



New South Wales

Strata Schemes Management Amendment Bill 2002

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to make provision for caretakers who will assist owners corporations in managing the common property of a strata scheme under a caretaker agreement and to regulate those agreements and any transfer of the functions conferred by them, and
 - (b) to require owners corporations to make disclosure of caretaker agreements, and
 - (c) to allow owners corporations to approach the Consumer, Trader and Tenancy Tribunal for an order providing relief with respect to the operation of a caretaker agreement or the performance of a caretaker, and
 - (d) to further limit the decisions that may be made by an owners corporation during the initial period for a strata scheme by preventing the appointment of a caretaker for a term extending past its first annual general meeting, and
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- (e) to prevent proxy voting at a meeting of an owners corporation by a caretaker, an on-site residential property manager or a strata managing agent that would personally advantage the caretaker, manager or agent, and
- (f) to limit the duration of the appointment of proxies generally, and
- (g) to restrict the priority voting rights of a mortgagee at a meeting of an owners corporation, and
- (h) to except the Crown and the New South Wales Land and Housing Corporation from certain administrative requirements of the *Strata Schemes Management Act 1996* if they own all of the lots in a strata scheme.

The Bill also makes some saving and transitional provisions.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the proposed Act to commence 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 Management Act 1996* set out in Schedule 1.

Schedule 1 Amendments

Caretakers and caretaker agreements

Schedule 1 [5] inserts new sections 40A–40C.

New section 40A explains that a caretaker is a person who is entitled to possession of a lot or common property and who (otherwise than on a voluntary or casual basis or as a member of the executive committee of the owners corporation) assists the owners corporation in any one or more of the following:

- (a) managing the common property,
- (b) controlling use of the common property by visitors,
- (c) maintaining and repairing the common property.

New section 40B requires a caretaker to be appointed by a written agreement (a *caretaker agreement*) and limits the term of such an agreement generally to a maximum of 10 years. The functions of a caretaker under a caretaker agreement can be transferred to a new caretaker only with the approval of the owners corporation.

A caretaker may be reappointed for one or more successive periods either after being first appointed by the original owner or by the owners corporation.

New section 40C authorises a caretaker to assist the owners corporation in accordance with the caretaker agreement. The owners corporation may continue to exercise the same functions. Under the new provisions, functions of the owners corporation are not delegated to a caretaker (whereas functions are delegated to a strata managing agent).

Schedule 1 [2]–[4] make minor consequential amendments. **Schedule 1 [6]** makes a related amendment that restates more accurately the duty of the owners corporation with respect to the common property.

Disclosure of caretaker agreements

Schedule 1 [7] requires an owners corporation to make a caretaker agreement available for inspection by interested parties (owners, mortgagees or covenant chargees of lots in the strata scheme and anyone authorised by them).

Schedule 1 [8] obliges the owners corporation to include particulars of any caretaker in a certificate given to any such interested party under section 109 of the Act.

Orders of Consumer, Trader and Tenancy Tribunal

Schedule 1 [10] inserts new section 183A which provides that the Tribunal may make the following orders with respect to a caretaker agreement:

- (a) terminating the agreement,
- (b) requiring the payment of compensation by a party to the agreement,
- (c) varying the term or varying or declaring void any of the conditions of the agreement,
- (d) confirming the term or any of the conditions of the agreement,
- (e) dismissing the application for the order.

An application for an order may be made only by the owners corporation and only on specified grounds.

Further limit on decisions during the initial period

Schedule 1 [9] further limits the decisions that may be made by an owners corporation during the initial period for a strata scheme by preventing the appointment of a caretaker or other person to assist in managing the common property for a term extending past the first annual general meeting.

Restrictions on proxy voting by caretakers and others

Schedule 1 [14] invalidates a proxy vote of a caretaker, an on-site residential property manager or a strata managing agent at a meeting of the owners corporation if it would obtain or assist in obtaining a pecuniary interest for, or would confer or assist in conferring any other material benefit on, the caretaker, manager or agent.

Schedule 1 [17] inserts a definition of *on-site residential property manager* into the Act as a consequential amendment.

Duration of appointment of proxies

Schedule 1 [13] limits the duration of appointment of a proxy to the later of the first anniversary of the day on which it takes effect or the conclusion of the second annual general meeting of the owners corporation held after that day, subject to any earlier termination by its being revoked or that may be provided for in the terms of its grant.

Restriction on priority voting rights

Schedule 1 [11] limits the matters that are subject to priority votes at a meeting of the owners corporation to:

- (a) motions relating to insurance, budgeting or fixing of a levy, in each case that will require expenditure by the owners corporation above an amount prescribed by the regulations, and
- (b) matters that require a special or unanimous resolution of the owners corporation.

Schedule 1 [12] requires a person intending to exercise a priority vote to give the lot owner whose vote would be invalid because of the priority vote at least 2 days' notice of intention to exercise it.

Exception from unnecessary administrative requirements

Schedule 1 [1] excepts the Crown (which includes statutory bodies representing the Crown, such as the New South Wales Land and Housing Corporation) from certain administrative requirements of the Act if the Crown owns all of the lots in a strata scheme.

Savings and transitional provisions

Schedule 1 [15] allows regulations of a saving or transitional nature to be made under the Act that are consequential on the amendments made by the proposed Act.

Schedule 1 [16] provides for certain agreements already entered into to be taken to be caretaker agreements entered into in accordance with the new requirements explained above. Those agreements will be subject to the controls explained above, with some specified variations. This item also inserts a provision into the Act that makes it clear that the amendments relating to proxies explained above apply to proxies appointed before the amendments commence.