities Act. There's already been agreement between stakeholders on how electricity should be charged within embedded networks—how bills need to be issued and what particular information needs to be provided in them. So there's already agreement on those changes that are needed. If the New South Wales Government could push those through, then we would have improved outcomes for land lease community residents in embedded networks.

DOUGLAS McCLOSKEY: Just to echo my colleague from the Tenants' Union, that process was extensive. It involved a lot of really good consultation—not least including ourselves and operators. The position that was reached was the result of principle and compromise, and there was a perception amongst the stakeholders that participated in that process that it was a good agreement that everybody could live with. It's not perfect, but it does provide the transparency, the consistency and the protections and greater access to protections—and also provides some scope for future improvements. And, as Eloise mentioned, we feel that a pretty no-regrets move would be to implement those changes now, on the basis that they have been the result of extensive consultation.

Mr GEOFF PROVEST: We have heard evidence today that a number of these hot water charges have been taken to NCAT, and they have been successful in NCAT. Our Chair was referring to a particular one. My concern is NCAT's going to get run over shortly, when the word gets out that you can take it to NCAT. Do you want to say about your particular case, you know of?

The CHAIR: You're throwing me under the bus, Mr Deputy Chair. We are aware of one case where a resident has taken their issue to NCAT and have received a very favourable outcome, whereby NCAT have ruled that the charge for hot water is not applicable and that that particular resident does not have to pay for that charge. And so, from our perspective—and certainly from a member of Parliament's perspective, representing their communities—any person who comes with a substantial bill for hot water in the future will be directed to NCAT. And whilst I don't think they should have necessarily need to do that, it certainly is a cheaper alternative, however timely, for them to go through that process. At least there has been somewhat of a precedent that has already been set in that regard.

If I could play devil's advocate, just for a moment, governments are always loath to introduce retrospective legislation. If we look at where embedded networks are now, in just a few years many companies have been formed. I would suggest many hundreds, if not thousands, of employees are currently employed. The flow-on effects to those businesses and companies would certainly face an impact if retrospective legislation was put in place. I take on board the submission by PIAC in regard to unwinding. But aren't there practical limitations in regard to going forward and trying to introduce something retrospective?

DOUGLAS McCLOSKEY: I can probably quickly say that there are certainly challenges to deal with, as there are with any legislation, whether prospective or retrospective. But we would say that we start from the principle that it is the interests of consumers and residents that should take primacy in this; that it is not acceptable for some residents' rights and the outcomes in accessing essential energy to be subordinated to the business prospects of particular operators. I would submit that I don't think the employment impacts are that significant. A lot of the exempt entities who are selling energy are doing so as part of other businesses that won't be made invalid by not selling energy. And in the case of some of the larger retailing entities, they are some of the bigger entities and probably could—some of them bigger than market retailers—again, not necessary that they would be defunct because of the inability to operate this particular arrangement.

I think, as the process of the AEMC's reforms was outlined, that there is obviously the need to stage the way that you unwind the kinds of arrangements that we have and, without going into detail, the first would be disclosure. The second would be more information about just how many of these arrangements we have and how many people are living in them and what outcomes they are getting, because we don't know. A lot of what we're talking about is anecdotal. The next stage would be to stop the process from being increased and the final stage would be to introduce a staged unwinding of the current arrangements, starting with the ones that are simpler and newer and moving down to the ones that are smaller. I think that we would recommend for a lot of those smaller arrangements, particularly around residential parks and boarding houses, there may need to be a government program to support the unwinding of those situations so they don't end up in people being homeless or having those costs passed through to them. But we think that the scope of people who would have to be supported by that is relatively small compared to the impact on those people.

The CHAIR: Taking onboard the recommendations of EWON going forward, if in its most simple form full disclosure was regulated to be essential and vital—and I don't think anybody disagrees with that. Anyone who is expected to pay a cost should understand exactly what that cost is going forward. If those costs were displayed at the time of either purchase or leasing on behalf of consumers, would the free market, do you think, ultimately affect how those tenancies and future sales went forward? Ultimately if you see a sign for $1.90 in fuel and the guy next door has one at $1.65, I can only imagine how the majority of people would react to that, and that's the sort of full disclosure we are looking at. Do you think in its simplest form that would aid the current situation?

DOUGLAS McCLOSKEY: No.

JANINE YOUNG: I don't think that would either. You can see how many petrol stations there are around. There is a shortage of affordable housing. It could be that I don't understand what an embedded network is or I do, but I can afford that house and I can't afford another one. We're talking about products that are very, you know, much—

The CHAIR: What you're saying is a blunter approach is required.

JANINE YOUNG: Disclosure is just about education so consumers can be positioned to make choice if they have a lot of choice. It was mentioned earlier that the amount of products that are actually being sold through embedded networks has expanded and it will expand more. I understand that most apartment buildings that are currently under the building or development stage now that their car parks are being fitted out so that the purchaser can also pay an extra $3,000 to $5,000 for the smart charger that would automatically be installed in the car park for their EV. This could mean that you have a different energy contract for your EV than you do for your electricity in your apartment. It could mean that it's combined. But we see customers that are being threatened from disconnection because they haven't paid for one element of the services they're getting because they don't think they're getting quality or they don't want it, and they're at risk of losing access to electricity, an essential service. I think disclosure is not going to solve things like that.

JEMIMA MOWBRAY: I was going to say, when we were talking about the question of unwinding, in a lot of ways that's talking about looking at where the exemptions currently apply. What is it that you are losing out on because you are in an embedded network? For example, would that help with infrastructure problems? We know that infrastructure problems are a key problem for residents in residential land lease communities. It's not just that they are paying too much; they are paying too much for something that really doesn't deliver the basics. Some people can't put on a toaster while their fridge is running. Some people can't put on a kettle.

At the moment, because these are exempt sellers, they don't come under and have certain requirements around upgrading that infrastructure. Yes, that might have implications for the bottom line of the operator, and I think there is a role for government to be looking at how we ensure this is sustainable, that we're not threatening the accommodation of people who want to be there but ensure that the operators can upgrade. I think that question of unwinding is about saying, "What are the appropriate basic protections or requirements that we would have of an operator because consumers need X?" Unwinding isn't necessarily about dismantling. It's about ensuring that some of the same expectations that we have, because this is an essential service—

Mr GEOFF PROVEST: And the other protections other users have got, they should have.

JEMIMA MOWBRAY: Yes—are there. It's about working out how do we make sure these apply. I don't think disclosure does the work of ensuring the application of some of those really key protections that are required.

The CHAIR: Would you say at this point in time that people within some embedded networks are not being treated as fairly as other members of our community and other consumers by virtue of the fact that they don't have choice in the services that they require, basic services like electricity, energy, gas, water and hot water?

JANINE YOUNG: I don't live in an embedded network. I get better consumer protections than my colleague if Eloise lived in an embedded network. It could be that you need them; I might not need them—but missing out.

ELOISE PARRAB: As I was saying before, there are some communities where half the community is kind of new homes and so they've got a different system and then the older part of the community are in embedded networks. Even though they live in the same community, it's a completely different daily life they experience because of the fact that if they're heating or cooling in the embedded network, you are going to have to turn off another appliance so that your power doesn't switch off. You pay more for the power than someone who's able to choose which service provider they have. So in those types of communities you can see first-hand on a daily basis that people are treated differently.

The CHAIR: So, therefore, regardless of whether there are good outcomes in some, bad in others, it needs a thorough regulation right across the board to ensure fairness for everybody.

DOUGLAS McCLOSKEY: To consistency, and I think to Jemima's point, the choice is a secondary problem because the providers aren't held to the same standard. Now, as we say, unwinding the situation may be just saying, "We're holding all providers of energy to the same standard and making sure that they have to provide safe, quality energy because it is such an essential, that they have to provide payment clarity and transparency, and they have to abide by similar arrangements for price controls as all other retailers do, and they have to provide access to payment protections and dispute resolution that people expect." Now, if they then want to have an arrangement that may lock someone into a contract—we think those sorts of things are important but they are also secondary—that may be then solved by disclosure. But the key thing is to ensure that the outcomes for people are protected. The recourse and the issue around choice is a problem because they are locked into, or given, outcomes which are not acceptable. The primary problem is the acceptable outcome. The secondary problem is that they can't do anything about it to choose something else.

The CHAIR: Given we've heard evidence from witnesses already that primarily the issue commenced whereby development or developers of a particular apartment block, residential retirement village, et cetera, was approached or approached an embedded network provider to install the necessary infrastructure, which might include meters, et cetera, hot water systems, and that that cost from the embedded network to the developer would be for nothing, or a negligible price, but ultimately the trade-off would be for the embedded network provider to, therefore, install contracts which were almost eternal contracts that consumers couldn't get out of, is there a role, therefore, for planning to play in regard to new developments whereby developers need to disclose embedded networks if they're embracing them to provide energy into their apartments?

DOUGLAS McCLOSKEY: We understand that one of the primary benefits for embedded networks—and I'm not sure if you've had any presentations from the distribution network businesses—is avoidance of a range of network distribution costs because that is handled internally. It's not something I would have assumed you would be retrofitting a development for, but that would be done at the outset to do with the metering at the front point of the development, and it is why a lot of those distribution businesses actually have an issue where the profile of usage in those developments is a residential profile so they should be paying residential-related costs, but the charges to those people are actually wholesale business-based arrangements, and the difference is the arbitrage that those developers or operators are claiming.

The issue then is that the distribution networks are going to start trying to recoup that amount of money, which may or may not have a flow-through effect. The problem is, in the current arrangement, if they do try to recoup that money, all of that extra charge will be passed through to the consumers, rather than being absorbed by the person who was responsible for it, which is the operator. I think you're right to say that there are roles for other legislative and regulatory arrangements. We've already noted that there are a range of tools operated by Fair Trading that probably should be addressed. I think there is a role to examine the range of different legal instruments and regulatory regimes which need to be looked at in order to implement the changes that we're suggesting or address the issues that we're noting. One of them will be various planning regimes. We would suggest it's simpler, as we have discussed, to remove the ability to do it unless there are specific benefits which can be demonstrate and guaranteed.

The CHAIR: Committee, I'm in your hands. There being no further questions, can I thank you all for appearing before the Committee today. You will be provided with a copy of the transcript of these proceedings. Any corrections, questions on notice taken today will be forwarded to you by the Committee staff. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and will be made public. Would you be happy to provide written replies to any further questions?

DOUGLAS McCLOSKEY: Yes.

ELOISE PARRAB: Yes.

JANINE YOUNG: Yes.

The CHAIR: Thank you very much. Thank you for your attendance here today and your valuable contribution.

(The witnesses withdrew.)

(Luncheon adjournment)

Mr STEPHEN ANGEL, Network Development Manager, Jemena Gas Networks (NSW), affirmed and examined

The CHAIR: Mr Angel, have you been issued with the Committee's terms of reference and information about the standing orders that relate to the examination of witnesses?

STEPHEN ANGEL: I have.

The CHAIR: Thank you. Before we proceed, do you have any questions regarding the hearing process?

STEPHEN ANGEL: No.

The CHAIR: Would you like to make a short, two-minute opening statement before we begin with some questions?

STEPHEN ANGEL: Yes, certainly. A little bit about Jemena. Jemena owns the gas distribution network in New South Wales or the largest gas distribution network in New South Wales. It supplies roughly 1.5 million customers, that is, residential through to business and industrial customers. The network services that we provide are regulated by the Australian Energy Regulator. We are a regulated asset. Our primary role is the transportation of gas through our network and the reading of gas meters and then the billing of retailers as part of that process. Our responsibility stops at the outlet of the meter. So we generally don't get involved in anything after the meter. I myself lead the network development team. We manage the large connections to new estates and the large, complex high-rise or commercial-type connections.

The CHAIR: Thank you very much. Committee, I'm in your hands. Are there any questions?

Mr ADAM CROUCH: Thank you, Mr Angel. You said that Jemena's role finishes at the meter. If that is the case, can you explain what Jemena's role would be in relation to the embedded gas networks we have in New South Wales?

STEPHEN ANGEL: How we connect customers—Jemena receives an application from someone who wants to connect a dwelling. If we limit it to, typically, the high-rise market, which is where we see most of the embedded from a gas perspective—we receive a connection request. That connection request will indicate the type of metering configuration a customer wants, which will either be volume boundary, where it's an embedded network, or volume individual, where we'll actually put an individual meter in for each apartment. The application will come to us. They'll request what type of metering configuration they want. For volume boundary, I suppose, what we would do is install the meter, a large meter, that's enough gas for the whole block. That's where we stop. We don't get involved with—we don't necessarily have a relationship with the actual embedders who are actually providing that service on behalf of the builder, whoever they're working for. It's purely stopping at that network meter, which is the on-market meter, which is registered in the AEMO systems. It's the meter that's at that point.

Mr ADAM CROUCH: Obviously, there'd be a cost of that infrastructure, for that meter to be put in. How is that passed on? Is that passed on to the developer? Is it passed on to the embedded network provider? Obviously, sometimes we are seeing that the embedded network provider is a different party to the developer. Where do the costs for all the infrastructure come from?

STEPHEN ANGEL: Natural gas is not an essential service. It's a fuel of choice. How we work is that we look at the capital cost of doing that work. This is for any connection. Then we offset that against the revenue we're going to receive for gas consumption over a number of years. If that's positive and we get a return, a regulated return over that period, then we actually don't charge a customer contribution for that work. If it doesn't justify and there is a contribution, how it works is, whoever the applicant is—for embedded networks, it's generally a retailer. The retailer puts a request in for connection. We'll make an offer back to that retailer. We perform that work after the offer is accepted. Then, once we're finished, we charge the retailer if there is a customer contribution. A lot of times for these embedded networks, because they're generally or at least large, medium density high-rise sites, because they're in brownfield areas, we've generally got infrastructure in the area. So it's very rare that there is a customer contribution. But sometimes there is.

Mr EDMOND ATALLA: I just want to get an understanding as I have not got my head around it. Say there is a block of apartments, a high-rise block of apartments. Is there one meter for the entire block, or are there individual meters for each of the units in that block? How does it work?

STEPHEN ANGEL: For a volume boundary site, one meter for the whole block. So Jemena will install a network meter. That's an on-market meter. Embedders may look at a different metering solution after that meter. There are different models out there. Typically what an embedder will do is put in a hot-water meter if it's a hot-water-metered site. They'll put a hot-water meter on each unit. They may then charge the customers, an

individual, cents per day for gas cooking if there's cooking involved. Then they'll charge the hot-water component based on the litreage, how much hot water that customer's used. But there's only one network meter. We will bill the retailer for the gas that flows through that meter. We don't get involved after that point.

Mr EDMOND ATALLA: Your charge to the embedded network provider is just one charge? You don't involve yourself in the individual rates charged by that network provider to the other units. Is that what I'm understanding?

STEPHEN ANGEL: That's close. We don't charge the embedder. We charge the energy retailer. We will charge an energy retailer. The embedder will be the energy retailer's customer. We charge the retailer our tariff. Again, given Jemena's a regulated network, all our tariffs are regulated by the AER. There's an appropriate tariff, depending on the site.

The CHAIR: On that particular point, just in regard to the tariff which, I believe, Jemena introduced in 2015, that's seen significant growth in the embedded network market, including the bulk-billing of hot water in New South Wales and the introduction and the practice of using meters to measure of the volume of cold water used in bulk hot-water systems. As a result, customers are now being billed for hot water on a cents-per-litre basis rather than for the energy used to heat the hot water. Could you explain the boundary meter tariff and why the tariff was introduced?

STEPHEN ANGEL: Historically, we supplied all the internal metering. We still do if we're asked to. For a site with centralised hot water, we would supply a cold-water meter for the hot-water plant, a gas meter for the hot-water plant and then individual hot-water meters for each unit. What we would then do is we would read all those meters. So we would read the amount of water that is being consumed through the master hot water system, we would measure how much gas has been consumed and work out a percentage or a ratio of how much energy is being used and that would then be pro-rataed based on hot water consumption by each unit and billed as a megajoule cost.

The CHAIR: In regard to evidence that the Committee has received in relation to the billing for hot and chilled water in the matter described limits customers' access to consumer protections and leaves them vulnerable to exploitation. The Committee has also been told that customers have been billed excessively or inconsistently for gas and hot and chilled water. What do you think the New South Wales Government could do to address these matters?

STEPHEN ANGEL: I suppose from a Jemena perspective there isn't much in the way of regulation around how those customers are billed from that perspective. So certainly it could be tightened up or that could be actually changed. All I can go back and say—from a network perspective—is that when we bill, we bill on a megajoule amount and not on a set amount per litre. Each site is looked at its own efficiency of the systems and how that operates and that's how we would actually work it. The difficulty with a cents per litre site is that every site is going to be a little bit different. So each system has its own efficiencies or inefficiencies depending on how it is designed and how it is sized. There are a whole lot of factors that could actually go into the amount of energy that is consumed to heat hot water in a building.

The CHAIR: If I just explore that a little bit further. Ultimately we have significant consumer issues with the prices that are now being charged, as I previously said. We have heard evidence from people that some have been charged up to nearly $10,000 for 12 months use of hot water alone. That's a charge that's over and above the electricity, gas and water that they pay. That is just primarily for hot water. We have heard other issues of people paying between $200 and $300 a month for their hot water. These problems basically were what prompted this Committee to investigate these matters. As we look at the information from EWON in regard to the increase in the amount of embedded networks we find that it corresponds perfectly to the moment in time when Jemena delivered to the boundary and stopped delivering directly to the consumer.

STEPHEN ANGEL: Well, in 2015 we gave applicants the right to request one meter for the whole block or individual metering.

