

## Strata and community title update: big changes are on the way

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### SNAPSHOT

- The Strata Schemes Legislation Amendment Bill 2024 (NSW) implements a suite of impactful changes for the governance of strata and community schemes.
- Amongst other things, the Fair Trading Commissioner will gain broad powers and onerous duties will be imposed on committees, and building and facilities managers.
- This article will outline and summarise the key elements of the reform for which strata lawyers should begin preparing for now.

The Strata Schemes Legislation Amendment Bill 2024 (NSW) (**'the Bill'**) is the latest tranche of the statutory review of our State's strata title legislation. The Bill received assent on 2 March 2025. The changes are expected to be rolled out from mid-2025.

The new legislation will bring a wealth of changes to our strata and community title schemes, giving effect to a further 37 recommendations raised during the 2021 review. These follow earlier stop-gap reforms relating to disclosures by strata managing agents and building managers in effect as of 3 February 2025. The new changes aim to improve accountability and confidence in strata managing agents and building managers.

This article outlines the key changes which will have a significant effect on the approximately 1.2 million NSW residents who live in strata communities.

### The 2024 and 2025 changes

It would be remiss not to start by summarising the changes which, unless otherwise stated below, took effect on 3 February 2025 under the *Strata Schemes Managing Agent Legislation Amendment Act 2024*. Now, strata managers:

- when seeking general meeting approval to accept training, commissions and gifts, must provide in writing the amount of commission and how it is calculated, the value or estimated value of the training and their relationship to the provider. Additionally, they must provide a statement that accepting the training, commission or gift will not breach their duty under Schedule 1, clause 11 of the *Property and Stock Agents Regulation 2022* relating to conflicts of interest (sections 57(3A) and (3B) of the *Strata Schemes Management Act 2015* (NSW) (**'SSMA'**));
- before entering into contracts to supply goods and services, must disclose in writing if that involves commissions or training services to be provided to the strata manager or if the contractor is a person connected with the managing agent. Similar details must be provided as for section 57 discussed above. It is retrospective, so if the manager becomes connected with the original owner or a person providing goods and services to the scheme within 12 months, they must disclose these details and their relationship. Since 8 November 2024, the scheme or the Fair Trading Commissioner (**'Commissioner'**) may make an application that the strata manager pay some or all of the value of commissions or training services to the owners corporation if they are not disclosed (section 60);
- must (along with building managers) now also disclose if they have a connection with a person who 'routinely supplies goods or services' to other schemes they manage or that the person gave advice, whether under a

formal contract or otherwise, to the original owner in the past two years about the strata plan or another strata or community plan ([section 71](#)). This is in addition to the requirement that strata managers and building managers disclose in writing prior to their appointment if they are connected with the original owner, or if they have any direct or indirect pecuniary interest in the scheme (other than their potential appointment); and

- must obtain three insurance quotations (or provide written reasons why not) that detail the commission amount and its percentage of the base premium (and who receives it), the brokers fee and base premium. They must also provide a statement as to whether the person providing the quotation is connected with the managing agent ([section 166](#)). These details must be provided as soon as practicable.

Note that section 7 provides a definition of a connected person. Penalties for the offences increase across the board and took effect on 8 November 2024.

Although references are made throughout to changes to the *SSMA*, these changes also affect the *Community Land Management Act 2021* (NSW) (*'CLMA'*).

## **The proposed 2025 amendments**

The Bill provides for the following changes to the *SSMA* and the *CLMA*. For convenience references are to the future *SSMA*, when the Bill comes into force.

### ***Accessibility infrastructure***

Definitions of 'accessibility infrastructure' and 'accessibility infrastructure resolution' will be adopted ([section 4\(1\)](#)). They include changes to any part of the common property to facilitate a person with a disability having access to the common property or the lot in which they reside. Resolutions to finance accessibility infrastructure, to add or alter the common property or to change the by-laws for the scheme in respect of accessibility infrastructure will be accessibility infrastructure resolutions. These changes mirror those enacted for sustainability infrastructure resolutions, including a change to the definition of special resolution meaning a simple majority would be required for this type of resolution.

### ***First AGMs & initial maintenance schedules***

Original owners must call and set the agenda of the first annual general meeting (*'AGM'*). Penalties for the original owner's failure to hold the first AGM and provide the required documents have increased from 10 to 100 penalty units, with two penalty units for each day the offence continues ([sections 14, 15 and 16](#)). 'Multi-storey schemes' are schemes with at least one building over two storeys (including the ground level and split levels) and where at least part of one lot is located above all or part of another lot. Original owners of such schemes must provide additional information before the first AGM. This includes an initial maintenance schedule in prescribed form containing estimates of expected expenditures and certification by an independent surveyor ([section 16\(1A\)](#) and [115\(2B\)](#)).

