



New South Wales

# Strata Schemes Management Amendment Bill 2003

## 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* to implement a number of proposals in relation to the management of strata schemes arising from an overall review of that Act and a review of that Act in connection with competition policy reform. The Bill includes amendments to the *Strata Schemes Management Act 1996* (“the Principal Act”) in relation to the following matters:

- (a) The Bill clarifies certain provisions relating to the exercise and delegation of functions by owners corporations and the powers of owners corporations to add to or alter, or grant licences for the use of, common property.
- (b) The Bill enables officers who are authorised to carry out certain fire safety inspections of buildings and premises subject to a strata scheme to deal with the owners corporation for the building or premises instead of individual lot owners.

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\* Amended in committee—see table at end of volume.

- (c) The Bill requires new owners corporations to establish 10-year sinking fund plans and enables the regulations to extend those requirements to some or all existing owners corporations.
- (d) The Bill defines a strata scheme comprising at least 100 lots (or such other amount prescribed by the regulations) as a *large strata scheme* and imposes a number of additional requirements in relation to such schemes as well as enabling regulations to be made in respect of a range of matters relating to the administration of such schemes.
- (e) The Bill requires approval by a general meeting of an owners corporation to the seeking of legal advice or services or the taking of legal action by the owners corporation where expenditure will be involved.
- (f) The Bill provides for disclosure of certain matters to owners in strata schemes.
- (g) The Bill requires all insurance taken out by an owners corporation to be taken out with an approved insurer.
- (h) The Bill gives a greater discretion to the Registrar of the Consumer, Trader and Tenancy Tribunal to refer matters to Adjudicators or the Tribunal without the need for mediation and lists specific matters that will not require mediation.
- (i) The Bill expands the powers of Adjudicators and the Tribunal to appoint a strata managing agent for a strata scheme that has been the subject of an application for an order under the Act.
- (j) The Bill makes a number of refinements in relation to the procedure for meetings of owners corporations of strata schemes and executive committees of owners corporations.
- (k) The Bill makes other miscellaneous amendments and amendments by way of statute law revision.

The Bill also amends the *Retirement Villages Act 1999*, the *Retirement Villages Regulation 2000* and the *Conveyancing (Sale of Land) Regulation 2000* in relation to disclosure of certain matters to prospective purchasers of lots in strata schemes and prospective residents of retirement villages that are subject to 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 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.

**Clause 4** is a formal provision that gives effect to the amendments to the *Retirement Villages Act 1999*, the *Retirement Villages Regulation 2000* and the *Conveyancing (Sale of Land) Regulation 2000* set out in Schedule 2.

## **Schedule 1 Amendment of Strata Schemes Management Act 1996**

### **Functions of owners corporations and executive committees**

**Schedule 1 [1] and [2]** make it clear that in the event of a disagreement between an owners corporation and the executive committee of the owners corporation the decision of the owners corporation prevails.

**Schedule 1 [3]** enables the owners corporation to authorise a chartered accountant to exercise certain functions relating to the finances and accounts of the owners corporation.

**Schedule 1 [4]** prevents the functions of a strata managing agent appointed for a strata scheme being transferred to another person by the strata managing agent without the approval of the owners corporation.

**Schedule 1 [5]** inserts proposed section 29A into the Principal Act which provides that certain functions of the owners corporation, executive committee, the chairperson, secretary or treasurer cannot be delegated to or conferred on anyone else except a member of the executive committee or the strata managing agent for the scheme. This limitation is subject to section 24 of the Principal Act that specifically allows certain functions relating to the finances and accounts of an owners corporation to be exercised by specified persons such as accountants.

**Schedule 1 [6] and [7]** make it clear that by-laws for a strata scheme are of no force or effect to the extent that they are inconsistent with the Principal Act or any other Act or law.

**Schedule 1 [8]** prevents an owners corporation or executive committee of an owners corporation issuing a notice on a person that the person has contravened the by-laws unless a resolution of the owners corporation or executive committee has been passed that allows the issuing of the notice or notices of that kind. That limitation does not apply to the issuing of such a notice by a strata managing agent authorised to do so.

**Schedule 1 [9]** makes it clear that the owners corporation may make a by-law granting a licence to an owner of a lot to use common property in a particular manner or for a particular purpose.

**Schedule 1 [11]** inserts proposed section 65A into the Principal Act that enables the owners corporation by special resolution, to alter, add to or erect a new structure on common property, or allow an owner of a lot to do so, for the purpose of enhancing or improving the common property. The proposed section also enables the owners corporation to address the issue of who bears responsibility for the maintenance of the common property after the relevant work has been carried out and provides that where the owners corporation does not make any provision for maintenance, the owners corporation itself has that responsibility.

**Schedule 1 [11]** also inserts proposed section 65B into the Principal Act that enables an owners corporation, by special resolution, to grant a licence to an owner of a lot to use common property in a particular manner or for a particular purpose without the need for making a by-law (as referred to in Schedule 1 [9]).