The CHAIR: Can I just question on the applicant? Is that the applicant being the developer?

STEPHEN ANGEL: Yes, it can be the developer, it can be the consultant, it can be the builder. That's who we take the connection request from for these medium density or high-rise sites. We changed that. We introduced that tariff because we were actually asked to. For a number of years we were asked to allow volume boundary metering to come in. That's why we put in switches.

The CHAIR: Can I ask who you were asked by to do that?

STEPHEN ANGEL: The initial people that were asking was actually Origin Energy and that went back to probably 2010. It's something that was happening in other jurisdictions and happening in other parts of Australia. We were the odd ones out where we were saying, "No, there's always a network meter installed".

The CHAIR: It's an interesting comment, given that Origin Energy now owns WINconnect and WINconnect has given us many of the problems that we are currently seeing before the Committee.

STEPHEN ANGEL: I can't comment on that.

Mr ADAM CROUCH: Can I just ask a follow-up question?

The CHAIR: Please, Adam.

Mr ADAM CROUCH: Mr Angel, the question I want to clarify is my understanding from the evidence you have just given is that if you are putting a meter into a brownfield site there is no charge to the recipient. Basically you put the infrastructure in based on the volume and the income that is going to be generated from that particular development. Is that a fair assumption?

STEPHEN ANGEL: That's right. We will economically model each application and if they justify there is zero charge. If there isn't then we will charge a difference.

Mr ADAM CROUCH: So zero charge for the infrastructure going into the site. That then goes to a retailer. Can the retailer ever be the embedded network or is the embedded network always a third party in addition to the retailer? What I am asking is: Can the retailer be the embedded network? Because effectively what we are saying is you provide the infrastructure at no cost, the retailer could then provide an agreement with an embedded network and you have no idea what those charges are that are being embedded in the usage of that gas. Is that fair?

STEPHEN ANGEL: Well, we don't need to know because we bill the retailer based on our regulated tariffs for the gas that goes through our meter. What happens after that, the third party agreement has nothing to do with us so we wouldn't know.

Mr ADAM CROUCH: That is what I'm saying. So you are regulated but they are not, effectively. So what we're saying is the cost to get the gas to the building is set. What happens after effectively you have no control over once that agreement is set up with either the retailer and/or a third party embedded network. That's correct?

STEPHEN ANGEL: That's correct.

Mr EDMOND ATALLA: No further questions.

Mr GEOFF PROVEST: Mr Angel, could you comment on the recommendations in the AEMC 2019 review of embedded networks relating to embedded gas networks? Do you support those recommendations? And finally, what actions could New South Wales take to support those recommendations?

STEPHEN ANGEL: I haven't read all the recommendations in the AEMC report, in the commission's report. There are certainly some changes that can be made around how the bills are issued as far as cents per litre, as opposed to per energy. I think it's important to point out though that embedded networks aren't just limited to energy and aren't just limited to gas. We are seeing there is potential there for larger precinct type models, particularly when we look at net zero carbon and innovation in that space. So that may grow. I suppose anything that gives customers greater protection, greater support, is a benefit. As a gas network, any time gas is criticised or is seen in a bad light obviously is not a good thing for the industry and not a good thing for Jemena. So really anything that supports greater customer protection is supported.

Mr GEOFF PROVEST: You are aware of the concern with the embedded networks and the purpose of the inquiry that we are getting some pretty horrible stories out there?

STEPHEN ANGEL: Yes. I am aware of that. I am aware of what is happening in some of the other jurisdictions. I think the difficulty for gas is it's different to electricity in the sense of you just can't go and pull out one meter and replace it with another because the design of the building doesn't suit that. I am aware that it's very difficult and it would be very expensive for a site to change from volume boundary to an individual metering configuration based on the design of those buildings.

Mr GEOFF PROVEST: You would be aware the Victorian Government has now banned or is in the process of banning embedded networks full stop?

STEPHEN ANGEL: Yes.

The CHAIR: In relation to that comment, Mr Angel, do you have any views on the ramifications going forward if New South Wales was to follow suit and ban embedded networks in New South Wales?

STEPHEN ANGEL: The concern with banning embedded networks would be are you stifling innovation, are you stifling behind-the-meter on-site generation or amalgamation of different technologies for precincts and those types of things.

The CHAIR: How does that correspond with your previous answer in regard to Jemena supporting better outcomes and choice for consumers when ultimately consumers within an embedded network have no choice whatsoever in regard to the service that they purchased, whether it be electricity, gas or water?

STEPHEN ANGEL: That's why you need to look at different models for embedded networks. What is actually included, what is an embedded network, what are you calling an embedded network as far as what technologies are there? Does it include water, does it include electricity, does it include other things, does it include solar? There are benefits for customers by sharing solar where they may not be able to do it on an individual basis. All that comes into it.

The CHAIR: Which are all aspects that consumers with embedded networks don't have a choice about at the moment.

STEPHEN ANGEL: It would depend on how you actually structured those agreements and how that was all structured. You look at how are those embedded networks funded, who owns those embedded networks, and it really goes back to what is an embedded network.

The CHAIR: So, ultimately, you're suggesting that better regulation of the embedded network providers needs to be undertaken to ensure the protections for those consumers. Is that what you're suggesting?

STEPHEN ANGEL: If it actually protects consumers, yes.

Mr ADAM CROUCH: Mr Angel, you just said previously that embedded networks can help drive better technologies and improvements. Do you have any cases of an embedded network that you can explain to the Committee where that has actually happened?

STEPHEN ANGEL: Yes, you have had developments around your Green Square development, where you have shared services amongst buildings. You are having large developers, and they're probably better placed to answer this question than myself. But you've got Frasers, who are doing developments of precinct-type models. You look at what's happening around western Sydney and some of the conversations around the city of Bradfield, and the different technologies and different options they're looking at that there. So there are certainly—those larger, precinct-type plans have been done in the past and are still being looked at. What's going to happen to those in the future?

The CHAIR: And to be fair, and just elaborating on that point, we've heard through the witnesses today that there are good embedded network providers and there are some that are appear to be extorting consumers. That extortion of exorbitant costs is a concern the Ombudsman has that may be elaborated on and exacerbated well into the future. If we look broadly across the board, I suppose the point would be that where there is a lack of regulation, which I think everybody understands and respects, that does need to be reflected more broadly so that we're getting better outcomes for the consumers on the whole.

STEPHEN ANGEL: Yes, and I agree with that.

The CHAIR: Mr Angel, I thank you very much for appearing before the Committee. You'll be provided with a copy of the transcript of today's proceeding for corrections, and any questions taken on notice today will be forwarded by the Committee staff. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply to any further questions?

STEPHEN ANGEL: That's fine.

The CHAIR: That would be great. Thank you very much for attending.

(The witness withdrew.)

Mr ADRIAN MERRICK, CEO, Energy Locals, affirmed and examined

Mr ANDREW CAMERON, General Manager, Centralised Energy Services and New Property, Origin Energy, affirmed and examined

Mr TIM O'GRADY, General Manager - Government Engagement, Origin Energy, affirmed and examined

Mr GLEN STREATFEILD, Managing Director, Energy Metrics Consulting, affirmed and examined

Mr ANDREW McMEEKIN, General Manager - Sales and Delivery, Active Utilities Pty Ltd, affirmed and examined

The CHAIR: Committee, I now welcome our next panel. Before we proceed, do you guys have any questions to the Committee regarding the hearing process?

ADRIAN MERRICK: No.

ANDREW CAMERON: No.

TIM O'GRADY: No.

GLEN STREATFEILD: No.

ANDREW McMEEKIN: No.

The CHAIR: Would you like to make a short two-minute opening statement before we begin with questions?

ADRIAN MERRICK: I'll make a very short one, please. Thank you for inviting us here today. I think the first thing I'd like to acknowledge is that not all embedded operators are created equal. We see part of our job as fixing that in the industry, in the embedded networks space, as we have been doing within the on-market retail space for the last five years. We offer customers protections, which not all embedded operators do, including a full retail authorisation and price match guarantees, and we add renewable energy technology to buildings at no upfront cost to the residents.

We absolutely acknowledge the need for consumer protection and more consumer protection, so we think every embedded operator should be operating under a full retail authorisation rather than an exemption. Prices should be competitive. We have prices that are up to 13 per cent below the default market offer. Unfortunately, embedded operators don't have to compare their offers to the default market offer, which we think is a miss and is something that should be changed pretty quickly. The Committee could go a step further and cap prices at the default market offer, and potentially it would be worthwhile asking IPART to come up with an independent reference price for hot water, which is a notoriously difficult thing to compare.

We would like to see more renewable energy into apartment buildings. It's an area that is very difficult for people that live in units and apartments to access, traditionally. We put in a lot of solar PV battery storage, smart meters and EV chargers, and we'd like to continue to do that because customers welcome that. We invest money on behalf of the super funds into these assets that have a long-term life and a long-term benefit to the residents. We agree that there are improvements that can and should be made to the operation of embedded networks, and we're looking forward to supporting the inquiry in doing so.

ANDREW CAMERON: Thanks for the opportunity to appear before this hearing. Origin is one of Australia's largest integrated energy companies, with activities spanning electricity generation, retailing and renewable energy. We have 4.4 million energy accounts across Australia, including 300,000 community energy services or embedded network customers. We recently completed the purchase of WINconnect in March 2022, growing our portfolio by more than 90,000 embedded electricity and hot water customers.

We strongly believe that all customers in an embedded network should have access to essential services at fair prices and be afforded the same customer protections as other energy customers, and this is increasingly important as embedded networks grow as an alternative to the standard supply arrangements. That's why, also, we prefer to provide services to our embedded network customers under a retail licence. As a result, customers have access to the same protections and regulatory oversight as those standard customers. This includes all applicable residential customer rebates, concessions, hardship policies and the Energy and Water Ombudsman scheme and associated dispute resolution services.

Origin also provides the same hardship assistance and access to the Ombudsman scheme and dispute resolution services to our hot water customers that are within apartment complexes. The ability to aggregate load within an embedded network often allows embedded networks to access energy rates lower than could otherwise

be achieved. Origin passes on those benefits of its scale purchases so that embedded network customers automatically receive a rate commensurate with Origin's most competitive offers. At present we provide our embedded network customers with a usage charge that is significantly lower than the default market offer usage charge. We agree with the AEMC's recommendation that extending the national energy laws and rules to embedded electrical networks would result in improved customer protections.

It's important to note, embedded networks are an enabler of many customer benefits, providing a platform for customers to access renewable energy technologies, ensuring the most efficient use of renewable generation and future-proofing buildings for new technology and innovation. Renewables such as solar PV, batteries, electric vehicles and demand response require an embedded network physical infrastructure to allow the entire building to participate and benefit from renewables, rather than just one sub-scale apartment or common area meter. An EN ensures maximum energy efficiency so that excess solar generation or battery storage is not wasted—by that I mean lost or exported—and can be used across multiple residents. Embedded networks can also allow solar generation or battery storage to be utilised more effectively than individually serviced meters, such as to reduce maximum demand charges and other costs for the overall building.

Energy technology is changing quickly and setting up residential buildings initially as embedded networks ensures these buildings can take advantage of these new and emerging technologies. Examples of that could include energy trading within buildings at the individual apartment level or, at a more macro-level, benefits such as those from demand response options. By that I mean the ability to minimise new generation and network investments and protect the electricity network from high demand periods. We look forward to working with the Committee to ensure that embedded networks in New South Wales function as intended and in the best interest of consumers. I am happy to take questions when convenient.

ANDREW McMEEKIN: Along with the other gentleman, Active Utilities fully supports regulatory reform within the embedded network industry. We are Victorian—or I am, anyway, so I am able to express some opinions on what has happened in Victoria in the last few weeks. However, we want to make sure that the regulations drive consistency in the industry and absolutely align individual customer protections with those who are in the retail electricity market—we're fully supportive of that. We strongly support the push for embedded networks that, when they are deployed properly, with the right operator in place, not only deliver benefits back to the respective building and the customers within that, but consistently drive pricing improvements and value to the building and residents. They drive innovation within the sector, particularly leading to product, pricing, and sustainability improvements in individual buildings. They certainly can aid to decrease growing pressure on the electricity grid, and they support and allow greater use of renewable and sustainable energy resources and storage.

Importantly, they create the sustainable building of the future which, when connected to the grid, is a much more challenging proposition. We believe much of the regulatory reform could be focused around metering installation—so ensuring the attachment of a metering provider and metering data provider to allow full retail contestability inside an embedded network. It is not often the embedded network is responsible for that not occurring. System integration—so that with MSATS and the ability for retailers to bill the embedded network operator for retail charges would allow customers full-on market contestability. Right now, most of them won't allow us to do that. And open concession applications to those who are not authorised retailers until such a time as there is a licence framework in place, and to allow us to pass through concessions to those who can currently only receive them from a licensed retailer.

Active believes that the correct consumer protections can be delivered while still maintaining the ability to fully utilise the benefits of an embedded network and help drive sustainability—it is the biggest push we see in our customers right now—while delivering cheaper electricity. We're often seeing sites that are 10 per cent to 20 per cent below the default market offer. They are much equivalent in Victoria and Queensland. So we think that we can continue to drive that innovation and deliver cheaper electricity and hot water to owners and tenants within embedded networks. Hot water is a particularly interesting one, and our experience, of the hot water sites that we deliver, on average deliver customers at about a 20 per cent lower rate, if they were on market, through a contestable Jemena. It isn't about the principle of embedded networks; it's about controlling the operators—making them do the right things. That's what is really important.

The CHAIR: Mr McMeekin, on that point—you're an embedded network operator that operates within Victoria?

ANDREW McMEEKIN: Victoria, New South Wales, Queensland, Western Australia.

The CHAIR: Given Victoria has just banned embedded networks going forward, how do you see your role and your business plan going forward in that State?

ANDREW McMEEKIN: With respect, Mr Chairman, they haven't banned embedded networks. They have announced that they intend to push through a change to the general exemption—one change to the general exemption order before the election, which would require, in order to be registered or exempted as an embedded network, that 100 per cent of the energy delivered to the residential component of the building alone be from renewable resources. If you can meet that criteria, you can still continue to register an embedded network in Victoria. The 15 other recommendations have been delayed until the next term of government.

The CHAIR: Why do you think Victoria implemented those changes?

ANDREW McMEEKIN: I think they probably looked at it for exactly the same purpose that this Committee is looking at it—is that the industry, in its history, has had operators who have taken advantage of the nature of embedded networks in order to price gouge. There are an increasing number of operators. Active, I think, is probably now the largest independent, shall we say, operator in the country. Our focus is on delivering the value to the building, because it is their network. They own it. The wiring is theirs; the operation should be theirs as well. When you operate it correctly, there are enormous advantages to the building. It's when it's not—that's the problem.

The CHAIR: But it's fair to observe that there's a lack of consumer choice on behalf of residents in Victoria in regard, overall, to embedded networks, and that's what therefore has brought on the change by the Victorian Government?

ANDREW McMEEKIN: In part, would be my response to that. Power of choice exists. The requirement exists for embedded network operators to enable individual customers to go on market should they choose to. In the way in which it is designed is that there are two bill scenarios: one as energy only, which comes from the retailer of their choice; the second is the network charge, which is issued by the embedded network provider. For example, we have a relationship with a retailer in Victoria who quite happily accepts our network invoices. We allow customers full-on market contestability through that retailer. Should they choose them, we provide them with a network bill.

The customer has choice. Customer choice is a really important matter when you are not priced properly. If you make sure that customers, first, have access to better rates, which is what an embedded network can do or, second, put in process the changes that are necessary to the metering installations to allow metering data providers to distribute that, and help us work with retailers to accept network invoices—and everybody can be on market the second they choose.

The CHAIR: Do you believe that a fair rate for the charging of hot water would involve almost $10,000 over a 14-month period?

ANDREW McMEEKIN: Unquestionably not. On average—

The CHAIR: To one particular apartment block.

ANDREW McMEEKIN: To one individual apartment—

The CHAIR: One unit in one particular apartment block.

ANDREW McMEEKIN: No, without question. On average in my experience, customers in New South Wales are between 70 and 80 litres of hot water a day. By and large, I would have thought that bill on an average one- or two-bedroom lot should be less than $70 or $80 a month at most in my opinion.

The CHAIR: That's wonderful.

Mr GEOFF PROVEST: I appreciate your opening statements. Am I right in getting the strong feeling that you guys are doing it right and there are some unscrupulous operators out there that aren't that are using loopholes in the exemption system at the moment for their own financial gain? Would that be a right assessment of the current market?

GLEN STREATFEILD: I think I'm probably a good person to answer that. Energy Metrics, unlike my colleagues here, are not a provider of embedded network services. We're a consulting firm that was set up in response to embedded networks. I did have a tenure at Origin Energy running their embedded network division in New South Wales but I've moved to be an independent advocate. We sit largely in two spaces: one side being new builds working with developers to help them get the embedded network that they are after; the other side being existing buildings that are unhappy with their embedded network supply so they can extract themselves from the embedded network and find an embedded provider that they are happy with.

In terms of the opening statement sentiment from our provider friends here, they generally are doing the right thing but there are a lot of market forces. When we have a market like embedded networks that is largely

unregulated in a lot of ways and has a large potential for growth and profit, initially everyone came in with the right ideas. Then there was a period where a lot of investment came into the space and there was a lot of rapid growth and that made it a very competitive landscape.

