STRATA SCHEMES DEVELOPMENT BILL 2015
STRATA SCHEMES MANAGEMENT BILL 2015

Bills introduced on motion by Mr Victor Dominello, read a first time and printed.

Second Reading

Mr VICTOR DOMINELLO (Ryde—Minister for Innovation and Better Regulation) [5.00 p.m.]: I move:

That these bills be now read a second time.

The Government is pleased to read for a second time the Strata Schemes Development Bill 2015 and the Strata Schemes Management Bill 2015. The bills are the culmination of the Government's landmark reform of New South Wales strata title laws that began in 2011. The importance of those reforms to the people of New South Wales should not be underestimated. Twenty five per cent of the population of greater Sydney lives in strata title properties. It is estimated that by 2040 half of Sydney's residential accommodation will be strata titled. Currently there are approximately 75,000 strata title schemes registered in New South Wales, with over 100 more schemes being registered every month. The vast majority of those are residential schemes. However, there are 7,235 schemes zoned for business uses, such as retail and commercial, with 3,257 zoned for other purposes including industrial, non-urban environmental living and tourism. The Strata Schemes Development Bill 2015 will replace both the strata schemes freehold and leasehold development Acts. The Strata Schemes Management Bill 2015 will replace the Strata Schemes Management Act 1996.

NSW Fair Trading and Land and Property Information have worked in partnership with industry stakeholders to develop more than 90 reforms and received well over 3,000 submissions during the four-year consultation period. The consultation involved online surveys, publicly released discussion and position papers, round tables and focus meetings, as well as an opportunity to comment on the draft exposure bills. Key stakeholders have been engaged and consulted throughout this process including, but not limited to, the Owners Corporation Network, Strata Community Australia, the Real Estate Institute of New South Wales, the Housing Industry Association, Master Builders Australia, the Combined Pensioners and Superannuants Association, the Urban Taskforce, and many other key consumer and industry groups. Each phase of the consultation process led to important changes and refinements to the proposals as a direct result of the feedback from members of the public and stakeholder groups.

I thank previous fair trading Ministers the Hon. Anthony Roberts, the Hon. Stuart Ayres and the Hon. Matthew Mason-Cox for their commitment and dedication to the strata title law reform process—in particular Minister Roberts, who started the public discussion about the future of strata living in New South Wales back in 2012. Fifty-four years ago New South Wales was a forerunner in the development of the world's first strata laws, with many other strata title laws—in places like Singapore, the United Kingdom, and Dubai—having applied the New South Wales laws model. While the original 1961 Act was reviewed and replaced in 1973 by more comprehensive laws, there has not been a major review since 1996. The bills introduce new provisions that are intended to address regulatory gaps that have been identified during the reform process. In addition, the bills replace and modernise the provisions in the existing Acts that are working well and continue to meet the Acts' objectives. I now will deal with the objectives and provisions of each bill, turning first to the Strata Schemes Development Bill 2015.

The Strata Schemes Development Bill 2015 replaces the former strata schemes freehold and leasehold development Acts. The objects of the Strata Schemes Development Bill 2015 are to facilitate the subdivision of land into cubic spaces, the disposition of titles, and the registration and renewal of strata schemes. This single bill covers land subdivision under both freehold and leasehold title. The most significant reform in this bill is a new process to facilitate the collective sale or renewal of strata schemes. This proposed reform deals proactively with the issue of ageing strata schemes and enables strata owners to make collaborative decisions about their strata building. The majority of community feedback received on the strata reforms acknowledged that the decision to end a strata scheme should not require 100 per cent support of owners, provided that the process is flexible, transparent and fair. The alternative method proposed by this bill meets all those requirements. The renewal provisions are designed to empower strata owners to make a collective decision about the

most important issue that will confront all strata buildings at some point: what to do with the building as it ages.

