

## **Explanatory note**

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

Overview of Bill

The object of this Bill is to amend the *Strata Schemes Management Act 1996* (the **Principal Act**):

(a) to prevent certain persons from being appointed as strata managing agents or caretakers of strata schemes, and

(b) to require the disclosure by strata managing agents, caretakers of strata schemes and legal practitioners engaged to provide legal services in relation to strata schemes of any connections they have with certain persons, and

(c) to require the disclosure by persons standing for election or appointment as members of the executive committee of a strata scheme of any connections they have to the strata managing agent for the scheme, and

(d) to provide that an owner of a lot in a strata scheme is jointly and severally liable with the occupier of the lot for damage caused by the occupier to the common property, and

(e) to place limits on the number of persons that can reside on a lot in a strata scheme, and

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(f) to enable the Consumer, Trader and Tenancy Tribunal (the **Tribunal**) to make certain orders for the settlement of disputes in respect of strata management statements, and

(g) to make it an offence to contravene an order made under that Act by an Adjudicator or the Tribunal, and

(h) to change the requirements for serving a summons or other legal process on an owners corporation, and

(i) to make other miscellaneous amendments in relation to the administration of strata schemes.

The Bill also makes consequential amendments to the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986*.

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 on the date of assent to the proposed Act.

### **Schedule 1 Amendment of Strata Schemes**

#### **Management Act 1996 No 138**

#### **Amendments relating to strata managing agents, caretakers, legal practitioners and executive committee members**

**Schedule 1 [1]** inserts proposed sections 27A and 27B into the Principal Act.

Proposed section 27A prevents the original owner, and certain other specified persons connected with the original owner, from being appointed as a strata managing agent and requires an owners corporation or executive committee to terminate an appointment that has been made on becoming aware that the strata managing agent is such a person.

Proposed section 27B requires a person to disclose certain connections that the person has to other specified persons before accepting an appointment as a strata managing agent. If the connection forms after the appointment, the disclosure must be made as soon as the strata managing agent becomes aware of that connection. The proposed section enables an owners corporation or executive committee to terminate the appointment of a strata managing agent on becoming aware that such a connection exists.

**Schedule 1 [2]** inserts proposed section 40D into the Principal Act which prevents

the original owner, and certain other specified persons connected with the original owner, from being appointed as a caretaker for a strata scheme and requires an owners corporation to terminate an appointment that has been made on becoming aware that the caretaker is such a person.

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**Schedule 1 [21]** inserts proposed section 230B into the Principal Act which requires a legal practitioner to disclose if the practitioner is connected with the original owner before undertaking to provide legal services to an owners corporation. If the connection forms after the practitioner is engaged to undertake those services, the disclosure must be made as soon as the legal practitioner becomes aware of that connection. The proposed section enables an owners corporation or executive committee to terminate the engagement of a legal practitioner on becoming aware that such a connection exists. **Schedule 1 [20]** makes a consequential amendment.

**Schedule 1 [34]** amends clause 3A of Schedule 3 to the Principal Act which currently prevents a person connected with the original owner or caretaker from being eligible to be elected to the executive committee of a strata scheme unless the person first discloses the connection. The amendment extends that provision to persons connected with the strata managing agent.

**Schedule 1 [35] and [36]** amend clause 3A of Schedule 3 to the Principal Act to make it an offence for a person to be elected or appointed as a member of an executive committee without making the disclosures required by that clause. The person also commits an offence each time the person votes on a matter as a member of the executive committee after failing to make such a disclosure.

**Schedule 1 [37]** amends clause 3A of Schedule 3 to the Principal Act to make it an offence for a person who becomes connected with the original owner, caretaker or strata managing agent after having being elected or appointed as a member of an executive committee to fail to disclose the connection.

#### **Amendments relating to orders of Adjudicators and the Tribunal**

**Schedule 1 [12] and [13]** amend section 162 of the Principal Act to enable the Tribunal to make an order terminating the appointment of a strata managing agent in circumstances where the appointment is required to be terminated in accordance with proposed section 27A and has not been terminated.

**Schedule 1 [16]** inserts proposed section 183C into the Principal Act to enable the Tribunal to make an order to settle a dispute or rectify a complaint concerning the management of a building or site that is subject to a strata management statement. The Tribunal can only make such an order if the strata management statement provides for disputes and complaints to be referred to the Tribunal or the Tribunal is satisfied that the dispute resolution process provided for in the strata management statement has been tried and has not succeeded.

**Schedule 1 [17]** amends section 198 of the Principal Act to increase the monetary penalties for contempt of the Tribunal from 5 penalty units to 50 penalty units (currently \$5,500).

**Schedule 1 [18]** inserts proposed section 201A into the Principal Act to make it an offence for a person to contravene an order made by the Tribunal or an Adjudicator under Chapter 5 of the Principal Act (which deals with the resolution of disputes in relation to strata schemes).

**Schedule 1 [9]–[11], [14] and [15]** make consequential amendments.

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#### **Amendments relating to responsibilities of owners of lots**

**Schedule 1 [8]** inserts proposed sections 117A and 117B into the Principal Act.

Proposed section 117A provides that the owner of a lot is jointly and severally liable with the occupier of the lot for damage caused by the occupier to the common property. However, the owner is entitled to be indemnified by the occupier for any such damage.

