

IN-CAMERA PROCEEDINGS BEFORE

**LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND
SAFETY**

INQUIRY INTO EMBEDDED NETWORKS IN NEW SOUTH WALES

At Jubilee Room, Parliament House, Sydney, on Thursday 18 August 2022

The Committee met in camera at 09:30.

PRESENT

Mr Ray Williams (Chair)

PRESENT VIA VIDEOCONFERENCE

Mr Edmond Atalla
Mr Adam Crouch

*Temporary note: The Committee has provided certain parties mentioned in this transcript
with an opportunity to comment.*

The CHAIR: Welcome to the second hearing of the Committee on Law and Safety inquiry into embedded networks in New South Wales. Before we start I would like to acknowledge the Gadigal people of the Eora nation and extend my respects to Elders past and present. I, Ray Williams, am the Chair of the Committee, and the member for Castle Hill. With me today are my fellow Committee members, who are appearing via Webex: Mr Edmond Atalla, the member for Mount Druitt, and Mr Adam Crouch, the member for Terrigal. Unfortunately the member for Tweed, Geoff Provest, has just been called away unexpectedly and he is an apology. Tamara Smith, the member for Ballina, is also an apology as she is dealing with some of the flooding issues up in her area.

The Committee has previously resolved to hear evidence for our first witness privately in camera. For this reason, this portion of the hearing will not be broadcast and the public gallery will not be open. I also note that following the receipt of the in-camera transcript, members may wish to publish a version of the transcript of evidence without identifying any details of the witness. The secretariat will be in touch with everybody following the hearing if the Committee wishes to do so.

Evidence in camera from **WITNESS A**, before the Committee via videoconference, sworn

The CHAIR: I welcome our first witness. Thank you, **WITNESS A**, for agreeing to appear before the Committee 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?


WITNESS A: I confirm.

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

WITNESS A: No.

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

WITNESS A:



Going to my journey, which I have written out—it's very, very long—basically, when I moved into a rental property in March 2020 I proceeded to switch on my electricity and gas but immediately had a roadblock. I spoke with the owners of the property. First off, I called energy providers and they basically said I could not go through those systems. They didn't have the address on the system. Then I spoke with the owners of some of the property there and they were saying that the electricity was still with the developer and hadn't been handed over. That went on from March to December. In May I received what we thought was a hot water bill, but it was actually an electricity bill but on a hot water template from WINconnect—again, just unreliable. Basically, my first hot water bill was received in December and I could see straight away, with the multipliers of one thousand on the bill, I was very concerned; also with the fact that it was estimated from March to December. It was just a complete estimation. They couldn't tell me when it was handed over from the developer. They would not tell me when the meters were changed—there was an issue with the meters as well. There was a lot of confusion in that process.

I then took that inquiry to EWON in December. It took nine months before EWON replied. I finally got a letter from EWON on 27 September 2021. The letter was very confused; the left hand was not talking to the right hand with the understanding of the legislation. The information that was provided was that the Australian Energy Regulator does not consider that hot water meets the definition of "energy" under the National Energy Retail Law. The use of hot water meters to measure energy consumption is a longstanding practice supported by AEMO gas retail markets. However, there is no energy regulation for billing customers for litres of hot water rather than as gas in megajoules. Currently the selling of hot water in cents per litre is unregulated; however, there are protections under the Consumer Law. I certainly haven't seen any protections at this point.

My discussions were with the AER; the western Sydney tenancy advisory service, who advised I should take a class action; the NSW Civil and Administrative Tribunal, or NCAT; and NSW Fair Trading. I spoke with [REDACTED] Council as well, trying to understand why they're approving these embedded networks. I also spoke with AEMO and the ACCC. I pretty well went around in circles with everyone and the left hand, again, was not talking to the right hand and referring me back. Long story short, when I raised this issue with Ray Williams in January 2022 he requested a ministerial inquiry. As a result, a lady [REDACTED] called me and seriously took my concerns into consideration. She also identified there was a multiplier of one thousand on the bill, which she said she's reported back to Fair Trading.

My concern as a tenant under the tenancy tribunal Act—she basically said that I needed to apply to NCAT for an order not to pay the bill, which was \$2,000 by this time. Channel 10 also reported on the embedded network. Janine Young, the EWON Ombudsman, was interviewed and she invited all consumers to call her. I called and spoke with her for an hour. She assured me that she'd provide an email to me to detail our conversation. I did not receive this. Janine also warned me that if I did not pay the hot water bill, WINconnect could possibly chase me down and I would incur a bad credit rating for up to 10 years. This information really concerned me.

I then applied to NCAT to request an order to pay. I had two hearings to get that through and that order went through. During that time when I was applying for the NCAT application, between April and June 2022, I was contacted several times by [REDACTED] WINconnect. He asked me why I was pursuing the NCAT hearing, and I told him that I was happy pay the gas component but not the rest of the bill, as I was a tenant covered under the tenancy tribunal Act, sections 38 and 39, so I was not required to pay those charges. At the first adjourned hearing at NCAT, WINconnect did not attend. I received a call from [REDACTED] who asked me if I had received their bill for zero dollars. I advised that, regardless, I was still proceeding with an NCAT hearing. He was surprised and tried to persuade me not to proceed to the hearing. On 7 June 2022 I attended the second NCAT hearing, where the tribunal declared that the sum of \$2,007.50 is not due and owed by myself. After that a special inquiry was raised by MP Ray Williams, where I made a submission.

Why am I here today? I am here after an extremely long and exhaustive journey to say that this embedded network system is very unfair and requires the immediate attention of the Government to address the poor regulatory requirements, and which I believe is now corrupt because they have got away with this for a very long time. If it wasn't for my determination and resilience, this issue would have continued. I do not like seeing young families struggling, and most have very poor English and could not understand what was happening. I do not like to see families bullied and harassed by WINconnect to pay these bills and then be provided with disconnection notices. This is very distressing. I have some recommendations but I will wait for that one.

The CHAIR: WITNESS A, I thank you for the way that you have articulated all those particular issues. Your tenacity, honesty and work in relation to exposing this issue has very much prompted this inquiry. It was at my request that you attend today to explain to the Committee what you've been through. We will go through and ask you a few questions, but I wanted to thank you for the time you have given. It is absolutely invaluable to this Committee on behalf of the work going forward, because you have demonstrated the coalface of what consumers are experiencing at this point in time. You will remember well our first conversation when you asked me, when we were in the holiday period of early January this year—you didn't want to make an emergency call to me. I nearly drove off the road. I said, "If this is not an emergency, I don't think you'll ever find one." So I was more than happy to chase it up, and here we are today. We very much hope that, through the work of this Committee, we will make changes. In relation to the energy and utility charges that you received, do you have itemised costs or those particular charges that you were charged as well? Everything you were charged as a tenant, I think that's the question, in terms of your utilities.

WITNESS A: I do.

The CHAIR: Have you provided those within your submission?

WITNESS A: I did. I'm just opening it up. I've got a table; this is just the hot water. The first bill that I received was \$897.73, between 24 March and 13 December. The total balance at the end of that was \$1,625.22. Then, obviously, other charges—that was the total, 2,007.50, that I had NCAT put in an order not to pay. Did you need me to read them out?

The CHAIR: Let me go a little bit further. That was a cost that you were charged, ultimately, for the heating of your hot water?

WITNESS A : Correct.

The CHAIR: So you have additional electricity charges, water charges and gas charges. This was the cost that you have reflected and what NCAT decided that you didn't have to pay, if I'm right in saying? I'm asking the question and not trying to lead you into an answer. Ultimately, was that the cost you were charged just for the heating of that hot water?

WITNESS A: It included the gas component, which I told WINconnect I was happy to pay. It was a standard daily gas charge. But he waived that bill because I was taking it to NCAT. I would said I was very happy to pay the gas, but he waived that. So that's inclusive of the gas component. In regard to the electricity, I paid a separate electricity bill. I did not question those bills. The total—being a tenant under the tenancy tribunal Act, the water usage that I paid for that time was \$66, via the Sydney Water bill and the landlord. So that was the water usage I paid.

The CHAIR: That was what I was trying to ascertain. I throw it open to the Committee for questions.

Mr ADAM CROUCH: WITNESS A, thank you so much for giving evidence today. It is pretty clear to me that you are very well briefed in your job and what you do. I would suspect that you would be well capable of—did you represent yourself at the NCAT hearings?

WITNESS A: Correct.

Mr ADAM CROUCH: Did you move into the property? Was it a new build that you bought off the plan or was it—it was.

WITNESS A: It was a rental. I rented it. It was a brand-new development. I was one of the first tenants to arrive on that property.

Mr ADAM CROUCH: There was literally no clarity and no line of sight to any of the billing processes for any of the utilities when you moved in. Is that correct?

WITNESS A: Correct.

Mr ADAM CROUCH: Did all the bills come from WINconnect? The gas, the electricity, the hot water—it was all from the one provider?

WITNESS A: Correct.

Mr ADAM CROUCH: You mentioned before that you obviously wanted to look at getting the best deal for your power, your gas and your electricity et cetera, like most people would. Can you explain—we all know to go to Service NSW with your bill and they provide you with an overview for you to look at. How was the process for you? You mentioned briefly that you said no. Did they explain to you whether they—

WITNESS A: No.

Mr ADAM CROUCH: So the other energy providers couldn't explain to you why they couldn't provide you with a price?

WITNESS A: Correct. They could not even identify the property address. I said, "I'm actually sitting in this property", but they did not have a property address at all. They couldn't even identify if it was an embedded network. It was just, "No, sorry, we can't help you."

Mr ADAM CROUCH: And they could give no reasons. How many energy providers did you speak to before you realised you weren't going to get an answer?

WITNESS A: I did a couple and I realised that this is not going anywhere. So that's why I then contacted my real estate and he didn't know either.

Mr ADAM CROUCH: One of the statements you made referred to the fact that the developer still effectively owned the rights to the energy billing. Did the building not have a strata? Had they already met?

WITNESS A: They had a strata.

Yes, the management centre. I can't even think of the name of it at the moment.