The proposed new renewal process will require the support of 75 per cent of lot owners. As a result, small schemes with two or three lots will continue to require unanimous agreement before they can be terminated. Two- or three-lot strata schemes make up 37 per cent of all strata schemes in New South Wales. As the number of lots in a strata scheme increases, it becomes harder to achieve unanimous agreement on any issue and it is to those schemes that this reform is addressed. When the Strata Titles Act was introduced in 1975 all decisions affecting common property required a unanimous resolution. This requirement was relaxed in 2001 because of the difficulty in obtaining a unanimous resolution. Reducing the level of support needed to sell, add or change common property was viewed with caution at the time. Now it is accepted as entirely appropriate that decisions about the shared property of a scheme should be made by special resolution when no more than 25 per cent of the value of votes are cast against a motion.

Around the world most other jurisdictions with strata or condominium legislation make provision for a strata scheme to be terminated with less than unanimous agreement. Examples of countries include the United States, Japan, the United Kingdom, Singapore and a majority of the Canadian provinces, including Alberta and Ontario. Closer to home, New Zealand recently introduced new strata legislation and relaxed the threshold, allowing the owners to approve termination with a special resolution, which is 75 per cent support. Of the Australian jurisdictions, the Northern Territory has been the first to provide an alternative procedure that no longer requires unanimous support for schemes with 10 lots or more. I acknowledge concerns regarding the impact that the new collective sale process may have on individual property rights. However, it must be remembered that while strata owners own their unit, they also own a share in the building and decisions about the building must be made collectively.

Ultimately it comes down to how we define collective decision-making. Numerically, we have set the threshold at 75 per cent. No matter what the threshold is, we must ensure that where the collective will of a significant majority of owners is to sell, there is an appropriate mechanism for that collective will to be exercised. As a building gets older, major structural components begin to fail and maintenance becomes more expensive. At some point further maintenance may become unviable and alternative solutions will need to be explored. The best option for the building may be to retrofit and renovate, or it may be simply to demolish and rebuild. The strata renewal process provided by part 10 of the bill is designed, through a collaborative and transparent decision-making process, to encourage owners to deal with those significant issues together. Ultimately the decision to sell or renew the scheme will be made only if a significant majority of the owners agree.

<41>
The interest of any dissenting owner or owners needs to be recognised and protected. With this in mind, the process has been designed with numerous safeguards to prevent intimidation, encourage collaboration and ensure that owners receive appropriate compensation. To assure the Parliament that the renewal process has been carefully thought through, with the interests of owners at the forefront, I will briefly list each of the steps and the protections and major safeguards for dissenting owners. The first safeguard is an opt-in model: The renewal process will not apply automatically to existing schemes. Part 10 of the development bill will apply only if the owners corporation opts in to the process by passing an ordinary resolution of 50 per cent. The second major safeguard is a thorough and transparent renewal process. A renewal proposal can be made by any person. It could be initiated by a purchaser interested in buying the whole building and its site, by a group of the current owners with a vision to revitalise the building or by a developer with a plan that could involve existing owners buying back in to the scheme after a major renovation.

All proposals must be given to the strata committee, which will make an initial assessment as to whether the proposal has merit and deserves consideration. If it does, or if owners with at least one-quarter of the unit entitlement want the proposal considered, a general meeting of the owners corporation will be held so that all owners have a chance to review the proposal and give their opinion. If the owners see merit in the proposal, the owners corporation can pass a resolution to establish a strata renewal committee. Before the strata renewal committee is elected, potential members must disclose any financial or other interests in the renewal proposal that could potentially cause a conflict of interest. Also, under section 160 of the Strata Schemes Development Bill 2015 any owner who owns or has an interest in more than 25 per cent of the lots must declare that fact.

The purpose of the renewal committee is to develop a comprehensive plan for the strata building, known as the renewal plan, that will be presented back to the owners for detailed consideration. The renewal committee can engage specialist advisors to assist it in the task but only under the strict oversight of the owners corporation, which will set a budget and a framework within which the renewal committee will be allowed to operate. Minutes of the meetings of the strata renewal committee will be available for lot owners to review so that they can stay informed of progress. The renewal committee can be dissolved at any time by ordinary resolution of the owners corporation, which ensures that the renewal committee operates at all times with the support of a majority of owners. The committee can function for a maximum of one year, unless this term is extended by special resolution of the owners corporation. The legislation sets out the detail that must be included in the renewal plan and the regulations can prescribe additional matters. This will make sure that the renewal plan is comprehensive and fully describes all aspects of the proposed arrangement, covering the price, planning approvals, construction details, relocation arrangements and any other aspects, depending on the nature of the proposal.