**Schedule 1 [10]** makes a consequential amendment.

### **Fire safety inspections**

**Schedule 1 [11]** inserts proposed section 65C into the Principal Act to enable a person authorised to carry out a fire safety inspection of a building or premises under the *Environmental Planning and Assessment Act 1979* to give a notice to the owners corporation for a strata scheme requiring it to organise access to the common property and also, if specified, one or more individual lots. The owners corporation commits an offence if it does not comply with the notice but has a defence in relation to access to an individual lot if the owner or occupier denied the access or could not be contacted.

**Schedule 1 [26]** enables the owners corporation to apply for an order of an Adjudicator requiring the occupier of a lot in the strata scheme concerned to provide access for the purposes of a fire safety inspection. A fine may be imposed under the current provisions of the Principal Act for refusal to comply with an order of an Adjudicator.

### **Sinking fund plans**

**Schedule 1 [14]** inserts proposed section 75A into the Principal Act which requires the owners corporation for a strata scheme established after the commencement of the proposed section to prepare 10-year sinking fund plans and to complete and review the plans at specified intervals. The regulations may extend those requirements (with necessary modifications) to some or all existing owners corporations.

**Schedule 1 [13]** requires an owners corporation to take account of any such sinking fund plan when preparing the annual estimate of amounts of contributions required to be levied for the sinking fund.

## **Provisions relating to large strata schemes**

**Schedule 1 [53] and [54]** define *large strata scheme* as a strata scheme comprising 100 or more lots (or more than such other number of lots as may be prescribed by the regulations). Utility lots and parking lots are not to be included in the calculation.

**Schedule 1 [13]** requires an owners corporation for a large strata scheme when preparing estimates of the amounts of contributions to be levied for the administrative and sinking funds to specify amounts for proposed expenditure on individual items or matters likely to arise before the next annual general meeting. **Schedule 1 [15]** inserts proposed section 80A into the Principal Act which prevents the executive committee of a large strata scheme from spending more than that specified amount plus 10 per cent on the relevant item or matter in the period until the following annual general meeting unless approved by the owners corporation. Proposed section 80C provides an exception in emergency situations.

**Schedule 1 [15]** inserts proposed section 80B into the Principal Act which requires the owners corporation for a large strata scheme to obtain 2 quotations before spending an amount over that prescribed by the regulations. Proposed section 80C provides an exception in emergency situations.

**Schedule 1 [19]** substitutes section 107 of the Principal Act so as to require the owners corporation for a large strata scheme to have its accounts and financial statements audited in accordance with the Australian Auditing Standards before presentation at the annual general meeting.

**Schedule 1 [35]** enables regulations to be made in respect of certain matters regarding the administration of large strata schemes.

**Schedule 1 [42]** requires a proxy for meetings of an owners corporation for a large strata scheme to be given to the secretary of the owners corporation at least 24 hours before the first meeting to which it relates. The current requirements that enable proxies to be presented at the relevant meeting still apply to other strata schemes.

**Schedule 1 [48]** provides that, for large strata schemes, notice of an executive committee meeting must be given to each owner and executive committee member and, in addition, be displayed on a notice board if a notice board is required to be maintained. For other strata schemes, notice must be displayed on the notice board or, in the alternative, given to each owner and executive committee member if a notice board is not required to be maintained.

**Schedule 1 [49]** provides that, for large strata schemes, the minutes and resolutions arising from an executive committee meeting must be given to each owner and executive committee member and, in addition, be displayed on a

notice board if a notice board is required to be maintained. For other strata schemes, minutes and resolutions must be displayed on the notice board or, in the alternative, given to each owner and executive committee member if a notice board is not required to be maintained.

**Schedule 1 [46] and [50]** provide that Schedules 2 and 3 relating to procedures for meetings of owners corporations and executive committees of owners corporations and to the constitution of executive committees are subject, in the case of large strata schemes, to the regulations.

### **Legal action by owners corporations**

**Schedule 1 [15]** inserts proposed section 80D into the Principal Act which prevents an owners corporation from seeking legal advice or services, or taking legal action, that will require payment unless a resolution has been passed at a general meeting approving the owners corporation doing so. Regulations may be made exempting types of legal services or legal action from the operation of the proposed section.

**Schedule 1 [34]** provides that if a disclosure is made to an owners corporation in respect of the costs of legal services to be provided to the owners corporation, the owners corporation must give a copy of the disclosure to each owner and executive committee member within 7 days of the disclosure being made.

**Schedule 1 [35]** provides for regulations to be made in respect of the provision of legal services to an owners corporation.

### **Insurance**

**Schedule 1 [17]** inserts proposed section 88A into the Principal Act which requires that all insurance that must or may be taken out by an owners corporation must be taken out with an insurer approved by the Minister. Currently that requirement applies only to some forms of mandatory insurance.

