

Committee on
Law and Safety



LEGISLATIVE
ASSEMBLY

Embedded Networks in New South Wales



Report 3/57 – November 2022

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The motto of the coat of arms for the state of New South Wales is “Orta recens quam pura nites”. It is written in Latin and means “newly risen, how brightly you shine”.

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Chair's foreword

Access to energy and energy security are essential for the health and wellbeing of all residents in NSW. However, unfair pricing and negative impacts on health and safety were raised by many consumers that contributed to our inquiry into embedded networks in NSW.

Embedded networks are private energy networks for services such as electricity, hot water and gas. Embedded network operators pay to receive energy from the grid and then on-sell energy to its customers. While some may provide bulk savings or technology innovation for its consumers, inquiry evidence overwhelmingly indicated significant consumer issues with embedded networks due to an outdated regulatory regime.

In particular, residents reported receiving unreasonably high bills for hot water embedded network services. For example, one witness had received a bill for \$2 000 for a 9-month period, and their neighbour had received a bill for \$9 700 for a period of less than 18 months.

Access to an affordable and readily available source of energy is vital for residents with special needs, such as people living with a disability that rely on energy services to maintain their health and safety. The Committee heard that ageing and CALD residents may also face difficulties accessing information or assistance regarding embedded network services and rules. Further, the Committee received evidence about safety risks regarding high voltage connections in larger embedded networks.

The combination of an increased number and size of embedded networks has meant that the existing regulatory framework and safety requirements are no longer fit for purpose and requires reform.

The Committee made several recommendations to address the regulatory gaps and issues that arose during the inquiry.

Primarily, the Committee recommended that the NSW Government immediately ban the separate charging of hot and chilled water in embedded networks and implement fulsome price protection measures to prevent the unreasonable and unfair pricing of these essential services. It also recommended that the NSW Government urgently collaborate with the federal, state and territory governments and regulatory bodies to improve consumer protections for these customers.

Inquiry participants also raised issues regarding a lack of notice before purchasing or leasing a property within an embedded network, and that there are no or limited requirements for disclosing this information beforehand. The Committee therefore recommended that the NSW Government ensure there are appropriate requirements to disclose embedded network services to a potential owner or tenant before they purchase or lease a property, including requiring real estate advertisements to disclose the average recurring costs of all services (for example, the sale of hot or chilled water).

The Committee also heard about unfair contract terms that locked owners into long term contracts with an embedded networks service provider, which were originally entered into by the building developer. This Committee considered this a significant lack of transparency and consumer choice and recommended that the NSW Government consider regulating embedded

network contract provisions, including the term of the contract and conditions of termination, to ensure they are not unduly burdensome for consumers.

Throughout the course of the inquiry, the Committee discovered that much of the consumer issues above derive from a regulatory framework that was originally designed for 'traditional' embedded networks that did not have energy supply as their core business.

As such, it was originally considered that subjecting smaller private networks to the same regulatory requirements as larger energy distributors would be overly burdensome for its customers and negate any price improvements from the bulk on-selling of energy. These networks were therefore subject to certain exemptions from the national framework which provided consumer protections.

However, the number of embedded networks have grown significantly in NSW. For instance, in 2013, the Energy and Water Ombudsman NSW estimated that there were approximately 2 authorised retailers, 7 exempt sellers and 900 households in residential developments established as electricity embedded networks. As at 2022, it is estimated that there were 793 authorised retailers, 161 exempt sellers and 95 400 households in residential developments established as electricity embedded networks. Additionally, as of June 2022, there were over 64 325 customers in gas embedded networks being billed for unmetered gas supply and hot water.

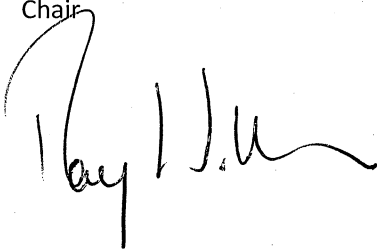
The Committee therefore made a number of recommendations addressing these regulatory gaps that focused on legislative change at the NSW state level as well as collaboration that should be urgently pursued with our federal and other state and territory colleagues to amend the relevant national regulatory framework.

It was also acknowledged that embedded networks can provide certain cost savings or technology innovation solutions in the right environment. We therefore recommended that regulatory changes should not stifle such innovation. However, the Committee considered that the implementation of its recommendations at state and federal levels should ensure that, going forward, embedded networks are only able to provide NSW customers genuine benefits and outcomes.

On behalf of the Committee, I thank all those who made a submission and participated in the inquiry by appearing at our public hearings and engaging with us at a private briefing. I thank Committee members for their hard work and valuable contributions to this report, and the Committee staff for supporting us in our work.

Mr Ray Williams MP

Chair

A handwritten signature in black ink, appearing to read 'Ray Williams', written over the printed name and title.

Executive summary

Embedded networks are private networks that can supply a range of services such as electricity, hot and chilled water, and gas. Embedded network operators pay to receive energy from the grid and then on-sell energy to its customers.

Consumer price issues in embedded networks

This inquiry examined the significant consumer issues arising from embedded networks in NSW. Specifically, that NSW residents have received unreasonably high bills, particularly for hot water embedded network services. For example, one witness had received a bill for \$2 000 for a 9-month period, and their neighbour had received a bill for \$9 700 for a period of less than 18 months.

During the inquiry, the Committee discovered that this issue cannot be fixed simply by introducing price protections for consumers. Currently, hot water embedded networks fall outside the current definitions for energy and therefore outside the relevant consumer and price cap protections under state and national laws. This creates a gap in the regulatory framework where hot water embedded network customers do not receive adequate protections, and therefore have very limited avenues for dispute resolution.

To this end, the Committee recommended that the NSW Government immediately ban the separate charging of hot and chilled water in embedded networks and implement fulsome price protection measures to prevent the unreasonable and unfair pricing of these essential services. It also recommended that the NSW Government urgently collaborate with the federal, state and territory governments and regulatory bodies to improve consumer protections for these customers.

Safety risks for consumers

Access to energy and energy security are essential for the health and wellbeing of all residents in NSW. However, those living in embedded networks may face significant safety risks as a result of high bills and limited consumer protections. The Committee received evidence that these high bills have led some consumers to take drastic cost-savings action, such as not using hot water while showering. Worryingly, high bills may also have a profound effect on the most vulnerable in our community, such as people with disability, who may rely on energy services to maintain their health and safety.

Further, there are physical safety risks associated with high voltage connections in larger embedded networks. The Committee heard that the increased number of large embedded networks requesting access to the grid means that current safety regulations are no longer fit for purpose. Residential land lease communities are also impacted by poor infrastructure that may result in some residents receiving low amperage. This can hinder their access to safe and reliable energy.

The Committee therefore recommended that the NSW Government address these issues by ensuring obligations and requirements in NSW legislation applying to different sized embedded networks are clear and sufficient to protect consumers and maintain network safety. The Committee also recommended that the NSW Government implement measures to ensure that network infrastructure, particularly in residential land lease communities, is maintained and upgraded to ensure the safety of, and reliable supply to, residents.

Lack of notice, lock in contracts and limited access to market competition

Many consumers informed the Committee that they received inadequate or no notice prior to purchasing or leasing an embedded network property, or what that would mean for service costs. The NSW Government also confirmed that there are currently no requirements to disclose that a property is in an embedded network before purchase, and the only disclosure required when leasing out a property is contained within the standard lease agreement which is typically viewed at the point of signing.

The Committee considered this an unreasonable lack of disclosure and transparency, and therefore recommended that the NSW Government ensure there are appropriate requirements to disclose embedded network services to a potential owner or tenant before they purchase or lease a property, including requiring real estate advertisements to disclose the average recurring costs of all services (for example, the sale of hot or chilled water).

Further, embedded networks are often set up in new apartment buildings between a developer and an embedded network service operator, with the original contract terms established before the owners' corporation is in existence. Embedded network customers are also limited from switching service providers and may be subject to extremely onerous contract provisions. This limits customers' ability to access market competition and, in the Committee's view, is likely the root cause of unreasonably high costs. To address this, the Committee recommended that the NSW Government consider regulating embedded network contract provisions, including the term of the contract and conditions of termination, to ensure they are not unduly burdensome for consumers.

Complicated complaints process and concern for vulnerable consumers

Embedded network customers typically have limited access to support and information about their services and dispute resolution avenues. External complaints and dispute resolution processes across state and federal levels are also complex and time-consuming for consumers to navigate. These issues are amplified for vulnerable stakeholders, including ageing and CALD consumers.

Therefore, it is recommended that the NSW Government ensure there is adequate information available to consumers in embedded networks about access to complaints and dispute resolution services. The Committee also recommended that the NSW Government appropriately educate and communicate with vulnerable communities about embedded networks. This includes with ageing and CALD consumers to ensure that they can make an informed choice and seek assistance.

Need for regulatory change

Given all of these issues, the Committee primarily found that the regulatory framework for embedded networks is not fit for purpose. The evidence gathered from individual consumers, advocacy groups and energy industry businesses and regulators overwhelmingly indicated that the regulatory framework for embedded networks requires urgent change.

The Committee made a suite of recommendations directed to addressing these significant regulatory gaps. The Committee focused on legislative change at the NSW state level as well as collaboration that should be urgently pursued with our federal and other state and territory colleagues to amend the relevant national regulatory framework.

The Committee acknowledged that embedded networks may also provide certain cost savings or technology innovation solutions and that regulatory changes should not stifle such innovation. However, the Committee considers that the implementation of its recommendations at state and federal levels should ensure that, going forward, embedded networks are only able to provide NSW customers genuine benefits and outcomes.

Findings and recommendations

Finding 1 _____	6
Access to energy and energy security are essential for the health and wellbeing of all residents in NSW.	
Recommendation 1 _____	6
That the NSW Government urgently collaborate with federal, state and territory governments and energy regulatory bodies to secure regulatory reforms which improve the consumer protections available to embedded network customers, including price cap protections.	
Finding 2 _____	11
The current national exemption framework for embedded networks is not fit for purpose.	
Recommendation 2 _____	11
That the NSW Government work with federal, state and territory governments and energy regulatory bodies to improve the compliance and monitoring regulatory framework for embedded networks.	
Recommendation 3 _____	11
That the NSW Government improve data collection regarding embedded networks, particularly to identify the number of residents living in embedded networks.	
Recommendation 4 _____	16
That the NSW Government implement a standardised billing structure requiring the itemisation of embedded network services.	
Finding 3 _____	18
Residential customers in embedded networks have reduced and inequitable consumer protections and some face unjustifiably high energy costs. For example, the Committee heard reports of residents receiving outrageous hot water charges for \$2 000 over a 9-month period and \$9 700 for a 14-month period.	
Recommendation 5 _____	18
That the NSW Government immediately ban the separate charging of hot and chilled water in embedded networks and implement fulsome price protection measures to prevent the unreasonable and unfair pricing of these essential services.	
Recommendation 6 _____	18
That the NSW Government collaborate with federal, state and territory governments and energy regulatory bodies to ensure hot and chilled water consumers in embedded networks have equal protections as are provided under the National Energy Customer Framework, including by requiring that these services are billed in accordance with the underlying source of energy.	

Recommendation 7 _____ 27

That the NSW Government ensure obligations and requirements applying to embedded networks of different sizes in NSW legislation, including the *Electricity Supply Act 1995* and the Service and Installation Rules, are clear and sufficient to protect consumers and maintain network safety.

Recommendation 8 _____ 32

That the NSW Government implement measures to ensure that network infrastructure, particularly in residential land lease communities, is maintained and upgraded where necessary to ensure the safety of and reliable supply to residents, including the consideration of the potential cost consequences for residents.

Recommendation 9 _____ 34

That the NSW Government:

- a) ensure there are appropriate requirements to disclose embedded network services to a potential owner or tenant before they purchase or lease a property in an embedded network, including requiring real estate advertisements to disclose the average recurring costs of all services provided to that property through an embedded networks (for example, the sale of hot or chilled water);
- b) require developers and embedded network operators to disclose any energy cost savings that potential owners would obtain when purchasing a property, such as from solar or other renewable sources.

Finding 4 _____ 34

The lack of disclosure around embedded network services is concerning, and it is vital that the NSW Government ensures that embedded network businesses do not exploit the rise of electric vehicle infrastructure being installed and operated in strata complexes.

Recommendation 10 _____ 40

That the NSW Government consider regulating embedded network contract provisions, including the term of the contract and conditions of termination, to ensure they are not unduly burdensome for consumers.

Recommendation 11 _____ 44

That the NSW Government implement a Retailer of Last Resort scheme to protect customers in embedded networks.

Finding 5 _____ 48

The external complaints and dispute resolution processes across state and federal levels are complex and time-consuming for consumers to navigate.

Recommendation 12 _____ 48

That the NSW Government ensure there is adequate information available to consumers in embedded networks about access to complaints and dispute resolution services.

Recommendation 13	48
That the NSW Government work with the Australian Energy Regulator and the Energy and Water Ombudsman NSW to ensure exempt entities become members of the Ombudsman.	
Recommendation 14	49
That the NSW Government ensure that small business customers in embedded networks are adequately protected.	
Recommendation 15	49
That the NSW Government, in collaboration with the Energy and Water Ombudsman NSW, develop and implement measures to ensure that the cost of an Ombudsman investigation cannot be passed on to a consumer.	
Recommendation 16	55
That the NSW Government ensure there is adequate hardship support available to embedded network customers.	
Recommendation 17	55
That the NSW Government urgently extend access to Energy Accounts Payment Assistance (EAPA) vouchers to all residents in embedded networks.	
Recommendation 18	58
That the NSW Government appropriately educate and communicate with vulnerable communities about embedded networks, including ageing and culturally and linguistically diverse consumers, to ensure they can make an informed choice and seek assistance.	
Recommendation 19	61
That the NSW Government collaborate with federal, state and territory governments and energy regulatory bodies to secure regulatory reform, particularly to include embedded networks and update the definitions of 'selling energy', 'electricity, and 'gas' under the National Energy Retail Law.	
Recommendation 20	61
That the NSW Government urgently collaborate with federal, state and territory governments to extend the Default Market Offer to embedded network customers.	
Recommendation 21	64
That the NSW Government urgently implement the recommendations of the 2021 statutory review of the <i>Strata Schemes Management Act 2015</i> relating to utilities contracts.	
Recommendation 22	67
That the NSW Government urgently implement the recommendations of the 2021 statutory review of the <i>Residential (Land Lease) Community Act 2013</i> relating to the charging of electricity in embedded networks.	

Glossary

ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AGM	Annual General Meeting
CALD	Culturally and Linguistically Diverse
CCIA NSW	Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd
CEO	Chief Executive Officer
COAG	Council of Australian Governments
COTA	Council on the Ageing NSW
DMO	Default Market Offer
EAPA	Energy Accounts Payment Assistance
ECC NSW	Ethnic Communities' Council of NSW
EV	Electric vehicle
EWON	Energy and Water Ombudsman NSW
HV	High voltage
IPART	Independent Pricing and Regulatory Tribunal
LV	Low voltage
NCAT	New South Wales Civil and Administrative Tribunal
NECF	National Energy Customer Framework
NEM	National Electricity Market
NER	National Electricity Rules
NERL	National Energy Retail Law
NERR	National Energy Retail Rules
NMI	National Meter Identifier
OCN	Owners Corporation Network
PIAC	Public Interest Advocacy Centre
RLLC	Residential land lease community
RoLR	Retailer of Last Resort
SCA	Strata Community Association (NSW)
WICA	<i>Water Industry Competition Act 2006</i>

Chapter One – Embedded networks and the regulatory framework

- 1.1 This chapter will provide a brief overview of the types of embedded networks examined in this report as well as the current regulatory framework. As the Committee primarily received evidence relating to electricity and bulk hot water embedded networks, these are the services that will form the focus of this report.
- 1.2 This chapter will also provide an overview of the final report of the Australian Energy Market Commission (AEMC) on updating regulatory frameworks for embedded networks dated 20 June 2019 (AEMC's 2019 report) and its recommendations.
- 1.3 The AEMC's 2019 report was initiated following a 2017 report titled *Review of regulatory arrangements for embedded networks*, which found that the national regulatory framework for embedded networks was not fit for purpose (AEMC's 2017 report).¹ The Committee agrees with this finding.
- 1.4 In particular, the Committee considers that the regulatory framework for embedded networks creates unequal access to the essential service of energy and the consumer protections that NSW energy customers traditionally receive.
- 1.5 It is the Committee's understanding that the recommendations in the AEMC's 2019 report are yet to be considered by the National Energy Ministers.

What are embedded networks?

Embedded networks are private energy and service networks

- 1.6 Embedded networks are private networks that can supply a range of services such as electricity, hot and chilled water and gas. In traditional embedded networks, embedded network operators pay to receive energy from the grid and then on-sell to its customers.
- 1.7 For example, embedded electricity networks are private networks within a building or complex in which electricity is purchased from the grid by the network owner or operator and on-sold to customers in the network.
- 1.8 Hot water embedded networks are common hot water systems in a building owned, maintained and metered by a third party embedded network operator. They are typically powered by gas.²

¹ [Submission 32](#), Australian Energy Market Commission (AEMC), p 1.

² Energy and Water Ombudsman NSW (EWON), [Hot water embedded networks](#), March 2021, viewed 2 November 2022; EWON, [What is a common hot water system?](#), viewed 2 November 2022.

- 1.9 These types of networks are typically found at residential developments, shopping centres and caravan parks. They may be new developments or retrofitted in existing developments.³
- 1.10 In contrast, typical energy customers are directly connected to the grid and purchase electricity from an authorised retailer. Figure 1 demonstrates this typical setup, with the relationship between the distribution system, the authorised energy retailer and energy customer. In this setup, customers have certain protections under the National Energy Customer Framework.

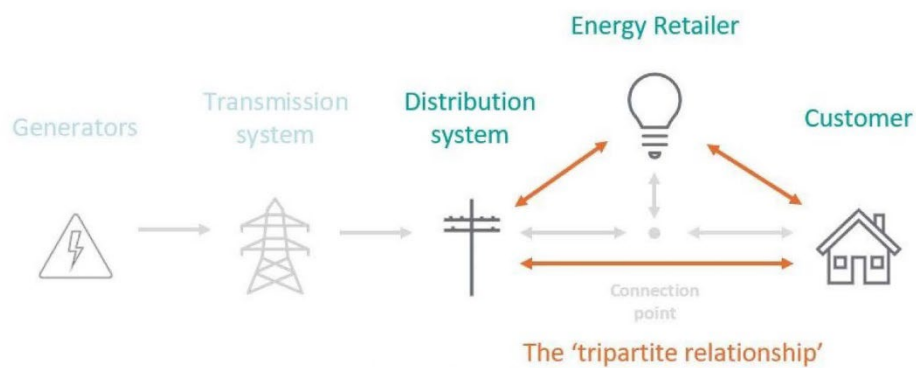


Figure 1: National Energy Customer Framework (Source: EWON)⁴

- 1.11 However, in embedded networks, multiple customers are connected to the grid via a parent connection point on a private distribution or transmission network. They purchase electricity from the owner or operator of the embedded network.
- 1.12 As illustrated in Figure 2, the owner or operator of the embedded network generally purchases electricity at a bulk rate at the parent connection point from an authorised retailer, often at a lower cost than what would be available to individual consumers. They then on-sell the electricity to their multiple customers at child connection points in the embedded network. Traditionally, the network service provider and seller of electricity are the same entity.

³ AEMC, [Updating the regulatory framework for embedded networks](#), Final report, 20 June 2019 (*AEMC 2019 report*), p 11.

⁴ EWON, [Presentation](#), 3 August 2022, p 12.

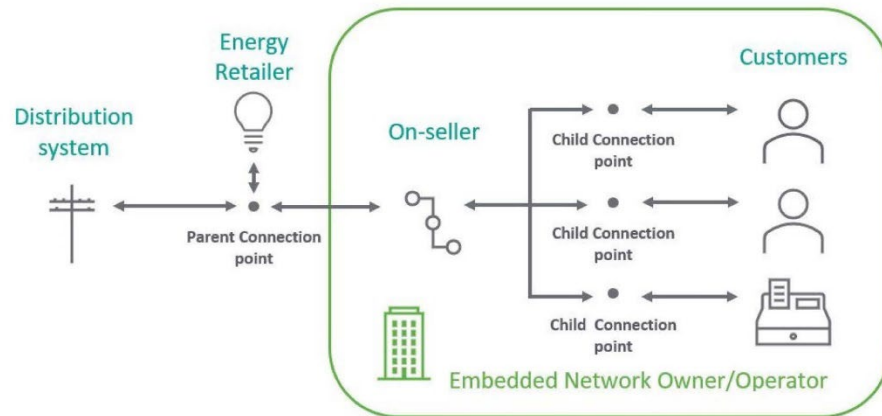


Figure 2: Energy supply to an electricity embedded network customer (Source: EWON)⁵

Embedded networks can be established for various purposes by owners or developers

- 1.13 Embedded networks may be established with the aim of producing cost effective energy solutions for owners or residents by allowing the bulk on-selling of energy at a reduced cost.
- 1.14 This is generally done in two circumstances. First, where embedded networks are entered into by an owners corporation to take advantage of bulk energy prices or to initiate sustainability-based projects such as solar panels.⁶
- 1.15 For example, residents of a retirement village may choose to implement an embedded network to save money on energy costs.⁷
- 1.16 Second, where embedded networks are entered into by developers when building a new residential complex, particularly in strata schemes. The Committee understands that in some new apartment complexes, developers may choose to avoid the cost of establishing internal networks and metering by contracting a third party or embedded network business to install this infrastructure. This third party then benefits from embedded network contracts to provide power to the building, that can obligate and lock in future owners to lengthy contracts.⁸ The serious consumer issues that can arise in these circumstances are examined in detail in Chapter 2.
- 1.17 Deviations from this structure may occur, such as some business models involving owner corporations, embedded network operators, billing agents, exempt sellers, and authorised retailers. For example, a common hot water system can be

⁵ EWON, [Presentation](#), 3 August 2022, p 13.

⁶ [Submission 8](#), Owners Corporation Network of Australia Ltd (OCN), p 2.

⁷ Ms Janine Young, Ombudsman, EWON, [Transcript of evidence](#), 12 August 2022, p 25.

⁸ [AEMC 2019 report](#), p 21; [Submission 8](#), OCN, p 2; Mr Stephen Brell, President, Strata Community Association (NSW) (SCA), [Transcript of evidence](#), 12 August, p 10.

developed, maintained and operated by multiple entities including an owners corporation, embedded network operator and a retailer.⁹

- 1.18 Notably, an increasing number of authorised retailers, which traditionally sold energy to standard supply customers, have started to sell energy to embedded network customers. In its submission, the NSW Government said it 'understands that most customers in embedded electricity networks are serviced by an authorised retailer'. This is consistent with data from Energy and Water Ombudsman NSW (**EWON**), being the energy industry ombudsman scheme in NSW.¹⁰ Many businesses now also provide embedded network services under a retail licence.¹¹
- 1.19 Mr Bryce Purches, Policy and Research Officer at EWON, told the Committee that the increased provision of embedded network services by authorised retailers:
- ... results in a situation where consumers might have multiple different entity types selling to different consumers and multiple frameworks applying to that, which means that one embedded network customer won't necessarily have the same experience as another embedded network customer.¹²
- 1.20 The types of services offered may also vary. For instance, many developers and utility businesses provide bundled services in embedded networks. This can include the provision of hot water, chilled water for air conditioning, gas for cooking and heating, telecommunications, and electricity for lighting and power.¹³

How are embedded networks regulated?

National energy laws regulate the operation and on-selling of energy in embedded networks

- 1.21 Energy in Australia is largely regulated through the application of national energy legislation.¹⁴
- 1.22 As the Committee did not receive an extensive amount of information on the regulatory framework for gas embedded networks, this section will focus on the national framework for electricity.
- 1.23 Electricity is largely governed by the states' and territories' application of the **National Energy Customer Framework (NECF)**. The NECF regulates the connection, supply and sale of energy (being electricity and gas) to grid-connected residential and small business energy customers.
- 1.24 Key legislation includes the:

⁹ [AEMC 2019 report](#), p iii-iv; AEMC, [Non-traditional energy services and products](#), viewed 31 October 2022.

¹⁰ [Submission 27](#), NSW Government, pp 6-7; [Submission 30](#), EWON, p 9.

¹¹ Mr Bryce Purches, Policy and Research Officer, EWON, [Transcript of briefing](#), 3 August 2022, p 5; Mr Adrian Merrick, CEO, Energy Locals, [Transcript of evidence](#), 12 August 2022, p 37; Mr Andrew Cameron, General Manager, Centralised Energy Services and New Property, Origin Energy, [Transcript of evidence](#), 12 August 2022, p 37.

¹² Mr Purches, [Transcript of briefing](#), 3 August 2022, p 5.

¹³ [AEMC 2019 report](#), p 22.

¹⁴ Dr Rory Campbell, Manager, Policy and Research, EWON, [Transcript of briefing](#), 3 August 2022, p 2.

- **National Electricity Law (NEL)**, which governs the National Electricity Market (**NEM**) and regulates access to electricity networks
- **National Energy Retail Law (NERL)**, which regulates the supply and sale of gas and electricity to retail customers
- **National Energy Retail Rules (NERR)** and **National Energy Retail Regulations**, which are made under the NERL.¹⁵

- 1.25 In recognition that energy is an essential service, the NECF provides energy-specific consumer protections which operate alongside the Australian Consumer Law. EWON highlighted that these specific protections recognise 'that the essential nature of electricity and gas requires specific consumer protection'. The AER monitors and enforces the NECF.¹⁶
- 1.26 The NEM is overseen by the Energy National Cabinet Reform Committee and the Energy Ministers' Meeting, which are ministerial forums for the Commonwealth, Australian state and territory governments, and New Zealand, that work together on key energy issues and reforms.¹⁷
- 1.27 The NECF has been adopted by most states and territories in Australia between 2012 and 2016, and currently applies in the Australian Capital Territory, Tasmania, South Australia, New South Wales and Queensland. It does not currently apply in Western Australia or the Northern Territory, and only applies in a limited manner in Victoria.¹⁸ See Chapter 4 regarding the Victorian approach to electricity embedded networks in residential complexes.
- 1.28 Embedded network providers and on-sellers have been subject to an exemption regime administered by the AER.
- 1.29 Under the exemption framework, the AER can grant network registration exemptions to providers of network services in embedded networks (known as **exempt network service providers**), and retail authorisation exemptions to on-sellers of energy to off-market customers (known as **exempt sellers**). For each of the network registration exemptions and retail authorisation exemptions, categories of deemed, registered and individual exemptions apply.¹⁹
- 1.30 The AER issues guidelines that exempt entities must comply with, including the Electricity Network Service Provider Registration Exemption Guideline (**Network**

¹⁵ Australian Government, Department of Climate Change, Energy, Environment and Water, [Energy market legislation](#), viewed 21 October 2022; AEMC, [National Energy Customer Framework](#), viewed 31 October 2022.

¹⁶ [Submission 27](#), NSW Government, p 6; [Submission 30](#), EWON, p 2; Australian Government, Department of Climate Change, Energy, the Environment and Water, [National Energy Customer Framework, viewed 31 October 2022](#).

¹⁷ Australian Government, Department of Climate Change, Energy, the Environment and Water, [Government Priorities – Energy Ministers](#), viewed 7 October 2022.

