

New South Wales

Strata Schemes Management Amendment Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to make provision for caretakers who will assist owners corporations in managing the common property of a strata scheme under a caretaker agreement and to regulate those agreements and any transfer of the functions conferred by them, and
- (b) to require owners corporations to make disclosure of caretaker agreements, and
- (c) to allow owners corporations to approach the Consumer, Trader and Tenancy Tribunal for an order providing relief with respect to the operation of a caretaker agreement or the performance of a caretaker, and
- (d) to further limit the decisions that may be made by an owners corporation during the initial period for a strata scheme by preventing the appointment of a caretaker for a term extending past its first annual general meeting, and

- (e) to prevent proxy voting at a meeting of an owners corporation by a caretaker, an on-site residential property manager or a strata managing agent that would personally advantage the caretaker, manager or agent, and
- (f) to limit the duration of the appointment of proxies generally, and
- (g) to restrict the priority voting rights of a mortgagee at a meeting of an owners corporation, and
- (h) to except the Crown and the New South Wales Land and Housing Corporation from certain administrative requirements of the *Strata Schemes Management Act 1996* if they own all of the lots in a strata scheme.

The Bill also makes some saving and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Strata Schemes Management Act 1996* set out in Schedule 1.

Schedule 1 Amendments

Caretakers and caretaker agreements

Schedule 1 [5] inserts new sections 40A–40C.

New section 40A explains that a caretaker is a person who is entitled to possession of a lot or common property and who (otherwise than on a voluntary or casual basis or as a member of the executive committee of the owners corporation) assists the owners corporation in any one or more of the following:

- (a) managing the common property,
- (b) controlling use of the common property by visitors,
- (c) maintaining and repairing the common property.

New section 40B requires a caretaker to be appointed by a written agreement (a ***caretaker agreement***) and limits the term of such an agreement generally to a maximum of 10 years. The functions of a caretaker under a caretaker agreement can be transferred to a new caretaker only with the approval of the owners corporation.

A caretaker may be reappointed for one or more successive periods either after being first appointed by the original owner or by the owners corporation.

New section 40C authorises a caretaker to assist the owners corporation in accordance with the caretaker agreement. The owners corporation may continue to exercise the same functions. Under the new provisions, functions of the owners corporation are not delegated to a caretaker (whereas functions are delegated to a strata managing agent).

Schedule 1 [2]–[4] make minor consequential amendments. **Schedule 1 [6]** makes a related amendment that restates more accurately the duty of the owners corporation with respect to the common property.

Disclosure of caretaker agreements

Schedule 1 [7] requires an owners corporation to make a caretaker agreement available for inspection by interested parties (owners, mortgagees or covenant chargees of lots in the strata scheme and anyone authorised by them).

Schedule 1 [8] obliges the owners corporation to include particulars of any caretaker in a certificate given to any such interested party under section 109 of the Act.

Orders of Consumer, Trader and Tenancy Tribunal

Schedule 1 [10] inserts new section 183A which provides that the Tribunal may make the following orders with respect to a caretaker agreement:

- (a) terminating the agreement,
- (b) requiring the payment of compensation by a party to the agreement,
- (c) varying the term or varying or declaring void any of the conditions of the agreement,
- (d) confirming the term or any of the conditions of the agreement,
- (e) dismissing the application for the order.

An application for an order may be made only by the owners corporation and only on specified grounds.

Further limit on decisions during the initial period

Schedule 1 [9] further limits the decisions that may be made by an owners corporation during the initial period for a strata scheme by preventing the appointment of a caretaker or other person to assist in managing the common property for a term extending past the first annual general meeting.

Restrictions on proxy voting by caretakers and others

Schedule 1 [14] invalidates a proxy vote of a caretaker, an on-site residential property manager or a strata managing agent at a meeting of the owners corporation if it would obtain or assist in obtaining a pecuniary interest for, or would confer or assist in conferring any other material benefit on, the caretaker, manager or agent.