The balancing that I think a lot of these guys are talking about in terms of dividing the benefits, the financial benefits and the operational benefits, of embedded networks among the stakeholders, the residents, the developers, even the operators, those offers started to get a little bit skewed because it became a race to get these embedded networks signed up. Once they started skewing that benefit from an equal division to favouring someone over another, whether it be the operator trying to make more margin or the developer being given a larger slice of up-front contribution, there's a limited pool of supply of money over the term of this agreement. It has to come from somewhere, and unfortunately there have been a number of instances where that place it came from was the end user and that prices that may have been initially competitive became escalated.

Now largely we are seeing a reaction by the industry to that and that most of the developers are no longer trying to get those large sums of contributions. They're focusing on making embedded networks that are sustainable. Yes, the providers are generally doing the right thing and people are getting more understanding of how these operate and what the long-term effects of upfront decisions are but they're still very complicated products that have a lot of technicalities to them and that's a main reason we as a company exist—is to help the developers and the existing residents navigate those decisions so that they can get what they're after for the long term of that building.

The CHAIR: Mr Streatfeild, I would suggest that the witnesses that we've heard from so far throughout this Committee would disagree with you in regard to them becoming more aware and more comfortable with the current embedded networks. I would say it has created an enormous problem for consumers and that that's why we're here and that's why this Committee has been established. Could I ask you as a consultant between wholesalers and the development industry, as I think you quite correctly said you were, to perhaps explain a standard contract between you and what services you provide under those contracts to a developer? What costs are involved? What would you provide to a new apartment block on behalf of a development?

GLEN STREATFEILD: Yes. If I was engaged by a developer, generally one of the early things we will do with them is sit down there and set an energy strategy, as in work out what they want to achieve with the embedded network. It's a big part for us as a company that we focus on being a fee-for-service consultancy. There are other consultants who operate in a similar vein to what I do but they operate on commission of the contributions from the embedded providers. Our point of view is that that stops me being independent. If my fees are dependent on how much money I can extract from one of these providers, then that's going to be the focus of what I do in any tender process.

Being a set fee-for-service company, we can focus on exactly what the developer requires. We have some developers that are very focused on sustainability and getting as much sustainability technology into a development from the get-go. We have others that are very much focused on end-user rates and not just getting a great rate that they can spruik as selling their units but something that will be sustainable for the long-term of that development and protections in there. One of the main things we do is simply support developers in those embedded networks. But in larger developments, and those that request it, we can take a very up-front role where we will run a tender on behalf of the developer.

We'll invite the providers to submit responses. But rather than the providers just giving us generalised embedded network offers that they would like to give out, we isolate that and sort of pinpoint it very focused to what the outcome of the development is. If we have a developer that is very focused about ongoing rates and consumer protections, we'll make a note of that in our tender process to say that the successful candidates here will be those who can demonstrate contractual clauses that will offer consumer protections and rates that will be guaranteed by some sort of contractual mechanism.

I myself have a background in trade. I'm a hydraulic engineer as well, so we're in a good position to be able to provide technical support in terms of making sure the infrastructure is designed correctly with the embedded network in mind as well as commercial support in terms of understanding when a deal is too good to be true, that potentially it is not sustainable offer, and when a deal is sort of less than market and doesn't qualify to meet the benchmarks. It's very much a case of if we're running a tender and a provider can't demonstrate that their rates in general are better than the open market, then they're not likely to progress through one of my tenders.

The CHAIR: What type of infrastructure would the wholesaler be providing to the developer? I hate to use the term "inducements" or "sweeteners", but what would the wholesaler be providing to the developer to enable them to be awarded with a lifetime contract of providing energy to a particular apartment block—the specific infrastructure?

GLEN STREATFEILD: I guess one thing to point out is that the agreements are never really—

The CHAIR: Mr Streatfeild, you don't need to point out anything more. We've heard from you for about five minutes. I'll come back to the specific question. I just want to understand what the specific infrastructure is, as I said before I'll use the term "inducement" or "sweetener", to that particular developer so that that developer can then on-pass a lifetime and eternal contract to those poor unsuspecting owners, purchasers or lessees of those units going forward. What is the specific infrastructure we're talking about that a wholesaler would provide?

GLEN STREATFEILD: There would be a mandatory requirement for them to provide metering technology, so both electrical and hot water metering. Often that is coupled with a meter reading system, so a completely remote read system. Then the sorts of sweeteners or inducements as you phrased it generally come in the form these days of sustainable technology, so electric vehicle charging points that are provided without cost and solar generation systems that are generally provided without cost. Sometimes those solar systems are for the benefit of common power reduction. Other times they may be metered at a reduced tariff. Other times they are in there to allow the provider to guarantee lower rates, so the generation is for the providers benefit but they are supposed to be providing that in the tariffs that they offer.

The CHAIR: As I understand, that infrastructure is provided, as you said, at no cost to the developer.

GLEN STREATFEILD: At no cost to the developer.

The CHAIR: That's terrific, thank you.

Mr GEOFF PROVEST: We have heard from a number of strata bodies and owners corporations that they were quite incensed that buying off the plan there were not disclosure documents regarding embedded systems. It wasn't until they got to their first body corporate meeting that a fair amount of pressure was put on them to sign this contract. They were even told at some point, "If you don't sign it by midnight, the electricity goes off at midnight." That was the first part, about the disclosure. The tenants association spoke about disclosure with renters, even into commercial properties and things like that. The other issue they brought up is that they would like to see a maximum of three years for any of these contracts. But we did understand from other people giving evidence that three years doesn't give you a return to pay for the infrastructure and three years is pretty short. But the tenants on the other hand are saying that three years is good; 15, 20 or 25 years is poor. But it was the disclosure issue and the term of the contract. I don't know who to ask across the table. I will let you guys work it out.

ANDREW CAMERON: I can address that if you like. We agree completely in terms of disclosure. There is no requirement in New South Wales for the developer to really provide disclosure to the new apartment purchaser. In other States, particularly Queensland, there is. So we—

Mr GEOFF PROVEST: Queensland, there is?

ANDREW CAMERON: Yes. So we'd encourage disclosure. Transparency is important in all parts of this value chain here. In terms of the maximum term, certainly, our understanding is that, even if there is a term in an agreement, the owners corporation can terminate that agreement without—

Mr GEOFF PROVEST: Are there not penalties?

ANDREW CAMERON: Our understanding of—

Mr GEOFF PROVEST: Exit fees, I think, is the word.

ANDREW CAMERON: Our understanding is it can't be punitive and so it has to be cost-based. In our agreements, it's about returning the cost of the hot-water equipment or the metering, or they may want to purchase the metering. One thing I was going to point out is that there is a bit of churn now in terms of whole of building. We're very happy to see that because, while the end user has less ability to churn, the owners corporation does and should very much have the ability to change providers if they're not getting the best outcome for their tenants. The maximum terms our Origin agreements—we really only go to about a three-year term generally. And you are right; there won't be a payback in three years. But then the owners corporation would pay us back just for the cost of the equipment if they wanted to purchase it, or we could remove the equipment. But often, when there is churn, we would work with the incumbent and sell them the equipment.

Mr GEOFF PROVEST: There has been a lot of talk about EVs and charging stations. In some of the old buildings you would probably have to put a new substation in to deal with it. How is that going to affect the embedders' market? If they're an embedder and, all of a sudden, the owners corporation says, "We want a number of these chargers and, by the way, we want the supercharger and not the slow charger", is that just an extra cost the embedder will pass on to the consumers in one lump sum, or will they average it out? I don't know who should answer that.

ANDREW McMEEKIN: I do a lot of EV work. It really depends on the construction of the building to start with. The available supply into the building dictates the capacity of it to run charging. You'll find that a lot of developments now are looking at what they would call EV readiness, which is that there is electrical cabling to the car spot to enable the installation of a vehicle charger. The part beyond that is the introduction of what they call load management, which is to control the volume of electricity being consumed to avoid the building taking more and shutting everything down, and then individual chargers. Embedded networks facilitate that in a much better way than a grid-connected building does.

It's a regular inquiry into us at the moment. Probably EV charging is one of the most common conversations we have with strata buildings right now, particularly grid-connected buildings, as to how they can manage it. There's a lot of consideration being given because there are potentially six-figure infrastructure requirements attached to that. So it is go back to 100 lot owners and ask them for a couple of thousand dollars each or find a different solution, which may be an organisation like one of ours providing them with the support in order to be able to do that.

Mr GEOFF PROVEST: Overall, you agreed that there are faults in the regulation system at this point in time and it needs tightening up—the old cliché—to get rid of the cowboys in the system and to achieve greater consumer protection.

ANDREW McMEEKIN: Yes.

Mr EDMOND ATALLA: This is for Origin. The Committee received submissions of management experiences of high energy and water prices in embedded networks owned by WINconnect, which Origin acquired last year. Are you able to speak about those consumer concerns? What actions has Origin taken to address these?

ANDREW CAMERON: Thank you for the question, Mr Atalla. I don't obviously know those individual cases you're talking about. But it's fair to say that there's a different approach between WINconnect and Origin in terms of the pricing approach. We acquired WIN, as I said, at the end of March this year. We are looking to integrate the business, to move the customers onto the Origin standard arrangements which, particularly in electricity—if I give an example. Our standard embedded electricity price in New South Wales is a 19 per cent discount off the usage component of the bill. That's significantly more than our standard market offers at the moment. As I said, once we integrate those customers into our systems, we'll be aligning them to what Origin does.

Mr EDMOND ATALLA: Thank you for that. What regulation is required to regulate the embedded network operator in relation to the pricing? What can the Government do to bring that regulation in place with prices the embedded network operator can or can't charge?

ADRIAN MERRICK: Can I have a go at that? Three things: firstly, require embedded operators to have a full retail licence that requires them to commit to delivering a range of protections to customers. It's a well-worn process. I think the AER has about 120 licensed retailers already. There are probably about 30 to 40 that are operating in the consumer space. But it is a well-trodden path. That is not a difficult thing to make happen, in my view, although the AER may very fairly claim that they require some more resources.

The second would be to ensure that embedded operators compare prices against the DMO. We've seen price fact sheets from a variety of operators where there is no mention or reference to the default market offer, which means that consumers are left trying to work out made-up numbers. That means that the things that the default market offer tried to get rid of, which were discounting off a made-up number, which means you can have whatever discount you want because you can make up the number that it comes from, is still prevalent amongst some embedded operators. Require the discounting and price comparison to be against default market offer. The Committee could choose to push a bit further and say that the default market offer acts as a price cap for embedded networks. We would support that, with an exception for extreme years. I think we're in an extreme year in the wholesale market right now, where some gaming by some generators in the wholesale market has led to a variety of very unfortunate conditions that have seen a lot of retailers leave the market. I think we'll see a few more still to go.

The final part is some sort of reference price to compare against for hot water. This is much more difficult because we are putting in a range of different hot-water plants. Clearly, things we put in five years ago are much less efficient than things that we're installing today. But we think IPART here in New South Wales is well placed to come up with some sort of benchmark price that hot water could be compared against—

Mr GEOFF PROVEST: IPART was here this morning. It finds it difficult to get data, to know where the embedded market is or isn't.

ADRIAN MERRICK: They could ask for it and we would be happy to provide it to them.

Mr GEOFF PROVEST: Okay, I'll pass that on to my colleagues for you.

ADRIAN MERRICK: Thanks.

The CHAIR: Just in relation to the hot water issue that you have raised, the Ombudsman suggested that the charging of hot water is well outside the guidelines that have already been stated. I think that's with the AEMC. We've had a recent case through NCAT where NCAT just made a decision on behalf of one consumer that they will not have to pay for that cost of hot water. How does the market move forward and have NCAT now set a precedent? Obviously as members of Parliament receive complaints in the future, hopefully this Committee can make recommendations and ultimately tighter regulations can apply to protect consumers in the future. Until that time I imagine that members of Parliament like me would be recommending that all consumers that have charges or excessive charges of hot water go down the NCAT path. How do you see that process going forward on behalf of your businesses? Does that not show that some people have been charged exorbitant costs and that really needs to be rectified?

ADRIAN MERRICK: I am sure in some cases they have and I think that's why there needs to be a bit of cleaning up in the embedded industry for sure, and we fully support that. Start by requiring retail licences and to get a retail authorisation you have to pass the fit and proper character test. So there are a range of tests that the regulator will put over an organisation to see if they are fit to hold an authorisation. We are aware that the Ombudsman in New South Wales takes on the hot water cases and it is probably a little bit outside of their traditional remit for embedded but they will take on customer cases and we will work with them if some of our customers were to go through that process. If it requires to go as far as NCAT then so be it, but we are always happy to work with the Ombudsman on these cases. If you compare to the cost of generating some hot water in a property that maybe you own, a house that you own and you have already invested in the capital, it will be cheaper. That's because you have invested in the capital up front.

We are investing some serious capital in some very sophisticated centralised hot water systems that customers don't need to pay for upfront and they don't need to maintain. We make sure that those systems are serviced and maintained regularly so that they are reliable systems for customers when they need them. One thing that would help would be to ensure that building regulations avoid the possibility of what we call dead legs where customers are, through the piping system that takes hot water to the customer, sometimes they are kind of off the main track and that means that they are waiting longer for the cold water to warm up. In some cases where we have customers that are on those kinds of dead legs, which are part of the building design and quite hard to change retrospectively, we provide credits on their bill because they have had to wait that extra amount of time. That is something that could be solved at source through building regulations.

Mr EDMOND ATALLA: You mentioned licensing for embedded network operators. Are there no licences at the moment for any of the operators?

ADRIAN MERRICK: People can operate under a—there is a network exemption for the network component and then there is a retail exemption. It is the retail exemption that we believe should be covered under a full retail authorisation, which is a process that the AER, the Australian Energy Regulator, administers for all States in the national energy market apart from Victoria.

Mr EDMOND ATALLA: So none are operating under that now?

ADRIAN MERRICK: No, many of us, in fact everyone I think here—I know Origin but I couldn't speak for everyone—is operating under a full retail authorisation. That is what we recommend because it provides consumers with greater protection in the market retail contract. It requires greater disclosure of data to the regulator by retailers and it requires more tests to be passed upfront before a retail authorisation is provided. We absolutely support that.

The CHAIR: Mr Merrick, you are correct in saying that you just—sorry, Edmond.

Mr EDMOND ATALLA: Just one more, Chair. Are there any situations where the retailer deals are actually with the body corporate rather than through a network operator or must they go through a third party network operator to the consumer?

ADRIAN MERRICK: No, we speak directly with body corporates and owners corporations on a regular basis.

Mr EDMOND ATALLA: Not speak, but can you enter into contracts with the body corporate rather than through a network embedded operator—cut out the embedded network operator is what I am alluding to?

ADRIAN MERRICK: Right, so someone would need to enter into a contract with the owners corporation or body corporate to provide the service to the building. That's not the developer. That is in one State

at least I know of but in New South Wales the developer can't appoint anyone sitting at this table on a long-term basis. It has to be the owners corporation that then appoints the embedded network operator. What we are suggesting is that the retail component of that service is covered under a full retail authorisation.

The CHAIR: The Ombudsman provided information to this Committee that in 2015 Jemena commenced providing wholesale electricity to the boundary as opposed to providing it to the end customer, to the resident. When Jemena was recently before this Committee it stated that the reason it had started providing those services to the boundary was at the request of Origin as far back as 2010. Could Origin perhaps explain why it made that request of Jemena? Why would it take that approach, which ultimately I suppose, if I elaborate a little further, has given us embedded networks that are now increasing at an exorbitant rate? That has seen many of the problems that this Committee is investigating regarding unfair practices and unfair outcomes for consumers and their lack of choice for energy such as electricity, gas, water and hot water.

ANDREW CAMERON: Thanks, Chair, for your question. Origin has been involved in providing centralised hot water services in a similar way that we do in New South Wales for really about 30 years and it has been very, very common, particularly in Queensland and also in Victoria, for about 15 or 20 years. We do think it is the best way to provide hot water to high-rise residential buildings. We think it is the most efficient way and should provide the best customer outcomes. So, yes, we were speaking with Jemena about trying to create what's now called the volume boundary meter to allow that. Yes. I can go into more detail if you like about the benefits.

The CHAIR: I might go a little further in the interests of full disclosure. A particular resident who was being provided hot water through WINconnect, which is now a company that Origin owns, was charged just under $10,000 for less than 14 months use of hot water. When that issue was raised publicly, WINconnect didn't refund the money. The money hadn't been paid because the residents could not afford to pay the money. WINconnect just completely dissolved that invoice and didn't charge the resident for that almost $10,000 cost for the use of hot water. We have already heard from people on your panel stating that that is an exorbitant cost. I think that's an absolute understatement that it is. Doesn't that prove that there are exorbitant costs, that there is price gouging on behalf of communities and that Origin has to stump up and take responsibility for the company that it now owns and that WINconnect is giving us a lot of the problems that this Committee is seeing?

ANDREW CAMERON: Thanks again for your question. The average consumer in New South Wales uses about 70 to 75 litres of water a day and that translates to—including the daily charges—about $60 a month. There are a lot of customers that use a lot less than that and then there are some extreme cases like the one that you mention now. I won't go into detail about that case. We certainly think that the pricing for hot water is fair. I won't comment about that particular case. As a general rule customers are getting a very good service for a very good price. If there have been problems with other providers and with WIN, we want to see those problems go away.

The CHAIR: In that apartment complex we've heard from residents that are paying $300 or $400 per month for hot water alone. That does not include their water, their electricity or their gas—just hot water alone. Are you stating they are fair prices to charge anybody?

ANDREW CAMERON: It really depends on the customer usage. If a customer is using, instead of the average 70 or 75 litres a day, if they're using—

The CHAIR: But I think I could heat that with a kettle and it wouldn't cost that much money in electricity.