Mr ADAM CROUCH: That's alright. We can come back to it. The evidence we've heard from other organisations prior to you is that the normal process would be that the developer would do some form of deal with an embedded network and go to a strata meeting prior to residents—and they will review what's there. I'm trying to ascertain whether the strata ever had the opportunity to review or have oversight of the embedded network agreement or if this has somehow just gone through, been rubber stamped and the residents and strata have no idea about what was done. From your perspective, the residents never had a line of sight to the deal that was done by the developer and the embedded network at any stage?

WITNESS A: Correct. They were owners and I was a tenant, so I had to separate the line of process there. As a tenant, I was covered under the Tenancy Tribunal Act. As an owner, they were paying the hot water charges, they were paying strata charges for hot water and then they were paying the Sydney Water bill. They were getting triple-charged—the owners.

Mr ADAM CROUCH: And nobody, effectively, had ever raised this at a strata meeting? There were no questions about it? You may not know the answer to this, but did the developer have voting rights on that strata? Some developers obviously hang on to a number of the properties and have voting rights. Do you know if the developer here had any voting rights on the strata?

WITNESS A: I'm unaware of that.

Mr EDMOND ATALLA: Thank you for attending today. I just want to get my head around the building process. We heard throughout the process of this inquiry that the developer, through an energy company, installs one meter at the gate for the entire complex. I just need to understand what happens after that. Does the embedded network provide installed meters in each unit or do they share the bill equally? How does it work?

WITNESS A: From my understanding, the developer installs a hot water system, so the water going to the property is Sydney Water. But then from the hot water system to the residents, they monitor that and have a separate meter to that, which is within the property.

Mr EDMOND ATALLA: So there's a separate meter for each unit?

WITNESS A: Correct.

Mr EDMOND ATALLA: Do you have access to the meter reading?

WITNESS A: I did. I found where it was and the door was unlocked. Yes, I could see the meter readings, so it's not so much—the first issue was when did the meter start reading? Then I heard that there were some faulty meters. There was a lot of that happening within that nine-month period. However, the way they calculate is another story.

Mr EDMOND ATALLA: But you found the meter because the door was unlocked. Do tenants have the right to go and inspect those meters at any time?

WITNESS A: Yes. It appears that it's not a lockable door and they can walk in and have a look at that, yes.

Mr EDMOND ATALLA: And each meter is labelled for each unit?

WITNESS A: Yes. You know that it's your unit.

Mr EDMOND ATALLA: So the meter for the hot water is a meter for litres used?

WITNESS A: Correct.

Mr EDMOND ATALLA: Is there a separate meter for the gas and a separate meter for electricity?

WITNESS A: Yes.

Mr EDMOND ATALLA: And they're all in the same complex—in the same area?

WITNESS A: Yes.

Mr EDMOND ATALLA: So when you get your bill, does it identify the meter reading from this period to this period as normal energy bills show? Does it show how much consumption you've used? Or do they just estimate the consumption? I'm not talking about your particular case, but generally.

WITNESS A: Generally, it's the same. It's an actual reading. It looks like a normal bill, but my concern is the hot water services bill. They take the gas component and slide it in and then charge other charges, which is very confusing.

Mr EDMOND ATALLA: It looks like they're double dipping in the way they charge for the hot water usage via gas meters.

WITNESS A: Correct.

Mr EDMOND ATALLA: Is all the hot water gas-heated or is it electricity-heated?

WITNESS A: I was under the understanding it was via gas, but it's really hard to tell.

Mr EDMOND ATALLA: The other question—the embedded network provider, I presume that's WINconnect, is it?

WITNESS A: Correct.

Mr EDMOND ATALLA: So all dealings from the tenants are through WINconnect and no other energy provider?

WITNESS A: Correct.

Mr EDMOND ATALLA: And WINconnect has a relationship with the energy provider?

WITNESS A: Yes.

Mr EDMOND ATALLA: Who would that be, do you know?

WITNESS A: WINconnect is the energy provider. They have a relationship with the developer, Toplace.

Mr EDMOND ATALLA: Okay. You went to NCAT and got the hot water waived?

WITNESS A: Yes.

Mr EDMOND ATALLA: What about future hot water usage?

WITNESS A: I've moved out of that premises now.

Mr EDMOND ATALLA: You've done what, sorry?

WITNESS A: I've moved out of the premises.

Mr EDMOND ATALLA: What would happen if you hadn't moved out? Was the NCAT hearing particularly for the past and then you get charged again? Will the next tenant be in that same position you're in?

WITNESS A: Correct.

Mr EDMOND ATALLA: It wasn't a decision to say that no future hot water payments are going to be made; it was only that particular past \$2,000 bill that was waived? There was no determination to say that this process of charging for hot water is not valid for any future usage. Is that correct?

WITNESS A: That is correct. I was very disappointed with the hearing because she was in a hurry. She'd just nod people through. She didn't even read the background history. She gave [REDACTED] an opportunity to have his say, which made me look like I just didn't want to pay my bill. But there was no understanding of why this occurred.

Mr EDMOND ATALLA: Would you like to see that this Committee make recommendations to ban the charging of hot water by the litre and go back to charging like everyone else—the gas usage that uses the hot water? Is that what you're seeking?

WITNESS A: Yes, I am.

Mr ADAM CROUCH: WITNESS A, can I just confirm the name of the developer that did the development and then did the contract with WINconnect? What was the name of that company again?

WITNESS A: Toplace.

Mr ADAM CROUCH: What I've garnered through this is that the NCAT has made a determination in your favour. Would I be right in saying you believe that WINconnect effectively tried to buy your silence by offering you a zero bill to not proceed to NCAT in the first place?

WITNESS A: Yes.

Mr ADAM CROUCH: Did it also seem a little strange that [REDACTED] contacting you directly?

WITNESS A: One hundred per cent. I thought, "No, you can't pull the wool over my eyes. I saw it from day one." Even the customer services assistants, they did not answer even a basic question, like "Who is your regulator?" or "What's your compliance?" No-one could give me an answer. When it got to him trying to defuse me, again, I asked him those questions and he could not give me an answer. When he was in the NCAT hearing, he actually referred his standing to the letter that EWON had written on 27 September. And he referred his—even EWON told me to pay the bill. But he couldn't give evidence about the legislative side of things. He was just using a silly letter, to me.

Mr ADAM CROUCH: Effectively, what he was trying to do was discredit your application but, at the same time, asked you not to proceed, with that zero bill?

WITNESS A: Correct.

Mr ADAM CROUCH: Then, on the second hearing, obviously, NCAT found in your favour. What Mr Atalla may have clarified is the fact that, despite you being given this determination by NCAT, none of the other residents in that tenancy would have any idea that they are being overcharged—well, incorrectly charged for gas hot water heating, which could amount to thousands of dollars a year because of a deal between Top Plan and WINconnect—

WITNESS A: Toplace, yes.

Mr ADAM CROUCH: —and they would have no understanding that they, probably still to this day, are potentially being billed incorrectly, and they're still paying at this stage?

WITNESS A: Correct.

Mr ADAM CROUCH: Further to Mr Atalla's question, what would you like to see the New South Wales Government do with regards to how we protect the consumer? You're very well-versed because of the business you're in and your experience. As you said, the average family wouldn't even know where to start. They'd be paying these bills without question, I suspect, because it's been going on since the day they moved in. One other thing, the bill for the heating of the gas hot water, was that a quarterly bill or was it a six-monthly bill?

WITNESS A: Monthly.

Mr ADAM CROUCH: It was a monthly bill?

WITNESS A: Yes.

Mr ADAM CROUCH: So you'd be getting monthly bills for all the other utilities or just the heating of the gas hot water?

WITNESS A: Both—electricity and the heating of the hot water.

Mr ADAM CROUCH: What do you think we, as a government, and this Committee should be recommending when moving forward with this, given what you've already told us this morning?

WITNESS A: Well, I'm just straight up: stop the embedded networks. They're triple-charging the owners. There is no identification for renters under this system. Stop the developers from selling hot water to noncompliant embedded network providers. If, say, WINconnect get the tick box, they're saying they're compliant to sell energy, conversion of gas-heated measured hot water is not covered under that Act, so it's a grey area. But because they've got a tick box that they're compliant with it, that they're an energy provider, that's what gets them away with it. Do you understand what I'm saying? They're not fully compliant. Anyway, certify the councils to address the DAs and compliance with certified energy providers. The council comes along and says, "Yes, this DA is put in." Tick. "They've got WINconnect." Tick. So the council go, "Okay." They don't go beyond that approval process because they think that WINconnect is certified, when they're not fully.

Regulate the electricity and gas and water prices to be offered to all consumers—owners and tenants. We all need that. Stop converting this gas component; it's just getting out of hand. Allow New South Wales Fair Trading to have the authority to manage and support tenants via the Tenancy Tribunal Act. The left hand is not talking to the right hand. The Tenancy Tribunal are pretty well the only ones that I got some common sense out of. Yes, and just ensure that all regulatory bodies refer to New South Wales Fair Trading. There are laws within laws and there are too many underlying laws; we need an overarching one to protect the consumers. My question is: What is EWON, the Ombudsman, doing? I thought they were the ones that looked after the energy and water and made these overarching—like, I just don't see the value. Shouldn't they be taking the lead on this issue? That's where I'm at.

Mr ADAM CROUCH: Thank you very much. This is, I suppose, a pretty obvious question: Do you believe, as a consumer, that you gained any benefit at all from there being an embedded network in the apartment that you were living in?

WITNESS A: No.

Mr ADAM CROUCH: Again, I think the concerns we as a committee have had and what we've seen is the complete lack of transparency and almost the deliberate confusion and complication around who delivers what to who. Origin might be responsible for getting the energy to the fence line, but from there onwards they have no oversight as to what happens. We have now seen WINconnect being purchased by, effectively, the persons providing them with the energy to the gate.

WITNESS A: Yes.

Mr ADAM CROUCH: It's like, well, you've created this customer base for yourself, you've now purchased it. At no point could you talk to a retailer about getting any options because a deal was done, potentially, by this developer, Toplace or whoever it is?

WITNESS A: Yes.


Mr ADAM CROUCH: When you went to rent the apartment, were you provided any details about the cost you'd be incurring, or not until you moved in and you started getting bills?