¹⁸ AEMC, [National Energy Customer Framework](#), viewed 6 October 2022; Mr Campbell, [Transcript of briefing](#), 3 August 2022, p 8.

¹⁹ EWON, [Presentation](#), 3 August 2022, p 23.

Exemption Guideline) for exempt network service providers and the Retail Exempt Selling Guideline for exempt sellers.²⁰

- 1.31 Under this framework, the exempt entity takes the place of the customer in the tripartite relationship under the NECF (see Figure 3). Consequently, the NECF and its protections do not extend to customers of exempt sellers.²¹

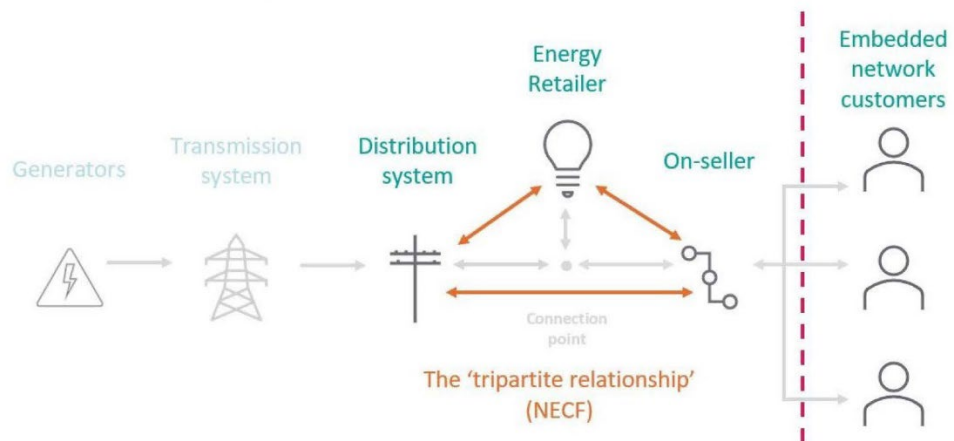


Figure 3: The regulatory problem (Source: EWON)²²

- 1.32 This exemption framework was designed to acknowledge the variety of supply arrangements that existed at that time. It traditionally applied to entities, such as residential land lease community (RLLC) operators and landlords, who on-sold electricity to residents as an *incidental* part of their business.²³ However, with the growth of the embedded network industry, the exemption framework no longer only applies to these entities on-selling energy incidentally.²⁴

Inconsistent consumer protections for embedded network customers under different frameworks

Finding 1

Access to energy and energy security are essential for the health and wellbeing of all residents in NSW.

Recommendation 1

That the NSW Government urgently collaborate with federal, state and territory governments and energy regulatory bodies to secure regulatory reforms which improve the consumer protections available to embedded network customers, including price cap protections.

²⁰ EWON, [Presentation](#), 3 August 2022, p 23; Mr Purches, [Transcript of briefing](#), 3 August 2022, p 4.

²¹ Mr Purches, [Transcript of briefing](#), 3 August 2022, p 5.

²² EWON, [Presentation](#), 3 August 2022, p 14.

²³ [Submission 30](#), EWON, p 2.

²⁴ [Submission 30](#), EWON, p 2.

- 1.33 The consumer protection framework applying to embedded network customers includes:
- the Australian Consumer Law (**ACL**), which applies to all embedded network customers
 - the NECF, which applies to energy customers of authorised retailers
 - the Retail Exempt Selling Guideline, which applies to customers of exempt sellers.²⁵
- 1.34 In its 2017 and 2019 reports, the AEMC identified that the consumer protections applying to embedded network customers are more limited than those for standard supply customers, under standard supply arrangements.²⁶
- 1.35 The ACL provides broad protections for the provision of goods and services in all Australian states and territories. It includes protections about unfair contract terms in standard form and small business contracts, consumer rights when buying goods and services, product safety and penalties, enforcement powers and consumer redress avenues.²⁷ All consumers of electricity, gas, or hot or chilled water in embedded networks have access to ACL protections.²⁸
- 1.36 The NECF provides energy-specific consumer protections to electricity and gas customers of authorised retailers. It operates alongside the ACL. Key consumer protections under the NECF include:
- rules regarding the provision of information to customers before they enter into an energy contract
 - the requirement for a retailer to obtain explicit informed consent from a customer entering into a contract and other arrangements
 - billing requirements, including rules for how bills are calculated and what they must include
 - disconnection limitations, including prohibition on disconnecting registered life support customers
 - energy service standards and quality
 - access to hardship policies and payment plans
 - access to free and independent dispute resolution through state and territory energy ombudsman schemes.²⁹

²⁵ [Submission 27](#), NSW Government, p 5.

²⁶ [Submission 32](#), AEMC, p 1.

²⁷ [Submission 27](#), NSW Government, p 5; Mr John Tansey, Executive Director, NSW Department of Customer Service, [Transcript of evidence](#), 18 August 2022, p 6.

²⁸ [Submission 27](#), NSW Government, p 5.

²⁹ [Submission 27](#), NSW Government, pp 6, 16.

- 1.37 However, centralised hot or chilled water services provided through gas or electricity embedded networks do not fall within the definition of 'energy', being 'electricity or gas or both', under the NERL. This is, as EWON said, 'despite their main input costs being energy'.³⁰ Operators can choose how they bill customers, either in litres (for water) or megajoules or kilowatt hours (for the energy used to heat or cool the water). Many of these consumers who are billed in litres cannot access NECF consumer protections.³¹ As such, the ACL is currently the 'primary mechanism' providing consumer protections to consumers of hot and chilled water.³²
- 1.38 Consumers on-sold energy by exempt sellers receive those consumer protections set out in the AER's Retail Exempt Selling Guideline. The conditions an exempt seller must meet are based on consumer protections in the NERL but vary according to the nature of the seller's operations. The AER explained that these conditions 'are a lighter, less prescriptive form of regulation'. Protections include the information disclosure, access to dispute resolution, hardship provisions, limitations on energy interruptions, life support and billing and metering requirements.³³
- 1.39 Additionally, the AER's Exempt Network Guideline applies to exempt network service providers operating embedded networks. The guidelines are similarly based on obligations applying to distribution network businesses, but are also a less prescriptive form of regulation. Conditions cover safety, metering, access to competition and pricing.³⁴
- 1.40 Figure 4 highlights that the operation and selling of energy in embedded networks by different entities means that customers receive different levels of consumer protections under different regulatory frameworks.

³⁰ [Submission 30](#), EWON, p 12.

³¹ [Submission 27](#), NSW Government, p 17; [Submission 30](#), EWON, pp 12-13; Sophia Vincent, Director, Energy Consumer and Competition Policy, Office of Energy and Climate Change, [Transcript of evidence](#), 18 August 2022, p 12.

³² Ms Sophia Vincent, Director, Energy Consumer and Competition Policy, Office of Energy and Climate Change, [Transcript of evidence](#), 18 August 2022, p 6.

³³ [Submission 27](#), NSW Government, p 7; [Submission 38](#), Australian Energy Regulator (AER), p 3.

³⁴ [Submission 38](#), AER, p 3.

Embedded networks – entities & consumer frameworks					
		Electricity on-seller		Embedded network owner/operator	
Type of entity	Authorised energy retailer	Exemption holder	Authorised energy retailer	Exemption holder	
Consumer protection framework	National Energy Retail Law (NERL) & National Energy Retail Rules (NERR)	AER Exempt selling guideline	AER Exempt Network guideline	AER Exempt Network guideline	

Figure 4: The regulation of embedded networks: Multiple entity types & multiple frameworks (Source: EWON)³⁵

- 1.41 Another key consumer protection relating to the pricing of electricity of standard supply customers is the Default Market Offer (**DMO**). Introduced in 2019 under the *Competition and Consumers (Industry Code – Electricity Retail) Regulations 2019*, the DMO is the maximum price that can be charged to a 'small customer' on default contracts. This covers most residential and small business customers. Retailers then offer customers competitive prices below this rate.³⁶
- 1.42 Customers on-sold electricity by exempt sellers cannot be charged more than the DMO in accordance with a requirement in the Retail Exempt Selling Guideline which provides that they cannot charge more than the standing offer price that would be charged by local area retailer.³⁷
- 1.43 However, the DMO does not apply to embedded network customers of an authorised retailer. This is because customers are explicitly excluded from the definition of a 'small customer' under the regulations if supplied energy by means of an embedded network. In addition, the Retail Exempt Selling Guideline does not apply as they are on-sold electricity by an authorised, not an exempt, retailer.³⁸
- 1.44 The consumer protections for embedded network customers are also shaped by the protections provided by, or regulatory gaps in, state legislation. Key protections under state legislation are addressed below, and certain regulatory gaps are addressed in Chapter 2.
- 1.45 Noting the inconsistent consumer protections available to customers through the application of different regulatory frameworks, the Committee recommends that the NSW Government urgently collaborate with federal, state and territory governments and energy regulatory bodies to secure regulatory reforms which improve the consumer protections available to embedded network customers, including price cap protections.

³⁵ EWON, [Presentation](#), 3 August 2022, p 27.

³⁶ [Submission 17](#), Independent Pricing and Regulatory Tribunal (**IPART**), p 2; Mr Ben Davis, Director, Retail and Wholesale Markets, AEMC, [Transcript of evidence](#), 12 August 2022, p 68; AER, [Default market offer prices 2022–23](#), viewed 21 October 2022.

³⁷ [Submission 27](#), NSW Government, p 15; [Submission 30](#), EWON, p 10.

³⁸ [Submission 17](#), IPART, p 2; [Submission 27](#), NSW Government, p 15; [Submission 30](#), EWON, p 10.

NSW Government can regulate some aspects of consumer protection at the state level

- 1.46 At the state level, the NSW regulatory framework also sets out certain requirements and consumer protections relating to embedded networks. Key legislation includes the:
- *Strata Schemes Management Act 2015*
 - *Residential (Land Lease) Communities Act 2013*
 - *Residential Tenancies Act 2010*.
- 1.47 First, the *Strata Schemes Management Act 2015* (the **Management Act**), along with the *Strata Schemes Development Act 2015*, jointly provide the regulatory framework for the creation, governance and termination of strata schemes established in NSW.³⁹
- 1.48 The strata scheme framework allows lot owners to operate as self-governing communities and collectively decide how to best manage their property. While strata schemes are most commonly used for residential housing, they can also be used for the ownership of commercial, retail, industrial or retirement village subdivisions.⁴⁰
- 1.49 Under this regulatory framework, some aspects of embedded networks are exempt from certain requirements. For example, the length of utility and service supply contracts. This is discussed in more detail in Chapter 4.
- 1.50 Second, the *Residential (Land Lease) Communities Act 2013* (the **RLLC Act**) provides the framework for the regulation of land lease communities, including the relationship between community operators, home owners and other residents of permanent sites in residential land lease communities. A RLLC is one in which residents usually own their home and lease the land on which it sits from a community operator. Residents may also sometimes rent the home from the home owner.⁴¹
- 1.51 About 40 per cent of RLLCs are connected to the electricity network via an embedded network where the operator of the embedded network is responsible for operating and maintaining the network and administering billing. Under the RLLC Act, certain protection is offered to ensure residents are not exposed to excessive prices, although there has been confusion about how best to calculate service bills.⁴² This will be discussed further in Chapter 4.
- 1.52 Third, the *Residential Tenancies Act 2010* covers tenants' rights and obligations. It sets out what they can and can't be charged for when it comes to utilities and services, and what is the obligation of the owners. Under this regulatory

³⁹ NSW Government, Department of Customer Service, [Statutory Review of Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015](#), November 2021 (*Strata laws statutory review*), p 1.

⁴⁰ [Strata laws statutory review](#), p 12.

⁴¹ [Submission 27](#), NSW Government, p 11.

⁴² [Submission 27](#), NSW Government, p 11.

framework, all electricity or gas supply charges must be paid by the tenant if the premises are separately metered.⁴³

What did the AEMC review recommend and status of recommendations?

AEMC's 2019 report recommendations are yet to be implemented

Finding 2

The current national exemption framework for embedded networks is not fit for purpose.

Recommendation 2

That the NSW Government work with federal, state and territory governments and energy regulatory bodies to improve the compliance and monitoring regulatory framework for embedded networks.

Recommendation 3

That the NSW Government improve data collection regarding embedded networks, particularly to identify the number of residents living in embedded networks.

- 1.53 The AEMC is an independent statutory body that makes and amends the rules for the Australian electricity and gas markets under the National Energy Rules. The AEMC also provides strategic advice to the Energy National Cabinet Reform Committee and Energy Ministers' Meeting.⁴⁴ As noted earlier, the AEMC conducted two reviews into the regulatory frameworks of embedded networks in 2017 and 2019.
- 1.54 The AEMC's 2017 report found that the current regulatory framework for embedded electricity networks is no longer fit for purpose in the face of the growing number and scope of embedded networks.⁴⁵
- 1.55 This growth occurred for a number of reasons, including because the exemption framework provides various incentives which, along with the trend towards high density living, has driven the growth of businesses dedicated to installing and operating embedded networks.⁴⁶ Evidence in this inquiry also indicated that regulatory gaps have created financial incentives for businesses to install embedded networks.⁴⁷

⁴³ *Residential Tenancies Act 2010* (NSW), [section 38](#) (Utility charges payable by tenant).

⁴⁴ [Submission 32](#), AEMC, p 1; AEMC, [Our work: Changing the energy rules – a unique process](#), viewed 16 October 2022.

⁴⁵ AEMC, [Review of regulatory arrangements for embedded networks](#), Final report, 28 November 2017 (*AEMC 2017 report*), p 58.

⁴⁶ [AEMC 2019 report](#), p 20.

⁴⁷ Mr Douglas McCloskey, Program Director – Energy and Water, Public Interest Advocacy Centre (PIAC), [Transcript of evidence](#), 12 August 2022, p 21; Ms Young, [Transcript of evidence](#), 12 August 2022, p 25; Ms Francoise Merit, Chief Financial Officer, Endeavour Energy, [Transcript of evidence](#), 12 August 2022, p 56.

- 1.56 The growth in the industry is reflected in the growing number of embedded networks in NSW:
- In 2013, EWON estimated that there were approximately 2 authorised retailers, 7 exempt sellers and 900 households in residential developments established as electricity embedded networks.⁴⁸
 - As at 2022, EWON estimated that there were 793 authorised retailers, 161 exempt sellers and 95 400 households in residential developments established as electricity embedded networks. It also said that, as of June 2022, there were over 64 325 customers in gas embedded networks being billed for unmetered gas supply and hot water.⁴⁹
- 1.57 There is limited data on the number of embedded networks customers, although it has been suggested that the amount could have exceeded half a million in 2019.⁵⁰ This information gap will be discussed below.
- 1.58 The AEMC's 2017 report found that the current regulatory arrangements resulted in:
- no access to retail market competition, meaning that customers cannot access competitive offers for the supply of energy from other retailers
 - limited consumer protections
 - inadequate compliance and monitoring regime
 - a lack of clarity about whether embedded network operators are meeting their obligations as suppliers of an essential service.⁵¹
- 1.59 The AEMC recommended changes to the regulatory framework for embedded networks to address these issues, including improved access to competition, ensuring minimum obligations for supplying embedded network customers align with those of standard supply customers, and providing appropriate consumer protections of embedded network customers.⁵²
- 1.60 In its second review in 2019, the AEMC provided advice on the regulatory amendments required to implement the recommendations in its 2017 report.
- 1.61 The proposed changes included:
- increasing the registration of embedded network service providers
 - reducing the number of network activities currently subject to deemed exemptions under AER guidelines

⁴⁸ EWON, [Presentation](#), 3 August 2022, p 16, 26.

⁴⁹ EWON, [Presentation](#), 3 August 2022, pp 16, 26; [Submission 30](#), EWON, p 14.

⁵⁰ [Submission 27](#), NSW Government, p 5; [AEMC 2019 report](#), p ii.

⁵¹ [AEMC 2017 report](#), p 1.

⁵² [AEMC 2017 report](#), p 1.

- extending consumer protections in the NERL and NERR to embedded network service customers
- integrating embedded networks into the NEM by extending the application of the NER metering framework
- standardised billing arrangements for the recovery of external network charges from embedded network customers who choose to go "on market" with an alternative retailer
- provision of retail customer connection services under the NERL
- strengthening the compliance framework
- transitional arrangements for existing embedded networks to balance the costs for implementing the new framework with providing benefits to their customers
- implementation of the new framework by amendment to the national laws
- ensuring embedded gas networks are subject to the same requirements.⁵³

1.62 While these detailed recommendations were made in 2019, none have been implemented. The progress of these recommendations, as reported to the Committee, is discussed in Chapter 4.

1.63 In reviewing evidence received during this inquiry, the Committee identified that the regulatory issues noted by the AEMC are still active. In particular, the Committee heard evidence about:

- overcharging in hot water embedded networks
- consumer safety risks
- lack of market competition
- inadequate consumer protections, including hardship support and issues affecting ageing and CALD consumers
- lack of disclosure requirements
- reform required to ensure Retailer of Last Resort provision apply.

1.64 These issues are discussed in detail in Chapter 2.

1.65 An issue identified by the AEMC, and reiterated to the Committee by inquiry participants, was the inadequacy of the monitoring and enforcement regime. Ms Michelle Shepherd, Commissioner of the AEMC told the Committee that 'there is

⁵³ [AEMC 2019 report](#), pp vii-xvi.

inadequate compliance and monitoring of the limited set of consumer protections that do apply'.⁵⁴

- 1.66 The Public Interest Advocacy Centre (**PIAC**) was critical of compliance action taken by AER because it does not actively seek registration, does not monitor the performance of registered entities, has limited information regarding exempt entities and conducts limited enforcement actions to ensure intended consumer outcomes are delivered.⁵⁵
- 1.67 Inquiry evidence indicated that it is difficult for the AER to monitor and enforce compliance with these protections under the current framework as:
- embedded networks are not required to undertake compliance reporting or self-report breaches of their obligations
 - the AER has limited enforcement options
 - the complexity of embedded network arrangements (involving owners corporations, operators, billing agents, exempt sellers and authorised retailers) makes it difficult to determine which party is responsible for the sale and supply of energy, and the obligations that apply to them
 - the AER has limited visibility over embedded networks' actions due to their exempt status.⁵⁶
- 1.68 There is limited visibility of embedded networks due to the lack of data available about how many exist and the number of customers they serve. Under the framework, some sites do not need to register their exemption with the AER, and operators do not need to report customer numbers. The AER raised that regulating smaller embedded networks, specifically those with less than 10 residential customers, could be burdensome for both the AER and those networks. Even so, this lack of data limits not only compliance and enforcement matters, but also the ability of regulators and advocacy groups to identify and therefore help these consumers.⁵⁷
- 1.69 There is also limited data on energy generation and storage within embedded networks, which impacts how electricity distributors manage networks during times of system constraint.⁵⁸
- 1.70 The AER told the Committee that it was considering the lack of regulatory visibility over exempt sellers and embedded network owners and operators as

⁵⁴ Ms Michelle Shepherd, Commissioner, AEMC, [Transcript of evidence](#), 12 August 2022, p 60.

⁵⁵ [Submission 28](#), PIAC, p 4.

⁵⁶ [Submission 32](#), AEMC, pp 2, 6; Mr Jim Cox, Deputy Chair, AER, [Transcript of evidence](#), 12 August 2022, p 67; Ms Shepherd, [Transcript of evidence](#), 12 August 2022, p 67.

⁵⁷ [Submission 27](#), NSW Government, p 4; [Submission 28](#), PIAC, p 4; [Submission 32](#), AEMC, p 2; Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 21; Mr Cox, [Transcript of evidence](#), 12 August 2022, p 61.

⁵⁸ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, pp 17-18.

part of its authorisations and exemptions review and will continue to work with EWON to identify and refer non-compliance complaints to the AER.⁵⁹

- 1.71 The Committee recommends that the NSW Government work with federal, state and territory governments and national energy bodies to improve the compliance and monitoring regulatory framework for embedded networks. It also recommends that the NSW Government improve data collection regarding embedded networks, particularly to identify the number of residents living in embedded networks.
- 1.72 More broadly, the Committee considers that the current regulatory arrangements for embedded networks are not fit for purpose. It stresses that the regulatory framework for embedded networks must be updated to address the issues identified by the AEMC and issues raised during the current inquiry.

⁵⁹ [Submission 38](#), AER, p 6.

Chapter Two – Impacts for consumers of embedded networks

- 2.1 This chapter will cover the consumer issues raised by stakeholders during the inquiry. This includes high service costs and inadequate price protection, particularly for hot water embedded network customers. Inquiry evidence demonstrates to the Committee that consumers in embedded networks generally receive high energy bills. However, in accordance with the evidence received, the discussion of pricing issues in this chapter will primarily focus on hot water embedded networks.
- 2.2 It will also examine the safety concerns, lack of disclosure requirements, restrictive contract clauses and lack of market competition. This chapter will also discuss the beneficial aspects that embedded networks may provide consumers, such as bulk energy savings and access to renewable energy technologies. This illustrates that any reform to the embedded network regulatory framework must address the gaps in consumer protection while promoting technology innovation and consumer cost savings.
- 2.3 The Committee found that residential customers in embedded networks have reduced and inequitable consumer protections and that some face unjustifiably high energy costs. Specifically, the Committee heard reports of residents receiving outrageous hot water charges for \$2 000 over a 9-month period and \$9 700 for a 14-month period.
- 2.4 Consequently, the Committee recommended that the NSW Government immediately ban the separate charging of hot water in embedded networks and implement fulsome price protection measures to prevent this unreasonable and unfair pricing of these essential services. The Committee also recommended that the NSW Government should continue to collaborate with federal, state and territory governments and energy regulatory bodies to secure protections for hot and chilled water customers under the NECF, including by requiring that these services are billed in accordance with the underlying source of energy.
- 2.5 The Committee also made recommendations for the protection of residents' safety in RLLCs, improving disclosure of embedded network services prior to purchasing or leasing a property and the regulation of embedded network contract provisions. It further recommended that the NSW Government implement a Retailer of Last Resort scheme to protect customers in embedded networks.

Embedded network customers receive unreasonably high bills

Recommendation 4

That the NSW Government implement a standardised billing structure requiring the itemisation of embedded network services.

- 2.6 The inquiry evidence indicates that embedded network consumers generally experience high bills, and many do not receive the benefit of bulk savings.
- 2.7 Specifically, the Committee heard that customers can receive bills higher than those received by standard supply customers. This includes evidence from customers who moved from a property with a standard supply arrangement to one in an embedded network and experienced much higher charges.⁶⁰
- 2.8 The Committee was also told by IPART and embedded network businesses that electricity in embedded networks were not billed above the DMO. For example, Origin Energy (**Origin**) stated that they currently provide their NSW embedded network customers with an electricity price that is 19 per cent below the usage component of the bill and lower than their standard market offers.⁶¹
- 2.9 However, this may not account for additional charges that embedded network customers incur. The Council on the Ageing NSW (**COTA**) also provided that exempt sellers circumvent the requirement not to charge more than the standing offer price of their network area. For example, by charging below-standard offer prices but applying additional supply charges.⁶² However, Energy Locals noted that, unlike standard supply customers, embedded networks customers do not have to pay capital costs for maintenance and emergency repairs of the system.⁶³
- 2.10 In relation to billing, the Committee received evidence indicating that embedded network customers received inadequate and inconsistent billing information compared to customers of authorised retailers. Specifically, exempt sellers are not subject to the AER's Better Bills Guidelines, which provides guidance to retailers on preparing and issuing bills to make it easy for residential and small customers to understand billing information. This includes information that would allow customers to pay their energy bills, ensure their bill confirms to their contract, query their bill, understand their usage, and navigate the retail market to seek the best offer.⁶⁴
- 2.11 Further, the Committee notes that residents in RLLCs do not receive appropriate, regular, consistent and accurate usage and billing information. They also receive high bills despite receiving low supply, and face pricing issues under the applicable statutory regime.⁶⁵ These issues are discussed further below and in Chapter 3.
- 2.12 The Committee recommends therefore that the NSW Government implement a standardised billing structure requiring the itemisation of embedded network services. The Committee also considers that recommendations regarding price

⁶⁰ [Submission 10](#), Mr Jonathan Moore, p 1; [Submission 26a](#), Name suppressed, p 1; Submission 40, Ms Penny Graham, p 1.

⁶¹ [Submission 17](#), IPART, p 2; Mr Cameron, [Transcript of evidence](#), 12 August 2022, p 42.

⁶² [Submission 9](#), Council on the Ageing NSW (**COTA**), p 3.

⁶³ Mr Merrick, [Transcript of evidence](#), 12 August 2022, p 45.

⁶⁴ [Submission 28](#), PIAC, p 16; [Submission 29](#), Tenants Union of NSW, p 14.

⁶⁵ [Submission 28](#), PIAC, p 8; [Submission 29](#), Tenants Union of NSW, pp 14-16; [Submission 31](#), Ethnic Communities Council of NSW (**ECC NSW**), p 2.

protections and switching retailers will also help to address the high bills faced by consumers in embedded networks, being recommendations 5 and 10.

Lack of protection for hot water embedded network customers

Finding 3

Residential customers in embedded networks have reduced and inequitable consumer protections and some face unjustifiably high energy costs. For example, the Committee heard reports of residents receiving outrageous hot water charges for \$2 000 over a 9-month period and \$9 700 for a 14-month period.

Recommendation 5

That the NSW Government immediately ban the separate charging of hot and chilled water in embedded networks and implement fulsome price protection measures to prevent the unreasonable and unfair pricing of these essential services.

Recommendation 6

That the NSW Government collaborate with federal, state and territory governments and energy regulatory bodies to ensure hot and chilled water consumers in embedded networks have equal protections as are provided under the National Energy Customer Framework, including by requiring that these services are billed in accordance with the underlying source of energy.

Overcharging of hot water embedded network customers

2.13 As noted in Chapter 1, many hot water embedded networks are not covered by the NECF. Additionally, these consumers do not receive the benefit of any pricing caps. Consumers of embedded networks therefore have limited protections compared to standard supply customers, and also compared to some other embedded network customers.

2.14 The Committee heard from residents living in apartment complexes with embedded networks that have received unreasonably high bills. The majority of these were specifically hot water costs, which were charged separately to their water or energy costs. Some examples are provided below:

- I've been an account holder on embedded network for a few months I didn't know what I was agreeing to when I signed the lease it wasn't explained I get billed monthly for hot water charges not gas charges hot water charges which are by the litre how bills have double if quadrupled in size monthly since moving into this property due to the hot water charges I don't understand how they can bill you by the litre through hot water then we get charged by Sydney Water for usage.⁶⁶
- Since moving into this premises in December 2020 we have found the cost of our utilities increase. On raising this with the supplier at the time and asking for

⁶⁶ Name suppressed, [Submission 26](#), p 1.

clarification of our bill we were told that these bills were correct and we should "take shorter showers".⁶⁷

- ... for context we are a two person household all our appliances have been purchased in the last 3 years with mostly 4 star energy ratings, we are extremely cautious with our energy consumption switching off appliances etc, we've installed DC powered fans and rarely use the air conditioner for heating or cooling, wear jumpers in winter and still we have quite a high bill.⁶⁸

- 2.15 Hot water embedded networks are of particular concern as their number continues to rise. In 2022, EWON estimated that 64 325 apartments in NSW received their hot water through gas embedded networks.⁶⁹ Although common hot water systems can also be powered by electricity, most are provided by gas.⁷⁰
- 2.16 The way hot water is billed is problematic. Consumers in common hot water networks receive bills including separate hot water charges, and are often billed in litres of water used rather than by energy used to heat the water. As a result, these services are considered to fall outside both the energy and water regulatory frameworks, meaning consumers do not receive the benefit of protections under the NECF or *Water Industry Competition Act 2006 (WICA)*. Due to this regulatory gap, these customers fall into an unprotected consumer group.⁷¹
- 2.17 Additionally, the hot water price for each consumer in the network is calculated using a conversion factor, and can vary between providers. Customers therefore pay an estimated amount to heat the water consumed based on various external factors including water plant maintenance and efficiency, temperature settings and individual meters. As such, 'it is therefore more likely that consumers are paying high or inaccurate bills for hot water because of these external factors'.⁷²
- 2.18 Consumers in hot water embedded networks may face different supply models depending on the boundary meters used. Such embedded networks usually have two boundary meters, one measuring the amount of energy (electricity or gas) required to heat the water and maintain its temperature, and another one to measure the amount of water that enters the water plant. In some cases, the energy boundary meter does not comply with the energy metering regulations.⁷³
- 2.19 EWON specifically noted that energy operator Jemena Gas Networks (**Jemena**) implemented a boundary meter network tariff in 2015, which saw a significant increase in the number of hot water embedded networks and an associated change in practise whereby meters were used to measure the volume of cold

⁶⁷ [Submission 10](#), Mr Jonathan Moore, p 1.

