



Strata Legislation Amendment Bill 2011

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Strata Schemes Management Act 1996* (the *Principal Act*):

- (a) to prevent certain persons from being appointed as strata managing agents or caretakers of strata schemes, and
- (b) to require the disclosure by strata managing agents, caretakers of strata schemes and legal practitioners engaged to provide legal services in relation to strata schemes of any connections they have with certain persons, and
- (c) to require the disclosure by persons standing for election or appointment as members of the executive committee of a strata scheme of any connections they have to the strata managing agent for the scheme, and
- (d) to provide that an owner of a lot in a strata scheme is jointly and severally liable with the occupier of the lot for damage caused by the occupier to the common property, and
- (e) to place limits on the number of persons that can reside on a lot in a strata scheme, and

- (f) to enable the Consumer, Trader and Tenancy Tribunal (the *Tribunal*) to make certain orders for the settlement of disputes in respect of strata development contracts and strata management statements, and
- (g) to make it an offence to contravene an order made under the Principal Act by an Adjudicator or the Tribunal, and
- (h) to change the requirements for serving a summons or other legal process on an owners corporation, and
- (i) to make other miscellaneous amendments in relation to the administration of strata schemes.

The Bill also makes an amendment to the *Strata Schemes Management Regulation 2010* in relation to the form of a certificate under section 109 of the *Strata Schemes Management Act 1996* to be given by an owners corporation as to the financial and other matters relating to a lot in a strata scheme.

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.

Schedule 1 Amendment of Strata Schemes Management Act 1996 No 138

Amendments relating to strata managing agents, caretakers, legal practitioners and executive committee members

Schedule 1 [1] inserts proposed section 25A into the Principal Act to require members of an executive committee to comply with the code of conduct in proposed Schedule 1A. **Schedule 1 [29]** inserts proposed Schedule 1A into the Principal Act.

Schedule 1 [2] inserts proposed sections 27A and 27B into the Principal Act. Proposed section 27A prevents the original owner, and certain other specified persons connected with the original owner or involved in building works for the strata scheme concerned, from being appointed as a strata managing agent and requires an owners corporation or executive committee to terminate an appointment that has been made if it becomes aware that the strata managing agent is such a person.

Proposed section 27B makes it an offence for a person to fail to disclose certain connections that the person has to other specified persons before accepting an appointment as a strata managing agent. If the connection forms after the appointment, it is an offence for the strata managing agent to fail to make the disclosure as soon as the agent becomes aware, or ought reasonably to have become aware, that the connection exists. The proposed section enables an owners corporation or executive committee to terminate the appointment of a strata managing agent if it becomes aware that such a connection exists.

Schedule 1 [3] inserts proposed section 40D into the Principal Act which prevents the original owner of a strata scheme, and certain other specified persons connected with the original owner, from being appointed as a caretaker for the strata scheme and requires an owners corporation to terminate an appointment that has been made if it becomes aware that the caretaker is such a person.

Schedule 1 [23] inserts proposed section 230B into the Principal Act which makes it an offence for a legal practitioner to fail to disclose if the practitioner is connected with the original owner before undertaking to provide legal services to an owners corporation. If the connection forms after the legal practitioner is engaged to undertake those services, it is an offence for the practitioner to fail to make the disclosure as soon as the practitioner becomes aware, or ought reasonably to have become aware, that the connection exists. The proposed section enables an owners corporation or executive committee to terminate the engagement of a legal practitioner if it becomes aware that such a connection exists. **Schedule 1 [22]** makes a consequential amendment.

Schedule 1 [27] amends section 246 of the Principal Act to enable regulations to be made with respect to the procedures to be observed by the chairperson and secretary in relation to meetings of an owners corporation and by persons presiding at those meetings and with respect to a code of conduct for chairpersons, secretaries and treasurers of owners corporations and members of executive committees.

Schedule 1 [28] makes a consequential amendment.

Schedule 1 [36] amends clause 3A of Schedule 3 to the Principal Act which currently prevents a person connected with the original owner or caretaker from being eligible to be elected to the executive committee of a strata scheme unless the person first discloses the connection. The amendment extends that provision to persons connected with the strata managing agent.

Schedule 1 [37] and [38] amend clause 3A of Schedule 3 to the Principal Act to make it an offence for a person to be elected, or appointed to act, as a member of an executive committee without making the disclosures required by that clause. The person also commits an offence each time the person votes on a matter as a member of the executive committee after failing to make such a disclosure.

Schedule 1 [39] amends clause 3A of Schedule 3 to the Principal Act to make it an offence for a person who becomes connected with the original owner, caretaker or strata managing agent after having being elected, or appointed to act, as a member of an executive committee to fail to disclose the connection.

Amendments relating to by-laws, strata rolls and records of owners corporations

Schedule 1 [9] amends section 98 of the Principal Act to require certain additional matters to be recorded on the strata roll for a strata scheme. Those matters are licences granted by the owners corporation for use of the common property, plans and approvals for building work to the common property, plans and approvals for building work carried out on other property in the strata scheme (if lawfully available to the owners corporation), details of loans to the owners corporation and copies of

special resolutions passed to allow additions and alterations to the common property or the erection of new structures on the common property. **Schedule 1 [8]** makes a consequential amendment.

