



New South Wales

# Strata Schemes Management Bill 2015

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.  
The *Strata Schemes Development Bill 2015* is cognate with this Bill.

## Overview of Bill

The object of this Bill is to provide for the management of strata schemes and the resolution of disputes in connection with strata schemes.

The Bill re-enacts the current law relating to the management of strata schemes with the changes set out below in the outline of provisions.

## Outline of provisions

### Part 1 Preliminary

Part 1 of the proposed Act re-enacts Chapter 1 of the *Strata Schemes Management Act 1996* (the *current Act*), except that words and expressions used in the proposed Act are defined in the proposed Part rather than in a Dictionary (proposed sections 4–7).

### Part 2 Managing body for strata schemes—owners corporation

Part 2 of the proposed Act re-enacts Part 2 of Chapter 2 and sections 29A and 118 of, and clauses 2–5, 23 and 31 of Schedule 2 to, the current Act with the following changes and additions:

- (a) documents required for the first general meeting are to be provided by the original owner or lessor of the strata scheme at least 48 hours before the meeting (proposed section 16),

- (b) an initial maintenance schedule and any report prepared on building defects under proposed Part 11 are to be provided to the owners corporation at its first annual general meeting (proposed section 16),
- (c) the annual general meeting of an owners corporation must be held once in each financial year rather than within 1 month of the anniversary of the first annual general meeting (proposed section 18),
- (d) the power to make an order convening a meeting of an owners corporation, in the absence of officers of the corporation, is to be exercised by the Civil and Administrative Tribunal (the *Tribunal*) rather than an Adjudicator. This change applies to all order-making powers under the current Act that have been re-enacted (proposed section 20).

### **Part 3 Strata committee of owners corporation**

Part 3 of the proposed Act re-enacts sections 16–18 and 21 and Division 2 of Part 3 of Chapter 2 of, and clauses 1–3, 4, 5, 7 and 17 of Schedule 3 to, the current Act with the following changes and additions:

- (a) the executive committee is now to be known as the strata committee,
- (b) a building manager for a strata scheme, a person who acts as an agent for the leasing of lots in a strata scheme or a person who has an undisclosed connection with the original owner of a strata scheme is not eligible to be appointed or elected to the strata committee unless the person is an owner (proposed section 32),
- (c) a tenant representative for the strata committee may be nominated by the tenants, if there are tenants for at least half the lots in a strata scheme, but will not be able to vote on committee decisions and may be excluded from discussion about certain financial matters (proposed section 33),
- (d) a duty is imposed on members of a strata committee to carry out their functions for the benefit, so far as practicable, of the owners corporation and with due care and diligence (proposed section 37),
- (e) the owners corporation may, by special resolution, declare that the office of an officer of the corporation is vacant (proposed section 45).

### **Part 4 Strata managing agents and building managers**

Part 4 of the proposed Act re-enacts Parts 4 and 4A of Chapter 2 and section 183A of the current Act with the following changes and additions:

- (a) a developer of a strata scheme, or a person connected with a developer, cannot be appointed as the strata managing agent for the scheme until 10 years after the registration of the strata plan for the scheme (proposed section 49),
- (b) the term of appointment of a strata managing agent is to be limited to a maximum of 12 months for an agent appointed at the first annual general meeting or 3 years for any other appointment, with any reappointment also limited to maximum terms of 3 years (proposed section 50),
- (c) a strata managing agent may transfer his or her functions as an agent if the transfer is approved by a resolution of the owners corporation at a general meeting (proposed section 51),
- (d) it will be an offence for a strata managing agent to request or accept a gift or other benefit for himself or herself or another person in connection with the provision of services as an agent, other than the provision of a monetary commission, or the provision or payment of training services, included in the agent's terms of appointment or otherwise approved by the owners corporation (proposed section 57),
- (e) a strata managing agent must report at an annual general meeting monetary commissions or training services or payments received from third parties in the previous 12 months as well

- as commissions and training services and an estimate of them expected to be received in the following 12 months. The agent must also disclose to the strata committee of the owners corporation variations from the matters disclosed, as soon as practicable after becoming aware of the variation (proposed section 60),
- (f) the period within which a strata managing agent must provide information is extended from 7 days to 14 days,
  - (g) caretakers for strata schemes are now to be referred to as building managers and a building manager is not required to be a person entitled to exclusive possession of a lot or common property,
  - (h) the power to make orders with respect to building manager agreements has been extended to strata managing agent agreements and a power to make ancillary orders requiring the return of documents to the owners corporation has also been included (proposed section 72).

