



New South Wales

# Strata Legislation Amendment Bill 2023

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to—

- (a) amend the *Strata Schemes Development Act 2015* (*the SSDA*) and the *Strata Schemes Management Act 2015* (*the SSMA*) to implement some of the recommendations made in the report on the statutory review of both Acts tabled in Parliament on 29 November 2021 (*the report*), and
- (b) make related amendments to the *Community Land Development Act 2021*, the *Community Land Management Act 2021* (*the CLMA*) and the regulations made under the SSMA and the CLMA.

The Bill also makes other minor and consequential amendments to the Acts and regulations.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1      Amendment of Strata Schemes Development Act 2015 No 51

**Schedule 1**[1] implements recommendation 37 of the report. The proposed amendment—

- (a) clarifies that the details that must be publicly notified before making an application to terminate a strata scheme are the details of the scheme that is proposed to be terminated, and

- (b) requires those details and a statement of intention to make the application to be publicly notified not more than 6 months before the application is made, and
- (c) replaces the requirement to publish the details and statement in certain newspapers with a requirement that the details and statement be publicly notified in a way the Registrar-General considers appropriate to ensure notice of the application comes to the attention of the public.

**Schedule 1[6]** implements recommendation 20. The proposed amendment extends the minimum period for which a strata renewal committee may operate from 1 year to 2 years after it is established, if not dissolved earlier.

**Schedule 1[7]** implements recommendations 21, 25 and 28. The proposed amendment—

- (a) enables the Land and Environment Court (*the court*) to make an order giving effect to a strata renewal plan despite a defect or irregularity in certain procedural steps if the court is satisfied that the defect or irregularity has not caused and is not likely to cause substantial injustice, and
- (b) requires the court to consider whether a person who files an objection to an application for such an order has not filed the objection in good faith, including because of a conflict of interest.

**Schedule 1[8]** inserts proposed section 187A and substitutes the SSDA, section 188. Proposed section 187A implements recommendations 23 and 24. The proposed section—

- (a) requires a member of the strata committee to disclose the nature of a direct or indirect pecuniary interest or other interest (a *relevant interest*) the member has in a strata renewal proposal at a meeting of the strata committee at which the proposal is considered, and
- (b) requires an owner of a lot to disclose the nature of a relevant interest the owner has in a strata renewal proposal or strata renewal plan at a general meeting convened to consider the proposal or plan or decide whether to apply to the court for an order to give effect to the plan.

**Schedule 1[5]** adopts the same definition of relevant interest in relation to members of the strata renewal committee and persons nominated for election as a member. The proposed amendment also provides for the matters the owners corporation must consider at a general meeting at which the members are elected, if a conflict of interest has been disclosed by a nominee, and removes the intermediate step requiring members to disclose conflicts at a meeting of the strata committee, which the strata committee must then refer to the owners corporation. **Schedule 1[2], [3] and [4]** make consequential amendments.

Proposed section 188 implements recommendations 26 and 27. The proposed section—

- (a) requires the court to make an order requiring an owner of a lot who has not given a notice supporting a strata renewal plan (a *dissenting owner*) to pay certain costs for proceedings for an application for an order giving effect to the plan, if satisfied the dissenting owner has a conflict of interest that makes it inappropriate, in the court's opinion, for the owners corporation to pay the owner's costs, and
- (b) allows the court to make a costs order against a dissenting owner if satisfied it is appropriate to do so, including because the dissenting owner has not acted in good faith, and
- (c) makes clear that the court may order that costs be assessed on the ordinary basis or an indemnity basis.

**Schedule 1[9]** implements recommendation 31. The proposed amendment creates an exception to the requirement to value each lot in a strata scheme that is not the subject of a proposed strata plan of subdivision if only minor changes to common property will be made and the unit entitlement of each lot will not change.

## **Schedule 2      Amendment of Community Land Development Act 2021 No 6**

**Schedule 2** makes corresponding amendments to the *Community Land Development Act 2021*, section 69 in implementing recommendation 37. **Schedule 2[2]** clarifies that the details that must be publicly notified before making an application to terminate a scheme are the details of the scheme that is proposed to be terminated. **Schedule 2[1]** requires those details and a statement of intention to make the application to be publicly notified not more than 6 months before the application is made.

## **Schedule 3      Amendment of Strata Schemes Management Act 2015 No 50**

**Schedule 3[3] and [47]** implement the second part of recommendation 56. The proposed amendments provide that the value of a vote cast by an original owner of a strata scheme may be reduced only if the scheme comprises more than 2 lots.

**Schedule 3[4]** implements recommendation 62. The proposed amendment requires the original owner or the lessor of a leasehold strata scheme required to convene the first annual general meeting to deliver certain documents to the owners corporation at least 14 days, instead of at least 48 hours, before the meeting.

**Schedule 3[7]** makes clear that the members of a strata committee may be elected at a general meeting called to elect members of the committee and not just at an annual general meeting. **Schedule 3[44]** requires the call for member nominations to be given at the same time notice of the general meeting is given and clarifies nomination procedures. **Schedule 3[6] and [8]** omit related, redundant provisions.