### ***Strata and association committees***

Currently, committees must act for the benefit, so far as practicable, of their scheme with due care and diligence ([section 37](#)). This duty will be significantly expanded to require they also act with 'honesty and fairness', so as to comply with the *SSMA* and regulations and only use or disclose information obtained as a committee member (including information about a lot owner) as required to carry out their function or as authorised by law. A further new duty to not behave in a way that 'unreasonably affects a person's lawful use or enjoyment' of a lot or the common property will be combined with a requirement to complete mandatory training. The nature, method and extent of that training is not known. Time limits will apply to complete the mandatory training. These new duties will impose onerous obligations on volunteers comprising the committee.

Clarifications will be made to the role of the chair at meetings, including to encourage discussion by attendees at committee and general meetings ([section 42](#)). It will also be easier for a scheme to vacate the office of chair, secretary and treasurer with only an ordinary resolution required at general meeting ([section 49\(1\)\(d\)](#)).

### ***Strata managers***

*Additional disclosure:* Strata managers must provide the owners corporation with records of their exercise of the owners corporation, chair, treasurer or secretary's functions every six months – up from every 12 months ([section 55\(2\)](#)).

*New defence for breach of duty:* Currently, where a strata manager is delegated a function and a breach of duty by the owners corporation would constitute an offence, the strata manager is guilty of the offence. A new defence will be

provided for the strata manager for when the breach was caused by the owners corporation and the agent took all reasonable steps to prevent the breach of the duty (section 57(1A)).

### ***Building and facilities managers***

*New definition:* Where a person exercises the functions of a building manager (or, in the case of an association, a facilities manager) on a voluntary or casual basis only, as a member of a committee, or if they belong to a yet-to-be prescribed class of people, they will not be a building or facilities manager (section 66(2)).

*New duty:* A substantial new duty will be imposed on building and facilities managers. They must not, without reasonable excuse, fail to act in the best interests of the scheme or breach a duty additionally prescribed by the regulations – which are not yet known (section 70A). They are not required to do so if such an act would be contrary to the SSMA or regulations, or otherwise unlawful. Potential penalties are 100 penalty units for individuals and 200 otherwise.

### ***Strata, building and facilities managers***

*Appointments:* The Commissioner may approve one or more strata management, building manager or facilities management (in the case of associations) agreements and the terms and conditions they must or must not contain (sections 49(3A)-(3B) and 67(3)).

*New power to vary or terminate agreements:* The Civil and Administrative Tribunal (“**Tribunal**”) will be given the ability to terminate or vary strata, building and facilities management agreements when they are unreasonable; or, where the manager is carrying on a business involving supplying services to the scheme, lot owners or occupiers, if carrying on the business is contrary to law (section 72(3)). This exposes these contracts to Australian Consumer Law requirements by inserting the new section 32A into the *Fair Trading Act 1987* (NSW) which will apply to new agreements and renewed agreements after commencement of the changes.

### ***Scheme finances***

*Sustainability considerations:* When estimating the costs of maintaining the common or association property, schemes will have to consider the cost of installing, repairing or replacing such for the sustainable use of the scheme (section 79(2)(e)). Examples of solar panels, electricity meters and sustainable building materials are provided.

*Capital works fund plans:* Schemes must consider the initial maintenance schedule when preparing the first ten-year capital works fund plan (section 80(1A)) with plans to be in a prescribed form (section 80(4)).

*Contributions and payment plans:* Levy notices will have to be accompanied by information approved by the Commissioner (section 83(1A)). This is expected to be information on payment plans and financial counselling services. Payment plans continue to be limited to 12 months with provision for further plans to be made. Schemes cannot pass a blanket resolution to refuse payment plans but can refuse in particular cases (section 85) and payment plans must be reasonably refused (section 85(5A)). There is provision for the regulations to prescribe what constitutes a reasonable refusal (section 85 (5B)). Payment plan eligibility, the form of request, evidence required and how the request is to be stored, secured, used and disposed of may be the subject of the regulations (section 85(6)). The Tribunal may order a payment plan be made if a refusal is found to be unreasonable (section 85(9)).

*Debt recovery:* When payment plans are entered and complied with, schemes may not take debt recovery action (section 86(6)). Payments must be applied to contributions in order of due date, then interest and then the schemes expenses (if an order was made to enable this) unless an order states otherwise (sections 86(7)-(8)). Notice of debt recovery action will be increased from 21 days to 30 days (section 86(4)). Schemes may not recover their reasonable costs of debt recovery action unless they have offered the option of a payment plan and the Tribunal or a court so orders (section 86(2AA)).

*Legal services:* Paid legal services must not be obtained unless the scheme or its committee has passed a resolution to do so. The resolution may be for unlimited costs or cap the costs for the services (section 103).

### ***Duty to maintain & repair scheme property***

*Limitation on deferring repairs:* In a major change to a scheme’s ability to defer its repair and maintenance of common or association property obligations, schemes will not be able to defer their obligation if it affects a person’s access to or use of the common property or a lot in the scheme (section 106(4)).

*Time limit for damages:* The time from which a lot owner must take action against the scheme for damages after they first become aware of their loss is to be extended from two years to six years (section 106(6)). This is another

significant change.