ANDREW CAMERON: I'm not sure about that. But—

The CHAIR: I could damn sure guarantee I could. Honestly, I just can't believe that you could sit there and suggest that that is a fair price for any consumer to pay, given that those people cannot gain fair access to the market in regard to their choice of electricity.

ANDREW CAMERON: Assuming the billing is accurate for those customers and the usage, instead of being 70 litres a day, is 200 litres or 300 litres a day then that is what it's costing to deliver that service. As I said, what I would say is that using that amount is unusual. The average is quite a lot lower.

The CHAIR: Ultimately, what is the average cost for hot water on a monthly or quarterly basis that you're billing people for?

ANDREW CAMERON: Sixty dollars a month for the average user.

Mr ADAM CROUCH: Obviously Origin has now purchased those 90,000 embedded electricity networks from WINconnect in March this year. Given the fact that the Chair has highlighted complaints from individuals with regard to WINconnect, will Origin go through those 90,000 embedded network customers and

check that their billing is actually correct? There are two parts to this question. Firstly, are you looking at all those new networks that you've now purchased—which, from what we've seen, you helped create? Secondly, the issue will be that the information we've been given is if someone is in an embedded network, when they then try to go directly to a retailer and the retailer finds out they're in an embedded network, they won't actually have a conversation about what would be a better price. They're in a catch 22. Being the largest integrated energy company, Origin has 90,000 customers. Will you review all of WINconnect's customers?

ANDREW CAMERON: Thanks for the question, Mr Crouch. Through our due diligence for purchasing WIN, we did find that we were comfortable with the billing. We didn't check every bill. We are going to integrate those customers into our systems over the coming 12 months or so, or hopefully less, and through that process we'll be absolutely making sure that customers are billed correctly. That's of paramount importance. What I would say in terms of the—I think you mentioned the competitive side of things. If a building believes that they're not priced fairly and there are more competitive offers out there, they absolutely have the ability to obtain other quotes from other providers. We certainly don't stand in the way of customers. We don't think we have the legal right to stand in the way of customers exiting an agreement. And when I say "customers", I mean at the building level—to change the entire building.

The CHAIR: I'm sure you're aware of the 2019 AEMC review regarding the regulatory framework for embedded networks. Could I ask you what you think of those recommendations? Which aspects of the regulatory framework should be adopted, and why?

ANDREW CAMERON: I'll answer that, unless somebody else wants to. We're supportive of the AEMC 2019 recommendations. One of the key things is to abolish the exemption guidelines. Just picking up on the points that were made before, we've always had the view that why is there this set of customers that are, in the regulations, defined as second-class citizens? It doesn't make sense to us. When we and myself started embedded networks at Origin Energy, we actively chose to put the customers under a licence. We had the option not to, but it didn't make sense for us, with four million customers, to have a group that could potentially be sort of disadvantaged. So we agree with that. There's a requirement for retailer authorisations that we agree with. There are recommendations about customers within the embedded networks and how the network charges would apply, so largely we agree. There are some practical things in there that aren't addressed, some process things. There would be some challenges with legacy equipment and things like that that need to be fleshed out, but we largely agree that they should apply.

The CHAIR: People who have their services provided who are not contained within an embedded network have full choice of the services—full choice of the market. They can shop around, as we believe people should. Shouldn't people in embedded networks have that same freedom of choice to be able to react to those market pressures and forces and shop around to get the best outcomes for themselves on behalf of their families?

ADRIAN MERRICK: I agree that they should have choice, and the AEMC review did provide for an easier path to customer switching. I understand the recommendations are still stuck with the energy Ministers, so maybe if we could unstick those, that would help with customer switching for the electricity side. On the hot water side, I would just note that people that are not in an embedded network maybe are not having to pay for the hot water service, for example, but they do have to pay the capital cost, the maintenance and the emergency repairs of these systems. So there is an offset there, and I think it's just important to look at both sides of the equation.

The CHAIR: It would be fair to say that they're body corporates and that would be reflected in their strata fees, back to their sinking funds and going forward in the future. I would imagine that ultimately when those hot water services required upgrading every now and then, whether that's 10 years or 15 years, that would be paid for out of that. I think that in regard to the costs that I've already explored, they'd be a long way in front.

ADRIAN MERRICK: Potentially, but in our experience so far, no body corporate has said, "The system's end of life, and we're going to take it over and replace it with one of our own that we will fund". We've just not had that experience. Theoretically, yes, they could go and fund it themselves. But in practice, they're very happy that they can outsource this problem and we can maintain an efficient system that they use. We have talked with the developers about whether we could put individual systems within each apartment, for example, and then customers are on their own and they can use it. Often it comes down to space. People just don't want to give up the extra space.

Mr ADAM CROUCH: By the way, I've just found out I have what is called dead legs in my apartment, so I have to talk to my body corporate about that. We're on the bottom floor and it seems to take forever for us to get hot water. We've talked about disclosure, and one of the things we were talking about earlier is the amount of investment that's being made, or the inducements or sweeteners. From what I'm gathering, none of this is ever disclosed to either the body corporate or the residents as they invest in their apartments. As we said, there's investment into the infrastructure, but there's no disclosure about the commissions. We heard from the gentleman

from Energy Metrics that some companies are effectively hiding the commissions that they're benefiting from for those embedded networks. As something the Government should be looking at, should there be full and frank disclosure of that information to the end user?

ADRIAN MERRICK: Yes—

ANDREW CAMERON: Yes, I think that's an easy question to answer. Yes, there should be transparency. The agreements that are put in place between the developer and the retail embedded network operator that then, at the first annual general meeting, get discussed and get novated—they should have all the information there. Should that be disclosed earlier, when a new apartment owner is buying their apartment? We think it should. There should be nothing to hide, absolutely.

The CHAIR: Just elaborating on what Mr Crouch said, therefore, if a minimum cost of hot water was disclosed as all other on-costs are disclosed in the sale or lease of an apartment—you suggested $60 or $70 a month—going forward, you would be happy for that full disclosure to be put onto those contracts? Real estate agents could advertise those as they do with council fees and strata fees. Going forward, you would be happy for those to be disclosed in the future?

ANDREW CAMERON: Yes, that's right. The rates are always obviously changing annually with the various cycles. The rates at that point in time, again, should be transparent and happily disclosed.

The CHAIR: As a minimum cost? And, of course, excessive use would be over and above that but, as a minimum cost, they could expect, in your words, $60 or $70. So, ultimately, a minimum cost would be $200 for a quarter—costs that would be advertised, as a real estate agent would do. You'd have your strata costs, you'd have your council rates, you'd have your hot water costs. You'd expect to pay another $200 or $300—whatever it is—per quarter for hot water. You'd be happy to have that advertised?

ANDREW CAMERON: Yes, based on a typical average. That would be fine.

Mr GEOFF PROVEST: You'd have to do that.

Mr ADAM CROUCH: Again, to Origin Energy: Obviously, with your purchase of the 90,000 embedded electricity network customers—you mentioned in your opening statement how Origin Energy is priced below, I think it's the base rate to use the exact term. Does that mean then that the 90,000 customers that you just purchased effectively can be expected, given the fact that [inaudible] in your regulatory regime at Origin Energy?

ANDREW CAMERON: Thanks for the question. Origin, in New South Wales—our standard price is 19 per cent discount to the DMO, the default market offer. WIN had a range of different pricing regimes for each of the different contracts—they certainly are discounting. When we understand each of the contracts and work out how we bring them into our systems, we'll be looking at the pricing. They can't commit to exactly how it will change, but certainly the idea is to align the customers and the pricing to what Origin does.

Mr ADAM CROUCH: Thank you. That could be some good news for some former WINconnect customers. The other question is—obviously, living in a strata building, when the developer actually sells off the plan and still remains the largest number of holding votes in a strata, could that not be conceded as a conflict of interest? Because the developer would have done a deal with an embedded network, holds the majority votes in a strata, so would then obviously say, well, it's easier to go with us because we hold the majority of votes in the strata?

GLEN STREATFEILD: Under strata law they're not allowed to, I believe, in New South Wales. Even if they hold the majority of votes, they're not allowed to sway a contractual commitment like that at the first annual general meeting.

The CHAIR: At the first annual general meeting. What about following meetings?

GLEN STREATFEILD: Well, that's where it's different. I think probably an important point to consider in the actuality of how it works is at the first annual general meeting you also have a strata manager who is trying to get appointed. And he has been brought in by the developer. So regardless of what they may feel of the embedded network offer, and it's a conversation I have with strata managers, they're not going to not recommend the embedded network because they have just been brought in by that developer—to do so would upset that developer. However, when they get to that second year, that's when they start talking to people like me and saying, "Now the developer has got his contributions and is out of building, I can get a better deal." But it does have this exposure point in that first year where everyone is a little biased.

The CHAIR: And this committee has heard evidence already that those very persuasive strata managers have even suggested that, if this is not adopted tonight, you may not have hot water tomorrow morning.

GLEN STREATFEILD: Yes. Which is a complete and utter fabrication, unfortunately.

The CHAIR: Fabrication of not having the hot water, or making that statement? Because we—

GLEN STREATFEILD: Sorry, as in not having water—to insinuate that their services would be cut. I can speak from experience. When providers are not appointed, I've never seen them turn off services to a building. In fact, they're more likely to come with better offers and that creates a great negotiation point, if they're not appointed at that first annual general meeting.

The CHAIR: You've to admit, with everything you've said there, that the consumer is really between a rock and a hard place. He's got to go through this negotiation. You've got people who have just bought a home, people who have just leased a property—exorbitant charges, as we've just heard. Would you all agree that this requires significant regulation to tidy this up?

GLEN STREATFEILD: Definitely.

ADRIAN MERRICK: I agree that there's regulation requirements. It's the same as I've outlined earlier, so I won't repeat myself.

The CHAIR: Adam, did you have any further questions?

Mr ADAM CROUCH: Yes, absolutely. One question. You talked about embedded networks, with the developer and the strata, which was just articulated. If it's approved at the first strata meeting, then they're locked in for years, effectively. So when it gets to the second annual general meeting, it's too late. The residents actually can't do anything about it. Would that be a correct assumption?

GLEN STREATFEILD: No. So there are a wide variety of how these agreements are structured. Some are a lot more permissible of dissolving the agreement than others. Others completely ignore it. There have been some clauses that providers have used that have been very punitive and have sort of said that if you were to cancel the embedded network prior to the end of the term, that they would calculate on their own reasonable basis how much profit that embedded network would be made, and that they would charge the owners corporation not just the equipment cost, but the entire profit of their five- or 10-year term. I think those sorts of terms have no place and really should be regulated and outlawed.

The CHAIR: Throw out a ballpark figure of what you think that cost would be.

GLEN STREATFEILD: It could easily be in the millions, depending on size of the development.

The CHAIR: That's sort of something you could see them accepting?

GLEN STREATFEILD: That is definitely not a common clause, but it has been in existence. I've flatly said, on behalf of my clients, to those providers, "You will never see an agreement like that signed if I'm the one looking over it." But, naturally, not everyone's as educated as I am on embedded networks and there are a lot of consumers, both strata and individuals, that are going into these agreements not understanding some of these clauses. It's our view that there needs to be some better regulation on how these agreements are terminated. We feel that all of the providers should have a way of recovering their investment and there should be a set mechanism to that—for instance, an agreed value of equipment that is pro-rataed over time. But setting very tight regulations on how these agreements can be dissolved, to make it easy for a building to say at year two, "No, you haven't lived up to your promise that you made at that FAGM. See you later."

Mr GEOFF PROVEST: I'm just thinking about the banks. When we force them, when you change housing loans—basically the Government threatened them with a stick and then the industry reluctantly came to the table because they were fearful of further regulations that would be imposed. You guys have a good feeling of the industry out there at the moment. Do you think the industry is keen for change with some regulation, or are they going to come kicking and screaming?

ANDREW McMEEKIN: From an embedded network point of view, I think you've heard from the three of us here that we fully support that. How you then deal with developers, and at that end of the equation, is—

Mr GEOFF PROVEST: Well, that will be an interesting discussion.

ANDREW McMEEKIN: Yes. So that's an interesting conversation for you, as a Parliament. As I said, in Victoria and Queensland, there's disclosure. There are lots of restrictions around—

Mr GEOFF PROVEST: In Queensland can they get out of it fairly easy?

ANDREW McMEEKIN: Queensland is a differing model. It has much better regulatory framework about what can be priced. Body corporates are not allowed to, for example, make money. So there's a billing

agency process. It's a slightly different model in Queensland than it is in Victoria and New South Wales. So it's at each State level's regulatory framework around individual aspects of that, that vary slightly. There is a much more overriding responsibility from the AER and NECF as to how we operate the networks. But rules about contracts and developers and disclosures, and those sorts of things, vary from State to State.

Mr ADAM CROUCH: Gentlemen, do you basically think that the national framework network doesn't work? Because, effectively, we've seen Victoria walk away from doing their own thing. And the evidence we've been given is the fact that, "Oh, we've all talked about it, but no States have actually come together formally and set up some form of standardisation of how we deal with these sorts of issues." Do you believe that's a fair assessment that the national framework doesn't work?

ADRIAN MERRICK: We firmly believe that Victoria should be aligned with the rest of the country when it comes to energy market rules. It has its own regulator and own set of rules, which is inefficient, and if someone lives in Albury-Wodonga, it is hard to explain one rule for someone that is a kilometre away from someone else. So we firmly believe that nationalising the national energy market should be consistent. I think what we are asking for, or recommending, is that the NECF and the retail authorisation process is extended to cover anyone who sells energy to someone in an embedded network.

Mr GEOFF PROVEST: I can relate to that—seeing my electorate borders Queensland, and for two years I've had armed police and the army and border checkpoints. Yes, we need better. Cooperation—

ADRIAN MERRICK: It's like Berlin, right?

Mr GEOFF PROVEST: Absolutely.

The CHAIR: It's warmer up there for you, Mr Provest. You don't use as much electricity as what we use down here in the southern States.

Mr GEOFF PROVEST: It's warmer.

The CHAIR: If there are no further questions, gentlemen I thank you for appearing before the Committee today. You will be provided with a copy of the transcript of the proceedings for corrections, and any questions on notice taken from today will be forwarded to you by the Committee staff. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a reply in relation to those further questions?

ADRIAN MERRICK: Yes.

ANDREW CAMERON: Yes.

TIM O'GRADY: Yes.

GLEN STREATFEILD: Yes.

ANDREW McMEEKIN: Yes.

The CHAIR: Thank you for that, and we thank you very much for your attendance.

(The witnesses withdrew.)

(Short adjournment)

Ms NATALIE LINDSAY, Acting Executive General Manager - Corporate Affairs, Essential Energy, affirmed and examined

Ms FRANCOISE MERIT, Chief Financial Officer, Endeavour Energy, sworn and examined

Mr ALEX McPHERSON, Head of Regulation, Ausgrid, affirmed and examined

Ms LUCY MOON, Head of Regulation, Energy Networks Australia, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next panel of witnesses. Thank you for appearing before the Committee today to give evidence. Can you please confirm that you've been issued with the Committee's terms of reference and information about the standing orders that relate to the examination of witnesses?

ALEX McPHERSON: Yes.

FRANCOISE MERIT: Yes.

The CHAIR: Before we proceed, does anybody have any questions of the Committee or the processes?

FRANCOISE MERIT: No.

ALEX McPHERSON: No.

NATALIE LINDSAY: No.

LUCY MOON: No.

The CHAIR: I invite you to make a two-minute opening statement before we ask any questions.

FRANCOISE MERIT: If it pleases the inquiry, the NSW Distribution Network Services Providers, Ausgrid, Endeavour Energy and Essential Energy, will provide a joint introductory statement. Our colleague Lucy Moon from the Energy Networks Australia, the peak body for energy network businesses across Australia, is also present today and will provide the national insights into the embedded network reforms occurring in other jurisdictions. I begin today by acknowledging the Gadigal people of the Eora nation, the traditional custodians of the land on which we meet today, and I pay my respects to their Elders past and present. I extend that respect to any Aboriginal and Torres Strait Islander peoples here today and acknowledge that our network areas are on the lands of many peoples and nations.

We preface our introductory statement by noting that embedded network customers are our customers and that without us embedded network customers would not be able to receive reliable electricity supply. As such, it is in our interest to ensure that there is sufficient clarity in the regulatory treatment of embedded networks in New South Wales so that appropriate protections are available to all customers. It is also worth noting that our networks have no financial interest in advocating for greater resolution of embedded networks. Network businesses operate under a regulated revenue cap and our revenues are unaffected through the existence of embedded networks. We are purely interested in achieving improved outcomes for all consumers across New South Wales from a fairness, safety and regulatory perspective.

Our assessment is that the current regulatory framework for embedded networks in New South Wales is no longer fit for purpose as it does not best serve the long-term interests of our customers. All customers, whether distribution-connected or embedded network customers, should be entitled to the same consumer protections. However, this is currently not the case for nearly all embedded network customers in New South Wales. At a national and State level, the rules relating to consumer protection, network price regulation and retail contestability have failed to keep pace with the change in embedded network types and scale, combined with the rapid growth in the number of embedded networks since the regulatory framework was introduced.

Those gaps in the regulatory framework predominantly arise in the following areas. First, customer implications. There is a growing body of evidence, including from the AEMC review, EWON's analysis, media reports and the recent Victorian review of embedded networks, that customer outcomes from embedded network customers are being adversely affected in the areas of reliability standards, connection standards, billing information, outage notifications, guaranteed service levels and appropriate protections for life support customers. The fixed network charges are being shared across customers unequally. In this instance, an embedded network operator, which can potentially have hundreds of individual residential and small business customers, contributes the same fixed amount as a regular, single-connected household or business. This exploits postage stamp pricing structures to reduce the embedded network's contribution to residual network costs and creates an uneven sharing of costs for other network customers. There is no evidence that any cost savings are ultimately passed through to the residents of embedded networks.