**Schedule 3[10] and [34]** make clear that certain references to an agent are references to a real estate agent within the meaning of the *Property and Stock Agents Act 2002*.

**Schedule 3[13]** implements recommendation 41. The proposed amendment enables an owners corporation to remove a member of the strata committee from office by ordinary, instead of special, resolution. **Schedule 3[12]** implements recommendation 42. The proposed amendment provides that the former member is not eligible for appointment or election as a member for the period of 12 months commencing on the day the resolution is passed. **Schedule 3[14]** makes a consequential amendment.

**Schedule 3[15]** implements part of recommendation 64. The proposed amendment requires a strata managing agent to give the owners corporation written notice of the end of the agent's term of appointment at least 3 months, but not more than 6 months, before the end of the term.

**Schedule 3[16]** implements recommendation 74. The proposed amendment makes clear that, if an owners corporation transfers money from the administrative fund or capital works fund to the other fund, or pays money out of one fund that should have been paid from the other fund, the owners corporation must, within 3 months of the transfer or payment, determine whether the money, or part of the money, should be reimbursed and, if so, the amount to be transferred from the other fund or levied as a contribution to the fund.

**Schedule 3[17] and [18]** implement recommendation 75. The proposed amendments shorten the period after which a contribution levied by an owners corporation becomes due and payable from at least 30 to at least 14 days after notice is given if the contribution is levied for the purpose of carrying out urgent repairs to a building that are necessary to mitigate a serious and imminent threat to the health or safety of the occupants.

**Schedule 3[19]** implements recommendation 77. The proposed amendment extends the requirement for owners corporations of large strata schemes to obtain at least 2 quotations for proposed expenditure exceeding a prescribed amount to all strata schemes. The proposed amendment also requires the quotations to be obtained from persons who are not connected with

each other and for reasons to be given if the owners corporation is not able to comply with the obligation to obtain the quotations.

**Schedule 3[20]** implements recommendation 86 in part. The proposed amendment prohibits an owners corporation from requiring an owner or occupier of a lot to pay a bond or fee relating to the keeping of an animal on the lot or to obtain insurance for the animal.

**Schedule 3[22]** implements recommendations 84 and 85. The proposed amendment—

- (a) makes clear that a by-law has no force or effect to the extent it would prohibit or restrict the keeping on a lot of an assistance animal used by an owner or occupier of the lot or would restrict, or impose an unreasonable burden on a person in relation to, the use of an assistance animal on a lot or common property, and
- (b) specifies the types of evidence that show an animal is an assistance animal, which the person keeping the animal may be required to provide to the owners corporation.

**Schedule 3[21]** makes a consequential amendment.

**Schedule 3[23]** implements recommendation 34. The proposed amendment makes clear that an owners corporation may consolidate the by-laws for the scheme, whether or not a by-law is amended, repealed or added, by special resolution only.

**Schedule 3[24]** implements the first part of recommendation 56. The proposed amendment exempts strata schemes comprising 2 lots from the requirement that a resolution be passed before a notice may be issued requiring an owner or occupier of a lot to comply with a by-law the owners corporation is satisfied the owner or occupier has contravened.

**Schedule 3[25]** implements recommendation 87. The proposed amendment requires the strata roll and other records required to be made or kept by an owners corporation 6 months after the proposed Act commences to be made or kept in electronic form.

**Schedule 3[26], [30] and [35]** implement recommendations 91 and 92. **Schedule 3[26]** requires the real estate agent of a lessor or sublessor of a lot or common property in a strata scheme to give the lessee a copy of the by-laws and strata management statement, and new copies if those documents change, if not given by the lessor or sublessor. **Schedule 3[30] and [35]** require the real estate agent to give the owners corporation notice that a lot has been leased or subleased if not given by the lessor or sublessor. **Schedule 3[32]** enables the tenant to give notice of the lease or sublease if the lessor or sublessor, or the real estate agent of the lessor or sublessor, fails to give notice. **Schedule 3[35]** also provides that the regulations may prescribe the documents or other evidence a tenant must provide in giving notice of the lease or sublease. **Schedule 3[33]** makes a consequential amendment.

**Schedule 3[28]** implements recommendation 71. The proposed amendment allows an application for an order by the Civil and Administrative Tribunal (*the Tribunal*) appointing a strata managing agent or requiring an owners corporation to appoint a strata managing agent to be made by the Commissioner for Fair Trading or, if there is no Commissioner, the Secretary of the Department of Customer Service.

**Schedule 3[36]–[42]** implement recommendation 94. The proposed amendments update references to an electronic address for service. **Schedule 3[43]** makes clear that the regulations may provide for the service of documents, including by prescribing additional methods of service.

**Schedule 3[45]** implements recommendation 49. The proposed amendment extends the minimum notice period for an annual general meeting from at least 7 to at least 14 days before the meeting. **Schedule 3[46]** makes a consequential amendment.

**Schedule 3[48]** implements recommendation 51. The proposed amendment limits the number of owners a company nominee or a person acting under a power of attorney may exercise voting rights on behalf of in a similar way to how the voting rights of duly appointed proxies are limited.

