



New South Wales

Community Land Management Bill 2020

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Community Land Development Bill 2020*.

Overview of Bill

The object of this Bill is to re-enact and update legislation with respect to the management of community, precinct and neighbourhood subdivision schemes and to align the legislation with legislation applying to the management of strata title schemes.

Outline of provisions

Part 1 Preliminary

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.

Clause 3 sets out the objects of the proposed Act, which are to provide for the management of community, precinct and neighbourhood schemes and to provide for the resolution of disputes arising from those schemes.

Clause 4 provides that the Dictionary defines certain words and expressions used in the proposed Act.

Clause 5 specifies the requirements for passing a special resolution of an *association* (being a community association, a precinct association or a neighbourhood association). A unanimous vote is passed if no vote is cast against it. The proposed section also sets how the value of a vote for a special resolution or a poll of a community is determined.

Clause 6 defines when a person is *connected* with another person for the purposes of the proposed Act. This provision reflects a provision of the *Strata Schemes Management Act 2015*.

Part 2 Management of schemes

The proposed Part provides for the members, functions and meetings of associations and their operation during the initial period of a precinct scheme or neighbourhood scheme and at other times. The proposed Part re-enacts provisions of Part 2, Division 1 of the *Community Land Management Act 1989* (the *1989 Act*), with the following changes—

- (a) the matters for the agenda for the first annual general meeting of an association are specified,
- (b) the documents required to be provided for that meeting by the original owner will include planning approvals, compliance certificates and fire safety certificates issued under the *Environmental Planning and Assessment Act 1979* relating to the scheme parcel,
- (c) the Civil and Administrative Tribunal (the *Tribunal*) rather than an adjudicator will have power to order a meeting of an association to be held,
- (d) a unanimous or special resolution by an association about a matter that is required to be determined by a resolution of that kind may only be revoked by a resolution of the same kind, other than a unanimous resolution relating to association property, which is revocable by a special resolution,
- (e) it will be mandatory, rather than discretionary, for a person who has an interest in a community development lot, precinct development lot or neighbourhood lot that confers a right to vote at an association meeting to give the association notice of the interest,
- (f) the Tribunal will have power to order a resolution at a general meeting to be treated as a nullity if satisfied that the applicant was improperly denied a vote on the motion or was not given due notice of the item of business relating to the motion,
- (g) the power to declare that the initial period for a scheme has not expired or to extend the period has been omitted and a power for the Tribunal to make orders waiving, varying or extinguishing a restriction relating to the initial period and authorising other related matters to be done is proposed to be inserted,
- (h) an association may recover amounts from the original owner under the *association scheme* (being a community scheme, precinct scheme or neighbourhood scheme) to cover losses or liability incurred because of a failure by the original owner to comply with restrictions relating to the initial period.

Part 3 Association committees

The proposed Part constitutes *association committees* (being the association committees constituted for an association) and provides for their members, functions and meetings. The proposed Part also provides for the appointment and functions of the chairperson, secretary and treasurer of an association. The proposed Part re-enacts provisions of Part 2, Division 2 of the 1989 Act relating to executive committees, with the following changes—

- (a) the committees are now to be known as association committees rather than executive committees,
- (b) managing agents, facilities managers for associations and agents who lease lots in a scheme will not be eligible for appointment, nomination or election as members of association committees,
- (c) if there are tenants for more than half the lots in a neighbourhood scheme, a tenant representative may be nominated for the neighbourhood committee and may attend, but not vote on issues at, the committee,
- (d) a duty is imposed on members of association committees to carry out their functions for the benefit, so far as practicable, of the association and with due care and diligence,

- (e) the functions of the treasurer and other officers of the association are specified, together with the limitations on delegation of the treasurer's functions,
- (f) the Tribunal will have power to make an order appointing a person to convene and hold a meeting of an association if there is no secretary, treasurer or chairperson or no association committee.

