



New South Wales

Strata Schemes Management Amendment (Building Defects Scheme) Act 2018 No 49

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Strata Schemes Management Amendment (Building Defects Scheme) Act 2018 No 49

Act No 49, 2018

An Act to amend the *Strata Schemes Management Act 2015* to make further provision with respect to the rectification of building defects in new strata schemes; and for other purposes. [Assented to 27 September 2018]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Strata Schemes Management Amendment (Building Defects Scheme) Act 2018*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Strata Schemes Management Act 2015 No 50

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Department means the Department of Finance, Services and Innovation.

[2] Section 194 Obligations of developer to appoint building inspector or notify Secretary

Omit “within that period of 12 months” where firstly occurring in section 194 (1).

[3] Section 194 (1) (a)

Insert “within that period of 12 months,” before “appoint”.

[4] Section 194 (2)

Omit “does not end within”. Insert instead “ends later than”.

[5] Section 194 (2)

Insert “of 12 months” after “that period”.

[6] Section 196 When building inspector for interim inspection arranged by Secretary

Insert “, the Secretary” after “done so” in section 196 (1).

[7] Section 196 (1) (a)

Omit “the Secretary”.

[8] Section 198A

Insert after section 198:

198A Documents to be provided to building inspector

(1) The developer of a strata scheme must, within 28 days after a building inspector is appointed under this Division to inspect building work for the scheme (or within any other period prescribed by the regulations), provide the following documents to the building inspector:

- (a) a document that identifies any building defects of which the developer is aware in the building work, including any building defects considered at the first annual general meeting of the owners corporation,
- (b) any other documents relating to the building work that are prescribed by the regulations.

Maximum penalty: 200 penalty units.

(2) The Secretary may provide a building inspector with any of the documents referred to in subsection (1) that are in the possession or under the control of the Secretary.

[9] Section 207 Bond to be given

Omit “for building work to which this Part applies before an occupation certificate is issued” from section 207 (1).

Insert instead “, in terms acceptable to the Secretary, for building work to which this Part applies before an application is made for an occupation certificate”.

[10] Section 207 (3)

Omit “amount of”. Insert instead “amount secured by”.

[11] Section 207 (5)

Omit “200 penalty units”.

Insert instead “10,000 penalty units and, in the case of a continuing offence, a further 200 penalty units for each day the offence continues”.

[12] Section 207A

Insert after section 207:

207A False or misleading information in relation to contract price or building bond

A developer must not knowingly give to the Secretary information in relation to the contract price of building work, or the amount required to be secured by the building bond for building work, that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—1,000 penalty units, or
- (b) in any other case—200 penalty units.

[13] Section 208 Form of building bond

Insert “issued by an authorised deposit-taking institution” after “guarantee” in section 208 (a).

[14] Section 208 (b)

Insert “issued by an approved insurer” after “bond”.

[15] Section 209 When amount secured by building bond payable

Insert after section 209 (1) (b):

- (c) to a building inspector to meet the costs of the inspector for an inspection or report under Division 2,
- (d) to a person who has prepared a report referred to in section 209A, to meet the developer’s share of the costs of obtaining the report.

[16] Section 209 (1A)

Insert after section 209 (1):

- (1A) The amount that may be claimed or realised for payment under subsection (1) (a) is an amount that the owners corporation and developer have agreed should be paid or the amount determined by the Secretary.

[17] Section 209 (2A)

Insert after section 209 (2):

- (2A) An amount may be claimed or realised for payment under subsection (1) (c) or (d) only if the costs concerned have not been paid and the developer:
 - (a) has died or ceased to exist, or
 - (b) is bankrupt or insolvent, or
 - (c) after due search and inquiry, cannot be found in Australia.

[18] Section 209 (3)

Omit “A building bond must be claimed or realised under this section”.

Insert instead “An amount secured by a building bond must be claimed or realised under this section within”.

[19] Section 209 (3) (b)

Omit “within 60”. Insert instead “90”.

[20] Section 209 (4)

Omit “amount of”. Insert instead “amount secured by a”.

