

New Laws for Community and Strata Schemes for 2023!

On 11 December 2023, the Strata Legislation Amendment Act 2023 commenced:

A copy can be obtained from the below link.

<https://www.parliament.nsw.gov.au/bill/files/18511/Passed%20by%20both%20Houses.pdf>

The act imposes amendments to:

1. The Strata Schemes Development Act 2015;
2. The Strata Schemes Management Act 2015;
3. The Community Land Management Act 2021; and
4. The Community Land Development Act 2021.

Some of the more interesting amendments to the current legislation include:

Commencement

Three of the amendments are specified to commence on proclamation:

1. The amendment of section 237 of the Strata Schemes Management Act 2015 to permit the Secretary of Fair Trading to make an application for the appointment of a compulsory managing agent.
2. Amendment of the Community Land Management Act 2021 to insert a new section 129A restricting the ability of an association to prohibit keeping of animals
3. The amendment of section 196 of the Community Land Management Act 2021 to permit the Secretary of Fair Trading to make an application for the appointment of a compulsory managing agent

All other amendments (set out below) commenced on 11 December 2023.

Strata Schemes Development Act 2015

Strata Renewal

Significant changes have been made to this process, including:



T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

1. Extending the time that a strata renewal committee operates (without an extension) to 2 years instead of the current 1 year.
2. Allowing an order for a strata renewal to proceed where there are non-compliances with the preliminary steps if the court considers that it has not resulted in a substantial injustice.
3. Potentially removing the entitlement of a dissenting owner to have a costs order in their favour where they are not dissenting in good faith and also allowing a costs order against them in certain circumstances (such as if it is a competing developer objecting just to increase the costs).
4. Clarifying that the costs order that dissenting owners can be awarded, can either be an ordinary costs order (roughly 55-75%), or indemnity costs (80%+) – and is to be determined by the court.

Subdivisions

Where a subdivision involves only a small amount of common property, this amendment proposes to avoid the need to undertake a review of the unit entitlements for the entire strata scheme.

Strata Schemes Management Act 2015

BMC Managers

Clarification of 26 of the Strata Schemes Management Act 2015 that during the initial period no one, such as a BMC manager who is assisting in management, maintenance or repair of common property can be appointed beyond the FAGM, without first obtaining such an order from NCAT. The same still applies to a strata manager or facilities manager.

Strata Managers

Imposing an obligation on managing agents to notify their owners corporation that their term of appointment is coming to an end at least three months before and not earlier than 6 months before the term will end.

Original Owner

Increasing the time required for the original owner to supply specified documents before the first annual general meeting to 14 days instead of 48 hours.

Strata Committees

Clarification that the committee can be appointed outside of an AGM.

Clarification of when and how calls for nomination of committee members is to occur.

If a call is made for nomination of strata committee members, this call will need to be made at the same time as the issuing of the notice of the general meeting of the owners corporation. The amendments to the SSMA provide guidance as to the correct nomination procedures to be followed, which reduces a significant amount of uncertainty.

An owners corporation may, by resolution at a general meeting, remove a member of the strata committee from office. Prior to the introduction of this amendment, a special resolution was required to remove a member of the strata committee at a general meeting.

A former strata committee member, once removed from office by way of ordinary resolution at a general meeting, will not be eligible for appointment or election as a member of the strata committee for 12 months from the date of the resolution removing them from office.

Amendments to how the strata committee consider a disclosure of a pecuniary interest by a committee member. They now cannot be present and/or take part in the decision.

AGM's

The notice period for Annual General Meetings is proposed to be 14 days, rather than the current 7. Note additional days required for service method requirements, such as by post must still be allowed in addition to those days.

Levies

1. Amendment to section 76 (where an owners corporation uses funds from the capital works fund to pay administrative fund expenses or vice versa) so that the OC can determine (within 3 months) whether the money, or part of the money, should be reimbursed. Currently there is no discretion.
2. It is proposed to shorten the notice time for levies relating to urgent works from the usual 30 to 14 days to address serious or imminent threats to health and safety.

Multiple Quotes

There is a requirement (currently only imposed on large strata schemes) to obtain two quotes in relation to works in excess of \$30,000, so that they apply to all strata schemes, not just large schemes. The two quotes must also be from unrelated entities, or an explanation given as to why this could not be done.

Restricting Pets and requiring Bonds

Amendments have been made to make it clear that pets cannot be restricted and a bond cannot be required in relation to approvals to have pets.

Clarification is also provided on what proof can be required that an animal is an assistance animal.

Clarification that if a by-law is inconsistent with the current Act it has no force or effect from the time of the change of law.

By-laws

An owners corporation can now just consolidate their current by-laws by special resolution even where they do not have any change of by-laws to register.

Records

From 1 June 2024 specified records of the owners corporation (including strata rolls) are to be kept in electronic form.



Powers of attorney and company nominees

The restrictions on the number of proxies a person can hold are being extended to also apply to votes held by company nominees and powers of attorney.

Company nominees and powers of attorney will be limited in a similar but different manner to proxy farming, being 1 lot if fewer than 20 lots and 5% of lot owners if more than 20 lots, with an exception being that a power of attorney authorising a person to exercise voting rights on behalf of an owner who is a member of the person's family must not be taken into account.

Real Estate Agents Obligations

Real estate agents are now also obliged to notify the owners corporation that a lot has been leased or sub-leased. If they do not, the tenant can also be given notice.

Copies of the by-laws and any strata management statement are also now required to be provided by the real estate agent. If these documents change, they are required to provide new updated copies.

Two Lot strata schemes

Certain amendments have been made in recognition of the different situation in two lot schemes, including:

1. Amending the reduction in the voting power of the original owner where it is a two lot scheme.
2. Removing the requirement to obtain a resolution to pursue breach of a by-law.

Community Land Management Act 2021

The amendments to the Community Land Management Act 2021, include similar changes to the Strata Schemes Management Act, including in relation to:

1. Restrictions on appointing those assisting with management, maintenance or repair of association property during the initial period.
2. Election and removal of committee members.
3. Notice of expiring of agency agreements.
4. Repaying funds used to pay expenses of another fund.
5. Shorter notice for levies relating to urgent works.
6. The requirement for two quotes.
7. Preventing a blanket ban on pets, or on imposing a bond.
8. Permitting consolidation of by-laws without the need for a change of by-law.

9. Extending the notice period for AGM's of neighborhood associations to 14 days from 7 days. Note additional days required for service method requirements, such as by post must still be allowed in addition to those days.
10. Restrictions on the number of votes able to be held by company nominees and powers of attorney.

Prepared by Bannermans Lawyers
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