Part 4 Managing agents and facilities managers

The proposed Part provides for the appointment and functions of managing agents and facilities managers for association schemes. The proposed Part re-enacts provisions of Division 5 of Part 2 of the 1989 Act, with the following changes—

- (a) the term of appointment of a managing agent will be 12 months if appointed at the first annual general meeting, or 3 years in any other case, including any option for reappointment,
- (b) the term of appointment may be extended by up to 3 months pending a decision as to reappointment but may not be extended beyond the date of the next annual general meeting,
- (c) a managing agent is taken to have an option to extend the term of the managing agent's term for 3 months if the agent is not reappointed and notice of less than 3 months is given by the association or the term is not extended by the association,
- (d) a managing agent must give notice at least 3 months before the end of the term of appointment and at least 1 month before the end of an extension of a term,
- (e) a managing agent may transfer the managing agent's functions to another person if the transfer is authorised by a resolution at a general meeting of the association,
- (f) a managing agent who exercises a function of the association or an officer of the association must keep a record of that and at least once each year provide a copy of all records made in the preceding year,
- (g) it will be an offence for a managing agent to request or accept a gift or other benefit from another person for the managing agent or another person in connection with providing services as a managing agent. The exceptions to the prohibition on benefits will be remuneration paid by an association, monetary commissions paid in accordance with the appointment agreement or approved by the association and gifts with a value below an amount prescribed by the regulations,
- (h) a managing agent must report at the following annual general meeting of an association whether commissions have been paid to the agent and as to the particulars of the commissions and must disclose subsequent variations to the reported amounts,
- (i) information about transactions must be disclosed by the managing agent at the request of the association if the transactions took place not earlier than 5 years before notice was given, rather than not earlier than 3 years as is currently the case,
- (j) the appointment of persons (*facilities managers*) who assist in exercising one or more of managing association property, controlling the use of association property by persons other than owners or occupiers or maintaining and repairing association property is regulated by requiring a written agreement and limiting the term of appointment to 10 years,
- (k) a facilities manager may transfer the facilities manager's functions to another person if the transfer is authorised by a resolution at a general meeting of the association,
- (l) a managing agent or facilities manager must disclose to the association a connection with the original owner or a direct or indirect pecuniary interest in the association scheme,
- (m) the Tribunal will have power, on application by an association, to make orders relating to managing agent and facilities manager agreements, including orders terminating an agreement appointing a managing agent or a facilities manager, requiring compensation to be paid to a party to the agreement, varying or declaring void part of the agreement or ordering a party to take action or not to take action under an agreement.

Part 5 Financial management

The proposed Part provides for the funds to be established by associations, the levying of contributions, financial statements, meetings and other matters related to the financial management of association schemes. The proposed Part re-enacts provisions of Part 2, Division 2 of, and Schedule 1, Part 4 to, the 1989 Act with the following changes—

- (a) a sinking fund is now to be known as a capital works fund,
- (b) the power to resolve a dispute about a distribution of surplus money in the administrative fund or capital works fund will be conferred on the Tribunal rather than a court, though the Supreme Court will continue to determine disputes where the title to land is in question (other than incidentally) or the dispute is incidental to other disputes being dealt with by the Supreme Court,
- (c) the amounts levied as contributions on members of an association must be determined at the same association meeting that the estimates of the money required to meet actual and expected expenditure from the administrative fund and capital works fund are determined,
- (d) a contribution payable by a member of an association is payable on the date set out in the notice of the contribution and the date must be at least 30 days after the notice is given,
- (e) additional notice is not required to be given of regular periodic contributions,
- (f) interest is not payable on an overdue contribution if the contribution is paid not later than 1 month after the due date,
- (g) the Tribunal will have power to order a member of an association or another person to pay contributions (if unpaid for more than a month), interest that is due and expenses incurred in recovering those amounts,
- (h) the Tribunal will have power to order the original owner to pay compensation to the association if the estimates and levies determined during the initial period of the association scheme were inadequate to meet the actual or expected expenditures of the association,
- (i) an association is required to prepare a statement of key financial information for each reporting period for each of its funds, which is to include the balance carried forward, total income, total interest earned and other matters,
- (j) an association must have its accounts and financial statements audited before its annual general meeting if its annual budget exceeds \$250,000 and may do so if the annual budget is \$250,000 or less,
- (k) an association must not obtain legal services without first obtaining approval at a general meeting to do so (except in certain circumstances including urgent cases) if the likely costs of the matter will not be more than \$10,000 and if the services are for the purposes of recovering unpaid contributions.