Schedule 1 [10] amends section 98 of the Principal Act to require the strata roll to contain an index of documents included in the roll.

Amendments relating to finances and insurance of strata schemes

Schedule 1 [5] amends section 76 of the Principal Act to enable an owners corporation to levy additional payments for the sinking fund if faced with unexpected expenses to be paid from that fund. Currently, the owners corporation can only levy additional payments to the administrative fund. **Schedule 1 [4]** makes a consequential amendment.

Schedule 1 [6] amends section 76 of the Principal Act to provide that, if a quorum cannot be achieved for an annual general meeting in accordance with that Act, the payments required to be levied to the administrative fund and the sinking fund are taken to be the same amounts as levied in the previous year increased by the Consumer Price Index.

Schedule 1 [7] amends section 87 of the Principal Act to increase the insurance required to be taken out under that section in relation to a strata scheme (for example, to cover occupier's liability and workers compensation) from \$10,000,000 to \$20,000,000.

Schedule 1 [30] amends clause 10 of Schedule 2 to the Principal Act to provide that, if a person pays strata contributions levied on the person by cheque, those contributions are not taken to have been paid for the purpose of the person exercising voting rights at a general meeting of an owners corporation unless, when the meeting is held, at least 5 clear working days have passed since the cheque was received and no notice of the cheque being dishonoured has been received.

Schedule 1 [35] amends clause 34 of Schedule 2 to the Principal Act to require notice of a general meeting to include proposed estimates of amounts needed to be credited to the administrative and sinking funds and proposed amounts of strata contributions based on those estimates.

Amendments relating to orders of Adjudicators and the Tribunal

Schedule 1 [15] and [16] amend section 162 of the Principal Act to enable the Tribunal to make an order terminating the appointment of a strata managing agent if the agent is a person referred to in proposed section 27A (1).

Schedule 1 [19] inserts proposed sections 183C and 183D into the Principal Act to enable the Tribunal in certain circumstances to make orders to settle disputes in relation to strata development contracts and strata management statements.

Schedule 1 [20] amends section 198 of the Principal Act to increase the monetary penalties for contempt of the Tribunal from 5 penalty units to 50 penalty units (currently \$5,500).

Schedule 1 [21] inserts proposed section 201A into the Principal Act to make it an offence for a person to contravene an order made by the Tribunal or an Adjudicator under Chapter 5 of the Principal Act (which deals with the resolution of disputes in relation to strata schemes).

Schedule 1 [12]–[14], [17] and [18] make consequential amendments.

Amendments relating to responsibilities of owners of lots

Schedule 1 [11] inserts proposed sections 117A and 117B into the Principal Act.

Proposed section 117A provides that the owner of a lot is jointly and severally liable with the occupier of the lot for damage caused by the occupier to the common property. However, the owner is entitled to be indemnified by the occupier for any such damage.

Proposed section 117B prevents the owner or occupier of a lot from allowing more persons over the age of 18 years to reside on the lot than the number obtained by multiplying each bedroom or other intended sleeping area in the lot by 2.

Amendments relating to service of documents

Schedule 1 [24] amends section 235 of the Principal Act to require service of a summons or other legal process on an owners corporation to be effected by posting it to the address recorded on the Register for service of notices on the owners corporation and also posting it to the address of the strata scheme (if that address is different) or leaving it in the letterbox of the owners corporation.

Schedule 1 [25] amends section 236 of the Principal Act to enable an owners corporation or an executive committee to serve a notice or other document on a person by e-mailing it to the e-mail address provided by the person for service of notices.

Schedule 1 [26] makes a consequential amendment.

Miscellaneous amendments relating to administration of strata schemes

Schedule 1 [31] amends clause 19 of Schedule 2 to the Principal Act to limit the time at which a poll may be demanded after a vote has been taken at a general meeting of an owners corporation.

Schedule 1 [32] and [33] amend clause 31 of Schedule 2 to the Principal Act to enable the owners corporation by resolution at a general meeting to vary the time at which the annual general meeting is held, subject to certain limitations.

Schedule 1 [34] inserts proposed clauses 33A and 33B into Schedule 2 to the Principal Act.

Proposed clause 33A requires notice of a general meeting that includes a motion to amend, repeal or substitute a by-law to also include a report prepared by the proponent explaining the intent of the proposed amendment, repeal or substitution.

Proposed clause 33B requires notice of a general meeting to include any disclosures made under proposed section 27B or 230B since the last meeting.

Schedule 1 [40] inserts proposed clause 6A into Schedule 3 to the Principal Act to require notice of an executive committee meeting to include any disclosures made under proposed section 27B or 230B since the last meeting.

Schedule 1 [41] inserts proposed clause 17A into Schedule 3 to the Principal Act to enable the executive committee to transact business by telephone, closed-circuit television or other electronic means.

