

New South Wales

# Strata Management Legislation Amendment Bill 2008

## Explanatory note

### Overview of Bill

The object of this Bill txt

### 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 on the date of assent to the proposed Act.

**Clause 3** is a formal provision that gives effect to the amendments to the *Strata Schemes Management Act 1996* set out in Schedule 1.

**Clause 4** provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

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Strata Management Legislation Amendment Bill 2008

Explanatory note

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New South Wales

# Strata Management Legislation Amendment Bill 2008

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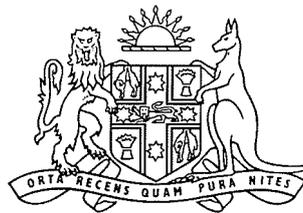
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New South Wales

## **Strata Management Legislation Amendment Bill 2008**

No. , 2008

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### **A Bill for**

An Act to amend the *Strata Schemes Management Act 1996* and the *Home Building Act 1989* to provide further rights and protections for owners of lots who are not developers; and for other purposes.

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Clause 1            Strata Management Legislation Amendment Bill 2008

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Strata Management Legislation Amendment Act 2008*.

**2 Commencement**

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

**3 Amendment of Strata Schemes Management Act 1996 No 138**

The *Strata Schemes Management Act 1996* is amended as set out in Schedule 1.

**4 Amendment of Home Building Act 1989 No 147**

The *Home Building Act 1989* is amended as set out in Schedule 2.

**5 Repeal of Act**

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

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Strata Management Legislation Amendment Bill 2008

Amendment of Strata Schemes Management Act 1996

Schedule 1

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## **Schedule 1      Amendment of Strata Schemes Management Act 1996**

(Section 3)

**[1] Section 40A Who is a caretaker?**

Insert after section 40A (3):

- (4) For the purposes of this Act, a person is taken to be a caretaker for a strata scheme if the person meets the description of a caretaker set out in this section, regardless of whether the title given to the person's position is caretaker, building manager, resident manager or some other title.

**[2] Section 56 Certain by-laws relating to parking may be made during initial period**

Omit the section.

**[3] Schedule 2 Meetings and procedure of owners corporation**

Omit "may be exercised" from clause 10 (3).

Insert instead "may only be exercised".

**[4] Schedule 2, clause 11 (7AA) and (7AB)**

Insert after clause 11 (7):

- (7AA) An original owner or a person connected with the original owner may not be appointed as a proxy for another person, or cast a vote as a proxy for another person, pursuant to a term of a contract or other arrangement entered into by the other person.
- (7AB) Subclause (7AA) does not prevent a proxy being given by a person to another person connected with him or her, or a vote being cast pursuant to any such proxy.

**[5] Schedule 3 Constitution of executive committee of the owners corporation and meetings of the executive committee**

Insert after clause 3:

**3A Disclosure of certain interests by candidates for executive committee elections and acting members**

- (1) A person who is connected with the original owner or caretaker of a strata scheme is not eligible to be elected as a member of an executive committee for the strata scheme unless:

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Strata Management Legislation Amendment Bill 2008

Schedule 1 Amendment of Strata Schemes Management Act 1996

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- (a) the person discloses the connection that the person has with the original owner or caretaker, and
  - (b) the disclosure is made at the meeting of the owners corporation at which the executive committee is to be elected and before the election is conducted.
- (2) A person who is connected with the original owner or caretaker of a strata scheme is not eligible for appointment to act in the place of a member of the executive committee unless:
- (a) the person discloses any connection that the person has with the original owner or caretaker, and
  - (b) the disclosure is made to the executive committee before the consent of the executive committee is given under clause 3.
- (3) A person who becomes connected with the original owner or caretaker of a strata scheme after being appointed as, or to act in the place of, a member of the executive committee must disclose any connection that the person has with the original owner or caretaker to the secretary or, if the person is the secretary, to the chairperson. The disclosure must be made as soon as possible after the person becomes aware of the connection.
- (4) The secretary or chairperson to whom a disclosure is made under subclause (3) must ensure that the disclosure is included on the agenda for the next general meeting of the owners corporation.

**[6] Schedule 3, clause 4 (4)**

Insert after clause 4 (3):

- (4) If a motion is proposed to determine that a person's office as a member of the executive committee should be vacated:
- (a) the person is not entitled to vote on the motion, and
  - (b) the original owner or, where the original owner is a corporation, a company nominee of the corporation has one vote for each 3 lots in respect of which the original owner is entitled to vote (ignoring any fraction) unless the original owner is the owner of less than one-half of the lots, and
  - (c) the original owner or, where the original owner is a corporation, a company nominee of the corporation is not entitled to vote on the motion as a proxy for any person.

**Note.** A determination of an owners corporation that a person's office as member of the executive committee is vacated requires a special resolution which is defined as a resolution which is passed at a duly convened general meeting of an owners corporation and against which

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Strata Management Legislation Amendment Bill 2008

Amendment of Strata Schemes Management Act 1996

Schedule 1

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not more than one-quarter in value, ascertained in accordance with clause 18 (2) and (3) of Part 2 of Schedule 2, of votes is cast.