## Part 5 Financial management

**Part 5** of the proposed Act re-enacts Part 3, and Division 3 of Part 5, of Chapter 3 and sections 24, 103, 110, 115A, 148, 149, 229, 230 and 230A of the current Act with the following changes and additions:

- (a) additional money may be paid into the administrative fund or the capital works fund if permitted to be paid to that fund under the proposed Act (proposed sections 73 and 74),
- (b) monetary penalties payable to the owners corporation must be paid into the administrative fund and monetary penalties payable by the owners corporation may be paid from the fund (proposed section 73),
- (c) the name of the sinking fund has been changed to the capital works fund (proposed section 74),
- (d) amounts paid to the owners corporation under proposed Part 11 are to be paid to the capital works fund (proposed section 74),
- (e) the owners corporation may levy a contribution on owners to recover amounts to cover money transferred from the administrative fund or the capital works fund to the other fund to meet a shortfall (proposed section 76),
- (f) the 10-year capital works fund plan for a strata scheme must be reviewed at least once every 5 years (proposed section 80) and may be revised or reviewed at any time,
- (g) an owners corporation may provide for payment plans for unpaid contributions, but only for 12 months at a time (proposed section 85),
- (h) in addition to the current provision that an owners corporation may recover unpaid contributions as a debt in a court of competent jurisdiction, the owners corporation may obtain an order from the Tribunal that the owner or other person concerned pay the unpaid contributions. At least 21 days notice must be given of any proposed action (proposed section 86),
- (i) an owners corporation may obtain an order by the Tribunal ordering the original owner under the strata scheme to compensate the owners corporation if the Tribunal determines that the estimates and levies determined during the initial period were inadequate (proposed section 89),
- (j) a statement of key financial information, that summarises information contained in the financial statements, is to be prepared for each reporting period for the administrative fund and the capital works fund and other funds kept by an owners corporation (proposed sections 92 and 94),
- (k) financial statements will be required for other funds kept by an owners corporation (in addition to those for the administrative fund and the capital works fund) (proposed section 93),

- (l) requirements imposed on the treasurer under the regulation made under the current Act, relating to issuing and recording receipts, transaction records and the levy register have been incorporated into the proposed Part,
- (m) provisions relating to requirements for approval to obtain legal services have been clarified (proposed section 103).

## **Part 6 Property management**

Part 6 of the proposed Act re-enacts Part 2 of Chapter 3, sections 111, 112, 114 and 115 and Division 2 of Part 4 of Chapter 5 of the current Act with the following changes and additions:

- (a) the obligation of an owners corporation to maintain and keep in repair common property may be deferred for a particular item of property if the owner or another person is liable for damage to the property and the owners corporation has taken action in respect of the damage (proposed section 106),
- (b) an owner of a lot in a strata scheme may recover from the owners corporation, as damages for breach of statutory duty, any reasonably foreseeable loss suffered by the owner as a result of a contravention by the owners corporation of proposed section 106, but any action must be taken within 2 years of becoming aware of the loss (proposed section 106),
- (c) the by-laws for a strata scheme may adopt a common property memorandum prescribed by the regulations which specifies whether the owner or the owners corporation is responsible for the maintenance, repair or replacement of any part of the common property (proposed section 107),
- (d) minor cosmetic work (including installing or repairing hooks or other things used to hang things on walls, installing or repairing handrails, painting internal walls and laying carpet) in connection with a lot will not require authorisation by the owners corporation. Specified work is excepted from these provisions, including minor renovations, structural work, work involving plumbing and waterproofing and reconfiguring walls and work that requires consent under other legislation. The by-laws and regulations may specify additional work as cosmetic work (proposed section 109),
- (e) minor renovations (including renovating a kitchen, changing recessed light fittings, installing or replacing wood or other hard floors, installing or replacing wiring or cabling or power or access points and reconfiguring walls) can be done after approval by the owners corporation at a general meeting. The regulations may specify additional work as minor renovations. Notice of the renovations and other information must be given to the owners corporation. The by-laws may delegate the approval power to the strata committee and may also specify additional work as minor renovations. Specified work is excepted from these provisions, including cosmetic and structural work and work that requires consent under other legislation (proposed section 110),
- (f) an owner of a lot in a strata scheme must not alter or add to the common property, unless authorised under the proposed Part, a by-law under the proposed Part, a common property rights by-law or a special resolution of the owners corporation (subject to a by-law that amends that requirement) (proposed section 111),
- (g) the owners corporation is empowered to grant a licence to use common property to a person other than the owner of a lot in the strata scheme (proposed section 112),
- (h) the original owner must cause an initial maintenance schedule to be prepared for the strata scheme, containing matters to be prescribed by regulations, which will not be binding on an owners corporation and may be used in proceedings about building defects (proposed section 115),
- (i) agents, employees or contractors of an owners corporation may enter any part of the parcel of a strata scheme to carry out building rectification work for the purposes of proposed Part 11 (proposed section 122),

