

Wednesday 7 April 2021

Strata Schemes Statutory Review  
Policy and Strategy  
Better Regulation Division  
Department of Customer Service

via online upload

### **UDIA NSW Submission on Statutory Review of the NSW Strata Schemes Laws**

The Urban Development Institute of Australia NSW (UDIA) is the leading industry body representing the interests of the urban development sector and has over 500 member companies in NSW. UDIA NSW advocates for the creation of liveable, affordable, and connected smart cities.

Our Standing Policy Committees are the cornerstone of UDIA NSW policy development and advocacy. The Strata, Community and Building Committee (Committee) promotes the development of strata and community title and the ongoing sustainability of the community for the residents that live in the community. The Committee provides a development perspective with a strong focus on building regulation, establishing new schemes, renewal and dispute resolution.

The Committee have formulated UDIA's response to each question contained in the November 2020 Discussion Paper on the Statutory Review of the NSW Strata Schemes, and can be found overleaf.

The Committee would be pleased to be part of further consultation and engagement with the Department of Customer Service in relation to the reform and implementation of the amended Strata Schemes Development and Management Acts.

Please contact Kit Hale on 02 8330 6907 and [khale@udiansw.com.au](mailto:khale@udiansw.com.au) in relation to any further matter or enquiry arising from this submission.

Question	UDIA Response
1. Are the current objectives of the Development Act still valid? If not, how should they be changed?	The overall objectives are still valid and relevant to contemporary practice.
2. How successful is the Development Act in fulfilling those objectives?	The Act has been quite successful in achieving its objectives. The Act has given a scaffold of negotiating with known end result which has been beneficial to practitioners in the industry. UDIA would like to see the processes under Part 10 of the Act remains strong, otherwise the number of terminations will decrease and opportunities for urban renewal near existing transport hubs will diminish.
3. Are there other objectives that should be included? If so, please identify what these should be and explain why.	UDIA supports the current objectives of the Act as currently drafted. The legislation is enabling a balance of interests to work well.
4. If the objectives should be expanded, what corresponding measures would be needed in the Development Act to give effect to those objectives?	Further consideration of Building Management Committees should be considered.
5. Are the key steps and safeguards imposed by the legislation appropriate, or are these too complex or costly? Should any of these steps be changed?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
6. Is the information required to be included in the strata renewal plan enough, or should the legislation require more information? If so, what information should be required for owners to properly assess a strata renewal proposal?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
7. Are the timeframes imposed in the strata renewal process reasonable, or should any of these be adjusted?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
8. Are other improvements needed to the strata renewal process? Why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
9. Should the legislation distinguish between residential and commercial strata owners in the strata renewal process? If so, should the Development Act provide additional protections for commercial lot owners?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
10. Should tenants have more involvement in the renewal process, other than being notified that a strata renewal plan has been developed, for which court approval is being sought (section 178)?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment. Owner's equity outranks tenant's interest with respect to the renewal process, while respecting current lessees in place.

Question	UDIA Response
11. Should the Development Act provide more guidance for treatment of leases in strata renewal proceedings?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment as there are too many variables and leases have their own separate & numerous specific obligations on the parties.
12. Is more guidance needed on how compensation applies to lot owners and their tenants? Who should be responsible for paying compensation to the tenant?	UDIA believes this issue falls outside the scope of these Management Acts.
13. How successful has the strata renewal process been in encouraging owners to consider collective sale/redevelopment options?	UDIA supports this section of the Act as is currently drafted as it has been successful and provided a framework for fruitful negotiation. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
14. Are the provisions encouraging parties to settle in a positive manner, or only to avoid protracted disputes?	The provisions are successful, strata is no longer viewed as a development blackspot.
15. What alternative methods are being pursued to achieve collective sales (eg, options, interdependent deeds of sale)? How effective are these alternative methods?	UDIA notes feedback from the membership that very few renewals have gone through the full process under Part 10. The existence of a pathway has increased the number of terminations under pt 9 of the SSSA2015. However, if the process under pt 10 appears weak or ineffectual, the number of terminations will decrease and opportunities for urban renewal near existing transport hubs will diminish.
16. Should the current requirement to act in good faith and to disclose conflicts of interest be extended to dissenting owners? Should the Court be required to consider these aspects in relation to an objection to a strata renewal plan, as well as to the application?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment except to note that all owners being treated the same would be appropriate.
17. Should section 188 be expanded to provide more guidance to the Court in relation to matters to be considered when making a costs order? How should the legislation deal with a dissenting owner who presses an objection on unmeritorious grounds? Should the dissenting owner be required to bear some or all of its costs?	UDIA does not have a position on this issue.
18. Section 180 lists those who may lodge an objection to an application to the Land and Environment Court. Should an objecting party be required to disclose if they have or have had any further interests in the court proceedings? Should the same apply for those who may be joined as a party to the proceedings (section 181(6))?	UDIA supports the proposal as drafted.

