Submission on the Exposure Draft

Alternative Electricity Services Code of Practice (On-site Power Supply)

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1. Introduction and Professional Background

I welcome the opportunity to provide feedback on the Exposure Draft of the proposed Alternative Electricity Services (AES) Code of Practice (OPS).

I am a strata and facilities management professional with more than two decades of experience in the Western Australian strata and property management sector. I am the Managing Director of B Strata and B Complex, organisations responsible for the governance, management and operational oversight of a wide range of residential, mixed-use and commercial strata schemes, including both legacy residential schemes and modern developments incorporating shared sustainability infrastructure.

My experience includes working directly with strata companies, councils of owners, residents, service providers and regulators, and dealing with the practical realities of implementing legislative and regulatory requirements within the statutory framework of the *Strata Titles Act 1985 (WA)*.

I am strongly supportive of improved transparency, consistency and consumer protection in utility billing, particularly in strata schemes. However, I am equally concerned that the regulatory model underpinning the AES Code of Practice does not adequately reflect how strata schemes are legally constituted, how shared infrastructure is owned, or how decisions are lawfully made within strata communities.

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2. Support for Regulated Billing and Consumer Protection

There is a clear and longstanding lack of transparency in electricity billing arrangements within many residential strata schemes. This is particularly evident in legacy developments where electricity is supplied through:

- a single parent meter;
- sub-metering arrangements installed decades ago; and
- informal or poorly documented cost-allocation processes.

In these schemes, owners and residents often have limited visibility as to:

- how electricity charges are calculated;
- whether electricity is passed on strictly at cost;
- how common property consumption is treated; and
- how billing queries or disputes may be reviewed or resolved.

A regulated billing framework that establishes minimum standards, clearer disclosure and accessible review mechanisms is both necessary and desirable. The policy objectives underpinning the AES Code of Practice are therefore supported in principle.

However, achieving these objectives in strata environments requires careful alignment with strata law and recognition of the shared nature of strata infrastructure.

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3. Legislative Context: Strata Law in Western Australia

3.1 Origins and Framework

Strata legislation in Western Australia has its conceptual roots in the 1960s, when governments sought to facilitate individual ownership of flats within relatively simple, low-rise residential developments. These early regimes were designed around:

- modest building scale;
- limited shared infrastructure; and
- minimal interaction with broader regulatory frameworks.

These foundational assumptions were later consolidated in the Strata Titles Act 1985 (WA), which remains the primary statute governing strata schemes today. While progressive for its time, the Act was not designed to regulate utilities, consumer billing protections, or service delivery models.

Strata companies were conceived as non-commercial statutory bodies, established to manage common property and administer shared costs through levies, not to operate as utility providers or contract counterparties in regulated energy markets.

3.2 Limited Legislative Review and Structural Inertia

Following its enactment in 1985, the Strata Titles Act experienced limited substantive review for more than three decades, despite dramatic changes in:

- the scale and complexity of strata developments;
- mixed-use and high-density living;
- technological advances; and
- the emergence of embedded energy systems and shared sustainability infrastructure.

Unlike other regulated sectors, strata law was not subject to regular cyclical review. Reform was largely incremental, meaning the core framework continued to reflect assumptions developed more than half a century ago.

3.3 The 2020 Reforms – Progress but Not Redesign

The most significant reform occurred on 1 May 2020, delivering improvements in disclosure, governance, dispute resolution and scheme termination. While important, these reforms were not a structural reset of strata law.

Critically, the reforms did not:

- address utilities or energy supply arrangements;
- provide strata-specific consumer protection frameworks;
- enable individual utility contracts within a collective governance model; or
- contemplate interaction with specialist regimes such as the AES framework.

As a result, modern energy regulation is now being overlaid onto a strata framework that was never designed for it.

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4. Shared Infrastructure and Democratic Governance in Strata

A fundamental feature of strata schemes — and one that must be expressly recognised within the AES framework, is that embedded electricity networks and on-site power supply systems are shared infrastructure.

In a strata context:

- embedded networks, generation systems, solar, batteries and associated metering are common property;
- the infrastructure is not owned by any individual lot owner or occupier; and
- the costs of installation, maintenance and operation are borne collectively by the strata company.

As a consequence, decisions relating to the establishment, operation and regulation of embedded energy infrastructure cannot lawfully or practically be made on an individual basis.

The *Strata Titles Act 1985 (WA)* is intentionally structured around collective ownership and democratic decision-making, requiring matters affecting common property and shared infrastructure to be authorised by:

- resolutions of the strata company;
- passed at a duly convened general meeting; and
- formally recorded in minutes.

This democratic process is not incidental, it is essential. It provides:

- transparency for all owners and occupiers;
- procedural fairness;
- accountability for decision-makers; and
- a clear legal mandate for the use and operation of shared assets.