Schedule 1 [42] and [43] amend Schedule 4 to the Principal Act to make provision for savings and transitional matters as a consequence of the enactment of the proposed Act.

Schedule 2 Amendment of Strata Schemes Management Regulation 2010

Schedule 2 amends Form 1 in Schedule 8 to the *Strata Schemes Management Regulation 2010* which is the form of a certificate under section 109 of the Principal Act given by an owners corporation as to the financial and other matters relating to a lot in a strata scheme. The amendment changes the requirement to disclose payments to be made by the owners corporation that do not relate to the maintenance or insurance of the strata scheme with a requirement to disclose payments to be made that relate to a matter that was not included in the estimates of actual and expected expenditure required to be prepared in relation to the strata scheme.



New South Wales

Strata Legislation Amendment Bill 2011

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New South Wales

Strata Legislation Amendment Bill 2011

No. , 2011

A Bill for

An Act to amend the *Strata Schemes Management Act 1996* in relation to the obligations of owners corporations, executive committees and owners and occupiers of lots, procedures for meetings and the finances of strata schemes; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Strata Legislation Amendment Act 2011</i> .	3
2 Commencement	4
This Act commences on the date of assent to this Act.	5

Schedule 1	Amendment of Strata Schemes Management Act 1996 No 138	1
		2
[1] Section 25A		3
Insert after section 25:		4
25A Code of conduct for members of executive committee		5
(1) The code of conduct in Schedule 1A applies to each member of the executive committee of an owners corporation.		6 7
(2) Nothing in this section prevents the regulations prescribing further provisions as a code of conduct for members of the executive committee of an owners corporation.		8 9 10
Note. Section 246 (2) (n) and (o) enable regulations to be made with respect to a code of conduct for members of an executive committee of an owners corporation and in relation to breaches of such codes of conduct and of Schedule 1A.		11 12 13 14
[2] Sections 27A and 27B		15
Insert after section 27:		16
27A Prohibition on certain persons holding position of strata managing agent		17 18
(1) The following persons may not be appointed as a strata managing agent of a strata scheme during the relevant period:		19 20
(a) the original owner,		21
(b) if the original owner is a corporation:		22
(i) a corporation that, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth, is a related body corporate of the original owner, or		23 24 25
(ii) a corporation that holds shares in the original owner or in a related body corporate of the original owner,		26 27
(c) if the original owner is an individual:		28
(i) a corporation that employs the original owner, or		29
(ii) a corporation in respect of which the original owner holds shares, or		30 31
(iii) a corporation in respect of which the original owner occupies a position of authority,		32 33
(d) a builder who has carried out prescribed building work for the strata scheme.		34 35

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- (2) If an owners corporation or executive committee of a strata scheme becomes aware after the appointment of a person as a strata managing agent of the scheme that the person cannot hold the position of agent because of subsection (1), the owners corporation or executive committee must terminate the strata managing agent's appointment as soon as possible. 1
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- (3) An owners corporation or executive committee may terminate the appointment of a strata managing agent in accordance with this section whether or not the instrument of appointment of the strata managing agent provides for termination under this section and any such termination does not constitute a breach of contract. 7
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- (4) No person is entitled to compensation or damages as a result of the termination of the appointment of a strata managing agent in accordance with this section. 12
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- (5) Nothing in this section: 15
- (a) requires the termination of the appointment of a strata managing agent who is a person referred to in subsection (1) if the relevant period has expired, or 16
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- (b) affects the validity of any function exercised by a person referred to in subsection (1) in the capacity of a strata managing agent during the relevant period if the person's appointment as strata managing agent had not been terminated before the exercise of the function. 19
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- (6) In this section: 24
- prescribed building work** means any building work that: 25
- (a) is required to be completed for the issue of a strata certificate in relation to a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, and 26
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- (b) is residential building work or specialist work for which a contractor licence is required under the *Home Building Act 1989*. 30
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- relevant period** means: 33
- (a) in relation to a person referred to in subsection (1) (a)–(c), the period ending 10 years from the completion of all the prescribed building work for the strata scheme concerned, and 34
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- (b) in relation to a person referred to in subsection (1) (d), the period ending 10 years from the completion of the prescribed building work carried out by the person for the strata scheme concerned. 38
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(7)	This section does not apply to a strata scheme unless all the lots in the scheme are used principally for residential purposes.	1 2
27B	Requirement to disclose certain connections	3
(1)	For the purposes of this section, each of the following persons is a <i>relevant person</i> in relation to a strata scheme:	4 5
(a)	the original owner,	6
(b)	a caretaker appointed for the strata scheme,	7
(c)	a person who is a party to a contract with the owners corporation,	8 9
(d)	a letting agent for the owner of any lot within the strata scheme, being a person who carries on the business of acting as the agent of the owner for the purposes of securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies in respect of the lot or part of the lot,	10 11 12 13 14 15
(e)	a builder who carried out prescribed building work (within the meaning of section 27A) in relation to the strata scheme.	16 17 18
(2)	Before accepting an appointment as a strata managing agent of a strata scheme, a person must disclose in writing to the owners corporation the following information:	19 20 21
(a)	any connection that the person has with a relevant person,	22
(b)	the nature and extent of the connection,	23
(c)	the nature and extent of the relevant person's connection with the strata scheme.	24 25
	Maximum penalty: 55 penalty units.	26
(3)	It is a defence to a prosecution for an offence against subsection (2) if the defendant establishes that, when accepting the appointment as strata managing agent, the defendant did not know, and could not reasonably be expected to have known, that the defendant was connected with a relevant person.	27 28 29 30 31
(4)	As soon as possible after a strata managing agent of a strata scheme becomes aware, or ought reasonably to have become aware, that the agent is connected with a relevant person, the agent must disclose in writing to the owners corporation the following information:	32 33 34 35 36
(a)	any connection that the agent has with the relevant person,	37
(b)	the date on which the connection commenced,	38
(c)	the nature and extent of the connection,	39