⁶⁸ [Submission 12](#), Ms Eloise O'Connell, p 1.

⁶⁹ EWON, [Presentation](#), 3 August 2022, p 63.

⁷⁰ EWON, [What is a common hot water system?](#), viewed 23 October 2022.

⁷¹ [Submission 13](#), Energy Metrics Consulting, p 4; [Submission 27](#), NSW Government, p 17; [Submission 28](#), PIAC, p 13; [Submission 30](#), EWON, pp 3, 12; EWON, [Hot water embedded networks](#), March 2021, viewed 2 November 2022.

⁷² AEMC, [Non-traditional energy services and products](#), viewed 24 October 2022.

⁷³ AEMC, [Non-traditional energy services and products](#), viewed 24 October 2022.

water used in the common hot water system. This changed how customers in embedded networks were billed for common hot water services.⁷⁴

2.20 At the hearing, Jemena told that Committee that all of their tariffs are regulated by the AER and are charged to the retailer.⁷⁵

2.21 Jemena further explained that the meter readings of the amount of both water and gas consumed is used to create a ratio of how much energy is being used, which is then applied on a pro-rata basis to hot water consumption by each unit and billed as a megajoule cost:

Historically, we supplied all the internal metering. We still do if we're asked to. For a site with centralised hot water, we would supply a cold-water meter for the hot-water plant, a gas meter for the hot-water plant and then individual hot-water meters for each unit. What we would then do is we would read all those meters. So we would read the amount of water that is being consumed through the master hot water system, we would measure how much gas has been consumed and work out a percentage or a ratio of how much energy is being used and that would then be pro-rataed based on hot water consumption by each unit and billed as a megajoule cost.⁷⁶

2.22 Jemena said that, from a network perspective, it bills 'on a megajoule amount and not on a set amount per litre'.⁷⁷

2.23 The NSW Civil and Administrative Tribunal (**NCAT**) has said that the way common hot water services are metered does not appear to meet the requirements of the *Residential Tenancies Act 2010*, which requires a tenant to pay for gas supply charges if the premises are separately metered. Specifically, NCAT found that the supply of gas was indirect and the charges are based on a calculation that includes extraneous factors. NCAT concluded that it was not satisfied with the system disseminating the cost of gas supplied to each resident's premises and that it is not separately metered.⁷⁸

2.24 The Committee understands that chilled water embedded networks, used for air conditioning, also exist under a similar structure. The Committee received limited evidence on chilled water embedded networks, however, was told that these consumers may face similar issues to consumers in hot water embedded networks.⁷⁹ The Committee strongly considers that these consumers should receive the same protections as recommended for hot water consumers.

2.25 The Committee heard from one resident, referred to as Witness A, who detailed their experience of receiving unreasonably high hot water bills as a tenant and embedded network customer. Specifically, they reported receiving a hot water

⁷⁴ EWON, [Transcript of briefing](#), 12 August 2022, p 23.

⁷⁵ Mr Stephen Angel, Network Development Manager, Jemena Gas Networks (NSW), [Transcript of evidence](#), 12 August 2022, p 34.

⁷⁶ Mr Angel, [Transcript of evidence](#), 12 August 2022, p 34.

⁷⁷ Mr Angel, [Transcript of evidence](#), 12 August 2022, p 34.

⁷⁸ AEMC, [Non-traditional energy services and products](#), viewed 24 October 2022; *Residential Tenancies Act 2010* (NSW), [section 38](#) (Utility charges payable by tenant).

⁷⁹ [Submission 27](#), NSW Government, p 17.

bill for approximately \$2 000 for a period from March to December 2020. They also reported that a neighbour in the same apartment complex had received a bill for \$9 700 for less than a 18-month period for the heating of hot water.⁸⁰

2.26 The below case study provides an overview of Witness A's experience as an embedded network customer and the difficulties they faced in trying to have their service bills overturned.

Case Study 1: Customer receives high bills and struggles with complex complaints process

Witness A moved into a rental property in March 2020. They were not notified that the property was part of an embedded network with WINconnect.⁸¹

While living at the property, Witness A was charged for regular electricity, water and gas charges. However, they also received separate hot water bills. They reported that the hot water charges were higher than their usual bills 'with multipliers of one thousand' and appeared to provide an estimation rather than the meter water usage. The hot water bill amounted to approximately \$2 000 for a period from March to December 2020. Witness A did not understand why the charges were so high. The bill was also unclear, with charges appearing to be estimated.

In December 2020, Witness A approached the Energy and Water Ombudsman (**EWON**) for assistance to overturn these high bills. In September 2021, EWON replied that the Australian Energy Regulator does not classify the heating of water as 'energy' under the National Energy Retail Law (**NERL**), and therefore, the heating of water is not subject to the consumer protections available under the NERL.

Witness A took their complaints to the following dispute resolution services and organisations in an attempt to have their bill overturned:

- AER
- Western Sydney Tenancy Advocacy Service
- NCAT
- NSW Fair Trading
- Australian Energy Market Operator
- Australian Competition and Consumer Commission

Witness A asserted that these organisations and services lacked clear communication with one another and would often refer Witness A back to organisations that they had already contacted.

Upon the advice of NSW Fair Trading, Witness A applied to NCAT to request an order not to pay the bill. During this time, WINconnect offered to waive the bill

⁸⁰ Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 9.

⁸¹ The Committee contacted WINconnect and Origin Energy in relation to Witness A's evidence to provide an opportunity for a right of reply. The Committee did not receive a response.

for Witness A. However, Witness A declined and proceeded with their matter in NCAT. NCAT granted the order not to pay.

The order not to pay did not extend to any future bills received by Witness A or to any other resident in the same apartment block receiving similar hot water bills.⁸²

- 2.27 In March 2022, Origin acquired WINconnect. In response to supplementary questions, Origin confirmed that WINconnect customers remain on their legacy billing platform and continue to currently be charged under the WINconnect pricing policy, noting that the WINconnect policy is typically very similar to Origin hot water pricing for standard customers. Origin further noted that it plans to move WINconnect customers onto Origin's systems and pricing plans over the next 9-12 months.⁸³
- 2.28 At the public hearing, a representative from NSW Department of Customer Service did not comment on whether \$9 700 for a 14-month period of heating hot water was a fair price due to lack of specific knowledge about that particular case.⁸⁴ However it was said that, while the charging in hot water embedded networks is more complex, charges are not duplicated:
- 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.⁸⁵
- 2.29 Active Utilities also considered that community concern for high prices may be a generalisation and not necessarily reflective of the broader marketplace. Referring to the annual reports of the Victorian and NSW Ombudsmen, Active Utilities considered that this was demonstrated by the lower percentage of complaints from embedded network customers compared to customers of authorised retailers in Victoria and NSW.⁸⁶
- 2.30 In any case, it is clear to the Committee that hot water embedded network customers receive inadequate consumer protections and face high bills or overcharging as a result of regulatory gaps.

⁸² Witness A, [Transcript of in camera evidence](#), 18 August 2022, pp 2-9.

⁸³ [Response to supplementary questions](#), Origin Energy, 19 September 2022, p 1.

⁸⁴ Mr Tansey, [Transcript of evidence](#), 18 August 2022, p 6.

⁸⁵ Mr Andrew Lewis, Executive Director Energy, Office of Energy and Climate Change, [Transcript of evidence](#), 18 August 2022, p 8.

⁸⁶ [Submission 3](#), Active Utilities, p 6.

Support for consumer protections for embedded network customers

- 2.31 The Committee heard strong support for increased consumer protections for hot water embedded network customers from owners and residents, advocacy groups, regulatory bodies and energy market stakeholders.
- 2.32 In particular, it heard support for customers to be charged for the energy used to heat the water and not a per litre base charge.⁸⁷
- 2.33 Owners Corporations Network of Australia (**OCN**) considered that all consumers should be afforded appropriate protections regardless of the type of service being provided.⁸⁸
- 2.34 EWON considered that the NSW Government should regulate the sale of hot water in apartment buildings to ensure energy retailers bill customers for the energy used to heat water rather than litres of water used.⁸⁹
- 2.35 The Tenants Union of NSW recommended that embedded network operators should be required to obtain a license under the WICA, so that customers can access consumer protections.⁹⁰ However, the NSW Government provided that the WICA specifically exempts entities selling heated water from its obligations because the WICA's purpose is to regulate larger private companies constructing or providing water supply, rather than companies on-selling water. The NSW Government considered that requiring hot water embedded networks to obtain a WICA licence would impose an excessive financial and administrative burden, which would then be passed on to consumers.⁹¹
- 2.36 The AER indicated that it is considering the regulation of hot water in its review of its energy retail authorisation and exemption process.⁹² The AER's review was not available at the time of drafting this report.
- 2.37 Energy business stakeholders examined by the Committee were also overwhelmingly in favour of increased consumer and pricing protections for embedded network customers and commented on the price examples raised.
- 2.38 At the public hearing, Mr Adrian Merrick, CEO of Energy Locals, acknowledge the need to ensure operators provide competitive prices:

We absolutely acknowledge the need for consumer protection and more consumer protection, so we think every embedded operator should be operating under a full retail authorisation rather than an exemption. Prices should be competitive. We have prices that are up to 13 per cent below the default market offer. Unfortunately,

⁸⁷ [Submission 8](#), OCN, p 3; [Submission 28](#), PIAC, p 14; [Submission 29](#), Tenants Union of NSW, pp 15-16; [Submission 30](#), EWON, pp 13, 15; [Response to supplementary questions](#), NSW Government, 26 September 2022, p 2.

⁸⁸ [Submission 8](#), OCN, p 3.

⁸⁹ Ms Young, [Transcript of evidence](#), 12 August, p 21.

⁹⁰ [Submission 29](#), Tenants Union of NSW, p 22.

⁹¹ [Submission 27](#), NSW Government, p 17.

⁹² Mr Cox, [Transcript of evidence](#), 12 August 2022, p 66.

embedded operators don't have to compare their offers to the default market offer, which we think is a miss and is something that should be changed pretty quickly.⁹³

2.39 He also expressed support for establishing a benchmark price for hot water.⁹⁴

2.40 Mr Andrew Cameron, General Manager of Centralised Energy Services and New Property at Origin stated their support of the AEMC 2019 report recommendations, specifically the abolishment of the exemption guidelines, while also acknowledging that there are challenges such as the application to legacy equipment:

... we've always had the view that why is there this set of customers that are, in the regulations, defined as second-class citizens? It doesn't make sense to us. When we and myself started embedded networks at Origin Energy, we actively chose to put the customers under a licence. We had the option not to, but it didn't make sense for us, with four million customers, to have a group that could potentially be sort of disadvantaged. So we agree with that. There's a requirement for retailer authorisations that we agree with. There are recommendations about customers within the embedded networks and how the network charges would apply, so largely we agree. There are some practical things in there that aren't addressed, some process things. There would be some challenges with legacy equipment and things like that that need to be fleshed out, but we largely agree that they should apply.⁹⁵

2.41 Mr McMeekin of Active Utilities confirmed that he did not consider that a price for hot water of almost \$10 000 over a 14-month period was a fair rate and would expect that a one- or two-bedroom lot should be less than \$70 or \$80 a month in most cases. He further noted their support for embedded networks to deliver benefits and drive innovation within the sector, which results in product, price and sustainability improvements.⁹⁶

2.42 Energy Metrics also suggested that embedded network service providers be required to publish a standing offer for each distribution network, to 'create a self-imposed price cap for each provider' and prevent excessive 'price creep' for individual sites.⁹⁷

Reform needed to ensure consumer and pricing protections available to hot water embedded network consumers

2.43 The issues raised during the inquiry regarding price, align with the issues raised in the AEMC's 2017 and 2019 reports. Regarding embedded network customers generally, the AEMC reported that these customers appeared to be paying similar prices for energy as standard customers, rather than receiving any cost-savings from the on-seller having purchased energy at a bulk rate.⁹⁸

⁹³ Mr Merrick, [Transcript of evidence](#), 12 August 2022, p 37.

⁹⁴ Mr Merrick, [Transcript of evidence](#), 12 August 2022, p 42.

⁹⁵ Mr Cameron, [Transcript of evidence](#), 12 August 2022, p45

⁹⁶ Mr Andrew McMeekin, General Manager Sales & Delivery, Active Utilities, [Transcript of evidence](#), 12 August 2022, pp 38-39.

⁹⁷ [Submission 13](#), Energy Metrics Consulting, p 7.

⁹⁸ [AEMC 2019 report](#), p iv.

- 2.44 Specifically, it found that the number of complaints to EWON about billing of common hot water systems was disproportionately high and were difficult to resolve. These complaints related to high bills, estimated readings, faulty meters, access issues, affordability problems and large back bills.⁹⁹ Regarding hot water, the uncertainty about which regulatory frameworks applied created difficulties for vulnerable customers in accessing energy rebates.¹⁰⁰
- 2.45 The AEMC ultimately found that arrangements for bulk hot water warranted careful consideration, but noted that some issues arising are different to both electricity and gas embedded networks. In particular, AEMC noted that it was not clear whether the sale of bulk hot water constitutes the sale of energy and, therefore, if it is covered by the regulatory framework under the energy laws and rules.¹⁰¹
- 2.46 The NSW Government acknowledged the regulatory framework for hot water embedded networks requires change.¹⁰²
- 2.47 In December 2021, the NSW Government began public consultation 'to identify reforms to improve customer access to and uptake of new energy technologies and innovation', through its consultation paper titled *Promoting Innovation for NSW Energy Customers*. The paper is concerned with stakeholders' perspectives on the issues in NSW, and 'issues that the NSW Government could advocate for through the national reform processes'.¹⁰³
- 2.48 Regarding hot water embedded networks, the paper consulted on opportunities to improve protections for consumers of hot water in embedded networks. The NSW Government advised that all stakeholders agreed that these consumers should receive the same protections as traditional hot water system customers, although some retailers and embedded network operators argued that hot water services are 'distinct from other energy products or services'. Taking on board stakeholder feedback, the Government is looking to address similar issues arising for customers with air-conditioning services derived from the chilling of water through a common system together with the issue of hot water embedded networks.¹⁰⁴
- 2.49 The paper suggests an option to require that customers be billed for the underlying input of energy (being gas or electricity, in cents per megajoule or kilowatt hour) rather than water (in cents per litre), in order to receive consumer protections available to traditional customers whose meters are generally owned by the gas distributor. The NSW Government said that further consultation showed this alone may not achieve equivalent consumer protections and

⁹⁹ [AEMC 2019 report](#), p 232.

¹⁰⁰ [AEMC 2019 report](#), p 3.

¹⁰¹ [AEMC 2019 report](#), p 237.

¹⁰² [Submission 27](#), NSW Government, p 18; Mr Lewis, [Transcript of evidence](#), 18 August 2022, p 3.

¹⁰³ NSW Government, Department of Planning, Industry and Environment, [Promoting innovation for NSW energy customers](#), Public consultation paper, December 2021 (*Consultation paper*), p 1.

¹⁰⁴ [Submission 27](#), NSW Government, p 17.

'additional changes to national energy laws are likely needed to clarify that the sale of energy includes hot and chilled water when billed in the energy source'.¹⁰⁵

- 2.50 The paper also includes a case study of the regulation of the sale of common hot water in Victoria, regulated through Victoria's Energy Retail Code. Retailers are required to bill customers 'for the charging of the energy used in the delivery of bulk hot water', meaning customers of licensed retailers receive the same protections as energy customers under the Energy Retail Code. This Code outlines specific information the bill must contain, including water consumed and energy conversion factors used to calculate the final hot water usage charges. Additionally, common hot water companies are also required to have a relevant energy licence to sell common hot water.¹⁰⁶
- 2.51 The AER has not yet accepted this proposition, but told the Committee that this issue can be considered as part of its retailer authorisation and exemption review.¹⁰⁷ Although, the AER recently made a draft determination for version 6 of the Exempt Selling Guideline advising that the sale of bulk hot or chilled water is unlikely to constitute energy for the purposes of the NERL.¹⁰⁸ The AER told the Committee that it is currently reviewing submissions received on its issues paper to inform potential reforms to the exemption framework. It aims to release draft recommendations for consultation by November 2022, and the final recommendations by April 2023.¹⁰⁹
- 2.52 The NSW Government submission outlined that certain embedded network customers are covered by protections under NSW legislation. In particular, the statutory review of the RLLC Act argued in favour of setting a price cap for electricity supplied through embedded networks in those communities. The review also considered the role of third party providers supplying electricity in RLLCs and supported further consideration being given to applying any amended electricity pricing provisions to contracted third party providers as well as the operator.¹¹⁰ The review and its recommendations will be covered in more detail in Chapter 3.
- 2.53 The Committee considers that the charges for embedded network services it examined were unreasonably high and has serious concerns about the continuation of this practice by some embedded network service providers. The lack of pricing regulation and consumer protection around hot water embedded networks is particularly of great concern.
- 2.54 The Committee therefore recommends that the NSW Government immediately ban the separate charging of hot water embedded networks and implement

¹⁰⁵ [Submission 27](#), NSW Government, p 17.

¹⁰⁶ [Consultation paper](#), p 13.

¹⁰⁷ [Submission 27](#), NSW Government, pp 17-18; Ms Vincent, [Transcript of evidence](#), 18 August 2022, p 12; Mr Cox, [Transcript of evidence](#), 12 August 2022, p 63.

¹⁰⁸ [Submission 30](#), EWON, p 13.

¹⁰⁹ Mr Cox, [Transcript of evidence](#), 12 August 2022, p 61.

¹¹⁰ [Submission 27](#), NSW Government, p 11; NSW Government, Department of Customer Service, [Residential \(Land Lease\) Communities Act 2013 Statutory Review \(RLLC Act statutory review\)](#), p 37.

fulsome price protection measures to prevent the unreasonable and unfair pricing of these essential services.

- 2.55 The Committee considers that this action should be taken independent of changes at the national level to ensure that customers are not being charged unreasonable prices while they wait for national reform that is unlikely to be a swift process.
- 2.56 The Committee acknowledges that the broader national framework also requires improvements. Therefore, it recommends that the NSW Government continue to collaborate with federal and state governments and energy regulatory bodies to amend the national framework. Specifically, that the national framework be amended to ensure hot and chilled water consumers in embedded networks have equal protections as are provided under the NECF, including to require that these services are billed in accordance with the underlying source of energy.

Consumers face safety risks

Recommendation 7

That the NSW Government ensure obligations and requirements applying to embedded networks of different sizes in NSW legislation, including the *Electricity Supply Act 1995* and the Service and Installation Rules, are clear and sufficient to protect consumers and maintain network safety.

- 2.57 Consumers in embedded networks can face safety risks, including:
- impacts on their health and wellbeing as a result of high bills and limited consumer protections
 - risks associated with larger embedded networks and high voltage connections
 - for residents of RLLCs, safety and supply issues.
- 2.58 The Committee believes that residents need safe and reliable access to electricity for their health and wellbeing. It considers recommendations 4-6, 16-17 and 22 will help address safety issues associated with high bills, payment difficulty and limited consumer protections.
- 2.59 To address consumer protection issues and safety risks arising from embedded networks' increased requests to connect to the grid via a high voltage connection, the Committee also recommends that the NSW Government ensures obligations and requirements in NSW legislation applying to embedded networks of different sizes, including the *Electricity Supply Act 1995* and the Service and Installation Rules, are clear and sufficient to protect consumers and maintain network safety.
- 2.60 To address safety and supply issues for residents, particularly in RLLCs, the Committee recommends that the NSW Government implement measures to ensure that network infrastructure in RLLCs is maintained and upgraded where necessary to ensure the safety of and reliable energy supply to residents.

Health and safety impacts as a result of high bills and limited consumer protections

- 2.61 Consumers and advocacy groups provided that high bills in embedded networks impact consumers' health, wellbeing and safety.
- 2.62 Facing high bills in circumstances where a resident feels 'trapped' in the embedded network can cause serious stress and harm to a person's mental health, which may then impact their physical wellbeing.¹¹¹
- 2.63 As outlined above, the Committee heard that people are managing their energy bills in 'unhealthy' ways including energy rationing and going without other essentials such as food and medicine. Significant debt issues can also be 'disastrous' for consumers, impacting both their access to energy and housing security.¹¹² It was reported to the Committee that some consumers have been threatened with disconnection for non-payment of bills, including:
- in circumstances where consumers do not want or need an aspect of the embedded network services provided in their complex and have therefore not paid for that services component¹¹³
 - where families are struggling and are subsequently provided with disconnection following non-payment.¹¹⁴
- 2.64 A consumer advised that when he raised the issue of his high bills with his supplier, he was told that 'we should "take shorter showers"'.¹¹⁵ Another consumer said that 'I don't think it's fair to choose between air conditioning or having a shower'.¹¹⁶ Further, that when they raised a complaint with EWON, their supplier's response was 'for us to turn off the air conditioning – despite them knowing it was critical for us to have the temperature regulated' as the customer is registered for life support.¹¹⁷
- 2.65 PIAC explained the role of chilled water in maintaining consumers' health:
- Chilled water used for air conditioning can be extremely important for health, particularly in apartments which lack cross ventilation or other means to cool. It is also vital for people who have medical conditions which means they need to maintain room temperatures within a certain range.¹¹⁸
- 2.66 The Committee also received evidence highlighting that people with disability who are on fixed pensions and living in embedded networks are particularly vulnerable to health and safety impacts arising from high bills. Case study 2 demonstrates to the Committee that living in an embedded network can exacerbate the vulnerability of people with disability, particularly where they are

¹¹¹ [Submission 13](#), Energy Metrics Consulting, p 6.

¹¹² [Submission 28](#), PIAC, p 18.

¹¹³ Ms Young, [Transcript of evidence](#), 12 August 2022, p 30.

¹¹⁴ Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 3.

¹¹⁵ [Submission 10](#), Mr Jonathan Moore, p 1.

¹¹⁶ [Submission 26](#), Name suppressed, p 1.

¹¹⁷ [Submission 26a](#), Name suppressed, p 1.

¹¹⁸ [Submission 28](#), PIAC, p 13.

on a fixed income and face high bills. A submission author reported to the Committee that she believes some people with disability on fixed pensions 'are already requiring charitable assistance to pay their electricity bills'.¹¹⁹

- 2.67 The Committee is deeply concerned that the health and wellbeing of people living in embedded networks is being adversely affected by the high cost of these services. It considers that report recommendation 4-6 and 22 aimed at addressing pricing issues in embedded networks, and recommendation 16-17 regarding hardship assistance, will help address these safety issues associated with payment difficulties.

Case Study 2: customer with disability relying on electricity for health needs receives high bills in embedded network

Al Graham lives with considerable physical disability in a 2 bedroom unit owned by a Special Disability Accommodation provider. The unit receives electricity and hot water through an embedded electricity network. Al receives a fixed pension.

Al's relies on electricity to maintain his health and safety. He needs pump feeds, charging for his power chair, charging for his deep brain stimulator and a power pressure bed and ceiling hoist. He needs access to a back-up generator in case there is a blackout.

Al has received high electricity bills (even after his rebates were applied) which do not include a breakdown of the electricity charges to heat water. He has been charged at a continuous 'Peak Rate' which shows the usage level expected of a 4 person household.

Al's mother raised the issue with the embedded network operator, Origin Energy. Origin offered to reduce the kilowatt rate for Al, but not for the other people living with disability in the same accommodation. Origin advised that Al also had the option of changing providers. However, there is a risk Al would not have power for a period which is not possible with his health needs.¹²⁰

- 2.71 In regards to the above case study, Origin told the Committee that Al is on the best available energy rate which, as part of an embedded network, is a lower rate than the general community. Origin advised that customers, including other customers living in the same apartment block as Al experiencing difficulty paying their bills, can contact Origin, which can provide assistance including payment plans and protection from disconnection.¹²¹
- 2.72 More broadly, the inquiry evidence demonstrated to the Committee that people living in embedded networks have inequitable access to reliable energy. Embedded network customers have more limited consumer protections than those which apply to customers in standard supply arrangements, and gaps exist

¹¹⁹ [Submission 40](#), Ms Penny Graham, p 2.

¹²⁰ [Submission 40](#), Ms Penny Graham, pp 1-2.

¹²¹ [Response to comments in submission](#), Origin Energy, 19 October 2022, p 1.

in areas including de-energisation and reenergisation (which concern the obligations of retailers and distributors before disconnecting and reconnecting a premises), life support arrangements and Retailer of Last Resort provisions.¹²²

- 2.73 Further, consumers in embedded networks are not protected by life support requirements imposed on distributors under the NERR. This could have serious implications for consumers who require these services. Nor can consumers individually complain to the distributor, because they are not covered by the network's guaranteed service levels.¹²³
- 2.74 The Committee was advised that some consumer protections, including network reliability standards and consumer service standards, are set out in distributor licences issued under the *Electricity Supply Act 1995* (NSW). Additionally, that gaps in the consumer protection framework are unlikely to be fully addressed by amendments to the NERL and NERR, as a number of key protection mechanisms for consumers are included in state legislation or instruments made thereunder. The Committee was told – and agrees – that NSW specific measures will also be required.¹²⁴
- 2.75 The Committee considers that reliable access to energy is essential to an individual's health, wellbeing and safety, particularly for people with disability. This access should not be put at risk simply because someone lives in an embedded network.
- 2.76 To ensure that embedded network customers receive greater protections that will safeguard more reliable access to energy supply, the Committee recommends that the NSW Government ensure obligations and requirements in NSW legislation, including the *Electricity Supply Act 1995 (NSW)*, are sufficient to protect consumers. This must be done in tandem with recommendation 1, that the NSW Government urgently collaborate with federal, state and territory governments and energy regulatory bodies to secure reform to improve embedded network customers' consumer protections.

Risks associated with larger embedded networks and high voltage connections

- 2.77 NSW electricity distributors Ausgrid, Endeavour Energy and Essential Energy drew the Committee's attention to the dangers associated with larger embedded networks, including where those networks connect to the electricity distribution network using a high voltage (**HV**) connection, rather than one or more low voltage (**LV**) connections.
- 2.78 The distributors' evidence highlighted that safety regulations have not kept pace with growth in the number and scale of embedded networks. The distributors pointed out that they are subject to stricter safety regulations than embedded networks, who are 'typically only subject to general workplace health and safety laws, which operate in limited contexts'. They asserted that 'these laws are not designed to comprehensively address the risks to members of the public created

¹²² [Submission 32](#), AEMC, pp 1-2.