Question	UDIA Response
19. Are the lapsing provisions in section 190 of the Development Act effective, and should any changes be made? Are there any circumstances in which a lapsed strata renewal plan should be able to be resubmitted within the 12 month period?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
20. Are management statements effective in regulating mixed-use developments and setting out interested parties' rights and obligations? If not, why not, and how could the legislation be improved?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
21. Are there circumstances where a strata management statement should not be required (for example, where the commercial lot area is relatively small, compared to the residential strata scheme)? If so, how could the various interests in the building be effectively managed without a management statement?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
22. Are the matters set out in Schedule 4 for inclusion in the strata management statement sufficient? If not, what other matters should be prescribed and why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
23. Should the legislation require the management statement to balance the rights of various lot owners in some way? How could this be achieved?	UDIA requests a requirement that the shared facilities allocations be prepared by an appropriately qualified professional.
24. What improvements could be made to the governance of building management committees and their meeting processes?	Members who are not party to a shared facility should not have a vote on matters relating to that shared facility.
25. What measures could be implemented to reduce conflicts of interest and unfair contracting in mixed-use schemes?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
26. Should existing contracts negotiated by the building management committee automatically apply to new lot owners as they join the committee? How can the legislation be improved to deal with this issue?	Yes, UDIA agrees that new lot owners should join the existing contracts.
27. Should there be limits on how long managing agents are appointed for by the building management committee? Should this apply to other types of contract? What would be a reasonable restriction?	UDIA believes a reasonable restriction is a 5 year term limit for a strata agent.
28. Should a duty of good faith be imposed on strata managers and building management committees?	UDIA notes the current requirement of having a strata manager appointed ensures the fiduciary relationship.

Question	UDIA Response
29. Should the requirement for management statements to provide for the fair allocation of shared expenses and the obligation to review that allocation, apply retrospectively to schemes registered prior to the commencement of the reforms (November 2016)? If not, why not?	UDIA believes this a matter for the courts/appropriate legal forum.
30. What other improvements, if any, could be made in relation to responsibility for shared facilities and why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
31. Should voting rights be aligned to the relative contribution of building management committee members to the cost of the shared facilities? Are there any other alternative methods of allocating voting rights that could be implemented?	UDIA supports this proposed approach.
32. What improvements can be made to the legislation that balance the interests of commercial and residential lot owners in a mixed-use development, while ensuring fair decision-making?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
33. What changes would provide fairer outcomes where strata management statements are in place? Should owners corporations be provided with rights and protections similar to those set out under the Management Act – for example, by placing limits on service contract terms?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
34. How can dispute resolution be better managed in mixed-use developments, balancing the needs of commercial and residential property owners?	No, current dispute resolutions are adequate.
35. What, if any, legislative protection is needed for residential owners in the rectification of complaints?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
36. Has the requirement for a qualified valuer's certificate to determine unit resulted in fairer apportionment of contributions? Could this process be improved?	UDIA notes that this requirement works and should not be amended in the pursuit of improvement. It is currently working as intended.
37. Are unit entitlement valuations too costly for the scheme? If so, what other ways could unit entitlements be calculated that is fair to all owners?	No, UDIA believes the current scheme should continue.
38. Should owners have a right to object to a proposal to change unit entitlements without the passing of a resolution, even if they are otherwise unaffected by a strata plan of subdivision?	UDIA does not have a position on this issue.

