



New South Wales

Strata Schemes Legislation Amendment Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are to—

- (a) amend the *Strata Schemes Management Act 2015* (the **SSMA**) to implement some of the recommendations made in the report on the statutory review of the Act tabled in Parliament on 29 November 2021 (the **report**), and
- (b) make related amendments to the *Community Land Management Act 2021* (the **CLMA**) and the regulations made under the SSMA and the CLMA, and
- (c) make consequential amendments to other Acts and regulations.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 **Amendment of Strata Schemes Management Act 2015 No 50**

Schedule 1[2] amends the SSMA to lower the threshold for passing a special resolution in relation to accessibility infrastructure. **Schedule 1[35]** makes a consequential amendment to a note.

Schedule 1[42] inserts proposed section 132C to set out the matters relating to financing and installation that an owners corporation must consider before approving an accessibility infrastructure resolution.

Schedule 1[3] and [6] implement recommendation 60. The proposed amendments increase the maximum penalty and insert continuing offences for—

- (a) failure to convene the first annual general meeting of a strata scheme (the *first AGM*) within 2 months of the initial period, and
- (b) failure to deliver certain documents to the owners corporation at least 14 days before the first AGM.

Schedule 1[5] clarifies that the agenda for the first AGM must be set by the original owner or, for a leasehold strata scheme that has no original owner, the lessor of the leasehold strata scheme. **Schedule 1[4]** makes an amendment consequential on the amendment made by Schedule 1[5].

Schedule 1[7] implements part of recommendation 109 to insert an offence for failure by the original owner of schemes with 3 storeys or more to deliver evidence of the following matters to the owners corporation at least 14 days before the first AGM—

- (a) that the initial maintenance schedule (the *IMS*) has been prepared in the prescribed form,
- (b) that the estimates of levies meet the expected expenditure of the scheme in the year ahead,
- (c) that the IMS and the estimates of levies have been certified by an independent surveyor or another appropriate prescribed person.

Schedule 1[8] implements recommendation 40 and part of recommendation 59. The proposed amendment expands the duties and obligations of strata committee members—

- (a) to include the following duties—
 - (i) to exercise the member's functions with honesty and fairness, with due care and diligence and for the benefit, as far as practicable, of the owners corporation,
 - (ii) to comply with the SSMA and the regulations under the SSMA,
 - (iii) to only use or disclose information obtained as a member, including information about an owner of a lot, as required to carry out strata committee functions, or as authorised or required by law,
 - (iv) to not behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot in the strata scheme or the common property.
- (b) to require members of strata committees to complete training, and to make clear that a member who fails to complete the required training will cease to be a member of the committee.

Schedule 1[10] implements recommendation 44. The proposed amendment clarifies the functions of the chairperson of an owners corporation to include ensuring the agenda is followed at meetings, that order is maintained at meetings, to encourage discussion at meetings and to facilitate the fair, constructive and open discussion of matters at meetings. **Schedule 1[9] and [11]** make consequential amendments.

Schedule 1[12] lowers the threshold for an owners corporation to declare the office of an officer of the owners corporation vacant so that this may be done by resolution rather than special resolution as is the current requirement. The amendment is consequential on the implementation of recommendation 41 by the *Strata Legislation Amendment Act 2023*.

Schedule 1[13] implements recommendation 66. The proposed amendment requires strata managing agents who exercise functions of the owners corporation or officers of the owners corporation to give a copy of the records they make about the exercise of those functions to the owners corporation every 6 months.

Schedule 1[14] implements recommendation 67. The proposed amendment introduces a defence for strata managing agents when performing a function delegated to them by the owners corporation if—

- (a) the breach of the duty by the owners corporation would be an offence if the breach of the duty was caused by the owners corporation, and

(b) the agent took all reasonable steps to prevent the breach of duty.

Schedule 1[15] and [16] update headings to assist the readability of the SSMA.

Schedule 1[17] implements recommendations 124 and 127 to align with current practice. The proposed amendment clarifies that a person is not a building manager if the person exercises the functions of a building manager as a member of the strata committee or if the person is prescribed as not being a building manager.

