

Strata Legislation Amendment Act 2023 – Good Faith, Costs and Strata Renewals

The Strata Legislation Amendment Act 2023 (Act) has now been passed and was assented 11 December 2023.

Since the commencement of Part 10 of the Strata Schemes Development Act 2015 (**Part 10**) there has been increased interest from developers in acquiring and re-developing aging strata schemes, although only one instance has resulted in a court ordered sale. For more details, please click the link to our article below.

[First Owners Forced to sell under the new 75% rules](#)

That said, the second reading speech for the Act, notes that since the regime began in 2016, only 21 schemes have notified the Registrar General of having reached the required 75 per cent owner approval of a renewal plan.

This is in part due to the fact that in a lot of instances 100% of owners agree to sell collectively without the need for the court process. Such applications have more than doubled since Part 10 commenced.

Another part of the cause for the limited number of notification is explained by instances where:

1. the Part 10 process has fallen through as a result of the involvement of a competing developer, where they have utilised the protections to dissenting owners included in the Strata Schemes Development Act 2015 to increase the cost of the process to the point where the developer no longer wishes to proceed;
or
2. a dissenting owner has objected to a strata renewal in bad faith (i.e. they don't care whether the offer is reasonable, they just want to stop the process at any cost), and they conduct themselves in a similar manner to a competing developer in driving up cost and delaying the process.

The amendments to the Strata Schemes Development Act 2015 are directed towards addressing the above issues in order to permit the strata renewal process to more effectively achieve its intended objective.

To that end, parliament have passed an Act that incorporates the following key amendments in relation to Part 10:

1. Amending section 182 to:
 - a) permit the Land and Environment Court to make an order giving effect to a strata renewal plan despite a defect or irregularity in certain procedural steps if the court is satisfied that the defect or irregularity has not caused and is not likely to cause substantial injustice, and
 - b) require the court to consider whether a person who files an objection to an application for such an order has not filed the objection in good faith, including because of a conflict of interest.

2. Inserting a new section 187A to require an owner of a lot and also strata committee members to disclose at key points in the process the nature of any relevant interest by inserting a new defined term of “relevant interest” and definition in section 154A
3. Amending section 188 in relation to costs to:
 - a) requires the court to make an order requiring an owner of a lot who has not given a notice supporting a strata renewal plan (a **dissenting owner**) to pay certain costs for proceedings for an application for an order giving effect to the plan, if satisfied the dissenting owner has a conflict of interest that makes it inappropriate, in the court’s opinion, for the owners corporation to pay the owner’s costs, and
 - b) allows the court to make a costs order against a dissenting owner if satisfied it is appropriate to do so, including because the dissenting owner has not acted in good faith including by failing to give, or withdrawing a support notice, and
 - c) makes clear that the court may order that costs be assessed on the ordinary basis or an indemnity basis.
4. There are also further amendment to section 166 to allow an additional year for a strata renewal plan to be prepared.

It is important to note that the second reading speech is at pains to note that these amendment are intended to target unjustified and frivolous actions, but that owners can still raise objections and have their concerns heard.

Ultimately it comes down to the motivation for the objections, and whether the protections built into the Part 10 process are being misused for a purpose that is not in good faith.

In addition to the amendments to the Strata Schemes Development Act 2015, there is further amendment to the Strata Schemes Management Act 2015 that may bear on the Part 10 process.

Often developers secure their agreement with supporting owners via an option deed, and one of the common clauses in such a deed includes an obligation on the owner to provide a power of attorney in favour of the developer’s nominee in relation to all matters relating to the Part 10 process.

A new clause 25A is being inserted into schedule 1 of the Strata Schemes Management Act 2015 to limit the number of lots that a power of attorney can cast votes for to 1 if less than 20 lots, and 5% of the total number of lots where there are more than 20 (mirroring the restriction for proxies)

While strata renewal under Part 10 of the Strata Schemes Development Act 2015 is one of the options available for an owners corporation, it is worth noting that there are other means by which an owners corporation can terminate their strata scheme. For more details, please click the link to our article below.

[How to Terminate a Strata Scheme \(Even if Required Consent is not provided by all parties\)](#)

Prepared by Bannermans Lawyers
11 December 2023