[21] Section 209A

Insert after section 209:

209A Determination of amount when owners corporation and developer don't agree

- (1) For the purposes of enabling the Secretary to determine an amount under section 209 (1A), the Secretary may:
 - (a) require the owners corporation or the developer (or both) to provide any information or reports that the Secretary may require, or
 - (b) arrange for a person whom the Secretary considers to be appropriately qualified to provide a report to the Secretary in relation to the work required or the costs involved in rectifying the defective building work concerned.
- (2) The costs of obtaining any report arranged by the Secretary are to be borne by the owners corporation and developer in equal shares, except in the circumstances (if any) specified in the regulations for the purposes of this section.
- (3) The Secretary may give to a person whom the Secretary has arranged to provide the report any documents relating to the building work that the Secretary considers would assist the person to prepare the report.

[22] Section 210 Use of amounts secured by building bond

Omit section 210 (2) and (3). Insert instead:

(2) Repayment of excess amounts to developer

An owners corporation must:

- (a) repay to the developer any amount secured by a building bond that has been paid to the owners corporation and is not required for a purpose specified in subsection (1), and
- (b) give the developer written notice of the completion of the rectification of the defective building work.

Maximum penalty: 10 penalty units.

[23] Section 210 (5)

Omit “any part of a building bond”.

Insert instead “any amount secured by a building bond that has been paid to the owners corporation”.

[24] Section 210A

Insert after section 210:

210A Cancellation of building bond

The Secretary may provide to a developer any release necessary to enable a building bond for building work provided by the developer to be cancelled:

- (a) if an interim report on the building work does not identify any defective building work and the Secretary thinks it appropriate in the circumstances of the case to enable the building bond to be cancelled, or
- (b) on application by the developer, with the agreement of the owners corporation, if part of the amount secured by the building bond has been claimed or realised by the Secretary, or
- (c) in any other circumstances specified in the regulations.

[25] Sections 211 (3) and 214 (2) (b) and (c)

Omit “amount of a” wherever occurring.

Insert instead “amount required to be secured by a”.

[26] Section 211 Tribunal may make orders as to access and contract price

Insert after section 211 (3):

Note. The contract price is determined in accordance with the regulations. See the definition of **contract price** in section 189.

[27] Section 211 (3A)

Insert before section 211 (4):

- (3A) The developer may make an application for an order under subsection (3) only in the circumstances prescribed by the regulations.

[28] Section 211A

Insert after section 211:

211A Debt recovery if building bond not provided or insufficient

- (1) The Secretary may recover from a developer, as a debt in a court of competent jurisdiction, any amount required to be secured by a building bond given by the developer to the Secretary under this Part if:
 - (a) the building bond has not been given to the Secretary, or
 - (b) the building bond has been given to the Secretary but the amount secured by the building bond is less than the amount required under this Part.
- (2) An owners corporation may claim from the Secretary the whole or part of an amount recovered under this section for payment to the owners corporation.
- (3) Section 209 applies, with any necessary modifications, in relation to any such claim in the same way as that section applies in relation to a claim by the Secretary for payment of an amount secured by a building bond.
- (4) The Secretary may refuse to pay an amount under this section in the same circumstances as the Secretary may refuse to claim or realise an amount under section 209.
- (5) Section 210 (except section 210 (2)) applies, with any necessary modifications, in relation to an amount paid to an owners corporation under

this section in the same way as it applies to an amount secured by a building bond that is paid under section 209.

- (6) An owners corporation must:
- (a) repay to the developer any amount that has been paid to the owners corporation under this section and is not required for a purpose specified in section 210 (1), and
 - (b) give the developer written notice of the completion of the rectification of the defective building work.

Maximum penalty: 10 penalty units.

[29] Part 11, Division 3A

Insert after Division 3:

Division 3A Investigation and enforcement powers

211B Authorised officers

- (1) In this Division:
authorised officer means:
- (a) an employee of the Department for the time being appointed under this Division as an authorised officer, or
 - (b) an investigator appointed under section 18 of the *Fair Trading Act 1987*.
- (2) The Secretary may appoint any employee of the Department as an authorised officer for the purposes of this Division.
- (3) An authorised officer is to be provided by the Secretary with a certificate of identification.
- (4) An authorised officer must, when exercising on any premises any function of the authorised officer under this Division, produce the officer's certificate of identification to any person apparently in charge of the premises who requests its production.

211C Purposes for which functions under Division may be exercised

- (1) An authorised officer may exercise the functions conferred under this Division for any of the following purposes:
- (a) for the purpose of investigating, monitoring and enforcing compliance with the requirements imposed by or under this Part,
 - (b) for obtaining information or records connected with the administration of this Part,
 - (c) for the purpose of administering or executing this Part (including any regulations made under this Part).
- (2) In this Part, a reference to an *authorised purpose* is a reference to any purpose referred to in subsection (1).