Schedule 1[18] implements recommendation 128. The proposed amendment inserts a duty for building managers to act in the best interests of the owners corporation. Additional duties may be prescribed by the regulations.

Schedule 1[19] implements recommendation 68. The proposed amendment clarifies that the Civil and Administrative Tribunal of New South Wales (the *Tribunal*) may order the termination or variation of an agreement for the appointment of a strata managing agent or building manager if—

- (a) the strata managing agent or a building manager is carrying on a business involving the supply of services to the owners corporation, owners or occupiers of lots, and
- (b) the carrying on of the business is contrary to law.

Schedule 1[20] implements recommendation 118. The proposed amendment adds the installation, replacement and repair of infrastructure, fixtures and fittings that are part of the common property for the purpose of the sustainable use of the scheme to the list of items the actual and expected expenditure for which an owners corporation must estimate at each annual general meeting.

Schedule 1[21] implements recommendation 110. The proposed amendment requires the owners corporation to consider the IMS prepared by the original owner when preparing the first 10-year capital works fund plan for the strata scheme.

Schedule 1[22] implements recommendation 111. The proposed amendment requires the first 10-year capital works fund plan to be made in the form prescribed by the regulations.

Schedule 1[23] amends the SSMA, section 83 to require owners corporations to provide additional information to lot owners along with notices of levy contributions.

Schedule 1[24]–[26] and [28] amend the SSMA, section 85, including for the following purposes relating to payment plans for the payment of overdue contributions—

- (a) to allow an owners corporation to agree to enter into a payment plan,
- (b) to allow an owners corporation to reasonably refuse to enter into a payment plan, with the details of what constitutes a reasonable refusal to be prescribed by the regulations,
- (c) to set out the requirements relating to payment plans that may be prescribed by the regulations,
- (d) to permit the Tribunal to order an owners corporation to enter into a payment plan if the Tribunal is satisfied that the owners corporation's refusal to enter into the payment plan was not reasonable.

Schedule 1[29] and [30] amend the SSMA, section 86 for the following purposes in relation to the recovery of unpaid contributions and interest—

- (a) to increase, from 21 days to 30 days, the period before which an owners corporation may take action to recover an unpaid contribution, interest on the unpaid contribution and the reasonable debt recovery expenses of the owners corporation,
- (b) to make clear that an owners corporation must not take recovery action if a payment plan is being complied with by an owner,
- (c) to set out the order in which payments in arrears must be applied,
- (d) to allow a court, the Tribunal or the owner in arrears to make an exception to the order in which payments in arrears must be applied.

Schedule 1[27] makes an amendment consequential on the amendment of section 86 by Schedule 1[29] relating to the taking of action when a payment plan is being complied with by an owner.

Schedule 1[31] implements recommendation 78. The proposed amendment clarifies that the approval of obtaining legal services by an owners corporation or a strata committee must be for—

- (a) legal services with unlimited costs for the services, or
- (b) legal services up to a maximum amount of costs for the services.

Schedule 1[58] makes savings and transitional arrangements consequential on the amendment made by Schedule 1[32].

Schedule 1[32] substitutes a regulation-making power in the SSMA, section 103 to clarify that an owners corporation or a strata committee may obtain certain non-urgent legal services without the approval of the owners corporation at a general meeting.

Schedule 1[33] implements recommendation 107. The proposed amendment permits owners corporations to defer compliance with the statutory duty to maintain and repair common property until after —

- (a) action is taken by the owners corporation against an owner or another person in relation to the damage, and
- (b) if the deferment—
 - (i) will not affect the safety of buildings, structures or common property in the strata scheme, or
 - (ii) will not affect a person having access to or use of the common property or a lot in the strata scheme.

Schedule 1[34] implements recommendation 106. The proposed amendment extends the limit on the bringing of an action by an owner for breach of the statutory duty under the SSMA, section 106 from 2 years to 6 years.

Schedule 1[36] implements recommendation 98. The proposed amendment makes clear that a special resolution authorising the owners corporation or the owner of a lot to add to, alter or erect a new structure on common property must specify whether the ongoing maintenance of the improved or enhanced common property will be the responsibility of the owners corporation or the owner of the lot.

