

[Act 1999 No 52]



New South Wales

Strata Schemes (Leasehold Development) Amendment Bill 1999

Explanatory note

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

Overview of Bill

The *Strata Schemes (Leasehold Development) Act 1986* allows land to be developed by means of a strata scheme in cases where the land owner wants to lease the land but does not want, or is not able, to sell the land. When land is subdivided by means of a leasehold strata scheme, the owner of the land retains the estate in fee simple to the strata lots that is created under the scheme. The strata lots are usually leased under long-term leases.

At present, the scheme can be utilised only by the Crown or a public authority (including a local council).

The object of this Bill is to amend the *Strata Schemes (Leasehold Development) Act 1986* to allow privately owned land to be the subject of a leasehold strata scheme.

Explanatory note

The Bill also makes changes to the taxation provisions contained in the *Land Tax Management Act 1956* to ensure that the lessee of a strata lot in a leasehold strata scheme is treated as the owner of the lot for land tax purposes. As a result, the lessee will be liable for any land tax payable in respect of the lot. In addition, any land tax exemptions that apply to land owned by a particular body (such as land owned by a charitable institution or religious society) will apply as if the lessee owned the strata lot.

Similar changes are made to rating provisions in the *Local Government Act 1993*, so as to ensure that the lessee of a strata lot created under a leasehold strata scheme is treated as the owner of the land for the purposes of various rate exemptions.

The effect of these amendments generally is that a lessee of a leasehold strata lot will be able to claim the benefit of any land tax or rate exemption that would have applied if the lessee were the owner of the lot. Conversely, the owner/lessor of the leasehold strata lot will not be entitled to claim an exemption for land that is leased to a lessee.

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 a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Strata Schemes (Leasehold Development) Act 1986* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the other Acts set out in Schedule 2.

Schedule 1 Amendments to Strata Schemes (Leasehold Development) Act 1986

At present, only land that is held in fee simple by a *prescribed authority* may be subdivided under the *Strata Schemes (Leasehold Development) Act 1986*. A prescribed authority is defined as the Crown in right of New South Wales or a public authority (including a local council) constituted or established by an Act.

The amendments set out in Schedule 1 allow other land owners to develop land by means of a leasehold strata scheme. In particular, the amendments to section 6 (see **Schedule 1 [5]** and **[6]**) make it clear that land held or vested in fee simple in any person may be subdivided under the Act, subject to the limitations provided for by section 6 of the Act. **Schedule 1 [7]** makes it clear that the Crown, a public authority or a local council will still be able to utilise the scheme of subdivision provided for by the Act.

Explanatory note

Consequential amendments replace the expression *prescribed authority* with the expression *proprietor*. The proprietor under the leasehold strata scheme will be the person who retains the estate in fee simple in the parcel (the land that is the subject of the scheme). See **Schedule 1 [2]–[4], [8]–[11] and [13]**.

Schedule 1 [1] inserts a note in the Act to make it clear that the Act provides for an alternative form of subdivision to the *Strata Schemes (Freehold Development) Act 1973*, where a land owner does not wish, or is not able, to part with ownership of the land proposed to be subdivided.

Schedule 1 [12] omits a provision that currently prevents the lessor from transferring land held by the lessor under the leasehold strata scheme, except in accordance with the regulations.

Schedule 1 [14] and [15] replace an incorrect reference to a prescribed authority.

Schedule 1 [16] provides for the making of savings and transitional regulations.

Schedule 2 Amendment of other Acts

Amendments to Land Tax Management Act 1956

Liability of lessees in leasehold strata schemes

Under the *Land Tax Management Act 1956* the owner of land that is taxable is liable to pay land tax. In general, the owner is a person entitled to an estate in freehold in possession or a person entitled to receive the benefit of any rents or profits that would be payable if the land were leased.

The amendment set out in **Schedule 2.1 [3]** provides that the lessee of a leasehold strata lot is to be considered to be the owner of the lot for land tax purposes. Accordingly, the lessee will be liable for any land tax payable in respect of the lot. The lessor will not be considered to be the owner of the lot unless the lessor is the lessee. (The *Strata Schemes (Leasehold Development) Act 1986* contemplates some circumstances in which a lessor may also be the lessee of a strata lot.)

The effect of the amendments will be that any land tax exemption that applies to land owned by a body that is “tax exempt” (such as a charitable institution) will apply to a leasehold strata lot only if the tax exempt body is the lessee of that strata lot.

Note that, at present, section 21C of the Act already deems a lessee of land to be the owner of the land if the land is owned by the Crown, a local council or a county council. However, as a result of the amendments to the *Strata Schemes (Leasehold Development) Act 1986* explained above it will be possible for land that is the subject of a leasehold strata scheme to be privately owned. Accordingly, it is necessary to include a similar provision for privately owned land.

Schedule 2.1 [1] and [2] are consequential amendments.

Savings and transitional

Schedule 2.1 [4] allows savings and transitional regulations to be made.

Schedule 2.1 [5] provides that the amendments do not impose any liability, or affect any liability, in respect of a land tax year that commenced before the commencement of the amendments.

Amendments to Local Government Act 1993

Exemptions from rates

At present, section 555 of the *Local Government Act 1993* exempts certain land from all rates. Section 556 exempts certain land from all rates other than water supply special rates and sewerage special rates. In some cases, land is exempt if it belongs to or is vested in a particular body (such as a religious body or a public benevolent institution or public charity). Generally there is also a requirement that the land be occupied and used by the body concerned.

Schedule 2.2 [1] and [2] provide for the application of those exemptions to land that is the subject of a leasehold strata scheme. A strata lot created under a leasehold strata scheme will be taken, for the purposes of the exemptions that apply to land belonging to or vested in a particular body, to belong to or be vested in the lessee of the strata lot, instead of the lessor. Accordingly, the strata lot will be rate-exempt only if the lessee is entitled to claim a rate exemption for land that belongs to or is vested in it.

If the lessor is the lessee of a strata lot, the lessor will still be considered to be the owner of the strata lot and will be able to claim the benefit of any relevant rate exemption.

Savings and transitional

Schedule 2.2 [3] allows savings and transitional regulations to be made.

Schedule 2.2 [4] provides that the amendments do not apply in respect of any year or part of a year occurring before the commencement of the amendments and do not affect any existing liability for rates.