

EMBEDDED NETWORKS IN NEW SOUTH WALES

Organisation: Strata Community Association (NSW)

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Embedded Networks Review

Strata Community Association (NSW) Submission

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INTRODUCTION

Strata Community Association (NSW), formerly the Institute of Strata Title Management and founded in 1980, is the peak industry body for Strata and Community Title Management in New South Wales. SCA (NSW) has more than 3,000 members including lot owners, suppliers to the sector and professional strata managers who oversee, advise, or manage a combined property portfolio with an estimated replacement value of over \$400 Billion. There are currently 83,998 Strata and Community Title Schemes in NSW, of which 95 percent are residential lots. There are 961,544 Strata and Community Title lots in the states. ¹ SCA (NSW) proudly fulfills the dual roles of a professional institute and consumer advocate.

NSW leads the way in the trend to higher density living in Australia with apartments accounting for more than half of all new dwellings expected to be built to 2032. Based on the 2020 Australasian Strata Insights Report, there are 2,200,793 people living in apartments in across Australia, over half (51 percent) are in NSW, followed by 21 percent in Victoria and 16 percent in Queensland. ² New South Wales also has the highest proportion of apartment households relative to all occupied private dwellings (at 22 percent).

Strata is responsible for the direct employment of 1413 managers throughout NSW, as well as a total of 1317 other related employees. ³ SCA (NSW) has strived to foster a high standard of professionalism within the strata services industry with initiatives like the Professional Standards Scheme (PSS), which is helping to facilitate strong consumer outcomes for the over 1 million strata residents in NSW. SCA (NSW) membership ranges from large corporate companies to small family businesses to volunteers. They have expertise in all facets of strata management, service provision and governance.

For further information about this consultation, please contact Shaun Brockman, National Policy and Advocacy Manager, SCA. [REDACTED]

¹ Hazel Easthope, Sian Thompson and Alistair Sisson, Australasian Strata Insights 2020, City Futures Research Centre, UNSW, Accessed at <https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/>

² Ibid, p.8-13

³ Ibid, p8.

SCA (NSW)'S RESPONSE TO THE LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND SAFETY'S EMBEDDED NETWORKS REVIEW

SCA (NSW) is pleased to offer a submission to the Legislative Assembly Committee on Law and Safety's review of the embedded networks system in NSW.

Strata communities are one of the largest consumers of embedded network systems. As the growth of residency in strata titles continues to dramatically expand, and as more and more Australians seek to experience the benefits of strata living, so too does the prevalence of embedded network agreements.

Embedded networks are complex and technical systems, which are often poorly understood by the consumers that engage in their use. As a result, it is a difficult area to ensure that consumers are protected, as lack of understanding, lack of transparency and unfair contracts from bad faith actors may lead to a multitude poor financial and legal outcomes for consumers.

Strata communities may utilise different embedded network systems based on their needs, and there are a variety of assets that embedded network operators may provide potentially provide, including:

- Electricity metering
- Solar infrastructure
- Batteries for energy storage e.g. from solar infrastructure
- EV infrastructure and charging stations
- Water infrastructure, including centralised hot water plants, wastewater infrastructure etc.

SCA (NSW) therefore recognises the importance of a review of the embedded network system in NSW as a step towards ensuring that that lot owners, owners corporations and residents that are currently using embedded networks are afforded the same choices, consumer rights and protections as those using non-embedded energy supply networks.

SCA (NSW) also recognises, and supports, the recommendations made by the Australian Energy Market Commission's (AEMC) Retail Energy Competition Review (2019). The structure of the recommended framework and regulatory changes outlined in the report, tailored to the specific legislative circumstances of the NSW property and energy markets would ensure that consumers are afforded access to a competitive energy market, with lower costs and a higher degree of consumer protection afforded to building owners and residents than that which is currently maintained by embedded network users.

SCA (NSW) recognises that embedded networks must be fair for consumers. 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; consumers must know about any commission, rebate or ownership regime afforded upon the developer.

