

**Submission
No 15**

EMBEDDED NETWORKS IN NEW SOUTH WALES

Organisation: The Law Society of NSW

Date Received: 24 June 2022



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref:PLC:JvdPgl240622

24 June 2022

Mr Ray Williams MP
Chair
Legislative Assembly Committee on Law and Safety

Via [Inquiry submission portal](#)

Dear Chair,

Inquiry into embedded networks in New South Wales

The Law Society of NSW appreciates the opportunity to provide comments in relation to the current Inquiry into embedded networks in NSW being conducted by the Legislative Assembly Committee on Law and Safety. The Law Society's Property Law Committee has contributed to this submission.

Our submission focuses on the third and fourth limb of the Terms of Reference for the Inquiry:

- 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

We are particularly interested in the effect of embedded networks on NSW residents living in strata schemes, and policy and legal solutions which might address these impacts.

In our members' experience, the most significant effect of embedded networks on residents in a strata scheme is that tenants and owner occupiers may be disadvantaged in terms of price competition. They are often unable to obtain the same level of consumer protections that exist when energy is purchased from an Authorised Energy Retailer, as distinct from an Exempt Seller. Despite there being benefits of such networks for owners corporations in terms of infrastructure costs and better rates due to bulk buying, once the owners corporation is well established, often lot owners may effectively be 'locked into' uncommercial arrangements by the developer in relation to an embedded network.

We note the terms of section 132A of the *Strata Schemes Management Act 2015*, which was inserted by the *Fair Trading Legislation Amendment (Reform) Act 2018*, and commenced on 1 October 2019. This section limits the term of an agreement for the supply of electricity, gas or any other utility with an owners corporation, except the section specifically does not apply

to “any agreement to supply electricity to residents in strata scheme through an embedded network”:

132A Agreements for supply of electricity, gas or other utilities

- (1) An agreement (including any additional term under an option to renew) for the supply of electricity, gas or any other utility with an owners corporation expires (if the term of the agreement does not end earlier or is not ended earlier for any other reason)—
 - (a) at the conclusion of the first annual general meeting of the owners corporation if the agreement was executed before the meeting, or
 - (b) in any other case, 3 years after the date on which the agreement commenced.
- (2) Nothing in subsection (1) prevents the owners corporation from renewing an agreement for the supply of electricity, gas or any other utility by resolution at a general meeting on or after the expiry of the agreement.
- (3) An agreement for the supply of electricity, gas or any other utility in relation to a strata scheme that commenced before the commencement of this section expires 10 years after the date on which the agreement commenced (unless the term of the agreement ends earlier or is ended earlier for any other reason).
- (4) This section **does not affect any agreement to supply electricity to residents in strata scheme through an embedded network.**

As part of the current review of strata legislation, in November 2021, the Department of Customer Service published its Report on the statutory review of the *Strata Schemes Development Act 2015* and *Strata Schemes Management Act 2015*.¹ The issue of embedded networks is extensively examined in Chapter 5.2.4 - Utilities contracts. Importantly, the Report makes several Recommendations which, if adopted, appear to us to address many of the concerns in relation to embedded networks in strata schemes that have been raised in the context of the review of strata legislation. Specifically, those recommendations are:

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| Recommendation 120 | Extend the application of section 132A of the Management Act to contracts for the supply of electricity through an embedded network. |
| Recommendation 121 | Explore the feasibility of allowing certain longer initial utility contracts in cases where they are required to deliver sustainability measures. Such sustainability measures would need to ensure a minimum building rating of NABERS five star and be demonstrated as delivering positive benefits for the owners corporation over the duration of the contract. |
| Recommendation 122 | Introduce 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 123 | Update Fair Trading strata information to provide additional information on embedded networks in strata schemes. |

¹ <https://www.parliament.nsw.gov.au/tp/files/81193/DCS%20-%20Statutory%20Review%20on%20Strata%20Scheme%20Legislation.pdf>

The Law Society supports Recommendation 120, the extension of the operation of section 132A to contracts for the supply of electricity through an embedded network. We also support Recommendation 121 as seeking to balance the benefit of longer term utility contracts in delivering sustainability measures.


Recommendations 122 and 123 touch on the other main issue with embedded networks in strata schemes, namely the lack of transparency for purchasers buying into new or existing buildings who usually have limited or no visibility of existing embedded networks in the strata scheme. We support exploring the proposal for improved disclosure outlined in Recommendation 122, although we foresee some difficulty in disclosing certain aspects as outlined, and practical issues, such as who would have the responsibility of preparing the information to be disclosed.

We support the updated provision of general information about embedded networks in strata schemes on the Fair Trading website as suggested by Recommendation 123. We also note the development of the Strata Hub by Fair Trading which has recently commenced operation. We understand that as the Strata Hub is further developed, additional information regarding strata schemes will be made available through the Strata Hub. Consideration could be given to disclosing information regarding embedded networks in a scheme at an appropriate stage in the phased implementation of the Strata Hub. This may assist both prospective purchasers and tenants.

An additional issue that arises for some owners corporations is the cost of installing additional infrastructure at the end of any embedded network agreement. Installing a meter for every lot when there has previously been a single meter for the whole building, for example, can be extremely expensive. This aspect is difficult to mitigate through a legislative or policy solution. However, it is again a situation where greater transparency of the status of embedded networks in a strata scheme would benefit prospective purchasers.

If you have any further questions in relation to this submission, please contact Gabrielle Lea, Policy Lawyer on (██████████) or email: ██████████.

Yours sincerely,

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Joanne van der Plaats
President