- (j) an order may be obtained to enter a part of a parcel of a strata scheme for all situations where the owners corporation is authorised to enter the part for inspection purposes or to carry out work (proposed section 124),
- (k) regulations may be made to establish a scheme for the disposal of goods abandoned on common property (proposed section 125),
- (l) if work by or on behalf of an owner or occupier causes damage to the common property or another lot of a strata scheme, the owners corporation or owner of the lot may obtain an order from the Tribunal that the owner or occupier repairs the damage or pays a specified amount for repairs and other costs (proposed section 132).

## **Part 7 By-laws for strata schemes**

**Part 7** of the proposed Act re-enacts Part 5 of Chapter 2, Division 8 of Part 4 of Chapter 5 and section 203 of the current Act with the following changes and additions:

- (a) the matters about which by-laws can be made are to be matters relating to the management, administration, control, use or enjoyment of the lots or the common property and lots of a strata scheme (proposed section 136),
- (b) the by-laws may limit the number of persons who may reside in a lot, but not to less than 2 adults per bedroom of the residence (proposed section 137) and higher monetary penalties are payable for a contravention of a by-law (proposed section 147),
- (c) a by-law must not be harsh, unconscionable or oppressive (proposed section 139),
- (d) a by-law may require an occupant of a lot to provide evidence that an animal kept on the lot is an assistance animal (proposed section 139).

## **Part 8 Obligations of owners, occupiers and others relating to lots**

**Part 8** of the proposed Act re-enacts Parts 1 and 3 of Chapter 4 and Division 5 of Part 4 of Chapter 5 of the current Act.

## **Part 9 Insurance**

**Part 9** of the proposed Act re-enacts Part 4 of Chapter 3 and Division 3 of Part 4 of Chapter 5 of the current Act with the change that the approved insurers with whom insurance (other than building insurance) is required to be taken out by owners corporations are to be general insurers under the *Insurance Act 1973* of the Commonwealth or persons prescribed by the regulations.

## **Part 10 Records and information about strata schemes**

**Part 10** of the proposed Act re-enacts Divisions 1, 2 and 4 of Part 5 of Chapter 3 and sections 155 and 156 of the current Act with the following changes and additions:

- (a) the form in which a strata roll or other mandatory record may be made or stored is to be determined by the owners corporation (proposed section 176),
- (b) information about the owner of a lot in the strata roll is to include the owner's email address, if any (proposed section 178),
- (c) access to records of the owners corporation for inspection purposes may be given by electronic means (proposed section 183),
- (d) the lessor or sub-lessor of a lot in a strata scheme must give the tenant of the lot a copy of the by-laws and any applicable strata management scheme not later than 14 days after the tenant becomes entitled to possession of the lot. Notice of changes to by-laws must also be given within 14 days (proposed section 186).

## Part 11 Building defects

Part 11 of the proposed Act contains a scheme to provide for rectification of building defects in new strata schemes. The proposed Part contains the following proposed provisions:

### Division 1 Preliminary (proposed sections 189–192)

The proposed Division defines words and expressions used in the proposed Part and also provides that a consent or approval by an owners corporation for the purposes of the proposed Part is to be given by resolution at a general meeting. The proposed Part will apply to building work carried out on a building, or a part of a building, that is part of the parcel of a strata scheme and that is contemporaneous with or for the purposes of the registration of a strata plan or a subdivision of a development lot. The building work must be residential building work that is exempt from the home building compensation insurance requirements under the *Home Building Act 1989* or be work on a building used for mixed use purposes that include residential purposes.