WITNESS A: No, because on my tenancy agreement I think there was a changeover after March where they decided that they were going to put that information on the agreements—the tenancy agreements—about embedded networks, even though it's contradictory to the Tenancy Tribunal Act. That contradicts it. However, my lease was signed on March, so I was not covered, or I did not know about any changes. I only found that out in hindsight.

Mr ADAM CROUCH: Thank you very much for this illuminating discussion. I have to say, it's great that you were able to put yourself forward, give your evidence and provide these details to the Committee. Mr Chair, I don't think I have any more questions at this stage.

The CHAIR: Thank you, Mr Crouch. WITNESS A, if I could perhaps finish up with just a couple of brief questions. Were you, as a tenant of that particular complex, ever invited to a body corporate meeting?

WITNESS A: I was not. However, because I did a little bit of stirring, talking with the owners, I found out when the body corporate meetings were on and I was suggesting that they raise this issue at the body corporate meeting. They were all very afraid to do that. Then WINconnect apparently approached the owners and tried to do an online meeting. I asked if I could have the link and be a part of that and they would not allow me to be a part of that.



Mr EDMOND ATALLA: I know we're running over time. I just want to understand, you as a tenant signed a tenancy agreement and embedded in the tenancy agreement is the embedded network contract; so they've included that into it? Or did you sign a separate contract with the embedded networks?

WITNESS A: I never signed any contract for an embedded network. No, it was separate—like, just the tenancy agreement was separate. There was no indication that there was an embedded network on that agreement. I found out because someone has obviously given—maybe the strata had given an embedded network my details and then I suddenly start getting the bill.

Mr EDMOND ATALLA: Do you believe that's the normal process, that they hide the embedded network contract within the tenancy agreement? So a person would be in as a rental tenant, signs the agreement as they think they are signing an agreement for tenancy, but in that they're signing the contract for embedded networks?

WITNESS A: No, I don't think the real estates were that wise at the time. I think that now they're just adding it in so they don't have to have the heartache. But, yes, it's separate, yes.

Mr EDMOND ATALLA: By adding it in, people are deceived—

WITNESS A: Correct.

Mr EDMOND ATALLA: —into thinking that this is just a tenancy agreement and they're not sure what they're getting themselves into. I just wanted to clarify the process. For people who own units, who are not renting units, they won't have a tenancy agreement. Does the developer get them to sign a separate embedded networks contract?

WITNESS A: It was just in the contract of sale, from my recollection. Then WINconnect come along and go, "Here we are. Here is your electricity bill; here is your hot water bill." It is just a follow-through. Yesterday I actually spoke to a work colleague to say what I was doing today. She goes, "Oh, I know those bills." She had no idea—no idea.

Mr EDMOND ATALLA: Your gas, electricity and water bills—have you compared those to the market? You have said that you were happy to pay those. Are they within reasonable prices compared to the market? Those three—forget the hot water for the moment. Just your gas, electricity and water?

WITNESS A: The electricity and the gas—the gas was just a standard daily rate. I compared them with other people with other normal bills and I felt that that was acceptable. But the fact that they are drawing the gas component into this hot water system—

Mr EDMOND ATALLA: Yes, I understand that. I just want to understand—for people entering into embedded networks, other than the hot water, are all the other free utilities fairly priced, or do you think they overprice them?

WITNESS A: Look, I wouldn't be able to comment on that one. At the time, I thought it was. But it could have changed. I don't know.

The CHAIR: WITNESS A, this Committee has heard evidence over the past couple of days that the actual embedded network has to be adopted at the first AGM of the body corporate meeting. Hence my question to you, as a tenant—because I think legislation may have changed now and I think tenants actually can be, or are

supposed to be, invited to body corporate meetings if they wish to attend. In fact, I think it is mandatory now under legislation. The reason I raise that is because I just wondered whether or not any of the owners of the units in the particular complex where you live may have been privy to that first AGM meeting and whether or not they remembered that contract actually being put before them, prior to them having been charged by an embedded network provider?

WITNESS A: I don't think they realised what it was about. When I could sit and explain to both the owners that lived either side—when I got their hot water bill and explained in detail—they were shocked, and they only understood at that point.

The CHAIR: I know you have suggested that you've left the complex now, but were you aware while you were there that there were other tenants or owners who were paying prices for the heating of their hot water that were as large as yours, or larger? Were you aware of those, and did you hear any costs? And did you hear any outcomes in relation to what may have happened in relation to those charges while you were there?

WITNESS A: One of the owners, their first bill was \$9,700 for water within a less than 18-month period.

[REDACTED]
That's from my knowledge—just very extreme bills.

The CHAIR: I greatly appreciate that.

Mr ADAM CROUCH: WITNESS A, you mentioned before that the owners were afraid. Can you explain to me what they were afraid of?

WITNESS A: The way WINconnect were sending us reminders, reminders and then threats—it was like threats, you know, "You don't pay, then we're going to disconnect."

[REDACTED]
I felt that they had nowhere to go. When I went to the right places, I got the shut door as well. There's no real way for them to communicate. They are just sitting there in fear with that, and that's sad.

Mr ADAM CROUCH: So, WITNESS A, WINconnect knew full well, based on the NCAT determination, that what they were charging, they couldn't actually recoup. But yet they are still—to this day, from what you have said—threatening disconnection and charges on residents of that building, despite the determination from NCAT to not have to pay those charges. It is that correct?

WITNESS A: Yes. However, I was a tenant, so they just probably, on that perspective—but no other foresight involved in that.

The CHAIR: WITNESS A, thank you very much for appearing before the Committee today. Just personally, I send you great thanks and appreciation for raising this particular issue on behalf of consumers, who are largely unknown. I think it will hopefully assist them in the future with getting some fair recompense in relation to the charges that they are being charged for services. You will be provided with a copy of the transcript of today's proceedings for any corrections, and any questions on notice taken 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 be made public. Would you be happy to provide a written reply to any further questions? And, when I say that those answers will be made public, your name will be redacted from those particular answers and kept confidential.

WITNESS A: Yes, I am happy to do that.

The CHAIR: Thank you. We also ask that you please provide a copy of your opening statement, if you have one, to the Committee secretariat. I imagine that they will chase you up in relation to that. There are no further questions. Once again, thank you so very much.

WITNESS A: You're very welcome. Thank you for listening.

(The witness withdrew.)

(Evidence in camera concluded.)

REPORT ON PROCEEDINGS BEFORE

**LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND
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At Jubilee Room, Parliament House, Sydney on Thursday 18 August 2022

The Committee met at 10:22 am

PRESENT

Mr Ray Williams (Chair)

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Mr Adam Crouch

Temporary note: The Committee has provided certain parties mentioned in this transcript with an opportunity to comment.

The CHAIR: Good morning everyone. Before we start, I would like to acknowledge the Gadigal people of the Eora nation and pay my respects to Elders, past and present. Today is the second public hearing of the Legislative Assembly Committee on Law and Safety inquiry into Embedded networks in New South Wales. The hearing is being broadcast to the public via the Parliament's website. Witnesses to this panel are attending in person and my colleagues are attending via Webex.

Mr JOHN TANSEY, Executive Director, Department of Customer Service, affirmed and examined

Ms KATERINA PAVLIDIS, Director, Department of Customer Service, affirmed and examined

Mr ANDREW LEWIS, Executive Director Energy, Office of Energy and Climate Change, affirmed and examined

Ms SOPHIA VINCENT, Director, Energy Consumer and Competition Policy, Office of Energy and Climate Change, affirmed and examined

The CHAIR: Thank you for all appearing before the Committee to give evidence today. Can you please confirm you have been issued with the terms of reference about the standing orders that relate to examination of witnesses?

JOHN TANSEY: Yes.

KATERINA PAVLIDIS: Yes.

ANDREW LEWIS: Yes.

SOPHIA VINCENT: Yes.

The CHAIR: Before we proceed, do any of you have any questions for me or the Committee regarding the hearing process?

JOHN TANSEY: No thanks.

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

ANDREW LEWIS: I have a brief statement, if it pleases you, Chair. Thank you very much for the invitation and opportunity to appear before the Committee and expand on the Government's submission that was provided. The Office of Energy and Climate Change has an active work program to enhance consumer protections and promote greater consistency for embedded network customers, compared to on-market customers, in collaboration with the various market bodies, the Commonwealth Government and other jurisdictions. Energy rebate eligibility has recently been expanded to cover customers of electricity and gas embedded networks and regulatory changes have been made to provide access to free and independent dispute resolution services through the Energy & Water Ombudsman NSW, or EWON.

We are actively looking to extend eligibility for the New South Wales Energy Accounts Payment Assistance Scheme to customers in embedded networks as soon as possible. For electricity and gas embedded networks, there is a national consumer protection framework through the National Energy Retail Rules and exempt seller framework. The AER's *Retail Exempt Selling Guideline* review has made significant progress towards providing more equivalent consumer protections to electricity and gas embedded network customers as those experienced by on-market customers. The New South Wales Government welcomes the work of the Commonwealth Government to consider how the default market offer can be further extended to embedded network customers and achieve consistent pricing protections for customers of embedded electricity networks.

For some hot and chilled water embedded network customers, further work is occurring on improving consumer protections when the frameworks for either water or energy do not apply. Public consultation has taken place and representations made to the Australian Energy Regulator to encourage issues faced by hot and chilled water customers to be addressed in its review of the energy retail authorisation and exemption process. Our starting principle is that a national approach to consumer protection should be explored in the first instance to provide consistent protections and promote efficiency for customers and operators. However, where national action proves unable to deliver the desired outcomes, New South Wales-specific reforms are implemented. We certainly welcome the Committee's consideration of these issues and I am happy to receive any questions from the Committee.

The CHAIR: Would anybody else like to make an opening statement?

JOHN TANSEY: No thanks, Chair.

The CHAIR: Mr Lewis, I might come straight to you in relation to your opening comments. We have just heard from a witness who was affected by the charging of some \$2,000 for the heating of their hot water. That was over and above any charges for electricity, gas or water, which they also pay for. They finally took that particular matter to NCAT and NCAT ruled subsequently that it was not necessary that they pay that particular bill, so we have a precedent in relation to that one matter. Back to what you said about the consumer protections.