The third major safeguard is the compensation value of the renewal proposal, which must satisfy the requirements under the Land Acquisition (Just Terms Compensation) Act 1991. I will discuss that in more detail later. Once the renewal plan has been completed, a meeting of the owners corporation must be convened to consider it. The owners corporation can then decide to return the renewal plan to the committee for further amendment, it could decide to take no further action with the plan and dissolve the renewal committee or, if a sufficient number of owners like the plan, a special resolution can be passed directing that the plan be given to lot owners for their consideration. It will then be up to the individual owners to review the plan and to make their own inquiries as to the potential benefits of the plan. Owners will be given at least 60 days to review the plan. The purpose of this is to prevent pressure being put on owners in a meeting environment and to allow sufficient time for owners to seek any independent financial and legal advice, as well as to conduct property valuations.

After the 60-day investigation period, owners in favour of the plan can sign a support notice and present it to the returning officer. The returning officer will have been appointed by the owners corporation and could be a mediator, independent managing agent or any other person the owners trust for this role. This will operate to prevent bullying by providing confidentiality and is yet another safeguard. If the required level of support is reached, the returning officer will notify the secretary of the owners corporation and a meeting will be called. The required level of support is a minimum of 75 per cent of lot owners, excluding any utility lots used for parking or storage. The fourth major safeguard of requiring 75 per cent of lot owners to agree acts as a balance against the 75 per cent of unit entitlements that was required to support the renewal plan being given to owners. This mechanism prevents the plan being pushed through solely by a small number of owners who have a large percentage of the unit entitlements. Approval of the plan by 75 per cent of the owners is not the final step. The owners corporation must by general resolution, that is 50 per cent, apply to the Land and Environment Court to give effect to the plan. The plan must then be reviewed and approved by the court.

Giving the court the ultimate power to approve or reject the renewal proposal if it is not just and equitable in all circumstances is the fifth and a very strong safeguard. To allow the court to make a proper review, the renewal plan will be lodged with full details of the steps taken to prepare the plan and obtain the required level of support. It must include a copy of all the supporting notices and the names of any dissenting owners; a declaration by the purchaser or developer, if known at the time, detailing their relationship with the lot owners; and an independent valuation. Before approving the plan, the court must be satisfied of a number of significant matters that protect the interests of all owners and act as further safeguards. First, the court must be satisfied that the plan was prepared in good faith without undue influence of the purchaser or developer and that the whole process was carried out in accordance with the Act. Secondly, the court must be satisfied with the distribution of any sale proceeds or the amount that will be paid to dissenting owners whose unit will be sold in a redevelopment. This is an important safeguard in the process and one that deserves some time to explain.

Where a whole strata scheme is to be sold to a purchaser, the sale proceeds must be divided between all the owners according to their unit entitlement. Unit entitlement is the method used to calculate how levies are paid, how votes are cast and how insurance money would be divided should

the building be destroyed by fire or some other disaster. It is therefore appropriate that the collective sale price is divided by this means. It will ensure that all owners are treated equally and prevent some owners negotiating separate private deals to the detriment of other owners. To make sure that the unit entitlements are fair, the Land and Environment Court will have the power to readjust them if they were not determined according to an appropriate valuation. The court will be required to consider the actual value of each lot to ensure that the distribution is fair for all lot owners. Each lot owner's share must not be less than the compensation value of the lot. Compensation value is worked out using the principles of just terms compensation, as required by the Land Acquisition (Just Terms Compensation) Act 1991.

