

Passed by both Houses



New South Wales

Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2021

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2021



New South Wales

Strata Schemes Management Amendment (Sustainability Infrastructure) Bill 2021

Act No _____, 2021

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

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2021*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsections (2) and (3).
- (2) Schedule 1[6] commences on whichever of the following occurs first—
 - (a) a day or days to be appointed by proclamation, or
 - (b) the date that is 6 months after the date of assent to this Act.
- (3) Schedule 1[10]–[14] commence 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)—

sustainability infrastructure and *sustainability infrastructure resolution*—
see section 132B.

[2] **Section 5 Resolutions of owners corporations**

Omit section 5(1)(b). Insert instead—

- (b) of the value of votes cast—
 - (i) not more than 25% are against the resolution, or
 - (ii) if the resolution is a sustainability infrastructure resolution—less than 50% are against the resolution.

[3] **Section 108 Changes to common property**

Insert after section 108(2)—

Note. If the special resolution is a sustainability infrastructure resolution fewer votes may be needed to pass it. See section 5(1)(b).

[4] **Part 6, Division 7, heading**

Omit the heading. Insert instead—

Division 7 Miscellaneous

[5] **Section 132B**

Insert after section 132A—

132B Financing and installation of sustainability infrastructure

- (1) Before approving a sustainability infrastructure resolution, the owners corporation must consider the following—
 - (a) the cost of the sustainability infrastructure and works including any expected running and maintenance costs,
 - (b) who will own, install and maintain the sustainability infrastructure,
 - (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,
 - (d) any matter prescribed by the regulations.
- (2) In this Act—

sustainability infrastructure 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—

 - (a) to reduce the consumption of energy or water or to increase the efficiency of its consumption,
 - (b) to reduce or prevent pollution,
 - (c) to reduce the amount of waste sent to landfill,
 - (d) to increase the recovery or recycling of materials,
 - (e) to reduce greenhouse gas emissions,

- (f) to facilitate the use of sustainable forms of transport,
Note. For example, installing electric vehicle charging stations.

- (g) a purpose prescribed by the regulations.

sustainability infrastructure resolution means a resolution to do any one or more of the following that is specified to be a sustainability infrastructure resolution—

- (a) to finance sustainability infrastructure,
- (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,
- (c) to change the by-laws of the strata scheme for the purposes of the installation or use (or both) of sustainability infrastructure.

[6] Section 137B

Insert after section 137A—

137B Keeping of animals

- (1) Each of the following has no force or effect to the extent that it would unreasonably prohibit the keeping of an animal on a lot—
 - (a) a by-law,
 - (b) a decision by an owners corporation under a by-law.
- (2) It is taken to be reasonable to keep an animal on a lot unless the keeping of the animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.
- (3) The regulations may specify circumstances in which the keeping of an animal unreasonably interferes with another occupant's use and enjoyment of the occupant's lot or the common property.
- (4) A by-law that prohibits the keeping of an animal on a lot is not harsh, unconscionable or oppressive if it does not unreasonably prohibit the keeping of an animal on a lot.
Note. Section 150(1) provides that the Tribunal may declare a by-law to be invalid if it is harsh, unconscionable or oppressive.
- (5) An owners corporation is taken to have given permission for the keeping of an animal on a lot if—
 - (a) it made a decision about the keeping of the animal in contravention of subsection (1)(b), or
 - (b) a decision of the owners corporation is required before the animal may be kept on the lot and the owners corporation failed to make a decision within a reasonable time.
- (6) If a report has been tabled in Parliament under section 276A, the Minister must not recommend the making of a regulation under this section unless the Minister has considered the report.
- (7) Subsection (6) is repealed 5 years after the commencement of this section.

[7] Section 141 Procedure for changes to by-laws

Insert after section 141(1)—

Note. If the special resolution is a sustainability infrastructure resolution fewer votes may be needed to pass it. See section 5(1)(b).

[8] Section 182 Requests for inspection of records of owners corporation

Insert after section 182(4)—

(5) Voting in secret ballots must not be disclosed

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.

[9] Section 186 Provision of strata scheme information to tenants

Insert after section 186(1)—

- (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 *Residential Tenancies Act 2010*.

[10] Section 228 Notice of applications to Tribunal

Omit “any other person who in the registrar’s opinion would be affected” from section 228(1).

Insert instead “the owners corporation”.

[11] Section 228(2)(b)

Insert “, and” after “submissions”.

[12] Section 228(2)(c)

Insert after section 228(2)(b)—

- (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.

[13] Section 247A

Insert after section 247—

247A Civil penalties for contravention of orders

- (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 (*the original order*).
- (2) An application for the order may be made—
 - (a) by the applicant for the original order, or
 - (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
 - (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.
- (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—
 - (a) a contravention for the purposes of a civil penalty provision of the *Civil and Administrative Tribunal Act 2013*, or
 - (b) a contempt of the Tribunal.

[14] Section 248 Recovery of unpaid civil penalty

Omit the first note. Insert instead—

Note. Section 72(3) of the *Civil and Administrative Tribunal Act 2013* and section 247A of this Act provide for a civil penalty for a contravention of an order of the Tribunal.

[15] Section 276A

Insert after section 276—

276A Review of keeping of animals

- (1) The Minister is to review this Act as it relates to the keeping of animals on lots in strata schemes, including by addressing the following matters—
 - (a) the circumstances in which it is reasonable to prohibit the keeping of animals,
 - (b) the impacts of kept animals on the health and wellbeing of residents,
 - (c) the barriers faced by residents in the keeping of animals and by persons who require assistance animals, including vulnerable persons,
Example. Persons fleeing domestic violence.
 - (d) the welfare of kept animals,
 - (e) how to limit any adverse impacts of kept animals on common property, including the adequacy of existing laws to deal with this,
 - (f) to resolve disputes about the keeping of animals,
 - (g) the effects of a change to the by-laws for a scheme that prohibits the keeping of an animal that was lawfully kept on a lot before the change.
- (2) The review is to be undertaken as soon as possible after the commencement of this section.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 6 months after the commencement of this section.

[16] Schedule 1 Meeting procedures of owners corporation

Insert after clause 26(7)—

- (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.
- (9) **Adjourned meetings**
An instrument appointing a proxy for a meeting is not rendered invalid merely because the meeting is adjourned to a later date.

[17] Schedule 3 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2021

Owners corporation is party to application

Section 226(1A) applies only to an application made after the commencement of that subsection.

Notice of application to Tribunal

The amendments made to section 228 by the *Strata Schemes Management Amendment (Sustainability Infrastructure) Act 2021* 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.

Civil penalties for contravention of orders

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.