

Strata Legislation Amendment Bill 2023 (NSW) (Bill)

Summary of Key Changes

1. *Strata Schemes Management Act 2015 (NSW)*

Some of the key amendments to the *Strata Schemes Management Act 2015 (NSW) (SSMA)* proposed by the Bill are as follows:

- Currently, a strata scheme's original owner has to provide relevant documents and records to the owners corporation at least 48 hours before the first annual general meeting (**AGM**). The Bill proposes to increase this period to at least 14 days before the first AGM (Item 4 of Schedule 3 to the Bill).
- Currently, the SSMA states that election of strata committee members must take place at the AGM. However, the Bill clarifies that they can also be elected at a general meeting convened for that purpose (Item 7 of Schedule 3 to the Bill).
- The Bill clarifies that a reference in it to an "agent" is a reference to a "real estate agent" within the meaning of the *Property and Stock Agents Act 2002 (NSW)* (Items 1, 10 and 34 of Schedule 3 to the Bill).
- The Bill reduces the threshold required for an owners corporation to remove a strata committee member from a special resolution to an ordinary resolution and prohibits that removed strata committee member from being re-elected or appointed for a 12-month period (Items 12 -14 of Schedule 3 to the Bill).
- Currently and relevantly, a strata manager must give an owners corporation at least 3 months' written notice of the end of their term of appointment. The Bill requires "at least 3 months, but not more than 6 months" written notice before the end of the term (Item 15 of Schedule 3 to the Bill).
- If money is paid from or transferred between the owners corporations' administrative and capital works funds, it has 3 months to decide (by resolution at a general meeting) whether to reimburse that money, in whole or in part, and whether that reimbursement should be in the form of a fund transfer or levy to the fund (Item 16 of Schedule 3 to the Bill).
- The Bill recognises that contributions levied for "emergency repairs" need to be paid much quicker than contributions levied for other matters. It distinguishes that contributions levied for carrying out emergency repairs must be paid at least 14 days after notice is given and that all other levies must be paid at least 30 days after the notice is given. The Bill also defines "emergency repairs" as urgent repairs to a building required to mitigate a serious and imminent threat to the health or safety of the occupants. (Items 17 and 18 of Schedule 3 to the Bill)
- For expenditure over \$30,000, a strata scheme is required to obtain at least two independent quotes (as defined in the Bill). Emergency repairs are exempt. If the owners corporation cannot comply with these requirements, they must include as an agenda item for the next general meeting the reasons the quotes were unable to be obtained. Expenditure on items for large strata schemes are limited to estimates prepared at an AGM plus 10%, however, this limitation can be removed

by the owners corporation by resolution at a general meeting. (Item 19 of Schedule 3, Item 1 of Schedule 5 to the Bill)

- Owners corporations are prohibited from requiring an owner or occupier to pay a bond or fee or to obtain insurance for the keeping of a pet (Item 20 of Schedule 3 to the Bill).
- The Bill clarifies that by-laws which prohibit, restrict or “impose an unreasonable burden on” a person who keeps an assistance animal on a lot or common property have no effect. The Bill also sets out the evidence required to establish that the animal is an assistance animal if a by-law requires a person with an assistance animal to do so. (Item 22 of Schedule 3 to the Bill).
- The Bill omits the current section 141 which sets out a procedure for changes to by-laws. Minor drafting changes have been made to the wording of the new section 141 and it also adds two new provisions about the consolidation of by-laws. (Item 23 of Schedule 3 to the Bill)
- Electronic record keeping is required for the strata roll and other records required to be made or kept by an owners corporation (subject to some exemptions set out in the Bill) (Item 25 of Schedule 3 to the Bill).
- Agents or landlords will incur a maximum penalty of 5 penalty units if they fail to give the tenant a copy of the by-laws and strata management statement affecting the lot or common property within 14 days of the tenant becoming entitled to possession of that lot or common property. This requirement does not apply if the tenant has already been given a copy of the by-laws pursuant to the *Residential Tenancies Act 2010* (NSW). If there are any changes made to these documents, agents or landlords must give the tenant an updated copy within 14 days of any change. (Item 26 of Schedule 3 to the Bill)
- The Bill permits NSW Fair Trading to apply to NCAT for an order appointing a strata manager or requiring an owners corporation to appoint one (Item 28 of Schedule 3 to the Bill).
- The Bill permits tenants to notify the owners corporation of their lease should the agent or landlord fail to do so. Any evidence which must accompany this notice may be set out in the Regulations. (Items 34 and 35 of Schedule 3 to the Bill plus other consequential amendments).
- The Bill updates the SSMA to allow for an electronic address for service (Items 36-42 of Schedule 3 to the Bill).
- The Bill increases the notice period required for an AGM from 7 days to 14 days (Item 45 of Schedule 3 to the Bill).
- The Bill inserts a new clause limiting company nominees or persons acting under a power of attorney to exercise voting rights on behalf of not more than 1 owner, for strata schemes of 20 lots or less, or 5% of total owners, for strata schemes larger than 20 lots (Item 48 of Schedule 3 to the Bill).
- The Bill removes the strata committee’s choice, after a strata committee member discloses the nature of a conflict of interest in a matter at a strata committee

meeting, to “otherwise determine” whether that strata committee member may be present for or participate in deliberations or decisions about that matter (Item 49 of Schedule 3 to the Bill).