That particular witness had gone to the office of the Ombudsman first and asked particular questions and then waited nine months to get a reply from EWON, from the office of the Ombudsman. They had spoken to various other departments. They had spoken to members of Parliament. They finally spoke to someone in Fair Trading after the particular member of Parliament made representations on their behalf. They were also advised by EWON, the Ombudsman, that they should pay the bill going forward because they could subsequently be left out on a limb if they didn't.

They were a tenant in that particular premise and under the Residential Tenancies Act it specifically states that the charging of hot water is not a charge for energy. My question is, and the question can be not only to you but to the panel, where has the consumer protection been on behalf of that person and every other person that this Committee has heard from who are currently being charged exorbitant prices, primarily for the heating of their hot water? Where do they turn to? Where do they go and who was providing those protections? Because there is not one particular body, authority of law that I have seen yet that has stood up on behalf of one person.

ANDREW LEWIS: I will start by saying that for customers in embedded hot water or chilled water networks, at this stage the primary regulator is the Australian Competition and Consumer Commission under Australian consumer law provisions. We are certainly aware, as I have intimated in the opening statement, that there are a number of regulatory gaps and issues for customers in embedded hot and chilled water networks, and it is an area that we are actively working on to try and improve that situation. We are aware that EWON has a strong interest in this. But at the moment, depending on how the underlying energy is billed, whether it is in traditional energy terms, which would be, say, a cents per kilowatt or per gigajoule for gas, or if they are charged based on an assessed consumption of the water, which would be in litres, unfortunately, the national framework is not clear enough to give a consistent set of protections.

It is an issue that we have certainly raised with the Australian Energy Regulator because we believe that is the most appropriate place to cover off on these issues that we are aware of that are emerging. It would be fair to say that there is a difference of interpretation and approach between the New South Wales Government and the AER in terms of whether the existing framework can cover the types of situations that you have outlined. That is why we are actively trying to work with the AER on the appropriate ways of filling in that gap. More broadly, yes, the instance that you have outlined from our perspective that that length of time for the tenant to get an outcome, we would not consider to be a satisfactory outcome. I'm certainly aware that we in the Office of Energy and Climate Change, when we became aware of this matter, have tried to work as actively as possible with the retailer in question—the embedded network operator—to address the concerns. I note your comments around the NCAT outcome. My understanding is that, yes, the embedded network operator came to an arrangement to reimburse the customer and that that decision was endorsed recently by NCAT. Obviously from the—

The CHAIR: My understanding is that the order was that they not need to pay. It was an order issued not to pay. I don't think that's coming to any agreement with any embedded network. If you're ordered not to pay, that's not an agreement. They would've dearly liked them to have paid.

ANDREW LEWIS: I'll be guided by your advice there, but I have seen a decision, which is just that the agreement was noted between the parties. So, as I was saying, the time taken and the lack of clarity around an appropriate—for want of a better expression—determining authority in these cases is one that, again, we're very actively trying to pursue. EWON has received a number of complaints in this space and has tried to assist various embedded network customers. Where the issue has come to an area where it currently does have coverage, again, we're working closely with EWON as one of our partners to address those regulatory gap issues and trying to bring together a greater level of equivalence in terms of the consumer protections for hot and chilled water embedded customers compared to embedded network customers for electricity or gas or standard on-market or retail-supplied energy services. Sophia, did you want to add anything to that?

The CHAIR: Just before you do pass on, in relation to you actively pursuing an outcome on behalf of consumers, comments four years ago in 2018 by a previous energy Minister under the current Government in New South Wales stated that they would address this particular issue before the end of 2018. So do you think actively pursuing an outcome, which is now—that comment was made now four years ago. Is that an acceptable time frame for consumers that are being affected by such gross overcharging?

ANDREW LEWIS: I'll start by saying that I wasn't in government at that time, so I can't really comment on what was said at the time. However, I am aware and have been involved in, as I mentioned earlier, quite a number of updates, improvements and expansions of the regulatory protections and other measures to help benefit customers in embedded networks. In particular, most recently we've been able to ensure that those customers are able to access the New South Wales Government's suite of energy rebate and financial assistance programs with the exception of the EAPA scheme, which we are still working on. I understand and take your comments on board, but we have a continual process, as I've said, of seeking to identify where there are problems, where there are

issues and where there are gaps, and then working to fill those and fix those not only within the New South Wales framework but through the national framework as well.

The CHAIR: What's an acceptable time frame that the consumers of New South Wales now trapped in embedded networks and people who in the future are likely to be trapped in embedded networks, given the increase of people is astronomical at this point in time—it's commensurate with the increase in apartment block living that we're seeing. The two certainly scale up together. What's an acceptable time frame for the consumers in those cases to get an outcome in regulatory change from your perspective?

ANDREW LEWIS: Well, in this instance there are different issues that emerge and so—

The CHAIR: Mr Lewis, I just wanted the time frame. Don't worry about—we've discussed the issues. I am happy to go for—just get an answer from you. What's an acceptable time frame?

ANDREW LEWIS: I'll answer by saying it depends on the issue and how long it takes to address either the legislative, regulatory guideline or other measures that are needed to implement a solution that is agreed.

The CHAIR: So you're working on those regulatory changes at the moment?

ANDREW LEWIS: Yes, we are working on them.

The CHAIR: To implement them?

ANDREW LEWIS: We are working on a range of regulatory measures, both New South Wales focused and primarily as well through the leadership of the Australian Energy Regulator in the role that it has in relation to approving and authorising embedded networks to operate.

The CHAIR: But you don't know when we're likely to see when those regulations will be implemented?

ANDREW LEWIS: Given there are a range of different solutions that are being—they each have different time frames. I can't give you an exact answer as to what the specific time frames are.

The CHAIR: You don't know. There's no time frame at this point in time—that's what I understand. There's no time frame. You have no time frame specified for those changes, any regulatory changes, to come in.

ANDREW LEWIS: We are working to deliver them as soon as possible.

The CHAIR: But you don't have a time frame. You can't tell me if it's going to be before December this year or early in the new year. You don't have a time frame.

ANDREW LEWIS: Right now, I don't have that information available to me. I'm happy to take that on notice and come back to the Committee with some more detailed information—

The CHAIR: We might forward you that in a question afterwards to get a time frame.

ANDREW LEWIS: —on specific time frames for the different strands of work that are underway, but we are actively pursuing a number of different reforms, as I said, both from the office—

The CHAIR: I understood that. From 2018—that's four years ago. It's a long time to actively pursue something and not get an outcome and still be in the current position we are in.

ANDREW LEWIS: We would need to go back and see exactly what those commitments were in relation to to be able to report back on whether elements or all or some of those have been already delivered and addressed or whether there is still ongoing work.

The CHAIR: Mr Lewis, just to take this further, you've agreed to come before a Committee today to discuss the issues surrounding embedded networks, but you don't have that information of decisions and ministerial comments and media releases that were made four years ago? You haven't appraised yourself with that particular information?

ANDREW LEWIS: I don't have the exact level of detail that you're seeking right now—

The CHAIR: Do you think you should've appraised yourself of that information?

ANDREW LEWIS: —but I will just check with my colleague to see if she has any further information that's able to be provided.

SOPHIA VINCENT: Yes, sure, I'm happy to add a little bit more information on time frames, Mr Chair. As Andrew said, there are lots of different workstreams underway and they do have different time streams. In terms of the comments from the former Minister in relation to embedded networks, I believe that was about changing rules for developers in strata organisations and the Department of Customer Service would be best

placed to comment on Minister Kean's comments when he was a Minister in that portfolio, as there is work underway to implement those commitments that you referenced. In terms of the other workstreams for embedded networks, I think it is important to distinguish between the work for electricity embedded networks versus hot and chilled water embedded networks. For hot and chilled water embedded networks, we are looking to work nationally to resolve some of those consumer protections and get greater equivalence for those customers.

The AER in its evidence, I believe, last Friday indicated that a review for their retailer authorisation and exemption process—which we see as the key mechanism to expand the scope of coverage of the energy framework to cover hot and chilled water embedded networks—would be released early next year. Again, with our preference to achieve national solutions first, we will be looking to wait for the outcomes of that review and working closely with the AER in that process to see that we can get those consumer protections addressed through that process. That's hot and chilled water. For electricity and gas, again, there are different workstreams so one, I suspect, is price protection. Some customers of electricity embedded networks already have access to the market price cap. That is planned to be expanded to all types of embedded network customers, those supplied by authorised retailers. Again, that is another Commonwealth workstream that's underway.

The Department of Energy have undergone various names—you'll have to correct me on that—but they are leading that process, so they would be best to comment on the time frames to expand price protections to cover remaining electricity embedded network customers. I guess there are two other aspects—the aspect of rebates, which has already been completed; and then the EAPA program in New South Wales, so expanding access to embedded networks. We can get back to you on notice about the time frame for expansion of that work. It is something that is a priority in the department, but I'm sure you can understand it's very complex. We've got a team looking at that issue already, right now.

The CHAIR: I come back once again—the comment was made four years ago by the previous Minister to address the matter.

SOPHIA VINCENT: About EAPA, about the expansion?

The CHAIR: About embedded networks, the problems that have—

SOPHIA VINCENT: Maybe I can pass to my DCS colleague about those specific comments that you might be aware of that were made about removing the exemption for developers for utility contracts on behalf of a strata scheme.

The CHAIR: Ultimately, I think we now know from the information that's been provided to this Committee that the problem exists between the developer who is building either a retirement home or an apartment complex, as an example, and the provision of energy on behalf of that. They enter into a contract with an embedded network. We've also established that as far back as 2015, Jemena were encouraged by Origin Energy to put in place embedded networks as opposed to providing energy directly to the household. I think a question that we need to ask is why that was actually done. We know that Origin Energy is the owner of WINconnect. Many of the problems that we have seen in the overcharging, especially for the heating of hot water, have come from WINconnect. Ultimately, I think you're right—as we have been advised about by various witnesses to this Committee, the problem exists between the developer and the inducements and sweeteners that are provided to developers on behalf of those embedded networks to save the developer the costs of providing meters and other infrastructure. I think that is an issue. If you've got an answer in relation to who should play that role, whether that's a planning role or something you can offer, that would be great.