Part 6 Property management

The proposed Part provides for the obligations and powers of associations relating to association property, the provision of amenities or services to associations and other matters related to association property. The proposed Part re-enacts provisions of Part 2, Division 1 and Part 3 of, and Schedule 1, Part 2 to, the 1989 Act, with the following changes—

- (a) an exception to the duty to maintain, repair and replace association property and property owned by an association is provided for where a special resolution is passed determining that it is not appropriate to maintain, repair or replace particular property and the decision will not affect safety or detract from the appearance of property in the association scheme,
- (b) the original owner must prepare an initial maintenance schedule of the association property and the schedule is to be one of the documents provided to the association before the end of the initial period,
- (c) an association is given clear power to dispose of or otherwise deal with a lot or personal property vested in the association,

- (d) the Tribunal will have power, on the application of an association, to order an occupier of a lot in an association scheme to allow access so that the association can determine whether work needs to be carried out by the association or for other purposes for which the association is permitted to enter,
- (e) a power to make regulations prescribing procedures for dealing with goods left on association property will be inserted,
- (f) the Tribunal will have power to order that an owner or occupier of a development lot or a neighbourhood lot in an association scheme take steps to repair damage caused to association property or another lot in the scheme by the owner or occupier or pay to the association the costs of repairing the damage and associated costs,
- (g) to require an association to consider certain matters before approving a sustainability infrastructure resolution.

Part 7 Management statements and by-laws for associations

The proposed Part provides for the management statements (including by-laws) for association schemes and the creation of by-laws that impose restrictions on and confer rights relating to association property. The proposed Part re-enacts provisions of Part 2, Division 1 and sections 54 and 55 of the 1989 Act, with the following changes—

- (a) a general statement is included that by-laws of association schemes may relate to the management, administration, control, use or enjoyment of the lots in an association scheme or association property,
- (b) a by-law of an association scheme may limit the number of adult residents who may reside in a lot by reference to the number of bedrooms in a residence,
- (c) a by-law must not be harsh, unconscionable or oppressive and cannot prohibit or restrict persons under 18 years from occupying a residential lot or the keeping of an assistance animal,
- (d) a by-law will not be capable of operating to prohibit or restrict a devolution or other dealing relating to a lot and a by-law cannot amend or repeal a by-law that takes effect by order of the Tribunal unless the change is approved by a unanimous resolution,
- (e) by-laws that restrict the use of or confer rights relating to association property will now be referred to as association property rights by-laws and may confer rights of exclusive use and enjoyment of all or specified property and confer special privileges in respect of all or specified property,
- (f) an association property rights by-law must provide for who is responsible for the maintenance and upkeep of property affected by the by-law,
- (g) a person who fails to comply with a notice given by an association that requires the person to comply with an association property rights by-law of the association or to pay an amount due under an association property rights by-law ceases to be entitled to use the property to which the by-law relates,
- (h) the maximum amount of civil penalty that may be imposed by the Tribunal for non-compliance with a notice relating to failure to comply with a by-law will be increased to \$1,100,
- (i) the Tribunal will have a power to revoke part of a management statement if it is of the opinion that the management statement contains a by-law that is harsh, unconscionable or oppressive.

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

The proposed Part provides for the obligations of owners of development lots, neighbourhood lots and strata lots in community schemes in relation to the use or enjoyment of the lots. The proposed

Part also authorises the appointment of agents by corporations and other owners of lots. The proposed Part re-enacts sections 111 and 111A of the 1989 Act, with minor changes.

Part 9 Insurance

The proposed Part provides for the insurance obligations of associations. The proposed Part re-enacts provisions of Part 2, Division 3 and section 84 of the 1989 Act, with the following changes—