Schedule 1 [17] inserts a definition of *on-site residential property manager* into the Act as a consequential amendment.

Duration of appointment of proxies

Schedule 1 [13] limits the duration of appointment of a proxy to the later of the first anniversary of the day on which it takes effect or the conclusion of the second annual general meeting of the owners corporation held after that day, subject to any earlier termination by its being revoked or that may be provided for in the terms of its grant.

Restriction on priority voting rights

Schedule 1 [11] limits the matters that are subject to priority votes at a meeting of the owners corporation to:

- (a) motions relating to insurance, budgeting or fixing of a levy, in each case that will require expenditure by the owners corporation above an amount prescribed by the regulations, and
- (b) matters that require a special or unanimous resolution of the owners corporation.

Schedule 1 [12] requires a person intending to exercise a priority vote to give the lot owner whose vote would be invalid because of the priority vote at least 2 days' notice of intention to exercise it.

Exception from unnecessary administrative requirements

Schedule 1 [1] excepts the Crown (which includes statutory bodies representing the Crown, such as the New South Wales Land and Housing Corporation) from certain administrative requirements of the Act if the Crown owns all of the lots in a strata scheme.

Savings and transitional provisions

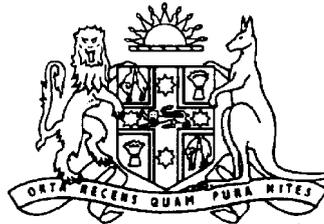
Schedule 1 [15] allows regulations of a saving or transitional nature to be made under the Act that are consequential on the amendments made by the proposed Act.

Schedule 1 [16] provides for certain agreements already entered into to be taken to be caretaker agreements entered into in accordance with the new requirements explained above. Those agreements will be subject to the controls explained above, with some specified variations. This item also inserts a provision into the Act that makes it clear that the amendments relating to proxies explained above apply to proxies appointed before the amendments commence.

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Strata Schemes Management Amendment Bill 2002

No. , 2002

A Bill for

An Act to amend the *Strata Schemes Management Act 1996* with respect to caretakers and caretaker agreements, voting at meetings, and the powers of an owners corporation during the initial period; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Strata Schemes Management Amendment Act 2002*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Strata Schemes Management Act 1996 No 138

The *Strata Schemes Management Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

[1] Section 5 Act binds Crown

(Section 3)

Insert at the end of the section:

- (2) However, Parts 3, 4 and 4A of Chapter 2, Chapter 3 (sections 63–65 excepted) and Chapter 4 do not apply to or in respect of a strata scheme if the Crown is the owner of all lots in the scheme.

Note. The Crown includes statutory bodies representing the Crown, such as the New South Wales Land and Housing Corporation.

[2] Section 9 Who else may be involved in managing a strata scheme?

Omit “either or both” from section 9. Insert instead “any one or more”.

[3] Section 9 (c)

Insert after section 9 (b):

- (c) a caretaker appointed in accordance with Part 4A.

[4] Section 13 Owners corporation may employ persons to assist in exercise of functions

Omit “However, where a strata managing agent is appointed the appointment must be in accordance with Part 4.” from the note to section 13 (2).

Insert instead “For example, a caretaker is required to be appointed under Part 4A.”.

[5] Chapter 2, Part 4A

Insert after Part 4 of Chapter 2:

Part 4A Others assisting in management— caretakers

40A Who is a caretaker?