Any regulatory framework that seeks to impose individual contractual consent requirements in relation to shared strata infrastructure misunderstands both the legal nature of the assets and the governance framework under which they are owned and controlled.

In strata schemes, energy infrastructure is a collective asset, and governance must be collective.

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5. Key Legislative Gaps Affecting Energy Regulation in Strata

5.1 Individual Agreements Are Not Practicable

The AES framework assumes individual contractual relationships between electricity providers and customers. In strata schemes, this assumption is fundamentally incompatible with the way decisions are lawfully made.

There is no mechanism under strata law to:

- compel individual owners or occupiers to enter energy contracts; or

- overcome refusal by a single owner or tenant.

This creates a real risk that a single dissenting party can frustrate a democratic, transparent and otherwise compliant arrangement involving shared infrastructure.

5.2 Strata Companies Are Not Commercial Energy Providers

Strata companies are statutory entities that:

- do not operate for profit;
- typically pass electricity costs on at cost; and
- exist solely to manage and maintain common property.

Treating strata companies as equivalent to commercial embedded network operators ignores their statutory nature and exposes volunteer council members and strata managers to disproportionate compliance risk.

5.3 Absence of Utility Billing and Enforcement Powers

The Strata Titles Act assumes recovery of shared costs via levies, not regulated billing regimes. It does not provide:

- billing enforcement mechanisms;
- hardship and vulnerability frameworks aligned with energy regulation; or
- disconnection and reconnection powers consistent with energy codes.

Expecting strata managers to implement these functions without lawful authority or system capability is unrealistic.

Accordingly, it is essential that any application of the AES framework to strata schemes be accompanied by a clear, enabling framework that allows strata companies, through their established democratic processes, to lawfully adopt appropriate regulated billing regimes, administer and subsequently comply with these requirements.

5.4 Owners vs Occupiers

Strata companies generally have a legal relationship with **owners**, not tenants. Energy frameworks, however, focus on **occupiers**, creating immediate complications in:

- customer identification;
- consent and disclosure obligations; and
- enforcement of obligations where the occupier is not the lot owner.

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6. Implications for the AES Code of Practice

Without modification, the AES Code of Practice risks being structurally misaligned with strata law, particularly in residential schemes.

Requiring individual agreements for services delivered via shared strata infrastructure:

- undermines democratic governance;
- ignores the collective ownership of assets; and
- creates compliance obligations that strata companies are not legally equipped to meet.

To be workable, the AES framework must:

- recognise strata company resolutions as the lawful authorisation mechanism;
- accommodate collective ownership and shared infrastructure; and
- be implemented alongside reform or formal adaptation of strata legislation.

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7. Impact on Strata Managers

Strata managers are not energy retailers. They:

- invoice owners, not tenants;
- rely on management software not designed for regulated energy billing; and
- already operate under increasing regulatory burden.

Applying AES obligations without strata-specific adaptation risks transferring regulatory obligations to strata managers that they are neither resourced nor authorised to discharge.

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8. Recommendations

8.1 Recognise Embedded Networks as Shared Strata Infrastructure Governed Collectively

The AES Code of Practice should expressly acknowledge that, within strata-titled schemes:

- embedded electricity networks and on-site power supply systems constitute shared infrastructure and common property;
- such infrastructure is not owned by individual residents; and
- decisions relating to supply, billing and compliance must be made collectively.

Accordingly, the Code should provide that a resolution of the strata company, passed at a general meeting in accordance with the *Strata Titles Act 1985 (WA)*, is a lawful and sufficient authorisation mechanism for electricity supply arrangements, without requiring individual customer contracts.

8.2 Introduce a Strata-Specific Regulatory Pathway

The AES framework should include strata-specific provisions, including simplified or deemed-compliance pathways for not-for-profit strata companies that on-charge electricity at cost.

8.3 Align the AES Framework with Strata Legislation

Implementation should occur in parallel with reform of the *Strata Titles Act 1985 (WA)*, or include statutory adaptations that resolve governance conflicts.

8.4 Provide a Mechanism Where Agreement Cannot Be Reached

The framework should address circumstances where individual refusal undermines democratically authorised shared infrastructure arrangements.

8.5 Avoid Transferring Disproportionate Risk to Strata Managers

Strata managers should not be treated as energy retailers by default, and compliance expectations must be proportionate, realistic and clearly defined.

8.6 Support, Not Undermine, Sustainability Outcomes

The AES framework should actively support owner-controlled embedded networks that deliver sustainability and cost benefits to strata communities.

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9. Conclusion

I support the policy intent of improving transparency and consumer protection in on-site power supply arrangements.