### Division 2 Inspection reports (proposed sections 193–206)

The proposed Division provides that a developer of a strata scheme is to be required to arrange for the building work to be inspected by a building inspector approved by the owners corporation who is to give an interim report identifying any defective work. The regulations will prescribe the kind of defective work that is to be reported on. Building inspectors are to be persons who are of a class of persons prescribed by the regulations. The inspector is to be appointed not later than 12 months after the completion of the work and the interim report is to be given not earlier than 15 months and not later than 18 months after that completion. A building inspector cannot be appointed by a developer without the approval of the owners corporation. The Secretary of the Department of Finance, Services and Innovation (the *Secretary*) is to arrange for the appointment of an inspector if the developer and owners corporation fail to agree on an inspector or if the initial period for the strata scheme has not ended. The Secretary may also appoint a building inspector if an owner of a lot objects to an appointment. A building inspector must not be connected with the developer, must act impartially and cannot and does not represent the interests of the developer. It will be an offence to receive or offer benefits not to act impartially. A final inspection is to be carried out and a report given by the same inspector (if available) or another inspector arranged by the Secretary not earlier than 21 months and not later than 2 years after the completion of the work. The inspector will have power to enter any part of a strata scheme parcel and is to be given assistance by the owners corporation for that purpose. Inspection costs are payable by the developer. A builder who carried out defective building work will be entitled to enter the property in connection with rectifying the work. A final inspection report will not bind the Tribunal or any court but is to be taken into account in proceedings relating to the building work.

### Division 3 Building bonds (proposed sections 207–211)

The proposed Division requires a developer to lodge a security (a *building bond*) with the Secretary for building work to which the proposed Part applies. The amount of the building bond is to be 2% of the contract price for the building work. Amounts secured by a building bond may be claimed or realised for payment to an owners corporation to meet the costs of building work to rectify defective building work identified in a final inspection report under the proposed Part. The building bond must be claimed or realised not later than 2 years after the completion of the building work or within 60 days of the final inspection report being given to the developer, whichever occurs later. Amounts secured by the building bond may also be paid in the manner agreed between the owners corporation and the developer. The Secretary is to rely on the final inspection report for the purposes of determining the payment of amounts secured by the building bond. An owners corporation must use the bond amount for or in connection with rectifying the defective building work (on any part of the parcel of the strata scheme) or its costs. An owners corporation, or a person on the owners corporation's behalf, will have power to enter a lot for the purpose of rectifying defective building work. Any surplus is to be repaid to the developer. The Tribunal may, on application by an owners corporation, a developer, a building inspector or a person entitled

to enter the strata parcel under the proposed Part, make an order requiring access to be given to the parcel for the purposes of an inspection or in connection with rectifying defective building work. The Tribunal may also, on application by the developer, an owners corporation, an original owner or the Secretary, make an order determining the amount of a building bond.

#### **Division 4 Miscellaneous (proposed sections 212–215)**

The proposed Part enables the Secretary to vary the time frames for actions under the proposed Part. The proposed Division provides for a right to apply to the Secretary for a review of decisions under the proposed Part. The proposed Division also contains powers to make regulations with respect to specified matters arising under the proposed Part and makes it clear that the proposed Part will not affect any other remedies that may be taken for defective building work, such as statutory warranties that may apply for building work. Any remedy obtained under the proposed Part may be taken into account by a court or other body when determining whether to grant other remedies.

## **Part 12 Disputes and Tribunal powers**

**Part 12** of the proposed Act re-enacts Part 2 and Divisions 1 and 9 of Part 4 of Chapter 5 and sections 125, 126, 135, 136, 173, 183, 183B, 185, 187–191, 199, 207 and 209 of the current Act with the following changes and additions:

- (a) an owners corporation is authorised to establish a voluntary dispute resolution process (proposed section 216),
- (b) jurisdiction is conferred on the Tribunal, rather than on Adjudicators, to make orders and procedural matters dealt with by the *Civil and Administrative Tribunal Act 2013* have been omitted,
- (c) jurisdiction is conferred on the Tribunal to make ancillary, consequential and interlocutory orders and interim orders (proposed sections 229–231),
- (d) jurisdiction is conferred on the Tribunal to deal with complaints or disputes about agreements under the proposed Act, agreements relating to strata schemes between the owners corporation and owners, mortgagees and covenant chargees and the failure of an owners corporation to exercise a function under another Act (proposed section 232),
- (e) jurisdiction is conferred on the Tribunal, on its own motion, to remove a person from a strata committee and as an officer of the owners corporation, prohibit a strata committee from determining a matter and require it to be determined by the owners corporation (proposed section 238),
- (f) an unpaid civil penalty imposed by the Tribunal may be recovered from an owner who is liable to pay the penalty as if the amount owed were an amount of unpaid contributions (proposed section 248).

## **Part 13 Offences and proceedings**

**Part 13** of the proposed Act re-enacts sections 215 and 225–228 of the current Act and also provides that penalty notices will be able to be issued by an authorised officer for offences of a kind prescribed by the regulations (proposed section 250).