¹²³ [Submission 30](#), EWON, p 17.

¹²⁴ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, pp 12-14.

by electricity networks when operated in areas more accessible to the general public'.¹²⁵

- 2.79 The distributors expressed particular concern about HV embedded network installations, as developers have started to apply more frequently for HV connections. HV connections are typically used 'at the large industrial sites such as mines'.¹²⁶ The distributors said that HV embedded network connections:
- ...carry a higher likelihood of catastrophic consequences from close contact when compared to low voltage (LV) installations. The risk to the general public increases when HV installations are situated in close proximity to residential developments.
- Regrettably, some safety incidents have occurred at HV embedded network sites in other jurisdictions. For example, in South Australia, the only HV mixed use residential embedded network had a safety incident in 2019 resulting in two employees of the embedded network being hospitalised for severe electrical burns, and one being placed in an induced coma due to the extent of their burns.¹²⁷
- 2.80 When an embedded network has a HV connection, the embedded network operator is responsible for the maintenance of that network. However, the operator's safety obligations are less stringent than those which distributors must comply with.¹²⁸ The distributors recommended applying stricter safety regulations to address the risks associated with larger embedded networks or those traversing public land. They also said another option could be to restrict the types of embedded networks that do not meet higher safety standards.¹²⁹
- 2.81 The distributors said that when a developer applies for a HV embedded network connection, their approach is to reject the application and 'request one or more LV connections unless there are extenuating circumstances'. They said that, at times, a choice between a single HV connection or multiple LV connections will need to be made, and that this decision will have network safety implications.¹³⁰
- 2.82 The distributors are of the view that, in such cases, they should have the discretion to determine the appropriate mode of connection, having regard to safety considerations. They said this is 'reasonably clear' in the *Electricity Supply Act 1995* (NSW) and the Service and Installation Rules, which provides a broad discretion to determine the suitability of an electricity connection. However, that 'there appears to be some uncertainty among embedded network operators regarding their ability to request an HV connection'.¹³¹
- 2.83 The Committee considers that safety obligations imposed on embedded network operators must reflect the growth in the number and scale of those networks. In

¹²⁵ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 16.

¹²⁶ Ms Natalie Lindsay, Acting Executive General Manager – Corporate Affairs of Essential Energy, [Transcript of evidence](#), 12 August 2022, p 52.

¹²⁷ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 16.

¹²⁸ Ms Lindsay, [Transcript of evidence](#), 12 August 2022, p 52; Mr Alex McPherson, Head of Regulation, Ausgrid, [Transcript of evidence](#), 12 August 2022, p 52.

¹²⁹ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, pp 16, 20.

¹³⁰ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 17.

¹³¹ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 17.

relation to HV embedded network connections, it understands that they can carry substantial safety risks for residents, workers and the general public. It also acknowledges that HV connections may be appropriate in certain circumstances.

- 2.84 The Committee recommends that the NSW Government ensures obligations and requirements applying to embedded networks of different sizes in NSW legislation, including in the *Electricity Supply Act 1995* (NSW) and the Service and Installation Rules, are clear and sufficient to ensure network safety. This includes requirements regarding the mode of connection to the distribution network, and any additional obligations needed to address the gap in safety regulations which exist in relation to larger embedded networks.

Safety and supply issues in residential land lease communities

Recommendation 8

That the NSW Government implement measures to ensure that network infrastructure, particularly in residential land lease communities, is maintained and upgraded where necessary to ensure the safety of and reliable supply to residents, including the consideration of the potential cost consequences for residents.

- 2.85 Poor quality infrastructure in RLLCs can cause safety and supply issues for residents, impeding their access to safe and reliable electricity.
- 2.86 Due to the poor quality of infrastructure, some residents receive low amperage. This impacts how much electricity they can use at a time and can lead to power outages.¹³² Jemima Mowbray, Policy and Advocacy Manager at the Tenants Union of NSW, explained:
- It's not just that they are paying too much; they are paying too much for something that really doesn't deliver the basics. Some people can't put on a toaster while their fridge is running. Some people can't put on a kettle.¹³³
- 2.87 Although residents are entitled to receive discounts when they receive less than 60 amps under the RLLC Act, the current application of the *Reckless* method of charging means that the discount is not applied.¹³⁴ See Chapter 4 regarding this method and charging issues.
- 2.88 The Committee also heard that, in some communities, older homes receive services through an embedded network while the newer homes have accounts directly with energy retailers. The Tenants Union of NSW highlighted that in one Central Coast community, people living in the older part of the community experience lower standards of safety and supply, while also facing higher prices:

The infrastructure includes old rusty electricity mushrooms. Some homes are connected to these mushrooms with extension cords. Requests to upgrade these mushrooms have been ignored by the operator. The residents in the old part can

¹³² [Submission 29](#), Tenants Union of NSW, pp 16-17.

¹³³ Ms Jemima Mowbray, Policy & Advocacy Manager, Tenants Union of NSW, [Transcript of evidence](#), 12 August 2022, p 30.

¹³⁴ [Submission 29](#), Tenants Union of NSW, p 16.

only get 32 Amps which impacts on their daily life. If they have too many appliances plugged in at the same time the power turns off. When heating or cooling their homes with an air conditioner they have to make the decision on what other appliances they need to disconnect. They cannot shop around for a better deal and are reliant on the operator to supply their electricity. Their bills are more expensive than other residents living in newer parts of the community who can shop around for the best rate.¹³⁵

- 2.89 Requests by residents in that community to install solar panels were refused by the operator, on the basis that the infrastructure is not in place to support it. The Tenants Union of NSW provided that while some homes in other communities (where the network is operated by an authorised retailer) have solar panels installed, the homeowners do not receive any credits for the solar that gets fed back into the system.¹³⁶
- 2.90 The Committee notes that inquiry evidence aligns with feedback to the statutory review on the RLLC Act regarding the installation of sustainability infrastructure. This feedback 'highlighted that solar panel installation in communities can be complicated, especially where a community has an embedded network' and that there are a number of 'technical, economic, infrastructure and policy barriers to homeowners installing solar panels that successfully integrate with their communities network'.¹³⁷
- 2.91 The Committee further notes that, due to the complexities in relation to installing sustainability infrastructure, the review recommended undertaking:
- ...further work to consider the complexities, barriers and costs associated with enabling the effective installation of sustainability infrastructure, notably solar panels, in communities. This work should occur in partnership with the Department of Planning, Industry and Environment and engagement with the broader land lease communities sector.¹³⁸
- 2.92 To address safety and supply issues, the Tenants Union of NSW highlighted that exempt sellers are not obliged to maintain the supply of essential services or upgrade infrastructure. It recommended to the Committee that embedded network providers, including exempt sellers such as RLLC operators, should be required to maintain and upgrade infrastructure where necessary to ensure the safe and reliable supply of essential services to customers.¹³⁹ Although, the Committee is conscious that an operator may seek to pass on maintenance and upgrade costs to residents.
- 2.93 The Committee therefore recommends that the NSW Government implement measures to ensure that network infrastructure is maintained and upgraded where necessary to ensure the safety and reliable supply to residents. Measures implemented should consider the potential cost consequences for residents.

¹³⁵ [Submission 29](#), Tenants Union of NSW, pp 16-17.

¹³⁶ [Submission 29](#), Tenants Union of NSW, p 19.

¹³⁷ [RLLC Act statutory review](#), p 39.

¹³⁸ [RLLC Act statutory review](#), p 40.

¹³⁹ [Submission 29](#), Tenants Union of NSW, pp 16, 19; Ms Mowbray, [Transcript of evidence](#), 12 August 2022, p 30.

Inadequate notice and disclosure requirements

Recommendation 9

That the NSW Government:

- a) ensure there are appropriate requirements to disclose embedded network services to a potential owner or tenant before they purchase or lease a property in an embedded network, including requiring real estate advertisements to disclose the average recurring costs of all services provided to that property through an embedded networks (for example, the sale of hot or chilled water);
- b) require developers and embedded network operators to disclose any energy cost savings that potential owners would obtain when purchasing a property, such as from solar or other renewable sources.

Finding 4

The lack of disclosure around embedded network services is concerning, and it is vital that the NSW Government ensures that embedded network businesses do not exploit the rise of electric vehicle infrastructure being installed and operated in strata complexes.

Lack of notice and transparency for embedded network customers

2.94 Both owners and tenants reported that they did not receive adequate prior notice about their property being in an embedded network or what that meant for service costs or switching providers.¹⁴⁰ Below are a selection of comments received by the Committee about residents' experiences of finding out that their property was in an embedded network:

- 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.¹⁴¹
- The first we knew that our energy services would be provided through an embedded network was during our pre settlement inspection there was a folder left on the kitchen bench. I had never heard of an embedded network I remember googling it on my phone on the drive home. I found it extraordinary that a government would allow such a manifestly unfair system to be in place for services that are essential.¹⁴²
- I've been an account holder on embedded network for a few months I didn't know what I was agreeing to when I signed the lease it wasn't explained.¹⁴³
- When we purchased our home back in 2013, we were not informed that we were required to purchase electricity from the owner/operator. I am concerned that

¹⁴⁰ [Submission 2](#), Mr Rathish Nair, p 1; [Submission 6](#), Mr Sungkwan Kim, p 1; [Submission 12](#), Ms Eloise O'Connell, p1; [Submission 34](#), Mr Benjamin Ho, p 1; [Submission 36](#), SCA, p 4; Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 2.

¹⁴¹ Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 8.

¹⁴² [Submission 12](#), Ms Eloise O'Connell, p 1.

¹⁴³ [Submission 26](#), Name suppressed, p 1.

incoming homeowners are still not being informed of information that will allow them to make an informed choice prior to proceeding with the purchase of a home.¹⁴⁴

- The developer does not advise you that you are buying a property with embedded network.¹⁴⁵

2.95 Evidence presented by EWON aligned with the general view that there is not enough information available to home buyers and prospective tenants about embedded networks:

Customers often complain to EWON that they had not been aware that embedded networks existed until they found their new home was part of one. They also tell EWON that they were not given adequate information from their real estate agent about opening energy, hot water or air conditioning accounts with the embedded network operator.¹⁴⁶

2.96 The Committee also received reports of strata residents in new complexes not being aware that they were in an embedded network until at least 12 months when they attended the first Annual General Meeting (**AGM**). It is at this meeting that the owners corporation agrees to the contracts established by the developer. However, at this point it is too late for owners to have the freedom of choice to choose a provider or contract terms.¹⁴⁷

2.97 The Strata Community Association (NSW) (**SCA**) asserted that this lack of disclosure combined with the complexity of the nature of embedded networks could lead to negative financial and legal outcomes for owners.¹⁴⁸

2.98 The Committee also heard that energy savings from renewable energy sources in new developments are not necessarily required to be passed on to the consumer. Mr Iain Maitland, Energy Advocate of the Ethnic Communities Council of NSW (**ECC NSW**), detailed his experience of a lack of transparency when purchasing an embedded network property:

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

¹⁴⁴ [Submission 39](#), Mr Brian Bavin, p 2.

¹⁴⁵ [Submission 2](#), Mr Rathish Nair, p 1.

¹⁴⁶ [Submission 30](#), EWON, p 19.

¹⁴⁷ [Submission 36](#), SCA, p 5; Ms Young, EWON, [Transcript of evidence](#), 12 August 2022, p 28

¹⁴⁸ [Submission 36](#), SCA, p 4.

... Some of the big developments in inner Sydney have got chilled water units as well, which they pipe around the building now. They are not at all transparent in their charging.¹⁴⁹

- 2.99 Further, residents in RLLCs face difficulties installing solar and, where it is installed, residents do not receive credits for energy fed back into the network. Consumers may also not be able to feed energy back into the grid to network limitations.¹⁵⁰
- 2.100 This Committee considers that this points to a further lack of transparency and accountability in the embedded network and development sectors.

No current requirements for disclosure of embedded network properties

- 2.101 The NSW Government confirmed that there are no obligations on developers, real estate agents, strata managing agents or vendors to disclose information about embedded networks to prospective buyers of a strata lot. Instead, prospective buyers can make their own enquiries to check whether an embedded network system exists in a strata scheme through the inspection of strata records.¹⁵¹
- 2.102 Similarly, there is no requirement to disclose that a property is in an embedded network under the RLLC Act.¹⁵²
- 2.103 Ms Karen Appleby, Acting CEO of COTA, asserted that this should be standard information given to prospective tenants and buyers and that there needs to be much greater regulation compliance and education.¹⁵³
- 2.104 SCA considered that embedded networks must be fair for consumers and that systems where the owners corporation have not had a reasonable amount of time to consider the terms, conditions and implications of such a network should be prohibited. SCA noted that consumers must know about any commission, rebate or ownership regime afforded upon the developer, and so that they may make an informed decision on the impact of an embedded network on their ownership and use.¹⁵⁴
- 2.105 To rectify this issue, the SCA recommended requiring the disclosure of any embedded network contracts in off-the-plan sales, including the disclosure of any commission or benefit that is being received, or any commercial relationship that may exist between the developer and the embedded network provider. SCA also recommended requiring the disclosure of embedded network contracts in strata information certificates (under the Management Act) prior to sale.¹⁵⁵

¹⁴⁹ Mr Iain Maitland, Energy Advocate, ECC NSW, [Transcript of evidence](#), 12 August 2022, p 8.

¹⁵⁰ Submission 25, Valla Beach Village over 50's; p 1; [Submission 29](#), Tenants Union of NSW, p 19.

¹⁵¹ [Response to supplementary questions](#), NSW Government, 26 September 2022, p 4.

¹⁵² Ms Eloise Parrab, Residential Land Lease Communities Officer, Tenants Union of NSW, [Transcript evidence](#), p 26.

¹⁵³ Ms Karen Appleby, Acting Chief Executive Officer, COTA, [Transcript of evidence](#), 12 August 2022, p 8.

¹⁵⁴ [Submission 36](#), SCA, p 4.

¹⁵⁵ [Submission 36](#), SCA, p 6.

- 2.106 At the public hearing, Ms Karen Stiles, Executive Director of OCN, stated that embedded networks have the potential of becoming common in high-rise or large residential developments without the knowledge or consent of off-the-plan or future purchasers and tenants. While OCN considered that compulsory disclosure of embedded networks would be more likely to harm property sales, it strongly advocated for the democratic right of owners to decide how their collectively owned property will be used.¹⁵⁶
- 2.107 Regarding tenants, the NSW Government advised that the compulsory standard form 'residential tenancy agreement' was amended to require landlords and agents to declare whether the electricity or gas for the rental property is supplied through an embedded network.¹⁵⁷
- 2.108 This means that disclosure occurs at the time a lease is signed. However, many stakeholders considered that this was too late to form adequate notice.
- 2.109 The Tenants Union NSW considered that notice should be required at the point of advertising for rental properties.¹⁵⁸ Ms Mowbray of the Tenants Union of NSW, further elaborated that responsibility for disclosure should be spread across multiple parties and include an information statement. Specifically, that amendments could be made to the Residential Tenancies Act to require disclosure through an information statement in addition to when the document is signed. The Tenants Union also considered that there was scope to place the obligation on real estate agents to disclose the existence of an embedded network as part of the material facts about a property for lease or sale at the point of listing.¹⁵⁹
- 2.110 Mr Douglas McCloskey, Program Director of Energy and Water at PIAC, also considered that it was important to include information about embedded networks at the point of advertising a sale or lease.¹⁶⁰ Specifically, this information should aid understanding by explaining what the arrangements are for that property in terms of outcomes rather than concept. For example, ensuring the length embedded network contract is clear (eg 10 years) and that it means that residents are unable to change providers.¹⁶¹
- 2.111 Ms Janine Young, the EWON Ombudsman, considered that the responsibility for disclosing information to prospective buyers and tenants should be spread across multiple entities.¹⁶² However, Ms Young also warned that disclosure alone may not solve related issues regarding access to essential services, particularly where there may be multiple energy contracts. For example, energy contracts for electric vehicles (**EVs**) that may differ from energy contracts for the corresponding apartment:

¹⁵⁶ Ms Karen Stiles, Executive Director, OCN, [Transcript of evidence](#), 12 August 2022, p 9.

¹⁵⁷ [Response to supplementary questions](#), NSW Government, 26 September 2022, p 4.

¹⁵⁸ [Submission 29](#), Tenants Union of NSW, p 11.

¹⁵⁹ Ms Mowbray, [Transcript of evidence](#), 12 August 2022, p 28.

¹⁶⁰ Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 27.

¹⁶¹ Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 26.

¹⁶² Ms Young, [Transcript of evidence](#), 12 August 2022, p 27.

I understand that most apartment buildings that are currently under the building or development stage now that their car parks are being fitted out so that the purchaser can also pay an extra \$3,000 to \$5,000 for the smart charger that would automatically be installed in the car park for their EV. This could mean that you have a different energy contract for your EV than you do for your electricity in your apartment. It could mean that it's combined. But we see customers that are being threatened from disconnection because they haven't paid for one element of the services they're getting because they don't think they're getting quality or they don't want it, and they're at risk of losing access to electricity, an essential service. I think disclosure is not going to solve things like that.¹⁶³

- 2.112 Embedded network businesses also acknowledged that there should be full and frank disclosure of information.
- 2.113 Mr Cameron of Origin, agreed that there should be full and frank disclosure of information about developer commissions or benefits from embedded networks to end users. Mr Cameron also confirmed that he would be happy for typical average quarterly hot water costs to be disclosed at point of advertisement along with strata costs.¹⁶⁴
- 2.114 Active Utilities suggested that there needs to be clear processes to ensure the interest of lot owners and tenants, particularly around requirements to notify prospective lot owners and tenants that a property is part of an embedded network.¹⁶⁵
- 2.115 In their submission, Ausgrid, Endeavor Energy and Essential Energy recommended that there should be improved information disclosure for embedded networks. Specifically, it noted that commercial agreements and decisions around the ownership of an embedded network's infrastructure and assets are made long before new lot owners and tenants take possession or occupy the site. Consequently, prospective owners have little influence over the design and operation of the embedded network.¹⁶⁶ This may be amplified by an owner's lack of understanding of the commercial contracts and ownership arrangements associated with embedded network infrastructure that makes it difficult to negotiate a better deal. It was considered that in these circumstances, owners are actually more disadvantaged than tenants because there is no equivalent obligation to disclose information to a prospective purchaser.¹⁶⁷

Reform on notice requirements needed

- 2.116 The inquiry evidence aligned with the AEMC finding that 'there is room to improve information disclosure prior to purchase or lease, and that this is an appropriate time for information to be provided rather than at the commencement of supply'.¹⁶⁸

¹⁶³ Ms Young, [Transcript of evidence](#), 12 August 2022, p 30.

¹⁶⁴ Mr Cameron, [Transcript of evidence](#), 12 August 2022, p 46.

¹⁶⁵ [Submission 3](#), Active Utilities, p 16.

¹⁶⁶ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 24.

¹⁶⁷ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 24.

¹⁶⁸ [AEMC 2017 report](#), p 154.

- 2.117 The AEMC consequently recommended that the NERR be amended to require authorised retailers to provide additional information on costs, benefits and risks to embedded network customers prior to the formation of an energy contract. The AEMC also recommended that jurisdictional governments consider whether there is sufficient provision for disclosure of the cost, benefits and risks of embedded networks in state-based laws prior to the purchase or lease of a property.¹⁶⁹
- 2.118 The Committee agrees with this AEMC finding and strongly considers that further notice requirements are urgently required at the NSW state level. Specifically, that mandatory disclosure obligations be introduced for the sale and lease of properties in embedded networks.
- 2.119 Regarding tenancy, the Committee recognises the changes to the compulsory standard residential tenancy form introduced in March 2020 which required landlords and agents to declare whether the electricity or gas for the rental property is supplied through an embedded network. This disclosure occurs at the time of signing a tenancy agreement.
- 2.120 However, the Committee considers that this notice occurs too late and is not adequate notice for tenants as to the practical implications and outcomes of embedded networks. That is, this type of disclosure does not indicate that service charges may be higher, there are less consumer protections, and less options for switching providers.
- 2.121 Further, the Committee holds concerns about the disclosure of hot water. The NSW Government confirmed that there is no current requirement to specifically disclose hot water being supplied by an embedded network. It was noted that this may have been because the hot water business model was not well known at the time of the amendments to the standard form agreement in 2020.¹⁷⁰
- 2.122 In any case, it means that hot water embedded network customers are disadvantaged more than other embedded network customers.
- 2.123 The Committee considers it paramount that all prospective owners and tenants are given adequate notice, prior to contracts being exchanged, that a property is connected to an embedded network. This includes hot water embedded networks. Furthermore, all prospective owners and tenants should be provided with sufficient information about the implications of embedded network properties, such as an indication of all service charges to the property and the length of the embedded network contract.
- 2.124 The Committee therefore recommends that the NSW Government ensure there are appropriate requirements to disclose embedded network services to a potential owner or tenant before they purchase or lease a property in an embedded network, including requiring real estate advertisements to disclose

¹⁶⁹ [AEMC 2017 report](#), p 155.

¹⁷⁰ Ms Pavlidis, NSW Government, [Transcript of evidence](#), 18 August 2022, p 10.

the average recurring costs of all services provided to that property through an embedded networks (for example, the sale of hot or chilled water).

- 2.125 The Committee further recommends that transparency be improved by the NSW Government requiring developers and embedded network operators to disclose any energy cost savings that potential owners would obtain when purchasing a property, such as from solar or other renewable sources.
- 2.126 Additionally, the Committee recognises that current technological advancements in the EV space may create a new opportunity for embedded networks to capitalise on strata owners' corporations that seek to install related charging infrastructure. The Committee therefore notes its significant concern for the lack of disclosure around embedded network services, particularly given the rapid growth of electronic vehicles and the need to ensure embedded network businesses do not exploit this technological advancement and the rise of electronic vehicle infrastructure installation by strata complexes.

Limited options for embedded network customers to switch providers

Recommendation 10

That the NSW Government consider regulating embedded network contract provisions, including the term of the contract and conditions of termination, to ensure they are not unduly burdensome for consumers.

- 2.127 Consumers in embedded networks can, in theory, buy their energy from a different retailer. However, the Committee was told that, in practice, there are significant barriers which prevent them from accessing retail market competition.¹⁷¹ Ms Janine Young, the EWON Ombudsman, observed that 'in theory, you can move; you can change retailers' but 'it's just nigh impossible to do it'.¹⁷²
- 2.128 This is reflected in the experiences of consumers, who reported a lack of choice and barriers accessing other retailers.¹⁷³
- 2.129 Inquiry evidence indicated that key barriers to accessing retail market competition include that:
- contractual provisions can 'lock' consumers into arrangements
 - it can be costly and unviable to install the infrastructure needed to go "on market"

¹⁷¹ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 7; [Submission 29](#), Tenants Union of NSW, p 9; [Submission 32](#), AEMC, p 5; [Submission 38](#), AER, p 3; Mr McPherson, [Transcript of evidence](#), 12 August 2022, p 55; Ms Lucy Moon, Head of Regulation, Energy Networks Australia, [Transcript of evidence](#), 12 August 2022, p 55; Dr Campbell, EWON, [Transcript of briefing](#), 3 August 2022, pp 6-7.

¹⁷² Ms Young, [Transcript of evidence](#), 12 August 2022, p 27.

¹⁷³ [Submission 5](#), Name suppressed, p 1; [Submission 23](#), Mr Kheng Wong; p 1; [Submission 25](#), Villa Beach Village over 50's, p 1; [Submission 34](#); Mr Benjamin Ho, p 1; [Submission 36](#), SCA, p 8; [Submission 39](#); Mr Brian Bavin, p 1; Witness A, [Transcript of in camera evidence](#), 18 August 2022, pp 2, 4.

- it is hard to find a retailer willing provide an energy-only offer.

2.130 The Committee considers that these barriers effectively prevent many consumers from leaving their existing embedded network arrangement and switching providers to access more competitive services.

2.131 It recommends that the NSW Government consider regulating embedded network contract provisions (including the term of the contract and conditions of termination) to ensure they are not unduly burdensome for consumers.

Contractual provisions can 'lock' consumers into arrangements

2.132 Contractual provisions can 'lock' consumers into arrangements with embedded network operators. The Committee was told that owners corporations can enter into lengthy contracts, sometimes up to 10 or 20 years long, with termination clauses that make it almost impossible to exit the contractual arrangement.¹⁷⁴

2.133 For example, an owners corporation may be required to purchase the embedded network infrastructure to terminate their contract. Such costs can be prohibitive for an owners corporation, which may never have the money to buy the assets.¹⁷⁵

2.134 Where the contract is terminated before the end of the contract term, an owners corporation might also have to pay the operator for its estimated profit for the remainder of the term. Mr Glenn Streatfeild, Managing Director of Energy Metrics Consulting, said that this 'could easily be millions, depending on the size of the development'.¹⁷⁶

2.135 The Committee understands that in these cases an owners corporation may effectively be locked into obtaining services from their existing operator.

2.136 These contractual provisions limit the ability of owners corporations to regularly go to and seek competitive prices from the market. It may also prevent them from accessing upgraded technology, such as solar.¹⁷⁷

2.137 The Committee also heard about issues associated with developers contracting third parties to install these networks and supply electricity before the strata scheme is registered, with owners corporations then entering into long term contracts with embedded network operators at the first Annual General Meeting (**AGM**).¹⁷⁸ It was told that this business model allows developers to transfer the costs of establishing essential infrastructure, otherwise borne by them, to 'unsuspecting owners by forcing their engagement in long term cost recovery

¹⁷⁴ [Submission 28](#), PIAC, p 8; Mr Brell, [Transcript of evidence](#), 12 August 2022, p 12.

¹⁷⁵ [Submission 12](#), Ms Eloise O'Connell, p 1.

¹⁷⁶ Mr Glenn Streatfeild, Managing Director, Energy Metrics Consulting, [Transcript of evidence](#), 12 August 2022, p 47.

¹⁷⁷ [Submission 8](#), OCN, p 2; [Submission 24](#), City of Sydney, p 2; Mr Brell, [Transcript of evidence](#), 12 August 2022, p 12.

¹⁷⁸ [Submission 8](#), OCN, p 2; [Submission 24](#), City of Sydney, p 1; [Submission 27](#), NSW Government, pp 10-11.