Using these principles, a lot owner would be expected to receive at least the market value of their unit plus an amount for disturbance, solatium and any special value. Market value will be assessed taking into account the actual condition of the unit, including any refurbishment or upgrades the owner may have made. The compensation amount is a safety net, ensuring that no owner can receive less than the market value of their unit. The collective sale will reap more than the sum of the market values of the individual lots because the value of the whole scheme as a package is much higher than the individual lots being onsold to individual buyers. An example of this occurred in 2014 when eight neighbours in Epping collectively sold their homes to a developer for approximately $30 million. The residents received approximately $3.75 million each. Advice from their real estate agent at that time was that the apartments would have sold for about $1.2 million.

Disturbance covers the costs associated with being required to move. The court will also consider the costs of stamp duty up to the value of the owner's unit, removalist fees, as well as legal and valuation costs associated with the acquisition. Proposed section 188 of the bill provides that unless the court otherwise orders, the owners corporation is to pay the reasonable costs of any dissenting owner who opposes the order in the Land and Environment Court. In addition, the owners corporation cannot levy a dissenting owner for a contribution towards these costs. An owner's personal attachment to a property is not something that can be translated easily into monetary terms. Solatium, which is paid to owners who reside in the property, attempts to do this by allowing an amount in recognition of the loss of a property. The maximum amount payable as solatium is currently set at $26,710.

<42>
Special value is a further category that can be used to cover any financial value, in addition to market value, that an owner may have had through their use of the property. For example, special value could be used to cover the cost of installation of a stair lift or other mobility device that an owner had installed that may not have increased the market value of their unit. If the strata lot is within a commercial scheme the compensation value would include different considerations depending on the nature of the business involved. Solatium would not be paid but relocation costs may be more or less, depending on the shop fit-out or specialist machinery that might need to be moved. If the business cannot be relocated the compensation value might have to include the goodwill of the business.

The compensation value assessed by the valuer will become the minimum benchmark. The Land and Environment Court will ensure that the amount each person receives is no less than this sum. The actual amount the lot owners will receive would be expected to be much higher than the compensation benchmark. If satisfied that the payment to the owners is fair, as a further safeguard the court will then have to be satisfied that the terms of settlement of the plan are just and equitable in all the circumstances—I repeat, in all the circumstances. This provision will be left to the discretion of the court. This discretion will allow the court to refuse an application even if all the required steps of the renewal process have been met. For example, the court may consider the individual circumstances of each owner, and if the amount an owner was to receive was not deemed to be fair the court could refuse the application.

An additional safeguard the New South Wales Government has proposed will make practical assistance available for all owners, but especially to vulnerable owners. Funds have been set aside to allow Fair Trading to establish a Strata Renewal Advice and Advocacy Program, which will include a dedicated hotline for any affected owners and specialist advice and advocacy for older and more vulnerable owners. Finally, I have spoken to the Hon. Dr Nick Smith, the Minister for Building and Housing in New Zealand, about that country's experience with the collective sale/renewal provision at 75 per cent. He said:

> This reform has worked well in New Zealand and is an example of sound public policy which has improved the quality of housing stock. It continues to enjoy broad support across the political spectrum including from the Labor Party and the Greens.

I turn now to the measures that will be introduced by the Strata Schemes Management Bill 2015. The objective of this bill is to provide for the management of strata schemes and for the resolution of disputes in such schemes. It will replace the existing Strata Schemes Management Act 1996. The Government recognises and understands the high level of governance undertaken by owners corporations, with democratic elections, powers to make by-laws, set levies and take enforcement action. As such, the legislation needs to find a balance between providing freedom for schemes to make decisions, while ensuring there are sufficient safeguards in place to protect minorities and guard against unfair practices. Voting methods, increased participation and dealing with proxy voting are therefore critical issues to strata communities.

Schedule 1 to the bill includes provisions to assist owners corporations and individual owners to exercise their voting rights and to ensure that decisions truly reflect the wishes of the majority. The scourge of proxy farming is addressed through two important provisions: a limitation on the number of proxies that can be held by one person to one if the scheme has fewer than 20 lots, or not more than 5 per cent of the lots if the scheme has more than 20 lots. In addition, the contract of sale cannot contain a requirement for the owner to provide a proxy to a particular person or be directed to vote in a particular way. Restrictions on proxy farming are supported by reforms in clause 28 of schedule 1 to the bill. That will allow those who cannot be present at meetings to be able to vote by other means, therefore not having to use a proxy.