Schedule 1[37] implements recommendations 96, 97 and 101. The proposed amendment requires a strata committee to give written reasons for refusing to approve the renovations while the committee is exercising the delegated function of approving minor renovations. If the strata committee has not provided written reasons for refusal within 3 months, the committee is taken to have approved the minor renovations.

Schedule 1[38] implements recommendations 108 and 109. The proposed amendment—

- (a) requires the IMS to be prepared in the form prescribed by the regulations, and
- (b) for schemes with 3 storeys or more—
 - (i) requires an independent surveyor to review and certify the IMS, and
 - (ii) requires an independent surveyor or another appropriate prescribed person to review the estimates of contributions and certify that the estimates meet the expected expenditure of the scheme in the year ahead, based on the expenses provided by the original owner, and
- (c) clarifies that independent surveyors and other persons engaged to review and certify the IMS and estimates must not be connected to the original owner.

Schedule 1[40] and [41] implement recommendations 119 and 120. The proposed amendments clarify that certain terms of agreements for the supply of utilities include agreements for supply of communication services and domestic services. **Schedule 1[39]** makes a consequential amendment.

Schedule 1[43] implements recommendation 115. The proposed amendment inserts proposed section 139B to prohibit the making of by-laws that prevent the installation of sustainability infrastructure for the sole purpose of preserving the external appearance of a lot or the common property unless the subject property is heritage-listed or within a heritage conservation area.

Schedule 1[44] implements part of recommendation 102. The SSMA, section 143 requires the consent of an owner on whom a common property by-law confers rights or special privileges before the making of the by-law. The proposed amendment extends the consent requirement to the amendment or repeal of that type of by-law. **Schedule 1[45]** makes a consequential amendment.

Schedule 1[46] implements the remainder of recommendation 102. The proposed amendment makes clear that an owner must not unreasonably fail to consent to the amendment or repeal of a common property by-law that confers special rights or privileges on the owner.

Schedule 1[47] implements recommendation 90. The proposed amendment clarifies the arrangements for the inspection of owners corporation documents. **Schedule 1[48]** allows inspection fees to be prescribed by the regulations.

Schedule 1[49] and [50] implement recommendation 122. The proposed amendments clarify that information relating to exclusive supply networks, which may also be referred to as embedded networks, must be included in a strata information certificate given under the SSMA, section 184.

Schedule 1[51] implements recommendation 104. The proposed amendment inserts proposed Part 10A into the SSMA to include powers for the purposes of investigating, monitoring and enforcing compliance with the SSMA, section 106 as follows—

- (a) information gathering powers,
- (b) powers in relation to premises,
- (c) seizure and destruction,
- (d) remedial actions,
- (e) compliance notices.

Schedule 1[52] and [53] make amendments related to the amendment in Schedule 1[51] to implement part of recommendation 104. The proposed amendments—

- (a) include investigating, monitoring and enforcing compliance with the SSMA, section 106, as functions of the Secretary under the SSMA, and
- (b) include regulation-making powers relating to enforceable undertakings under proposed section 188T and compliance notices under proposed sections 188Y and 188Z.

Schedule 1[54] implements recommendation 117. The proposed amendment inserts the consideration of environmental sustainability within the strata scheme, including energy and water consumption and expenditure, as a required item for the agenda of the annual general meeting of strata schemes. The amendment also makes an amendment consequential on the amendment made by Schedule 1[40].

Schedule 1[56] is consequential on the implementation of recommendation 51 by the *Strata Legislation Amendment Act 2023*. The amendment omits company nominees from the voting limits for persons exercising voting rights on behalf of the owner of a lot at an owners corporation's AGM. **Schedule 1[55] and [57]** make consequential amendments.

Schedule 1[1] inserts definitions consequent on other amendments made by Schedule 1.

Schedule 2 Amendment of Community Land Management Act 2021 No 7

Schedule 2[1] makes an amendment similar to Schedule 1[2] to lower the threshold for passing a special resolution in relation to accessibility infrastructure.

Schedule 2[37] makes an amendment similar to Schedule 1[42] to insert proposed section 125A into the CLMA to set out the matters relating to financing and installation that an association must consider before approving an accessibility infrastructure resolution.

