

## STRATA SCHEMES LEGISLATION AMENDMENT BILL 2024

### STATEMENT OF PUBLIC INTEREST

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

Strata schemes play an essential part in the NSW housing mix. Strata is also an important form of land title in commercial, retail, industrial and retirement village settings.

There are now more than 86,000 strata schemes in NSW, housing more than 1.2 million people across NSW. These numbers are expected to grow as the Government boosts housing supply.

It is essential that the regulatory framework governing the sector functions effectively, allowing lot owners to operate as self-governing communities collectively deciding how best to manage the property that they share.

The *Strata Schemes Development Act 2015* and the *Strata Schemes Management Act 2015* jointly provide the regulatory framework for the creation, management and termination of NSW strata schemes.

This regulatory framework was subject to a statutory review in 2020, with the purpose of establishing whether the objects of the Acts and their provisions remained fit for purpose.

The Report on the Statutory Review of the *Strata Schemes Development Act 2015* and *Strata Schemes Management Act 2015* (the Report) was tabled in NSW Parliament on 29 November 2021. The Report made 139 recommendations including reforms in key areas of strata renewal, governance, embedded networks, sustainability and repairs and maintenance.

The Report was informed by an extensive public consultation process between 7 December 2020 and 7 April 2021, as well as a survey on pets in strata from February 2021 for six weeks. A total of 222 submissions and 728 survey responses were received. The pets survey received 1,601 responses.

The Bill is part of a staged approach to the implementation of the Report's recommendations. This process started with the *Strata Legislation Amendment Act 2023* which commenced on 11 December 2023. This Act implemented 31 of the Report's recommendations including more urgent reforms relating to strata renewal and banning the charging of fees or bonds for residents to keep pets.

The Bill implements a further 37 of the Report's recommendations providing benefits to residents living in strata and community land schemes. The Bill also implements additional reforms raised by stakeholders since the review. These reforms were informed by multiple rounds of consultation with key strata stakeholders.

Key strata stakeholders were consulted on a draft of the Bill for a four-week period between 5 September and 3 October 2024.

The Report's remaining legislative recommendations are being progressed by the Government.



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

The Bill amends strata and community land scheme laws and ensures community land scheme laws remain harmonised with strata laws.

The Bill introduces significant reforms that aim to protect owners corporations, improve the accountability of strata management services and developers, ensure owners properly maintain their building, uplift the governance of committees, and make community living better and easier for residents.

The Bill will achieve these aims by:

- **strengthening developer accountability** by introducing requirements in relation to the preparation of the initial maintenance schedule (IMS), requiring the IMS to be independently certified by a prescribed professional for a multi-storey scheme, requiring that the initial levy estimates to the administrative fund and capital works are independently certified by a prescribed professional for a multi-storey scheme, and increasing penalties for developers failing to meet these new obligations as well as failing to hold a first Annual General Meeting (AGM) in the required time,
- **supporting sustainability infrastructure and accessibility infrastructure uptake** by prohibiting by-laws that prevent the installation of sustainability infrastructure solely on appearance except where heritage listed or within a heritage conservation area, requiring owners corporations to consider sustainability at each AGM and when preparing estimates for the capital works funds, and making it easier for an owners corporations to pass accessibility infrastructure resolutions,
- **uplifting strata professional services to improve owners confidence** by prohibiting certain terms in strata management agreements, requiring strata managing agents to report every six months to the owners corporation the functions they exercise, adding a new statutory duty for building managers to act in owners corporations' best interests, and adding a new ground to terminate strata managing agent and building manager agreements if they carry on a business in a way that is contrary to law,
- **improving the governance of strata committees** by imposing additional duties on strata committee members, prescribing training requirements for committees, requiring strata committees to provide written reasons for refusing minor renovation requests within three months of the application and providing for deemed approval if they fail to do so,
- **building responsible owners corporations to maintain and repair common property** by enabling NSW Fair Trading to enter into enforceable undertakings with owners corporations or issue compliance notices, restricting an owners corporation's ability to defer building works if safety or amenity is affected, prescribing requirements for the 10-year capital works fund plan, requiring the initial 10-year capital works fund plan to consider the IMS, , and extending the two-year limit on damages claims by lot owners to six years,
- **prohibiting unfair contract terms** in standard form contracts for the supply of good or services or for the sale or grant of an interest in land to an owners corporation,
- **improving protections for owners and prospective owners around embedded networks** by removing the exemption for embedded electricity supply contracts so three year term limits apply, clarifying the definition of utility to apply to a range of communication and domestic services and adding new conveyancing disclosure requirements around embedded networks,



- **assisting owners in financial hardship** by requiring levy notices to be accompanied by information approved by NSW Fair Trading, introducing safeguards for owners experiencing financial hardship such as requirements around payment plans and applying arrear payments to levies first followed by interest and debt recovery expenses, and increasing the notice of debt recovery action from 21 days to 30 days, and
- **other minor changes** to improve the operation of the legislation.