JOHN TANSEY: Chair, thank you. I can add some detail on that. Since October 2019 the Strata Schemes Management Act has placed limits on the duration of utility contracts with an owners' corporation of a strata scheme, so we are talking about the arrangements governed by the Strata Schemes Management Act. Under that Act, a contract for the supply of electricity, gas or other utilities, including where that's through an embedded network—that agreement will either expire at the conclusion of the first annual general meeting of the owners' corporation or after three years for contracts entered into after that AGM. As I think you're alluding to, that change was made to prevent developers when they might have the dominant voting rights and control of the development in a strata scheme before the majority transfers to the lot owners and occupants—you can't lock the owners' corporation and the strata scheme into arrangements ad infinitum, so it absolutely creates a break there.

I think this goes to the question you asked initially. When those changes were made, at that time they didn't then apply to the supply of electricity through an embedded network. That was based on the work that was happening through the Australian Energy Regulator looking at all of the pros and cons of the arrangements for embedded networks. We would still await that work to consider whether or not these changes can then be applied back into the strata schemes.

I would note, though, as you may be aware—and I think we mentioned in our submission to the inquiry—there was a statutory review undertaken of the strata schemes Act which was tabled in Parliament at the end of last year. One of the recommendations of that review was looking specifically at the information and improving disclosure to strata schemes about whether or not there is an embedded network in their scheme, so they have that awareness going into living there or, more particularly, purchasing in it. That is a further reform we're working on developing and implementing to improve the disclosure that people have around those.

The CHAIR: Time line on that?

JOHN TANSEY: In part, it's going to be down to the priorities of the Government and the Parliament. But we're working with stakeholders on that now, developing legislation, and we would bring it forward when Government and Parliament are ready to deal with it.

Mr EDMOND ATALLA: This question is on the standard for panel members. I understand that there is currently no regulatory framework for the sale of hot water or chilled water. Is it correct that there are no regulations? I know you're working on the regulatory framework for energies such as electricity and gas, but who will regulate the sale of hot water?

SOPHIA VINCENT: Thank you for the question. For the hot and chilled water customers of embedded networks, the Australian Consumer Law is the primary mechanism that provides consumer protections. Hot and chilled water doesn't specifically fall within energy regulations or water regulations in some circumstances.

Mr EDMOND ATALLA: So how can they get protections under the Australian Consumer Law?

SOPHIA VINCENT: I believe that Fair Trading—

Mr EDMOND ATALLA: What regulation framework would be there specifically for hot and chilled water?

SOPHIA VINCENT: That might be a question for NSW Fair Trading, to explain the implementation of the ACL.

JOHN TANSEY: Yes. I think it's important to make a distinction between the broad application of the ACL and—I don't know, Mr Atalla, if you've got a more focused intention behind your question. The ACL, so the Australian Consumer Law—which is a national model law in which all of the States and Territories in the Commonwealth co-administer the identical law—provides broad protections for the provision of goods and services that will essentially seek to ensure that people get what they pay for and understand what they're getting when it's provided. It does what it promises to do and it's fit for purpose, and there is a broad system of consumer rights and warranties under that.

That will apply, though, in the case where—and most of our consumer protection frameworks, whether it's strata, residential tenancies and some others, basically seek to help both the parties when they enter into an agreement. It's predicated on people entering and making some bargain for the supply of goods and services. I guess the distinction I would make is that our remit doesn't reach back into energy or utilities in terms of generation, transmission and the hard provision or reticulation of those services. Who may or may not provide those services is outside the scope of the Consumer Law and the general consumer protections. Ours is a little bit closer to home, between a trader and a consumer and the bargain they strike. Our role comes into play if there's a concern that one or the other either has an unreasonable advantage or is not getting what they contracted to receive in that bargain.

The CHAIR: Would you consider the charging of \$9,700 for a 14-month period for the heating of hot water to be excessive or unfair?

JOHN TANSEY: I couldn't give you an informed view on that because I'm not familiar, I don't think, with the instance.

The CHAIR: For a person in an apartment block, over and above what they're paying for electricity, water and gas, it's for the heating of their water. I made a comment that you could boil a jug and bathe in the water for 14 months and it wouldn't cost you that much in water and electricity, I think I'd be 100 per cent right in saying that.

JOHN TANSEY: I can't comment on what is or isn't a fair price.

The CHAIR: You wouldn't think it's an excessive charge? You think it's perfectly right that embedded networks are charging that at the moment on behalf of consumers in residential apartments?

JOHN TANSEY: No, I'm saying I couldn't give you an opinion because I don't know the specifics of that case.

The CHAIR: This is the whole point that we're asking: Where are the protections for those people? Who are the people standing up at the moment, apart from, obviously, the person that we spoke to before who chased it down through NCAT? I'm pleased as punch that they got an outcome through NCAT, and all of the Committee now agree that we will be directing anybody who comes to us in the future straight to NCAT. But as a responsible government, who's picking up the pieces here?

ANDREW LEWIS: Mr Williams, if I can, in relation to the specific case that you've mentioned with the \$9,700 bill—

The CHAIR: Who's the Minister responsible for protecting consumers?

ANDREW LEWIS: In that specific situation, obviously there are two elements of what a bill is in this instance. There's the underlying cost per unit, and there's the units consumed. Obviously, that leads you to the outcome of what the price that was charged is. If there is an issue where the consumption level is being incorrectly recorded, or there's a physical issue such as a leak or a wrong connection in place that is causing an excessively high billed amount based on the consumption that's measured, that is obviously of very high concern and is one of the things where, if we become aware of those issues, we work very closely particularly with a retailer or an embedded network operator to try to address that in as many circumstances as we can.

What I am aware of in this specific case is that WINconnect has attempted to work very closely with the customer in question. They tested the meter, in this instance, and found that it appeared to be operating correctly. But as an additional measure, they replaced the meter that recorded the hot water consumption free of charge for the particular customer. They also arranged for a plumber to come and inspect the pipework, et cetera, in the premises—again, as I understand it, at no charge to the customer—and no leaks or anything like that were found. It would appear that there is a consumption issue in relation to that customer, and that is the main part. The consumption level, as you've correctly pointed out in your analogy, is probably some 10 to 15 times greater than what you would expect for a premises of that size—and, indeed, some of the premises in the same development. I have been advised by the embedded network operator that there continues to appear to be high consumption for that customer and that they are attempting to work closely with that customer to understand what the consumption profile is and provide support and ongoing assistance to be more efficient with what appears to be a pattern of how the hot water is being used within the premises.

The CHAIR: [REDACTED]

ANDREW LEWIS: [REDACTED]

The CHAIR: [REDACTED]

Mr EDMOND ATALLA: In relation to what has occurred in Victoria—banning the embedded networks, with some exemptions—what are your views on what Victoria has done, and would you support a similar ban in New South Wales?

ANDREW LEWIS: As you have intimated there in that question, Victoria has not banned embedded networks. They continue to allow embedded networks to operate, but they have imposed additional conditions that would need to be met for embedded networks to operate. As we have kind of indicated as well today, we continue to look at what are the appropriate mechanisms for embedded networks, particularly around consumer protection and pricing protections. I think it's fair to say that embedded networks have a number of advantages for customers that are connected to them, but they also have some issues that the Committee is well aware of and that we've also have covered today. What we're attempting to do is to address those issues that do emerge, because not all are obvious and some only come out over time, so that we can focus on ensuring as consistent consumer and price protection as possible.

If on a cost-benefit analysis it doesn't stack up to allow certain types of embedded networks to operate, then I am sure that's something that we will be putting to Government for a policy decision to be made on. However, we also need to realise that with the rapidly evolving nature of energy supply and delivery, as we transition to net zero, there are a lot of new and innovative solutions that can deliver benefits for consumers. Particularly in the types of buildings where embedded networks tend to be found, we don't want to unnecessarily stifle some of those innovations. This is a continual process, from our perspective, in looking at what are the current regulatory arrangements, how can they be improved, what are the consumer protection and other measures that need to evolve and develop over time, and certainly looking at what are maybe some of the more egregious examples where embedded networks are not working effectively for the benefits of the consumers who are participants in them and to be addressing those through the appropriate mechanisms.

Mr EDMOND ATALLA: The information I have is that the Victorian Government's ban on embedded networks in new residential apartment buildings will commence from January 2023. Are you saying that's not correct?

ANDREW LEWIS: Unless an embedded network meets certain types of requirements, such as around the supply of renewable energy, then it will not be able to operate. There is a pathway, as I understand it, for embedded networks to continue to operate past that date that you mentioned, but they have to meet the minimum requirements that the Victorian Government is going to be putting in place. Essentially, what they are seeking to do is to limit the circumstances in which embedded networks can commence operation, but the advice I have had is that it is not an outright ban on embedded networks. They have just effectively changed the framework in which they are allowed to operate. That is not—

Mr EDMOND ATALLA: [Inaudible].

ANDREW LEWIS: Sorry, Mr Atalla. That is not for existing embedded networks; that is for new embedded networks.

Mr EDMOND ATALLA: That's correct. So what type of embedded network services do you think should continue and what services should be banned? Should hot water continue as an embedded network service?

ANDREW LEWIS: Provided there is appropriate identification of a regulatory framework—as the Committee has made clear on and we have not disagreed with, there are regulatory gaps. Provided that those issues can be effectively addressed, then, as I mentioned, there are a number of benefits that embedded networks can deliver to their residents. Essentially, what an embedded network seeks to do is to bulk-buy a product rather than an individual having to do it. Quite often there are some potential price advantages for residents in embedded networks—not in all cases, but that is one of the main benefits that has been observed in relation to embedded networks. Again, as I mentioned, we don't want to necessarily be stifling innovation or new solutions that come into place, but we would fully agree with the sentiment being expressed by Committee members that there needs to be an appropriate balance between the consumer protections and the rights of the residents and users of embedded networks in place and very clearly understood. That is what we are continuing to attempt to work towards through the various measures that I and my colleagues have outlined before.

Mr EDMOND ATALLA: Do you think it's fair for a tenant to be paying for gas that heats the hot water, to be paying for the water that is getting heated and then pay for the hot water itself? That's a three-whammy charge. Are you saying if it's regulated and it's fair, then that should be case? Why should people pay for hot water by the litre when they're already paying for the gas that heats the hot water and they're already paying for the water usage itself? Why should they pay for the heating?