- (1) A caretaker is a person who is entitled to exclusive possession (whether or not jointly with another person or other persons) of a lot or common property and assists in exercising any one

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- or more of the following functions of the owners corporation for the strata scheme concerned:
- (a) managing common property,
 - (b) controlling the use of common property by persons other than the owners and occupiers of lots,
 - (c) maintaining and repairing common property.
- (2) However, a person is not a caretaker if the person exercises those functions only on a voluntary or casual basis or as a member of the executive committee.
- (3) A person may be both a caretaker and an on-site residential property manager.
- 40B How is a caretaker appointed?**
- (1) A caretaker is required to be appointed by an instrument in writing (a *caretaker agreement*) executed before or after the strata scheme commenced by the caretaker and:
- (a) by the original owner, if executed before the strata scheme commenced, or
 - (b) under the authority of a resolution passed at a general meeting of the owners corporation of the strata scheme concerned, if executed after the strata scheme commenced.
- (2) Unless it expires or otherwise ceases to have effect earlier, a caretaker agreement (including any additional term under any option to renew it) expires:
- (a) at the conclusion of the first annual general meeting of the owners corporation, if the agreement was executed by the original owner, or
 - (b) when 10 years have expired after it commenced to authorise the caretaker to act under it, in any other case.
- (3) The functions of a caretaker under a caretaker agreement may be transferred to another person only with the approval of the owners corporation. A person to whom those functions are transferred is taken to be appointed as a caretaker by the caretaker agreement.

(4)	An owners corporation may terminate a caretaker agreement in accordance with its terms, and may approve a transfer of the functions of a caretaker, if authorised by a resolution at a general meeting of the owners corporation.	1 2 3 4
40C	With which functions of an owners corporation can a caretaker assist?	5 6
(1)	A caretaker may, in accordance with the caretaker agreement appointing the caretaker, assist in exercising one or more of the functions of the owners corporation of managing and controlling the use of common property (otherwise than by the owners or occupiers of lots) and of maintaining and repairing common property.	7 8 9 10 11 12
(2)	However, the owners corporation may continue to exercise all or any of those functions, subject to the caretaker agreement.	13 14
(3)	A person is not a strata managing agent for the purposes of this or any other Act only because the person is a caretaker acting in accordance with a caretaker agreement.	15 16 17
[6]	Section 61 What are the key management areas for a strata scheme?	18 19
	Omit section 61 (1). Insert instead:	20
(1)	An owners corporation has, for the benefit of the owners:	21
(a)	the management and control of the use of the common property of the strata scheme concerned, and	22 23
(b)	the administration of the strata scheme concerned.	24
[7]	Section 108 Inspection of records of owners corporation	25
	Insert after section 108 (3) (h):	26
(i)	if a caretaker agreement is in force or has been entered into but has not yet commenced, a copy of the caretaker agreement.	27 28 29
[8]	Section 109 Certificate by owners corporation as to financial and other matters relating to lot	30 31
	Insert “and caretaker” after “agent” in section 109 (4).	32

[9] Section 113 Restrictions on powers of owners corporation during initial period	1 2
Omit “to hold office as such” from section 113 (1) (c).	3
Insert instead “or a caretaker or other person to assist it in the management or control of use of the common property, or the maintenance or repair of the common property,”.	4 5 6
[10] Section 183A	7
Insert after section 183:	8
183A Orders relating to caretaker agreements	9
(1) The Tribunal may make an order with respect to a caretaker agreement:	10 11
(a) terminating the agreement, or	12
(b) requiring the payment of compensation by a party to the agreement, or	13 14
(c) varying the term or varying or declaring void any of the conditions of the agreement, or	15 16
(d) confirming the term or any of the conditions of the agreement, or	17 18
(e) dismissing the application.	19
(2) An order under this section may be made only on an application made by the owners corporation for the strata scheme concerned on one or more of the following grounds:	20 21 22
(a) that the caretaker has refused or failed to perform the agreement or has performed it unsatisfactorily,	23 24
(b) that charges payable by the owners corporation under the agreement for the services of the caretaker are unfair,	25 26 27
(c) that the agreement is, in the circumstances of the case, otherwise harsh, oppressive, unconscionable or unreasonable.	28 29 30
(3) Any amount ordered to be paid under this section may be recovered as a debt.	31 32