Engagement and participation of owners is a significant issue faced by owners corporations and strata managers who attempt to facilitate the decisions and management of the scheme. As the Minister responsible for innovation, I am pleased that the bill inserts a number of provisions that will allow strata communities and strata managing agents to make use of new technologies—for example, using Skype, teleconferencing or electronic voting as alternative forms of participation in meetings and voting. In today's environment electronic communication is integral to how businesses and individuals share information. That was not the norm in 1996, when the laws were last reviewed. The bill attempts to look beyond the present day, providing for future technological developments. The bill does this by not prescribing voting methods; instead it allows owners corporations to determine their own best methods.

Schedule 1 to the bill allows for a vote to be carried out by secret ballot. This is to ensure that owners can vote in a way that accords with their wishes and not feel intimidated by others present at the meeting. This will apply to any vote held under the development or management bill for any purpose and a secret ballot can be called by the strata committee if 25 per cent of eligible voters agree. I will now outline the new measures that will apply to by-laws in part 7 of the bill. The bill introduces new overarching principles that by-laws must not be harsh, unconscionable or oppressive. There is a transitional provision that will require all existing owners corporations to review their by-laws within 12 months from the Act's commencement. A scheme's by-laws will not be affected by a failure to comply with these review requirements.

New model by-laws will be introduced when the regulations are made to deal with a number of issues that are of importance to strata residents. These include amending the existing by-laws relating to pets to make it easier for schemes to become more pet friendly. While a scheme can make its own by-laws, it cannot unreasonably refuse the keeping of the animal, nor can it prevent a resident from keeping an assistance animal. The tribunal still retains the power to make an order for the removal of an animal from a strata scheme if the animal is a nuisance or a hazard. The by-laws will also address

the issue of smoke drift. To support this, the bill notes that smoke drift can be considered to be a nuisance or hazard if it interferes with the rights of a resident to use or enjoy their lot.

Part 7 also introduces a new streamlined and enhanced by-law enforcement process. The maximum penalty for a by-law breach will increase from five to 10 penalty units to reflect current standards. This will currently provide for a maximum penalty of $1,100. A new enforcement process will allow owners corporations to bypass the need to issue a notice to comply when the tribunal has imposed a penalty for the same breach in the past 12 months. Any second and subsequent penalty in that 12-month period will attract a maximum penalty of 20 penalty units, currently $2,200. One substantial reform in the bill is the introduction of a more flexible process for lot owners to undertake renovations. Current laws require lot owners to seek approval of the owners corporation for even minor changes to their lot. This results in broad noncompliance, as many owners simply proceed with renovations without seeking consent because they consider the formal approval process to be too onerous.

The bill introduces a more sensible framework that consists of a three-tiered approach. The main premise of this reform is that if the renovation or work will not affect other residents and does not interfere with the structural, waterproofing or external appearance of the building then a full special resolution—that is, 75 per cent—is not required to undertake the work. Approval will not be required for cosmetic work, which includes installing picture hooks, carpet, painting and filling minor holes and cracks. The next level is minor renovations, which will require only a general resolution at a meeting—a simple majority. This includes work such as kitchen renovations, as long as the waterproofing is not affected; replacing cupboards; installing cabling or wiring; and, importantly, installing timber or other hardwood floors.

Lot owners will need to provide adequate information on minor renovations, such as work plans, timing and contractors' details. The owners corporation will be able to place reasonable conditions on the work, such as ensuring the removal of waste or requiring the work be carried out by a licensed tradesperson. Once provided with information, the owners corporation will not be able to unreasonably refuse minor renovations. To enforce this, the tribunal is being given the power to make orders to that effect. Importantly, owners corporations will be able to make by-laws that deem certain types of work to be cosmetic or minor renovations for the purposes of their scheme, as long as the by-law is consistent with the Act. Major work, such as moving structural walls or enclosing a veranda, will require approval by special resolution of the owners corporation, as is currently required. This three-tiered approach allows owner's corporations to tailor a process to suit their circumstances and needs.