- The Bill amends transitional provisions relating to by-laws in force before the SSMA commenced and provides that they are only valid if they do not “contravene” the SSMA (Item 51 of Schedule 3 to the Bill).
- The Bill makes other minor amendments and drafting changes throughout.

2. *Strata Schemes Development Act 2015 (NSW)*

Some of the key amendments to the *Strata Scheme Development Act 2015 (NSW)* proposed by the Bill are as follows:

- Details about an application to terminate a strata scheme currently has to be published in a local and State newspaper at least 14 days before making the application. Instead, the Bill requires the applicant to give “public notice” of the details of the relevant strata scheme proposed to be terminated and a statement of intention to make the application for termination. Such notice must be in a manner considered appropriate by the Registrar-General “at least 14 days, but not more than 6 months” prior to making the application. (Item 1 of Schedule 1 to the Bill)
- The Bill increases the strata renewal committee’s period of operation from 1 year to 2 years (Item 6 of Schedule 1 to the Bill). The period of operation can still be extended by special resolution of the owners corporation prior to the expiry of the 2 years.
- For strata renewal plan applications, the Bill states that the Land and Environment Court:
 - can make an order giving “effect to the strata renewal plan” notwithstanding defects and irregularities in procedural steps occurred – provided they are “not likely to cause substantial injustice” (Item 7 of Schedule 1 to the Bill);
 - where a person makes an application objecting to such an order, the Court must consider whether the objection has not been filed in good faith (including because of a conflict of interest) (Item 7 of Schedule 1 to the Bill); and
 - must make a costs order against a dissenting lot owner in certain conflict of interest scenarios, or if the court considered appropriate, including because of a failure by the dissenting owner act in good faith (Item 8 of Schedule 1 to the Bill).
- The Bill defines a “relevant interest” as a direct or indirect pecuniary interest or other interest a person has in the proposed collective sale or redevelopment of a strata scheme. It also sets out when a person has a direct or indirect pecuniary interest.

Strata committee members who have a “relevant interest” must disclose the nature of that interest at a strata committee meeting at which the strata renewal proposal is being considered. They must not, unless the committee decides otherwise, be

present during deliberations or participate in decisions about the strata renewal proposal.

Further, a lot owner must disclose the nature of a “relevant interest” at a general meeting of the owners corporation held to consider either a strata renewal proposal, a strata renewal plan or whether to apply to the court for an order to give effect to the plan.

Particulars of any such disclosure must be recorded in the minutes of the relevant meeting. Non-compliance with these disclosure obligations does not invalidate a decision of the strata committee or owners corporation.

The Bill clarifies that, unless the court orders otherwise:

- (a) the owners corporation must pay the dissenting owner’s reasonable costs of proceedings for an application for an order to give effect to a strata renewal plan; and
- (b) the owners corporation cannot levy a contribution for part of the costs on a dissenting owner.

The court must make an order requiring a dissenting owner to pay certain costs for proceedings for an application for an order giving effect to a strata renewal plan, if satisfied the dissenting owner has a conflict of interest that makes it inappropriate, in the court’s opinion, for the owners corporation to pay the owner’s costs.

The court may make a costs order against a dissenting owner if satisfied it is appropriate to do so, including because they have not acted in good faith in failing to give, or withdrawing, a support notice.

The Bill states that the court may order costs to be assessed on the ordinary basis or an indemnity basis.

(Items 3 and 8 of Schedule 1 to the Bill)

- A strata renewal committee member or a person nominated for election to that committee must disclose any conflict of interest. The Bill sets out to whom such disclosure should be made and explains when a conflict of interest might arise.

At a general meeting at which members of the strata renewal committee are elected, the owners corporation must consider the nature of the conflict of interest, whether the nominee should be elected and, if elected, whether they should be present during deliberations or participate in decisions about a matter relating to their interest.

If a strata renewal committee member discloses a conflict of interest, a general meeting must be convened to decide whether to allow the member to remain on the committee without restrictions, remove that member from the committee or allow them to remain but not be present during deliberations or not participate in decisions about the matter relating to their interest.

A person who has made a disclosure during their nomination for election as a strata renewal committee member does not need to make the same disclosure once elected.

(Item 5 of Schedule 1 to the Bill)

- The Bill provides an exception to the requirement to value each lot that is not impacted by of a proposed strata plan of subdivision. They do not have to be valued if, in the qualified valuer's opinion, the proposed subdivision requires only minor changes to be made to common property and will not change the unit entitlement of each lot (Item 9 of Schedule 1 to the Bill).