- contracts'.¹⁷⁹ Where this occurs, the third party 'effectively becomes the monopoly electricity provider' for the contracted period.¹⁸⁰
- 2.138 Inquiry evidence indicates that developers are not required or forced, including by electricity distributors, to install embedded networks in new developments.¹⁸¹
- 2.139 The Committee also heard that owners corporations can be 'coerced' into entering into this contract at the first AGM. This may occur under the threat of their supply being switched off or being told they must contract with a certain provider because that provider installed the equipment.¹⁸²
- 2.140 However, Mr Glenn Streatfeild advised that, in his experience, he has not seen services switched off when an operator is not appointed at the first AGM. Further, that this may even assist the negotiating position of the owners corporation.¹⁸³ Mr Stephen Brell, President of the SCA, highlighted that owners corporations 'need to understand that they don't necessarily have to enter into a contract at their first meeting but they do have the ability to shop it around'. He explained that if an owners corporation does not enter into the contract at the first AGM, the developer will often be liable to the embedded network operator for the cost of the infrastructure installed.¹⁸⁴
- 2.141 The Committee understands that owners corporations may otherwise enter into contracts at the first AGM without a clear understanding of the implications. This may occur because contracts are not in plain English, members of the owners corporations are inexperienced and unfamiliar with their rights and obligations or, in many cases, because the contract has not been disclosed prior. Contracts may also be signed by the owners corporation without obtaining legal advice.¹⁸⁵
- 2.142 The Committee also heard that an owners corporation may be the exempt seller, including where the developer sets up the network and retail exemptions in the name of the owners corporation without its knowledge. This can lock the owners corporation into a lengthy and costly management contract, and can also require the owners corporation to comply with obligations as an exempt seller under a complex regulatory framework. An owners corporation can subsequently face challenges in making decisions, including about competitive bulk purchasing contracts, without experience or a clear understanding of their obligations and options.¹⁸⁶
- 2.143 Recommendations to the Committee to address this included additional disclosure and information requirements in the Management Act and conveyancing legislation, restricting contracts being entered into by developers

¹⁷⁹ [Submission 8](#), OCN, p 2.

¹⁸⁰ [Submission 27](#), NSW Government, pp 10-11.

¹⁸¹ [Response to supplementary questions](#), Urban Development Institute of Australia NSW, 21 September 2022, p 1; [Response to supplementary questions](#), Ausgrid, 21 September 2022, p 1.

¹⁸² Mr Brell, [Transcript of evidence](#), 12 August 2022, pp 9, 10, 12-13.

¹⁸³ Mr Streatfeild, [Transcript of evidence](#), 12 August 2022, p 47.

¹⁸⁴ Mr Brell, [Transcript of evidence](#), 12 August 2022, p 12.

¹⁸⁵ [Submission 12](#), Ms Eloise O'Connell, p 1; [Submission 36](#), SCA, p 5; Mr Brell, [Transcript of evidence](#), 12 August 2022, pp 9-10.

¹⁸⁶ [Submission 24](#), City of Sydney, p 2; [Submission 30](#), EWON, pp 20, 24.

on behalf of owners during the initial period under the Management Act and ensuring shorter contract lengths and no automatic rollover mechanisms in embedded network contracts.¹⁸⁷ Chapter 3 discusses reforms recommended by the statutory review of the Management Act in relation to the length of contracts in strata premises.

- 2.144 In calling for better regulation of the termination of agreements, Mr Streatfeild emphasised the need to balance interests of providers and consumers.¹⁸⁸
- 2.145 Taking the evidence into account, the Committee recommends that the NSW Government consider regulating embedded network contract provisions, including the term of the contract and conditions of termination, to ensure they are not unduly burdensome for consumers. It believes that this will help to strengthen the position of owners corporations so they can switch retailers more easily.

It can be costly and unviable to install the infrastructure needed to go "on market"

- 2.146 To access retail competition, embedded network customers may need to install additional infrastructure.
- 2.147 Unlike customers outside of embedded electricity networks, meters in embedded networks generally do not have a national meter identifier (**NMI**). This means that consumers in those networks are not 'discoverable' to NEM retailers, and their data is therefore only available to their existing supplier. To become discoverable and access competitive offers (in other words, go "on market"), consumers need to pay for a new meter.¹⁸⁹
- 2.148 The cost of installing new metering can limit consumers from accessing alternatives.¹⁹⁰ It 'could result in the loss of any benefit from lower priced electricity'.¹⁹¹
- 2.149 Active Utilities suggested that metering installation could be a focus of regulatory reform, in order to facilitate retail contestability inside an embedded network. This is in line with the AEMC's recommended reforms. It would involve all meters being registered with the market operator, which would make customers 'discoverable' by retailers (in Market Settlement and Transfer Solution, or MSATS).¹⁹²
- 2.150 Further, many consumers living in apartments with centralised hot water systems do not have individual gas meters. Energy Locals said that a benefit of these systems is that they use shared supply pipework and plant which reduces build

¹⁸⁷ [Submission 36](#), SCA, pp 5, 9; Ms Stiles, [Transcript of evidence](#), 12 August 2022, p 9; Mr Brell, [Transcript of evidence](#), 12 August 2022, pp 9-10, 12.

¹⁸⁸ Mr Streatfeild, [Transcript of evidence](#), 12 August 2022, p 47.

¹⁸⁹ [Submission 9](#), COTA, p 3; [Submission 29](#), Tenants Union of NSW, p 9; [Submission 32](#), AEMC, p 5; Ms Young, [Transcript of evidence](#), 12 August 2022, p 27; Mr Brell, [Transcript of evidence](#), 12 August 2022, p 11; Mr McPherson, [Transcript of evidence](#), 12 August 2022, p 55; Mr Davis, [Transcript of evidence](#), 12 August 2022, p 67.

¹⁹⁰ [Submission 28](#), PIAC, p 8; Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 3.

¹⁹¹ [Submission 29](#), Tenants Union of NSW, p 9.

¹⁹² [Submission 3](#), Active Utilities, p 8; Mr McMeekin, [Transcript of evidence](#), 12 August 2022, p 38.

cost, saves space and means that individual hot water systems are not required. On the other hand, individual systems require more space, often for gas meters, and may have specific airflow requirements. Energy Locals told the Committee that introducing additional gas meters needed to run individual hot water systems 'would be unviable for many apartment buildings'.¹⁹³

- 2.151 Energy Metrics raised a further complexity of hot water embedded networks: that they rely on 'onsite plant' to create thermal energy from the base fuel, which would make it 'exceedingly difficult' to accurately measure the base fuel used by an individual for the purpose of 'orphaning' a consumer. This is a key challenge which prevents hot water embedded network customers from leaving existing common hot water arrangements.¹⁹⁴

It is hard to find a retailer willing provide an energy-only offer

- 2.152 Retailers typically bill for both energy and network charges, and it can be hard to find one willing to provide an energy-only offer to a consumer in an embedded network. Additionally, some retailers may be unwilling to streamline their billing process.¹⁹⁵
- 2.153 Consumers may be billed twice for network charges by the NEM retailer and embedded network operator if they cannot access an energy-only offer, or the retailer and embedded network operator do not agree who will bill the consumer for network charges.¹⁹⁶

Reform required to ensure Retailer of Last Resort provisions apply

Recommendation 11

That the NSW Government implement a Retailer of Last Resort scheme to protect customers in embedded networks.

- 2.154 The absence of Retailer of Last Resort (**RoLR**) protections for embedded network customers demonstrates the lesser consumer protections available to these consumers compared to standard supply customers.
- 2.155 The NERL contains protections for consumers if their retailer becomes insolvent or otherwise ceases to supply energy, whereby they are automatically transferred to a RoLR. This allows for continuity in consumers' energy supply.¹⁹⁷ The AEMC explained that 'currently only embedded network customers that are supplied by a NEM retailer at a child connection point are protected by the RoLR scheme', but those supplied by an exempt seller are not.¹⁹⁸

¹⁹³ [Submission 33](#), Energy Locals, p 4.

¹⁹⁴ [Submission 13](#), Energy Metrics Consulting, p 5.

¹⁹⁵ [Submission 24](#), City of Sydney, p 2; Ms Young, [Transcript of evidence](#), 12 August 2022, p 27; Ms Moon, [Transcript of evidence](#), 12 August 2022, p 55; AER, [Information for electricity consumers in embedded networks](#), viewed 10 October 2022.

¹⁹⁶ [Submission 24](#), City of Sydney, p 2; AER, [Information for electricity consumers in embedded networks](#), viewed 10 October 2022.

¹⁹⁷ [Submission 30](#), EWON, pp 20-21; [Submission 38](#), AER, pp 3-4.

¹⁹⁸ [Submission 32](#), AEMC, p 6.

- 2.156 The AEMC's 2019 report proposed greater RoLR protections for embedded network customers, to make the retailer at the parent connection point the RoLR in the event of a failure of the off-market retailer.¹⁹⁹
- 2.157 The Committee notes that in the AEMC's 2021 report on the RoLR scheme, the AEMC provided options for alternative RoLR arrangements which contemplated the AER's involvement. Specifically, it provided that the AER could be given powers to appoint a RoLR for an embedded network if not arranged by the exempt seller, or the AER could include a requirement in its Retail Exempt Selling Guidelines for exempt sellers to arrange that an authorised retailer or exempt seller be the default RoLR for their network if a failure occurs. Taking into account stakeholder feedback, the AEMC concluded that the recommendations in its 2019 report regarding RoLR arrangements were sound but, if they are not progressed, alternative arrangements could be considered.²⁰⁰
- 2.158 On 8 June 2022, the Energy Ministers discussed the challenges facing the east coast energy market and agreed on a number of actions to be progressed immediately, including:
- The AEMC will urgently re-examine its 2021 Review of the Retailer of Last Resort scheme, and provide updated recommendations to Energy Ministers in July, to improve resilience in the system and better manage retailer failures, informed by recent events and in light of sustained pressures in the NEM.²⁰¹
- 2.159 The AER told the Committee that it has provided input to the AEMC regarding its re-examination of this scheme. It also said that while this issue is outside of its network and retail guidelines, as part of its review of those guidelines, it has consulted with the AEMC about extending RoLR protections to embedded network customers.²⁰²
- 2.160 The Committee considers continuity of supply is essential to consumers' health and wellbeing. It recommends that the NSW Government implement a RoLR scheme to protect consumers in embedded networks.

Embedded networks can deliver technology innovation and cost savings for consumers

- 2.161 The Committee heard that, when delivered properly, embedded networks have the potential to provide favourable outcomes for consumers. Key benefits raised include that:
- they can deliver lower energy prices to consumers through the purchase of energy in bulk at discount rates.²⁰³ The Committee was told that some residents have installed embedded networks to access these lower costs. For

¹⁹⁹ [Submission 22](#), AGL Energy, p 4; [Submission 32](#), AEMC, p 6.

²⁰⁰ AEMC, [Review of the retailer of last resort scheme](#), Final report, 25 February 2021, pp 33-35.

²⁰¹ Energy Ministers' Meeting, [Energy Ministers meeting communique](#), 8 June 2022, viewed 31 October 2022.

²⁰² [Submission 38](#), AER, p 4.

²⁰³ [Submission 3](#), Active Utilities, pp 9-10, 19; [Submission 13](#), Energy Metrics Consulting, pp 3, 6; [Submission 27](#), NSW Government, p 8; [Submission 33](#), Energy Locals, p 3; Mr Cameron, [Transcript of evidence](#), 12 August 2022, p 37.

example, EWON said it has come across one or two retirement villages run on a not-for-profit basis where residents voted to install an embedded network. EWON added that 'it can work depending on who is managing it, who is running it and for what purpose they have set it up'.²⁰⁴

- they can future proof developments by facilitating greater access than grid-connected developments to renewable energy and storage and innovative technology, including EV charging. If this were not available communally in the embedded network, individual residents may not be able to access it if they cannot meet the upfront costs or due to limitations in or physical infrastructure. Stakeholders said consumers are particularly interested in EV charging and the Committee understands it will be increasingly important in the future.²⁰⁵
- they can increase energy efficiency and have decarbonisation benefits, including through increasing access to renewable energy and storage and using excess energy generated across multiple consumers. This is also achieved in context of centralised hot water networks as the number of plants required to meet site demand is less than in a traditional network.²⁰⁶
- thermal embedded networks have health and safety benefits for consumers because they are more regularly maintained in accordance with contractual arrangements. This leads to less failures and outages and therefore a lower risk of temperature fluctuations or bacterial growth (such as legionella).²⁰⁷

2.162 As noted earlier, embedded network businesses acknowledged the negative experiences of consumers but submitted that these were not representative of consumers' experiences as a whole.²⁰⁸ Notwithstanding, they expressed support for regulatory reform to address these issues.²⁰⁹ It was emphasised that any regulatory reform should encourage the uptake of sustainability technology, to promote innovation.²¹⁰

2.163 The Committee considers that embedded networks services should be focused on delivering genuine technology innovation and costs savings benefits. Given the Committee's recommendations directed at addressing the gaps in the regulatory framework, it expects that these changes should ensure that

²⁰⁴ Ms Young, [Transcript of evidence](#), 12 August 2022, p 25.

²⁰⁵ [Submission 3](#), Active Utilities, p 9; [Submission 13](#), Energy Metrics Consulting, p 6; [Submission 33](#), Energy Locals, p 3; [Submission 37](#), Local Energy Network Action Group, pp 1-2; Mr Angel, [Transcript of evidence](#), 12 August 2022, p 36; Mr Merrick, [Transcript of evidence](#), 12 August 2022, p 38; Mr Cameron, [Transcript of evidence](#), 12 August 2022, pp 37-38; Mr McMeekin, [Transcript of evidence](#), 12 August 2022, pp 38, 42; Mr Tansey, [Transcript of evidence](#), 18 August 2022, p 14.

²⁰⁶ [Submission 33](#), Energy Locals, pp 3-4; [Submission 37](#), Local Energy Network Action Group, p 2; Mr Cameron, [Transcript of evidence](#), 12 August 2022, p 38.

²⁰⁷ [Submission 13](#), Energy Metrics Consulting, p 6.

²⁰⁸ [Submission 3](#); Active Utilities, p 6; [Submission 13](#), Energy Metrics Consulting, p 6.

²⁰⁹ Mr Merrick, [Transcript of evidence](#), 12 August 2022, pp 37, 42-43; Mr Cameron, [Transcript of evidence](#), 12 August 2022, p 38; Mr McMeekin, [Transcript of evidence](#), 12 August 2022, p 38.

²¹⁰ [Submission 13](#), Energy Metrics Consulting, p 4; [Submission 33](#), Energy Locals, p 3.

embedded networks are only able to exist where customers receive genuine benefits and outcomes.

Chapter Three – Limited access to support and information

- 3.1 This chapter will examine the limited access customers have to support and information about embedded networks. In particular, the lack of dispute resolution avenues available for consumer complaints and how these issues can be amplified for vulnerable stakeholders, including ageing and CALD consumers.
- 3.2 The Committee found that the external complaints and dispute resolution processes across state and federal levels are complex and time-consuming for consumers to navigate. Therefore, the Committee recommended that the NSW Government ensure that there is adequate information available to consumers in embedded networks about access to complaints and dispute resolution services, and that the NSW Government work with the AER and EWON to ensure that exempt entities become members of EWON. The Committee also recommended that small business customers in embedded networks must be adequately protected
- 3.3 Further, the NSW Government should, in collaboration with EWON, develop and implement measures to ensure that the cost of an Ombudsman investigation cannot be passed to the consumer.
- 3.4 In regards consumers experiencing hardship or disadvantage, the Committee recommended that the EAPA scheme be extended to all residents in embedded networks and that the NSW Government appropriately educate and communicate with vulnerable communities about embedded networks. This includes with ageing and CALD consumers to ensure that they can make an informed choice and seek assistance.

Consumer complaints and resolution avenues are not simple

Finding 5

The external complaints and dispute resolution processes across state and federal levels are complex and time-consuming for consumers to navigate.

Recommendation 12

That the NSW Government ensure there is adequate information available to consumers in embedded networks about access to complaints and dispute resolution services.

Recommendation 13

That the NSW Government work with the Australian Energy Regulator and the Energy and Water Ombudsman NSW to ensure exempt entities become members of the Ombudsman.

Recommendation 14

That the NSW Government ensure that small business customers in embedded networks are adequately protected.

Recommendation 15

That the NSW Government, in collaboration with the Energy and Water Ombudsman NSW, develop and implement measures to ensure that the cost of an Ombudsman investigation cannot be passed on to a consumer.

- 3.5 Consumers in embedded networks find the process to resolve issues regarding high bills or switching providers unclear, difficult to navigate and slow.²¹¹
- 3.6 A number of agencies and organisations are involved in the external consumer complaints and dispute resolution process in NSW. These include the NSW Department of Fair Trading, EWON and NCAT. The AER also receives complaints and enquiries about embedded networks.
- 3.7 Inquiry evidence illustrated to the Committee that it can be difficult for consumers to know which agency or organisation to approach with a complaint, because:
- various state and national laws apply to embedded networks, which results in multiple agencies and organisations handling embedded network complaints and matters. This requires consumers to navigate a complex legal framework.
 - some consumers can seek recourse through more than one avenue. For example, consumers in RLLCs may be able to take their complaint to both EWON and NCAT
 - some consumers have fewer avenues to which they can take their complaint, including consumers in hot water embedded networks and small business consumers.
- 3.8 The Committee recommends that the NSW Government ensures there is adequate information available to consumers in embedded networks about access to complaints and dispute resolution services. This includes information about the pathway for complaints for different types of consumers, taking into account the embedded network business they are complaining about, where they live (for example, in a strata complex or RLLC) and if they are an owners corporation, individual consumer or small business.
- 3.9 The Committee also observed that consumers currently have inconsistent access to EWON. This is because some exempt entities have not complied with the requirement to become a member of the EWON.²¹²
- 3.10 The Committee considers that greater enforcement of this requirement is vital to ensuring consumers have access to free and independent dispute resolution. It

²¹¹ [Submission 8](#), OCN, p 1; Witness A, [Transcript of in camera evidence](#), 18 August 2022, pp 2-3, 7.

²¹² [Submission 28](#), PIAC, p 15; [Submission 29](#), Tenants Union of NSW, p 21; [Submission 32](#), AEMC, p 2; Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 5.

recommends that the NSW Government work with the AER and EWON to ensure that exempt entities become EWON members.

- 3.11 Further, many consumers in hot and chilled embedded networks, as well as small businesses, also may not be able to access EWON's services.²¹³
- 3.12 The Committee supports extending ombudsman access to these consumers. To this end, it reiterates recommendation 6, regarding the extension of consumer protections to hot water embedded network customers. It also recommends that the NSW Government ensure that small business customers in embedded networks are adequately protected.
- 3.13 It also recommends that the NSW Government, in collaboration with the Energy and Water Ombudsman NSW, develop and implement measures to ensure that the cost of an Ombudsman investigation cannot be passed on to a consumer.

NSW Department of Fair Trading

- 3.14 As stated in Chapter 1, the ACL provides broad protections for the provision of goods and services in all Australian states and territories. All consumers of electricity, gas, or hot or chilled water in embedded networks have access to ACL protections.²¹⁴
- 3.15 The ACL is administered by the Australian Competition and Consumer Commission and, in NSW, the Department of Fair Trading. It is enforced by Australian courts and tribunals.²¹⁵
- 3.16 Regarding the Department of Fair Trading's role in relation to embedded networks, Mr John Tansey, Executive Director with the NSW Department of Customer Service said that its remit is limited:
- ...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.²¹⁶
- 3.17 Mr Tansey advised that when energy-specific issues arise, the Department works with EWON to address the complexities associated with electricity and utility transmission, generation and supply. He said that this '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'.²¹⁷ He further stated:

²¹³ [Submission 13](#), Energy Metrics Consulting, p 4; [Submission 27](#), NSW Government, p 17; [Submission 30](#), EWON, pp 12-13, 19; Ms Vincent, [Transcript of evidence](#), 18 August 2022, p 12; EWON, [Hot water embedded networks](#), March 2021, viewed 11 October 2022.

²¹⁴ [Submission 27](#), NSW Government, p 5.

²¹⁵ [Submission 27](#), NSW Government, p 5.

²¹⁶ Mr Tansey, [Transcript of evidence](#), 18 August 2022, p 6.

²¹⁷ Mr Tansey, [Transcript of evidence](#), 18 August 2022, p 9.

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.²¹⁸

- 3.18 The Department of Fair Trading advised it had received 3 complaints and 26 inquiries about embedded networks between 1 January 2021 and 30 August 2022.²¹⁹

Energy and Water Ombudsman NSW

- 3.19 EWON provides free and independent dispute resolution services regarding complaints about its members.²²⁰
- 3.20 Under the NERL, authorised retailers in NSW are required to provide free access to dispute resolution through EWON.²²¹
- 3.21 Since 2018, exempt sellers and networks which sell and supply energy to residential customers have been required to be members of EWON under AER guidelines and the *Electricity Supply (General) Regulation 2014*. This gave consumers living in embedded networks operated by an exempt entity, including residents of RLLCs, a new avenue for dispute resolution.²²²
- 3.22 The AER and EWON are working on a project to increase exempt seller customers' awareness about their right to access EWON, including in retirement villages.²²³ The Committee considers this is particularly important as it was advised by Ms Appleby from COTA that 'a lot of people don't actually know that EWON exists and that they can go and complain'. She called for greater publication of EWON's functions.²²⁴
- 3.23 However, the Committee heard about certain issues which limit some consumers' access to EWON. Some exempt entities have not complied with the requirement to become a member of EWON. Further, some consumers of hot and chilled water and small business consumers in embedded networks have limited access to EWON.
- 3.24 Stakeholders repeatedly raised that exempt entities are not complying with the requirement to become an EWON member.²²⁵ The Committee was told that

²¹⁸ Mr Tansey, [Transcript of evidence](#), 18 August 2022, pp 9-10.

²¹⁹ [Response to Questions on Notice](#), NSW Government, 18 September 2022, p 1.

²²⁰ [Submission 30](#), EWON, pp 1-2; EWON, [Making a complaint](#), viewed 14 October 2022.

²²¹ [Submission 27](#), NSW Government, pp 6-7.

²²² [Submission 27](#), NSW Government, p 9; [Submission 29](#), Tenants Union of NSW, p 21, [Submission 30](#), EWON, p 3.

²²³ [Submission 29](#), Tenants Union of NSW, p 21; Mr Cox, [Transcript of evidence](#), 12 August 2022, p 61.

²²⁴ Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 5.

²²⁵ [Submission 28](#), PIAC, p 15; [Submission 29](#), Tenants Union of NSW, p 21; [Submission 32](#), AEMC, p 2; Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 5.

some operators 'have responded to the requirement to join an Ombudsman scheme by delaying their application indefinitely, disengaging from the discussion, or simply refusing to join'.²²⁶ The Tenants Union of NSW provided that consumers should not be required to navigate the complexity of dispute resolution, particularly when faced with only being able to take disputes to EWON if their supplier is a member of EWON.²²⁷

- 3.25 The AER released its revised Retail Exempt Selling Guideline in July 2022. This Guideline introduces a requirement for exempt sellers 'to provide evidence of steps taken to obtain ombudsman scheme membership, as part of the individual exemption application process'.²²⁸ This requirement was proposed at the time the Committee received submissions to this inquiry and received stakeholder support from PIAC.²²⁹ The Committee also supports the implementation – and enforcement – of this requirement to allow customers of exempt sellers to bring their complaints to EWON.
- 3.26 The Committee was informed that some consumers of hot and chilled water in embedded networks have limited access to EWON. As examined in Chapter 1, these services fall outside the NECF due to regulatory gaps, meaning consumers billed in litres are not guaranteed access to NECF consumer protections, including the ombudsman.²³⁰ In an article on hot water embedded networks, EWON explains:
- Any customer billed in cents (\$) per litre does not have guaranteed access to the consumer protections included in NECF, including EWON's free, fair and independent advice and dispute resolution service. Access to EWON requires the hot water seller to be a member of EWON and while some EWON members operate in this market sector, other entities in this market sector are not required to be EWON members.²³¹
- 3.27 When a consumer makes a compliant, EWON is 'limited to encouraging operators to agree to a conciliated outcome' or referring them back to their operator or the Department of Fair Trading.²³²
- 3.28 As stated above, the NSW Government supports expanding the definition of the sale of energy in the NERL when customers are billed in accordance with the underlying input of energy, which would provide hot (and chilled) water consumers increased consumer protections including access to EWON.²³³

²²⁶ [Submission 28](#), PIAC, p 15; EWON, [Embedded networks – it's time for change](#), June 2021, viewed 11 October 2022.

²²⁷ [Submission 29](#), Tenants Union of NSW, p 21.

²²⁸ AER, [Retail exempt selling guideline – July 2022](#), viewed 11 October 2022.

²²⁹ [Submission 28](#), PIAC, p 15.

²³⁰ [Submission 27](#), NSW Government, p 17; [Submission 30](#), EWON, pp 12-13; EWON, [Hot water embedded networks](#), March 2021, viewed 11 October 2022.

²³¹ EWON, [Hot water embedded networks](#), March 2021, viewed 11 October 2022.

²³² EWON, [Hot water embedded networks](#), March 2021, viewed 11 October 2022.

²³³ [Submission 27](#), NSW Government, p 18; Ms Vincent, [Transcript of evidence](#), 18 August 2022, p 12; [Response to supplementary questions](#), NSW Government, 26 September 2022, p 2.

- 3.29 EWON also supports expanding this definition and billing customers in accordance with the underlying energy source.²³⁴
- 3.30 The Committee supports this position and urges that the NERL be revised so that consumers in hot and chilled water networks are guaranteed access to external dispute resolution through the industry ombudsman. It also notes that some of these consumers may not even have the protection of internal dispute resolution procedures.²³⁵
- 3.31 To ensure these consumers can access dispute resolution, the Committee restates recommendation 6, that the NSW Government collaborate with the federal and State governments and energy regulatory bodies to ensure consumers of hot water embedded networks have the same protections as standard supply customers.
- 3.32 Small business consumers in embedded networks also have limited access to EWON. EWON stated that the dispute resolution requirements in the Exempt Selling Guideline do not apply to small businesses. As such, while the *Electricity Supply Act 1995* gives all small business customers the right to complain to EWON, operators of embedded networks are not required to be EWON members. This means that EWON's 'dispute resolution powers are limited to, at best, negotiating an outcome if the operator is open to engaging with EWON'.²³⁶ EWON further states:
- EWON cannot compel operators to work with it, provide information or comply with its decisions. EWON engages with them to assist customers, but for many complaints, it is unable to achieve a fair and reasonable outcome, as it does for small business customers of EWON members who operate outside the embedded network regime.²³⁷
- 3.33 EWON recommended that protections applying to small businesses under the NECF, including access to the ombudsman, should be extended to those which operate in an embedded network.²³⁸ To this end, the Committee recommends that the NSW Government ensure that small business customers in embedded networks are adequately protected.
- 3.34 Other evidence received by the Committee about EWON's dispute resolution services include that:
- EWON can take a number of months to address consumer complaints. For example, Witness A told the Committee that it took nine months for EWON to reply to their inquiry.²³⁹ EWON advised that its complaint handling processes, including those relating to complainant interactions, were adhered to for Witness A. The Committee understands EWON's complaint handling processes involve multiple steps including information gathering,

²³⁴ Submission 30, EWON, pp 13, 15.

²³⁵ EWON, [Hot water embedded networks](#), March 2021, viewed 11 October 2022.

²³⁶ [Submission 30](#), EWON, p 19.

²³⁷ [Submission 30](#), EWON, p 19.

²³⁸ [Submission 30](#), EWON, p 19.

²³⁹ Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 2.

information review and, where a conciliated outcome is not agreed, a preliminary written decision, opportunity for parties' responses and a final decision. In any event, it considers that a timeframe of nine months can cause additional stress and concern for consumers, and that complaints should be addressed more quickly.²⁴⁰

- Tenants Union of NSW considered that EWON is unable to fully resolve complaints regarding pricing within RLLCs, due to the current issues with pricing in residential parks. The Tenants Union said that 'this means even where the operator is a member of EWON, dispute resolution through EWON is not necessarily available' to residents in RLLCs.²⁴¹ See Chapter 4 and recommendation 22 regarding this issue.
- where a resident in a RLLC is receiving electricity from an authorised retailer, they may have 'little recourse to administrative challenge due to their retailer being regarded as an independent agent rather than acting in the responsibility of the operator'.²⁴²
- residential park operators may seek a fee arising from an EWON investigation by increasing the resident's site charges. 'Site charges are not transparent' and cannot be challenged in NCAT. PIAC suggested that a mechanism be developed to prevent the cost of an EWON investigation being passed on a consumer.²⁴³

3.35 The Committee recommends that the NSW Government, in collaboration with EWON, develops and implements measures to ensure that the cost of an EWON investigation cannot be passed on to a consumer.