(d) the nature and extent of the relevant person’s connection with the strata scheme.	1 2
Maximum penalty: 55 penalty units.	3
(5) It is a defence to a prosecution for an offence against subsection (2) or subsection (4) for a failure to disclose the information referred to in subsection (2) (c) or (4) (d), respectively, if the defendant establishes that the defendant did not know, and could not reasonably be expected to have known, the information required to be disclosed.	4 5 6 7 8 9
(6) If an owners corporation or executive committee of a strata scheme becomes aware after the appointment of a strata managing agent for the scheme that the agent is connected with a relevant person, the owners corporation or the executive committee may terminate the appointment of the agent.	10 11 12 13 14
(7) An owners corporation or executive committee may terminate the appointment of a strata managing agent in accordance with this section whether or not the instrument of appointment of the strata managing agent provides for termination under this section and any such termination does not constitute a breach of contract.	15 16 17 18 19
(8) No person is entitled to compensation or damages as a result of the termination of the appointment of a strata managing agent in accordance with this section.	20 21 22
(9) This section does not apply to a strata scheme unless all the lots in the scheme are used principally for residential purposes.	23 24
[3] Section 40D	25
Insert after section 40C:	26
40D Prohibition on certain persons holding position of caretaker	27
(1) The following persons may not be appointed as a caretaker for a strata scheme:	28 29
(a) the original owner,	30
(b) a person (referred to in this section as <i>the contractor</i>) with whom the owners corporation entered into a contract during the initial period for the supply of goods or services, or both, to the owners corporation for a period greater than 2 years,	31 32 33 34 35
(c) if the original owner or contractor is a corporation:	36
(i) a corporation that, within the meaning of the <i>Corporations Act 2001</i> of the Commonwealth, is a	37 38

	related body corporate of the original owner or contractor, or	1
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(ii)	a corporation that holds shares in the original owner or contractor or in a related body corporate of the original owner or contractor,	3
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(d)	if the original owner or contractor is an individual:	6
(i)	a corporation that employs the original owner or contractor, or	7
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(ii)	a corporation in respect of which the original owner or contractor holds shares, or	9
		10
(iii)	a corporation in respect of which the original owner or contractor occupies a position of authority.	11
		12
(2)	If an owners corporation for a strata scheme becomes aware after the appointment of a caretaker for the scheme that the caretaker is a person referred to in subsection (1), the owners corporation must:	13
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(a)	terminate the caretaker's appointment, and	17
(b)	determine whether a new caretaker is to be appointed.	18
(3)	The action required to be taken by the owners corporation under subsection (2) is to be taken:	19
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(a)	at the general meeting of the owners corporation at which the owners corporation becomes aware that the caretaker is a person referred to in subsection (1), or	21
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(b)	if the owners corporation becomes aware that the caretaker is a person referred to in subsection (1) otherwise than at a general meeting, at the next general meeting after the owners corporation becomes so aware.	24
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(4)	An owners corporation may terminate the appointment of a caretaker in accordance with this section whether or not the caretaker agreement provides for termination under this section and any such termination does not constitute a breach of contract.	28
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(5)	No person is entitled to compensation or damages as a result of the termination of the appointment of a caretaker in accordance with this section.	32
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(6)	This section does not apply to a strata scheme unless all the lots in the scheme are used principally for residential purposes.	35
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[4] Section 71 What money can be paid out of the sinking fund?	1
Insert after section 71 (1) (a):	2
(a1) payments to meet expenses for which a contribution to the sinking fund has been levied under section 76 (4), or	3 4
[5] Section 76 Owners corporation to set levy for contributions to administrative and sinking funds	5 6
Insert “or the sinking fund (as the case may be)” after “administrative fund” in section 76 (4).	7 8
[6] Section 76 (6) and (7)	9
Insert after section 76 (5):	10
(6) Despite any other provision of this Act, if a quorum is not present as required by clause 12 (5) of Schedule 2 at an adjourned annual general meeting of the owners corporation at which the amounts to be levied as contributions to the administrative fund and sinking fund are to be determined, those amounts are taken to have been determined to be the same amounts as the contributions last determined, increased to take account of the relevant Consumer Price Index.	11 12 13 14 15 16 17 18
(7) For the purposes of subsection (6), the <i>relevant Consumer Price Index</i> is the Consumer Price Index (All Groups Index) for Sydney last issued by the Australian Statistician before the date of the adjourned annual general meeting.	19 20 21 22
[7] Section 87 What other insurance must an owners corporation take out?	23
Omit “\$10,000,000” from section 87 (2). Insert instead “\$20,000,000”.	24
[8] Section 98 What must be recorded or included in the strata roll?	25
Insert “or included” after “recorded” in section 98 (2).	26
[9] Section 98 (2) (f)–(j)	27
Insert after section 98 (2) (e):	28
(f) a copy of each licence granted by the owners corporation for the use of common property and that is in force,	29 30
(g) copies of plans and approvals for all building work that has been carried out on the common property,	31 32
(h) copies of plans and approvals of building work that has been carried out on any other property in the strata scheme	33 34