Question	UDIA Response
39. Should the legislation provide an exception to the requirement for a valuation of all lots in the scheme in any circumstances? If so, what would those exceptions be? What is the alternative proposed method of altering the unit entitlements in those situations?	There should be limited provisions to not require a full valuation, an occasional issue in larger plans (300+) involves a subdivision and change of a wall, which is common property and requires a special resolution for the subdivision and for the unit entitlement.
40. Should there be guidance for valuers in assessing strata plan unit entitlement valuations? If so, what guidance is required?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
41. Do the objects of the Act remain appropriate? Should further policy objectives such as those that guided the 2015 reforms be added to section 3 of the Management Act?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
42. How well have the functions of the committee and office holders been working?	UDIA does not have a position on this issue.
43. Committees can be up to 9 people. Is this size limit working?	UDIA does not have a position on this issue.
44. Under the law, strata committee members have a duty to act in the best interest of the owners corporation and with due care and diligence. How well is this working?	UDIA notes that this is not working well as there is no impact when breached.
45. Are there any other measures that would improve accountability of strata committees? For example by adopting a mandatory code of conduct as in Queensland?	UDIA agrees with this proposal.
46. How well have the eligibility requirements for election to the committee operated? How could they be improved?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
47. Are clear grounds for removing committee members and office holders needed? If so, what should they be?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
48. How have the meeting procedures been operating and are any changes needed? If so, what changes?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
49. Should the meeting procedures be moved from the Management Act to the Management Regulation so they can be changed more easily? Should any parts remain in the Management Act and, if so, why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.

Question	UDIA Response
50. Should the law be changed to permanently allow electronic voting in all circumstances without the need to first pass a resolution? If so, are additional protections for lot owners needed?	UDIA supports this proposal at the discretion of the committee and could be extended to allow for an election.
51. Are there other alternative methods for electronic meetings and voting that should be considered?	UDIA does not have a position on this issue.
52. How have the different ways (teleconferencing, email etc) of voting been working? Are any changes needed? If so, what changes and why?	UDIA notes that they have been working well, no changes required.
53. How well have the limits on proxies worked and are any changes needed? If so, what changes?	UDIA does not have a position on this issue.
54. How well is tenant participation working? How could tenant participation be improved?	UDIA makes the observation that it has not been widely adopted, it is a financial impost on the owner and it should not continue.
55. Are the current durations of appointment and termination notice periods for strata managing agents appropriate? If not, how should they be amended?	UDIA notes that it should be longer (amended to 2 years) but with harsher provisions for poor conduct. 12 months is not long enough to navigate OC's through defects. UDIA notes the termination notice period has been one of the 'policy disaster areas' for the strata industry. The whole extension provisions have been subject to different legal interpretations and novel maneuvers that cloud the real intention of the legislation.
56. Do you think the developer should have to present the owners corporation with the choice of three managing agents at the first AGM.	While UDIA can see the reasoning behind this suggestion, we would suggest that rather than 3 quotes being presented to an AGM, there should be a document that shows they went to tender and the results of that tender are submitted to the AGM for consideration. The current limit of appointment from the first AGM has seen some strata companies declining an invitation to provide a quotation. As noted in response to question 55, the work involved in the formative years of a scheme is very labour intensive and, to that extent, some strata companies are less commercially interested in such appointments.
57. A developer or someone connected with them can't manage a strata scheme in its first 10 years. Is this appropriate? Please tell us why.	UDIA agrees with section 49(3) as it is currently. To have a strata company appointed that is connected to the original developer is a situation where a range of potential and actual conflicts of interest will arise.