NSW Civil and Administrative Tribunal

3.36 Certain consumers, including owners in RLLCs, tenants and consumers in hot water embedded networks, can take their complaints to NSW Civil and Administrative Tribunal, or NCAT. This may result in NCAT ordering that they are not required to pay one or more bills subject of the complaint. Although, an order not to pay is not binding in relation to how the individual or other consumers are charged in the future.²⁴⁴

3.37 The Committee was told that accessing complaints and dispute resolution avenues is particularly complex for residents in RLLCs.²⁴⁵ The Tenants Union of NSW explained that before they were required to become members of EWON, residents of RLLCs 'could only force operators to provide information about charges' through NCAT proceedings.²⁴⁶ PIAC highlighted 'these residents often

²⁴⁰ [Response to comments in transcript](#), EWON, 18 September 2022, p 1.

²⁴¹ [Submission 29](#), Tenants Union of NSW, p 21.

²⁴² [Submission 28](#), PIAC, p 9.

²⁴³ [Submission 28](#), PIAC, p 15.

²⁴⁴ [Submission 29](#), Tenants Union of NSW, p 21; Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 3; EWON, [Hot water embedded networks](#), March 2021, viewed 11 October 2022.

²⁴⁵ [Submission 28](#), PIAC, p 6; [Submission 29](#), Tenants Union of NSW, p 21.

²⁴⁶ [Submission 29](#), Tenants Union of NSW, p 21.

receive no consistent, transparent usage, price or other information',²⁴⁷ demonstrating why recourse to accessible complaint avenues is vital for these residents.

- 3.38 The Committee was also advised that, where residents in RLLCs dispute their energy charges, they face a distinct imbalance of power as their energy supplier is also their landlord. Many residents are therefore fearful of reprisal or eviction if they pursue complaints. Further, where the operator does not comply with the requirement to become a member of EWON, residents still need to seek recourse through NCAT (rather than EWON).²⁴⁸
- 3.39 The Committee was told that NCAT proceedings are complex, time consuming and that 'some home owners are simply not up to it'.²⁴⁹ Witness A also advised that their NCAT hearing felt rushed.²⁵⁰

Australian Energy Regulator

- 3.40 The AER provided that it receives complaints and enquiries about embedded networks. From 1 July 2021 to 30 June 2022, it received 22 complaints and enquiries from consumers, being 15 per cent of all those relating to embedded networks during this period. It said that these complaints and inquiries concerned:
- ...various questions about pricing such as bulk hot water charges and whether customers in an embedded network can be charged a daily supply charge in an embedded network; and accessing competition, including not receiving the relevant information or support for how to go 'on-market'.²⁵¹
- 3.41 When a consumer contacts the AER with a complaint or enquiry, it provides information with practical dispute resolution steps where appropriate. It may also investigate potential breaches of exemption conditions. This may result in a formal investigation and enforcement action. Where it considers that it is warranted, the AER escalates matters to EWON.²⁵²

Need for increased availability of consumer hardship support

Recommendation 16

That the NSW Government ensure there is adequate hardship support available to embedded network customers.

Recommendation 17

That the NSW Government urgently extend access to Energy Accounts Payment Assistance (EAPA) vouchers to all residents in embedded networks.

²⁴⁷ [Submission 28](#), PIAC, p 6.

²⁴⁸ [Submission 28](#), PIAC, p 6; [Submission 29](#), Tenants Union of NSW, p 21.

²⁴⁹ [Submission 29](#), Tenants Union of NSW, p 21.

²⁵⁰ Witness A, [Transcript of in camera evidence](#), 18 August 2022, p 6.

²⁵¹ [Submission 38](#), AER, p 6.

²⁵² [Submission 38](#), AER, p 6.

Limited access to hardship support

- 3.42 The NECF requires retailers to 'have hardship policies in place and offer payment plans to customers having difficulty paying their bills'.²⁵³ However, these protections are not fully extended to residential embedded network customers.²⁵⁴ Although not obliged to do so, some retailers may choose to offer hardship assistance to their hot and chilled water customers.²⁵⁵
- 3.43 It is noted that the AEMC's 2019 report recommended changing the national framework to provide embedded network customers with access to customer hardship programs.²⁵⁶
- 3.44 The Retail Exempt Selling Guideline, which includes conditions that exempt sellers are required to comply with, was recently reviewed by the AER to improve consumer protections for residents in embedded networks and clarify exempt sellers' obligations. The draft Guideline was released in March 2022 and included a new condition requiring exempt sellers to have a hardship policy.²⁵⁷ The AER said that this condition is designed to ensure 'residential consumers in embedded networks who experience payment difficulties due to hardship can have access adequate support to better manage their energy bills'.²⁵⁸
- 3.45 PIAC said that the proposed measures 'go some way to improve assistance for people experiencing payment difficulty', but do not match the supports available for consumers living outside embedded networks. In particular, sellers do not need to 'proactively identify payment difficulty' or offer 'fair, sustainable and flexible payment options'.²⁵⁹
- 3.46 PIAC, along with the Tenants Union of NSW, called for exempt sellers to be obliged to proactively support consumers experiencing payment difficulty. PIAC highlighted that providing proactive assistance can help prevent significant debt issues which may not only threaten a consumer's energy supply, but also their housing security. It advised that many people are turning to Buy Now Pay Later loans to cover essentials including energy bills or are otherwise managing these bills by rationing energy or limiting other essentials such as food and medicine.²⁶⁰ It asserted:

Meeting basic obligations of assistance when people experience payment difficulty is a fundamental requirement and cost of business in selling an essential service. Exempt sellers unable to meet these obligations should not be selling an essential service.²⁶¹

²⁵³ [Submission 27](#), NSW Government, p 6.

²⁵⁴ [Submission 30](#), EWON, p 15.

²⁵⁵ [Submission 13](#), Energy Metrics Consulting, p 4; [Submission 35](#), Origin Energy, p 1.

²⁵⁶ [Submission 19](#), Energy Networks Australia, p 1.

²⁵⁷ [Submission 27](#), NSW Government pp 7, 14; [Submission 38](#), AER, p 4.

²⁵⁸ [Submission 38](#), AER, p 5.

²⁵⁹ [Submission 28](#), PIAC, pp 17-18.

²⁶⁰ [Submission 28](#), PIAC, p 18; [Submission 29](#), Tenants Union of NSW, p 22.

²⁶¹ [Submission 28](#), PIAC, p 18.

- 3.47 The AER advised that where on-selling energy is incidental to the core business of the embedded network, it 'may not have the administrative resources, sophistication or understanding to ensure customers in payment difficulties... are afforded the required protections'.²⁶² The Committee was told that NSW Department of Customer Service's work in developing a principles-based framework for identifying and responding to financial hardship could be used to develop materials and services which help exempt sellers to identify and respond to payment difficulty.²⁶³
- 3.48 PIAC also said that the draft Exempt Seller Hardship Policy template, proposed with the draft Retail Exempt Selling Guideline, 'provides insufficient opportunity for consumers to decline or vary repayments according to their capacity to pay'. It explained:
- This does not strike an appropriate balance in line with equivalent protections in the National Energy Customer Framework (NECF). This is likely to lead to people entering unsustainable payment plans that they cannot manage or cannot manage without forgoing other essentials. It may also expose consumers to intimidating behaviour from exempt sellers who are in powerful positions, where the consumers cannot simply move to a new retailer.²⁶⁴
- 3.49 The AER released the final version of its updated Retail Exempt Selling Guideline in July 2022.²⁶⁵ The final Guideline includes a new condition requiring exempt sellers to develop, implement, maintain and comply with a plain English hardship policy for residential customers containing, at a minimum, the standardised statements provided in the Hardship Policy Template. It also requires the seller to offer flexible payment options, including a payment plan, to a customer who has identified themselves as being in financial difficulty.²⁶⁶
- 3.50 Taking the above into account, the Committee recommends that the NSW Government ensure there is adequate hardship support available to embedded network customers.

Limited access to Energy Accounts Payment Assistance vouchers

- 3.51 The Committee was told that consumers in embedded networks have difficulty accessing NSW Government energy rebates and concessions. Stakeholders were particularly concerned that embedded network customers cannot access financial assistance through the NSW Government's Energy Accounts Payment Assistance (EAPA) scheme.²⁶⁷
- 3.52 In its submission, the NSW Government said that its EAPA scheme 'helps NSW households experiencing a short-term financial crisis or emergency to stay connected to essential energy services by receiving multiples of \$50 vouchers towards their energy bills'. Customers can receive vouchers of up to \$400 per

²⁶² [Submission 38](#), AER, p 3.

²⁶³ [Submission 28](#), PIAC, p 18.

²⁶⁴ [Submission 28](#), PIAC, pp 18-19.

²⁶⁵ Mr Cox, [Transcript of evidence](#), 12 August 2022, p 61.

²⁶⁶ Commonwealth of Australia, AER, [Retail Exempt Selling Guideline](#), version 6, July 2022, pp 42, 46.

²⁶⁷ [Submission 29](#), Tenants Union of NSW, p 22; [Submission 30](#), EWON, p 15.

application for each electricity and gas bills two times each financial year. The vouchers are sent to the applicant's energy provider to help pay their bills.²⁶⁸

- 3.53 Stakeholders repeatedly raised that residents in embedded networks are not currently eligible to access EAPA vouchers.²⁶⁹ PIAC highlighted that some people living in these networks are in very vulnerable circumstances. It asserted these residents should have access to EAPA vouchers to help them avoid debt or limiting their use of energy or other essentials in order to afford their energy bills.²⁷⁰
- 3.54 The NSW Government said that, as part of its review of the EAPA scheme, it is consulting with stakeholders on expanding the scheme to embedded network customers of authorised retailers. When asked about the timeframe for delivering the expansion of the program, the NSW Government said the scheme would be expanded 'as soon as possible'.²⁷¹
- 3.55 The Committee believes that extending the EAPA to residents in embedded networks is a priority. It recommends that the NSW Government urgently extends access to the scheme to all residents living in embedded networks.
- 3.56 Consumers' access to the EAPA may also be limited where the operator's billing system is not consistent, transparent or detailed. PIAC suggested that, in this case, the benefit be paid directly to the applicant's bank account rather than energy provider, noting that eligible consumers in embedded networks already receive rebates this way. Although, EWON indicated that receiving rebates in this way disadvantages residential consumers in embedded networks.²⁷² The NSW Government should consider these issues as part of its work to extend EAPA vouchers to embedded network residents.

Disadvantage is amplified for ageing and CALD consumers

Recommendation 18

That the NSW Government appropriately educate and communicate with vulnerable communities about embedded networks, including ageing and culturally and linguistically diverse consumers, to ensure they can make an informed choice and seek assistance.

- 3.57 Consumer issues may be amplified for vulnerable consumers in embedded networks including ageing residents and CALD consumers.
- 3.58 The Committee was told that ageing residents are likely to live in embedded networks including in residential parks, retirement villages or strata complexes. It was also told that CALD consumers are likely to live and own small businesses in embedded networks, including apartments and shopping centres, respectively.

²⁶⁸ [Submission 27](#), NSW Government, p 10.

²⁶⁹ [Submission 29](#), Tenants Union of NSW, p 22; [Submission 30](#), EWON, pp 15-16.

²⁷⁰ [Submission 28](#), PIAC, p 17.

²⁷¹ [Submission 27](#), NSW Government, p 10; [Response to supplementary questions](#), NSW Government, 26 September 2022, p 4.

²⁷² [Submission 28](#), PIAC, p 17; [Submission 29](#), Tenants Union of NSW, p 22; [Submission 30](#), EWON, p 15.

These small businesses, including convenience stores, hot bread shops, nail parlours and dry cleaners, are high energy users and may represent more than 40 per cent of small businesses in NSW.²⁷³

- 3.59 COTA advised that embedded networks can exploit the vulnerability of ageing consumers. For example, these consumers are likely to be on fixed incomes and vulnerable to cost of living pressures. As such, they might not be able to invest in a new meter, which is needed to switch retailers and access competitive pricing.²⁷⁴
- 3.60 Mr Iain Maitland, Energy Advocate at the ECC NSW noted that the same issues arise for CALD consumers.²⁷⁵ He also raised that the billing framework in embedded networks creates the potential for CALD small business owners to be exploited, as their energy charges are bundled into their rent.²⁷⁶ Similarly, residents of boarding houses 'who don't formally sign on to an embedded network and aren't formally paying for their energy cost' are particularly vulnerable as they pay for their energy as part of their accommodation fee and are not recognised as consumers of the network.²⁷⁷
- 3.61 Advocates highlighted that ageing and CALD consumers may find it more difficult to seek assistance or understand information available on websites if they are not tech-savvy, or where translations make the information 'indecipherable'. They emphasised the need for better communication with these consumers.²⁷⁸
- 3.62 To this end, Ms Appleby from COTA pointed to an EWON project providing information in plain English to residents in retirement villages, which she said needs to be extended to residents in other locations, and suggested a peer education model. The need for information to be communicated in various languages and formats, including non-digital means such as community radio and newspapers, was emphasised. The Committee was also referred by the ECC NSW to guidelines it has developed to assist energy businesses and government agencies consulting and engaging with CALD consumers on energy.²⁷⁹
- 3.63 Other issues facing CALD and ageing consumers in embedded networks include:
- for CALD consumers, language difficulties which may impact on their ability to provide explicit informed consent.²⁸⁰ Language difficulties may also complicate their access to the external complaints process, including where they need to engage an interpreter.²⁸¹

²⁷³ [Submission 9](#), COTA, p 3.; [Submission 31](#), ECC NSW, p 2.

²⁷⁴ [Submission 9](#), COTA, p 3; Ms Appleby, [Transcript of evidence](#), 12 August 2022, pp 2-3.

²⁷⁵ Mr Maitland, [Transcript of evidence](#), 12 August 2022, p 3.

²⁷⁶ Mr Maitland, [Transcript of evidence](#), 12 August 2022, p 3.

²⁷⁷ Ms Mowbray, [Transcript of evidence](#), 12 August 2022, p 24.

²⁷⁸ [Submission 9](#), COTA, p 3; Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 2; Mr Maitland, [Transcript of evidence](#), 12 August 2022, pp 3-4.

²⁷⁹ [Submission 9](#), COTA, p 3; [Submission 31](#), ECC NSW, p 1; Mr Maitland, [Transcript of evidence](#), 12 August 2022, pp 2, 6; Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 2.

²⁸⁰ Mr Maitland, [Transcript of evidence](#), 12 August 2022, p 6.

²⁸¹ See, for example, case study 1 of [Submission 30](#), EWON, p 22.

- for CALD consumers, there may be cultural issues around seeking assistance from 'outside organisations not connected to family or their community'.²⁸²
- for ageing consumers, information about pensioner concession and hardship protections may not be as readily available as it is for standard connection customers.²⁸³
- living in a premises where their energy provider is also their landlord, and making a complaint can put them at risk of eviction.²⁸⁴

3.64 The Committee recommends that the NSW Government appropriately educate and communicate with vulnerable communities about embedded networks, including ageing and CALD consumers, to ensure they can make an informed choice and seek assistance when necessary.

²⁸² [Submission 31](#), ECC NSW, p 3.

²⁸³ [Submission 24](#), City of Sydney, pp 2-3.

²⁸⁴ Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 5.

Chapter Four – Regulatory reform

- 4.1 This chapter outlines the different areas of regulatory reform for embedded networks that are currently open to the NSW Government. This includes amendments to the national framework and legislative change at the state level.
- 4.2 The Committee considered that the NSW Government should collaborate with the federal and other state and territory governments, and energy regulatory bodies to secure regulatory reform. Specifically, changing key definitions under the NERL and to extend the DMO to ensure embedded network customers are included.
- 4.3 Given the complexities of RLLCs under NSW law compared to other embedded network customers, the Committee has chosen to make specific recommendations regarding land lease communities. Specifically, that the NSW Government amend the charging of electricity in embedded networks in line with the recommendations of the statutory review of the *Residential (Land Lease) Community Act 2013*. It also noted that, due to the pricing protections for these residents included in the NSW legislation, it may not be appropriate to extend the DMO to these customers.
- 4.4 The Committee also considered that the NSW Government should take initiative at the state level to urgently address issues which have been identified in the relevant strata and residential land lease communities legislation in recent statutory reviews.
- 4.5 This chapter will conclude by identifying key issues that should also be considered in the reform process. This includes the recent Victorian Government commitment to banning embedded networks in new developments unless supplied from 100 per cent renewable energy, and the potential effects of distributor network tariffs.

Reforms to the national framework

Need for collaboration between NSW Government, federal and other state governments to address issues

Recommendation 19

That the NSW Government collaborate with federal, state and territory governments and energy regulatory bodies to secure regulatory reform, particularly to include embedded networks and update the definitions of 'selling energy', 'electricity, and 'gas' under the National Energy Retail Law.

Recommendation 20

That the NSW Government urgently collaborate with federal, state and territory governments to extend the Default Market Offer to embedded network customers.

Progress of AEMC recommendations and AER's review

4.6 Following the publication of the AEMC's 2019 report, its final recommendations were provided to the (then) COAG Energy Council on 20 June 2019. These recommendations were referred by the COAG Energy Council to a working group, which commissioned KPMG to conduct a cost-benefit analysis.²⁸⁵ The AEMC told the Committee that this analysis, completed in 2020, found:

... that in 61% of scenarios modelled, the benefits of the AEMC's recommendations would not outweigh the costs. However, it was noted that not all consumer benefits could be quantitatively valued and some customers would benefit significantly.²⁸⁶

4.7 According to the AEMC, the member governments 'therefore concluded not to accept the AEMC's recommendations, and for jurisdictions to pursue their own actions to support customers in embedded networks'.²⁸⁷

4.8 As noted in Chapter 1, the NSW Government told the Committee that AEMC's 2019 report on embedded networks 'has yet to be considered by the National Energy Ministers'. Further:

In February 2021, Energy Senior Officials agreed that the former Chair of National Energy Ministers, the then Commonwealth Government Minister for Energy and Emissions Reduction, should circulate the Report and proposed response to the National Energy Ministers for consideration. The Report has yet to be circulated to the National Energy Ministers.

The NSW Government has advocated for the Report and proposed response to be circulated to, and considered by the National Energy Ministers as soon as possible.²⁸⁸

4.9 The Committee agrees with stakeholders' observations that implementation of the AEMC's proposed reforms has 'stalled'.²⁸⁹ It considers that the inter-jurisdictional agreement required to amend the national framework is time consuming and at the expense of consumers.

4.10 As such, the AEMC has pointed to the AER's review of the retailer authorisation and exemption framework as an alternate avenue for regulatory reform.²⁹⁰ The AER noted in its submission that its review 'will consider the package of recommendations put forward by the AEMC in its 2019 review of the regulatory frameworks for embedded networks' and said it will be 'consulting closely' with the AEMC to 'inform potential reforms'.²⁹¹

²⁸⁵ [Submission 32](#), AEMC, p 3.

²⁸⁶ [Submission 32](#), AEMC, pp 3-4.

²⁸⁷ [Submission 32](#), AEMC, p 4.

²⁸⁸ [Response to supplementary questions](#), NSW Government, 26 September 2022, p 2.

²⁸⁹ [Submission 28](#), PIAC, pp 3, 10; [Submission 30](#), EWON, p 9.

²⁹⁰ Ms Shepherd, [Transcript of evidence](#), 12 August 2022, p 60; Mr Davis, [Transcript of evidence](#), 12 August 2022, p 65.

²⁹¹ [Submission 38](#), AER, p 6.

- 4.11 As outlined in Chapter 2, the AER's retailer authorisation and exemption review is currently underway. The AER's review was not available at the time of drafting this report.²⁹²
- 4.12 The AEMC also recently made a rule change, commencing 1 May 2023, to introduce family violence protections for consumers of energy retailers into the NECF.²⁹³ As 'conditions for exempt sellers are an AER function', the AEMC has recommended that the AER revise its Retail Exempt Selling Guideline to apply customer protections for family violence as conditions for exempt sellers. In making this recommendation, the AEMC highlighted the different consumer outcomes experienced by people living in embedded networks compared to those who are not:
- If affected customers living or working in embedded networks are not covered by similar protections to those that apply to customers connected to the national grid, the energy sector risks creating an arbitrary distinction between customers based on how they get their energy services and where they live.
- This distinction is problematic as many residents in the types of accommodation that are commonly set up as embedded networks, such as nursing homes and caravan parks, are amongst the most vulnerable.²⁹⁴
- 4.13 The Committee recommends that the NSW Government collaborate with the federal and other state governments and energy regulatory bodies to secure regulatory reform. In particular, to include embedded networks and update the definitions of 'selling energy', 'electricity, and 'gas' under the National Energy Retail Law in order to address the consumer issues discussed in Chapter 2.
- 4.14 If no progress is made by the National Energy Ministers to progress consideration of the AEMC's recommendations, or the AER's review is not timely or otherwise does not adequately address the issues faced by embedded networks consumers, the Committee urges the NSW Government to implement reforms to address these issues.

The Default Market Offer should be extended to embedded network customers

- 4.15 As stated in Chapter 1, the DMO does not apply to consumers in embedded networks who are on-sold electricity by an authorised retailer. This is particularly important as authorised retailers are increasingly on-selling electricity to consumers in embedded networks, including in residential land lease communities and other residential complexes.²⁹⁵
- 4.16 In 2022, the Commonwealth Department of Industry, Science, Energy and Resources completed a review of the Code which implements the DMO, being the *Competition and Consumer (Industry Code – Electricity Retail) Regulations 2019*. The outcomes of the review were finalised in March 2022 and include that

²⁹² Mr Cox, [Transcript of evidence](#), 12 August 2022, p 61.

²⁹³ AEMC, [National Energy Retail Amendment \(Protecting Customers Affected by Family Violence\) Rule 2022](#), Rule determination, 15 September 2022, pp i-ii.

²⁹⁴ AEMC, [National Energy Retail Amendment \(Protecting Customers Affected by Family Violence\) Rule 2022](#), Rule determination, 15 September 2022, pp 10-11.

²⁹⁵ [Submission 27](#), NSW Government, p 15; [Submission 30](#), EWON, pp 10, 18.

the Department will consult further on how to best extend price cap protection provided by the DMO to embedded network customers, including to examine compliance issues and costs.²⁹⁶ The NSW Government told the Committee that it 'intends to be a part of this consultation'.²⁹⁷

- 4.17 The Commonwealth Department aims to implement the agreed changes before the DMO 2023-2034 period, after working with the ACCC and AER to undertake consultation throughout 2022.²⁹⁸
- 4.18 To extend this price cap protection to customer of authorised retailers, the Committee recommends that the NSW Government urgently collaborate with the federal and other state governments to extend the DMO to embedded network customers.
- 4.19 The Committee notes that residents in residential land lease communities may receive energy from an authorised retailer and that specific pricing protections apply to these residents under the RLLC Act (see below). The Committee considers that, as part of extending the DMO to embedded network customers, it should be carefully considered whether the DMO should apply to residential land lease community residents in NSW.

Reforms at the NSW level

Strata community legislation needs reform

Recommendation 21

That the NSW Government urgently implement the recommendations of the 2021 statutory review of the *Strata Schemes Management Act 2015* relating to utilities contracts.

- 4.20 As stated in Chapter 1, the Management Act and Development Act regulate the creation, governance and termination of NSW strata schemes.²⁹⁹
- 4.21 A statutory review of the Management Act and Development Act was tabled in Parliament in November 2021. This review made 139 recommendations, including five relating to embedded networks. Specifically, three recommendations regarding the length of contracts, and two recommendations regarding information provision. Stakeholders raised these issues and the review's recommendations with the Committee.³⁰⁰
- 4.22 Section 132A of the Management Act limits the length of utility contracts. It provides that a contract for the supply of electricity, gas or other utilities will

²⁹⁶ [Submission 27](#), NSW Government, p 15; [Submission 30](#), EWON, p 10; Australian Government, Department of Climate Change, Energy, the Environment and Water, [Price safety net](#), viewed 16 October 2022.

²⁹⁷ [Submission 27](#), NSW Government, p 15.

²⁹⁸ [Submission 30](#), EWON, p 10; Australian Government, Department of Climate Change, Energy, the Environment and Water, [Price safety net](#), viewed 16 October 2022.

²⁹⁹ [Strata laws statutory review](#), p 1.

³⁰⁰ [Submission 8](#), OCN, p 2; [Submission 15](#), Law Society of NSW, p 3; [Submission 24](#), City of Sydney, pp 1-3; [Submission 27](#), NSW Government, pp 10-11; [Submission 30](#), EWON, p 20; [Submission 36](#), SCA, pp 8-9; [Strata laws statutory review](#), pp 2-11.

expire either at the conclusion of the owners corporation's first AGM if the agreement is executed before the meeting or, in any other case, after three years. This provision was implemented in 2018 to prevent owners being locked into long-term utility supply contracts which prevent them from negotiating a better deal. Utility supply contracts entered into before the reform are limited to 10 years.³⁰¹

- 4.23 However, section 132A does not apply to contracts supplying electricity to residents of a strata scheme through an embedded network.³⁰² The NSW Government indicated that these contracts were excluded to not pre-empt or include provisions contrary to the upcoming recommendations in the AEMC's 2019 report.³⁰³
- 4.24 The statutory review found that this exemption 'is likely to result in adverse outcomes for strata scheme residents by restricting their access to competitive prices and contract options'. This is because, as discussed in Chapter 2, it can result in a developer entering into a contract with a third party to fund and supply electricity infrastructure and metering, who then 'effectively becomes the monopoly electricity provider for a contracted period of time'.³⁰⁴ Such contracts limit the ability of residents to switch retailers.
- 4.25 There has also been confusion as to the scope and application of section 132A.³⁰⁵ Feedback to the statutory review raised concerns that the section is silent on various issues including its application to rolling or indefinite contracts and how to enter into new contracts, and confusion around its application to other types of embedded networks such as for water and gas.³⁰⁶
- 4.26 The statutory review recommended:
- redrafting section 132A of the Management Act to provide greater clarity and certainty regarding its use (recommendation 119).
 - extending the application of section 132A of the Management Act to contracts for the supply of electricity through an embedded network (recommendation 120).³⁰⁷
- 4.27 As stated in Chapter 2, the Committee heard support for maximum term arrangements for embedded network supply contracts, as is put forward by recommendation 120.³⁰⁸

³⁰¹ *Strata Schemes Management Act 2015* (NSW), [section 132A\(1\)](#) (Agreements for supply of electricity, gas or other utilities); [Submission 8](#), OCN, p 2; [Submission 27](#), NSW Government, p 10.

³⁰² *Strata Schemes Management Act 2015* (NSW), [section 132A\(4\)](#) (Agreements for supply of electricity, gas or other utilities).

³⁰³ [Submission 8](#), OCN, p 2; [Submission 27](#), NSW Government, p 5; [Submission 30](#), EWON, p 20.

³⁰⁴ [Submission 27](#), NSW Government, pp 10-11.

³⁰⁵ [Submission 8](#), OCN, p 2.