ANDREW LEWIS: They are not paying twice for any of those services. They are just billed in a different way to what may be a traditional approach to how water and energy are consumed in, say, a freestanding house where you are supplied by a retailer. Is it more complicated and complex? Yes, absolutely, because they are done in three different ways rather than through, say, one different way. But all the evidence that we have seen and that we have looked at and IPART has looked at et cetera is that there is not duplication of charging in relation to hot and chilled water and the underlying energy used to heat that as well as the actual water itself, compared to the separate potable water supply, which is used for drinking, showering et cetera. It's just that there are multiple streams involved.

The CHAIR: Ultimately, with the comment that you've just said there, IPART doesn't believe there is a duplication of services. How then does that parallel with the Residential Tenancies Act, which stipulates that hot water—and I think one of the Australian regulators has also stipulated that; it might be AER—is not an energy charge? How can an energy provider then charge for something that is not an energy charge and you guys ultimately at this point in time are accepting that?

JOHN TANSEY: As I think I referred to in my earlier answer, as I'm sure the Committee understands, people will be liable for paying the costs of agreements that they enter into, generally. But then, the residential—

The CHAIR: Hang on. Mr Tansey, just come back a bit. If it's already stipulated that it's not a charge, how can they be responsible for paying for something? Someone's just picked something out of there. This has been an incredible, innovative business case that has been created by an embedded network, by someone like WINconnect. They've seen a massive loophole, and they're on-charging for the heating of water, which is stipulated by various authorities that it should not be charged. NCAT have ruled on behalf of someone in not paying for that. So how do you sit here, as responsible members of departments, stating that it's a fair charge for consumers that they can't get out of? They cannot walk out of it unless they onsell their unit or they leave their tenancy—which, I might add, from the comments that we've heard from the previous witnesses, they're doing in droves at the moment. Surely that can't be beneficial to anyone.

JOHN TANSEY: Alright. If it's useful, can I make a distinction between somebody who might be a lot owner in a strata scheme, in which case their rights and obligations are covered by the strata schemes Act? If, by distinction, somebody is a tenant—so living in a property owned by somebody else under a residential tenancy agreement—the Residential Tenancies Act and the reg generally require people to pay for electricity, gas and oil supplied to the tenant where it's individually metered. So there is a threshold obligation that the charges specifically relevant to them are individually metered so that they can be transparently measured and allocated. The Act doesn't specifically deal with hot water through an embedded network, but it generally requires people to pay for the costs of water where it's individually metered. And, in the case of water, there's a prerequisite that certain water-efficient devices be in place so that, effectively, they get the benefit of efficient use of water before they're metered and charged.

The CHAIR: So then IPART are incorrect in what they've said? You've just suggested that there is a duplication. They're being charged for water. They have a separate bill for water, and then they're being charged for the heating of hot water and being charged per kilojoule, per litre—whatever it is. You've accepted that that's correct, but IPART has stated that there's no duplication.

JOHN TANSEY: No. I agree with my colleague Mr Lewis that people aren't being charged twice for the same thing. The reality is that they can be charged—as I said, as a tenant under the Residential Tenancies Act—where it's individually metered for the water they use and the power they use.

The CHAIR: And they stipulate what those services are, and hot water is not one of them.

KATERINA PAVLIDIS: I can clarify here. Hot water supplied via an embedded network is not explicitly referenced in the Residential Tenancies Act; however, the general principle that tenants are liable for costs related to their utilities charges where those utilities charges are separately metered still stands. And so, if they have a contract with the tenant and the operator of the embedded network have a contract, the tenant would be liable to pay those charges. They're separate to other water charges that they may be liable for under a different contract that isn't related to hot water.

The CHAIR: But the Australian Energy Regulator also supports that hot water is not a charge for energy. The tenancies Act doesn't stipulate it within the Act, but we—or you, as members of your department—are happy to accept that that charge is applied to consumers. I thought one of your primary roles was to protect consumers. Have I got that wrong? Didn't Fair Trading—isn't one of their primary roles to protect consumers?

JOHN TANSEY: Yes, it is, and I've set out the framework. We can enforce the laws as they apply. The point I keep making and that Katerina has emphasised—where people make agreements for these issues, we absolutely can help. I'd add this to one of your earlier questions. Whether people are coming to us as tenants under a residential tenancy agreement or as lot owners or otherwise in strata, we absolutely provide support and receive complaints on that each year. We have, for those respective issues, expert teams that can work with tenants and landlords to try to sort out these problems and help people understand their obligations and help people receive and enforce their rights. That is absolutely a core activity of it. We do it tens of thousands of times a year.

Where issues are specific, for example, to energy, we will do that together with EWON to make sure that because there are—and I guess this is what the Committee, in part, is exploring. There are some specifics and some complexities when you're talking about electricity and utility transmission and generation and supply. It's not as simple as buying a consumer good from a department store and taking it back if it doesn't work. We understand that and we need to deal with the intricacies of that, so we do provide that. That doesn't allow us, however, to impose or otherwise set prices based on what we might think is reasonable or not. We have to observe the bargain between the parties.

Whether it's under the general consumer law or others, if people have entered an unreasonable bargain through unfair contracts or not being fairly informed about what they were getting or what they were entering

into, we can certainly help that and help consumers rectify some of that imbalance. But where people have entered an agreement, the terms of the agreement were there. I think what this issue seems to pivot on is whether or not people were required to pay specified charges for, in this case, water and energy they did use. We can't rupture an agreement where people are getting, are receiving, what they paid for at the cost and in the terms they got it.

The CHAIR: A previous witness stated to us that there was absolutely no identification of costs in terms of hot water when they leased the apartment. They leased the apartment on the understanding that they were paying all of their normal services for electricity, for water et cetera. They weren't advised about the embedded network. The first time they recognised that they had to pay anything for hot water was when they received a bill from WINconnect. And then, when they refused to pay that particular bill because it wasn't specified anywhere in the tenancy agreement that they'd signed—which is ultimately your responsibility. There was nothing mentioned whatsoever that they had to pay for that particular service.

That particular tenant refused to pay, subsequently went to NCAT about it and got a positive outcome in NCAT stating that they didn't have to pay for that. So we have a case with that particular tenant that they weren't notified. We have a case that they were paying for something that was outside and wasn't notified in any form of contract that they had signed. You have a positive outcome in terms of NCAT. You have a tenancies Act that doesn't specify that hot water is a part of the provision of services. You have the AER stating that hot water is not energy that's provided. But you are happy to accept that that person or those people that are in that particular unit block at this point in time, like so many others that are ultimately going to come before us very shortly, should just pay that particular money?

JOHN TANSEY: No. It's not my evidence that I'm happy to accept—

The CHAIR: So if that particular person had come to you, which they incidentally did, what did you do on behalf of that tenant?

JOHN TANSEY: I'm sorry, Mr Williams, I'm not aware of the specifics of the case. I'm going to think of the WINconnect case—

The CHAIR: I've got a response from the Minister for Fair Trading saying it was outside her jurisdiction.

KATERINA PAVLIDIS: I can say a couple of things to the points that you've just made. I suppose there are a few separate issues. One is around the cost of getting your hot water through an embedded network. Regulating the cost of energy providers on the free market is not necessarily something that Fair Trading has remit over. But the other issues which you've talked about around disclosure and the circumstances in which a tenant versus a landlord pays for utilities—that is something that is captured by the Residential Tenancies Act. At the moment, there's a standard form tenancy agreement, which is compulsory for all landlords and agents to use when they sign up tenants onto residential tenancy agreements. There are currently disclosure obligations under that residential tenancy standard form agreement, and the landlord or the agent must disclose whether gas or electricity is supplied through an embedded network.

There's not currently a requirement for hot water being supplied by an embedded network to be specifically disclosed, and it may be that when those updates were made to the standard form agreement, the hot water embedded network business model was not well known. That currently exists, and that is one of the key mechanisms for disclosure at the moment relating to embedded networks under the tenancies framework.

The CHAIR: Ms Pavlidis, that's exactly what I'm stating. There was no disclosure of that particular cost. I'm not going to go back and repeat everything I've said verbatim. The point is, that particular person went to the office of Fair Trading. My understanding is your primary role is to protect consumers. How did you protect that particular tenant?

KATERINA PAVLIDIS: I can't speak specifically to that case—

The CHAIR: Well, I can: They didn't do anything. They had to go to NCAT to chase it up to ultimately get an outcome. This is where we sit at the moment. There's a lack of regulation, there's a lack of acceptance and yet you recognise that there's a problem. Could I perhaps go back and ask whether you are receiving any complaints at this point in time about people in embedded networks? You must have. There's one at least that I know of.

KATERINA PAVLIDIS: We have received around seven complaints since—

The CHAIR: How many people at this point in time across New South Wales do we have in embedded networks? How many customers? How many clients? How many residential buildings, ultimately, do you understand are captured within an embedded network at this point in time across New South Wales?

JOHN TANSEY: Mr Williams, I don't think that's something we would necessarily record. I'm happy to take on notice that question you asked about the number of complaints. I'm happy to do a little bit more detailed work on the specific numbers. As Katerina said, we believe they're very low. But I'm happy to—

The CHAIR: No complaints?

JOHN TANSEY: No, I said we believe they're very low. But we're happy to get specific details on that and provide it back to the Committee so you have the advantage of the information that we do.

The CHAIR: Just before I go back to the Committee, one comment was made by Origin Energy when we raised the issue of WINconnect, which is a company that they've just recently purchased. They made the comment that they are currently working to—and I will be careful with my terminology—absorb 90,000 customers into their operation under Origin Energy from WINconnect. That would, I suppose, suggest to me that is just within the WINconnect embedded customers—and I imagine that they are customers across this country that they are customers within embedded networks—just within WINconnect, as one embedded network operator. I would suggest that some of the issues that we're hearing ultimately are going to be amplified very soon in the future unless we act on this. Committee members, do you have any further questions? Mr Crouch?

Mr ADAM CROUCH: Thank you, Mr Chair. Sorry I had to jump off before, and if you've covered this please let me know. It's been interesting listening to the evidence from people that have—I would highlight to you that there is a failure of disclosure under rental tenancy agreements. We've literally heard that there was no disclosure of an embedded network payment requirement to a particular tenant. We've been given evidence to say that. The real estate agents, and I quote, said it was all too complicated and they don't want to get involved in it. When a complaint was lodged with EWON it took nine months for that complainant to even get a response, and the response was, "We can't do anything about it." I would put to you that there is a massive failure of implementation about any regulation of these embedded networks.