Schedule 2[2] and [5] make amendments corresponding to Schedule 1[3] and [6] to implement recommendation 60 in the CLMA.

Schedule 2[4] makes an amendment similar to Schedule 1[5] to clarify that the agenda for the first AGM must be set by the original owner.

Schedule 2[6] makes an amendment corresponding to Schedule 1[7] to implement recommendation 109 in the CLMA.

Schedule 2[7] makes an amendment corresponding to Schedule 1[8] to implement recommendation 40 and part of recommendation 59 in the CLMA.

Schedule 2[9] makes an amendment corresponding to Schedule 1[10] to implement recommendation 44 in the CLMA. **Schedule 2[8] and [10]** make consequential amendments.

Schedule 2[11] makes an amendment corresponding to Schedule 1[12] to make an amendment consequential on the implementation of recommendation 41, by the *Strata Legislation Amendment Act 2023*, in the CLMA.

Schedule 2[12] makes an amendment corresponding to Schedule 1[13] to implement recommendation 66 in the CLMA.

Schedule 2[13] makes an amendment corresponding to Schedule 1[14] to implement recommendation 67 in the CLMA.

Schedule 2[14] and [15] make amendments similar to Schedule 1[15] and [16] to update headings to assist the readability of the CLMA.

Schedule 2[16] makes an amendment corresponding to Schedule 1[17] to implement recommendations 124 and 127 in the CLMA.

Schedule 2[17] makes an amendment corresponding to Schedule 1[18] to implement recommendation 128 in the CLMA.

Schedule 2[18] makes an amendment corresponding to Schedule 1[19] to implement recommendation 68 in the CLMA.

Schedule 2[19] makes an amendment corresponding to Schedule 1[20] to implement recommendation 118 in the CLMA.

Schedule 2[20] makes an amendment similar to Schedule 1[23] to amend the CLMA, section 88, to require associations to provide additional information to members along with notices of levy contributions.

Schedule 2[21]–[23] and [25] make amendments similar to Schedule 1[24]–[26] and [28].

Schedule 2[26] and [27] make amendments similar to Schedule 1[29] and [30] to amend the CLMA, section 91.

Schedule 2[24] makes an amendment similar to Schedule 1[27] consequential on the amendment of the CLMA, section 91 by Schedule 2[26].

Schedule 2[28] makes an amendment corresponding to Schedule 1[31] to implement recommendation 78 in the CLMA.

Schedule 2[52] makes an amendment similar to Schedule 1[58] to make savings and transitional arrangements consequential on the amendment made by Schedule 2[29].

Schedule 2[29] makes an amendment corresponding to Schedule 1[32] to clarify that an association or an association committee may obtain certain non-urgent legal services without the approval of the association at a general meeting.

Schedule 2[30] makes an amendment corresponding to Schedule 1[33] to implement recommendation 107 in the CLMA.

Schedule 2[31] makes an amendment corresponding to Schedule 1[34] to implement recommendation 106 in the CLMA.

Schedule 2[32] makes an amendment corresponding to Schedule 1[38] to implement recommendations 108 and 109 in the CLMA.

Schedule 2[34] and [36] make amendments corresponding to Schedule 1[40] and [41] to implement recommendations 119 and 120 in the CLMA. **Schedule 2[33]** makes a consequential amendment.

Schedule 2[35] makes an amendment to extend the clarification that certain terms of agreements for the supply of utilities include agreements for supply of communication services and domestic services to community associations in addition to neighbourhood associations.

Schedule 2[38] makes an amendment corresponding to Schedule 1[43] to implement recommendation 115 in the CLMA.

Schedule 2[39] makes an amendment corresponding to Schedule 1[44] to implement part of recommendation 102 in the CLMA.

Schedule 2[40] makes an amendment corresponding to Schedule 1[46] to implement the remainder of recommendation 102 in the CLMA.

Schedule 2[41] makes an amendment corresponding to Schedule 1[47] to implement recommendation 90 in the CLMA. **Schedule 2[42]** makes an amendment corresponding to Schedule 1[48].