³⁰⁶ [Strata laws statutory review](#), p 91.

³⁰⁷ [Strata laws statutory review](#), p 92.

³⁰⁸ [Submission 36](#), SCA, p 9.

- 4.28 So that this does not hinder the uptake of sustainable technologies, including solar and electric vehicle charging infrastructure, the statutory review also recommended (in recommendation 121) to explore the feasibility of allowing longer initial terms for utility contracts delivering sustainability measures. Such measures would need to ensure a minimum building rating of NABERS 5 star and demonstrate the delivery of positive benefits for the owners corporation.³⁰⁹
- 4.29 The Committee also heard about consumer issues connected with the lack of information available to prospective owners and tenants, explored in Chapter 2. Specifically, inquiry stakeholders drew the Committee's attention to recommendations in the statutory review to require mandatory disclosure and more general education. In relation to this, the review recommended:
- introducing a requirement that, as part of any sale of strata scheme units, including off the plan sales, there is plain English disclosure of which services are provided as an embedded network, their ownership structure and what this will mean for residents, including in relation to access to alternative providers and ongoing capital costs (recommendation 122).
 - updating fair trading strata information to provide additional information on embedded networks in strata schemes (recommendation 123).³¹⁰
- 4.30 The Law Society of NSW said that it foresees 'some difficulty in disclosing certain aspects as outlined' in recommendation 122, 'and practical issues, such as who would have the responsibility of preparing the information to be disclosed'.³¹¹
- 4.31 In relation to recommendation 123, the Law Society of NSW also noted Fair Trading's development of the online Strata Hub. It said that 'consideration could be given to disclosing information regarding embedded networks in a scheme at an appropriate stage', which could assist prospective purchasers and tenants.³¹²
- 4.32 The SCA raised that consideration must be given to how new rules and regulation could impact existing embedded networks. It suggested a longer transition period for these networks or, where cost considerations preclude changes made in a timely manner, that legacy networks be grandfathered into any future regulations.³¹³
- 4.33 Commenting on the timeline for implementing the recommendations of this statutory review, the NSW Government provided that that legislative reform will be progressed in two separate phases. A Phase 1 Bill has been sent to targeted stakeholders for feedback, due in October 2022. The review's recommendations relating to embedded networks will be included in a Phase 2 Bill, which will be developed over 2022 and involve targeted stakeholder consultation in 2022 and public consultation in 2023. The Government provided that the contents of the

³⁰⁹ [Submission 27](#), NSW Government, p 11; [Strata laws statutory review](#), p 93.

³¹⁰ [Strata laws statutory review](#), p 94.

³¹¹ [Submission 15](#), Law Society of NSW, p 3; [Submission 36](#), SCA, pp 8-9.

³¹² [Submission 15](#), Law Society of NSW, p 3.

³¹³ [Submission 36](#), SCA, p 9.

specific Bills will continue to be assessed, and that they will be 'introduced to Parliament subject to Government and Parliamentary priorities'.³¹⁴

- 4.34 At the time of the hearing, the NSW Government indicated that the mechanism through which disclosure would be required had not yet been determined.³¹⁵
- 4.35 To address consumer impacts relating to long-term electricity supply contracts and a lack of transparency for new entrants to strata complexes, the Committee recommends that the NSW Government urgently implement the recommendations of the 2021 statutory review of the Management Act relating to utilities contracts.

Residential land lease community legislation needs reform

Recommendation 22

That the NSW Government urgently implement the recommendations of the 2021 statutory review of the *Residential (Land Lease) Community Act 2013* relating to the charging of electricity in embedded networks.

- 4.36 As stated in Chapter 1, the RLLC Act sets out the framework regulating RLLCs, 'including the relationship between community operators, home owners and other residents of permanent sites' in these communities.³¹⁶
- 4.37 Following public and targeted consultation, a review of the RLLC Act was tabled in Parliament in November 2021. This statutory review made 48 recommendations, including four recommendations relating to embedded network pricing issues.³¹⁷ Stakeholders elaborated on these pricing issues in evidence to the Committee.³¹⁸
- 4.38 The Committee heard that RLLC residents faced safety and supply issues, and cannot choose their own utility provider. The RLLC Act had previously introduced pricing protections (prior to the DMO) to ensure residents were not charged excessively.³¹⁹ Section 77(3) of the Act states:
- The operator must not charge the home owner an amount for the use of a utility that is more than the amount charged by the utility service provider or regulated offer retailer who is providing the service for the quantity of the service supplied to, or used at, the residential site.³²⁰
- 4.39 In its 2018 decision of *Silva Portfolios Pty Ltd trading as Ballina Waterfront Village & Tourist Park v Reckless* [2018] NSWSC 1343, the Supreme Court clarified that this means an operator cannot charge a home owner more than the operator has

³¹⁴ [Response to supplementary questions](#), NSW Government, 26 September 2022, p 3.

³¹⁵ Ms Pavlidis, [Transcript of evidence](#), 18 August 2022, p 15.

³¹⁶ [Submission 27](#), NSW Government, p 11.

³¹⁷ [Submission 27](#), NSW Government, p 12; [RLLC Act statutory review](#), pp 4, 7, 14-15.

³¹⁸ [Submission 14](#), Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (CCIA NSW), pp 13-19; [Submission 17](#), IPART, p 5; [Submission 27](#), NSW Government, pp 11-12; [Submission 29](#), Tenants Union of NSW, pp 13-14.

³¹⁹ [Submission 27](#), NSW Government, p 11.

³²⁰ *Residential Land Lease Communities Act 2013* (NSW), [section 77\(3\)](#) (Utility charges payable to operator by home owner).

been charged by the energy provider for the electricity consumed by the home owner. The matter was then returned to NCAT in *Reckless v Silva Portfolios Pty Ltd t/as Ballina Waterfront Village and Tourist Park (No. 2)* [2018] NSWCATCD 59 to consider how the relevant electricity bill should have been calculated.³²¹ NCAT adopted the following method to calculate the bill:

... the total amount billed to the operator divided by the total kilowatt hours (kWh) consumed in the community. This provides a kilowatt rate that homeowners are charged for each kWh they consume. The charge includes supply and home owners no longer pay a service availability charge (**SAC**) when they are charged under this method.³²²

- 4.40 The is known as the *Reckless* method, and it has been used to calculate electricity charges in many communities since.³²³ Although, the method is not binding and, in some cases, NCAT has used different methods to calculate refunds due to home owners.³²⁴
- 4.41 Many residents received refunds from operators following this decision. However, as the kilowatt rate varies monthly, they lack certainty about how much they can expect to be billed each month, and face confusion about how their bills have been calculated. Because there is no SAC payable under this method, residents who receive low amperage no longer receive the statutory discount for low supply set out in the Act.³²⁵
- 4.42 The Committee was also advised that this method is complex and time-consuming for operators to administer. Further, it requires operators to absorb additional costs associated including maintenance, operational and replacement costs of the embedded network and EWON membership fees, rather than recovering these costs through energy charges.³²⁶
- 4.43 According to the Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd (**CCIA NSW**), an outcome of applying the *Reckless* method is that many home owners in RLLCs pay energy prices that are cheaper than those paid by standard supply customers.³²⁷
- 4.44 As part of the statutory review, stakeholders were consulted on different methods for electricity charging.³²⁸ To best balance the interests of home owners and operators, the review favoured the 'median separate charges' approach, which involves:

³²¹ [Submission 27](#), NSW Government, pp 11-12.

³²² [Submission 29](#), Tenants Union of NSW, p 13.

³²³ [Submission 27](#), NSW Government, p 11.

³²⁴ Ms Pavlidis, [Transcript of evidence](#), 18 August 2022, p 13; NSW Government, Department of Customer Service, [Discussion Paper - Statutory Review of the Residential \(Land Lease\) Communities Act 2013](#), Discussion paper, 2019, p 24.

³²⁵ [Submission 27](#), NSW Government, p 12; [Submission 29](#), Tenants Union of NSW, p 13.

³²⁶ [Submission 14](#), CCIA NSW, p 8; [Submission 27](#), NSW Government, p 12; Ms Liz Livingstone, CEO, IPART, [Transcript of evidence](#), 12 August 2022, p 18.

³²⁷ [Submission 14](#), CCIA NSW, p 8.

³²⁸ [Submission 29](#), Tenants Union of NSW, p 14.

- setting the maximum price that a resident can be charged for electricity (by an operator or contracted third party) at the median market retail price. This includes separate usage and supply charges contained in the median market offer for that distribution area
- residents who receive low quality electricity supply receiving certain discounts to their SACs.³²⁹

4.45 The Committee was told that, while this method would likely increase prices for consumers, it would be simpler, transparent, increase certainty for residents and provide scope for future improvements.³³⁰ Stakeholders emphasised that this position was reached through extensive consultation and represents an agreed position. Mr Douglas McCloskey, from PIAC, considered that 'everybody would live with' this position. Stakeholders including the Tenants Union of NSW, PIAC and CCIA NSW expressed support for this pricing mechanism.³³¹

4.46 Acknowledging the potential impacts of utility price increases on residents, the statutory review recommended undertaking further work on the potential price impacts of introducing a maximum price cap based on the median market price, including whether there is a need for any mitigation strategies, and any additional mechanisms to promote competition and transparency of operators' electricity prices (recommendation 20). It also recommended:

- considering applying any amended electricity pricing provisions to contracted third party providers, as well as operators (recommendation 21)
- considering extending the pricing protections available to home owners to tenants who rent directly from the community operator (recommendation 22)
- reviewing any new electricity pricing provisions within three years of their commencement, including to assess any changes to the national electricity framework or other regulatory changes affecting embedded networks (recommendation 23).³³²

4.47 The Committee considers that the extension of any amended pricing provisions to contracted third parties is particularly important, having received evidence that since the *Reckless* decision some community operators have outsourced electricity supply to authorised retailers.³³³

³²⁹ [RLLC Act statutory review](#), p 36.

³³⁰ [Submission 17](#), IPART, p 5; [Submission 27](#), NSW Government, p 12; Ms Livingstone, [Transcript of evidence](#), 12 August 2022, p 18; Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 26.

³³¹ [Submission 14](#), CCIA NSW, p 18; [Submission 28](#), PIAC, p 11; [Submission 29](#), Tenants Union of NSW, p 14; Ms Parrab, [Transcript of evidence](#), 12 August 2022, p 29; Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 29.

³³² NSW Government, p 12; [RLLC Act statutory review](#), p 37.

³³³ [Submission 28](#), PIAC, p 9; [Submission 30](#), EWON, p 18.

- 4.48 Inquiry participants told the Committee that legislative reforms to reflect this agreed position should be implemented urgently and expressed frustration at the delay in doing so.³³⁴
- 4.49 As with the timeframe for implementing the statutory review on strata laws, the NSW Government told the Committee that legislative reform will be progressed in two separate phases in order to quickly implement some reforms (in a Phase 1 Bill) and consider, consult on and draft those that are more complex and contentious (in a Phase 2 Bill). The review's recommendations on embedded networks will be included in the Phase 2 Bill, which will be developed over 2022 and involve targeted stakeholder consultation in 2022 and public consultation in 2023. The Government provided that the contents of the specific Bills will continue to be assessed, and that they will be 'introduced to Parliament subject to Government and Parliamentary priorities'.³³⁵
- 4.50 Based on the inquiry evidence, the Committee understands that stakeholders consulted as part of the statutory review – advocacy groups and industry alike – consider that implementing the agreed pricing mechanism as set out in that review is appropriate and a pressing priority. It therefore recommends that the NSW Government urgently implement the recommendations of the 2021 statutory review of the RLLC Act relating to the charging of electricity in embedded networks.
- 4.51 The Committee also notes that other recommendations in the statutory review relate to consumer experiences in embedded networks, including recommendation 26 regarding installing sustainability infrastructure (as outlined in Chapter 2) and recommendations 24 and 25 relating to billing issues. In relation to the recommendations around billing issues, the Committee reiterates recommendation 4 in this report regarding implementing a standardised bill structure requiring itemisation of embedded network services and, as part of this recommendation, suggests that the NSW Government consider recommendations 24 and 25 of the statutory review.

NSW Government is consulting on improving data on embedded network customers

- 4.52 As discussed in Chapter 1, there are major gaps in data concerning the number of embedded networks and their customers.³³⁶
- 4.53 In December 2021, the NSW Government began public consultation 'to identify reforms to improve customer access to and the uptake of new energy technologies and innovation', through its consultation paper titled *Promoting Innovation for NSW Energy Customers*. The paper is concerned with stakeholders' perspectives on the issues in NSW, and what 'the NSW Government could advocate for through the national reform processes'.³³⁷

³³⁴ [Submission 14](#), CCIA NSW, p 18; [Submission 28](#), PIAC, p 11; [Submission 29](#), Tenants Union of NSW, p 14; Ms Parrab, [Transcript of evidence](#), 12 August 2022, pp 24, 29; Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 29.

³³⁵ [Response to supplementary questions](#), NSW Government, 26 September 2022, p 3.

³³⁶ [Submission 27](#), NSW Government, p 12.

³³⁷ [Consultation paper](#), p 1.

- 4.54 This paper seeks feedback on, among other things, improving access to data on customers of embedded networks. The paper suggests that one option to address this issue could be to require distribution networks to request information from their customers about whether they are embedded network operators, and report this to the government. Stakeholders were asked to comment on whether operators should be required to report information to the AER or their local distribution network, and what other data reporting requirements would be of value.³³⁸
- 4.55 Submissions closed on 23 February 2022. The NSW Government is reviewing submissions and undertaking consultation, including stakeholder workshops, throughout 2022 and 2023.³³⁹
- 4.56 The paper also sought feedback on hot water embedded networks. The NSW Government's consultation on this issue is discussed in Chapter 2.

Other considerations for regulatory reform

Victorian restrictions on electricity embedded networks

- 4.57 In 2018, the Victorian Government announced an election commitment to ban embedded electricity networks in new residential apartment buildings, with limited exemptions. An expert panel developed recommendations on how to best implement the ban, which were included in its January 2022 final report.³⁴⁰
- 4.58 The panel found that residential electricity embedded networks in Victoria are not delivering outcomes in the best interest of consumers, and that regulatory intervention is required to ensure better outcomes while also supporting the uptake of renewable energy.³⁴¹
- 4.59 The Victorian Government has committed to banning embedded electricity networks in new residential apartment buildings in Victoria from January 2023, unless 100 per cent of electricity supplied to residential customers is from renewable sources. The Government has said that it will legislate reforms in 2023 to 2024 to introduce a licensing framework, and to enhance consumer protections and provide access to the competitive retail offers for all embedded network customers – including those living in existing embedded networks.³⁴²
- 4.60 The NSW Government characterised this approach as changing the framework in which embedded networks can operate.³⁴³
- 4.61 Inquiry participants had mixed views on the Victorian approach. Notably, PIAC viewed that the approach may help stop the growth of embedded networks and

³³⁸ [Consultation paper](#), p 34.

³³⁹ [Submission 27](#), NSW Government, p 12; NSW Government, [Energy Customer Policy Reform](#), viewed 31 October 2022.

³⁴⁰ Victoria State Government, [Embedded Networks Review](#), viewed 31 October 2022.

³⁴¹ [Response to Questions on Notice](#), Energy Networks Australia, 31 August 2022, p 1.

³⁴² Victoria State Government, [Embedded Networks Review](#), viewed 31 October 2022; Victoria State Government, Department of Environment, Land, Water and Planning, [Victorian Government response to the Embedded Networks Review](#), July 2022, p 2.

³⁴³ Mr Lewis, [Transcript of evidence](#), 18 August 2022, p 7.

'the problem from getting bigger'.³⁴⁴ Although, the Committee notes that the AEMC also indicated that implementing additional requirements around customer protections would also deter the growth in exempt sellers.³⁴⁵ Monitoring the Victorian experience, together with the impact of any NSW-specific reforms implemented in response to this inquiry, was also advised.³⁴⁶

- 4.62 Active Utilities submitted that restricting new residential embedded networks would cause 'major disruptions' to a variety of associated industries including embedded network operators, electrical contractors and developers and builders specialising in embedded networks. Further, that it would result in developers meeting only minimum requirements and not considering future impacts of electrical infrastructure and operating requirements.³⁴⁷
- 4.63 Other stakeholders expressed concern that an outright ban on embedded networks could stifle innovation in a rapidly changing electricity market.³⁴⁸
- 4.64 When determining how best to deal with issues faced by residential embedded network customers, the Committee urges the NSW Government to consider the Victorian Government's approach, along with any limitations that NSW, as a NEM member state, would encounter if it sought to implement similar measures.

Potential effects of network tariffs

- 4.65 Network tariffs apportion fixed network costs in a distribution network, with costs shared equally among all consumer connection points within a network tariff class. These tariffs are charged to retailers, which package them with other costs and pass them on to consumers.³⁴⁹
- 4.66 In September 2019, Ausgrid submitted a proposal to the AER to approve an amendment to its Tariff Structure Statement for the 2019-2024 period. Specifically, to apply a tariff to the parent connection point of embedded networks with residential customers.³⁵⁰
- 4.67 In making this proposal, Ausgrid argued that the costs of running the distribution network are not shared equitably by customers connected directly to the grid and embedded network customers. It said that the tariff would not increase revenue but ensure a fair contribution to funding network costs.³⁵¹
- 4.68 The NSW distributors, including Ausgrid, raised the potential for the uneven sharing of network costs as an issue in evidence to this inquiry. They said:

³⁴⁴ [Submission 28](#), PIAC, p 10; Mr McCloskey, [Transcript of evidence](#), 12 August 2022, p 24.

³⁴⁵ Ms Shepherd, [Transcript of evidence](#), 12 August 2022, p 64.

³⁴⁶ Ms Appleby, [Transcript of evidence](#), 12 August 2022, p 7.

³⁴⁷ [Submission 3](#), Active Utilities, p 12.

³⁴⁸ Ms Livingstone, [Transcript of evidence](#), 12 August 2022, p 19; Mr Angel, [Transcript of evidence](#), 12 August 2022, p 36.

³⁴⁹ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 18; AER, [Network tariff reform](#), viewed 21 October 2022.

³⁵⁰ [Submission 30](#), EWON, p 16.

³⁵¹ [Submission 30](#), EWON, pp 16-17.

For an embedded network with a single parent connection point and multiple customers behind the parent connection point, the total amount of fixed costs apportioned to that connection point will be the same as for a connection point serving a single customer. This means that for an embedded network with multiple customers, the contribution of each customer to fixed network costs will be much smaller than the contribution of a single standard supply customer. In effect standard supply customers will cross-subsidise those customers connected to embedded networks.

The scale of this cross-subsidy increases significantly as the size of an embedded network grows.³⁵²

- 4.69 The distributors noted that standard supply customers view this arrangement as unfair. They also said that the cross-subsidy could lead to development to embedded networks in order to 'exploit pricing inefficiencies or inconsistent regulations and regulatory gaps'.³⁵³
- 4.70 EWON said the proposed tariff would 'likely increase the average cost of energy for residential embedded network customers in affected distribution areas'.³⁵⁴ It also submitted that the proposed tariffs fail to recognise that:
- embedded network customers are not covered by the distribution networks deemed standard connection contracts and are not recognised as network customers
 - where there is a network incident affecting the parent connection point, and therefore an embedded network customer's supply, the customer cannot individually complain to the distributor and is not covered by the network's guaranteed service levels. They also do not receive the benefit of the life support requirements imposed on the distributor by the NERR. This could disadvantage these customers during an unplanned outage
 - they do not acknowledge the inequitable rights experienced by embedded network customers, or additional costs imposed on them by their operator.³⁵⁵
- 4.71 The AER did not approve Ausgrid's proposal to amend its Tariff Structure Statement due to the timing of the proposed amendments and non-compliance with clause 6.18.1B of the NER. However, the Committee was told it is likely this will be a consideration of all NSW distributors' future five yearly Tariff Structure Statement review process.³⁵⁶
- 4.72 The Committee notes EWON's recommendation that, if network tariffs are introduced for parent connection points for embedded networks, the AER should extend provisions in deemed standard connection contracts to customers in embedded networks (and not just the parent connection point). EWON

³⁵² [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, p 18.

³⁵³ [Submission 18](#), Ausgrid, Endeavour Energy, Essential Energy, pp 18-19.

³⁵⁴ [Submission 30](#), EWON, p 16.

³⁵⁵ [Submission 30](#), EWON, pp 16-17.

³⁵⁶ [Submission 30](#), EWON, p 16.

suggested this could include guaranteed service levels, where a power outage is attributable to a network issue or enable an individual customer to make a claim directly with the distributor.³⁵⁷

³⁵⁷ [Submission 30](#), EWON, p 17.

Appendix One – Terms of reference

That the Legislative Assembly Committee on Law and Safety inquire into and report on embedded networks in NSW, with particular reference to:

- a) the current legal framework regulating embedded networks
- b) changes to the legal framework proposed by the Australian Energy Market Commission in its 2019 review on updating the regulatory frameworks for embedded networks
- c) the effect of embedded networks on NSW residents and businesses, including any health or safety concerns
- d) policy and legal solutions to address the effect of and concerns about embedded networks, including to address any gaps in the regulatory framework or safety concerns raised by NSW residents and businesses
- e) any other related matters.

Appendix Two – Conduct of inquiry

Inquiry referral

On 11 May 2022, the Committee resolved to conduct a self-referred inquiry into Embedded Networks in New South Wales.

Call for submissions

The Committee issued a media release and wrote to stakeholders on 16 May 2022 calling for submissions. A second media release was distributed on 22 June 2022 advising of a two week extension with a new closing date of 8 July 2022.

A total of 39 submissions were received from embedded network providers and distributors, consumers, community advocates, regulators, local councils and the NSW Government. A list of submissions is found in **Appendix Three**.

Briefing

On 3 August 2022 the Committee held a private briefing with two representatives from the Energy and Water Ombudsman NSW (EWON) to obtain a greater understanding of the embedded network process. A copy of the transcript and presentation can be found [online](#).

Hearings

The Committee held two public hearings at Parliament House on 12 and 18 August 2022 and heard from 28 separate witnesses.

Witnesses included community advocates, owners and strata representatives, regulators, energy and gas providers, NSW Government and a consumer who provided their evidence to the committee in-camera. Witnesses appeared in person and via videoconference.

A list of witnesses is at **Appendix Four**. Transcripts of evidence taken at the hearings are available on the Committee's [webpage](#).

Response to consumer comments in submissions and transcripts

A number of embedded network consumers mentioned specific entities or individuals in the course of their submission or hearing evidence regarding personal consumer complaints. As this evidence was directly related to the subject matter of the inquiry, the Committee chose to retain this evidence where relevant. In some cases, the Committee also considered it important that the specifically mentioned parties should have a right of reply to such comments. The Committee therefore wrote to these parties notifying them of the comments published by the Committee and offered that they make a response that would also be published. The Committee notes that not all parties took up this offer to reply, however those that did have had their correspondence published on the Committee [webpage](#).

Appendix Three – List of Submissions

No.	Author
1	Confidential
2	Mr Rathishs Nair
3	Active Utilities Pty Ltd
4	Confidential
5	Name suppressed
6	Mr Sungkwan Kim
7	Confidential
8	Owners Corporation Network of Australia Ltd
9	Council on the Ageing NSW
10	Mr Jonathan Moore
11	Leo Edwardsson
12	Ms Eloise O'Connell
13	Energy Metrics Consulting
14	Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW Ltd
15	The Law Society of NSW
16	Real Utilities
17	IPART
18	Ausgrid, Endeavour Energy, Essential Energy
19	Energy Networks Australia
20	Jemena
21	APA Group
22	AGL Energy
23	Kheng Wong
24	City of Sydney
25	Valla Beach Village over 50's
26	Name suppressed
26a	Name suppressed
27	NSW Government
28	Public Interest Advocacy Centre (PIAC)
29	Tenants Union of NSW
30	Energy and Water Ombudsman NSW
31	Ethnic Communities' Council of NSW

No.	Author
32	The Australian Energy Market Commission
33	Energy Locals Pty Ltd
34	Mr Benjamin Ho
35	Origin Energy
36	Strata Community Association (NSW)
37	Local Energy Network Action Group
38	The Australian Energy Regulator
39	Mr Brian Bavin
40	Ms Penny Graham

Appendix Four – List of Witnesses

12 August 2022

Jubilee Room, Parliament House

Witness	Position and Organisation
Ms Karen Appleby	Acting CEO, Council on the Ageing (COTA) NSW
Mr Iain Maitland	Energy Advocate, Ethnic Communities' Council of NSW
Ms Karen Stiles	Executive Director , Owners Corporation Network
Mr Stephen Brell	President, Strata Community Association (NSW)
Ms Liz Livingstone	CEO, IPART
Mr Douglas McCloskey	Program Director – Energy and Water , Public Interest Advocacy Centre (PIAC)
Ms Jemima Mowbray	Policy and Advocacy Manager, Tenants Union of NSW
Ms Eloise Parrab	Residential Land Lease Communities Officer, Tenants Union of NSW
Ms Janine Young	Ombudsman, Energy and Water Ombudsman NSW (EWON)
Mr Stephen Angel	Network Development Manager, Jemena Gas Networks (NSW)
Mr Adrian Merrick	CEO, Energy Locals
Mr Andrew Cameron	General Manager, Centralised Energy Services and New Property, Origin Energy
Mr Tim O'Grady	General Manager Government Engagement, Origin Energy
Mr Glen Streatfeild	Managing Director, Energy Metrics Consulting
Mr Andrew McMeekin	General Manager Sales & Delivery, Active Utilities Pty Ltd
Ms Francoise Merit	Chief Financial Officer, Endeavour Energy
Mr Alex McPherson	Head of Regulation, Ausgrid
Ms Natalie Lindsay	Acting Executive General Manager Corporate Affairs, Essential Energy
Ms Lucy Moon	Head of Regulation, Energy Networks Australia
Ms Michelle Shepherd	Commissioner, Australian Energy Market Commission

Mr Jim Cox	Deputy Chair, The Australian Energy Regulator
Mr Ben Davis	Director, Retail and Wholesale Markets , Australian Energy Market Commission

18 August 2022
Jubilee Room, Parliament House

Witness	Position and Organisation
Witness A	Embedded Network Customer
Mr John Tansey	Executive Director, Department of Customer Service
Ms Katerina Pavlidis	Director, Department of Customer Service
Mr Andrew Lewis	Executive Director Energy, Office of Energy and Climate Change
Ms Sophia Vincent	Director, Energy Consumer and Competition Policy, Office of Energy and Climate Change

Appendix Five – Extracts from minutes

Meeting no 17

TIME & DATE	1:02 PM, 11 MAY 2022	LOCATION	PARKES ROOM, PARLIAMENT HOUSE AND VIA WEBEX
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MEMBERS PRESENT

Mr Ray Williams (**Chair**), Mr Geoff Provest (**Deputy Chair**), Mr Edmond Atalla, Ms Tamara Smith.

Via WebEx: Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Francesca Arciuli-Matar, Jennifer Gallagher, Patrick Glynn.

APOLOGIES

Nil.

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Provest, seconded by Mr Atalla: That the minutes of the meetings of 4 August 2021 and 6 April 2022 be confirmed.

2. Correspondence

...

3. Proposed inquiry into embedded networks in NSW

The Committee considered draft terms of reference for an inquiry into embedded networks in NSW as circulated. Discussion ensued.

Ms Smith suggested that the terms of reference be amended at paragraph (c) to include reference to 'health or' safety concerns.