*Additions and alterations:* Special resolutions authorising changes to the common property will need to specify whether the ongoing maintenance obligation is assigned to the scheme or the relevant lot owner (section 108(3)).

*Minor renovations:* Strata committees that refuse applications for minor renovations under section 110 must provide written reasons within three months of the application. Failure to do so will result in the deemed acceptance of the works application (section 110(6B)). Schemes must keep written records of minor renovations for ten years (section 110(6C)).

### ***Embedded networks***

Section 132A, which sets time limits for contracts for the supply of utilities, will be amended to include the supply of embedded networks and communication services. Changes are also to be made to the *Conveyancing Act 1919* (NSW) to require disclosure of embedded networks for off-the-plan contracts. Further, section 184 certificates will have to state if the scheme has an 'exclusive supply network'.

### ***By-laws***

*Restrictions:* By-laws will have no force or effect where they prevent the installation of sustainability infrastructure only to preserve the scheme's external appearance. This does not apply where heritage restrictions apply (section 139B).

*Common property rights by-laws:* Clarification is also provided that the written consent of owners with rights or special privileges is required to make, *repeal or amend* a common property rights by-law (section 143), with owners not to unreasonably fail to give their consent (section 143(1A)).

### ***Books and records***

Inspections of books and records may be by secure electronic access with the regulations to set the maximum fee for in-person or electronic access (section 183(3) & (3A)).

### ***Commissioner's powers***

The Commissioner's powers are expanded to enable investigations, monitoring and enforcement of obligations to maintain and repair scheme property, and obtain information or records required for enforcement purposes (section 188B). They can require documents to be provided (section 188D), answers to be given (section 188E), record answers for evidence purposes (section 188F), enter premises (section 188G) and apply for search warrants (section 188H). When on premises they may require, inspect and copy records (section 188J), examine a thing, take and remove samples, conduct examinations, inquiries, tests or take measurements including using reasonable force to break open or access a thing or conduct destructive testing (section 188K). They can also open up, cut open or demolish building work where they reasonably believe there is, or is likely to be, a breach of the scheme's duty to maintain and repair its property (section 188L) and may seize items reasonably believed to be connected with a breach of the duty to maintain and repair (section 188M).

The Commissioner may direct a person to provide reasonable assistance (section 188O) and a person must not without a reasonable excuse obstruct, hinder or interfere with the Commissioner when they are exercising their enforcement functions (section 188P). It will be an offence not to comply with the Commissioner's direction without reasonable excuse and subject to 20 penalty units, with two penalty units for each day the offence continues, for individuals or 100 penalty units otherwise.

The Commissioner must provide receipts for seized items and keep them for evidence in court proceedings (section 188R) and may destroy the seized items after providing written notice to the owner (section 188S). Compensation is not payable where an item is destroyed.

The Commissioner is also empowered to accept written undertakings by schemes to carry out maintenance or repair work, renew or replace fixtures or fittings provided the scheme has authorised the undertaking by special resolution (section 188T). Contravention of an undertaking incurs a maximum penalty of 100 penalty units, with 20 penalty units per day for continuing offences. A scheme may vary or withdraw the undertaking after passing a special resolution and with the Commissioner's consent (section 188U).

The Commissioner can apply to the Tribunal for orders to either remedy or restrain a breach of the duty to maintain and repair scheme property (section 188V). They are not required to show likelihood of damage for an order to be made.

Notably, a complaint is not required for the Commissioner to investigate a breach or potential breach of the duty to maintain and repair, however, even if they receive a complaint, they are not obligated to inspect (section 188W).

Compliance notices may be issued by the Commissioner where they reasonably believe there has been a breach of the duty to maintain and repair the scheme's property (section 188X). A notice must give reasons and require the scheme to take the action specified in the notice (section 188Y). It is an offence to breach a compliance notice subject to 200 penalty units, with 20 penalty units per day for continuing breaches (section 188ZB). Schemes may apply, within 28 days of receipt of the notice, to the Tribunal for administrative review under the *Administrative Decisions Review Act 1997* (NSW) of the decision to give a compliance notice (section 188ZC).

## Summary

These are substantial changes to strata and community title legislation with the widest ranging of the changes being:

- more onerous duties imposed on committees, including the obligation to undertake training;
- new duties imposed on building and facilities managers;
- the obligation not to defer maintenance and repairs to scheme property where it affects a person's use or access to the common property or a lot;
- the extension of the time for lot owners to take action for reasonably foreseeable loss resulting from a breach of the schemes duty to maintain and repair its property from two years to six years;
- the requirement not to unreasonably refuse payment plans for overdue contributions;
- the lower threshold for accessibility infrastructure changes; and
- the significant increase in the Commissioner's powers which will require much in the way of additional resources.

The time frame for implementation of the legislation is not yet known. Given the substantial changes required, including preparation and implementation of training for committee members and the need to resource Fair Trading, the implementation may well be delayed.

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