Question	UDIA Response
<p>58. Do you think a standard form strata managing agent agreement should be included in the legislation? If so, why?</p>	<p>UDIA are aware of no mandated contract in other professional industries and see no reason why it should be introduced into strata. We note that this suggestion is not being made in respect to building managers. If government were of a mind to introduce such a standard form, we would suggest that rather than a form, the legislation could list a set of conditions that should be in any contract. Any contract needs to provide for the flexibility in the context of what a client needs. The SCA as a professional body provides a 'standard contract' and it seems appropriate that, like other areas of the building industry, the professional body should be providing such a service to its members.</p>
<p>59. Should the law require strata schemes of a certain size to be professionally managed?</p>	<p>UDIA notes that this would be an excellent reform to safeguard the consumer. Rather than a specific size based upon the number of lots, it would seem sensible to include a requirement that related to the size of the annual budget. This would be in keeping with the logic used in the legislation that requires a scheme's accounts to be audited. Thus, an appropriate clause could be that strata schemes containing 10 or more lots and/or an annual budget of \$125,000 or more, must engage a managing agent to assist the owners corporation to perform its functions under the strata legislation. While the critical lot size and budgetary amount might be the subject of some debate, the basic approach would seem appropriate to ensure trust accounts are properly managed and guidance is provided to the owners corporation by a person with knowledge of the obligations of the owners corporation.</p>
<p>60. Are the current conflict of interest laws working? If not, how should they be changed?</p>	<p>UDIA notes there appears to be a contradiction in the legislation in as much as those members of the strata committee need to declare any direct or indirect pecuniary interest, but that same group of people is not required to make any such declaration at a meeting of the owners corporation. This seems particularly odd for smaller schemes where the number of persons gathered at a general meeting might be similar to the number of committee members for that scheme. There appears to be no logical justification for making this distinction.</p> <p>The requirement to declare a "pecuniary interest" rather than any potential or actual conflict of interest seems at odds with the general population's expectation of declaring any conflict of interest.</p>



Question	UDIA Response
61. Are the provisions of the Management Act relating to gifts and commissions easy to understand?	UDIA notes Section 57(2) and (3) prohibiting an agent from accepting gifts or benefits with a value of greater than \$60 is based upon a public service provision and is very much out of place in the commercial world. It would seem more appropriate for all gifts and benefits to be recorded in a central registry of the managing agency that should be made available when a lot owner or authorized person seeks to inspect the books and records for a strata scheme. The clarification that had to be provided by the Commissioner for Fair Trading to the SCA (NSW) as to the items covered by Section 57(3), could be placed in the regulations as example of the exceptions to the strict declaration of Section 57(2).
62. Should there be a general duty of care in the laws to ensure managing agents obtain goods or services at competitive prices?	The general duty is already provided in the Rules of Conduct in as much there is a fiduciary responsibility upon a managing agent to act in the best interests of the owners corporation. Obtaining quotes and recommending or engaging service providers is a responsibility of a managing agent and sometimes that responsibility includes ensuring, for example, repairs are made in a timely manner by an appropriately qualified person. Thus, there is a greater responsibility than simply a criteria of 'competitive price' – it is but one criteria and not the criteria.
63. Should the rules be tightened on disclosures of interest for Owners Corporation contracts?	In relation to managing agents having a potential or actual conflict of interest in engaging service providers that have some connection with the agent, we are aware that a significant number of strata managing agents have an internal conflict of interest declaration policy. This coupled with the fiduciary obligation under the Rules of Conduct would seem sufficient.
64. The managing agent must follow certain rules when they make a decision for the owners corporation. Are these rules appropriate? If not, how can they be improved?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
65. Owners corporations have duties and functions that can be delegated to managing agents (section 57 of the Management Act). If the agent breaches their duties, they will have committed an offence. How well is this working?	UDIA does not have a position on this issue.
66. Do you have personal experience of managing agents being prevented from carrying out their duties under the Management Act because of disputes with the owners corporation? If yes, please describe your experience.	UDIA does not have a position on this issue.
67. In your experience, are the laws to keep the managing agent accountable working well? If not, how can they be improved?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.

