

[Act 1996 No 138]



New South Wales

Strata Schemes Management Bill 1996

Explanatory note

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

The *Strata Schemes Management (Miscellaneous Amendments) Bill 1996* is cognate with this Bill.

Overview of Bill

The object of this Bill is to repeal and re-enact in a separate Act provisions currently contained in the *Strata Titles Act 1973* and the *Strata Titles (Leasehold) Act 1986* relating to the management of strata schemes established under those Acts and the settlement of disputes concerning those schemes. The Bill renames the 1973 and 1986 Acts to the *Strata Titles (Freehold Development) Act 1973* and the *Strata Titles (Leasehold Development) Act 1986*.

Significant changes to the management and dispute provisions include the following:

Management

- At present, the 1973 and 1986 Acts provide that a strata scheme has the by-laws set out in those Acts. Some of those by-laws can be amended or revoked by the body corporate of the scheme (now called the owners corporation), but some of those by-laws cannot be amended or revoked. The Bill changes those by-laws that cannot be amended by an owners corporation into provisions of the proposed Act. Those by-laws that can currently be amended or revoked are retained as the by-laws for existing strata schemes. However, new strata schemes will be able to register their own by-laws.
- An owners corporation will be able to give a 10% discount on levies paid before the due date. Overdue levies will attract interest at 10% per annum (or another rate set by the regulations) if not paid by the end of one month after the due date.
- Miscellaneous changes are made to the provisions relating to the insurance taken out in relation to a strata scheme, including requiring updated valuations of buildings at least every 5 years and increasing the amount of public liability insurance required from \$5,000,000 to \$10,000,000 per claim.
- Auditing of financial statements for a strata scheme must be carried out in accordance with Australian Auditing Standards.
- Certain restrictions are imposed on the powers of an owners corporation during the initial period. The initial period is the period from when the owners corporation is constituted until there are owners (other than the original owner) whose unit entitlements are at least one-third of all the unit entitlements for the strata scheme concerned. The Bill allows the owners corporation to apply to the Board to overcome those restrictions rather than, as at present, to the Supreme Court.
- An owners corporation is to be advised when a mortgagee has taken possession of a lot and when the use of a lot changes.

- An owner will be able to appoint an agent to receive notices and other documents from the body corporate if the proprietor is intellectually or physically impaired, is illiterate or is unable to read or write English sufficiently well or is absent from the lot.
- Exemptions from certain provisions of the proposed Act are provided for strata schemes containing 2 lots only.
- The proposed Act makes miscellaneous changes to the procedures for meetings of owners corporations and of councils of owners corporations (now called executive committees), including amendments to the notice, quorum and voting provisions.

Disputes

- The Strata Titles Commissioner (now called the Strata Schemes Commissioner) will have the function of mediating strata disputes rather than the Commissioner's current function of adjudicating in such disputes.
- Adjudicators will be appointed and the Commissioner's current powers to make orders and most of the current powers of the Strata Titles Board (now called the Strata Schemes Board) to make orders will be transferred to those Adjudicators.
- The Board will retain power to make certain types of orders and will hear appeals from decisions of Adjudicators.
- An Adjudicator or the Board will be required to refuse to deal with a matter if satisfied that in the circumstances mediation was appropriate but was not attempted.
- The Board will be given power to impose a civil penalty of up to 50 penalty units (currently \$5,000) for a breach of an order of an Adjudicator or the Board. The Board will be able to impose a civil penalty of up to 5 penalty units (currently \$500) if satisfied that a person has contravened a notice issued by an owners corporation to comply with a particular by-law that the person has previously contravened.

Outline of provisions

Chapter 1 Preliminary

Chapter 1 contains **clauses 1–7**. The Chapter makes provision for the name of the proposed Act, its commencement and the definitions of certain words and expressions used in it. The Chapter provides that the proposed Act binds the Crown.

Chapter 2 Management of strata schemes

Part 1 Introduction

Part 1 contains **clauses 8–10**. The Part explains that a strata scheme is managed principally by an owners corporation established for the scheme. The executive committee of the owners corporation, and the strata managing agent if one is appointed, are also involved in the management of the scheme.