Quite frankly, we've also heard evidence where the tenant's been charged for electricity—which was reasonable, by the way—and the gas, which was reasonable. But then there was this extra charge for heating the hot water. In addition to paying for the consumption of the water and paying for the consumption of the gas, they are then being billed, which they had no understanding of and no disclosure of until they received a bill. As Mr Williams said, when challenged on this issue, after being given no provision and no support from EWON or the Ombudsman—in fact, the Ombudsman said, "You should pay it,"—the evidence was taken to NCAT and NCAT ruled in favour of that particular person.

We know, given the evidence we've received, that as of today rental tenants are still being billed by WINconnect—or this particular person. Even though WINconnect had a finding against them that what they were charging was, effectively, inappropriate and could not be charged, they are still to this day doing exactly that. I would put it to all of you that if we are looking at reviewing regulation at the moment, we have literally potentially hundreds of people who are still being billed, despite a declaration from NCAT and despite WINconnect offering this person a non-payment of that bill. They've admitted, by offering that they don't have to pay it, that it's not a fair charge—but they are still doing exactly that.

We have seen, in the evidence we've been given over the last few days of hearings, that there is a complete lack of transparency with regards to embedded networks. Not just that, but we have situations where a developer—I think it's Toplace—have done a deal with an embedded network, aka WINconnect, and the residents and the owners, and I quote, are "too scared" to actually face this issue because of the threats they have been receiving from the embedded network about being cut off. To us as a government, do you believe that is a fair way for consumers to be treated? That's just one bit of evidence we've had. I'm sure, as Mr Williams said—Origin Energy has just purchased WINconnect and inherited 90,000 customers. Do you think that is a fair way for customers to be getting treated? If it isn't, how would we as a government and you as a regulator fix those issues?

ANDREW LEWIS: One thing I'll just clarify is that 90,000 figure is predominantly for electricity embedded network customers. It is not hot water embedded network customers. The figures that we have available to us, which have primarily been supplied by EWON, is that there are approximately 49,000 customers in different types of embedded hot water networks. It is still a substantial number, absolutely.

The CHAIR: In Australia or in New South Wales?

ANDREW LEWIS: In New South Wales. But out of something like 3.5 million customers, as a proportion it is small, but it is still a significant number. We definitely acknowledge that. Mr Crouch, in relation to your comments, obviously we need to see the specifics of various instances. If there are issues in relation to how certain embedded network operators—if there is evidence around that, we'd be certainly happy to receive that directly. The primary regulator for electricity embedded networks is the Australian Energy Regulator. We can certainly work very closely with them in terms of the authorisation requirements that are in place for those

types of electricity embedded networks to understand if the behaviour that is being seen by customers warrants further regulatory activity by the AER.

SOPHIA VINCENT: Just to add to your point, of those customers of Origin Energy who are supplied electricity through an embedded network, they would have access to a full range of national consumer protections, including access to free and independent dispute resolution through the Energy and Water Ombudsman NSW. That is different to some hot and chilled water customers, who currently don't have access to EWON as EWON is limited to provide dispute resolution services based on what is in the law. We do acknowledge, as the Committee has identified, that there are gaps in consumer protections for some of those customers.

I'd like to reiterate that the Government is actively working to address those gaps. It was included in a public consultation paper released in December last year. Since then we have identified that one key pathway to address those gaps, provide access to dispute resolution and provide equivalent consumer protections to on-market customers would be to expand the definition of the sale of energy under national energy laws. That's something that's being considered in the AER's retail authorisation and review process. That may take some time but it is underway. That is one pathway that we have identified—and the AER is willing to explore it as well—that could really achieve, I think, the desired outcomes that many of you appear to be looking for today: to get that equivalence, to have more specific consumer protections that relate to energy customers and give access to dispute resolution.

The CHAIR: I think they suggested that they will be completed and made public by November, but also then stressed that New South Wales should and could take a lead role in ultimately addressing the regulatory shortfalls that exist at this point in time. They were comments that I think came to this Committee last week from AER themselves.

ANDREW LEWIS: I think, without wanting to blow our own trumpet, it has been work that we have pushed the AER to that position where they will be coming out with something hopefully in November. I would say that we have been taking that leadership role in relation to this issue. As I mentioned before, our approach is always that we look to a national approach because that way there is an overall benefit to consumers and those that operate in this market so that they are not subject to different regulatory requirements. But if either the time is taking too long or the outcome that we are seeking is not comprehensive enough, we will certainly then look at New South Wales-specific requirements to bolster or replace those that are not deemed to be satisfactory.

Mr ADAM CROUCH: Would you agree, given what we have discussed with you today, that there are some serious gaps in the regulatory framework around embedded networks? And, given what's going to be coming through in November—my understanding is that not every State and Territory is part of this. This is one of the things we've found. Victoria are going their own way at the moment. Do you believe that the regulator still doesn't have enough kick to actually implement what needs to be done, given what we've seen so far? It almost appears to be deliberately confusing to the poor old consumer about where to go, who to talk to and where to start, to be quite honest.

ANDREW LEWIS: Victoria does not sign up to the National Energy Retail Law. It has its own set of provisions covering this. But in terms of New South Wales, Queensland, South Australia, Tasmania and the ACT—all those jurisdictions operate under the NERL and the various provisions. So anything that the AER does would apply to all jurisdictions that are connected in the National Electricity Market or the east coast gas market, with the exception of Victoria.

Mr ADAM CROUCH: But that also excludes Western Australia too, doesn't it? It's Western Australia and Victoria, so it's not really a national scheme because not all the States are actually part of it.

ANDREW LEWIS: I'm less familiar with the regulatory environment in Western Australia, but a lot of it is consistent with the provisions that apply in what's called the National Electricity Market, which is the east coast market and the equivalent for gas as well.

The CHAIR: Are you aware of the Reckless case?

KATERINA PAVLIDIS: Yes.

The CHAIR: Could I get some comment in relation to what that means on behalf of future embedded network customers? Should there be legislative change to reflect that decision?

KATERINA PAVLIDIS: Yes, I can speak to that one. The Reckless case was specifically about residential land lease communities, which are governed by a separate law specifically for those who live in residential land lease communities. It was a Supreme Court decision that basically found that the operator of these communities cannot charge residents, who include tenants and owners of the premises, more than they've been charged for the use of electricity. What's happened with Reckless is after that Supreme Court decision it went

back to NCAT to then make a decision on what method operators should be using to charge residents through an embedded network. The method that NCAT had agreed on is not necessarily binding. But a lot of residential land lease communities are implementing that, and it's actually caused a lot of confusion and complexity in the calculation method that's resulted. That's one of the issues that our recent statutory review of the Residential (Land Lease) Communities Act looked at. It is looking at alternative ways to bring certainty to how an operator can charge for electricity through an embedded network.

The CHAIR: We understood, I think, from advice the Committee heard from witnesses that whilst the actual operator or owner of the particular premises couldn't now become the authority that charged for electricity, they could shift that to another independent person who could become it—so, therefore, do a sweetheart deal, get someone to put their hand up. It might be a relative; it might be anybody; it might be a tenant in the particular land lease community. But you're suggesting that's not the case?

KATERINA PAVLIDIS: Are you referring to the fact that, as a result of the complex method that Reckless has instilled, I suppose, some operators are getting third parties to operate the embedded network?

The CHAIR: Yes.

KATERINA PAVLIDIS: That has been happening, and that's one of the things that we've been taking into account. That third party is not necessarily captured by the Residential (Land Lease) Communities Act. The statutory review found that was problematic, and that any reforms we make to clarify and provide certainty to the way that the charging can be done also applies to any third parties that the operator contracts out to look after and maintain the embedded network.

The CHAIR: It almost seems that that's very much been a precursor to the more broadened definition of embedded networks that we're now seeing in retirement villages and apartment blocks that we've already covered. It would also be fair to say that witnesses to this Committee have stated that they believe that their electricity charges, water charges, and even some of their gas charges have been commensurate with current charges that other people would find in the market, and that some embedded network operators are operating in a manner that is benefiting the consumer. I think that needs to be stated firmly for the record.

But, from my perspective, when you see a massive loophole that exists currently, where you have an embedded network that can start charging for the heating or the cooling of water that we've heard about, surely that is outside the bounds of the provision of energy. And, as has also been provided in evidence to this Committee, if we go back perhaps 10- or 20-odd years, that charge for the hot water heating—if the main hot water provider had been built into the apartment block or the retirement village, that particular charge was normally heated by gas and contained within a gas charge. Ultimately, whilst people may have been paying for the heating of their hot water, it was absorbed in a gas charge, which was then a recognised charge for energy.

Charging separately the hot water is certainly outside the guidelines and what we understand to be a massive loophole. That is where we can envisage and see the problems, because we're seeing them already from consumers. But, going forward, what other loopholes will those embedded networks find? I think there was something on Facebook. I can't attest to it. I'm not suggesting that anyone who's on Facebook lies, but certainly on some social media platforms it was suggested that even the cool air that flowed through the air conditioning unit was being charged by WINconnect in another adjoining State. I see you're nodding your heads, so you're probably aware of those particular claims. They're just some of the issues and further loopholes that embedded network providers could find in the future. That's why we're trying to address them now and nip this in the bud.

ANDREW LEWIS: If I could add, Mr Williams, in relation to embedded electricity network operators and the pricing, if they are an authorised embedded network operator—

SOPHIA VINCENT: Exempt seller.

ANDREW LEWIS: Sorry, an exempt seller under the AER framework, they are required to charge no higher than the default market offer electricity price for the particular network region where the premises is located. So there is, effectively, a price protection in place for those types of embedded network customers in relation to electricity—to clarify, if the Committee wasn't aware of that.

The CHAIR: I think that's right. So, ultimately, therefore, it's the existence of loopholes and the loose regulatory framework that exists, where anything could be charged in the future. If we get to the point where we're charging for the heating and cooling of water and the air that subsequently flows through air conditioners, you wonder what other charges these people—that's the work of the Committee, where we have to come up and try to provide some sorts of resolutions or recommendations, ultimately, for government to follow in the future. Mr Crouch?

