



New South Wales

Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2020

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to facilitate the installation of sustainability infrastructure in strata schemes,
- (b) to prevent records of secret ballots from being disclosed as part of strata records,
- (c) to remove a duplicated requirement to give a tenant a copy of the by-laws for a strata scheme,
- (d) to make an owners corporation responsible for the service of notices about applications to the Civil and Administrative Tribunal (the *Tribunal*) under the *Strata Schemes Management Act 2015* (the *principal Act*),
- (e) to enable applications to the Tribunal for a civil penalty against a person who has contravened an order of the Tribunal,
- (f) to enable a person who owns more than 1 lot in a strata scheme to nominate 1 individual to act as a proxy for all the lots,
- (g) to provide that a nomination of a proxy for a meeting is not rendered invalid if the meeting is adjourned.

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[1] inserts definitions into the principal Act of *sustainability infrastructure* (which means changes to part of the common property of a strata scheme for certain environmental purposes) and *sustainability infrastructure resolution* (which means certain resolutions relating to the installation of sustainability infrastructure).

Schedule 1[2] provides that a special resolution of an owners corporation that is a sustainability infrastructure resolution requires a simple majority of the value of the votes cast to be successful rather than 75% as is required in other special resolutions. **Schedule 1[3] and [6]** make consequential amendments.

Schedule 1[5] requires an owners corporation to consider certain matters before approving a sustainability infrastructure resolution. **Schedule 1[4]** makes a consequential amendment.

Schedule 1[7] provides that an owners corporation must not make available for inspection any record that would disclose how an owner voted in a secret ballot unless directed to do so by the Tribunal or a court.

Schedule 1[8] provides that an obligation to give by-laws to a tenant does not apply if the tenant has already been given the by-laws under the *Residential Tenancies Act 2010*.

Schedule 1[9]–[11] provide that the registrar of the Tribunal is to give notice of an application to the Tribunal to the owners corporation for a strata scheme and the owners corporation is then to serve a copy of the notice on each owner of a lot in the strata scheme.

Schedule 1[12] provides for a civil penalty of up to \$5,500 to be imposed by the Tribunal for a contravention of an order under the principal Act. The penalty can be sought by the applicant for the order, the owners corporation, owner or other person with an interest in a lot in the strata scheme to which the order relates or a party to mediation, if the order gives effect to any agreement or arrangement arising out of a mediation session. **Schedule 1[13]** inserts a note about civil penalties for breaches of orders.

Schedule 1[14] permits a person who owns more than 1 lot in a strata scheme to appoint a single proxy in respect of all the lots. It also provides that an instrument appointing a proxy for a meeting is not rendered invalid merely because the meeting is adjourned to a later date.

Schedule 1[15] includes a number of savings and transitional provisions consequent on the other amendments made to the principal Act by the proposed Act.



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New South Wales

Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2020

No. , 2020

A Bill for

An Act to amend the *Strata Schemes Management Act 2015* with respect to the installation of sustainability infrastructure; and for other purposes.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2020*.

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2 Commencement

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(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).

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(2) Schedule 1[9]–[13] commence on a day or days to be appointed by proclamation.

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Schedule 1	Amendment of Strata Schemes Management Act 2015 No 50	1
		2
[1] Section 4 Definitions		3
	Insert in alphabetical order in section 4(1)—	4
	<i>sustainability infrastructure</i> and <i>sustainability infrastructure resolution</i> —	5
	see section 132B.	6
[2] Section 5 Resolutions of owners corporations		7
	Omit section 5(1)(b). Insert instead—	8
	(b) of the value of votes cast—	9
	(i) not more than 25% are against the resolution, or	10
	(ii) if the resolution is a sustainability infrastructure resolution—less than 50% are against the resolution.	11
		12
[3] Section 108 Changes to common property		13
	Insert after section 108(2)—	14
	Note. If the special resolution is a sustainability infrastructure resolution fewer votes may be needed to pass it. See section 5(1)(b).	15
		16
[4] Part 6, Division 7, heading		17
	Omit the heading. Insert instead—	18
	Division 7 Miscellaneous	19
[5] Section 132B		20
	Insert after section 132A—	21
132B Financing and installation of sustainability infrastructure		22
	(1) Before approving a sustainability infrastructure resolution, the owners corporation must consider the following—	23
		24
	(a) the cost of the sustainability infrastructure and works including any expected running and maintenance costs,	25
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	(b) who will own, install and maintain the sustainability infrastructure,	27
	(c) the extent to which the use of the sustainability infrastructure will be available to all or some of the lots in the strata scheme,	28
		29
	(d) any matter prescribed by the regulations.	30
	(2) In this Act—	31
	<i>sustainability infrastructure</i> means changes to part of the common property (which includes the installation, removal, modification or replacement of anything on or forming part of that property) for any one or more of the following purposes—	32
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	(a) to reduce the consumption of energy or water or to increase the efficiency of its consumption,	36
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	(b) to reduce or prevent pollution,	38
	(c) to reduce the amount of waste sent to landfill,	39
	(d) to increase the recovery or recycling of materials,	40
	(e) to reduce greenhouse gas emissions,	41