<43>
Approximately 60 per cent of strata schemes in New South Wales are managed by licensed managing agents, rising to almost 100 per cent for larger and complex schemes. There are approximately 1,667 licensed strata managing agents in New South Wales. To provide added protection for owner's corporations and ensure agents continue to act in the best interests of the scheme, the bill introduces a range of measures to increase transparency and accountability. A new restriction will prohibit an owner who wishes to become the strata managing agent for their scheme from voting on his or her own appointment, removing an opportunity for a party to affect the legitimacy of the appointment process. In addition the developer, or a person connected with the developer, cannot be appointed as the strata managing agent within 10 years of the registration of the strata scheme.

At the first AGM a strata managing agent can be appointed only for a maximum period of 12 months. After that initial contract, there will be a maximum limit of three years for all subsequent contracts. Rollovers will be limited to one month at a time and an agent must notify the owner's corporation three months before the expiry of the contract, and seven days before every roll over. This will assist owner's corporations and agents to renegotiate existing arrangements, ensuring that both strata

managing agents and owners corporations have an agreement in place that meets their current and on-going needs. Another measure in the bill that addresses potential conflicts of interest is a prohibition on strata managing agents requesting or accepting gifts or benefits, other than those with a nominal value, in the exercise of their functions. This prohibition will not apply to payments, commissions or training courses that have been approved by the owner's corporation.

Fair Trading also receives many complaints about the lack of transparency on the commissions received by their strata managing agents. To deter strata managing agents from falsifying or failing to report commissions, the tribunal is being given additional powers so that it can order an agent to pay the owner's corporation any amount of commission not reported in good faith. The tribunal can also consider these factors as grounds to terminate or vary a strata managing agent agreement. These measures will give owner's corporations more choice and will provide a higher level of transparency. Greater understanding may also help reduce disputes about agents' fees and commission arrangements.

To give strata schemes more effective means to deal with underperforming managing agents, owner's corporations will be able to apply to the tribunal to terminate these contracts, or vary their term. Owner's corporations will also be able to apply for payment of compensation or seek tribunal orders requiring the agent to take certain action or to refrain from taking certain action. These same provisions already apply to caretakers' contracts and have been expanded to apply to strata managing agent contracts. Fair Trading has worked with industry representatives such as Strata Community Australia, the Association of Strata and Community Managers and the Real Estate Institute of New South Wales, the peak industry bodies for strata managers. These reforms have been amended and refined in consultation with stakeholders throughout the reform process.

The provisions contained in the bill continue to meet the objectives of transparency and accountability but take into consideration the practical operation of management contracts. These measures are strongly supported by the Owner's Corporation Network. A major concern for many strata schemes is unauthorised use of visitor parking, or parking on the common property where it is not allowed. The bill provides owner's corporations with the ability to enter into a commercial agreement with local councils to police parking within a scheme. The type of parking infringements include overstaying in a visitors spot, parking in a disabled space, parking where there are no parking signs and blocking another vehicle. There is a maximum penalty of five penalty units or $550 for non-compliance with the requirements; this is the same maximum penalty as other parking offences under the Local Government Act 1993.

The reforms were developed in consultation with the Office of Local Government. The Pedestrian Council of Australia also supports this proposal and has provided input into the practical application of this reform. Part 11 of the bill contains another significant reform—a defect bond and inspection regime which is carried out in the first two years and is designed to incentivise developers and builders to build well and to fix any problems early in the life of the building. The new process aims to reduce costs for all parties involved, minimise time delays, and reduce the incidence of drawn-out and expensive legal action. It is not, however, intended to displace an owner's corporation's right to pursue legal action under any other law, including the Home Building Act. It is simply a structured process to promote issues being brought to the forefront early in a building's life, and get them resolved quickly and cost-effectively.