Lastly, safety gaps. Our distribution networks must comply with a range of detailed safety obligations, including implementing a safety management system that expressly considers safety of the public, workers, property and the environment, and safety risks arising from a loss of supply. We are obliged to comply with various audits, reporting and other compliance obligations that relate to voltage frequency and disturbances and the reporting of any safety incidents when they occur. Depending on whether an embedded network is classified as a "distribution system" or as an "electrical system" has important implications for consumer protections, reliability and guaranteed service levels as well as reporting and monitoring conditions. Depending on how those are defined, some customer protections and safety regulations would not necessarily automatically apply and may require amendment to apply to embedded networks.

The CHAIR: That's a politician's two minutes, Ms Merit, but I'm going to indulge you and pass on to Ms Lindsay.

NATALIE LINDSAY: Over the past decade there has been a rapid increase in the number of embedded networks in New South Wales. For example, we estimate that since 2015 the number of embedded networks in Ausgrid's distribution area has grown eightfold from around 100 to around 800 today. Since 2015 the number of embedded networks in Essential Energy's network has rapidly grown at an annualised rate of approximately 14 per cent and today we have 72 embedded networks. Since 2018 Endeavour Energy has received 297 applications for embedded networks across its network area. We note that the number of embedded networks in New South Wales may be higher than these figures suggest because the New South Wales distribution networks do not have visibility over the number and type of all embedded networks because embedded networks are not required to be registered or licensed in New South Wales.

The current regulatory framework does not adequately protect customers in medium-to-large embedded networks, which have proliferated in size and number since the framework was introduced. The increasing size and number of embedded networks over time has exacerbated these existing gaps in the current regulatory framework. This includes the quality of service for customers and customer protections within embedded networks. For example, customers will call us about an outage within their network that we cannot offer them support for because distribution networks often have limited visibility over customers that are part of an embedded network. We also find ourselves in a challenging position, as embedded network customers will call us to complain about not being able to switch to another retailer or about seeking to installing solar on their home, and often we will be unable to assist them with a positive outcome. We all feel this is unfair for existing embedded network customers and do not want it to be perpetuated for future embedded network customers in New South Wales.

Unfortunately, this growth in embedded network customers is continuing and is now progressing to expand to high-voltage mega embedded networks. This trend, if not addressed by regulatory authorities at both the national and jurisdictional level, will continue to perpetuate the customer impacts articulated in our submission and other submissions to this parliamentary inquiry. I understand that in the last few months there have been at least five applications for high-voltage, mixed-use residential embedded networks in Ausgrid's network area, which combined will have tens of thousands of residents. Ausgrid has had no choice but to progress these applications as high-voltage connections due to the regulatory framework gaps. This shows again that the regulatory gaps associated with embedded networks are proliferating in New South Wales, highlighting the need for urgent change to ensure these residential customers can receive adequate customer protections.

We recommend, from a safety and asset management perspective, that a new New South Wales framework should acknowledge that the most appropriate connection types for residential and small business customers is low-voltage connections, and any high-voltage connections should be at the discretion of the relevant distribution network. This is simply because a low-voltage connection is 400 volts, a high-voltage connection is 11,000 volts. To demonstrate the potential safety implications of an embedded network with a high-voltage connection, we draw the Committee's attention to a safety incident at the only high-voltage, mixed-use residential embedded network in South Australia, where two employees of the embedded network were hospitalised for severe electrical burns and one placed in an induced coma due to the extent of their burns. We all know that the Victorian Government has banned developers from implementing new embedded networks in all circumstances, except for when an embedded network offers 100 per cent renewable energy to their customers through a mix of on- and off-site renewable energy.

The CHAIR: Thank you. Mr McPherson, please.

ALEX McPHERSON: Thank you. In terms of recommendations for reform, as noted in our submission, we recommend the Committee consider updating the regulatory framework for embedded networks in New South Wales so that it provides, firstly, enhanced safety regulations so that embedded network operators only operate low-voltage networks unless there is a technical reason for requiring a high-voltage connection, such as being an industrial estate. We also request clarification of what constitutes a distribution system and what constitutes an

electrical installation for regulatory purposes. This clarification is particularly important and has implications for reporting of obligations in relation to safety, reliability and guaranteed service levels within the embedded network, as well as monitoring and reporting on license conditions.

Secondly, greater clarity around the regulatory treatment of embedded networks by introducing licensing to establish formal operational and customer protection standards for embedded networks. In relation to services, despite the AEMC's recommended reforms and efforts to implement the capacity for customers to switch retailers, our understanding is that embedded network customers cannot readily switch retailers to access competitive retail market offers and get a better deal. This has meant that embedded network customers may be paying much more than is necessary. In relation to cost, embedded network operators currently enjoy being charged as a single customer, and there is no evidence that any cost savings are subsequently being passed on to residents within the embedded networks. We, as networks, are looking to reform our pricing. Unsurprisingly, this is being met with some resistance by embedded network operators. Equity and fairness must be addressed, and we would welcome the Committee's consideration of this in its inquiry.

Thirdly, licensing will result in improved protections for customers residing or operating businesses within embedded networks so that they can access energy rebates, call centres, particularly during outages, guaranteed service levels and life support registration, which is vital, as well as being able to pick the energy contract they want when they want it. Finally, visibility and reporting of operations, customer numbers, energy resources within the networks—to help demystify what is occurring within the embedded network itself. I have no doubt you've heard a lot today about the importance of transparency and data and the lack thereof in this system. Ultimately we want the best and fairest outcomes for all New South Wales energy consumers.

So, in summary, we recommend in terms of the path forward that New South Wales should retain the existing framework for what we call the "traditional" embedded networks, such as small embedded networks servicing caravan parks or retirement villages with less than 30 customers. We should also implement stronger regulation of medium-to-large embedded network operators through licensing. This should include providing equivalent consumer protections for embedded network customers with those of standard supply customers, as per the AEMC's and AER's recommendations; for New South Wales, requiring embedded networks with more than 30 customers to comply with technical and safety regulations that apply to us as distribution networks. This reflects what happens in other jurisdictions, including South Australia. Our understanding—it's similar to what happens in New South Wales for regulated private water networks. New South Wales should determine whether new embedded networks of a certain size or type are appropriate or should be restricted or banned due to their scale. This could include banning residential or mixed-use, high-voltage networks and limiting high-voltage embedded networks to industrial sites only. Thank you.

The CHAIR: Thank you very much, Mr McPherson. Ms Moon.

LUCY MOON: Thank you. I begin today by acknowledging the Turrbal people, the traditional custodians of the land on which I am calling in from today. I would also like to pay my respects to their Elders past, present and emerging. I extend that respect to any Aboriginal and Torres Strait Islander peoples here today. Energy Networks Australia welcomes the opportunity to provide both a submission to the Committee's inquiry into embedded networks in New South Wales and to speak today at the public hearing. Energy Networks Australia is the national industry body representing Australia's electricity transmission and distribution and gas distribution networks. Our members provide more than 16 million electricity and gas connections to almost every home and business across Australia. Embedded networks play a complementary role to distribution networks and can provide benefits to consumers.

This inquiry is timely, however, given the significant uptake of embedded networks in recent years, as highlighted in my colleagues' opening statement, and concerns in relation to poor consumer experience. As referenced in the inquiry's terms of reference, the Australian Energy Market Commission undertook a 2019 review into embedded networks as part of its consumer action plan to give consumers more choices about energy products and services, more control over energy bills and stronger protections. The commission found the current regulatory frameworks are no longer fit for purpose in the face of the growing number and scope of embedded networks and recommended a number of changes to the national frameworks. These include improved consumer protections in areas such as disconnection, payment options and notification of planned outages, and new protections such as access to consumer hardship programs and a retailer-of-last-resort scheme, along with giving customers more choice and access to competitively priced market offers.

As highlighted by the commission in the release of its final report, the review is about treating customers the same, wherever they live and do business. This includes whether or not they're served directly by our members—in this case, distribution businesses. Everyone should have the same rights and protections, no matter who they buy their electricity from. Energy Networks Australia therefore strongly supports the inquiry's further

considering the commission's review findings and recommendations, with the expected costs and benefits of potential reform options assessed by the Committee, to ensure there's sufficient clarity in the regulatory treatment of embedded networks and appropriate protections for embedded customers in New South Wales. Thank you.

The CHAIR: Thank you very much, Ms Moon. Thank you all for your opening statements. Committee, if you just indulge me for a moment, can I just say to all the panel you are obviously aware of many of the issues that the Committee has already heard from witnesses in regards to the retailing or the embedded network products that are currently available. I think you've raised something that the Committee may not have been aware of, and that has been the provision of your wholesale electricity in terms of large transmission, I think—

NATALIE LINDSAY: High voltage versus low voltage?

The CHAIR: High-voltage transmission, which is something from a safety perspective that I don't think the Committee considered. But given we are the Law and Safety Committee, perhaps I might question you just a bit further in relation to that. Your opening statements—thank you very much—all appear to be written. If we could gather those; I don't want to lose that information, but I'm sure our trusty Hansard have already got that recorded. You mentioned particular premises in South Australia that required an 11,000-watt transmission?

NATALIE LINDSAY: It was a high-voltage connection to the network. Typically high-voltage connections are at the large industrial sites such as mines but what we are seeing more frequently is embedded networks connecting as a high-voltage customer. There are probably a number of reasons for that but the issue with that is once it becomes high voltage, the embedded network becomes responsible for maintenance of that network. Given it is high voltage, when you compare that with a distribution network that needs to manage high-voltage assets every day, the safety obligations are quite different in terms of what that embedded network operator has to comply with and what the distribution network has to comply with. Clearly, safety obligations are critical to the safety of the community and the public. I'm not saying that there are no obligations for high-voltage connections; there are some. But they are very different systems compared to what a distribution network has to comply with.

The CHAIR: In relation to the size of that high voltage, are there any sites within New South Wales that we potentially have that? I guess the question more importantly is has that been provided on behalf of a very, very large apartment building? It is?

NATALIE LINDSAY: Yes. I might defer to Ausgrid on this question because the recent residential developments in the Ausgrid network are trying to connect as high-voltage connections, so they have more experience than we do in this area. We don't have as many, obviously, as I said. Essential Energy has 72 and it is a mix of shopping centres and some apartment blocks. But given Ausgrid has 800 and a recent trend towards connecting to high voltage he can probably provide some better perspective.

The CHAIR: We're talking something like the interconnector just dropping down and connecting to a premises, are we?

NATALIE LINDSAY: Generally speaking, you are avoiding a whole layer of the network because you are connecting at that high voltage. Everyone else sort of connects at low voltage. A reason you might do that is to get a cheaper network tariff. I'm not saying that's the reason but it could be a reason. There are less obligations in terms of safety compared to what a distribution network has to comply with.

The CHAIR: Yes.

ALEX McPHERSON: In terms of the Ausgrid network area we are seeing more applications for high-voltage connections. In recent years you might be aware of the Central Park development near Central station. That's a high-voltage electricity connection and there are good reasons for why that site needed a high-voltage connection for some of the technology in place at that site. But what we are seeing are mixed use residential-type sites seeking a high-voltage connection. There is a gap in the safety regulations in New South Wales that we've recommended that IPART might have a role in looking at, because the obligations on us in managing high-voltage electricity installations do not apply to embedded network operators currently. They do in South Australia. We would recommend that the South Australian experience be examined as part of this.

The CHAIR: I know it's probably outside the remit of this Committee but if I could just indulge that a little bit further. I imagine with all of those proposed high-voltage connections in the future that that's going to place a strain on the energy provision across the board, given that you have to ascertain that you can provide that? Would that be correct to say? If they have the ability to or if they are paying for that high-voltage connection and you are seeing more and more of that, it may not necessarily be, as you said before, that they are using all of that but they are getting a cheaper tariff in order to connect. I imagine that you as providers yourself have to ensure

that that is available in the network and that would put greater strain across the network? Sorry if I'm outside the remit of this but it's just a question off the top of my head.

FRANCOISE MERIT: I can try to answer that question. It is about the role that network distribution have, which is to maintain the grid and ensure stability. You are right in balancing the load and the various points on the network. The embedded networks do not have necessarily the same flow of information back to the networks, so we don't necessarily see and know what's happening in the embedded network themselves. I guess not only when they are high voltage but when they are low voltage, this absence of information around what's happening can, in fact, put on exercise to maintain the grid stable a bit more complex. You are right. If we see increased demand or increased application for embedded networks in the future without a little bit more regulation, I guess it will make our task a little bit more difficult.

The CHAIR: Just another problem that we have to deal with with embedded networks. Committee, I will throw it over to you.

Mr GEOFF PROVEST: Probably just an opening statement from me. The other stakeholders that have come have all basically said the same thing: There needs to be reform; there are issues in clarity and transparency; there are issues in billing practices and so on. I didn't know what an embedded electricity thing was until about two months ago. You guys are the leaders in the field. You are the suppliers and everything. Why haven't we done something before or why hasn't the industry come to government and said, "Hey, we think there is a problem". I have seen that parabolic curve of the amount of embedded programs. It just strikes me as why all of a sudden everyone seems to be on the same side, basically. It's not often—I've been here a long time, not that long, but a long time—that industry comes to government and says, "Hey, guess what, we need more regulation". It's usually the other way around, that we're overregulated and things like that. If you could answer that one, or somebody?

FRANCOISE MERIT: I can start. There has been evidence in 2017 and 2019 when the AEMC report suggested that it needed some change around the National Electricity Rules to govern and allow the embedded network customers to access some retailer competition. In 2019 the report suggested that we needed to have more monitoring and reinforcing of some of the regulation. Equally the AER report that came out a couple of years ago suggested that, in fact, the customers of embedded networks did not have access to this retailer competition. I don't think it's a new issue. It's been bubbling along for some years. What has happened very recently is this acceleration and this increased application for embedded networks. The framework in place had been designed for a very specific reason that we highlighted, which was to cover caravan parks and retirement villages or very, very small areas which would have by nature a more transit type of demand on the network. What has happened recently is that this, I guess, context around embedded networks was a little bit forgotten. For every application, despite being outside of the initial intention, was allowed to progress. I guess that's why we are all coming back together now suggesting that we need to change that.

Mr GEOFF PROVEST: Okay. Tell me something, the way it's shaping up, if I was a developer and I developed say a 5,000-lot residential area, can I make that totally an embedded network?

ALEX McPHERSON: Yes, you can seek to apply to have an embedded network.

FRANCOISE MERIT: Yes, you can apply for it, yes.

Mr GEOFF PROVEST: I can apply for it. I could look after the whole 5,000. Correct me if I'm wrong, hasn't Essential changed? The way I understood it, when I was doing that before, Essential would come in and put the infrastructure in and then recoup their costs over a period of time. Now they are saying to developers, to do that you have to pay us up front and then you can put it on the price of the blocks?

NATALIE LINDSAY: That's right, yes.

Mr GEOFF PROVEST: And that's a change in Essential?

NATALIE LINDSAY: That's a change. That's not a policy Essential Energy has only changed. We are complying with the National Electricity Rules on that. It's basically if you create the cost, you should fund that cost. There are circumstances where you can deviate from that but for real estate developers creating new real estate developments, they are required to fund the cost of the electricity infrastructure.

Mr GEOFF PROVEST: Another question, if I may. Earlier today we spoke to owners' associations, strata bodies and that and they expressed a great deal of concern that when their customers, their members, actually enter these things, it's so confusing you nearly need a degree to work your way through it. Usually there is no disclosure when I buy a unit or an apartment off a plan. I don't realise it's an embedded thing until I get to the first body corporate meeting and there's obviously some pressure there to say sign up here. We've even heard today threats of "If you don't sign today, you won't have power by midnight tonight", type of thing, which has been disputed by other witnesses. There's a lot of confusion in the marketplace.

I'm just concerned that certain developers out there are trying to take advantage of the system—e.g., to be basic, if there wasn't a quid in it, we wouldn't see the massive amount of applications. If it was for the good of the consumer, we'd probably see a pretty flat line along there. So you're working together as a team. You also said in your submission that embedded network customers are not receiving adequate service levels and options could be explored which include a regulated price similar to the DMO. You see, I'm getting the hang of this terminology.

NATALIE LINDSAY: Yes. Well done.

Mr GEOFF PROVEST: Would you have a set price below that? Would you use the DMO as the maximum amount, or a bench medium mark?

NATALIE LINDSAY: That would be the absolute maximum price. The AER do put a fair bit of effort into determining that DMO each year. Whether it's the right maximum price for an embedded network customer is probably to be debated, but that would be the absolute maximum price that should be applied. I know in New South Wales in the past—and the concept of caravan parks and retirement villages has been around for a long time, and I've been around for a long time as well.

Mr GEOFF PROVEST: No, I'm saying I've got many of those.

NATALIE LINDSAY: Yes. Twenty years ago there were processes in place where we would send letters to caravan parks and say, "This is the maximum price you can charge your embedded network customers." I think a lot has changed a lot since then and the whole framework has changed, but I think from a consumer protection perspective for a customer in an embedded network that has no choice and that can't transfer, pricing controls or pricing protection is really critical.