	if those plans and approvals can lawfully be obtained or required by the owners corporation,	1
	(i) details of each loan to the owners corporation,	2
	(j) a copy of each special resolution passed for the purposes of section 65A.	3
[10]	Section 98 (3)	6
	Insert after section 98 (2):	7
	(3) The strata roll must contain an index of all documents held by the owners corporation that are required to be recorded or included in the strata roll.	8
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[11]	Sections 117A and 117B	11
	Insert after section 117:	12
117A	Owner and occupier liable for damage to common property caused by occupier	13
	(1) The owner and occupier of a lot are jointly and severally liable for damage caused to the common property by the occupier.	14
	(2) The owner of a lot is entitled to be indemnified by an occupier of the lot for any amount of damage caused to the common property by the occupier in respect of which the owner is liable under subsection (1).	15
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117B	Owner and occupier not to permit overcrowding	21
	The owner and occupier of a lot must not permit more persons over the age of 18 years to reside on the lot than the number obtained by multiplying by 2 the number of rooms in the lot that were constructed for the purpose of bedrooms or sleeping areas.	22
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[12]	Chapter 5 Disputes and orders of Adjudicators and Tribunal	26
	Insert under the heading General orders for settlement of disputes after the matter relating to section 139 in the introductory note:	27
		28

To settle disputes concerning a strata development contract	Person bound by the contract	183C
To settle disputes or rectify complaints concerning management of a building or its site subject to a strata management statement	Person bound by the statement	183D

- [13] **Chapter 5, introductory note** 1
- Omit the matter relating to orders appointing strata managing agents. 2
- Insert instead: 3

Orders appointing strata managing agents and terminating appointments		
To appoint strata managing agent	Person who obtained order under this Act that imposed duty on owners corporation or office holder of executive committee that has not been complied with Person having estate or interest in lot or, in the case of leasehold strata scheme, lease of lot Authority having benefit of positive covenant that imposes duty on owners corporation Judgment creditor to whom owners corporation owes judgment debt	162
To terminate appointment of strata managing agent	Owners corporation Owner of lot	162

- [14] **Chapter 5, Part 4, Division 10, heading** 4
- Insert “**and terminating appointments**” after “**agents**”. 5
- [15] **Section 162 Orders appointing strata managing agent to exercise certain functions or terminating appointment of strata managing agent** 6
- Insert after section 162 (2): 7
- (2A) **Order terminating appointment of strata managing agent** 8
- An Adjudicator may by order terminate the appointment of a strata managing agent. 9
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- [16] **Section 162 (3A)** 12
- Insert at the end of section 162 (3A) (d): 13
- , or 14
- (e) a strata managing agent’s appointment should be terminated because the agent is a person referred to in section 27A (1). 15
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[17] Section 162 (7)	1
Insert “(other than an order under subsection (2A))” after “under this section”.	2
[18] Section 162 (8)	3
Insert after section 162 (7):	4
(8) An application for an order under subsection (2A) may be made only by the owners corporation or the owner of a lot in the strata scheme concerned.	5 6 7
[19] Sections 183C and 183D	8
Insert after section 183B:	9
183C Orders relating to strata development contracts	10
(1) The Tribunal may make an order to settle a dispute in relation to a strata development contract, but only if:	11 12
(a) the strata development contract provides for the reference of disputes to the Tribunal or makes no provision for settling disputes, or	13 14 15
(b) in a case where the strata development contract provides for some other method of settling disputes, the Tribunal is of the opinion that the method provided for in the contract has been tried and has not resulted in the settlement of the dispute concerned.	16 17 18 19 20
(2) An application for an order under this section may be made only by a person who is bound by the strata development contract.	21 22
183D Orders relating to strata management statements	23
(1) The Tribunal may make an order to settle a dispute, or rectify a complaint, concerning the management of a building or its site that is subject to a strata management statement, but only if:	24 25 26
(a) the strata management statement provides for the reference of disputes or complaints to the Tribunal, or	27 28
(b) in a case where the strata management statement does not so provide, the Tribunal is of the opinion that the method of settling such disputes or rectifying such complaints provided for in the statement has been tried and has not resulted in the settlement of the dispute or rectification of the complaint concerned.	29 30 31 32 33 34
(2) An application for an order under this section may be made only by a person who is bound by the strata management statement.	35 36