- (a) an insurance policy for damage must provide for a building or structure that is destroyed, or a part of a building or structure that is damaged but not destroyed, to be rebuilt or replaced so that its condition or extent is not worse or less than the destroyed part when new,
- (b) an insurance policy for damage must also provide for payment of expenses incurred in removing debris and the remuneration of architects and other persons whose services are incidental to rebuilding, replacement, repair or restoration of a damaged building or structure,
- (c) the approved insurers for the purpose of providing insurance will be general insurers under the *Insurance Act 1973* of the Commonwealth or other persons prescribed by the regulations, rather than insurers approved by the Minister,
- (d) an association will be required to obtain a valuation of a building or structure that is required to be insured at least once every 5 years,
- (e) an association may, by unanimous resolution, decide not to use money received from an insurer for the destruction of or damage to a building for repairs or rebuilding,
- (f) an association must use an approved insurer for optional insurance it decides to take out,
- (g) the Tribunal may, on application by an association in accordance with a unanimous resolution, exempt the association from compliance with the requirement to insure a building or structure unconditionally, or subject to a condition that specified insurance is taken out,
- (h) the Tribunal may, on application by an owner or tenant of a development lot or neighbourhood lot, order a person entitled to the benefit of an insurance policy taken out under the proposed Act to pursue a claim in relation to damage to a building or structure on the lot if the Tribunal considers the person has unreasonably refused to make or pursue the claim.

Part 10 Records and information about association schemes

The proposed Part provides for the association rolls and records to be kept by associations and for the inspection of records and the provision of information about associations. The proposed Part re-enacts provisions of sections 25 and 26 of, and Schedule 1, Part 3 and Schedules 3 and 4 to, the 1989 Act, with the following changes—

- (a) the lessor or sub-lessor of a development lot, neighbourhood lot, strata lot or association property must give a copy of the by-laws or management statement affecting the lot or property to a tenant of the lot or property within 14 days after the tenant is entitled to possession and must also notify the tenant of changes to the management statement within 14 days of the change coming into effect,
- (b) the Tribunal may, on application by an association, owner or other person having or acquiring an interest in land, order an association to enter information contained in an association interest notice in the association roll if required confirmation of the information is not given.

Part 11 Disputes and Tribunal powers

The proposed Part provides for procedures for dealing with disputes and for Tribunal procedures and powers. The proposed Part re-enacts provisions of Part 4 of the 1989 Act with the following changes—

- (a) an association may establish a voluntary process for resolving disputes between owners, members of the scheme, other interested persons, the association, the association committee, the managing agent and the facilities manager. The process will not be considered mediation for the purposes of the proposed Act,
- (b) functions formerly exercised by Community Schemes Adjudicators appointed by the Minister will be performed by the Tribunal,
- (c) a party to a dispute is not entitled to be represented by another person at a mediation session unless all the parties consent,
- (d) the registrar of the Tribunal must not accept an application for an order under the proposed Act unless mediation has been unsuccessful, a party has refused mediation or the registrar considers that mediation is unnecessary or inappropriate in the circumstances,
- (e) jurisdiction is expressly conferred on the Tribunal to make orders or decisions that provide for ancillary or consequential matters and to make interlocutory decisions,
- (f) the Tribunal may make an interim order if urgent considerations justify the making of the order,
- (g) jurisdiction is conferred on the Tribunal to make orders about disputes and complaints relating to particular matters, including the operation, administration or management of a scheme and agreements appointing managing agents and facilities managers. The jurisdiction is limited to agreements arising under the proposed Act and to functions conferred by or under the proposed Act,
- (h) the right of persons who administer land tax to apply to the Tribunal for an order to replace the schedule of unit entitlement for a community scheme, precinct scheme or neighbourhood scheme has been removed,
- (i) the grounds on which the Tribunal may make an order appointing a managing agent or requiring a managing agent to be appointed have been extended to include the grounds that an association or strata corporation has failed to comply with an order made under the proposed Act, has failed to perform 1 or more of its duties and owes a judgment debt,
- (j) the maximum period for which an order appointing a managing agent or requiring a managing agent to be appointed may be in force will be extended from 12 months to 2 years,
- (k) the Tribunal will have power to make an order removing a person from an association committee, an order prohibiting an association committee from determining a matter and requiring it to be determined by a resolution of the association or an order removing 1 or more association officers from office and from the committee.

Part 12 Offences and penalties

The proposed Part provides for procedures for dealing with disputes and for Tribunal procedures and powers. The proposed Part re-enacts provisions of sections 109F, 112, 113, 120 and 121 of the 1989 Act and deals with the following additional matters—

- (a) where an offence under the proposed Act contains an exception for a reasonable excuse for an act or omission, the onus of proving that a person had a reasonable excuse will lie with the defendant and must be proved on the balance of probabilities,
- (b) an association or strata corporation for a scheme for a building or an owner of a lot in a scheme on which a building is erected may take proceedings for the rectification of the condition of part of a building or site of a building if the condition affects or is likely to affect the support or shelter provided to any other part of the building or its site.