Question	UDIA Response
68. Is the law clear on what information the owners corporation is allowed to request from the managing agent and how they get it? If not, please tell us why.	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
69. Do you think the rules of conduct for strata managing agents under the Property and Stock Agents Regulation 2014 are appropriately balanced?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
70. As a resident in a strata scheme, what do you think about the competency of strata managing agents?	UDIA does not have a position on this issue.
71. As a strata managing agent, what additional resources and training do you think you should have access to?	UDIA does not have a position on this issue.
72. How important is it for managing agents to have specialist knowledge about building defects?	Managing agents should have knowledge of the process and be the “gate keeper” to direct the OC to the developer or builder (as appropriate) or in their absence to an appropriately qualified professional.
73. What would you think of the proposal for accreditation of certain licensees under the Property and Stock Agents Act as strata building defects management specialists?	UDIA does not support this proposal as the current regime is adequate.
74. How well is money being managed in the administrative and capital works funds by your owners corporation? Are any changes needed and why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
75. Owners corporations can use money from one fund to temporarily cover the expenses of the other fund. How do you interpret the rules about repayment of money transferred from one fund to the other fund? What should the rule be?	UDIA believes this is antiquated and should be removed. SCM or SMA should be able to transfer between funds.
76. How well have the laws on levies and arrears been working? Please explain why and suggest any changes.	This is a critical update to legislation needed, Section 80, charges to recalcitrant needs to be reinstated. Sec 86(2A) needs to allow for reasonable charges. The 30-days grace period before levy arrears action can be taken is too long and when applied to special levies frustrates the application of those levies to the purposes for which the special levy was deemed necessary.

Question	UDIA Response
77. Are any changes needed to how financial records are prepared, for example, deposits and withdrawals for the owners corporation? Are any changes needed?	The key financials for an AGM seems a duplication when most schemes ask for a full set of financial accounts. Reporting requirements under the Property Stock and Business Agent Act and Regulation have already defined a format of financial reporting, which is superior to the statement of key financial information. It is unlikely that a user is unable to obtain the desired information from regular financial reports but is able to do so from the statement of key financial information, so it is of little use as a supplement. It is highly likely that a user could obtain the desired information from regular financial reports but not from the statement of key financial information, so it is of little use as a replacement.
78. Is a \$250,000 budget the right threshold for compulsory audits to be carried out? If not, what do you think is the right amount?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
79. Could we make it easier for owners corporations to make by-laws? If yes, please tell us how.	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
80. By-laws must be lodged with the Land Registry Services within six months. Is this a reasonable time?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
81. The Registrar General has the power to waive the requirement for by-law changes to be lodged all at the same time, and instead allow changes to be lodged separately. Should there be changes to this power?	Changes should always be consolidated, so remove the Registrar General's power.
82. While owners corporations can make their own by-laws for their strata scheme, there are restrictions on the types of by-laws that can be made. What do you think about prohibiting 'unreasonable' by-laws?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
83. If the law was changed to allow tenants to be able to seek orders challenging by-laws on the basis they are harsh, unconscionable or oppressive, how would this work in your strata scheme?	UDIA strongly views this proposal as unacceptable and does not support, as equity owners deserve the right to set the by-laws.
84. What is your experience with the enforcement of by-laws?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
85. Should by-laws made under old strata laws be compliant with the current law? Why, or why not?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
86. Are there any additional model by-laws that should be included in the legislation? If so, what are they and how would they assist?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.

Question	UDIA Response
87. Under the law, a by-law cannot ban assistance animals e.g. guide dogs. Are any changes needed to the way the laws govern assistance animals?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
88. Should owners corporations be allowed to request proof that an animal is an assistance animal?	Yes
89. Should the Management Act outline what kinds of evidence owners corporations can request as part of proving an animal is an assistance animal? If so, what kinds of information should be taken as proof?	No
90. The NSW Court of Appeal found in 2020, that a by-law imposing a blanket ban on pets was oppressive and therefore invalid under the laws. Should the law allow owners corporations to completely ban pets from a strata scheme? Please tell us why.	UDIA does not have a position on this issue.
91. Do the existing restrictions on the power to make by-laws require any changes? If so, what changes and why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
92. How has record keeping been working? Are any changes needed and if so, why?	UDIA's position is that agents should be doing this better rather than a separate regime being set up.
93. Should keeping electronic records be made compulsory? Why/why not?	Yes
94. How is inspection of records working? Are any changes needed and if so, why?	UDIA supports changes to defining as only for current owners or prospective owners, with fines for those farming strata information for commercial purposes.
95. How are the strata information certificates provisions working? Are any changes needed and if so, why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
96. A landlord must provide a tenant with a copy of the by-laws and the strata management statement if there is one. How is this working? Please describe and suggest what changes might be needed.	UDIA supports SMA's to do this and charge.
97. If a lot owner leases their apartment to tenants, the lot owner must provide the owners corporation with information about the tenants living in their lot within 14 days. Is this notice working? Could this be improved? If so, how?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
98. The law sets out how notices and other documents can be served on or by an owners corporation. How is this working? Please describe and tell us if this can be simplified in any way.	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.

