

cpd LawInform YOUR PARTNER IN CPD **BOOK YOUR CPD TODAY** CPD YEAR ENDING 31 MARCH

Don't get caught out! Changes to strata title legislation



BY ALLISON BENSON - JAN 22, 2024 5:48 PM AEDT

Snapshot

Reforms to strata and community title legislation came into effect on 11 December 2023.

Governance changes impose new restrictions on meeting notices, voting, expenditure and disclosure in schemes.

Changes also affect the termination and renewal of strata schemes.



2023 is 'to improve the governance, accountability and effectiveness of strata and community land schemes'.

The amending legislation is broader than simply a review of strata title legislation as it also amends the [Community Land Development Act 2021](#) ('CLDA'), the [Community Land Management Act 2021](#) ('CLMA') and corresponding regulations. It responds to only 31 of the reform recommendations.

Amendments in effect

All but three of the amendments in *Strata Legislation Amendment Act 2023* commenced on 11 December 2023. The following changes are already in effect and relate to both strata and community title schemes unless otherwise noted.

Committees

Strata and association committees must be elected at an Annual General Meeting ('AGM'). However, they may now also be elected at other general meetings, which solves the issue of what happens when a committee is voted out between AGMs ([s 30 SSMA](#) and [s 32 CLMA](#)).

Committee members must disclose direct and indirect pecuniary interests and they may not participate in discussion or voting in relation to that interest ([sch 2 cl 18\(4\) SSMA](#) and [sch 2 cl 16\(4\) CLMA](#)).

Committee members can now be removed by an ordinary rather than a special resolution ([s 35\(1\)\(e\) SSMA](#) and [s 38\(1\)\(h\) CLMA](#)). If removed by ordinary resolution, a person cannot be a committee member for 12 months from the date of the resolution ([s 32\(5\) SSMA](#) and [s 35\(5\) CLMA](#)).

Associations may now have up to 15 committee members, up from nine ([s 32 CLMA](#)).

Managing agents

Managing agents must now give notice of the expiry of their agreement at least three months, and not more than six months, before it expires ([s 50\(6\)\(a\) SSMA](#) and [s 54\(6\)\(a\) CLMA](#)). Previously, the requirement was to provide notice three months beforehand.

In respect of associations, [section 25\(e\)](#) of the *CLMA* now restricts the term of appointment of strata managers and facilities managers in the scheme's initial period until the first annual general meeting.

Finances and fines

Schemes can now raise funds quickly for emergency repairs, with such contributions due and payable after 14 days' notice ([s 83\(3A\) SSMA](#) and [s 88\(3\) CLMA](#)). Emergency repairs are defined as urgent repairs to a building in the strata scheme, or a building on association property, that are necessary to mitigate a serious and imminent threat to the health or safety of the occupants. This definition excludes works that are not to a building, for example, repairs to a retaining wall that is not part of a building. All other contributions will still require 30 days' notice.

Schemes (except two-lot strata schemes), that have used money from one fund that should have been paid from the other fund, may resolve at a general meeting to reimburse all, part or none of the money, or to raise a

Two independent quotations must be obtained for expenses over \$30,000, except when the expenses are for emergency purposes ([s 102 SSMA](#) and [s 105A CLMA](#)). Previously, only large strata schemes had to do so. If the scheme is unable to obtain the required quotations, then an agenda item at the next general meeting must note the expenses and why two independent quotations could not be provided.

Schemes can now raise funds quickly for emergency repairs, with such contributions due and payable after 14 days' notice.



Animals

It is now easier for residents to keep an animal or assistance animal as schemes are prevented from requiring fees, bonds or insurance as a condition of keeping an animal ([s 105A SSMA](#) and [s 108A CLMA](#)). This overturns the decision of the NSW Civil and Administrative Tribunal in *Roden v The Owners – Strata Plan No. 55773 [2021] NSWCATCD 61* enabling application fees.

Further mischiefs are corrected by [sections 139A SSMA](#) and [130A CLMA](#) which prohibit by-laws imposing an unreasonable burden on a person using an assistance animal on the common or association property, and limiting the evidence required of an occupant with an assistance animal. The only evidence that can be required is evidence of accreditation under the *Disability Discrimination Act 1992* or a statutory declaration verifying the animal has received the prescribed training. Strata and community title regulations may, but do not currently, prescribe further acceptable evidence. An example of an unreasonable burden would be the requirement for an animal to be carried over the common property as this would prevent the use of a guide dog by a visually impaired person. It also prevents occupants from having to disclose personal medical information.

Records

From 10 May 2024, schemes must keep their records electronically, but they are not required to electronically reproduce records kept prior to this date ([s 176 SSMA](#) and [s 164 CLMA](#)). As such, schemes may want to review their data protection, back up and retention policies.

Under [sections 258](#) of the *SSMA* and [s 219](#) of the *CLMA*, where a lot is leased, the relevant person, being the lessor or their real estate agent, must provide notice of the lease to the scheme. Note that a real estate agent may now be fined for non-compliance. Tenants may also provide notice and must be provided with both the registered by-laws and all applicable management statements.