[20] Section 198 Contempt of Tribunal	1
Omit “5 penalty units” wherever occurring in section 198 (1) and (2).	2
Insert instead “50 penalty units”.	3
[21] Section 201A	4
Insert after section 201:	5
201A Failure to comply with order of Tribunal or Adjudicator	6
(1) A person who is subject to an order under this Chapter must not contravene the order.	7
Maximum penalty: 200 penalty units.	8
(2) A person is not liable to any penalty in respect of an offence under this section if the person has been ordered to pay a civil penalty under section 202 in respect of the same contravention.	9
[22] Chapter 7, Part 1A, heading	10
Omit the heading. Insert instead:	11
Part 1A Legal services provided to owners corporation	12
[23] Section 230B	13
Insert after section 230A:	14
230B Requirement to disclose certain connections	15
(1) Before undertaking to provide any legal services to an owners corporation, a legal practitioner must disclose in writing to the owners corporation if the practitioner is connected with the original owner.	16
Maximum penalty: 55 penalty units.	17
(2) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that, when undertaking to perform those legal services, the defendant did not know, and could not reasonably be expected to have known, that the defendant was connected with the original owner.	18
(3) As soon as possible after a legal practitioner who is providing legal services to an owners corporation becomes aware, or ought reasonably to have become aware, that the practitioner is connected with the original owner, the practitioner must disclose in writing to the owners corporation any connection that the	19

person has with the original owner and the date when the connection commenced.	1
Maximum penalty: 55 penalty units.	2
(4) If an owners corporation or executive committee of a strata scheme becomes aware after engaging a legal practitioner to provide legal services in relation to the scheme that the practitioner is connected with the original owner, the owners corporation is, within 42 days, to determine at a general meeting whether the practitioner's engagement should be terminated and a different practitioner engaged.	3
(5) Subsection (4) does not prevent the owners corporation or executive committee from terminating the engagement of the legal practitioner at any time for any other reason.	4
(6) The termination of the engagement of a legal practitioner in accordance with this section does not constitute a breach of contract and no person is entitled to compensation or damages as a result of the termination.	5
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[24] Section 235 Service of documents on an owners corporation	18
Omit section 235 (1). Insert instead:	19
(1) A summons or other legal process may be served on an owners corporation by doing both of the following:	20
(a) posting it, by prepaid mail, to the owners corporation at the address recorded in the folio of the Register as the address for the service of documents on the owners corporation,	21
(b) posting it, by prepaid mail, to the owners corporation at the address of the strata scheme concerned (if different to the address referred to in paragraph (a)) or leaving it in the letterbox of the owners corporation.	22
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[25] Section 236 Service of documents by owners corporation and others	29
Insert after section 236 (6):	30
(7) Service of certain documents by electronic means	31
A notice or other document that is required to be given to a person under this Act by an owners corporation or an executive committee may be given to the person by electronic means, but only if the person has given the owners corporation an e-mail address for the service of notices under this Act and the notice is sent to that address.	32
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[26] Section 239 Change of owners corporation's address	1
Insert "and other documents" after "notices" in section 239 (1).	2
[27] Section 246 Regulations	3
Insert after section 246 (2) (l):	4
(m) the procedures to be observed by the chairperson and secretary in relation to meetings of the owners corporation and by persons presiding at such meetings,	5 6 7
(n) a code of conduct for the chairperson, secretary or treasurer of an owners corporation or the members of the executive committee of an owners corporation,	8 9 10
(o) breaches of any provision of a code of conduct referred to in Schedule 1A or prescribed by the regulations.	11 12
[28] Section 246 (2A)	13
Insert after section 246 (2):	14
(2A) A regulation relating to the matter referred to in subsection (2) (m), (n) or (o) may apply, adopt or incorporate by reference wholly or partly, and with or without modification, any published document as in force at a particular time or as in force from time to time.	15 16 17 18 19
[29] Schedule 1A	20
Insert before Schedule 1:	21
Schedule 1A Code of conduct for members of executive committee	22 23
	(Sections 25A and 246 (2) (o)) 24
1 Commitment to acquiring understanding of Act, including this code	25 26
A member of an executive committee must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member's role on the committee.	27 28 29
2 Honesty, fairness and confidentiality	30
(1) A member of an executive committee must act honestly and fairly in performing the member's duties as such a member.	31 32