Question	UDIA Response
99. COVID-19 emergency laws, passed in May 2020, allowed owners corporations to approve official documents with the witnessed signatures of two authorised people, instead of affixing the common seal. If this was permanently included in strata laws, is there anything else that should be included?	UDIA believes these should be adopted as normal practice/BAU.
100. To verify that documents are properly executed, should the details of strata committees and strata managing agents be required to be lodged and made available on a publicly searchable register similar to the ASIC company register?	UDIA does not support or agree with this proposal.
101. How have the initial period provisions been working? Are any changes needed, and if so, why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
102. Owners can make changes to common property in connection with their lots if they have authorisation. Either the owner or owners corporation could be responsible for ongoing maintenance. Should the Act outline that a decision needs to be made about who is responsible for ongoing maintenance before any approvals are given to change common property?	UDIA does not have a position on this issue.
103. When making changes to common property such as renovations, is it easy to understand what approvals are needed and when? If no, please tell us why not.	UDIA does not have a position on this issue.
104. Are any changes needed to the types of work that are considered cosmetic work or minor renovations? Please tell us why.	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
105. Should committees be automatically able to make decisions on minor renovations rather than those decisions being delegated by resolution? Please tell us why.	Standing resolutions should be recognized.
106. Should a lot owner always be told the reasons why their request for work or renovations was not approved? If yes, when should the reasons be provided?	UDIA believes this is problematic and not always achievable.
107. Do you have any other suggestions on how to improve approval of changes to common property?	No

Question	UDIA Response
108. Are the provisions relating to common property rights by-laws clear and working well? Do you have any suggestions for improvement?	UDIA suggests the simplest way to fix it is to change s143(1) of the SSMA as follows (added part underlined): <i>An owners corporation may make, <u>alter or repeal</u> a common property rights by-law only with the written consent of each owner on whom the by-law confers rights or special privileges.</i>
109. Does your strata scheme have a licence agreement with your local council for a strata parking area? Have you experienced any issues?	UDIA supports this and it should be encouraged.
110. Have you experienced problems due to parking on common property? If so, how might changes to the law help manage this issue?	Cars that are in breach should be able to be removed.
111. How effectively has the law been in ensuring owners corporations comply with their duty to properly maintain and repair common property?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
112. Do you have any concerns with the statutory duty to maintain and repair common property? How could it be improved?	The claim for damages should be removed.
113. Is the two-year time limit imposed on making a claim for damages for breaching the duty appropriate? If not, what would be an appropriate length of time?	UDIA members have experienced difficulty with this clause and it should be removed.
114. Is it appropriate for the owners corporation to remove parts of the common property from their duty where it is inappropriate to maintain or repair that part of the property? Can you advise of any situations where this has been misused?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
115. Is it appropriate that owners corporations can defer compliance with the statutory duty in situations where they are taking action against an owner for damage to the property? Are you aware of any situations where it has been misused?	This is contrary to principles of mitigating loss. Also, with trend of OCs commencing proceedings on eve of expiry of 2yr and 6yr HBA statutory warranty periods as a matter of course – this has potential to have broad impact.
116. Has the duty impacted owners' corporations' and owners' pursuit of claims for building defects, or arranging of rectification of building defects? If yes, how could this be addressed?	UDIA does not have a position on this issue.
117. The developer must prepare an initial maintenance schedule for the strata scheme's common property to be considered at the first AGM. Do you agree with this? Are the requirements clear? Are any changes needed?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.