211D Power to require information and records

- (1) An authorised officer may, by notice in writing given to a person, require the person to furnish to the authorised officer any information or records (or both) that the authorised officer may require for an authorised purpose.

- (2) The notice must specify the manner in which, and a reasonable time by which, the information or records are to be furnished.
- (3) The notice may only require the person to furnish existing records that are in the person's possession or that are within the person's power to obtain lawfully.
- (4) An authorised officer to whom any record is furnished under this section may take copies of it.
- (5) If any record required to be furnished is in electronic, mechanical or other form, the notice requires the record to be furnished in written form, unless the notice otherwise provides.

211E Power of authorised officers to require answers

- (1) An authorised officer may require a person whom the authorised officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for an authorised purpose to answer questions in relation to those matters.
- (2) An authorised officer may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation's representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) An authorised officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend is to be a place and time nominated by the authorised officer that is reasonable in the circumstances.

211F Exercise of powers under sections 211D and 211E in conjunction with other powers

A power conferred by section 211D or 211E may be exercised whether or not a power of entry under section 211G is being exercised.

211G Power of authorised officers to enter premises

- (1) An authorised officer may enter any premises at any reasonable time.
- (2) Entry to any premises may be effected with or without the authority of a search warrant.
- (3) This section does not empower an authorised officer to enter any part of premises that is used predominantly for residential purposes without the consent of the occupier of the part or under the authority of a search warrant under this Division.

211H Search warrants

- (1) An authorised officer may apply to an issuing officer for a search warrant if the applicant believes on reasonable grounds that a provision of this Part or regulations made under this Part has been or is being contravened on premises.

- (2) An issuing officer to whom an application for a search warrant is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising an authorised officer named in the warrant and any other person named in the warrant:
 - (a) to enter the premises concerned, and
 - (b) to search the premises for evidence of a contravention of this Part or regulations made under this Part.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) Without limiting the generality of section 71 of the *Law Enforcement (Powers and Responsibilities) Act 2002*, a police officer:
 - (a) may accompany an authorised officer executing a search warrant issued under this section, and
 - (b) may take all reasonable steps to assist the authorised officer in the exercise of the officer's functions under this section.
- (5) In this section:
issuing officer means an authorised officer within the meaning of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

211I Power to require owner, occupier or owners corporation to provide assistance

An authorised officer proposing to exercise a power of entry under this Division may, by notice in writing given to the owner or occupier of the premises or to the owners corporation, require the owner, occupier or owners corporation to provide, within a specified time and in a specified manner, any reasonable assistance and facilities that are specified in the notice.

211J Powers that can be exercised on premises

- (1) An authorised officer may, at any premises lawfully entered, do anything that in the opinion of the authorised officer is reasonably necessary to be done for an authorised purpose, including (but not limited to) the things specified in subsection (2).
- (2) An authorised officer may do any or all of the following:
 - (a) make any examinations and inquiries that the authorised officer considers necessary,
 - (b) direct a person to produce records for inspection,
 - (c) examine and inspect any records,
 - (d) copy any records,
 - (e) seize any thing that the authorised officer has reasonable grounds for believing is connected with an offence against this Part or regulations made under this Part,
 - (f) do anything the authorised officer is empowered to do under this Division.
- (3) The power to seize any thing connected with an offence includes a power to seize:
 - (a) a thing with respect to which the offence has been committed, and
 - (b) a thing that will afford evidence of the commission of the offence, and
 - (c) a thing that was used for the purpose of committing the offence.

- (4) The power to do a thing under this section includes a power to arrange for that thing to be done.
- (5) A power to do something under this section in relation to a thing may be exercised without the consent of the owner of the thing.
- (6) In this section, a reference to an offence includes a reference to an offence that there are reasonable grounds for believing has been committed.

211K Dealing with seized things

- (1) An authorised officer who seizes anything under section 211J on any premises must issue the person apparently in charge of the premises with a written receipt for the thing seized.
- (2) An authorised officer may retain anything seized under section 211J until the completion of any proceedings (including proceedings on appeal) in which it may be evidence.
- (3) A record may only be retained if the person from whom the record was seized is provided, within a reasonable time after the seizure, with a copy of the record certified by the authorised officer as a true copy. The copy is, as evidence, of equal validity to the document of which it is certified to be a copy.
- (4) Subsection (2) ceases to have effect in relation to anything seized if, on the application of a person aggrieved by the seizure, the court in which proceedings referred to in that subsection are commenced so orders.