Resolved on the motion of Ms Smith, seconded Mr Crouch, that the Committee conduct an inquiry into embedded networks in NSW in accordance with the following terms of reference:

That the Legislative Assembly Committee on Law and Safety inquire into and report on embedded networks in NSW, with particular reference to:

- (a) the current legal framework regulating embedded networks*
- (b) changes to the legal framework proposed by the Australian Energy Market Commission in its 2019 review on updating the regulatory frameworks for embedded networks*
- (c) the effect of embedded networks on NSW residents and businesses, including any health or safety concerns*
- (d) policy and legal solutions to address the effect of and concerns about embedded networks, including to address any gaps in the regulatory framework or safety concerns raised by NSW residents and businesses*
- (e) any other related matters.*

The Committee discussed the inquiry timeline and stakeholder list. Discussion ensued.

Resolved on the motion of Mr Provest, seconded Mr Atalla, that:

- i. the Committee call for submissions to be received by Friday 24 June and write to the listed stakeholders and other stakeholders requested by Committee members.
- ii. the Chair issue a media release announcing the inquiry.
- iii. in consultation with the DPS Library Research Service, the Committee engage an external subject matter expert to brief the committee on the inquiry topic prior to any public hearings and that Hansard transcribe the briefing with a view to it being made public and published on the inquiry webpage.

The Committee noted the indicative inquiry timeline, as amended to include a 6 week call for submissions and hearings to be held in August.

4. **General business**

Nil.

5. **Next meeting**

The meeting adjourned at 1.31pm until a time and date to be determined.

Meeting no 18

TIME & DATE	1:02 PM, 22 JUNE 2022	LOCATION	MCKELL ROOM, PARLIAMENT HOUSE
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MEMBERS PRESENT

Mr Ray Williams (**Chair**), Mr Geoff Provest (**Deputy Chair**), Mr Edmond Atalla, Mr Adam Crouch, Ms Tamara Smith.

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Ze Nan Ma.

APOLOGIES

Nil.

AGENDA ITEM

1. Inquiry into embedded networks in NSW

1.1. Extension of submission closing date

The Committee discussed extending the submission closing date from 24 June 2022 to 8 July 2022.

Resolved, on the motion of Mr Provest, seconded by Ms Smith:

- i. That the Committee extend the call for submissions until 8 July 2022 and write to the listed stakeholders (stakeholder list circulated at the previous meeting)
- ii. That the Chair issue a media release announcing the extension of the call for submissions.
- iii. That these details be updated on the Committee website.

1.2. Inquiry timeline

The Committee noted an updated inquiry timeline now includes a private briefing with the Energy and Water Ombudsman NSW scheduled for Wednesday 3 August 2022 at 1:30pm. Room details to follow.

Resolved, on the motion of Ms Smith, seconded by Mr Crouch: That the NSW Department of Fair Trading be invited to provide a private briefing on embedded networks in NSW on Wednesday 3 August 2022.

2. General business

Nil.

3. Next meeting

The meeting adjourned at 1:09pm until a time and date to be determined.

Meeting no. 19

TIME & DATE	1.34 PM, 3 AUGUST 2022	LOCATION	ROOM 814/815, PARLIAMENT HOUSE AND VIA WEBEX VIDECONFERENCE
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MEMBERS PRESENTMr Ray Williams (**Chair**), Mr Geoff Provest (**Deputy Chair**), Mr Edmond Atalla, Mr Adam Crouch.**OFFICERS PRESENT**

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Jennifer Gallagher, Gerard Rajakariar.

APOLOGIES

Ms Tamara Smith.

AGENDA ITEM**1. Confirmation of Minutes**

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That the minutes of the meetings of 11 May 2021 and 22 June 2022 be confirmed.

2. Correspondence

The Committee noted correspondence received, including the following:

-
- 2.1. 18 May 2022 – Letter from Brian Steffen, Director City Services, Penrith City Council declining to make a submission to the Inquiry into Embedded networks in NSW.
 - 2.2. 26 May 2022 – Email from Iliada Bolton, Director Business and Governance, Bega Valley Shire Council seeking further information on inquiry into embedded networks in NSW.
 - 2.3. 30 May 2022 – Email from the secretariat responding to Iliada Bolton, Director Business and Governance, Bega Valley Shire Council.
 - 2.4. 3 June 2022 – Email from Embedded Networks Review Secretariat, Department of Environment, Land, Water and Planning (Victoria) declining to make a submission to inquiry into embedded networks in NSW but advising of the Victorian inquiry, report and recommendations.
 - 2.5. ...
 - 2.6. ...
 - 2.7. 25 July 2022 – Email from Shannon Lakic, Policy, Training and Executive Services Manager, Caravan, Camping & Tourism Industry & Manufactured Housing Industry Association of NSW (CCIA), declining invitation to attend the public hearing.
-

3. Inquiry into embedded networks in NSW

3.1. Publication of submissions

- 3.1.1. Submissions 1 to 39 were provided to members prior to this meeting.
- 3.1.2. A publication table covering submissions 1 to 39 was prepared for the Committee's consideration.
- 3.1.3. As a matter of practice, details such as residential addresses, phone numbers and email addresses will be redacted from submissions. Signatures will also be redacted where they are not publicly available.

Resolved, on the motion of Mr Provest, seconded by Mr Crouch, *in globo*:

- a) That the Committee authorise that submissions 3, 8-11, 13-25, 27-32, 34-38 be published in full.
 - b) That the Committee authorise that submissions 1, 4, and 7 remain confidential.
 - c) That the Committee authorise the publication of submission 2 with identifying details redacted and without attachments.
 - d) That the Committee authorise the publication of submission 5 with name suppressed.
 - e) That the Committee authorise the publication of submission 6 in full without attachments.
 - f) That the Committee authorise the partial publication of submission 12 with certain identifying information redacted and without attachments.
 - g) That the Committee authorise the publication of submission 26 with name suppressed and without attachments.
 - h) That the Committee authorise the partial publication of submission 33 with monetary details redacted.
 - i) That the Committee authorise the publication of submission 39 in full with identifying details redacted.
-

3.2. Hearing dates and witness selection

- 3.2.1. The Committee noted it agreed via email to invite the list of witnesses (Attachment D) to the public hearings on 12 August 2022 and 18 August 2022.
- 3.2.2. The Committee noted that since the circulation of this list, the CCIA declined the invitation to attend the public hearing.

Resolved, on the motion of Mr Provest, seconded by Mr Atalla: That the Committee formally invite the listed witnesses to give evidence at the public hearing on 12 August 2022 and 18 August 2022.

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That the Committee invite the author of Submission 4 to give evidence at a private hearing on 18 August 2022.

3.3. Briefing paper

The Committee noted the briefing paper on regulation of embedded electricity networks in residential land lease communities in NSW and attached legal cases.

4. Committee briefing

4.1. NSW Fair Trading

The Committee noted that NSW Fair Trading was unable to confirm their attendance at the briefing. They have indicated they will instead attend the public hearing as part of the NSW Government Panel.

4.2. Energy and Water Ombudsman NSW (EWON)

Resolved, on the motion of Mr Provest, seconded by Mr Atalla: That the Committee invite representatives from the Energy and Water Ombudsman NSW to brief the Committee on issues relevant to the inquiry.

Resolved, on the motion of Mr Crouch, seconded by Mr Provest: That Anita Knudsen, Senior Research Officer and Expert Panel Project Leader (Hansard, Library and Research Branch of the Department of Parliamentary Services) attend the briefing as an observer.

The Committee then conducted a private briefing with EWON representatives Dr Rory Campbell, Manager – Policy and Research and Mr Bryce Purches, Policy and Research Officer at 1.50 pm. Hansard and secretariat officers were also present.

The private briefing concluded at 3.08 pm. The EWON representatives and Hansard withdrew.

5. General business

Resolved, on the motion of Mr Crouch, seconded by Mr Provest: That Jemena be invited to attend the public hearings on 12 August 2022 or 18 August 2022.

6. **Next meeting**

The meeting adjourned at 3.10 pm until 12 August 2022 at a time to be determined.

Meeting no. 20

TIME & DATE	9.16AM, 12 AUGUST 2022	LOCATION	JUBILEE ROOM, PARLIAMENT HOUSE AND VIA WEBEX VIDECONFERENCE
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MEMBERS PRESENT

Mr Ray Williams (**Chair**), Mr Geoff Provest (**Deputy Chair**)
 Via [WebEx videoconference](#): Mr Edmond Atalla, Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Jennifer Gallagher, Gerard Rajakariar

APOLOGIES

Ms Tamara Smith

AGENDA ITEM

1. **Recording of Deliberative**

Resolved, on the motion of Mr Provest, seconded by Mr Atalla: That the Committee authorise the Webex recording of the deliberative to assist with the completion of the minutes and that it be deleted after the confirmation of minutes by the Committee.

2. **Confirmation of minutes**

Resolved, on the motion of Mr Provest, seconded by Mr Atalla: That the minutes of the meeting of 3 August 2022 be confirmed.

3. Inquiry into embedded networks in NSW

3.1. Public hearing on 12 August 2022

- 3.1.1. The Committee noted that the public hearing will commence at 9.30am.
- 3.1.2. The Committee also noted the hearing schedule and suggested questions for witnesses.
- 3.1.3. The Committee considered the procedural resolutions for the conduct of the public hearing.

Resolved, on the motion of Mr Provest, seconded by Mr Atalla, *in globo*:

- a) That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 12 August 2022 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.
- b) That the corrected transcript of evidence given on 12 August 2022 be authorised for publication and uploaded on the Committee's website.
- c) That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 14 days of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.
- d) That the Webex videoconference be recorded to assist with the transcription of the public hearing, to be deleted upon the confirmation of the final transcript.

4. General business

The Chair noted Ms Smith is an apology for today's meeting and hearing due to recent flooding in her electorate.

The Chair adjourned the deliberative meeting at 9:25am.

Public hearing

The Chair opened the public hearing at 9.27am. Witnesses attended the public hearing in person and via WebEx videoconference and the hearing was broadcast from the Parliament's website. The Chair made a short opening statement.

The following witnesses were admitted:

- Karen Appleby, Acting CEO, Council of the Ageing NSW was affirmed and examined.
- Ian Maitland, Energy Advocate, Ethnic Communities' Council of NSW was affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witnesses were then admitted:

- Karen Stiles, Executive Director, Owners Corporation Network of Australia was affirmed and examined.

-
- Stephen Brell, President, Strata Community Association (NSW) was sworn and examined.

Evidence concluded; the witnesses withdrew.

The following witness was admitted:

- Liz Livingstone, CEO, IPART was sworn and examined.

Evidence concluded; the witness withdrew.

The following witnesses were then admitted:

- Douglas McCloskey, Program Director – Energy and Water, Public Interest Advocacy Centre was affirmed and examined.
- Jemima Mowbray, Policy and Advocacy Manager, Tenants Union of NSW was affirmed and examined.
- Eloise Parrab, Residential Land Lease Communities Officer, Tenants Union of NSW was affirmed and examined.
- Janine Young, Ombudsman, Energy and Water Ombudsman NSW was affirmed and examined.

Evidence concluded; the witnesses withdrew.

The following witness was admitted:

- Stephen Angel, Network Development Manager, Jemena Gas Networks (NSW) was affirmed and examined.

Evidence concluded; the witness withdrew.

The following witnesses were then admitted:

- Adrian Merrick, CEO, Energy Locals was affirmed and examined.
- Andrew Cameron, General Manager, Centralised Energy Services and New Property, Origin Energy was affirmed and examined.
- Tim O'Grady, General Manager Government Engagement, Origin Energy was affirmed and examined.
- Glen Streatfeild, Managing Director, Energy Metrics Consulting was affirmed and examined.
- Andrew McMeekin, General Manager Sales & Delivery, Active Utilities Pty Ltd was affirmed and examined.

Evidence concluded; the witnesses withdrew.

5. **Deliberative meeting**

The Chair opened the meeting at 3:27pm.

Resolved, on the motion of Mr Provest, seconded by Mr Atalla: That the Committee invite appropriate representative bodies of developers, primarily of residential developments, to appear at the public hearing on 18 August 2022.

The Chair closed the meeting at 3:29pm.

Public Hearing (continued)

The Chair re-opened the public hearing at 3:32pm.

The following witnesses were then admitted:

- Alex McPherson, Head of Regulation, Ausgrid was affirmed and examined.
- Francoise Merit, Chief Financial Officer, Endeavour Energy was sworn and examined.
- Natalie Lindsay, Acting Executive General Manager Corporate Affairs, Essential Energy was affirmed and examined.
- Lucy Moon, Head of Regulation, Energy Networks Australia, appearing via WebEx videoconference, was affirmed and examined.

Evidence concluded, the witnesses withdrew.

The following witnesses were then admitted:

- Michelle Shepherd, Commissioner, Australian Energy Market Commission, appearing via WebEx videoconference, was affirmed and examined.
- Benjamin Davis, Director Retail and Wholesale Markets, Australian Energy Market Commission was affirmed and examined.
- James Cox, Deputy Chair, the Australian Energy Regulator was sworn and examined.

Evidence concluded, the witnesses withdrew.

The public hearing concluded at 5:26pm.

6. **Next meeting**

The Chair adjourned the meeting at 5:26pm.

The next meeting will be held on 18 August 2022 at a time to be determined.

Meeting no. 21

TIME & DATE	9.21AM, 18 AUGUST 2022	LOCATION	JUBILEE ROOM, PARLIAMENT HOUSE AND VIA WEBEX VIDECONFERENC
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MEMBERS PRESENT

Mr Ray Williams (**Chair**)

Via WebEx videoconference: Mr Edmond Atalla, Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Jennifer Gallagher, Gerard Rajakariar

APOLOGIES

Mr Geoff Provest (**Deputy Chair**), Ms Tamara Smith

AGENDA ITEM

1. Recording of Deliberative

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That the Committee authorise the Webex recording of the deliberative to assist with the completion of the minutes and that it be deleted after the confirmation of minutes by the Committee.

2. Confirmation of minutes

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the minutes of the meeting and public hearing of 12 August 2022 be confirmed.

3. Correspondence

The Committee noted the following correspondence:

- 3.1. 16 August 2022 – Email from Nathan Boulous, Research and Policy Officer, Urban Development Institute of Australia (NSW), declining invitation to attend the public hearing of 18 August 2022.

-
- 3.2. 16 August 2022 – Email from Lauren Conceicao, NSW Deputy Executive Director, Property Council of Australia (NSW), declining invitation to attend the public hearing of 18 August 2022.
-

4. **Inquiry into embedded networks in NSW**

4.1. **In camera hearing on 18 August 2022**

- 4.1.1. The Committee noted that the in camera hearing will commence following the deliberative meeting.
- 4.1.2. The Committee also noted that only members, the secretariat and Hansard may be present, and that the witness will be appearing via WebEx videoconference.

4.2. **Public hearing on 18 August 2022**

- 4.2.1. The Committee noted that the public hearing will commence at 10:00am.
- 4.2.2. The Committee also noted the hearing schedule and suggested questions for witnesses.
- 4.2.3. The Committee considered the procedural resolutions for the conduct of the public hearing.

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla, *in globo*:

- a) That the Committee authorises the audio-visual recording, photography and broadcasting of the public hearing on 18 August 2022 in accordance with the NSW Legislative Assembly's guidelines for coverage of proceedings for parliamentary committees administered by the Legislative Assembly.
- b) That the corrected transcript of evidence given on 18 August 2022 for the public hearing be authorised for publication and uploaded on the Committee's website.
- c) That witnesses be requested to return answers to questions taken on notice and any supplementary questions within 14 days of the date on which the questions are forwarded to the witness, and that once received, answers be published on the Committee's website.
- d) That the Webex videoconference be recorded to assist with the transcription of the hearings, to be deleted upon the confirmation of the final transcript.

4.3. **Transcript of Committee briefing**

The Committee considered the publication of the transcript of the briefing by the Energy and Water Ombudsman NSW (EWON) of 3 August 2022.

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the Committee publish the presentation and transcript of the briefing by the Energy and Water Ombudsman NSW (EWON) of 3 August 2022 with redactions on pages 12-13.

5. **General business**

5.1. **Questions to Urban Development Institute of Australia and Property Council of Australia**

The Committee noted that the Urban Development Institute of Australia and Property Council of Australia have declined to attend the public hearing.

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla:

- a) That the Committee send questions to the Urban Development Institute of Australia (NSW) (**UDIA**) and the Property Council of Australia (NSW Branch) (**Property Council**).
- b) That the UDIA and Property Council be requested to return answers to questions taken on notice and any supplementary questions within 14 days of the date on which the questions are forwarded to them, and that once received, answers be published on the Committee's website.

The Committee also noted that members are to submit their questions for the UDIA and Property Council to the secretariat by close of business on Monday 22 August 2022.

The Chair adjourned the deliberative meeting at 9:30am.

6. **In camera hearing**

The Chair opened the in camera hearing at 9:31am. The witness attended the in camera hearing via WebEx videoconference. The Chair made a short opening statement.

The following witness was admitted:

- Witness A was sworn and examined.

Evidence concluded; the witness withdrew.

The in camera hearing concluded at 10:17am.

7. **Public hearing**

The Chair opened the public hearing at 10:22am. Witnesses attended the public hearing in person and the hearing was broadcast from the Parliament's website. The Chair made a short opening statement.

The following witnesses were then admitted:

- John Tansey, Executive Director, Department of Customer Service was affirmed and examined.
- Katerina Pavlidis, Director, Department of Customer Service was affirmed and examined.

- Andrew Lewis, Executive Director Energy, Office of Energy and Climate Change was affirmed and examined.
- Sophia Vincent, Director, Energy Consumer and Competition Policy, Office of Energy and Climate Change was affirmed and examined.

Evidence concluded; the witnesses withdrew.

The public hearing concluded at 11:44am.

8. **Next meeting**

The Chair adjourned the meeting at 11:44am.

The next meeting will be held at a time and date to be determined.

Meeting no. 22

TIME & DATE	3.35PM, 6 SEPTEMBER 2022	LOCATION	ROOM 1254, PARLIAMENT HOUSE AND VIA WEBEX VIDECONFERENCE
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MEMBERS PRESENT

Via WebEx videoconference: Mr Ray Williams (**Chair**), Mr Geoff Provest (**Deputy Chair**), Mr Edmond Atalla, Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Jennifer Gallagher
Via WebEx videoconference: Gerard Rajakariar

APOLOGIES

Ms Tamara Smith

AGENDA ITEM

1. **Confirmation of minutes**

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the minutes of the meeting of 18 August 2022 be confirmed.

2. **Correspondence**

The Committee noted the following correspondence:

Received

- 2.1. 29 August 2022 – Email from Witness A, regarding the in camera hearing transcript and providing additional details.
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3. **Inquiry into embedded networks in NSW**

3.1. **Publication of in camera hearing**

- (a) The Committee noted the transcript of the in camera hearing of 18 August 2022 with suggested redactions, being Attachment C of the meeting papers. Suggested redactions are to protect the identity of Witness A, protect the privacy of other residents who may not wish for their story to become public and to avoid unnecessarily adversely naming individuals.
- (b) The Committee noted Witness A has indicated that they consent to the publication of the transcript, with identifying details redacted, on the Committee's webpage.
- (c) The Committee considered the transcript and suggested redactions.
- (d) The Committee noted the comments made by Witness A about WINConnect, Toplace and the Energy and Water Ombudsman NSW (EWON).

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That the Committee publish the transcript of the in camera hearing with the suggested redactions on its webpage.

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the committee send a copy of the published in-camera transcript to WINConnect, Toplace and EWON and provide them with an opportunity to respond to the comments made about them in evidence.

3.2. **Publication of Day 2 public hearing with suggested redactions**

- (a) The Committee noted the transcript of the Day 2 public hearing of 18 August 2022 with suggested redactions, being Attachment D of the meeting papers. Suggested redactions are to protect the identity of Witness A and to protect the privacy of other residents who may not wish for their story to become public.
- (b) The Committee considered the transcript and suggested redactions.

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the Committee publish the transcript of the 18 August 2022 public hearing with the suggested redactions on its webpage.

3.3. **Supplementary questions**

- (a) The Committee noted the supplementary questions proposed by the Chair for Origin Energy and Ausgrid, including the linked sound file, and the NSW Government.

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That the Committee send the proposed supplementary questions to Origin Energy, Ausgrid and the NSW Government.

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That each be requested to return answers to those questions within 14 days of the date on which the questions are forwarded to them, and that once received, answers be published on the Committee's website.

3.4. **Questions for developer bodies/associations**

- 3.4.1. The Committee noted questions proposed by the Chair for the Urban Development Institute of Australia (NSW) and Property Council of Australia (NSW), including attached sound file.

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the Committee send the proposed question to the Urban Development Institute of Australia (NSW) and Property Council of Australia (NSW).

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That each be requested to return answers to that question within 14 days of the date on which the question is forwarded to them, and that once received, answers be published on the Committee's website.

3.5. **Answers to questions on notice received**

- 3.5.1. The Committee noted that answers to questions on notice have been received from Energy Networks Australia (ENA) in relation to their evidence given at the public hearing of 12 August 2022.
- 3.5.2. The Committee noted that these have been published on the Committee's website.

4. **General business**

The Committee discussed the timeline for the preparation and tabling of the report.

5. **Next meeting**

The Chair adjourned the meeting at 3:52pm.

The next meeting will be held on 7 November 2022 at a time to be determined.

Meeting no. 23

TIME & DATE	1.36PM, 12 OCTOBER 2022	LOCATION	LIBRARY CONFERENCE ROOM, PARLIAMENT HOUSE
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MEMBERS PRESENT

Mr Ray Williams (**Chair**), Mr Geoff Provest (**Deputy Chair**), Mr Edmond Atalla, Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Gerard Rajakariar

APOLOGIES

Ms Tamara Smith

AGENDA ITEM

1. Recording of proceedings

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the Committee agree to record the meeting for the purposes of the secretariat preparing the minutes and draft report and that the recording be deleted when the minutes are settled.

2. Confirmation of minutes

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the minutes of the meeting of 6 September 2022 be confirmed.

3. Inquiry into embedded networks in NSW

3.1. Publication of EWON response to transcript comments

The Committee noted that it agreed via email on 13 September 2022 to publish EWON's response to comments made in the transcript dated 18 August 2022.

3.2. Late submission

- 3.2.1. The Committee received a late submission by email on 10 October 2022 from Penny Graham on behalf of her son, Al Graham.
- 3.2.2. The hard copy of late submission (circulated at the meeting) set out proposed redactions, including: standard redactions of personal contact details and named third parties, an amendment at the request of the author and a redaction of confidential information.
- 3.2.3. The submission also refers to an individual.

Resolved, on the motion of Mr Provest, seconded by Mr Crouch: That the Committee authorise submission 40 be published with identifying details and sensitive information redacted.

Resolved, on the motion of Mr Crouch, on the motion of Mr Provest: That the Committee send the redacted submission 40 to Origin Energy and provide an opportunity to respond to the comments made about them in evidence within 14 days.

3.3. Draft report recommendations

Discussion about draft report recommendations ensued.

4. General business

Nil.

5. Next meeting

The meeting adjourned at 1:59 pm until a date and time to be determined.

Meeting no. 24

TIME & DATE	1.00PM, 20 OCTOBER 2022	LOCATION	LIBRARY CONFERENCE ROOM, PARLIAMENT HOUSE
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MEMBERS PRESENT

Mr Ray Williams (**Chair**), Mr Edmond Atalla, Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Francesca Arciuli-Matar, Gerard Rajakariar

APOLOGIES

Ms Tamara Smith, Mr Geoff Provest (**Deputy Chair**)

AGENDA ITEM

1. Confirmation of minutes

Resolved, on the motion of Mr Atalla, seconded by Mr Crouch: That the minutes of the meeting of 12 October 2022 be confirmed.

2. Correspondence

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3. General business

Nil.

4. Next meeting

The meeting adjourned at 1:03 pm until a date and time to be determined.

Meeting no. 25

TIME & DATE	2.03PM, MONDAY 7 NOVEMBER 2022	LOCATION	ROOM 1254, PARLIAMENT HOUSE AND VIA WEBEX VIDEOCONFERENCE
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MEMBERS PRESENT

Mr Ray Williams (**Chair**), Mr Provest (**Deputy Chair**), Mr Edmond Atalla, Mr Adam Crouch

OFFICERS PRESENT

Sam Griffith, Caroline Hopley, Hayley Jarrett, Gerard Rajakariar

APOLOGIES

Ms Tamara Smith

AGENDA ITEM

1. Recording of proceedings

Resolved, on the motion of Mr Atalla, seconded Mr Crouch: That the Committee agree to record the meeting for the purposes of the secretariat preparing the minutes and report amendments and that the recording be deleted when the report is tabled.

2. Confirmation of minutes

Resolved, on the motion of Mr Crouch, seconded by Mr Atalla: That the minutes of the meeting of 20 October 2022 be confirmed.

3. Inquiry into embedded networks in NSW

3.1. In accordance with Committee resolution, dated 12 October 2022, a redacted submission was sent to Origin for an opportunity to respond to comments made about them in evidence.

The Committee noted the following correspondence received:

- Email received 19 October 2022 from Tim O'Grady, General Manager Government Engagement at Origin, regarding comments made about Origin in submission 40.

Resolved, on the motion of Mr Provest, seconded Mr Atalla: That the Committee authorise Origin's comment to be published with identifying details redacted.

3.2. Consideration of Chair's draft report (as circulated)

Committee to consider Chair's draft report on the inquiry into embedded networks in NSW.

Resolved, on the motion of Mr Crouch, seconded Mr Atalla: That the draft report be considered chapter by chapter.

Chapter 1

Resolved, on the motion of Mr Provest, seconded Mr Atalla: That Chapter 1 stand as part of the report.

Chapter 2

Resolved, on the motion of Mr Crouch, seconded Mr Provest: That Chapter 2 stand as part of the report.

Chapter 3

Resolved, on the motion of Mr Atalla, seconded Mr Crouch Atalla: That Chapter 3 stand as part of the report.

Chapter 4

Resolved, on the motion of Mr Crouch, seconded Mr Provest: That Chapter 4 stand as part of the report.

Executive summary

Resolved, on the motion of Mr Provest, seconded Mr Atalla: That the executive summary stand as part of the report.

Appendices One to Five

Resolved, on the motion of Mr Crouch, seconded Mr Atalla: That appendices one to five stand as part of the report.

Resolved, on the motion of Mr Crouch, seconded Mr Atalla:

- That the Committee adopt the draft report, and that it be signed by the Chair and presented to the House.
 - That the Committee authorise the secretariat to make consequential, stylistic, typographical and grammatical edits as required.
 - That, once tabled, the report be published on the Committee's webpage.
 - That, once the report is tabled, the Committee authorise the publication of media relating to the report, including a media release and video.
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4. **General business**

The Chair noted to the Committee that the report will be tabled in the Legislative Assembly on Tuesday 8 November 2022 and that, once tabled, the report will be published on the website. A report tabling video will also be published later this week.

The Chair also noted that the first opportunity for a take note debate will be on Wednesday 9 November. However, the secretariat has been advised that there are a number of reports on the list for take notes this week, so it is more likely for the take note debate to take place on Wednesday 16 November at 12:45pm.

The Chair expressed his thanks to the Committee members for their contributions to the inquiry and the secretariat for their support during this inquiry and the final report.

The Deputy Chair and members thanked the Chair for his leadership in this inquiry and the secretariat for their support.

5. **Next meeting**

The meeting adjourned at 2:16pm.
