

THE NUTS AND BOLTS OF THE LATEST STRATA REFORMS



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On 5 November 2015, the *Strata Schemes Development Act 2015* (the *Development Act*) and the *Strata Schemes Management Act 2015* (the *Management Act*) were assented to. By 2020 it is estimated that 50 per cent of NSW residents will live or work in strata. The expected commencement date is 1 July 2016, with draft regulations expected early this year. Key reforms are outlined below.

Governance

Statutory duty of strata committee members

The *Management Act* establishes a duty requiring strata committee (previously executive committee) members to carry out their functions for the benefit, so far as practicable, of the owners corporation (OC) and with due care and diligence. Liability for their acts or omissions will attach to the OC provided they were done in good faith for the purpose of executing their functions.

Disclosure obligations

Potential strata managers and building managers must disclose connections to the original owner and any pecuniary interest other than their potential appointment. Strata managers must disclose commissions and training received at each Annual General Meeting (AGM) and any expected commissions or training for the next 12 months with variations to be reported to the strata committee (SC) as soon as practicable. Gifts must also be disclosed and approved. SC members must disclose if their direct or indirect pecuniary interests appear to conflict with the proper performance of their duties and, unless the SC otherwise determines, that member must not take part in any decision relating to the matter.

Terms of appointment for strata managers

Section 50(1) of the *Management Act* provides that strata managers can only be appointed for a maximum term of 12 months at the first AGM or, in any

Snapshot

- Major reforms to strata laws have been passed and are expected to commence on 1 July 2016.
- The reforms are designed to increase transparency, simplify meeting processes and increase the accountability of those involved in managing the scheme.
- The reforms include changes to governance structures, by-laws, dispute resolution procedures and a new regime for building defects and a strata renewal process.

other case, for a period of up to three years. However, a complicated system is established providing for either extensions (of three month terms up to the next AGM) or a statutory option of a further three-year term.

The term for a strata manager appointed prior to commencement of the *Management Act* will end three years after the day the term commenced, or six months after commencement, whichever is later.

Strata managers must provide at least three months written notice of the end of their term of appointment and, where the term has been extended, at least one month's written notice of the end of the extension period.

New meeting requirements and procedures

Voting may be made easier with provisions allowing for attendance at meetings other than in person or by proxy provided the OC approves the procedure and for secret ballots. The regulations are to provide procedures. If quorum is not reached 30 minutes after the scheduled meeting time,

the chairperson may either adjourn a general meeting for at least seven days or declare that the persons present and entitled to vote constitute a quorum.

Proxy farming is restricted. Owners may hold one proxy in schemes of up to 20 lots and for schemes with more than 20 lots, proxies of up to 5 per cent of the total number of lots in the scheme.

Budgets and levies

Financial reports included with meeting notices have been streamlined with 'key financial information' required for the capital works fund (previously the sinking fund) and administrative fund.

Further changes include the OC being required to consider the initial maintenance schedule in determining contributions set prior to the first AGM, and NCAT will be empowered to order the original owner to pay compensation for inadequate estimates and levies. There is clarification of when approval to obtain legal services is required and the OC will be able to provide payment plans for contributions and must provide 21 days' notice prior to taking legal action to recover unpaid contributions.

Building management

Duty to maintain and repair common property

The previous obligation to properly maintain and repair common property is re-enacted as s 106 of the *Management Act* with the following additions:

- if the OC has taken action against an owner or other person in respect of damage to the common property it can defer compliance with its statutory obligation until the action is complete provided it does not affect safety (s 106(4));
- an owner may recover from the OC damages for breach of s 106 for reasonably foreseeable loss suffered due to its non-compliance provided such action is taken no more than two years after the owner first became aware of the loss (s 106(5)-(6));

(c) the obligation is subject to any common property memorandum adopted by the OC, any common property by-law or any by-law changing common property (s 106(7)).

Conflict exists between sub-ss 106(4) and (5). Presumably, an owner can take action and recover damages for breach of the statutory duty even where an OC has deferred compliance under sub-s 106(4), yet where an OC has made a claim for breach of statutory warranties under the *Home Building Act 1989* (NSW) (*HB Act*), the OC has a common law duty and potentially a statutory duty (see s 18BA) to mitigate its loss. This may further limit the OCs ability to defer compliance with s 106.

Building defects

Part 11 of the *Management Act* establishes a regime to deal with building defects. Part 11 does not apply to building work if the contract was entered into prior to the commencement of the *Management Act*, or, if there was no contract, the work commenced before this date. Further, pt 11 does not apply to building work for which insurance is required by pt 6 of the *HB Act*.