**Schedule 3[49]** implements recommendation 40 in part. The proposed amendment removes the power for a strata committee to determine that a member of the strata committee who has

disclosed a conflict of interest may be present during a deliberation, or take part in a decision, of the committee about the matter to which the conflict relates. **Schedule 3[50]** makes a consequential amendment.

**Schedule 3[51]** implements recommendation 82. The proposed amendment provides that a by-law continued in force by the SSMA is taken to be a valid by-law only if the by-law does not contravene the Act.

**Schedule 3[1] and [2]** insert and amend definitions consequent on other amendments.

**Schedule 3[5], [9], [11], [27], [29] and [31]** make minor amendments to omit redundant words and correct obvious errors.

## **Schedule 4      Amendment of Community Land Management Act 2021 No 7**

**Schedule 4[1]** makes a corresponding amendment to the CLMA in implementing recommendation 62. The proposed amendment requires the original owner convening the first annual general meeting of an association to deliver certain documents to the association at least 14 days before the meeting, instead of at the meeting, or within 3 years after the scheme is registered, whichever is earlier.

**Schedule 4[2]** prevents an association from, during the initial period for the scheme, appointing a managing agent, a facilities manager or another person to assist with the management, maintenance or repair of association property for a period extending beyond the date of the first annual general meeting, unless authorised to do so by an order of the Tribunal.

**Schedule 4[6]** implements recommendation 45. The proposed amendment increases the maximum number of association committee members, for associations with more than 3 members, from 9 to 15.

**Schedule 4[7] and [51]** make similar amendments to Schedule 3[7] and [44].

**Schedule 4[10] and [41]** make similar amendments to Schedule 3[10] and [34].

**Schedule 4[11]–[15]** make similar amendments to Schedule 3[12]–[14].

**Schedule 4[16]** makes a similar amendment to Schedule 3[15].

**Schedule 4[17]** makes a similar amendment to Schedule 3[16].

**Schedule 4[18] and [19]** make similar amendments to Schedule 3[17] and [18].

**Schedule 4[21]** makes a similar amendment to Schedule 3[19].

**Schedule 4[22]** makes a similar amendment to Schedule 3[20].

**Schedule 4[23]** implements recommendation 83. The proposed amendment provides, for consistency with the SSMA, that a by-law or a decision of an association made under a by-law has no force or effect to the extent it would unreasonably prohibit the keeping of an animal on a lot. It is taken to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or association property.

**Schedule 4[24] and [25]** make similar amendments to Schedule 3[21] and [22].

**Schedule 4[28]–[30]** make corresponding amendments to the CLMA in implementing recommendation 91. The proposed amendments require the real estate agent of a lessor or sublessor of certain property to ensure the lease submitted for execution is accompanied by a copy of the management statement, strata scheme by-laws and strata management statement that apply to the land if not done by the lessor or sublessor. **Schedule 4[27]** makes a consequential amendment.

**Schedule 4[31]** makes a similar amendment to Schedule 3[25].

**Schedule 4[33]** makes a corresponding amendment to the CLMA in implementing recommendation 94. The proposed amendment omits references to an Australian address for service, given the address may be an electronic address rather than an Australian postal address.

**Schedule 4[35]** makes a similar amendment to Schedule 3[28].

**Schedule 4[37], [39], [40] and [42]** make similar amendments to Schedule 3[30], [32], [33] and [35]. **Schedule 4[36]** makes a consequential amendment.

**Schedule 4[43]–[50]** make similar amendments to Schedule 3[36]–[43].

**Schedule 4[52]** makes a corresponding amendment to the CLMA in implementing recommendation 49. The proposed amendment requires notice of an annual general meeting of a neighbourhood association to be given at least 14 instead of at least 7 days before the meeting. **Schedule 4[53]** updates a related provision for consistency with Schedule 3[45].

**Schedule 4[54]** makes a similar amendment to Schedule 3[46].

**Schedule 4[55]** makes a similar amendment to Schedule 3[48].

**Schedule 4[56] and [57]** make similar amendments to Schedule 3[49] and [50].

**Schedule 4[58]** makes a similar amendment to Schedule 3[51].

**Schedule 4[3], [5], [8], [20], [26], [32] and [34]** correct obvious errors.

**Schedule 4[4], [9] and [38]** omit redundant provisions and words.

**Schedule 4[59]** amends and inserts definitions consequent on other amendments.

## **Schedule 5     Amendment of other legislation**

**Schedule 5.1[1] and Schedule 5.2[1]** implement recommendation 77. The proposed amendments prescribe \$30,000 as the maximum amount of proposed expenditure for which not more than 1 quotation is required to be obtained by an owners corporation or association.

**Schedule 5.1[2]** omits a provision that is redundant as a result of the proposed amendments in Schedule 3[36]–[42].

**Schedule 5.1[3]** implements recommendation 139. The proposed amendment enables a penalty notice to be issued for the offence of failing to give a lessee a copy of the by-laws and strata management statement, or new copies if those documents change.

**Schedule 5.1[4] and Schedule 5.2[2]** correct minor discrepancies in schedules prescribing penalty notice offences and penalties.