The defects model will apply to new residential and mixed use strata buildings and renovations that are not covered by the Home Building Compensation Fund and where there has been a registration of a new strata plan. It is not intended to incorporate minor upgrades to existing strata schemes or cosmetic renovations. Essentially the process involves the developer lodging a bond or financial security with Fair Trading equal to 2 per cent of the contract price of the building work, to cover any

unresolved defects that have been identified by a qualified independent inspector. Having a single process for independent defects reports will help avoid each party in the dispute spending thousands of dollars commissioning competing reports, which is a common occurrence. A qualified independent inspector will inspect the work and provide a defect report not earlier than 15 months and not later than 18 months after completion of the work.

Strict conflict of interest provisions are provided to exclude anyone with personal or pecuniary interests in the building work from being appointed as the qualified building inspector for that work. These measures will guarantee the independence and credibility of the qualified building inspector, who has a crucial role to play in this process. If the owner's corporation and original owner cannot agree on an appointment, the original owner will have to notify the Commissioner for Fair Trading, who will arrange for the appointment of an inspector. The interim report must be provided to the original owner, the builder, the owner's corporation and the Commissioner for Fair Trading.

The bill provides a right of entry to rectify any defects outlined in the interim report and the builder will have at least three months to carry out the rectification work before a final inspection can be undertaken. The builder must give at least 14 days notice of an intention to enter individual lots to rectify. Access cannot be unreasonably refused by an owner and is supported by financial penalties for a breach. The final report must not identify new defects. It must only assess those defects identified in the interim report, and any work undertaken to rectify those defects. The content of the report itself cannot be contested in any forum. The key to making the process work is to ensure that it is completely self-contained.

In order for the process to work, owner's corporations must have faith in the process and commit to it. That is why the general two-year statutory warranty period under the Home Building Act has been extended by three months, so that owner's corporations do not feel they need to exercise those rights before the end of the two-year period and the outcome of this new process. The bond is released on the basis of the findings in the final report and there are very limited grounds on which an application can be made to the tribunal, such as for orders to allow access to rectify defects and orders about the contract price on which the bond is calculated.

If no defects are identified in the final report then the bond is returned to the developer. If there are defects identified, the portion of the bond necessary to cover the estimated cost of any defects identified in the final report will be released to the owner's corporation. Any amount of the bond released to the owner's corporation must be used for rectifying the defective building work for which it was received. Any remaining portion of the bond will be returned to the developer. The Commissioner for Fair Trading will be able to extend the timeframes provided by the bill in certain unforeseen circumstances—for example, if, because of exceptional circumstances beyond the control of the inspector, the report cannot be completed in time. While the defect bond and inspection regime will impose an additional cost to developments, the case for reform is clear. To do nothing leaves strata owners having to pick up the pieces for a problem caused by someone else.

<44>
The regulations will contain much of the detail about the experience, qualifications and other requisites of a qualified building inspector. The regulations will also provide for the scope of the interim inspection report and any detail that may be required to be included in the final report. Work has already commenced on this, with the first of many expert working groups consisting of industry stakeholders and relevant professionals held last month. This Government is committed to ensuring that the detail of the process that is contained in the regulations is workable and will provide the best chance of ensuring that the objectives of the proposed legislation are met. As I said at the beginning, these bills contain more than 90 proposed reforms. The amendments that I have already dealt with in detail are among those which feature most prominently in the public discourse on strata reform. The

remaining reforms, however, are equally important to the improvement of the governance and management of strata schemes. I will briefly outline the objectives of some of these other important reforms.

Overcrowding of strata units has become a serious problem. Overcrowding is where unscrupulous operators pack a two-bedroom unit with 16 or 20 people, usually students or backpackers, creating highly unsafe living conditions as well as affecting the amenity and enjoyment of the building for the other residents. The bill seeks to address this issue by empowering owners corporations to tackle this situation themselves. A new provision specifically allows for the adoption of by-laws imposing occupancy limits on a strata lot. Importantly, any limit must not be fewer than two adults per bedroom and only applies to persons "residing" at a lot and certainly not to overnight stays or visits from friends and family.