Mr GEOFF PROVEST: Yes. We heard today from another electricity provider that it's not that hard to change and they're working on making it easier to change, yet other people—witnesses—said it's enormously hard and there can be really punitive costs and things like that. Finally, I get a bit—sorry—with having a national scheme. My electorate is on the Queensland border at Coolangatta, so for the past 2½ years I've had border lockdowns, armed police and that. So I get doubtful of the States ever agreeing to work on something nationally, and if they do, it takes many, many years. We've already been told today the embedded network in Queensland is different. Victoria is trying to do something different again, and we're here.

Mr ADAM CROUCH: My question would be to Mr McPherson. I'm on the Central Coast, Mr McPherson, so Ausgrid is a major provider of energy up here on the Central Coast. Again, in all of your opening statements you highlighted the difficulties that you are all having when it comes to looking after somebody else's company. Say, hypothetically, we have a customer from WINconnect who decides they want to shop around. They live on the Central Coast and they live in a caravan park, for instance. If they were to call Ausgrid, who we all know on the Central Coast is a major provider of electricity, would you not be able to assist them, given that they would be part of an embedded network with, say, WINconnect at the caravan park? Are you restricted from actually doing any deals with them?

ALEX McPHERSON: Yes, we are. So, our role effectively ends at the gate of the embedded network, at the connection point, so we really have very little relationship, once the embedded network has commenced, with the end consumer apart from providing effectively ongoing reliable supply to that embedded network gate and then to enable that reliable supply within the embedded network. We are not a retail provider, either; we are not allowed, either, to be a retail provider. So, yes, we have no real role under legislation to be able to support that customer. That said, there is a lot of confusion in the market. Energy is a confusing industry. We do get calls directly to us saying, "What can you do for me?" and we have to go through this quite confusing conversation with the customer, and quite a frustrating conversation from at least the customer's perspective, around what we can and can't do in those circumstances.

Mr ADAM CROUCH: Mr McPherson, I suspect that some of those calls would hit peak time when we have a storm event around the Central Coast. You know, you've got these embedded networks and facilities—as I said, everyone on the Central Coast just defaults to Ausgrid. So whenever we have a storm event and the power goes out, you would be having to negotiate or explain to all these people every time they call, "We actually can't help you." Would that be a fair assumption?

ALEX McPHERSON: No, I wouldn't say that. If there isn't an outage caused and it is driven by an issue in our network, sort of upstream, we would provide information around restoration of supply to the embedded network, but it does depend on whether the outage is driven by something in our network. If it's beyond that sort of gate meter or gate connection point, then we don't have any visibility of it.

Mr ADAM CROUCH: [Disorder].

ALEX McPHERSON: Sorry, I was just going to say that's something that we've raised in our submission not only for unplanned outages where nature might impact supply, but also for planned outages. Under national energy customer frameworks, we have to provide notification of outages within four days. There are no equivalent obligations for embedded network operators to provide similar time frames for outages that might be affecting customers within their network.

Mr ADAM CROUCH: Just to clarify, if I lived in a caravan park and they were part of an embedded network, if a tree in the caravan park fell over the power lines connecting properties, you effectively can't actually repair that?

ALEX McPHERSON: Yes, that is exactly right. They are not our assets. We have no role.

Mr ADAM CROUCH: Even though Ausgrid may have—sorry, let me rephrase that. This is where they are seeing this confusion around embedded networks, especially at the customer level. They don't know who to turn to (a) if there is a problem internally inside a facility and (b), as you've just articulated, they literally have absolutely no consumer rights to go and shop around for a better price. A good example is Service NSW. If someone walks into Service NSW with their power bill and says, "Can you help me finding a better provider", as soon as they're part of the embedded network, it ceases. There's nothing that can be done for them, effectively, which is what you were saying, anyway.

ALEX McPHERSON: No, that's not quite what I'm saying. I'm saying we have no role in providing them a retail offer.

Mr ADAM CROUCH: Yes.

ALEX McPHERSON: But certainly my understanding is there is, theoretically at least, retail competition but there are significant barriers for an embedded network customer to access a retail offer. For example, the retailer has to be willing to provide that offer, a market contract; there may need to be a changing to their metering configuration to give them the ability to have a separately read meter and a meter in the market. So I'm not saying there is no availability of retail competition; I'm saying my understanding is the barriers are quite high.

Mr ADAM CROUCH: So it would be fair to say that most retail providers will avoid trying to negotiate or help somebody who is already in an embedded network because of those complications?

ALEX McPHERSON: I couldn't say that. That's probably a question better put to the retailers.

The CHAIR: We also understand it's cost prohibitive—

ALEX McPHERSON: Okay.

The CHAIR: —for people to be able to access the embedded network. I am conscious that we look like we're ignoring Ms Moon. Before I go to Mr Atalla I will ask you, Ms Moon: We understand you represent the electricity transmission, distribution networks and gas distribution networks. Could you perhaps elaborate on any issues identified by gas distributors in relation to the embedded gas networks?

LUCY MOON: Yes. Certainly, our focus in this inquiry has been on electricity customers. Certainly, the AEMC's review in 2017 and 2019 largely focused on electricity embedded networks, although it did do a little bit on gas networks. When speaking to our gas members, of which I think you may be speaking to some through this inquiry and some—certainly Jemena Gas Networks and APA—made submissions, I think they highlighted that the embedded gas networks such as centralised gas hot water systems are an efficient and cost-effective way of providing hot water to multiple customers within the local network. I think to maintain that optionality to give customers options to access gas embedded networks is a priority for gas members; but notwithstanding that, there is a need to address those consumer protections that are found in electricity embedded networks as well.

Following on some of the points that my colleagues have mentioned, I think what we've all found is that an existing challenge within the current frameworks is the lack of regulatory visibility over these exempt sellers and embedded network operators and owners. The AER has done some great work recently in terms of their retail guidelines and introducing fact sheets and providing more information and introducing some more consumer protections. But I think there is some way to go, particularly around the limited retailer choice that Mr McPherson mentioned in terms of customers. While they theoretically have access to retailer contestability, the issues raised in terms of the way that maybe the embedded network is wired or whether it's metered or the fact of the challenges of getting an energy-only offer from retailers means that they're unable to access that, which means from a customer perspective they may not be able to get the best retail offer that they are able to, compared to, say, a grid-connected customer like myself.

Mr EDMOND ATALLA: Endeavour Energy, in your opening statement, you indicated the growth of embedded networks. I think you said "increased tenfold". We've seen stacks that skyrocketed from—I'm not sure of the time frame—a couple of years ago till now, where they've just got enormous growth. Can you give an explanation as to why this growth has occurred?

NATALIE LINDSAY: You can speculate.

Mr GEOFF PROVEST: Money?

NATALIE LINDSAY: Yes. I think there are definitely gaps in the regulatory framework, and I think you've heard a lot about that in this session and today. I think there is a financial incentive to operate an embedded network—to put it quite bluntly.

Mr EDMOND ATALLA: So embedded network operators are finding loopholes, which makes this very financially attractive. As more find this loophole, more are jumping on the bandwagon to join in the financial incentives.

FRANCOISE MERIT: Yes, and maybe some other element of the less regulatory framework and therefore probably an easier avenue to create those embedded networks. So probably the suggestion is not just probably financial but the actual practicality of creating those embedded networks.

Mr EDMOND ATALLA: If we go down the track of licensing embedded network operators, do you think the number of operators would drop? Could you have a guess?

NATALIE LINDSAY: I think in today's numbers—I don't think they will drop. I do think that once you have one, they are incredibly hard to unwind. I think licensing will help improve the experiences of customers. What it may do is slow down the progression of embedded networks to those sites that actually should be an embedded network or they connect at the right voltage. I don't think it'll change the number of embedded networks today, but I think it will impact the growth going forward.

Mr EDMOND ATALLA: What about the embedded network operators? Will that slow down the number of operators coming into the market?

FRANCOISE MERIT: We can only probably believe that. If the regulatory framework and the regulation is increased and the licence conditions are increased, then naturally there would be a tendency for those network operators to aggregate and maybe concentrate. But that's a suggestion, obviously, that naturally you will see that sort of consolidation happening in the market. But the further point that I want to stress is probably the safety aspect from the customer into an embedded network needs to be considered. So it's not just a financial point that we need to raise, but really looking into the access to safe and reliable electricity that, with my colleagues and on behalf of the network, we want to put to the inquiry.

The CHAIR: You've raised the issues in regards to safety from high voltage. You're now raising the issue particularly in regards to embedded networks. Are you seeing any unsafe practices? We largely have an unauthorised and unregulated industry. I can only imagine that, if you presented to a developer something that appears on paper too good to believe, a developer is going to grasp that. That is someone willing to pay for all their infrastructure, their metering, all the requirements that they need for an operator to come in and provide a provision of energy for eternity, and you're saving a developer hundreds of thousands of dollars, if not millions of dollars, depending on the size of the development. Why wouldn't that developer grasp that with both hands? The answer to that is they certainly have in a grand way, I may say. We're seeing, as we say, a tenfold increase in embedded networks. Given that they are unauthorised and largely unregulated, are you seeing specific safety issues from you guys as a wholesale operator?

FRANCOISE MERIT: I cannot say for Endeavour's Energy patch.

ALEX McPHERSON: I think there's an incentives issue. The property developer in the first instance generally won't be the party that looks after the embedded network. They generally build the site, and then they leave. In terms of the question of whether we've seen any unsafe practices—no. We certainly have. But the fact of the matter is that we don't have any visibility of what's happening in the embedded network. I think that's part of the issue, that no-one really does.

Mr GEOFF PROVEST: Who's the policeman? Who checks these things?

ALEX McPHERSON: That's the challenge. That's the point we're trying to make.

FRANCOISE MERIT: It's unregulated.

Mr GEOFF PROVEST: So it's self-regulated?

ALEX McPHERSON: Yes. There isn't really any oversight.

Mr GEOFF PROVEST: You're not going to get an inspection every so often?

ALEX McPHERSON: Not that we're aware of.

NATALIE LINDSAY: The service and insulation rules do have some requirements for high-voltage network operators. But it is like a page and a half of requirements, compared with what a business like ourselves would have to deal with.

Mr GEOFF PROVEST: We're talking 11,000 volts or—

NATALIE LINDSAY: Yes. That's why I was saying before that they don't have no safety obligations, they have some. But whether they're the right level or not, I think, does need to be explored.

FRANCOISE MERIT: The one thing that I will add is we're looking, obviously, into the future and the changing environment and energy transition with more renewable energy. We as the network operator have to prepare the grid for two-way energy flow with the influx in solar panels and the batteries. We don't believe at this point in time that the current regulatory framework around the embedded network will allow this two-way flow to operate in a safe environment.

The CHAIR: One thing that the Ombudsman has raised is the information that they are able to gather, and that largely is them going door to door to knock on doors, to actually undertake to explain what provision of services have been provided to each individual resident et cetera. Then they find out who the embedded network is. You have that information at hand in relation to—you don't have that in relation to the embedded network operators?

ALEX McPHERSON: We have no visibility beyond the gate—what happens within, how many customers are within it. We have no—

The CHAIR: But you have visibility on the actual embedded network operator?

ALEX McPHERSON: Yes, just as one customer. We don't know beyond that.

The CHAIR: I understand that. But even that particular information I think would be valuable to the Ombudsman. Would there be agreement to be able to willingly provide that particular information when an embedded network operator provides to you and ultimately you enter into that contract for provision of electricity?

NATALIE LINDSAY: Could I just make a few comments. As I stated in my opening statement, we have 72 registered embedded networks. But, looking through the list of those customers, there are no caravan parks and there are no retirement villages. So there's a whole range of embedded networks out there that we actually don't know about at all. They're not registered as anything. They're connected to the network, and the local people might know them, but we certainly don't have a list that we can pull out at a drop of a hat and say these are the 700 embedded network sites across our network.

The CHAIR: But I think that's the point that I'm making. You at least have visibility on that. Is that something you'd be happy to hand to the Ombudsman and say, "This is the service we're providing"?

NATALIE LINDSAY: For the registered ones? Yes.

The CHAIR: That'd be great. Fantastic.

Mr EDMOND ATALLA: Just on the licensing issue, I think it's Ausgrid, Endeavour and Essential that recommend that IPART license and regulate large embedded networks under categories 2 and 3. Can I get an understanding of that recommendation? Why not recommend that all embedded network operators be regulated and licensed? Why only the large ones?

ALEX McPHERSON: I can take that. We've tried to draw a distinction. It's hard to draw clear lines in this sort of thing. We tried to draw a distinction between small embedded networks, which are generally small retirement villages or caravan parks, and those that are much larger and probably are the ones driving that significant uptake and may be more prone to seek a high-voltage connection. So we propose to draw a line at 30 customers. You could draw it slightly differently, but that's where it's proposed to be drawn, to provide transparency and predictability over where licensing should start and end.

I think licensing for small caravan parks and the arrangements and the burden that that might create for those sites—there is a question to be considered there, about whether that would be unnecessarily burdensome. We think in many cases it may well be. But, certainly, for those larger sites, particularly where there are safety, reliability, consumer protections and tens, hundreds or thousands of end customers within the sites there needs to

be, I think we're learning, just quite simple things, just very simple information provision requirements, if not anything else, to understand what is actually going on within these sites, which I don't think anyone really knows.

LUCY MOON: That is certainly relevant to the outcomes out of the Victorian review, where they've recommended the introduction of a licensing framework to be then also administered by their jurisdictional regulator, the Essential Services Commission.

The CHAIR: There's been information in regards to a ban. But we've been provided with information today, that—obviously, it's not a total ban but I think it's a ban going forward—unless there is 100 per cent renewables being provided. I think some of the comments out of this particular Committee have been, "How far down in the future will 100 per cent renewable energy be provided? Then do we all ultimately enter into a new problem, where it's unregulated once again?" So I think we probably need to encapsulate all of that from our perspective going forward.

LUCY MOON: Definitely. Not only the licensing framework, but then they've introduced additional consumer protection for existing sites as well. They're trying to capture the full gamut.

Mr GEOFF PROVEST: Lucy, how do they capture the existing ones? We've heard so many times we don't really know who they are.

LUCY MOON: How do they currently capture the existing ones?

Mr GEOFF PROVEST: Yes. You just said the Victorians have got new stuff coming through to capture the existing customers but, quite frankly, many times today we've heard that we don't really know who they are out there.

LUCY MOON: I think that lack of information and transparency around them is not just applicable to New South Wales. It's certainly applicable to other jurisdictions. As I understand it, they're looking at introducing a licensing framework, which then may be able to address some of those concerns, and some registrations, along with the AER's registration requirements in terms of exempt, registered and large networks.

Mr GEOFF PROVEST: It's a bit like moonshine, isn't it?

LUCY MOON: I can certainly provide more information out of the Victorian review on notice if that would be helpful to the Committee.

Mr ADAM CROUCH: We talked about caravan parks. Sadly, they're the people who can least afford to be fleeced by these people. They are the most vulnerable, predominantly. While they might be small caravan parks, if you accumulate all of them, especially in areas like Tweed or the Central Coast, there are thousands of people that are low-hanging fruit, effectively, who are going to be completely oblivious to what they're being exposed to until they simply can't afford to pay any more. As I said, I'm not sure what solutions you guys can recommend to us about how we capture them. Quite frankly, nobody should miss out, regardless of how big or small you are, from having that protection. As I said, it might be one or two caravan parks, but suddenly, if you start accumulating all of those, it starts to enter thousands of people. Central Coast is a good example. I think Tweed and Ballina would be good examples of where there are literally thousands of people living in these sorts of villages, who are slipping through the net.

LUCY MOON: Yes. That lack of retailer choice and the concern that maybe consumers are not getting the best offer was a key outcome of the AMC's review—a key finding as well.

Mr ADAM CROUCH: Could I ask the energy wholesalers is there any way to actually capture this data? Obviously, the embedded networks who are not acting in the best interests of their customers are not going to come forward. How do we as a government work out a way that we can actually capture—because all the evidence we've heard is that it's so difficult. We don't know where they are. We don't know how many there are. We know there are lots of them because we've seen the curve. We just don't know where they are. How do we as a government find a way to capture that data?

ALEX McPHERSON: I would hazard to say that, if there was a licensing regime, particularly for embedded network operators, and if there was a lack of information being provided, the ability to revoke a licence could be quite a useful means to get conformance in that area.

Mr ADAM CROUCH: Just let me clarify: Who would notify the Government or the regulator, so to speak, that somebody's being not compliant?

ALEX McPHERSON: There could be a role there for IPART, potentially. It's a really complicated question. It's very hard. But there may be a role there for the regulatory authority. But it's a very complicated one.

Mr ADAM CROUCH: That's part of the issue we're seeing. It's so complicated. It's like trying to unscramble the egg. We've seen the situation where we know they're out there, but no-one's putting their hand up, of course, to say, "We know where they are" or whether there's the ability for wholesalers—and even retailers to some degree—to if you want to work in the best interest of the customer, you should be able to identify where the cowboys are effectively and be able to boycott them. I don't think at the moment the network has—would I be right in saying the network doesn't have the ability to track down that information?

FRANCOISE MERIT: No, we don't. That's correct.

Mr GEOFF PROVEST: Can I just follow on with that? You guys take it to the kerb, right? And the embedder comes the other way. Surely, if you're supplying enough electricity to a kerb and it's feeding enough for 50 houses or 60 houses, you'd have a fair idea what's behind the fence, so to speak.

NATALIE LINDSAY: For a network like ours, yes, there are ways to identify them. You could drive up to the gate and go, "That's a caravan park." But we cover most of New South Wales. Yes, it could be done. But it would be quite a costly exercise to do that sort of audit. We could do things like look through account names and pick up words like "caravan" or "park". But sometimes those businesses aren't registered like that. There's a few ways that you could try to identify this information, by using local knowledge and database records, but it's not going to happen easily or quickly. It's possible, though.