Changes have been made to how notices may be served. Essentially, they enable service of documents by electronic transmission to a nominated address or location ([ss 261–264 SSMA](#) and [ss 224–227 CLMA](#)).

Meetings



[Section 5\(2A\)](#) of the *SSMA* prevents an original owner's vote in a two-lot strata scheme from being reduced by changing the definition of a special resolution. This means the original owner retains the ability to elect officers of an owners corporation and strata committee members.

New restrictions apply to the voting rights of company nominees and voting under powers of attorney. If the strata scheme has 20 lots or less, or the association scheme has 20 development or neighbourhood lots or less, then a company nominee or attorney can exercise voting rights on behalf of one owner. If the strata scheme has more than 20 lots, or the association scheme has more than 20 development or neighbourhood lots, then the attorney or company nominee can exercise voting rights on behalf of not more than five per cent of the total number of lot owners. Note this differs slightly to existing restrictions on holding proxies.

Original owners must provide key information to schemes at least 14 days prior to the first AGM or, for associations, within three years of the scheme being registered, whichever is the sooner ([s 16\(1\) SSMA](#) and [s 14 CLMA](#)).

By-laws

Strata scheme by-laws can be consolidated following a special resolution even with no changes made ([s 141\(4\) SSMA](#)). Written consent of an owner with a common property rights by-law is not required unless their by-law is to be changed ([s 141\(5\) SSMA](#)). Amendments to the *SSMA*'s transitional provisions make it clear that although a scheme's registered by-laws can continue in force, they are not valid if they contravene the *SSMA*.

Two-lot strata schemes

In addition to the change in the definition of a special resolution, two-lot schemes no longer require a notice to comply with a by-law to be authorised by a resolution of the owners corporation or strata committee ([s 146\(4\) SSMA](#)), preventing a lot owner from blocking enforcement action.

The Court may also make costs orders against objectors if they are not acting in good faith under s 188 SSSA.



Strata renewal and strata termination

A new definition of 'relevant interest' is provided at [section 154A](#) of the *SSDA*, underpinning new disclosure requirements during the strata renewal process. It captures interests due to a connection to a proposed developer or purchaser, prospective developer or purchasers, and interests arising from options with these entities. Disclosure must be made before election to the strata renewal committee and should be continuous, with a requirement that general meetings consider the interest and whether that person should be restricted from being present during discussions or votes in relation to their interest ([s 165 SSSA](#)). Further, the term of a strata renewal committee has been extended to two years ([s 166 SSSA](#)).

certain key decision points in the process ([s 187A SSDA](#)).

The Court may now make orders giving effect to a strata renewal plan where there is a procedural irregularity, provided it has not caused and is not likely to cause substantial injustice ([s 182\(4A\) SSDA](#)). The Court may also make costs orders against objectors if they are not acting in good faith under [s 188 SSDA](#).

Where lot owners in a scheme unanimously wish to terminate the scheme, notification must be given in a manner the Registrar-General considers appropriate to ensure it comes to the attention of the public not less than 14 days before and not more than six months before the application to terminate is made ([s 142 SSDA](#) and [s 69 CLDA](#)).

Amendments not yet in effect

The following amendments are to take effect on a day to be proclaimed:

The Commissioner for Fair Trading will have standing to seek orders to appoint a compulsory manager:

- a. under [s 237](#) of the *SSMA* in respect of owners corporations; and
- b. under [s 196\(8\)\(e\)](#) of the *CLMA* in respect of associations,

extending the persons able to make such an application.

In respect of associations, section 129A will introduce into the *CLMA* the animal-related provisions already in place under the *SSMA*. This will prohibit by-laws, or decisions of an association, that unreasonably restrict the keeping of an animal. The changes also make provision for regulations specifying when keeping an animal unreasonably interferes with another occupant's use or enjoyment, and provision for deemed consent if a decision relating to keeping an animal is not made within a reasonable time or is in contravention of the new restriction.

Watch this space, more reforms to come

While these reforms are straightforward, it was highlighted in the amending legislation's second reading speech that they 'are just the beginning'. A draft bill to implement some of the other 139 recommended reforms on embedded networks, sustainability infrastructure, repairs and maintenance and governance will be prepared for consultation later this year.



Allison Benson is a principal of Kerin Benson lawyers.

RELATED ARTICLES



Mascot Towers: A termination order is not in order

BY ALLISON BENSON AND TOM WAUGH
11.12.23 - 4 min read



Evolving limitations on the power to make by-laws in strata and community title schemes

BY ALLISON BENSON
06.10.23 - 7 min read



When building work is not iron clad

BY CHRISTOPHER KERIN AND MIA HAAS
01.09.23 - 6 min read

[About us](#)

[Contact](#)

[Commercial partnerships](#)

[Subscribe](#)

[Privacy Policy](#)

[Terms of Use](#)

[Purchase and Refund Policy](#)