[11] Schedule 2, Part 2 Provisions relating to procedure for meetings	1
Insert “on a motion that relates to insurance, budgeting or fixing of a levy, that will require expenditure above the prescribed amount by the owners corporation or on any matter that requires a special or unanimous resolution” after “a vote” in clause 7 (1).	2 3 4 5
[12] Schedule 2, Part 2, clause 10 Persons entitled to vote at general meetings	6 7
Insert “However, a priority vote has no effect unless at least 2 days’ written notice of intention to exercise the priority vote at the particular meeting has been given to the owner of the lot.” at the end of clause 10 (9).	8 9 10
[13] Schedule 2, Part 2, clause 11 Proxies	11
Omit clause 11 (4). Insert instead:	12
(4) Period for which proxy effective	13
An instrument appointing a proxy has effect for the period commencing with the day on which it takes effect and ending with the later of the first anniversary of that day and the conclusion of the second annual general meeting held after that day, unless it is sooner revoked or a shorter period is provided by the instrument.	14 15 16 17 18 19
[14] Schedule 2, Part 2, clause 11 (7A) and (7B)	20
Insert after clause 11 (7):	21
(7A) Other limits on exercise of proxy	22
A vote by a proxy who is a caretaker, an on-site residential property manager or a strata managing agent is invalid if it would obtain or assist in obtaining a pecuniary interest for, or confer or assist in conferring any other material benefit on, the proxy.	23 24 25 26 27
(7B) For the purposes of subclause (7A), <i>material benefits</i> include, but are not limited to, the following:	28 29
(a) an extension of the term or an additional term of appointment of the proxy as caretaker, on-site residential property manager or strata managing agent,	30 31 32
(b) an increase in the remuneration of the proxy,	33

(c)	a decision of the owners corporation not to proceed with, to withdraw, to delay, to compromise or to settle litigation or other legal proceedings relating to the proxy,	1 2 3 4
(d)	any other decision of the owners corporation that affects litigation or other legal proceedings relating to the proxy.	5 6 7
[15]	Schedule 4 Savings, transitional and other provisions	8
	Insert at the end of clause 1 (1):	9
	<i>Strata Schemes Management Amendment Act 2002</i>	10
[16]	Schedule 4, Part 4	11
	Insert after Part 3 of Schedule 4:	12
Part 4	Provisions consequent on Strata Schemes Management Amendment Act 2002	13 14 15
12	Effect of certain common property management agreements	16
(1)	Any agreement that was in force immediately before the commencement of Part 4A of Chapter 2 that, if entered into after that commencement, would be a caretaker agreement is taken to be a caretaker agreement appointing a caretaker.	17 18 19 20
(2)	However:	21
(a)	the caretaker is not required to be or have been entitled to exclusive possession of a lot or common property either while the agreement is in force or as a precondition to entering into the agreement, and	22 23 24 25
(b)	section 40B (2) does not apply to such an agreement, and	26 27
(c)	an application for an order under section 183A may not be made with respect to such an agreement on the ground that the period for which the agreement is in force is harsh, oppressive, unconscionable or unreasonable.	28 29 30 31 32

13	Effect of certain proxies	1
(1)	In this clause, <i>the amending Act</i> means the <i>Strata Schemes Management Amendment Act 2002</i> .	2 3
(2)	Clause 11 (4) of Schedule 2, as amended by the amending Act, extends to an instrument appointing a proxy that was in force immediately before that subclause was amended by that Act.	4 5 6 7
(3)	Clause 11 (7A) and (7B) of Schedule 2, as inserted by the amending Act, extend to a proxy that was in force immediately before those subclauses were inserted by that Act.	8 9 10 11
[17]	Dictionary	12
	Insert in alphabetical order in Part 1:	13
	<i>on-site residential property manager</i> has the same meaning as in the <i>Property, Stock and Business Agents Act 2002</i> .	14 15