**[7] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Strata Management Legislation Amendment Act 2008*

**[8] Schedule 4, Part 6**

Insert after Part 5 of Schedule 4:

## **Part 6 Provisions consequent on enactment of Strata Management Legislation Amendment Act 2008**

### **23 Definition**

In this Part, *amending Act* means the *Strata Management Legislation Amendment Act 2008*.

### **24 Effect of certain common property management agreements**

- (1) Any agreement that was in force immediately before the commencement of section 40A (4) that, if entered into after that commencement, would be a caretaker agreement is taken to be a caretaker agreement appointing a caretaker.
- (2) However:
  - (a) the caretaker is not required to be or have been entitled to exclusive possession of a lot or common property either while the agreement is in force or as a precondition to entering into the agreement, and
  - (b) section 40B (2) does not apply to such an agreement, and
  - (c) an application for an order under section 183A may not be made with respect to such an agreement on the ground that the period for which the agreement is in force is harsh, oppressive, unconscionable or unreasonable.

### **25 Exclusive by-laws relating to parking**

- (1) The repeal of section 56 by the amending Act does not affect any by-law that was recorded by the Registrar-General before that repeal.
- (2) Section 56 as in force immediately before its repeal by the amending Act is taken to continue to apply to a proposed by-law for which written approval was given under that section before

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Strata Management Legislation Amendment Bill 2008

Schedule 1 Amendment of Strata Schemes Management Act 1996

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that repeal but that was not recorded by the Registrar-General before that repeal.

## 26 Existing proxies

- (1) An amendment made to this Act by the amending Act does not affect any proxy in force immediately before the commencement of the amendment.
- (2) However, subclause (1) operates only for the period for which the proxy has effect and does not apply to any renewal of the proxy or extension of its term.

## [9] Dictionary

Insert in alphabetical order in Part 1:

*caretaker* means a person described in section 40A as a caretaker.

## [10] Dictionary, Part 2

Insert after clause 6:

### 7 References to a person connected with another person

- (1) For the purposes of this Act, a person (the *principal person*) is connected with another person if the other person:
  - (a) is a relative (within the meaning of the *Local Government Act 1993*) of the principal person or, where the principal person is a corporation, is a relative of the holder of an executive position in the corporation, or
  - (b) is employed or engaged by the principal person or is a partner of the principal person, or
  - (c) where the principal person is a corporation, holds an executive position in the corporation, or
  - (d) is the employer of the principal person, or
  - (e) is employed or engaged by, or holds an executive position in, a corporation that also employs or engages the principal person or in which the principal person holds an executive position, or
  - (f) has any share in the capital of the business of the principal person or is entitled to receive any income or other benefit derived from that business, whether that entitlement arises at law or in equity or otherwise, or
  - (g) has any contractual arrangement with the principal person, or

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Strata Management Legislation Amendment Bill 2008

Amendment of Strata Schemes Management Act 1996

Schedule 1

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- (h) has any other connection or relationship with the principal person of a kind prescribed by the regulations.
- (2) However, the principal person is not connected with another person who is a member of an owners corporation, or the executive committee of an owners corporation, merely because of any dealing, contact or arrangement the other person has with the principal person in the other person's capacity as such a member.
- (3) In this section, *executive position* in a corporation means the position of director, manager or secretary of the corporation, or any other executive position of the corporation, however those positions are designated.

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Strata Management Legislation Amendment Bill 2008

Schedule 2 Amendment of Home Building Act 1989

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## Schedule 2 Amendment of Home Building Act 1989

(Section 4)

### [1] Section 48C Notification of building disputes

Insert at the end of the section:

- (2) Without limiting subsection (1), a notification under that subsection may be made by:
  - (a) an owner of a lot in a strata scheme (within the meaning of the *Strata Schemes Management Act 1996*) about residential building work or specialist work relating to common property in the strata scheme, or
  - (b) a proprietor of a lot in a scheme (within the meaning of the *Community Land Management Act 1989*) about residential building work or specialist work relating to association property in the scheme.

### [2] Section 48D Investigation of dispute

Insert after section 48D (2):

- (3) For the purposes of making an investigation in relation to common property in a strata scheme (within the meaning of the *Strata Schemes Management Act 1996*), an inspector may enter and inspect the common property at the request of the owner of a lot in the scheme concerned.
- (4) The owners corporation, any person who has exclusive use of the common property concerned and any caretaker or manager of the property are to provide such assistance as is reasonable to enable an inspection of that common property to be carried out by an inspector under this section.
- (5) For the purposes of making an investigation in relation to association property in a scheme (within the meaning of the *Community Land Management Act 1989*), an inspector may enter and inspect the association property at the request of the proprietor of a lot in the scheme concerned.
- (6) The relevant association that has the use of the association property concerned and, if the use of that association property has been restricted to a particular proprietor or proprietors, any such proprietor, and any caretaker or manager of the property are to provide such assistance as is reasonable to enable an inspection of that association property to be carried out by an inspector under this section.

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Strata Management Legislation Amendment Bill 2008

Amendment of Home Building Act 1989

Schedule 2

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- (7) For the avoidance of doubt, a person may be authorised under section 126 by the Director-General for the purposes of this section.