## **Part 14 Miscellaneous**

**Part 14** of the proposed Act re-enacts sections 119, 120, 212, 214 and Parts 3–5 of Chapter 7 of the current Act with the following changes and additions:

- (a) officers of an owners corporation and other members of a strata committee are protected from personal liability for acts done in good faith in that capacity for the purposes of the proposed Act and any other Act, the liability will instead attach to the owners corporation (proposed section 260),

- (b) an email address may be given as an address for service under the proposed Act (proposed section 261),
- (c) there is an additional general provision providing for the giving of documents under the proposed Act or regulations (proposed section 264),
- (d) the regulations may exclude a particular class or classes of strata scheme from all or any of the provisions of proposed Part 12 (proposed section 271).

## **Schedule 1 Meeting procedures of owners corporation**

**Schedule 1** to the proposed Act re-enacts Parts 2 (other than Division 2) and 3 of Schedule 2 to the current Act with the following changes and additions:

- (a) an owner or other person may request that a motion be included on the agenda for a general meeting of the owners corporation even though the owner or person cannot vote because of unpaid strata contributions (proposed clause 4),
- (b) provisions relating to the nomination of persons as officers of the owners corporation are included in the proposed Schedule (proposed clause 5),
- (c) the agenda for the annual general meeting of an owners corporation must include consideration of building defects and rectification until the end of any applicable statutory warranty (proposed clause 6),
- (d) the notice of an annual general meeting of an owners corporation that has a strata managing agent must include a motion to consider the report as to commissions and training services by the agent (proposed clause 9),
- (e) the notice of an annual general meeting must include a motion to decide how to deal with overdue contributions payable to the owners corporation (proposed clause 9),
- (f) the notice of an annual general meeting is no longer required to be accompanied by a copy of the last financial statements prepared by the owners corporation, but these must be provided on request to a lot owner or mortgagee or covenant chargee of a lot (proposed clause 10),
- (g) a copy of the agenda for a meeting must be given to each tenant of a lot at least 7 days before the meeting (proposed clause 11),
- (h) the developer or lessor of a leasehold strata scheme is not entitled to vote or exercise a proxy vote on a matter concerning building defects or rectification of building defects (proposed clause 15),
- (i) if there is no quorum for business at a meeting, the chairperson may, after half an hour, declare that the persons present constitute a quorum for that purpose (proposed clause 17),
- (j) a tenant is entitled to attend a meeting but not to vote (unless a proxy holder) and may be excluded from a meeting when financial matters are being discussed or determined (proposed clause 21),
- (k) the number of proxies that may be held by one person is limited to 1 if a strata scheme has 20 lots or fewer or not more than 5% of the total number of lots in any other case, except where the proxies are held as the co-owner of a lot (proposed clause 26),
- (l) a provision of a contract for the sale of a lot, and any provision of an associated contract or arrangement, that requires the owner of a lot to vote as directed at a meeting of an owners corporation or to give a proxy will be void and unenforceable (proposed clause 27),
- (m) the owners corporation may determine that a vote at a meeting may be made other than in person and regulations may provide for the manner of such votes (proposed clause 28),
- (n) voting may be carried out by secret ballot (proposed clause 29).



## **Schedule 2 Meeting procedures of strata committees**

**Schedule 2** to the proposed Act re-enacts Parts 2 and 3 of Schedule 3 to the current Act with the following changes and additions:

- (a) the strata committee may determine that a vote at a meeting of the committee may be made other than in person and regulations may provide for the manner of such votes (proposed clause 10),
- (b) members of a strata committee must disclose any pecuniary interest in a matter that is being or is about to be considered at a meeting of the committee and, unless the committee otherwise determines, must not be present for any deliberations on the matter or vote on the matter (proposed clause 18).

## **Schedule 3 Savings, transitional and other provisions**

**Schedule 3** to the proposed Act contains savings and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 4 Amendment of Acts**

**Schedule 4** to the proposed Act contains amendments to other Acts consequent on the enactment of the proposed Act.

**Schedule 4.3** enables an owners corporation to obtain a garnishee order against rent that is payable for a lot in a strata plan, if the owners corporation has obtained a judgment debt for an unpaid contribution against the owner of the lot and the rent is held in the trust account of a real estate agent for the benefit of the judgment debtor.

**Schedule 4.16 [3]** enables an owners corporation, or an association in a community scheme, and a local council to enter into an agreement in relation to a strata parking area or community scheme parking area in the relevant strata scheme or community scheme. The council under such an agreement would erect parking signs and provide parking enforcement services. It will be an offence to park contrary to signs or contrary to marked parking spaces in any such parking area. An agreement must comply with guidelines under the *Local Government Act 1993* and applicable regulations authorised by proposed section 271 of the proposed Act.

**Schedule 4.23** enables the parking offences created under the provisions inserted by **Schedule 4.16 [3]** to be dealt with by penalty notice.