ALEX McPHERSON: Yes. When we normally connect the site, the premises behind them aren't built. It's a new development so we wouldn't know.

Mr GEOFF PROVEST: No. But if I'm consuming enough electricity for 50 houses—

ALEX McPHERSON: That's what we have to do. We can estimate based on how much is going through that gate meter.

Mr GEOFF PROVEST: If I start growing marijuana at home with hydroponics, a sure thing is that you guys will know about it, because my—

NATALIE LINDSAY: We'll know about it.

Mr ADAM CROUCH: I was waiting for the member for Tweed to bring—

Mr GEOFF PROVEST: It's a bit of an issue, up where I come from. But you would certainly know about it if my electricity doubled or tripled or quadrupled.

ALEX McPHERSON: The other challenge is a lot of these embedded networks are implementing renewable energy behind the meter. To know exactly—to estimate it when they have their own generation source within the site can actually be quite complicated as we well.

Mr GEOFF PROVEST: I see. I agree, but we were told with other people that, if they do that, often they don't pass on those savings. You don't know, I know.

FRANCOISE MERIT: Yes. We don't know, but there's suggestion it's the case.

The CHAIR: In the interest of full disclosure, the member for Tweed was talking about medicinal cannabis.

Mr ADAM CROUCH: There is absolutely no obligation for an organisation who's an embedded network—say they built an apartment block, they've got a couple of thousand solar panels on the roof and don't tell anybody they're there. They could actually be putting energy back into the grid, getting a saving from that and not having to pass it on to the consumer, being those people that are part of that embedded network. Is that correct?

ALEX McPHERSON: That would be my understanding, yes.

FRANCOISE MERIT: Yes, that's our understanding.

Mr GEOFF PROVEST: This is a gift that keeps on giving. It's like those Russian dolls.

The CHAIR: Conscious of the time, I sincerely thank all the panels for appearing before the Committee today. You will be provided with a copy of the transcript of today's proceedings for corrections. Any questions taken on notice will be forwarded to you by our staff.

(The witnesses withdrew.)

Mr JIM COX, Deputy Chair, Australian Energy Regulator, sworn and examined

Mr BEN DAVIS, Director, Retail and Wholesale Markets, Australian Energy Market Commission, affirmed and examined

Ms MICHELLE SHEPHERD, Commissioner, Australian Energy Market Commission, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our last panel of witnesses, Ms Michelle Shepherd, via Webex from Western Australia; Mr Ben Davis; and Mr Jim Cox. I thank you all for being here to present evidence to the Committee today. To assist Hansard with the preparation of the transcript, I ask all members and witnesses appearing via videoconference to identify themselves when they begin speaking, and please mute the microphones when not answering a question to minimise background noise. In line with our proceedings, would any witnesses like to make a short opening statement for a couple of minutes before we ask questions? Ms Shepherd?

MICHELLE SHEPHERD: Thank you, Chair. Yes, I would like to make a couple of opening remarks. Firstly, thank you very much for inviting the Australian Energy Market Commission to be part of the inquiry. We are very pleased to be here today. The commission is an independent statutory body that makes rules for Australian electricity and gas markets. We also provide strategic advice to the Energy National Cabinet Reform Committee and to energy Ministers. In 2017 and 2019 the commission conducted reviews of the regulatory framework for embedded networks. Through those reviews, we found that the framework was originally designed for a limited set of activities on a small scale, where the sale and supply of electricity was not an entity's core business. However, we now estimate that embedded networks supply around one million customers in the NEM, and we know that number continues to grow. There's also a disproportionately large number of vulnerable customers within embedded networks and, furthermore, businesses that specialise in the supply of embedded networks supply the majority of those customers.

There are a number of key challenges faced by embedded network customers. These include that they have limited access to retail competition, they have substandard consumer protections applied to them, and there is inadequate compliance and monitoring of the limited set of consumer protections that do apply. The commission made a number of recommendations to improve consumer outcomes and in 2019 we provided the then COAG Energy Council a package of recommended law and rules drafting to give effect to those recommendations. It is our understanding that the recommendations were referred to a working group and were then subject to an independent cost-benefit study. We understand that study found that while many consumers would benefit from the reforms we suggested, the implementation costs did not outweigh those benefits. However, the study also noted that not all consumer benefits could be quantified, particularly in relation to the benefits from improved customer protections.

Since then, we understand that there have been no jurisdictional actions to progress the recommendations from our report. However, separately, the Victorian Government has pursued its own actions to improve outcomes for embedded network customers in Victoria. The commission continues to be of the view that the regulatory framework for embedded networks is not fit for purpose, and that the issues we identified need to be addressed. However, given the lack of progress on the commission's recommendations, there are alternative avenues to reform embedded networks and the framework that exists within them. The AER's current retail authorisations and exemptions review is an avenue to progress such reforms. We will continue to work closely with the AER, as we have always done, to improve the regulatory framework for embedded networks for the long-term interests of consumers. We very much look forward to the outcomes of this inquiry. Thank you.

The CHAIR: Thank you very much, Ms Shepherd.

BEN DAVIS: Nothing from me in addition to Michelle.

The CHAIR: Jim?

JIM COX: Thank you very much, Chair. I would like to make brief opening comments on behalf of the Australian Energy Regulator. I would like to begin by thanking the Legislative Assembly Committee on Law and Safety and its members for the opportunity to discuss embedded networks. I will make a brief opening statement and I am happy to answer any questions after that. The AER—the Australian Energy Regulator—can be viewed as the energy market entry and exit point. As the regulator, we apply the national energy laws and rules which govern authorisation for businesses that seek to become energy retailers, and our role extends to monitoring and compliance enforcement under these laws to ensure that customers get the required protections.

Under the National Energy Retail Law, the AER assesses applications for businesses wanting to become retailers and provides exemptions with conditions for those businesses selling energy which do not require an

authorisation. Exempt businesses commonly operate embedded networks where the business onsells energy to residents or tenants at a site. When we're thinking about exemptions, it doesn't mean no regulation. The conditions we attach to the exemptions, so-called, are themselves a form of regulation.

Under the National Electricity Law, anyone who supplies electricity through a network must be registered with the Australian Energy Market Operator or be exempt from registration. The AER may provide an exemption where the costs of having an authorisation outweighs the benefits to consumers and where the sale of energy is not the operator's core business, for example, retirement villages, caravan parks or shopping centres. The AER administers these exemptions through the Retail Exempt Selling Guideline and in accordance with the framework set out in the retail law. As discussed in the AER's submission, exemption holders must follow strict conditions and meet their obligations to customers as outlined in the guidelines. While these conditions are less prescriptive than those of authorised retailers, they, as far as practicable, mirror key customer protections imposed on authorised retailers. Such protections include information disclosure, payment plans, life support and billing, which attract substantial penalties if they are not met.

Notably, embedded network operators are a diverse collection of individuals and businesses that have markedly different resources, expertise and motivations, making a universal application or administration of the same level of consumer protections impracticable. There are also complexities for the operator in meeting obligations under other governing legislation, which may place further and possibly conflicting requirements on the operator, for example, those under tenancies, land lease, body corporate and caravan legislation. Improving consumer outcomes in embedded networks, including by enabling access to ombudsman schemes, is a compliance and enforcement priority area for the AER. The AER relies on various sources to gather intelligence about the current issues and harms that customers face in embedded networks, including direct contacts to our contact centre and ombudsman reports, so we can conduct trends analysis to inform the AER's compliance priorities and subsequent compliance work and identify specific noncompliance for escalation into investigations.

In July 2022 we released our updated Retail Exempt Selling Guideline and consulted extensively across New South Wales with various stakeholders. The updated guideline includes new consumer protections, for example, the requirement for exempt sellers to have a hardship policy in place and provide customers information that aids their understanding about the challenges to accessing a retailer of their choice. The AER have recently engaged in a range of compliance activities to ensure customers in embedded networks can access dispute resolution services. This has included contacting various industry associations related to caravan parks, retirement villages and similar, as well as contacting exempt sellers directly, to communicate the AER's expectation of becoming members of EWON and working with EWON on a major project to increase exempt customers' awareness of their right to access EWON's services. EWON is the Electricity and Water Ombudsman NSW. I realise we have to be careful with acronyms.

We have also established a process to identify and take action where exempt sellers have failed to become members of EWON. We continue to work closely with EWON to ensure greater compliance. We acknowledge the exemptions framework may no longer be fit for purpose and we are considering this issue as part of the authorisations and exemptions review. We are currently considering submissions received on our issues paper to inform potential reforms for the exemption framework. The review aims to release draft recommendations by November 2022 for consultation, with a view to release final recommendations by April 2023. In this work we will consider the suite of recommendations the AEMC put forward in its 2019 review of the regulatory framework for embedded networks that Michelle spoke about earlier and we will consult with the AEMC to identify areas that could be progressed. That gives a sense of what the AER is doing in relation to embedded networks. I welcome any questions, thank you.

The CHAIR: Thank you very much, I appreciate that. We will go straight to questions. I am going to indulge myself straight off and ask a question to the Australian Energy Regulator. Mr Cox, do you have the ability as the Australian Energy Regulator to regulate, authorise every embedded network across Australia?

JIM COX: Let's see, I think in principle, yes, is the answer to that. We can regulate them by issuing conditions to accompany the exemption from authorisation. In practice there are issues of registration. We know about the ones that are registered with us. As I was saying to your colleague, if you are an embedded network that has 10 or more residential customers you have to register with us. The smaller ones aren't. I guess the reason why they are not required to register with us is because of the cost, I guess, both to them and ourselves in dealing with a large number of very small operators. That probably is why the registration framework operates as it does. Certainly for those that are registered, we can and we do attach conditions to the exemption and we do enforce monitor compliance with those conditions and we enforce compliance with those conditions. The other thing of course is that as part of the authorisations extensions review that we discussed earlier, it might be possible for us to decide that additional conditions are required and make further decisions along those lines.

The CHAIR: I am just going to go a bit further. If I'm reading that correctly, the AER today could request, demand, whatever the wording may be, to register every embedded network across the country and could impose consistent conditions across those embedded networks right across Australia. If you wished to, you could do that today?

JIM COX: I am not so sure we could do it today because I'm not so sure myself where the limit of 10 customers comes from. Michelle might be able to help me here. Whether it is something in our own guidelines or if it is something that is required by the law or the rules, in which case it would not be open for us to do that.

The CHAIR: If I went further and said everybody outside those that have 10 customers?

JIM COX: Certainly for those that have more than 10 customers we have the authority to do that.

The CHAIR: You have the authority to do that. That would not require legislation; you could do that?

JIM COX: It depends what you mean by "regulation".

The CHAIR: I am talking about the issue that has come through from just about every witness here today, which has been the need for all embedded network operators to be registered. That has been one consistent theme. Through that registration process, I imagine an appropriate level of Australia-wide standards and conditions could be implemented within that registration. I am just trying to get to the point: If you can do that, given the inherent problems that we are seeing with some embedded network operators to this day that are imposing ludicrous costs to consumers in our areas, particularly some of our electors, as has already been established, the question would be why wouldn't you do that straightaway?

JIM COX: I understand that we do have the legal ability to decide on the limits. We would obviously have to do some work to establish the criteria for exemptions, but I think in principle we do have the ability to regulate all embedded networks. Whether we should do so obviously requires a consideration of costs and benefits. As we have discussed, we already do regulate the large networks. If we were to extend that to below 10 customers, obviously there are issues of the burden that places on very small operators that may have only a few customers, such as a caravan park with a few tenants. That's a burden to them with regulation and there is a question, that I think Michelle referred to, whether the costs are worth the benefits. That sort of consideration would need to be made. Under the existing system, yes, with anyone of any significant size, we can and we do regulate them.

The CHAIR: Committee, thank you for your indulgence.

Mr GEOFF PROVEST: I want to explore this. You make these regulations on the embedded network. Do you go and check on them, whether they're doing it? If I have a place in an embedded network, are you my first order of call if I feel hard done by?

JIM COX: We do have a contact centre and some people do contact us in relation to embedded networks, so we are a possible first source of complaint, so to speak. The other important thing is the right to complain to an Ombudsman. That is something that we have been very concerned about in recent times. There is now a requirement for all embedded networks to be members of the Ombudsman scheme, EWON, and we have done a lot of work to ensure recently that they are members of that scheme.

Mr GEOFF PROVEST: The Ombudsman was here earlier and said a lot of them haven't joined up and they don't know who they are.

JIM COX: Well, we are promoting membership of EWON and we're encouraging all embedded networks to be members of EWON. If it came to our attention that an embedded network was not a member of EWON then we would have to consider what action we'd have to take. But there may well be a case for enforcement action to be taken.

Mr GEOFF PROVEST: Yes. Would that explain why Victoria has gone off on their own a bit? It seems to me like they've waited and waited and waited. In all fairness, all we've heard today is complaints—even from the industry itself, who said this needs more regulation. You might have heard me say—I have sat on lots of these committees—that rarely do I get industry coming and saying, "We need more regulation."

JIM COX: I have a couple of points there. On Victoria, we're not the retail regulator for Victoria. I really can't comment on what is going on in Victoria and what may have prompted them to take the action that they have. It is probably a question you should address to the Victorians. In terms of why the industry is complaining to you, obviously it's not the embedded networks that are asking for more regulation.

Mr GEOFF PROVEST: They were. There were some embedded network people here earlier today.

JIM COX: Okay. That's interesting. I listened to the energy networks talking and obviously they have a different part to play than the embedded networks themselves. If the embedded networks are asking for more regulation, I think that is—

Mr GEOFF PROVEST: Well, certain ones.

JIM COX: That's certainly very interesting.

Mr GEOFF PROVEST: Does it concern your organisation that there's a growth factor like this—an upwards curve? Usually in private enterprise, if there's a growth factor like that, somebody's found a loophole to make money—and the money only can come from the poor old consumer down at the end.

JIM COX: Is the growth of embedded networks a concern to us? I'm thinking yes, it is. You're asking yourself the question, "Is the regulation appropriate?" and I guess we're asking the same question ourselves through our authorisation exemption review.

The CHAIR: But you have the ability to do something about it.

JIM COX: Well, the New South Wales Government may have also the ability to do something.

The CHAIR: Can I just—

JIM COX: Sorry, I did want to make one other point, if I may, to Mr Provest: There are people that tell us that they appreciate taking power from embedded networks, so it's not all—

Mr GEOFF PROVEST: Can you send them our way? Because we haven't found one of them yet.

JIM COX: It's interesting, because we get requests from people for a conversion to an embedded network, so we can draw them to your attention. Also, we are discussing about publicising the services of the Ombudsman scheme so that people can take advantage of it. We're doing a communications campaign so that people are better informed about the Ombudsman scheme than they now are. One of the messages that came out of that was that being in an embedded network is not necessarily negative. There are some people that actually enjoy living in them, perhaps because new or innovative services or renewable energy is available. It's not to say there are not problems in embedded networks—I'm not saying that. But I think there are also some benefits, and some people appreciate living in embedded networks.

The CHAIR: I would suggest, Mr Cox, that the concerns raised by the Ombudsman certainly don't have too many people coming to her raising that they're just so thrilled and happy that they're in an embedded network. If I could just state you one example—certainly the Ombudsman could raise several more—is that we have a situation where one particular resident was charged almost $10,000 for 14 months' worth of hot water. Now, that was hot water charged over and above the electricity, the water and the gas. In that same particular apartment block residents have complained of receiving bills from WINconnect of between $300 and $400 per month for the use of their hot water.

One particular resident took their claim, which was an expense of some $2½ thousand which they refused to pay because they were advised, and for everything that they had read, a hot water charge is not an energy charge. That particular resident took that claim to NCAT and NCAT has made a very positive determination in stating that they are not required to pay for that $2½ thousand for that hot water usage that they've been charged. They've very much set a legal precedent.

Those are some of the problems. That's just a snapshot. There are many, many others. Certainly the Ombudsman is receiving that. I'm not for a moment discrediting those embedded network providers we have heard about today—and we've heard about from other witnesses—who are doing the right thing. I'm suggesting that we need to get some consistency across the board so that the good embedded networks are not being discredited by the cowboys in the industry that are charging exorbitant prices to consumers, which we've seen.

JIM COX: Thank you for those comments. I just pick up one point, perhaps. You mention hot water. Hot water is outside our sphere of regulation because of the way that the National Energy Retail Law is framed, which restricts what we can do to the sale of energy for premises. There's a question about whether hot water is sale of energy, but that is an issue that I think can appropriately be considered by the authorisation exemption review. I think there are question marks as to whether the National Energy Customer Framework is sufficiently expansive, particularly as we are moving into a new era with new services. I very much take the point that that's an issue that could be progressed further.

The CHAIR: Mr Atalla?

Mr EDMOND ATALLA: Thank you, Chair. Mr Cox, you've mentioned that you've got the legal authority to put regulation in place. What sort of regulation do you think is needed, and why is it difficult—you

hesitated whether it's better to cut the cost factor. So why would putting regulations be an impediment to yourself and to your organisation?

JIM COX: There are a couple of questions there. The first one is what sort of regulation might be needed. I guess I probably give the highest priority to issues of customer protection. Obviously there are some customer protections at the moment. I think we discussed before that you can't charge more than the DMO if you're an embedded network, so there's a degree of protection there. I think, as we were saying, it's important to move towards better hardship policies. I think those are probably the priorities. I probably emphasise the consumer protection side of it all. That's the first question. I suppose to the second question—why don't we regulate the very small embedded networks?—ultimately, I think the issues there are ones of practicality, so to speak. There is a very large number of them. They are very small. It would be burdensome for the embedded networks themselves that, after all, are providing services. It will also be burdensome to ourselves because we would have to keep track of a very large number of small operators. I guess the issue there is ultimately one of practicality.