Question	UDIA Response
118. Have you experienced any difficulty obtaining the initial maintenance schedule, or information about estimates and levies determined during the initial period, from an original owner/developer?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
119. Have you experienced unrealistic levies being set by an original owner/developer?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
120. Do you have any suggestions for improving the initial maintenance schedule?	No
121. Are 10-year capital works fund plans clear and effective in helping with maintenance and repairs of common property? If no, how could the 10-year capital works fund plan be improved?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
122. The NSW Government is already changing the law to make it easier for strata schemes to install sustainability infrastructure such as solar panels, batteries, digital meters, hot water systems and electric vehicle (EV) charging stations. What other changes to the strata laws could encourage the uptake of sustainability measures in strata and how would they work?	UDIA supports introduction of the legislation.
123. Owners corporations must maintain an appropriate level of building and workers compensation insurance. How are the laws working? Are any changes needed? If so, how?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
124. The law places time limits on contracts for electricity, gas, or other utilities to ensure strata schemes aren't locked into long-term contracts. Are any changes needed? If so, what changes and why?	UDIA supports reasonable time limits on contracts.
125. Embedded electricity networks are privately owned and managed networks that often supply all premises within a specific area or building. Embedded networks generally buy electricity in bulk and then on-sell it to customers inside their network and are currently exempt from the limits on the duration of the contract. Should embedded networks still be excluded from time limits on contracts? If not, what transitional arrangements should be included?	Embedded networks should be subjected to the requirements of any other contract
126. The Management Act includes a list of reasons why the Tribunal can vary or terminate a building manager's agreement, for example, for unsatisfactory performance of duties. Should any more reasons be added, and should they be the same grounds as those that apply to managing agents?	UDIA supports the current reasons

Question	UDIA Response
127. Are the current restrictions on who can be appointed as a building manager appropriate? Why/why not?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
128. Do you support changing the law to introduce a duty of care on the building manager to act in the best interests of the owner's corporation? Why/why not?	UDIA supports suggestion
129. Should building managers be subject to the same or a similar level of regulation as managing agents? Which could include licensing?	UDIA does not support, only one person at this level required whoever provision for contract procurement could be considered.
130. Should the maximum duration of appointment of building managers be further limited in a similar manner to strata managing agents? (Note: managing agents can only be appointed for twelve months at the first annual general meeting and a maximum term of three years after that. The owner's corporation can also renew the agent's appointment.)	UDIA does not believe that BMs should have better standing than SMA's.
131. Should building managers have a statutory duty of care with responsibility for the safety of the building, including its fire safety? If so, what would be the appropriate qualifications, licensing, or accreditation requirements?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
132. Are the current dispute resolution processes effective? If not, please describe and suggest any improvements.	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
133. Does the process for an owner's corporation to directly manage disputes between people work? If no, please describe and suggest any improvements.	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
134. Have you been part of a Fair-Trading strata mediation? Are there any changes that could be made to the process? and if so, why?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
135. Do you have any general feedback on the strata scheme orders available from the Tribunal and how easy it is to get them?	UDIA supports this section of the Act as is currently drafted. The legislation is enabling a balance of interests to work well and UDIA does not support any amendment.
136. Should the Tribunal be able to award damages for breaches of statutory duties under the Management Act? Why/why not?	Yes
137. Should the Tribunal have a general power to order damages, compensation, or other monetary amounts in settling disputes? Why?	Yes, enabled by Vickery v SP 80412 that has addressed this allowing it to happen.
138. There is no cap on the size of the claim that the Tribunal can consider. Should there be?	UDIA does not have a position on this issue.
139. Are the penalties for breach of orders made by the Tribunal adequate? If not, what should they be?	UDIA believes these could be higher.



Question	UDIA Response
140. Do you have any feedback on NSW Fair Trading's role and functions with strata schemes, including any suggestions for improvement?	No comment