Part 2 The principal manager—the owners corporation

Part 2 contains **clauses 11–15**. The Part constitutes an owners corporation for a strata scheme on registration of the relevant strata plan under the *Strata Titles (Freehold Development) Act 1973* or the *Strata Titles (Leasehold Development) Act 1986*. The Part confers functions on an owners corporation and enables it to employ persons to assist in the exercise of those functions. The Part also gives effect to Schedule 2 which contains provisions relating to meetings and procedure of an owners corporation.

Part 3 Others involved in management—the executive committee

Division 1 Constitution of the executive committee

Division 1 contains **clauses 16–21**. The Division requires an owners corporation to elect an executive committee and requires the executive committee to appoint a chairperson, secretary and treasurer. With some exceptions, the decisions of the executive committee are the decisions of the owners corporation. The Division also gives effect to Schedule 3 which contains provisions relating to the constitution of the executive committee and the appointment of the chairperson, secretary and treasurer.

Division 2 Members and office holders of the executive committee

Division 2 contains **clauses 22–25**. The Division specifies the functions of the secretary and treasurer of the executive committee and provides that only certain persons can exercise functions relating to the finances and accounts of an owners corporation. The Division also allows an owners corporation to make a payment to a member of the executive committee in recognition of services performed by the member.

Part 4 Others involved in management—strata managing agents

Division 1 Appointment of strata managing agent

Division 1 contains **clauses 26** and **27**. The Division enables an owners corporation to appoint a strata managing agent who is licensed under the *Property, Stock and, Business Agents Act 1941*.

Division 2 Functions of strata managing agent

Division 2 contains **clauses 28–32**. The Division enables an owners corporation to delegate functions to a strata managing agent. An owners corporation may continue to exercise functions that have been delegated to a strata managing agent. The Division also places requirements on a strata managing agent to record the exercise of certain functions.

Division 3 Accountability of strata managing agent

Division 3 contains **clauses 33–40**. The Division enables an owners corporation to serve a notice on its strata managing agent requiring the agent to provide certain information relating to financial matters and transactions entered into by the strata managing agent on behalf of the owners corporation.

Part 5 By-laws

Division 1 What by-laws apply to a strata scheme?

Division 1 contains **clauses 41–43**. The Division provides that the by-laws for a strata scheme in existence at the commencement of the proposed Act are those set out in Schedule 1. New strata schemes will have to register a set of

by-laws under related amendments made to the *Strata Titles (Freehold Development) Act 1973* and the *Strata Titles (Leasehold Development) Act 1986*. The Division specifies matters that may be included in those by-laws (although it does not limit the matters that may be included) and enables model by-laws to be prescribed and adopted.

Division 2 How are the by-laws enforced?

Division 2 contains **clauses 44–46**. The Division provides that owners, occupiers, mortgagees and covenant chargees of lots in a strata scheme are bound by the by-laws for the scheme. An owners corporation may serve a notice on an occupier of a lot who is breaching a by-law requiring the occupier to comply with the by-law. Such a notice may be enforced by an owners corporation under Chapter 5.

Division 3 Amendment or repeal of by-laws

Division 3 contains **clauses 47–50**. The Division enables an owners corporation to amend its by-laws and sets out the procedure for doing so. The Division also places certain restrictions on by-laws.

Division 4 Special provisions for by-laws conferring certain rights or privileges

Division 4 contains **clauses 51–56**. The Division enables an owners corporation to make a by-law conferring on an owner or owners of lots in a strata scheme a right of exclusive use and enjoyment of, or special privileges in respect of, the whole or part of the common property for the scheme.

Division 5 Special provisions for strata schemes that are part of community schemes

Division 5 contains **clauses 57–60**. The Division provides for the management statement for a community scheme of which a strata scheme forms part to prevail over the by-laws for the strata scheme. The Division also places obligations on lessees of lots to comply with such management statements.