The first offence for a breach of an overcrowding by-law is 50 penalty units, currently $5,500. If there is a second or subsequent offence, like all by-law breaches, the owners corporation will not be required to first serve a notice to comply but will be able to go straight to the tribunal. Second and subsequent offences will attract a maximum penalty of 100 penalty units, currently $11,000. In addition to this, Fair Trading has been leading an interagency working group to address this issue from a whole-of-government perspective and I expect to announce reform proposals by the end of the year.

Another key reform addresses the lack of participation afforded to tenants, or lessees, who represent more than half of all strata residents in New South Wales. That figure is set to increase, with a growing number of investor-owned apartments being purchased in strata schemes. The reforms address this phenomenon by allowing tenants to participate in owners corporations meetings and, where 50 per cent of the lots are tenanted, allowing a tenant representative on the strata committee. The reforms also include an overhaul of the dispute resolution processes, simplifying and improving the existing three-layer dispute resolution regime and providing owners corporations with the capacity to invoke an internal dispute resolution process.

An owner, the owners corporation or a resident can apply to have a dispute mediated. Currently, if this fails an application can be made to have the matter adjudicated; however, the outcome of adjudication can be appealed to the NSW Civil and Administrative Tribunal [NCAT]. The bill removes the layer of adjudication and this jurisdiction is conferred on the tribunal. This change avoids the extra time and cost implications for participants and also ensures strata disputes are dealt with consistently with other divisions of NCAT. NCAT will also be provided with a new power to make orders about strata managing agent agreements and disputes between adjoining schemes without the need for mutual consent. I note that in drafting these reforms the courts and tribunal were duly consulted and have been supportive of their introduction.

The transparency and accountability of officer bearers has been strengthened with more rigorous requirements for disclosing conflicts of interest. Members of the strata committee will now have a statutory duty to act for the benefit of all owners and to exercise due care and diligence in their role. This approach provides clarity on the standard of behaviour expected of strata committee members but does so in a way that does not place an unrealistic burden on committee members who, at the end of the day, are generally volunteers. To further protect this special "volunteer status", the bill limits the personal liability of strata committee members who act in good faith for the purpose of executing their functions as conferred by the Act. The liability will instead attach to the owners corporation.

Developers will no longer be able to control the future operation of the scheme or be involved in decisions about defects. They will also have to set realistic levies and the owners corporation can apply to the tribunal for an order that the original owner compensate the scheme if the original levies

were inadequate. In relation to governance and administration, a building maintenance manual and all necessary information for the running of the scheme must be provided to the owners corporation at the first annual general meeting. Owners corporations will be able to more easily pursue outstanding levies through an application to the tribunal for recovery of a debt and the use of garnishees on real estate agents' trust accounts. Finally, in addition to the capacity to prohibit proxy farming and allow electronic means of participation and voting, there is more flexibility regarding when annual general meetings can be held. The meeting provisions have been strengthened to provide owners with more information about the agenda and motions that will be moved.

In closing I thank the many organisations and individuals who have joined the Government on this journey, generously giving their time and experience to help develop this important legislation at various stages of the strata law reform process. I also thank the many Fair Trading and Land and Property Information officers who have developed these reforms over a long period: Leanne Hughes, Adam Heydon, Luke Walton, Matt Press, Warren McAllister, Tori Marshall, Gabbie Mangos and John Vernon. I also thank Commissioner for Fair Trading Rod Stowe, Assistant Commissioner Rhys Bolien and, in my ministerial office, Matt Dawson, Jane Standish, Tom Green, and Stephanie Matti for their support and continued enthusiasm.

The bills that I commend to the House today are an excellent example of the Government, community and industry stakeholders working together to bring enduring benefits to the State. I am confident that the strata law reform package will deliver significant and positive changes for all strata sector participants and that the reforms in these bills will serve the sector effectively for decades to come. I commend the bills to the House.

Debate adjourned on motion by Ms Kate Washington and set down as an order of the day for a future day.