Proposed section 117B prevents the owner or occupier of a lot from allowing more persons over the age of 18 years to reside on the lot than the number obtained by multiplying each bedroom or other intended sleeping area in the lot by 2.

#### **Amendments relating to service of documents**

**Schedule 1 [22]** amends section 235 of the Principal Act to require service of a summons or other legal process on an owners corporation to be effected by leaving it with the chairperson or strata managing agent whose address for service has been recorded on the Register and posting it to the address recorded on the Register for service of notices on the owners corporation and the address of the strata scheme.

**Schedule 1 [23]** amends section 236 of the Principal Act to enable an owners corporation or an executive committee to serve a notice on a person by e-mailing it to the e-mail address provided by the person for service of notices.

**Schedule 1 [25]** amends section 239 of the Principal Act to require a person whose address is recorded on the folio of the Register for the strata scheme as an address for service of notices, and the owners corporation, to keep that information up to date.

**Schedule 1 [24]** makes a consequential amendment.

#### **Miscellaneous amendments relating to administration of strata schemes**

**Schedule 1 [3]** amends section 48 of the Principal Act to require an owners corporation of a strata scheme to lodge a consolidated copy of the by-laws for the scheme when registering an amendment or repeal of a by-law or a new by-law.

**Schedule 1 [4]** amends section 76 of the Principal Act to enable an owners corporation to levy additional payments to the sinking fund if faced with unexpected expenses to be paid from that fund. Currently, the owners corporation can only levy additional payments to the administrative fund.

**Schedule 1 [5]** amends section 76 of the Principal Act to provide that, if a quorum cannot be achieved for an annual general meeting in accordance with that Act, the payments required to be levied to the administrative fund and the sinking fund are taken to be the same amounts as levied in the previous year increased by the Consumer Price Index.

**Schedule 1 [6]** amends section 87 of the Principal Act to increase the insurance required to be taken out under that section in relation to a strata scheme (for example, to cover occupier's liability and workers compensation) from \$10,000,000 to \$20,000,000.

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**Schedule 1 [7]** amends section 98 of the Principal Act to require certain additional matters to be recorded on the strata roll for a strata scheme. Those matters are licences granted by the owners corporation for use of the common property, plans and approvals for building work to the common property, details of loans to the owners corporation and copies of special resolutions passed to allow additions and alterations to the common property or the erection of new structures on the common property.

**Schedule 1 [19]** amends section 226 of the Principal Act to provide that a court is not to refuse to determine proceedings to enforce a right or remedy merely because the Principal Act or the *Community Land Management Act 1989* provides for the enforcement of those rights or remedies. However, the court can order the plaintiff to pay the defendant's costs if it is of the opinion, having regard to certain criteria, that the plaintiff has brought the proceedings in an inappropriate venue.

**Schedule 1 [26]** amends section 246 of the Principal Act to enable regulations to be made with respect to the procedures to be observed by the chairperson and secretary in relation to meetings of an owners corporation and by persons presiding at those meetings and with respect to a code of conduct for the chairperson, secretary and treasurer. **Schedule 1 [27]** makes a consequential amendment.

**Schedule 1 [28]** amends clause 10 of Schedule 2 to the Principal Act to provide that, if a person pays strata contributions levied on the person by cheque, those contributions are not taken to have been paid for the purpose of the person exercising voting rights at a general meeting of an owners corporation unless, when the meeting is held, at least 5 clear working days have passed since the cheque was received and no notice of the cheque being dishonoured has been received.

**Schedule 1 [29]** amends clause 19 of Schedule 2 to the Principal Act to limit the time at which a poll may be demanded after a vote has been taken at a general meeting of an owners corporation.

**Schedule 1 [30] and [31]** amend clause 31 of Schedule 2 to the Principal Act to enable the owners corporation by resolution at a general meeting to vary the time at which the annual general meeting is held, subject to certain limitations.

**Schedule 1 [32]** inserts proposed clauses 33A and 33B into Schedule 2 to the Principal Act.

Proposed clause 33A requires notice of a general meeting to include a report prepared by the executive committee explaining any proposed amendment, repeal or substitution of a by-law.

Proposed clause 33B requires notice of a general meeting to include any disclosures made under proposed section 27B or 230B since the last meeting.

**Schedule 1 [33]** amends clause 34 of Schedule 2 to the Principal Act to require notice of a general meeting to include proposed estimates of amounts needed to be credited to the administrative and sinking funds and proposed amounts of strata contributions based on those estimates.

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**Schedule 1 [38]** inserts proposed clause 6A into Schedule 3 to the Principal Act to require notice of an executive committee meeting to include any disclosures made under proposed section 27B or 230B since the last meeting.

**Schedule 1 [39]** inserts proposed clause 17A into Schedule 3 to the Principal Act to enable the executive committee to transact business by telephone, closed-circuit television or other electronic means.

**Schedule 1 [40] and [41]** amend Schedule 4 to the Principal Act to make provision for savings and transitional matters as a consequence of the enactment of the proposed Act.

#### **Schedule 2 Amendment of other Acts**

**Schedule 2** amends the *Strata Schemes (Freehold Development) Act 1973* and the *Strata Schemes (Leasehold Development) Act 1986* as a consequence of the amendments made to the Principal Act by Schedule 1 [3] and [22].