Mr ADAM CROUCH: Thanks, Mr Chairman. One of the things that has come to light during the inquiry—and you have already said this—is about some embedded networks driving the change and development of better technologies to reduce emission et cetera. That's a good thing. But one of the potential loopholes that's been given to us is the fact that an embedded network has no requirement to pass on any savings with regard to the implementation or application of solar savings et cetera. Effectively, what we're hearing is the developer will do a deal with an embedded provider. As part of that infrastructure, solar panels et cetera could be put on the roof to reduce power costs. But there's no obligation from the embedded provider to have to pass those savings on to the consumer, be that a residential tenant or an owner. Is that a correct assessment at the moment?

ANDREW LEWIS: I would broadly say that that would appear to be correct. I would agree with you, there is no mechanism to require any savings to be passed on. However, what I would say, as I just mentioned, there is a maximum price that can be charged. So it's not like prices are completely unregulated in this environment. As I mentioned earlier, we are seeing innovation and we are seeing new developments. The nature, obviously, of policy and regulation is that where new things come, we need to look at: What are the implications, what are the issues and then what are the appropriate regulatory and consumer protection responses to be put in place to address that?

Certainly, for many what I'll call multi-unit dwellings, the ability to install things like solar and other more energy-efficient renewable solutions has only been a relatively recent development, for a number of reasons. My colleagues could comment on that. I know there have been some reforms recently to reduce the voting numbers to allow that type of sustainable infrastructure to be installed. What I would say is that we're still at the relatively early stages of seeing those kinds of technology solutions rolled out more broadly as different designs and more affordability of the equipment comes into play. It is certainly an issue that we are looking at closely from our side, and I believe my colleagues are as well, from the DCS and Fair Trading side. We do work cooperatively in relation to understanding not just how we enable sustainable infrastructure to be installed in apartments and other kinds of density-living situations but, on the flipside, what is the appropriate regulatory environment that needs to go along with that as these opportunities start to emerge.

JOHN TANSEY: Yes, I would echo that. We're acknowledging and, without speaking for the Committee, I think you've made comments that acknowledge that there can be significant benefits for owners and occupants in these schemes. As a regulator, one of the challenges we have is to balance where there is innovation and disruption. That brings either competition that can improve the price that people can get these services for or, as Mr Lewis just mentioned, it might provide particular opportunities for people to install sustainable, low-carbon, more cost-effective infrastructure and amortise the cost of that over a longer period where they might not be able to meet the up-front cost. There are benefits.

Generally, I want to acknowledge the point that members and the Committee are making. Yes, where there is innovation and disruption, it tests the regulatory frameworks. Yes, it finds gaps in the regulatory frameworks, and I wouldn't want anything that we're saying to connote that we think the regulatory frameworks are perfect. They're not. They need constant reworking and reviewing to keep pace with the innovation, and to make sure that people can access the benefits that come but that they are not exposed to unreasonable and unknown risks in entering into these agreements. We work constantly with stakeholders. We'll absolutely be interested in the work and the report of this Committee and the recommendations out of that about how we can improve the regulatory framework for this.

As Andrew made the point, this is literally stuff that is changing month by month and year by year in terms of market offerings. We'd always hope that those market offerings are for good and that they're great, beneficial new services. Where they're not and they may be exploiting loopholes and looking to exploit consumers, we will absolutely come to understand those and work on ways that we can provide those protections for consumers and others, as I said, balancing it so that we don't crush innovation or disruption or unintentionally stop the advantages being available to people.

The CHAIR: With that said, in the interest of full disclosure, and I'm sure I wouldn't get any disagreement if I asked you this, should consumers be apprised and have presented to them in identifiable documentation what the costs are for anything that they are purchasing? I don't think I'd get any disagreement.

JOHN TANSEY: No.

The CHAIR: In the interest of full disclosure—whilst we are here waiting for, as you've suggested, the AER recommendations and the work of this particular Committee—is it outside the realms of possibility that the New South Wales Government, through the respective departments, could insist on the disclosure of certain costs to tenants or owners purchasing premises going forward from now? To give you an example, if I was to get onto any real estate website or platform at this point in time, I would have disclosed to me the strata fees and council rates, and I could find out the electricity and water. That would all be disclosed. Would it not be fair, and could

we immediately commence—I imagine with very little work—that any other costs and an average of those costs could be disclosed to a person who was going to lease or purchase a residential apartment or dwelling going forward?

KATERINA PAVLIDIS: I can speak to that. That is one of the recommendations of the strata statutory review around disclosure during the purchase of a strata lot, including ongoing capital costs and things like that. It is something that we're working on to implement.

The CHAIR: That is not a capital cost; that's an ongoing service charge.

KATERINA PAVLIDIS: Yes.

The CHAIR: Therefore, I ask the question: Why would this Government need to wait for the AER or anyone else to make recommendations when you all agree that, in the interest of full disclosure, consumers should have those costs? Why couldn't we implement that today?

KATERINA PAVLIDIS: Implementing this recommendation doesn't hinge on anything that comes out of the AER at the moment.

The CHAIR: Great. So when will it be implemented?

KATERINA PAVLIDIS: We're working on it at the moment—on implementing this. There are lots of different mechanisms—

The CHAIR: Full disclosure of costs to anybody entering into the purchase or leasing of a residential dwelling, and perhaps encapsulating a commercial dwelling as well, on behalf of businesses, because we're also hearing complaints from businesses that are now being trapped in embedded networks—the requirement that real estate agents and developers selling off the plan, going forward, disclose all costs.

KATERINA PAVLIDIS: The actual specific mechanism through which we would require this disclosure hasn't yet been determined. There are a number of mechanisms that we could make that a requirement—different regulations that are relevant to purchasing a property or renting a property, for example. The other issue that you've mentioned is exactly what the disclosure will be and what we mean by "full costs". Obviously, the intent is that a lot owner goes into the purchase and has an understanding of the capital costs as well as what it means for their energy pricing.

The CHAIR: You keep going to capital costs. That may be something for owners, but I'm also looking for tenants. They're not going to be paying any capital costs. I'm thinking about ongoing service charges.

KATERINA PAVLIDIS: Yes. Tenants are separate to what I'm saying. This recommendation that was made for a strata statutory—it was part of the strata legislation, and it applies to prospective buyers rather than tenants.

The CHAIR: So there's nothing currently in place or immediately going forward to protect someone who is leasing?

JOHN TANSEY: To make the distinction, as Katerina just did, between people who are considering buying a lot in a strata scheme versus somebody who is looking to rent anywhere, but including in a strata scheme, there is currently no mandate about what must be included in—you're asking about advertisements or listings for real estate. That's not mandated. There are other protections currently in residential tenancies around what agents must make people aware of or not inducing them to enter into agreements not knowing things they need to know. That doesn't currently include disclosures around embedded networks.

The other point to make, separate to what might be mandated in law, is the opportunity we have to improve the advice to people about what things they should know about and find out about. I think some of the other examples you're using are based on the long experience of people buying and selling or renting properties and the things they know they ought to know about. There are also opportunities for us to look at the information we provide to people so that they go in eyes wide open and know what they should be asking.

The CHAIR: I hear that from a government perspective, the information that you can provide to people. That's if people contact the department or get onto a website. I'm talking about someone going out and purchasing something. You know how much your petrol is; it's advertised when you're buying your petrol. You know how much it costs. The costs are displayed on every item. It's a protection for the consumers. Ultimately, at this point in time, there are people leasing and buying—I'm going to continue to include purchasers of apartment blocks, primarily, especially retirement villages—in a market where there is a shortage of available housing. There is certainly a shortage of available rental properties. Shouldn't we take on board at the moment that the full disclosure of costs be identified by real estate agents that are selling or leasing those properties? What could possibly be a

problem with insisting on regulating that those costs get charged in the interests of full disclosure at this point in time? They have to disclose all other on-costs that are there, why shouldn't they disclose these costs, which are significant?

JOHN TANSEY: Again, I don't have any quibble with the principle of disclosure. That is absolutely a common element of all of our regulatory frameworks—helping people to understand what they need to know. I couldn't give you an informed opinion today whether or not it's feasible to ask people to declare forward-going costs for some of these things, for example, a real estate agent doing that if they're not privy to the contract. I think we keep coming back to the base of there are upfront charges but there is also the issue of consumption. So I just couldn't give you an informed opinion today whether or not it would be practicable to ask people to give that calculus to somebody looking for a tenancy.

The CHAIR: I would suggest then, Mr Tansy, that the costs that are displayed by real estate agents will be encapsulated within the contracts for tenants going forward. Those costs will be encapsulated. They will have an understanding that those costs on any contract that they sign up to—at this point in time, they don't have that protection.

JOHN TANSEY: As I said before, no objection to the work you're doing and the basis of the inquiry to look at how we can keep improving that. I am simply trying to give you a frank discussion about it today. I don't know whether or not it would be reasonable or practicable to ask an agent to do that. It may be. I mean, it's absolutely one of the things we can look at with the benefit of this inquiry and from discussions today.

The CHAIR: I would think it was a basic requirement on behalf of consumer protection. Committee, do you have any further questions? With that, I thank you all for appearing before the Committee today. You will be provided with a copy of the transcript of today's proceedings for any corrections or any questions taken on notice. They 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 also be made public. Would you be happy to provide a written reply to any further questions?

ANDREW LEWIS: Of course.

KATERINA PAVLIDIS: Yes.

JOHN TANSEY: Thank you, yes.

The CHAIR: We also ask that you please provide a copy of your opening statement to the Committee secretariat. I thank you, once again, for your attendance. Thank you, Committee. That concludes our public hearing for today. I thank all witnesses who appeared before the Committee. I would also like to thank our Committee members, Hansard, the staff of the Department of Parliamentary Services and Committee staff for their invaluable assistance. I also thank my Committee, especially the member for Terrigal, Mr Crouch; the member for Mount Druitt, Mr Atalla; and other Committee members, Mr Provest, and Ms Smith from the electorate of Ballina. Thank you all for your invaluable contributions. All the best.

(The witnesses withdrew.)

The Committee adjourned at 11:45.