Referring to the Legislative Assembly Committee on Law and Safety's Terms of Reference, SCA (NSW) will provide insights related to 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:

- *the current legal framework regulating embedded networks*
- *changes to the legal framework proposed by the Australian Energy Market Commission in its 2019 review on updating the regulatory frameworks for embedded networks*
- ***the effect of embedded networks on NSW residents and businesses, including any health or safety concerns***
- ***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***
- *any other related matters.*

Key Issues

When purchasing into a strata scheme, future owners are often unaware of the existence and involvement of a scheme in an embedded network. This can be attributed to both the complexity and general lack of understanding of what an embedded network system is, and the lack of rigorous disclosure requirements when buying into a scheme.

Lack of knowledge of an embedded network has the potential to cause negative financial and legal outcomes for a potential purchaser of a property.

It is imperative that if a strata scheme engages the services of an embedded network, it be disclosed to a given prospective buyer so that they may have the opportunity to make an informed decision on the effects of the network on their ownership and energy use.

Consumers who are engaged with an embedded network provider generally appear to be at a distinct competitive disadvantage when compared to those who are not. Embedded network consumers are often faced with an unfair situation, where due to the nature of existing supply agreements, embedded network customers are generally limited in their

ability to engage in the market effectively, and consumers have overwhelmingly indicated that they have faced significant challenges when attempting a market operation like changing providers.

Similarly, a lack of access to competitive pricing creates disproportionately high costs, which are ultimately passed on from lot owners to tenants. Whilst in theory embedded network users should have full capacity and ability to access licenced retailers, retailers are not incentivised to render their services to embedded network users, due the costs surrounding embedded network infrastructure and the structure of the market as a whole.

Customers should have the ability to engage in full retail choice, removing the current limitations for a customer to go on-market to find the best price. The same protections offered to a market retail customer should be offered to an embedded network's customer, and they should attract commensurate levels of policing for compliance and penalties for non-compliance.

Shortening contract lengths and ensuring no automatic rollover mechanisms in energy contracts for embedded network users, implemented in tandem with the rest of the AEMC framework, will allow greater oversight and ensure the enforcement of accountability of energy providers serving these customers. SCA (NSW) believes creating equal rights between embedded and non-embedded customers a is critical first step to energy market parity.

Embedded Networks are often installed by a service provider prior to the formation of the strata scheme. Corporations are subsequently charged substantial management and service fees in order to use the infrastructure.

When asked, a large majority of SCA members indicated that the developer did not disclose in the contract that they (the developer) would not be required to pay for maintenance and service of the embedded network infrastructure if the owners corporation signed a long-term service agreement at the FAGM. Similarly, SCA members surveyed indicated that the developer often did not provide the embedded network infrastructure installation agreement prior to the FAGM.

SCA (NSW) suggests that draft embedded networks contracts form part of sales contracts for all off the plan purchases so that buyers are aware of what they are signing up for, further; any commissions, benefits or free installations of equipment should be outlined within this disclosure.

Policy and Legal Solutions to Address the Effects of Embedded Networks

There is a strong necessity for positive developments within the embedded network industry regarding their relationship and interaction with strata. Additional consumer protections are required for both strata managers and owners corporations who do not fully understand the complex embedded networks system, and the legal and financial difficulties that may arise when using an embedded network.

Potential legislative solutions to address the effect and of and concerns about embedded networks could include:

- Amending the conveyancing legislation to require disclosure of embedded network arrangements, especially in relation to sales “off the plan.”
- Amending the SSMA to require that certificates under section 184 include details of embedded network arrangements.
- Amending Section 132A of the SSMA to extend its operation to embedded network arrangements.
- Amending Section 26 of the SSMA to restrict entry into embedded network arrangements during the initial period.

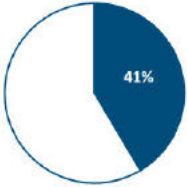
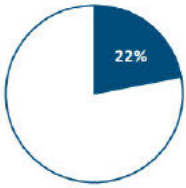
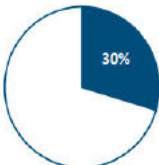
SCA (NSW) supports the expansion of legislation that allows greater autonomy to alter or terminate unfair existing embedded network agreements. Specifically, SCA (NSW) members when surveyed were overwhelmingly supportive of:

- The introduction of legislation that voids all clauses in contracts which seek to charge owners corporations for early termination of embedded network infrastructure.
- 95% of SCA members surveyed believed that the current legislation should be expanded to set aside or vary all current and future unfair embedded network contracts for owners corporations in NSW.