**Schedule 1 [16]** makes a consequential amendment.

### **Provisions relating to disclosure and procedure for meetings**

**Schedule 1 [22]** requires an owners corporation to give a written statement of the current contributions relating to a lot in a strata scheme if requested to do so by the operator of a retirement village that is subject to that strata scheme. That requirement will enable the operator to meet the disclosure obligations imposed under the amendment included in Schedule 2.3.

**Schedule 1 [36] and [37]** require the agenda for the first annual general meeting of an owners corporation to include items to discuss the preparation of the 10-year sinking fund plan and the appointment and functions of a caretaker.

**Schedule 1 [38]–[40]** require certain documents and plans relating to a strata scheme to be produced at the first annual general meeting of the owners corporation for the strata scheme and enables the regulations to prescribe other documents that must also be produced.

**Schedule 1 [41]** increases the penalty for an original owner or lessor failing to produce such documents.

**Schedule 1 [43]** contains an amendment ensuring that notice of a meeting of an owners corporation must be given to first mortgagees and covenant chargees if the meeting will deal with certain matters that they are entitled to vote on.

**Schedule 1 [44]** provides that the notice of an annual general meeting of an owners corporation must include a form of motion to decide if any matter is to be determined only by the owners corporation in general meeting. **Schedule 1 [45]** provides that a corresponding agenda item must be included in the agenda of an annual general meeting as well as an agenda item relating to the preparation or review of the 10-year sinking fund plans, if relevant.

**Schedule 1 [47]** clarifies that the owners corporation has power to remove more than one or all of the members of the executive committee from office by special resolution.

### **Dispute resolution and powers of Adjudicators and Tribunal**

**Schedule 1 [23]** enables the regulations to exclude classes of strata schemes from the dispute resolution provisions.

**Schedule 1 [24]** gives a greater discretion to the Registrar of the Consumer, Trader and Tenancy Tribunal to accept an application for an order of an Adjudicator or the Tribunal even though mediation has not been attempted. The Registrar may accept such an application if the Registrar considers that mediation is unnecessary or inappropriate. In addition, mediation is not required in cases where the application relates to specified orders.

**Schedule 1 [25]** clarifies that the current powers of an Adjudicator to make orders to give effect to agreements or arrangements arising out of a mediation session include giving effect to the terms of a written agreement entered into by parties to the mediation. Such an order can only be made with the agreement of the parties to the mediation.

**Schedule 1 [27]** expands the circumstances in which an Adjudicator may make an order, on application, appointing a strata managing agent for a strata scheme.

**Schedule 1 [31]** gives a specific power to the Tribunal, on its own motion, to make an order appointing a strata managing agent in cases where the management structure of a strata scheme that is the subject of an application for

an order under the Principal Act or an appeal to the Tribunal is not functioning. This is similar to a power that Adjudicators already have.

**Schedule 1 [28]** removes a current limitation that requires a strata managing agent appointed by an Adjudicator on his or her own motion to be chosen from a panel of nominees chosen by prescribed persons or bodies.

**Schedule 1 [12], [29], [30], [32] and [33]** contain statute law revision amendments clarifying the provisions for the making of applications for certain orders.

### **Miscellaneous amendments**

**Schedule 1 [18]** provides that all records required to be kept by the owners corporation under the Act are to be kept for at least 5 years or such other period as may be prescribed. Currently various periods are prescribed by the regulations.

**Schedule 1 [19]** substitutes section 107 of the Principal Act so as to provide that if an owners corporation has its accounts and financial statements audited the auditing must be done in accordance with the Australian Auditing Standards, unless the strata scheme concerned comprises not more than 2 lots.

**Schedule 1 [20] and [21]** remove a requirement that a person obtain the written authorisation of the owner of a lot to carry out certain inspections of the records of an owners corporation or to obtain a certificate as to certain financial and other matters relating to the lot. That authorisation will be able to be given in any manner.

**Schedule 1 [28] and [54]** put it beyond doubt that a strata managing agent appointed under the Principal Act can be a corporation.

**Schedule 1 [51] and [52]** insert into the Principal Act a savings and transitional regulation-making power and transitional provisions consequent on the enactment of the proposed Act.

## **Schedule 2 Amendment of Act and Regulations**

**Schedule 2.1** amends the *Conveyancing (Sale of Land) Regulation 2000* to require a vendor of a lot in a strata scheme to attach a copy of any by-law for the strata scheme that grants exclusive use of, or special privileges over, common property in the strata scheme.

**Schedule 2.2** amends the *Retirement Villages Act 1999* to require information about living in a strata scheme to be given to a prospective resident of a retirement village that is subject to a strata scheme.

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Explanatory note

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**Schedule 2.3** amends the *Retirement Villages Regulation 2000* to require the current strata contributions for a lot in a retirement village that is subject to a strata scheme to be included in the disclosure statement required to be given to a prospective purchaser of the lot.