



Australia's property industry

Creating for Generations

27 September 2021

Mr Lachlan Malloch
Manager Real Estate and Housing Policy
Better Regulation Division
Department of Customer Service
via email: lachlan.malloch@customerservice.nsw.gov.au

Dear Mr Malloch,

RE: FURTHER SUBMISSION ON STRATA LAWS STATUTORY REVIEW

Further to the feedback provided at the Property Council's previous consultation session with the Department, we would like to formally submit an additional response surrounding the draft recommendations for changes to the Strata Schemes Management Act 2015 (SSMA) and the Strata Schemes Development Acts 2015 (SSDA).

Access Rights over Shared Facilities – Strata Schemes Development Act

Property Council members have raised concerns surrounding the recommendation in section 1.7 of the SSDA recommendations that a limited set of implied rights over the site of shared facilities should be created for the benefit of any part of the building that is serviced by the facility.

We do not agree that access rights should be implied or mandated in respect of shared facilities or that implied reciprocal easements should be created. Due to the bespoke nature of mixed use developments, the shared facilities in each development will vary. Some will include things such as recreational facilities (for example swimming pools), however many shared facilities also comprise complicated, technical plant, equipment and services which should only be accessed by appropriately qualified contractors engaged by either the building management committee or the owner of the lot on which the facilities are located.

Recommendation:

Remove recommendation 1.7.1 which aims to,

"Create a limited set of implied rights over the site of shared facilities, for the benefit of any part of the building that is serviced by the facility."

Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. nsw@propertycouncil.com.au

propertycouncil.com.au
[@propertycouncil](https://twitter.com/propertycouncil)

Initial Period and power to terminate contracts – Strata Schemes Management Act

Property Council members have raised concerns surrounding the recommendation in section 6.2 of the SSMA recommendations that owners corporations should have strengthened rights to terminate contracts entered into by the developer during the initial period.

We do not agree that the owners corporation should necessarily be able to terminate contracts entered into by the developer, particularly in the context of mixed use developments. As mentioned in our initial submission, mixed use developments are often highly bespoke and individual, and over regulation of mixed-use developments will result in the legislation not permitting sufficient flexibility to manage these bespoke developments. Sanctity of contract and the rights of other building committee members needs to be considered if a contract entered into by the developer applies more broadly than just to the relevant owners corporation.

Recommendation:

Remove section 6.2 of the SSMA recommendations regarding owners corporations powers to terminate contracts entered into by the developer during the initial period.

Initial Maintenance Schedules – Strata Schemes Management Act

Property Council members largely welcome the recommendations contained in section 8 of the SSMA recommendations. However, members have raised concerns in relation to the proposal and recommendation outlined under section 8.5 of the SSMA recommendations. This section recommends that an owners corporation can apply to the Tribunal for an order for compensation from the developer if the initial levies set by the developer and confirmed at the first AGM are later found to be inadequate.

Recommendation:

Amend the recommendations in section 8.5 so that the liability of the developer in respect of the IMS and any shortfall in levies is limited in particular circumstances. For example, if the IMS and initial levies are reviewed and approved by independent specialists then the developer should not be responsible for the deficiency. In addition, as with the Community Land Management Act, the Tribunal should not be permitted to make an order against the developer to pay compensation for inadequate estimates and levies where the developer used due care and diligence in determining the estimates and levies.

Three year contract term limit for Building Managers – Strata Schemes Management Act

Property Council members have raised concerns regarding the reduction of the maximum term for building managers from 10 years to 3 years. We suggest that the 10 years maximum term should remain or, if reduced, that it should not be reduced to as little as 3 years. Building managers perform different functions to the strata managing agent and it is in the interests of the owners corporation that the term of the building manager's appointment has greater longevity.

Recommendation:

Remove recommendation 11.2 which aims to:

'Align maximum term limits with SMAs to 3 years, with renewals allowed'



Australia's property industry

Creating for Generations

Property Council of Australia
ABN 13 00847 4422

Level 1, 11 Barrack Street
Sydney NSW 2000

T. +61 2 9033 1900
E. nsw@propertycouncil.com.au

propertycouncil.com.au
 [@propertycouncil](https://twitter.com/propertycouncil)

Repeal electricity embedded network exemptions – Strata Schemes Management Act

Property Council members do not agree with the recommendation regarding repealing the exemption for embedded networks at section (section 12.1 of the SSMA recommendations). As referred to in our initial submission, current provisions contained in the SSMA (including section and section 132A) adversely impact on a developer's ability to install sustainability initiatives in a new development. We suggest that the carve out contained in s132A(4) should be expanded beyond embedded electricity networks rather than for the carve out to be removed.

Recommendation:

Remove recommendation 12.1 which aims to:

'Repeal the exemption for embedded networks at section 132A(4)'

Should you wish to discuss any of the above please do not hesitate to contact Charles Kekovich, Senior Policy Advisor on ckekovich@propertycouncil.com.au. I look forward to receiving your response in due course.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Luke Achterstraat', is written over a horizontal line.

Luke Achterstraat
NSW Executive Director
Property Council of Australia