Embedded Networks Case Studies

SCA (NSW) recognises that in when embedded networks are properly engaged and work effectively, there are observable, positive financial outcomes for consumers. For example, as per case studies provided Arena Energy Consulting, owners and occupiers that engage in the services of an embedded network (as opposed to traditional energy supply methods) may realise savings to the effect of:



	<p>Total Savings \$17,000 p.a. 41% \$63 per lot p.a.</p> <p><i>Building details:</i> - 225,000 kWh p.a. - 270 residential lots</p>
	<p>Total Savings \$62,100 p.a. 22% \$230 per lot p.a.</p> <p><i>Building details:</i> - 2,800 kWh per lot p.a. - 270 residential lots</p>
	<p>Total Savings \$10,000 p.a. 30% \$251 per lot p.a.</p> <p><i>Building details:</i> - 30,000 litres hot water per lot p.a. - Gas Cooktop - 40 residential lots</p>

Example 1:

Common area savings per annum of \$17,000 or 41% on a 270-lot residential building.

Example 2:

Residential energy savings per annum of \$62,100 or 22% on a 270-lot residential building.

Example 3:

Residential hot water & gas savings per annum of \$10,000 or 30% on a 40-lot residential building.

Results of internal SCA (NSW) Member Survey on Embedded Networks

SCA members (39 members responded to our internal survey) also had the following feedback notable to this submission:

- A majority said that developers should be paying for infrastructure such as meters, cabling and pipes.
- Approximately half of people thought that they were getting a better deal through their embedded network than other retail prices.
- A vast majority said that the developer did not disclose or provide the embedded network agreement prior to the first AGM.
- A vast majority said the developer did not disclose that they would not need to pay for the embedded network infrastructure.
- An overwhelming number of SCA members surveyed (95 per cent) believed that the current legislation should be expanded to set aside or vary all current and future unfair embedded network contracts for owners corporations in NSW.
- A majority said that the NSW parliament should legislate that any clause which seeks to require an owners corporation to pay for on early termination for embedded network infrastructure it owned at registration is void.
- A majority said that the NSW Government should prohibit the activity of a developer effectively acquiring the embedded network infrastructure for free.
- A vast majority said that if embedded network agreements were to continue they should they be limited to the same maximum term arrangements which strata managing agents are limited to.
- Most respondents stated that if they had tried to change their embedded network provider, they had found it very difficult to do so.
- Over half of the people said that they thought disclosure in off the plan contracts would adequately protect consumers from arrangements including secret commissions, inflated prices and unfair contracts.
- A vast majority of respondents had not compared their embedded network spending to alternative competitive offerings in the past 3 years.

Regarding disclosure, SCA (NSW) is supportive of NSW Fair Trading's Report on the statutory review of the Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015 Recommendation 122, which states:

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.*

Transparency and full disclosure are fundamental requirements for consumer protection, and any current or future contractual arrangements that unreasonably limit access to competitive markets should be prohibited or terminated.

The Government should consider maximum term arrangements for embedded network service agreements. This should include limited fixed term arrangements for FAGM, and then a maximum term allowed for all future contracts. This would serve to assist in avoiding consumers being locked into long-term, unfavourable contracts that are difficult to get out of.

Similarly, automatic roll over agreements should be abolished. Developers should not be able to enter into an embedded network agreement without the express approval of an owners corporation that fully understands the potential risks and outcomes.

NSW Fair Trading should provide both additional information and educational resources on embedded networks in strata schemes. Lot owners and tenants should be appropriately aware of the potential legal and financial ramification of buying into a scheme with an existing embedded network agreement, and be able to be directed to appropriate resources if further information is required.

However, consideration must also be made to the implementation of new rules and regulations and the effect on existing embedded network systems. The Government should consider a longer transition period for those who have existing embedded network agreements to comply with any new or future rules and legislation, to ensure that consumers have an adequate period of time to comply. Alternatively, where cost considerations obstruct the prospects of timely implementation, SCA recommends that legacy networks should be grandfathered into any future regulations.

Ultimately, SCA (NSW) wishes to ensure that all strata community residents are protected from unfair contracts, are able to make decisions based on sound, transparent and well disclosed information and are entitled to the same consumer provisions as other energy network customers.

For further information about this consultation, please contact Shaun Brockman, National Policy and Advocacy Manager, SCA. [REDACTED]