However, embedded energy infrastructure in strata is shared common property, and democratic governance is essential. Without recognising this, the AES Code of Practice risks imposing obligations that are impracticable, disproportionate and inconsistent with strata law.

Meaningful reform requires alignment between energy regulation and the strata legislative framework on which these communities are built.

Recommendations to the AES Code of Practice (OPS)

Recognise embedded networks as shared strata infrastructure governed collectively

Relevant AES Code sections:

- **Clause 8 – Content of OPS contract**
- **Clause 7 – Disclosure statement**
- **Part 2 – Terms used (definitions of "customer", "OPS contract", "OPS supply address")**

Issue in the Code:
Clauses 7 and 8 assume that an OPS service provider will enter into an individual contract with each customer before OPS services are provided.

Strata impact:
In strata schemes, OPS systems and embedded networks are shared common property, not individually owned infrastructure. Requiring individual OPS contracts is inconsistent with:

- collective ownership of the infrastructure; and
- democratic governance through strata company resolutions.

Recommendation:
The Code should include a strata-specific carve-out or deeming provision within **Clause 8** (Content of OPS contract), providing that:

- where OPS services relate to shared strata infrastructure approved by a valid strata company resolution,
- the resolution is taken to satisfy the requirement to "enter into an OPS contract" for the purposes of the Code.

Introduce a strata-specific regulatory pathway

Relevant AES Code sections:

- **Part 3 – OPS service provider requirements (General requirements)**
- **Part 4 – Billing**
- **Part 5 – Financial hardship and family violence**

Issue in the Code:
The Code applies uniform obligations to all OPS providers, regardless of whether they are:

- commercial operators, or
- not-for-profit strata companies passing electricity on at cost.

Strata impact:
This creates disproportionate compliance risk and cost for residential strata schemes that do not present the same consumer risk profile as commercial embedded networks.

Recommendation::
A strata-specific schedule or modified application clause should be added to the Code, allowing:

- simplified compliance under Parts 3, 4 and 5 for strata companies; or
- deemed compliance where electricity is allocated at cost in accordance with a strata resolution.

Align the AES framework with strata legislation

Relevant AES Code sections:

- **Entire Code (structural issue)**
- **Clause 3 – Terms used**

Issue in the Code:
The Code is drafted without reference to the *Strata Titles Act 1985 (WA)* or the statutory limits on strata companies' powers.

Strata impact:
Strata companies are expected to comply with obligations for which they have no enabling authority under strata legislation.

Recommendation:
Part 1 (Preliminary) or Clause 3 (Terms used) should include:

- express recognition of strata companies as statutory bodies; and
- acknowledgment that compliance obligations operate subject to the powers and decisions authorised under strata legislation.

Provide a mechanism where agreement cannot be reached

Relevant AES Code sections:

- **Clause 8 – Content of OPS contract**
- **Part 6 – Disconnection and reconnection**

Issue in the Code:
The Code assumes that refusal to enter an OPS contract is a valid customer choice without addressing collective infrastructure scenarios.

Strata impact:
A single owner or occupier can frustrate implementation of a democratically approved shared energy system, risking non-compliance by the strata company.

Recommendation:
Clause 8 should be modified to clarify that:

- refusal by an individual owner or occupier does not invalidate OPS arrangements approved by strata resolution; and
- enforcement and continuity provisions apply at the strata-company level where infrastructure is shared.

Avoid transferring disproportionate compliance risk to strata managers

Relevant AES Code sections:

- **Part 4 – Billing (Clauses 19–26)**
- **Part 5 – Financial hardship and family violence**
- **Part 7 – Complaints and dispute resolution**

Issue in the Code:
These Parts assume the OPS provider has:

- direct customer relationships;
- billing systems capable of regulated energy billing; and
- authority to manage hardship, arrears and disconnections.

Strata impact:
Strata managers:

- do not invoice tenants;
- lack regulatory enforcement powers; and
- rely on software not designed for regulated energy billing.

Recommendation:
The Code should clarify that:

- strata managers acting on behalf of strata companies are not taken to be OPS providers in their own right; and
- compliance responsibility sits with the strata company, subject to its statutory capabilities.

Ensure sustainability outcomes are not undermined

Relevant AES Code sections:

- **Clause 7 – Disclosure statement**
- **Clause 8 – OPS contract**
- **Part 3 – General requirements**

Issue in the Code:
Uniform contractual and disclosure requirements risk making owner-controlled embedded networks unviable.

Strata impact:
This may unintentionally discourage:

- installation of solar, batteries and shared energy systems; and
- collective sustainability initiatives supported by strata owners.

Recommendation:
The Code should expressly acknowledge owner-controlled strata energy systems and provide:

- proportional disclosure and contracting requirements; and
- a pathway that preserves the economic viability of shared sustainability infrastructure.