Chapter 3 Key management areas

Part 1 Introduction

Part 1 contains **clause 61**. The Part explains that the owners Corporation for a strata scheme has the control, management and administration of the strata scheme. The Part also gives an overview of the key areas of responsibility that an owners corporation has in managing a strata scheme.

Part 2 Maintenance and repairs

Part 2 contains **clauses 62–65**. The Part imposes a duty on an owners corporation to maintain and repair the common property of a strata scheme. The Part gives power to an owners corporation to carry out work and recover money from some other person who was responsible for carrying out the work but failed to do so. The Part also sets out the circumstances in which an owners corporation may enter property for the purpose of carrying out necessary work.

Part 3 Finances of strata scheme

Division 1 Administrative and sinking funds and account of owners corporation

Division 1 contains **clauses 66–74**. The Division requires an owners corporation to establish an administrative and sinking fund for the strata scheme. A sinking fund need not be established for certain schemes containing 2 lots only. The Division specifies the types of payments that are to be made to and from those funds. The Division also requires an owners corporation to establish an account in a financial institution.

Division 2 Levy of contributions

Division 2 contains **clauses 75–80**. The Division requires an owners corporation to estimate its expected expenditure and to levy contributions to its administrative and sinking fund to cover that expenditure. The Division also provides for the manner in which those contributions may be levied and enables discounts to be given for early payment and interest to be imposed for late payment.

Part 4 Insurance

Division 1 Definitions

Division 1 contains **clauses 81** and **82**. The Division defines certain terms used in the Division.

Division 2 Insurance of buildings

Division 2 contains **clauses 83–86**. The Division requires an owners corporation to insure buildings in the strata scheme. In the case of a strata scheme for part only of a building, the obligation to insure is placed on the

owners corporation for the strata scheme and the other owners of the building. Valuations of buildings to be insured are to be obtained at least once every 5 years. The Division also enables an Adjudicator to grant exemptions from the requirements of the Division.

Division 3 Other insurance

Division 3 contains **clauses 87 and 88**. The Division specifies other types of insurance that an owners corporation is required to take out, such as insurance relating to workers compensation and occupier's liability insurance. The Division also enables an owners corporation to take out certain other types of insurance.

Division 4 Insurance claims and other matters affecting insurance

Division 4 contains **clauses 89–95**. The Division contains miscellaneous provisions, such as provisions relating to who has an insurable interest in property in a strata scheme and what happens in certain circumstances when an insurance claim is made by an owners corporation.

Part 5 Records and accounts

Division 1 The strata roll

Division 1 contains **clauses 96–99**. The Division requires an owners corporation to keep a strata roll containing information in relation to each lot in the strata scheme and to the common property in the strata scheme.

Division 2 Other records and accounts required to be kept by owners corporation

Division 2 contains **clauses 100–105**. The Division requires an owners corporation to keep records of certain matters, such as minutes of meetings and notices, orders and accounts. The Division enables an owners corporation to require certain persons possessing records, accounts or property of the owners corporation to produce those records or accounts or that property.

Division 3 Preparation and auditing of financial statements

Division 3 contains **clauses 106 and 107**. The Division requires an owners corporation to prepare financial statements. If the owners corporation decides to have those statements audited, they must be audited in accordance with Australian Auditing Standards.

Division 4 Inspection of records and issue of certificates

Division 4 contains **clauses 108** and **109**. The Division enables certain persons to inspect the records of an owners corporation and to request the owners corporation to issue a certificate as to certain matters relating to a particular lot.

Part 6 Other provisions relating to functions of the owners corporation

Part 6 contains **clauses 110–115**. The Part contains miscellaneous provisions relating to the functions of an owners corporation. Those provisions include powers of an owners corporation to borrow money and deal with property and restrictions on the things that an owners corporation can do in the initial period after the strata scheme is established.