(f)	to facilitate the use of sustainable forms of transport,	1
	Note. For example, installing electric vehicle charging stations.	2
(g)	a purpose prescribed by the regulations.	3
	sustainability infrastructure resolution means a resolution to do any one or more of the following that is specified to be a sustainability infrastructure resolution—	4
		5
		6
(a)	to finance sustainability infrastructure,	7
(b)	to add to the common property, alter the common property or erect a new structure on common property for the purpose of installing sustainability infrastructure,	8
		9
		10
(c)	to change the by-laws of the strata scheme for the purposes of the installation or use (or both) of sustainability infrastructure.	11
		12
[6]	Section 141 Procedure for changes to by-laws	13
	Insert after section 141(1)—	14
	Note. If the special resolution is a sustainability infrastructure resolution fewer votes may be needed to pass it. See section 5(1)(b).	15
		16
[7]	Section 182 Requests for inspection of records of owners corporation	17
	Insert after section 182(4)—	18
(5)	Voting in secret ballots must not be disclosed	19
	Despite any other provision of this section, the owners corporation must not make available for inspection any record that would disclose how an owner voted in a secret ballot unless the owners corporation is directed to do so by the Tribunal or a court.	20
		21
		22
		23
[8]	Section 186 Provision of strata scheme information to tenants	24
	Insert after section 186(1)—	25
(1A)	The lessor or sub-lessor is not required to give the by-laws to a tenant under subsection (1) if the tenant has been given the by-laws under section 26(2A) of the <i>Residential Tenancies Act 2010</i> .	26
		27
		28
[9]	Section 228 Notice of applications to Tribunal	29
	Omit “any other person who in the registrar’s opinion would be affected” from section 228(1).	30
		31
	Insert instead “the owners corporation”.	32
[10]	Section 228(2)(b)	33
	Insert “, and” after “submissions”.	34
[11]	Section 228(2)(c)	35
	Insert after section 228(2)(b)—	36
(c)	immediately serve a copy of the application on each owner of a lot in the strata scheme except an owner who is a named party to the application.	37
		38
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[12]	Section 247A	40
	Insert after section 247—	41

247A	Civil penalties for contravention of orders	1
(1)	The Tribunal may, by order, require a person to pay a pecuniary penalty of an amount of up to 50 penalty units for contravention of an order under this Act (<i>the original order</i>).	2 3 4
(2)	An application for the order may be made—	5
(a)	by the applicant for the original order, or	6
(b)	by the owners corporation, owner or other person having or acquiring an estate or interest in a lot in the strata scheme to which the order relates, or	7 8 9
(c)	in the case of an order that gives effect to any agreement or arrangement arising out of a mediation session, by either party to the mediation.	10 11
(3)	A person is not liable to be punished twice if the person’s act or omission constitutes both a contravention for the purposes of this section and—	12 13
(a)	a contravention for the purposes of a civil penalty provision of the <i>Civil and Administrative Tribunal Act 2013</i> , or	14 15
(b)	a contempt of the Tribunal.	16
[13]	Section 248 Recovery of unpaid civil penalty	17
	Omit the first note. Insert instead—	18
	Note. Section 72(3) of the <i>Civil and Administrative Tribunal Act 2013</i> and section 247A of this Act provide for a civil penalty for a contravention of an order of the Tribunal.	19 20
[14]	Schedule 1 Meeting procedures of owners corporation	21
	Insert after clause 26(7)—	22
(8)	Despite subclause (7), a person who owns more than 1 lot in a strata scheme may appoint a single proxy in respect of all the lots.	23 24
(9)	Adjourned meetings	25
	An instrument appointing a proxy for a meeting is not rendered invalid merely because the meeting is adjourned to a later date.	26 27
[15]	Schedule 3 Savings, transitional and other provisions	28
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	29
Part	Provisions consequent on enactment of Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2020	30 31 32
	Owners corporation is party to application	33
	Section 226(1A) applies only to an application made after the commencement of that subsection.	34 35
	Notice of application to Tribunal	36
	The amendments made to section 228 by the <i>Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2020</i> do not apply in relation to an application made before those amendments and that section, as in force immediately before those amendments, continues to apply to those applications.	37 38 39 40 41

Civil penalties for contravention of orders

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Section 247A extends to an order made before the commencement of that section but only if the contravention of the order occurs after that commencement.

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