

# Relief in sight for those involved in a BMC with unfair allocation of shared expenses

Pending reforms to strata management legislation, likely to commence later this year, include a number of relevant changes. In particular:

The reforms include provisions:

- Imposing content requirements on strata management statements, including procedures for review of allocation of shared expenses.
- Permitting further requirements to be imposed by regulation, e.g. matters to be taken into account in the course of the review.
- Requiring that an allocation be reassessed if a review determines it to be unfair.
- Requiring implementation of a recommended reallocation, unless the BMC otherwise decides by unanimous resolution.
- Permitting the Supreme Court to direct amendment of an SMS to give effect to a recommended reallocation. This may make it practical to pursue an amendment effecting a reallocation of shared expenses, notwithstanding lack of agreement by one or more BMC members, particularly if a review has been undertaken and has recommended a reallocation of shared expenses. In contrast with the position in previous cases such as *The Owners Corporation Strata Plan 70672 v The Trustees of the Roman Catholic Church for the Archdiocese of Sydney [2011] NSWSC 973*, where attempts to reallocate shared expenses were frustrated by some BMC members disagreeing to effect a reallocation, the new position will apparently be that a recommended reallocation must be implemented unless all BMC members disagree.
- Simplifying Registrar General requirements related to amendments effecting a recommended reallocation. This operates as follows:
  - Section 104 of the Strata Schemes Development Act 2021 currently makes registration of an SMS amendment conditional on the amendment being signed by various parties, including:
    - The owners corporation of each strata scheme for part of the building, with evidence of approval by special resolution of the owners corporation.
    - Each person with an interest in the building not included in a part strata parcel.

- If a leasehold scheme, each person with a leasehold interest in the building not included in a part strata parcel.
- Registered mortgagees, chargees or covenant chargees of the interest referred to in the previous two bullet points.
- Section 104(3) currently provides that the Registrar General may in a particular case can waive a requirement for a signature without giving notice to any person.
- Sections 104(4) & (5) are to be added, providing that, without prejudice to Section 104(3):
  - the Registrar General may waive the requirement of a signature and accompanying evidence if satisfied that the amendment is required to give effect to a change to the allocation of the costs of shared expenses as recommended by a reassessment under Section 105I.
  - the Registrar General may request evidence that the situation is as outlined in the previous bullet point.

We have considerable experience with these issues and could assist you with reallocation of unfairly allocated shared expenses, redrafting your SMS to comply with the legislative requirements or to assist you with any practical issues you may be experiencing or expect.

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**Prepared by Bannermans Lawyers**  
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