The CHAIR: Mr Crouch?

Mr ADAM CROUCH: Thanks, Mr Chairman. I think my question is for Ms Shepherd to start with. We talked about a disproportionate representation of embedded networks amongst certain groups, effectively, like caravan parks and small retirement villages. As we've articulated—the member for Tweed and the member for Ballina, who couldn't be with us today—those groups are the low-hanging fruit, with all due respect, that some of these organisations have targeted. They sneak in under the regulations. It could only be five, six, seven, eight or even nine caravans, potentially, where they know that they're not going to be able to be caught under that umbrella. Do you think, by putting in a framework that covers one home, nine homes or 900 homes, does it send a clear message to those people who want to become a provider of an embedded network that regardless of your size, you have to play by the rules? While burdensome, there are costs involved in becoming—I suppose what I'm trying to ask is: Would it be a disincentive to the cowboys who are targeting those lower socio-economic groups if there were regulations covering everyone, no matter what?

MICHELLE SHEPHERD: If we had the sort of regulatory framework changes that the commission had recommended or indeed if the AER goes down a similar path through its own review, I think the additional requirements around regulation to provide customer protections would definitely provide the outcomes for consumers we're all seeking, which is to have the customer protected under that regulatory framework. Whether they continue to be called "sellers" in an embedded network and they're subject to a number of customer protections, the key ones that really matter to customers—I think that's important—it would certainly deter the growth in exempt sellers that we're seeing at the moment because the authorisation framework wouldn't be there—the exemption framework—so you would see less exempt sellers if you were to go down that path of applying conditional authorisations and so on. But perhaps Jim wants to add to that answer, but that would be our view that if you applied a tighter regulatory framework you would certainly get better outcomes for customers and ultimately less exempt sellers.

Mr GEOFF PROVEST: My question is probably to Ms Shepherd. When we register these retailers, as you've said, you might shake the tree a bit, but ultimately one of the issues that was brought up to us today by, I guess, the user groups, the strata titles and consumers and that was the lack of transparency when they even buy a unit off a plan—they're not told. If I buy a unit today, the real estate will tell me what the body corporate fees are, what the council rates are and I've got a fair idea, and usually the first time they find out they're in an embedded program is the first body corporate meeting and there seems to be a lot of coercion.

We've heard stories today that if you don't sign now you're going to have the power off by midnight. Then they find they're locked in for a lengthy period of time. Some of those groups mentioned today that it should be back to three years but we've heard other horror stories that it's 15 years and 25 years and so on so it's virtually a life sentence involved in these organisations. As a commission, what are your views on that? Should there be greater transparency? The tenants' association and those advocates who were here as well said you rent a unit and you're not told that you're in an embedded thing until you sign the lease, and considering the shortage of housing on the east coast here, people are just going to sign it anyway. But it's just that lack of transparency and the length of the term of signing on.

MICHELLE SHEPHERD: Thanks for the question. That is an issue that did get raised during our reviews and so we were aware of that issue. It is one of the recommendations that came out of our review and it's something that I'm sure that the AER is alive to as well that the importance of consumers when they're buying a product, whether that be a rental agreement or a property or a commercial lease—that they have an understanding of what their obligations and rights are under their energy supply. It was certainly a key issue that came up in our review. Ben Davis from the commission might want to add to that or indeed Jim from an AER perspective.

BEN DAVIS: Yes, thanks, Michelle. I think similar to some of the evidence you've heard today, we probably agree the transparency would help, but ultimately, as you've probably also heard, most customers aren't going to know what it means that they are moving into an embedded network. We've even had people who work at the Australian Energy Market Commission who have moved into embedded networks and they don't really know what that means unless they've worked on the specific project and then largely at the moment they're locked into monopoly supply. Whilst I suspect it would help, the commission certainly—and you've seen from the long list of significant changes we've recommended to this framework—don't think that extra transparency addresses the underlying problems.

The CHAIR: So what would you suggest is the way forward?

BEN DAVIS: Michelle's opening statement I think highlighted the two areas that the commission has thought about. One is the full suite of law and rule changes that we proposed in 2019. The second is the one that you've been touching on with Jim today and indeed that Michelle talked about through the AER's authorisations and exemptions review, which is largely doing it through the AER's exemptions framework both on the network exemption and the retail exemption side. That might actually include more transparency requirements or it might involve State regulations through—I'm not sure of the exact Act that would require. But I think those are the two frameworks we see. One is the top-down through law changes and rule changes that we recommended and the second is the more bottom-up through the AER's exemption frameworks. Given we put forward the top-down method and it hasn't progressed, at the moment we suggest the other avenue of the AER's authorisations and exemptions review being an appropriate form.

Mr GEOFF PROVEST: We had a number of people give evidence today about, they're in an embedded network and they're finding it very difficult to get chargers for electric vehicles.

JIM COX: Yes.

Mr GEOFF PROVEST: And also renewable energy feeding back in and out and batteries and that. Do you guys take that into consideration as well or is this sort of—

JIM COX: There are a number of things there. Perhaps to go back to your previous question, just to say I sympathise with you; I think transparency is an important issue and that's one we will need to think about. I just note that. In terms of what's going on, yes, some embedded networks have green energy fitting in to the embedded network and has heads into the big network. That does happen. I mean, it's not necessarily a bad thing, I would say. I think renewable energy is something that we all see as important. Also, I think there are many customers that would appreciate being served by renewable energy. The other question was the electric vehicle chargers—

Mr GEOFF PROVEST: The reason I ask that, Mr Cox, is that I get this strong feeling that the Government is pushing EVs and everything else like that. Everyone is going to buy one. They live in an apartment and suddenly they find out short of putting a substation out the front, no-one's going to be able to charge.

JIM COX: Yes, actually the embedded network won't stand the charger you want to put in. I can see that's frustrating for the people that want to take advantage of electric vehicles.

Mr GEOFF PROVEST: And they'll blame us.

BEN DAVIS: I'd take you back to the broader framework. At the highest level these are monopoly suppliers where the customers have limited access to competition and they also don't have the usual—the people who were here before—core distribution network service providers who have obligations to provide connection services for things like electric vehicles. Because of that core framework being monopoly and having less specific regulations on the rights of customers, a customer in an embedded network might get a very good deal on an electric vehicle. The embedded network supplier might have a focus on green, but they don't have the guarantees that a normal customer has.

A normal customer who wants electric vehicle charging can go to the distribution businesses you saw before and there are obligations for connection services and specific safety standards that apply to those businesses and therefore they have a right to get those connections. If they don't like the retail product associated with charging the electric vehicle, they can pick a different retailer offer, and within the more than 30 retailers we now have in the market, there are some that specialise in providing those types of products. It's the fact that at a holistic level the embedded networks are monopoly suppliers and have lower service standards attached to them on the network side that means customers seeking that diversity of product are less likely to be able to get it. That doesn't mean they won't occasionally get a very good service. Sometimes they will; sometimes the provider will do a very good job and I think you've seen some of that today, but it's less likely because they are ultimately subject to monopoly supply.

Mr GEOFF PROVEST: Do you feel like some of those people are moving to enhance the monopoly? Like with WINconnect and the takeover by Origin and things like that? I just get a feeling that that is explaining the rise. I know this is commercial, but they have picked up—I just get a feeling that they've now realised, all of sudden, "I've found hot water that I can charge people for." We were told today that wi-fi too can be in the embedded network, and cold water for air conditioning. I've got a feeling there will be something else—bird feed—next week. It's a commercial world out there and they're looking at how they can maximise that.

JIM COX: I'm sure that's right. I suspect that they're finding this a profitable business to be in and that they are expanding their operations because our commercial businesses are responding to those incentives. It may or may not be good for customers. It may be a good thing for customers in some cases and they're getting a good level of service in embedded networks. In other cases, as we heard, the level of service isn't as good, so it's a mixed picture.

Mr GEOFF PROVEST: Ultimately, this Committee has to make a recommendation to the Government. I'm a bit torn at the moment. We haven't discussed this, Mr Chairman. Do we promote going ourselves to protect our citizens or do we wait for organisations such as yours to bring everyone together on a national basis? As we found out, Mr Cox, you can actually move New South Wales first?

JIM COX: My suggestion would be that you wait for our authorisation and exemption review, which will report early next year, and see whether enough comes out of that to meet New South Wales' requirements.

The CHAIR: New South Wales exists under the national framework, but I understand that States such as—am I led to believe—Victoria, Western Australia and the Northern Territory are not under the national framework?

JIM COX: That's correct, the national—the retail framework. That's correct, yes.

The CHAIR: Given that's the case, if I just come back, the significant rise in embedded network operators over the last five years is commensurate with the significant rise in apartment blocks and approvals for apartments going forward, suggesting that the increase in embedded networks, the increase in apartments and the inherent risk of an increase in problems of incredible costs that we've already spoken about, which we are seeing and both the ombudsmen are seeing—given that is the case and that you have the ability to be able to, at the very least, register and condition embedded networks right across the country as opposed to those three States, wouldn't you take the first step?

JIM COX: I would think so. The function of the review we're doing at the moment is to identify what steps it would be best for us to take. That will be reporting early next year. I think my suggestion would be the first thing to do is to see what comes out of all of that, because there is a process that is already up and running.

The CHAIR: I might just add that perhaps you might take on board some of the work the Committee and some of the information that we've—

JIM COX: Yes. I am certainly very interested to see—

The CHAIR: —which we'd be happy to forward.

JIM COX: —anything that you can share with us on the work that you've done. I think that would be extremely interesting for us.

Mr ADAM CROUCH: To Mr Cox and Mr Davis, we were talking before about renewable energies and the benefits that they could provide people in the embedded network. It is sad that some of the evidence we are seeing is that infrastructure for these green initiatives is being put in place in locations, but the embedded network has absolutely no obligation to pass on those benefits to the consumer. What's more, they do not even have to disclose what those benefits are. Again, this comes down to what we see as that holistic failure, broadly, with respect to the entire framework. People have been racing off, wanting to get into the money market that is embedded networks and, as we've said, there are potentially hidden conditions, and you've got people advising stratas that have or stratas that have a conflict of interest. There is no obligation for anybody to declare a conflict of interest from any of this in their involvement.

Secondly, there is also no obligation for any of these providers to clearly and transparently outline what they provide, what they're getting back and how the consumer benefits. This seems to be the common thread, from all of this, is the fact that there is a total lack of transparency with regards to embedded networks, what they're supposed to be doing, how they're supposed to be doing it and then, when a consumer dares to ask the question, they haven't got the ability to go to the retailer because the retailer will say, "No, sorry, you're in an embedded network. I can't help you." The poor old consumer doesn't know what they're getting and has no line of sight to what the benefits are. I'm sure there could be some very good ones out there. But I suspect, given the hockey-stick

curve that we have seen in growth in embedded networks, that there are possibly a lot more cowboys out there, realising there is a buck to be made from this rather than actually worrying about the consumer. So how can you, as a national body, drive that and force those changes to be transparent? At the moment, nobody seems to know. Sorry, that was a very long question.

BEN DAVIS: Do you want to start?

JIM COX: Shall I have a go and then perhaps Michelle and Ben might want to add to it. Look, obviously, embedded networks, in some ways, are a difficult situation. As we've explained, competition is difficult. You don't get the benefits of competition—I think Ben articulated that very well—so it's a difficult situation. What can we do? Well, we can apply various conditions if we decide to exempt an embedded network from the requirement to be authorised before it can sell energy. One protection we have at the moment relates to pricing, so they can't charge more than the full market offer. That provides some protection. It probably doesn't provide perfect protection, but it at least provides some protection against excessively high charges.

We require them to have other things like a hardship policy to deal appropriately with life support customers. What we don't require is for them to report breaches of those obligations, so that is something that is not required. But, nonetheless, we are encouraging people to contact the Ombudsmen's schemes if they have problems and, in that way and through our own contact centre, we will build a better picture of what's going on in embedded networks—what the problems are, what breaches of obligations are taking place and then what should be done about it. But that is very much a work in progress at the moment. That is something that we have emphasised as one of our compliance enforcement priorities, so we're getting onto it, but there is still some way to go before we have a fully effective system.

The CHAIR: Ms Shepherd, in the AEMC submission it was noted that compliance and monitoring is inadequate. You might like to elaborate on the compliance requirements, the lack thereof and what difficulties that presents and, possibly, what policy solutions forward you would recommend going forward?

MICHELLE SHEPHERD: Jim has really touched on some of those points. There is a lack of transparency about what embedded networks exist. There is not a requirement around self-reporting of noncompliance, as Jim has just raised. There is a difficulty for the AER, even for the limited consumer protections that already apply under their current exemptions framework, to actually monitor compliance and enforce compliance with that framework. The changes that the AER is looking at through their authorisations and exemptions review, hopefully, will address that issue. It is something we can seek to address through our own review that has been taken up, so we do see that—another avenue, being the AER's review. Perhaps Ben and Jim would like to respond to that as well, but I think that that is an incredibly important issue that we would like to see addressed.

The CHAIR: You've also touched on the lack of available data regarding the embedded network consumers. What data is currently available and how might that be improved?

MICHELLE SHEPHERD: I might just pass that question on to Ben Davis, who is a little bit closer to the data issues, Chair.

BEN DAVIS: It is probably a good example of the difference between a customer inside of an embedded network and outside of an embedded network in the national electricity market. A customer outside of an embedded network has a national metering identifier and all of their data for their consumption is registered with the Australian Energy Market Operator. So, when a new supplier seeks to supply them, some of that's available to allow them to make an offer to the customer. But all of the data is quite transparent in the NEM's systems and so it can flow to the parties that need that information, to make them offers and to provide them services, including the network service providers you saw today.

Largely speaking, in embedded networks customers simply aren't registered in the electricity market systems, so they don't have a national metering identifier, which means, as far as the national market goes, they largely don't exist. So the data isn't available to anyone other than the existing supplier, and even to the extent that it's available to the existing supplier, there's a more limited set of requirements regarding that data, including metering that actually measures the data, which makes it more challenging. Even if it was to be supplied, and even if an embedded network operator wanted to supply it to someone else, often it's not available and it's in a much more bespoke form.

The customers outside of embedded networks have standardised arrangements with the distribution businesses and with NEM authorised retailers that go into the national mass systems, which then make the supply for those customers very smooth and frictionless. Whereas inside an embedded network, everything is largely bespoke, which is one of the reasons why competition is hard—because for any other retailer coming along, it's

not just that they're in an embedded network, but they effectively don't exist to a new supplier, which is very challenging for them.

The CHAIR: Would you agree that those people that are outside the embedded network market have freedom of choice, have choice of particular service providers and therefore are treated much more fairly than those people that are within an embedded network?

BEN DAVIS: Our reviews speak to those points. As I think Michelle and I have both said, in general we think the competition where customers have choice drives good prices and drives good services to the customers. That doesn't mean that there won't be individual embedded networks and individual embedded network operators that provide good services and prices to the customers, but we think it's less likely because they are essentially supplied under a monopoly arrangement. Fundamentally, the commission's view has always been that where you can have workable competition, it's likely to be in the best interests of consumers.

The CHAIR: Hence the system needs to be either regulated or rectified to bring back that fairness on behalf of all.

BEN DAVIS: I would also make the point that not all of the NEM has retail competition for small customers. There are areas—for example, regional Queensland—where Queensland has chosen to have monopoly supply, but under those arrangements the monopoly supplier is subject to full economic and consumer protection regulation. Ergon is regulated. The prices are set at an efficient level, which is based on cost, not based on what the default market offer—the DMO—is, which is supposed to be the worst benchmark you can get, where people compete below that level. So there are instances in the NEM where we don't always have competition but the arrangements for those customers are fundamentally different to what you have inside an embedded network.

Mr GEOFF PROVEST: If I'm an embedder and I breach my conditions, there's no requirement of me to pick up the phone and say, "Hey, I've breached my conditions."

JIM COX: That's correct, yes.

Mr GEOFF PROVEST: Right. So that issue—

JIM COX: But if we get to hear about it from someone else, we could take enforcement action.

Mr GEOFF PROVEST: I suppose I was talking about that charge that some of Ray's people have experienced. If I went to NCAT and I won the case, do you get automatically advised that as an embedder, I've lost a case in NCAT, a civil tribunal here in the State of New South Wales? I guess you don't get told.

JIM COX: Obviously, we would follow what NCAT does and says.

Mr GEOFF PROVEST: But there's no requirement.

JIM COX: That would be our initiative. There's no requirement for them to tell us, yes.

Mr GEOFF PROVEST: There's no requirement for them to tell you?

JIM COX: Yes.

Mr GEOFF PROVEST: Whereas if I get a speeding ticket in Queensland and I come here to Macquarie Street or if I go to Melbourne, it comes with me.

The CHAIR: We don't have to go into your seedy past, Mr Provest. I particularly thank the witnesses once again for your attendance at the Committee today. You will be provided with a copy of the transcript of today's proceedings for any corrections, and any questions taken on notice today will be forwarded to you by our Committee staff. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and will be made public. Would you all be happy to provide written replies to any further questions?

JIM COX: Yes.

MICHELLE SHEPHERD: Yes, we would be.

The CHAIR: We also ask that if you have a written copy of your opening statements, could you please provide that to the Committee secretariat? With that, I thank you all and wish you the best. Thank you for attending.

(The witnesses withdrew.)

The Committee adjourned at 17:26.