

STRATA MANAGING AGENTS LEGISLATION AMENDMENT BILL 2024
STATEMENT OF PUBLIC INTEREST 18 / 9 / 24

Need: Why is the policy needed based on factual evidence and stakeholder input?

More than 1.2 million people live in strata communities in NSW. This number is set to grow in the future.

Recently, issues have been highlighted about the transparency of strata managing agents when carrying out their functions and whether they are acting in the best interests of owners corporations.

These issues include agents:

- charging excessive fees and receiving commissions when securing strata insurance for the buildings they manage,
- being swayed to buy products from certain companies over others because they get a benefit, and
- using the services of related entities to obtain financial benefits without the knowledge of the owners corporation.

The Bill is needed to address these issues and help restore people's confidence in living and investing in strata schemes. This is critical as higher density housing is key to addressing NSW's housing shortage.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill is in the public interest as it aims to:

- strengthen the disclosure obligations of the strata industry,
- increase transparency for consumers, and
- bolster NSW Fair Trading's compliance and enforcement powers.

The Bill will achieve these aims by:

- imposing stronger disclosure requirements on agents. Agents will need to disclose more information about their interests more frequently to owners corporations,
- banning agents from receiving a commission for insurance products where an owners corporation secures the quote and arranges the purchase independently, and
- strengthening NSW Fair Trading's enforcement and compliance powers including introducing a broader enforceable undertaking power and increasing the maximum penalties and penalty infringement notice amounts for agents' disclosure obligations.

The changes to the *Strata Schemes Management Act 2015* will also be applied to the *Community Land Management Act 2015* so the two similar regulatory regimes remain consistent. This will also benefit residents who live in community land schemes.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The NSW Government considered the following options:

1. Option 1 – Take no action and maintain the status quo.
2. Option 2 – Ban commissions and financial benefits outright.
3. Option 3 – Improve agents disclosure obligations under the *Strata Schemes Management Act 2015* (the Strata Act).
4. Option 4 – Strengthen NSW Fair Trading's compliance and enforcement powers.

Analysis: What were the pros/cons and benefits/costs of each option considered?

Option 1, taking no action is not preferred. This approach would mean that there would be no increase in the regulatory burden on the strata industry. However, this approach would not:

- address community expectations that there should be transparency in owners corporations' dealings with agents,
- mitigate the risks that strata managing agents who get commissions when they purchase strata insurance for an owners corporation are not acting in the interests of their clients (i.e. owners corporations), or
- ensure that owners corporations have the information they need to make informed decisions about matters that impact them, such as whether their agent is providing a quality and well-priced service.

Option 2, banning commissions outright is not preferred at this point in time. It is standard practice in the strata industry for strata managing agents to receive commissions from insurance providers.

Some strata industry stakeholders argue that commissions are an essential income stream for strata managing agents. Stakeholders consider that if agents cannot receive commissions, agents would need to increase their strata management fees, which would then make strata levies higher for strata lot owners. However, many industry stakeholders have acknowledged that this business model must evolve for the industry to remain financially viable and trustworthy into the future.

This is a complex issue that the Government will continue to explore in consultation with stakeholders as part of future reforms to NSW strata laws.

Option 3 in combination with option 4 are the preferred options.

The benefits of improving agents' disclosure obligations (i.e. option 3) include:

- owners corporations being better informed so they can make good decisions about matters that impact them,
- mitigating the risks of agents acting in conflict with their clients' interest as they will need to more actively think about their obligations, inform their clients about relevant matters properly and be more accountable for their actions,
- increasing people's confidence that the strata laws are properly protecting consumers so they are comfortable buying strata properties.

Additionally, the strata industry generally accepts that improved disclosure in the strata industry is needed. For example, John Trowbridge's 2022 industry-commissioned report about commissions for strata insurance, *Independent Review of Strata Insurance Practices*, recommended increasing transparency for owners corporations about insurance charges.

While there is expected to be increases in the regulatory burden on strata managing agents, the Bill limits this as much as possible. It aims to strike the right balance between informing and empowering consumers and capturing the level of detail and type of information that managing agents are reasonably able to provide to ensure consumer confidence and transparency. For example, the new disclosure requirements about insurance quotes are largely consistent with the peak industry body's, Strata Community Association, *Best Practice Strata Insurance Disclosure Guide*. This means that strata managers already following the Guide will need to do very little additional work to comply with these new requirements. However, making it law puts all strata managers on a level playing field.

Option 4, strengthening NSW Fair Trading's compliance and enforcement powers, will ensure there is a strong penalty framework and appropriate compliance and enforcement

powers for the regulator to deter non-compliance and ensure fair competition in the strata industry.

For example, increasing the maximum penalties and penalty infringement notice (PIN) amounts in the Strata Act and the *Property and Stock Agents Act 2002* (the PSA Act) will better deter bad actors from taking advantage of owners corporations for their own personal gain. The existing maximum penalties for the disclosure obligations in the Strata Act (e.g., 20 penalty units or \$2,200) and PIN amounts (e.g. \$550) can be inconsequential to many strata managing agents who earn much larger amounts through their business or from commissions.

PINs that NSW Fair Trading issue are only done so according to strict criteria where non-compliance is clear. As such, the cost to Government of the proposed increases is expected to be nil or minimal.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

NSW Fair Trading within the Department of Customer Service (DCS) regulates strata schemes and property agents.

The Bill will commence on proclamation. The proclamation date, or dates, will be determined in close consultation with key stakeholders. This process will include any transitional considerations for the industry and development of supporting administrative and education measures.

It is expected that certain provisions that do not introduce any new obligations on industry will commence shortly after the Bill passes Parliament.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

DCS undertook targeted consultation with key stakeholders on the Bill in July 2024.

Key external stakeholders consulted about the Bill include:

- the Strata Community Association (NSW),
- the Real Estate Institute of NSW,
- the Owners Corporation Network,
- the Australian College of Strata Lawyers,
- the Australian Consumers Insurance Lobby,
- the Australian Apartment Advocates, and
- the Law Society of NSW.