(2)	A member of an executive committee must not unfairly or unreasonably disclose information held by the owners corporation, including information about an owner of a lot, unless authorised or required by law to do so.	1 2 3 4
3	Acting in owners corporation's best interests	5
	A member of an executive committee must act in the best interests of the owners corporation in performing the member's duties as such a member, unless it is unlawful to do so.	6 7 8
4	Complying with Act and this code	9
	A member of an executive committee must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member's duties as such a member.	10 11 12
5	Nuisance	13
	A member of an executive committee must not:	14
(a)	cause a nuisance on the common property of the strata scheme, or	15 16
(b)	otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.	17 18 19
6	Conflict of interest	20
	A member of an executive committee must disclose to the committee any conflict of interest the member may have in a matter before the committee.	21 22 23
[30]	Schedule 2 Meetings and procedure of owners corporation	24
	Insert after clause 10 (8):	25
(8A)	For the purposes of subclause (8), payment by means of a cheque of an amount owing is taken to have been made before a meeting only if the cheque was received at least 5 clear working days before the meeting and no notice has been received by the time of the meeting of the cheque having been dishonoured.	26 27 28 29 30
[31]	Schedule 2, clause 19 (2A)	31
	Insert after clause 19 (2):	32
(2A)	In the case of a poll demanded after a vote has been taken, the demand may be made no later than the completion of consideration of the next item on the agenda if one or more items on the agenda remain to be considered.	33 34 35 36

Strata Legislation Amendment Bill 2011

Schedule 1 Amendment of Strata Schemes Management Act 1996 No 138

[32] Schedule 2, clause 31 (1)	1
Omit “An”. Insert instead “Subject to subclause (1A), an”.	2
[33] Schedule 2, clause 31 (1A)	3
Insert after clause 31 (1):	4
(1A) An owners corporation may vary the time at which the annual general meeting is required to be held by resolution passed at a general meeting so long as:	5
(a) the variation results in an annual general meeting being held in each year, and	6
(b) the time for holding the meeting has not already been varied by order of an Adjudicator under section 152.	7
[34] Schedule 2, clauses 33A and 33B	8
Insert after clause 33:	9
33A Notice of general meeting including proposal relating to by-laws	10
Notice of a general meeting that includes a form of motion to amend, repeal or substitute a by-law must include a report prepared by the proponent of the motion explaining the intent of the proposed amendment, repeal or substitution of the by-law.	11
33B Notice of general meeting to include disclosures	12
Notice of a general meeting must include a copy of any disclosure made to the owners corporation by a strata managing agent under section 27B, or a legal practitioner under section 230B, since the last general meeting.	13
[35] Schedule 2, clause 34 (b1)	14
Insert after clause 34 (b):	15
(b1) include proposed estimates of amounts needed to be credited to the administrative and sinking funds as referred to in section 75 and proposed amounts of contributions based on the proposed estimates, and	16
[36] Schedule 3 Constitution of executive committee of the owners corporation and meetings of executive committee	17
Omit “or caretaker” wherever occurring in clause 3A (1), (3) and (4).	18
Insert instead “, caretaker or strata managing agent”.	19

[37] Schedule 3, clause 3A (1A)–(1D)	1
Insert after clause 3A (1):	2
(1A) A person who is elected as a member of the executive committee after failing to make a disclosure in accordance with subclause (1) in relation to that election is guilty of an offence.	3 4 5
Maximum penalty: 55 penalty units.	6
(1B) A member of the executive committee is guilty of an offence in relation to each occasion on which the member votes on a matter being considered by the executive committee after failing to make a disclosure in accordance with subclause (1) or (4).	7 8 9 10
Maximum penalty: 55 penalty units.	11
(1C) If an owners corporation becomes aware after the election of a member of the executive committee that the member is connected with the original owner, caretaker or strata managing agent, the owners corporation must:	12 13 14 15
(a) declare the member’s position vacant, and	16
(b) determine whether a new member of the executive committee is to be elected.	17 18
(1D) The action required to be taken by the owners corporation under subclause (1C) is to be taken:	19 20
(a) at the general meeting at which the owners corporation becomes aware that the member is connected with the original owner, caretaker or strata managing agent, or	21 22 23
(b) if the owners corporation becomes aware that the member is connected with the original owner, caretaker or strata managing agent otherwise than at a general meeting, at the next general meeting after the owners corporation becomes so aware.	24 25 26 27 28
[38] Schedule 3, clause 3A (3A)–(3D)	29
Insert after clause 3A (3):	30
(3A) A person who is appointed to act in the place of a member of the executive committee after failing to make a disclosure in accordance with subclause (3) in relation to that appointment is guilty of an offence.	31 32 33 34
Maximum penalty: 55 penalty units.	35
(3B) A person who is appointed to act in the place of a member of the executive committee is guilty of an offence in relation to each occasion on which the person votes on a matter being considered by the executive committee as a member of the executive	36 37 38 39

