

Breaking In Lawfully: The Limits of Emergency Entry in Strata Schemes and Responsibility for Damage

The New South Wales Civil and Administrative Tribunal's decision in *McArthur v The Owners – Strata Plan No. 30924* [2025] NSWCATCD 207 provides useful guidance on the meaning of “emergency” for the purposes of section 122(3) of the Strata Schemes Management Act 2015 (SSMA) and the meaning of ‘damage’ under section 122(6).

The dispute arose after water leakage issue was reported from lot 29 into the bathroom wall of lot 27. The owners corporation was notified that the leak had been continuing for several days, that there appeared to be broken and depressed tiles in lot 29, and that the waterproofing may have been jeopardised. The property manager for lot 29 then asked the owners corporation to organise a plumber to look into the problem urgently.

The owners corporation's contractor entered lot 29, investigated the issue, and carried out remedial work to the shower area. The lot owner later complained that there has been damage to the lot, comprising of:

1. The mismatched tiles;
2. The cracked tiles near the bath; and
3. mould.

Emergency and section 122(3)

Under section 122(2) of the SSMA, an owners corporation may enter a lot to determine whether work is required to be carried out by the owners corporation. In a case that is not an emergency, the entry by the owners corporation requires the consent of the occupier or an order of the Tribunal. However, subsection (3) allows the owners corporation to enter a lot at any time in an emergency.

122 Power of owners corporation to enter property in order to carry out work

- (1) *An owners corporation for a strata scheme may, by its agents, employees or contractors, enter on any part of the parcel of the scheme for the purpose of carrying out the following work—*
- (a) *work required or authorised to be carried out by the owners corporation in accordance with this Act (including work relating to window safety devices and rectification work carried out under Part 11),*
 - (b) *work required to be carried out by the owners corporation by a notice given to it by a public authority,*
 - (c) *work required or authorised to be carried out by the owners corporation by an order under this Act.*
- (2) *An owners corporation for a strata scheme may, by its agents, employees or contractors, enter on any part of the parcel for the purpose of determining whether any work is required to be carried out by the owners corporation in accordance with this Act.*
- (3) *In an emergency, the owners corporation may enter any part of the parcel for those purposes at any time.*
- (4) *In a case that is not an emergency, the owners corporation may enter any part of the parcel for those purposes with the consent of any occupier of that part of the parcel or, if the occupier does not consent, in accordance with an order of the Tribunal under this Division.*
- (5) *A person must not obstruct or hinder an owners corporation in the exercise of its functions under this section.*
Maximum penalty—5 penalty units.
- (6) *An owners corporation is liable for any damage to a lot or any of its contents caused by or arising out of the carrying out of any work, or the exercise of a power of entry, referred to in this section unless the damage arose because the owners corporation was obstructed or hindered.*

Decision in McArthur

The Tribunal accepted that the SSMA does not give an exhaustive definition of “emergency” for section 122(3). It rejected the argument that the examples of emergencies in section 102(5) necessarily constrained the meaning of emergency in section 122:

102 Limits on spending by owners corporation

(5) This section does not apply to expenditure for emergency purposes, including in relation to the following—

- (a) burst or blocked water or sewerage pipes,*
- (b) serious damage caused by a storm, fire or another natural disaster,*
- (c) unexpected electrical or security system failures,*
- (d) glass breakages that affect the security of a building in the strata scheme or could result in damage to the inside of the building.*

Instead, the Tribunal treated the ordinary meaning of the word as “unforeseen occurrence” or “sudden and urgent occasion for action”. The Tribunal emphasised that the owners corporation’s strict duty under section 106 to maintain and repair common property must be kept firmly in mind when deciding whether circumstances amount to an emergency. If there are indications of damage to common property, the owners corporation must act promptly and seriously.

In deciding that there is an “emergency” in the circumstances and the owners corporation is entitled to enter lot 29 to undertake investigative work, the Tribunal took into consideration that the owners corporation was told there was an urgent water leakage issue from lot 29 into lot 27 that had been continuing for three days. It was also told that broken or depressed tiles might be jeopardising waterproofing. When the property manager for lot 29 later asked the owners corporation to “organise the plumber to look into this urgently,” that reinforced the urgency of the situation.

Damage under section 122(6)

The Tribunal in this case also drew a distinction between actual “damage” to lot property and dissatisfaction with the appearance or quality of repair work. It held that replacing old tiles with new tiles of a different colour was not “damage” for the purposes of section 122(6). On the Tribunal’s reasoning, “damage” refers to physical harm such as breaking, disfiguring or harming part of the lot or its contents. A mismatch of tiles may be unattractive, but it is not, of itself, damage.

The only proven physical damage was a cracked tile near the bath, however, the applicant did not provide precise evidence of the cost of repair and the Tribunal declined to estimate the loss by guesswork.

We have considerable experience with these issues and could assist you with any practical challenges you may be experiencing or expect. Please contact us on 02 9929 0226 or enquiries@bannermans.com.au.



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