Part 13 Miscellaneous

The proposed Part contains miscellaneous provisions. The proposed Part re-enacts provisions of sections 8, 46A and 53, Part 5A, Division 1 and Part 6 of the 1989 Act, with the following changes—

- (a) an officer of an association or a member of an association committee will be protected from personal liability for acts or omissions done in that capacity if done in good faith for the purposes of executing the proposed Act or any other Act. Any liability will instead attach to the association,
- (b) a postal address for service under the proposed Act must be an Australian postal address and an email address may be given as an address for service under the proposed Act,
- (c) the proposed Act and regulations under the proposed Act will not be able to be avoided through contractual provisions and other arrangements,
- (d) a power to make regulations will be included in relation to agreements between associations and councils relating to association parking areas and to require persons to provide information to the Secretary about schemes,
- (e) if the Crown is the owner of all lots in a scheme, it is not required to comply with provisions of the proposed Act relating to association committees, managing agents and facilities managers, property management (other than provisions conferring powers on associations), owner obligations, insurance and records.

Schedule 1 Meeting procedures of associations

The proposed Schedule contains provisions relating to procedures for meetings of associations. The proposed Schedule re-enacts provisions of Schedules 5 and 6 to the 1989 Act, with the following changes—

- (a) a notice requiring a matter to be included on the agenda for a general meeting of an association must include an explanation of the motion,
- (b) the agenda for an annual general meeting of an association must include—
 - (i) an item to decide if a matter or type of matter is to be decided only in a general meeting, and
 - (ii) an item to consider relevant utility agreements for the association scheme,
- (c) the notice of motion of an annual general meeting of an association is to include a motion to consider the report by the managing agent as to commissions paid or payable to the managing agent,
- (d) a member or the mortgagee or covenant chargee of a lot must be given a copy of the last financial statements for the association scheme at least 2 days before the annual general meeting if a copy is requested from the association,
- (e) a copy of the agenda for a meeting of the association must be given to a tenant of a lot who has been notified to the association as a tenant (a **notified tenant**),
- (f) the developer of the association scheme is not entitled to vote or exercise a proxy vote on a matter concerning building defects or rectification of building work,
- (g) a notified tenant is entitled to attend meetings of the association (subject to determinations by an association relating to consideration of financial and other matters) but not entitled to vote at or address a meeting,
- (h) a person may not act as a proxy of another person if the right to do so is conferred pursuant to a contract for sale of a lot in an association scheme or pursuant to an ancillary or related arrangement,
- (i) a vote by a proxy who is a facilities manager, on-site residential property manager or managing agent is invalid if it would gain the proxy a pecuniary interest or other material benefit,

- (j) there will be a limit on the number of proxies that a person may hold,
- (k) a provision of a contract, or an ancillary or related contract or arrangement, is void and unenforceable to the extent that it requires a person to cast a vote, or give a proxy for a vote, at a meeting of the association at the direction of another person,
- (l) regulations may be made to provide for voting at meetings other than in person,
- (m) voting may be by secret ballot if the association committee or at least one-quarter of the persons entitled to vote so determine.

Schedule 2 Meeting procedures of association committees

The proposed Schedule contains provisions relating to procedures for meetings of association committees. The proposed Schedule re-enacts provisions of sections 35 and 38 of the 1989 Act, with the following changes—

- (a) the secretary must give notice of at least 3 days of a meeting to each member of the association committee,
- (b) the association committee may decide a matter by approving a motion in writing,
- (c) regulations may be made to provide for voting at meetings other than in person,
- (d) provision is made for the adjournment of meetings,
- (e) members of an association committee must disclose direct or indirect pecuniary interests in matters to be considered at meetings of the committee and must not be present during deliberations of those matters and cannot vote on those matters unless the committee otherwise determines.

Schedule 3 Savings, transitional and other provisions

The proposed Schedule contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Schedule 4 Amendment of Acts and instruments

The proposed Schedule amends the Acts and instruments specified in the proposed Schedule.

Dictionary

The Dictionary defines certain words and expressions used in the proposed Act.