211L Failure to comply with requirement under this Division

- (1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made of the person under this Division.
Maximum penalty:
 - (a) in the case of a corporation—40 penalty units, or
 - (b) in any other case—20 penalty units.
- (2) A person is not guilty of an offence of failing to comply with a requirement under this Division to furnish records or information or to answer a question unless the person was warned on that occasion that a failure to comply is an offence.

211M Obstruction of authorised officer

- (1) A person must not, without reasonable excuse, delay, hinder or obstruct an authorised officer in the exercise of the authorised officer's functions under this Division.
Maximum penalty:
 - (a) in the case of a corporation—40 penalty units, or
 - (b) in any other case—20 penalty units.
- (2) A person is not guilty of an offence under this section unless, before the alleged offence occurred, the authorised officer produced the authorised officer's certificate of identification for inspection by the person.

[30] Sections 213 (6) (b), 250 (6) and 257 (a)

Omit "of Finance, Services and Innovation" wherever occurring.

[31] Sections 213A and 213B

Insert after section 213:

213A Liability of inspectors and persons acting under direction of inspectors

A matter or thing done or omitted to be done by a building inspector, or a person acting under the direction of a building inspector, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing functions under this Part, subject the building inspector or person so acting personally to any action, liability, claim or demand.

213B Liability of professional associations in respect of accreditation functions

- (1) A matter or thing done or omitted to be done by a professional association, or an individual acting under the direction of a professional association, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing functions under this Part, subject the professional association or individual so acting to any action, liability, claim or demand.
- (2) In this section:
professional association means a body that is prescribed by the regulations for the purposes of this definition.

[32] Section 214 Regulations

Insert after section 214 (1) (a):

- (a1) the functions of professional associations, or other bodies, with respect to determining whether persons are qualified to carry out functions as building inspectors,
- (a2) registers of persons qualified to be appointed as building inspectors, including the public availability of those registers,
- (a3) conditions that may be imposed on the exercise of functions under this Part by building inspectors, including the imposition of conditions by the Secretary or professional associations,

[33] Section 214 (2) (e1)

Insert after section 214 (2) (e):

- (e1) procedures to be followed by the Secretary in determining an amount under section 209 (1A),

[34] Section 215A

Insert after section 215:

215A Review of Part

- (1) The Minister is to review this Part to determine whether the policy objectives of this Part remain valid and whether the terms of this Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after 1 January 2024.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament no later than 1 January 2025.

[35] Section 250A

Insert after section 250:

250A Continuing offences

- (1) A person who is guilty of an offence because the person contravenes a requirement made by or under this Act or the regulations (whether the requirement is imposed by a notice or otherwise) to do or cease to do something (whether or not within a specified period or before a particular time):
 - (a) continues, until the requirement is complied with and despite the fact that any specified period has expired or time has passed, to be liable to comply with the requirement, and
 - (b) is guilty of a continuing offence for each day the contravention continues.
- (2) This section does not apply to an offence if the relevant provision of this Act or the regulations does not provide for a penalty for a continuing offence.
- (3) This section does not apply to the extent that a requirement of a notice is revoked.

[36] Section 251 Proceedings for offences

Insert “or before the Supreme Court in its summary jurisdiction” after “Local Court”.

[37] Section 251 (2)

Insert at the end of section 251:

- (2) The maximum monetary penalty that the Local Court may impose in proceedings for an offence under this Act or the regulations is the maximum penalty specified for that offence or 1,000 penalty units, whichever is the lesser.

[38] Section 257A

Insert after section 257:

257A Personal liability of Secretary and persons acting under Secretary’s direction

- (1) A matter or thing done or omitted to be done by the Secretary, or a person acting under the direction of the Secretary, does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing functions under this Act, subject the Secretary or person so acting personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.

[39] Section 260, heading

Insert “of officers of owners corporations and others” after “liability”.

[40] Section 271 Regulations

Insert after section 271 (2):

- (3) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units.

Schedule 2 Amendment of Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Schedule 2 Search warrants under other Acts

Insert in alphabetical order:

Strata Schemes Management Act 2015, section 211H

[Second reading speech made in—
Legislative Assembly on 15 August 2018
Legislative Council on 19 September 2018]