Chapter 4 Owners, occupiers and other persons with interests in lots

Part 1 Responsibilities of owners, occupiers and other persons relating to lots

Part 1 contains **clauses 116** and **117**. The Part imposes certain obligations on owners, occupiers and other persons with interests in lots not to interfere with the structure of the lot or services provided to the lot and not to create a nuisance.

Part 2 Notices required to be given by owners, occupiers and other persons

Part 2 contains **clauses 118–120**. The Part requires certain notices to be given to an owners corporation when a person acquires a right to cast a vote at a meeting of the owners corporation, leases or subleases a lot or, being a mortgagee, takes possession of a mortgaged lot.

Part 3 Representatives of owners and other persons

Part 3 contains **clauses 121** and **122**. The Part deals with agents and representatives of owners and other persons having interests in lots.

Chapter 5 Disputes and orders of Adjudicators and Board

Part 1 Application for order to resolve issue relating to strata scheme

Part 1 contains **clauses 123–126**. The Part deals with the making of an application for an order under the Chapter in relation to a dispute, complaint or other issue affecting a strata scheme. The application is initially made to the Registrar of the Board who must refuse to accept the application unless mediation has been attempted.

Part 2 Mediation and resolution of disputes by Commissioner

Part 2 contains **clauses 127–134**. The Part provides for a person to apply to the Commissioner for mediation of a matter in relation to which an application for an order under the Chapter can be made. Certain disputes between strata schemes for part only of a building and other owners of the building may also be mediated under this Part. Mediation under the Part is carried out by mediators approved by the Commissioner. However, an Adjudicator can make orders giving effect to agreements between parties to mediation sessions whether or not mediation was arranged through the Commissioner or independently. The Part also contains provisions relating to mediation and mediators.

Part 3 Procedure after Registrar receives application

Part 3 contains **clauses 135–137**. The Part sets out the procedure that must be followed by the Registrar after the Registrar accepts an application for an order under the Chapter.

Part 4 Orders of Adjudicator

Division 1 General power of Adjudicator to make orders

Division 1 contains **clauses 138 and 139**. The Division gives an Adjudicator a general power to settle disputes relating to strata schemes where the dispute is not the subject of other provisions contained elsewhere in the Chapter.

Division 2 Orders relating to property

Division 2 contains **clauses 140–145**. The Division gives an Adjudicator certain powers to make orders relating to matters affecting property in the strata scheme, such as alterations and repairs to common property, acquisition of property, and entry to lots by an owners corporation.

Division 3 Orders relating to insurance

Division 3 contains **clauses 146 and 147**. The Division gives an Adjudicator certain powers to make orders relating to the insurance of strata scheme property.

Division 4 Orders relating to contributions

Division 4 contains **clauses 148 and 149**. The Division gives an Adjudicator certain powers to make orders relating to the contributions levied by an owners corporation.

Division 5 Orders relating to keeping of animals

Division 5 contains **clauses 150 and 151**. The Division gives an Adjudicator certain powers to make orders relating to the keeping of animals in a strata scheme.

Division 6 Orders relating to meetings and decisions of owners corporation

Division 6 contains **clauses 152–154**. The Division gives an Adjudicator certain powers to make orders relating to meetings and decisions of an owners corporation.

Division 7 Orders relating to records of owners corporation

Division 7 contains **clauses 155 and 156**. The Division gives an Adjudicator certain powers to make orders relating to the keeping, updating and inspection of the records of an owners corporation.

Division 8 Orders relating to by-laws

Division 8 contains **clauses 157–159**. The Division gives an Adjudicator certain powers to make orders relating to the by-laws of a strata scheme.

Division 9 Orders relating to covenants and ether restrictions

Division 9 contains **clauses 160 and 161**. The Division gives an Adjudicator certain powers to make orders relating to the enforcement of positive covenants and other restrictions over lots in a strata scheme.

Division 10 Orders appointing strata managing agents

Division 10 contains **clause 162**. The Division gives an Adjudicator certain powers to make orders appointing a strata managing agent for a strata scheme on application by certain persons having an interest in the scheme or, in limited circumstances, on the Adjudicator's own motion.