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	committee after failing to make a disclosure in accordance with subclause (3) or (4).	1
	Maximum penalty: 55 penalty units.	2
(3C)	If an executive committee becomes aware after the appointment of a person to act in the place of a member of the executive committee that the person is connected with the original owner, caretaker or strata managing agent, the executive committee must:	3
	(a) withdraw its consent to the person's appointment, and	4
	(b) determine whether to give consent to the appointment of a different person to act in the place of the member of the executive committee.	5
(3D)	The action required to be taken by the executive committee under subclause (3C) is to be taken:	6
	(a) at the meeting of the executive committee at which the committee becomes aware that the person concerned is connected with the original owner, caretaker or strata managing agent, or	7
	(b) if the executive committee becomes aware that the person concerned is connected with the original owner, caretaker or strata managing agent otherwise than at a meeting of the executive committee, at the next meeting of the executive committee after the executive committee becomes so aware.	8
[39]	Schedule 3, clause 3A (4)	9
	Insert at the end of the subclause:	10
	Maximum penalty: 55 penalty units.	11
[40]	Schedule 3, clause 6A	12
	Insert after clause 6:	13
	6A Notice of executive committee meeting to include disclosures	14
	Notice of an executive committee meeting must include a copy of any disclosure made to the owners corporation by a strata managing agent under section 27B, or a legal practitioner under section 230B, since the last executive committee meeting.	15
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[41] Schedule 3, clause 17A	1
Insert after clause 17:	2
17A Transaction of meetings by telephone etc	3
The executive committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members and each other person who is present at the meeting and entitled to attend.	4 5 6 7 8 9
[42] Schedule 4 Savings, transitional and other provisions	10
Insert at the end of clause 1 (1):	11
<i>Strata Legislation Amendment Act 2011</i>	12
[43] Schedule 4	13
Insert at the end of the Schedule with appropriate Part and clause numbers:	14
Part Provisions consequent on enactment of Strata Legislation Amendment Act 2011	15 16
Definitions	17
(1) In this Part:	18
<i>amending Act</i> means the <i>Strata Legislation Amendment Act 2011</i> .	19 20
(2) In this Part, a reference to a provision of this Act is a reference to that provision as inserted or amended by the amending Act.	21 22
Strata rolls	23
A requirement to record or include a document or information on the strata roll that is imposed by an amendment to section 98 by the amending Act extends to recording or including any such document that was created before the commencement of the amendment and any such information that related to an event that occurred before that commencement if the document or information is reasonably available.	24 25 26 27 28 29 30

Strata managing agents, caretakers and other appointments	1
(1) If a strata managing agent who is a person referred to in section 27A (1) was appointed before the commencement of that subsection:	2
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(a) section 27A extends to the appointment of the strata managing agent, and	5
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(b) section 27A (2) is to be read as enabling the owners corporation to terminate the strata managing agent's appointment after that commencement rather than as requiring the owners corporation to terminate the appointment as soon as possible after becoming aware that the agent was a person referred to in section 27A (1).	7
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(2) Section 27B (2) is to be read as requiring a person who held the position of strata managing agent immediately before the commencement of that subsection to disclose, within 60 days after that commencement, any connection with a relevant person of which the agent was aware, or ought reasonably to have been aware, before that commencement.	13
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(3) A requirement in section 40D (2) to terminate a caretaker's appointment:	19
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(a) extends to caretakers appointed before the commencement of that subsection, and	21
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(b) is to be read as a requirement to terminate the appointment within 60 days after the commencement of that subsection if the owners corporation or executive committee became aware before that commencement that the caretaker was a person referred to in section 40D (1).	23
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(4) Section 230B (3) is to be read as requiring a legal practitioner who was providing legal services to an owners corporation immediately before the commencement of that subsection to disclose, within 60 days after that commencement, any connection with the original owner of which the practitioner was aware, or ought reasonably to have been aware, before that commencement.	28
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(5) A requirement in section 230B (4) in relation to the engagement of a legal practitioner:	35
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(a) extends to practitioners engaged before the commencement of that subsection, and	37
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(b) is to be read as a requirement to convene and hold a general meeting within 60 days after the commencement of that subsection if the owners corporation or executive	39
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committee became aware before that commencement that
the practitioner was connected to the original owner.

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Meetings and procedure

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- (1) Clause 10 (8A) of Schedule 2 does not apply to a payment made
by means of a cheque before the commencement of that
subclause.
- (2) Clauses 33A, 33B and 34 (b1) of Schedule 2 and clause 6A of
Schedule 3 do not apply to notices sent before the
commencement of those provisions.

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Insurance

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The amendment made to section 87 by the amending Act does not
apply to an owners corporation until the next renewal of the
insurance required under that section occurring after the
commencement of that amendment.

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Owner's and occupier's liability for damage to common property

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Section 117A does not apply to or in respect of any damage to
common property occurring before the commencement of that
section.

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Schedule 2 Amendment of Strata Schemes Management Regulation 2010 1
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Schedule 8 Forms 3

Omit the matter relating to item 17 in Form 1 (including the direction immediately preceding the item). 4
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Insert instead: 6

Item 17 must be completed if the strata scheme is required to pay to any other person or body any amount relating to a matter not included in the estimates of actual and expected expenditure prepared under section 75 of the Act. 7
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17 Amount payable to any other person or body not provided for in the estimates prepared under section 75 of the Act 11
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Name of person or body

Brief statement as to the purpose of the payment:

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If next payment known: Amount Date Due

.....

Amount (if any) outstanding

Amount (if any) in credit