Part 11 requires a developer to pay a building bond of 2 per cent of the contract price for the building work and appoint (and pay for) an independent building inspector to inspect and report on the building work. Interim reports are required 15 – 18 months after completion of the work. Eighteen months after the completion of the building work the developer must arrange for the building inspector to prepare a final report, which is due 21 – 24 months after completion of the work. The final report must be provided to the developer, the owners corporation, the secretary and the builder responsible for any defective work.

In line with the *HB Act*, the *Management Act* favours rectification work with the responsible builder given rights to enter any part of the parcel to rectify defects. If rectification is not undertaken the building bond can be claimed, or, where not used, returned to the developer. Time limits apply.

Building manager definition extended

A building manager (formerly a caretaker) will not be required to have exclusive possession of a lot or part of the common property, thereby significantly expanding who is subject to the *Management Act*.

Parking

Section 112(3) of the *Management Act* authorises an OC to license the common property to council for a strata parking area. The *Local Government Act 1993* (NSW) is amended by inserting s 650A, creating the offence of parking in a strata parking area otherwise than as permitted by a notice or sign erected by council. A licence must be approved by special resolution.

By-laws

Registered by-laws for existing schemes will remain in force and must be reviewed within 12 months of commencement of the *Management Act*. Any by-law changes must be registered with the LPI within six months of the passing of the resolution.

The ability of an owner to conduct work within their lot and to the common property has been streamlined.

'Cosmetic work' such as laying carpet needs no approval. 'Minor renovations' including renovating kitchens requires OC approval by ordinary resolution at general meeting. Approval must not be unreasonably withheld but conditions apply. Work affecting the external appearance of the lot, involving structural changes or waterproofing, requires approval by a special resolution at general meeting and a by-law.

A by-law may limit occupancy to no more than two adults per bedroom, although it will have no effect if inconsistent with planning approval or other laws. By-laws must not be harsh, unconscionable or oppressive, nor can they restrict the keeping of an assistance animal. Civil penalties for a by-law breach will be increased, with increased penalties for repeat offenders. Penalties are payable to the OC unless NCAT orders otherwise.

Dispute management

The *Management Act* authorises an OC to establish a voluntary internal dispute resolution process. Participation will not be considered for the purpose of any mediation or other proceedings under the Act. The requirement for most disputes to be mediated prior to an NCAT application remains.

The notes to pt 12 contain a table regarding orders that can be made by NCAT, eligibility to apply and the relevant sections of the *Management Act*. Applications previously dealt with by a Strata Schemes Adjudicator go before NCAT and NCAT is given a number of

new powers. This is problematic as there is no right to legal representation.

Strata renewal process

Part 10 of the *Development Act* establishes a collective sale or renewal process known as 'strata renewal'. The process is subject to strict timeframes and starts when a person (not necessarily a lot owner) provides a written proposal for strata renewal to the OC.

If the SC considers the proposal worth further investigation, or, if a 'qualified request' under s 19 of the *Management Act* is received, the proposal must be considered at general meeting. If the SC rejects the proposal and a qualified request is not received within 44 days of the SC decision, or the OC decides at general meeting that the proposal is not worth investigating, it lapses.

If the OC at general meeting passes an ordinary resolution to pursue the proposal a strata renewal committee is elected to investigate and develop it. The committee has a budget and can appoint professional advisers.

A strata renewal plan containing prescribed information is developed by the committee. Once the plan is developed the OC at general meeting must specially resolve to give the plan to lot owners for their consideration or to return it to the committee, or it lapses.

Lot owners have 60 days to consider the plan after which they may execute a support notice. The plan lapses if it fails to obtain the written support of 75 per cent of lot owners within three months. By executing a support notice an owner is generally bound to the renewal process. If the required level of support is received, the OC must resolve at general meeting to apply to the Land & Environment Court for approval of the plan.

Dissenting owners must not be forced to participate in the redevelopment. The price to be paid for their lot is as follows:

In a plan for a collective sale, each lot must be planned to be purchased for not less than the compensation amount under s 55 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (*Compensation Act*) (s 171(2)), although there is a potential conflict with s 171(1)). If the plan is for redevelopment, each dissenting lot owner's lot must be purchased for the 'compensation amount', which is either the value determined under s 55 of the *Compensation Act* or as prescribed in the regulations. **LSJ**