Schedule 2[43] and [44] make amendments corresponding to Schedule 1[49] and [50] to implement recommendation 122 in the CLMA.

Schedule 2[45] makes an amendment corresponding to Schedule 1[51] to implement recommendation 104 in the CLMA.

Schedule 2[46] and [47] make amendments corresponding to Schedule 1[52] and [53], and related to the amendment in Schedule 2[44], to implement part of recommendation 104 in the CLMA.

Schedule 2[48] makes an amendment corresponding to Schedule 1[54] to implement recommendation 117 in the CLMA. The amendment also makes an amendment as a consequence of the amendment made by Schedule 2[34].

Schedule 2[50] makes an amendment corresponding to Schedule 1[56], consequential on the implementation of recommendation 51 by the *Strata Legislation Amendment Act 2023*. **Schedule 2[49] and [51]** make consequential amendments.

Schedule 2[53] makes an amendment similar to Schedule 1[1] to insert definitions consequential on the other amendments made by Schedule 2.

Schedule 3 Amendment of other legislation

Schedule 3.1 amends the *Community Land Management Regulation 2021* to make corresponding amendments to Schedule 3.7 as follows—

- (a) **Schedule 3.1[2]** makes a corresponding amendment to Schedule 3.7[2], to implement recommendation 84,
- (b) **Schedule 3.1[3]** makes a similar amendment to Schedule 3.7[3], to amend the fees payable to the association for making records available for inspection under the CLMA, section 171,
- (c) **Schedule 3.1[4]** makes an amendment corresponding to Schedule 3.7[4] to implement recommendations 60, 104, 105, 108 and 109.

Schedule 3.1[1] makes an amendment consequential on the amendment of the CLMA by Schedule 2[3].

Schedule 3.2 amends the *Conveyancing Act 1919* to implement recommendation 122. The proposed amendments ensure that for lots sold by off the plan contracts, if there is an inaccuracy in the disclosure statement attached to the contract relating to the association scheme or strata scheme including, or being likely to include, an exclusive supply network, the vendor must notify the purchaser and the purchaser may have an option to rescind the contract.

Schedule 3.3 amends the *Conveyancing (Sale of Land) Regulation 2022* to implement recommendation 122. The proposed amendment sets out the description of exclusive supply networks that must be included in the disclosure statement for off the plan contracts.

Schedule 3.4 amends the *Fair Trading Act 1987* to implement recommendation 57. **Schedule 3.4[1]** applies the *Australian Consumer Law*, Part 2-3 and Part 5-2 as a law of NSW in relation to contracts made with owners corporations under the SSMA and associations under the CLMA. **Schedule 3.4[2]** sets out how the application relates to existing contracts.

Schedule 3.5 amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to apply certain provisions of that Act to warrants of entry issued under the following proposed sections—

- (a) *Community Land Management Act 2021*, section 177H,
- (b) *Strata Schemes Management Act 2015*, section 188H.

Schedule 3.6 amends the *Property and Stock Agents Regulation 2022* to implement recommendation 65. The proposed amendment excludes the following terms from agency agreements for the management of strata or community title land—

- (a) that the owners corporation or association must pay for the agent's professional indemnity liabilities, including insurance excess,
- (b) unless the agreement is covered by a professional standards scheme—that the agent's liability is limited to a specified monetary amount.

Schedule 3.7 amends the *Strata Schemes Management Regulation 2016* as follows—

- (a) **Schedule 3.7[2]** implements recommendation 84 to prescribe evidence that is required to be provided to the owners corporation to show that an animal is an assistance animal,
- (b) **Schedule 3.7[3]** amend the fees payable to the owners corporation for making records available for inspection under the SSMA, section 182,
- (c) **Schedule 3.7[4]** implements recommendations 60, 104, 105, 108 and 109.

Schedule 3.7[1] makes an amendment consequential on the amendment of the SSMA by Schedule 1[4].

Schedule 3.8 amends the *Uncollected Goods Act 1995* to implement part of recommendation 103. The proposed amendment includes goods abandoned or left behind on a lot in a strata scheme as uncollected goods that may be dealt with under that Act with the consent of the owner of the lot.