Division 11 Provisions relating to orders of Adjudicator

Division 11 contains **clauses 163–176**. The Division contains general provisions relating to orders made by Adjudicators dealing with matters such as dismissal of applications for orders, investigation of applications, the making of ancillary orders and interim orders and restrictions on the making of orders.

Division 12 Appeals against orders of Adjudicator

Division 12 contains **clauses 177–181**. The Division provides for an appeal to the Board against an order of an Adjudicator.

Part 5 Orders of Board

Division 1 Matters for which orders may be made by Board

Division 1 contains **clauses 182–184**. The Division gives the Board specific powers to make orders in relation to the authorisation of certain acts by an owners corporation during the initial period and reallocation of unit entitlements. The Board can also deal with certain matters referred by an Adjudicator.

Division 2 Provisions relating to orders of Board

Division 2 contains **clauses 185–199**. The Division contains general provisions relating to orders made by the Board dealing with matters such as dismissal of applications for orders, investigation of applications, the making of ancillary orders and restrictions on the making of orders.

Division 3 Appeals against orders of Board

Division 3 contains **clauses 200 and 201**. The Division provides for an appeal to the Supreme Court on a question of law concerning an order of the Board.

Part 6 Enforcement of orders of Adjudicators and Board and certain notices

Part 6 contains **clauses 202–206**. The Part enables the Board to impose a civil penalty of up to \$5,000 for a contravention of an order of an Adjudicator or the Board. The Part also enables the Board to impose a civil penalty of up to \$500 on a person who contravenes a by-law of a strata scheme after having received a notice from the owners corporation regarding a previous contravention of the by-law.

Part 7 Effect of orders of Adjudicators and Board

Part 7 contains **clauses 207–210**. The Part contains provisions dealing with matters such as the recording of certain orders in the Register and the time at which orders take effect.

Chapter 6 Administration

Part 1 Strata Schemes Commissioner

Part 1 contains **clauses 211–216**. The Part provides that the Director-General of the Department of Fair Trading is to be the Strata Schemes Commissioner. The Part sets out the functions of the Commissioner.

Part 2 Strata Schemes Adjudicators

Part 2 contains **clauses 217–219**. The Part provides for the appointment of Strata Schemes Adjudicators and sets out their functions.

Part 3 Strata Schemes Board

Part 3 contains **clauses 220–222**. The Part provides for the establishment of a Strata Schemes Board. The members of the Board will be Magistrates or persons qualified to be Magistrates. The Part sets out the functions of the Board and provides that proceedings before the Board are to be heard by one member sitting alone.

Part 4 Registrar and Deputy Registrar

Part 4 contains **clauses 223 and 224**. The Part provides for the appointment of a Registrar and Deputy Registrar of the Strata Schemes Board and sets out their functions.

Chapter 7 General

Part 1 Matters relating to proceedings

Part 1 contains **clauses 225–230**. The Part contains miscellaneous provisions relating to the taking of proceedings in relation to strata schemes.

Part 2 Legal assistance

Part 2 contains **clauses 231–234**. The Part enables certain applications for legal assistance to be made to an Adjudicator by an owner of a lot or an owners corporation.

Part 3 Service of documents

Part 3 contains **clauses 235** and **236**. The Part provides for the way in which notices and other documents may be served on a person under the proposed Act.

Part 4 Seal of owners corporation

Part 4 contains **clauses 237** and **238**. The Part contains provisions dealing with who may affix the seal of an owners corporation to a document and who is to have custody of the seal.

Part 5 Miscellaneous

Part 5 contains **clauses 239–248**. The Part contains miscellaneous provisions, including provisions relating to the making of regulations and giving effect to Schedule 4 which contains savings and transitional provisions.

Schedules

Schedule 1 contains the by-laws for existing strata schemes.

Schedule 2 sets out provisions relating to the meetings and procedure of an owners corporation.

Schedule 3 contains provisions dealing with the constitution, and meetings, of an executive committee of an owners corporation.

Schedule 4 contains savings and transitional provisions.