The reforms will complement the Government's other commitments to crack down on unscrupulous builders, increase housing supply, make it easier for tenants to have pets in rentals and address community concerns around strata managing agent conflicts of interest.

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

The Bill implements 37 of the Report's recommendations, which can only be achieved through legislative amendment. Alternative non-legislative mechanisms would not deliver on the Report's recommendation.

The additional reforms in relation to accessible infrastructure, inspection of records and assisting owners in levy arrears can only be achieved through legislative amendment.

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

Not taking legislative action would maintain the status quo. NSW Fair Trading explored the implementation of the recommendations' intent through non-legislative approaches, including education and compliance. These options were not able to fully resolve the issues that the Bill seeks to address. Without the Bill it would mean that NSW strata and community land laws remain outdated, and that Government has not implemented the recommendations in the Report.

The Bill will strengthen the operation of the regulatory frameworks for strata and community land schemes in NSW with the following benefits:

- improving the governance and capabilities of committee members,
- strengthening transparency and accountability of the original owner (usually the developer),
- supporting the uptake of sustainability and accessibility infrastructure for more future-oriented and sustainable community living,
- uplifting professional strata management services, including strata managing agents and building managers, to improve owners confidence in the professionals they engage,
- helping owners to properly maintain and repair common or association property and empowering NSW Fair Trading to act when needed,
- improving disclosure of embedded networks to prospective buyers,
- protecting owners corporations and associations from unfair contract terms in standard form contracts, and
- assisting owners in financial hardship while recognising the needs of the scheme overall.

The changes in the Bill impose some regulatory burden on industry and owners, such as requirements for committees to undergo training, requirement for certain information to accompany levy notices and new obligations. However, any increase in regulation is outweighed by the benefits. This will be subject to ongoing review to ensure that regulatory burden is commensurate with regulatory harms.



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

Most amendments in the Bill will commence on proclamation, expected to be rolled out from mid-2025. This is because the Bill contains substantive reforms which will require a transition period for the industry and owners to prepare for the changes. Also, supporting regulations and forms need to be developed in consultation with stakeholders.

NSW Fair Trading will continue working with stakeholders to ensure the recommendations are implemented with the lowest cost impact. There will be dedicated education and communications resources, as well as standardised materials to make it easier for owners and managers to meet their obligations under the Act.

Only the minor amendments that fix unintended consequences and ensure consistency in legislation commence on assent of the Act. They include amendments to clarify that a committee member vacates their position if removed by resolution of the owners corporation to ensure alignment with changes that commenced in December 2023, replacing 'legal action' with 'legal services' to ensure the relevant sections in the Regulations are not beyond power and removing company nominee voting restrictions for corporation owners.

NSW Fair Trading administers the *Strata Schemes Management Act 2015* and *Community Land Management Act 2021*. The Office of the Registrar General administers the *Strata Schemes Development Act 2015*, *Community Land Development Act 2021* and the *Conveyancing Act 1919*. NSW Fair Trading and the Office of the Registrar General will work together to co-ordinate the implementation of the Bill.

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

As discussed above, the Report was informed by an extensive public consultation process. Key strata stakeholders were also consulted in November 2022 and February 2024 on options to help inform drafting of the Bill. Further consultation on the draft Bill occurred in September and October 2024.

The key stakeholders consulted include: Animal Care Australia, Australian Apartment Advocacy, Australian Bankers Association, Australian College of Strata Lawyers, Australian Institute of Quantity Surveyors, Australian Resident Accommodation Managers Association, Bannerman Lawyers, Professor Cathy Sherry, Economic Abuse Reference Group, Financial Rights Legal Centre, Financial Counselling Australia, Law Society of NSW, Marrickville Legal Centre, Owners Corporation Network, Property Council of Australia (NSW), Property Owners Association NSW, PICA Group, Sacks Australian International Lawyers, Real Estate Institute (NSW), Strata Community Association NSW, and Urban Development Institute of Australia NSW.

All feedback was carefully considered and informed the final Bill.