Prepare for Increased Damages Claims Under Section 238A

With the latest wave of strata reforms now in effect, a number of new measures have been introduced to strengthen compliance and improve the handling of statutory obligations. The Strata Schemes Legislation Amendment (Miscellaneous) Act 2026 has now passed Parliament and commenced, introducing several important changes to how breaches of statutory duty are addressed. In particular:

Orders for Breach of Statutory Duty

Section 238A provides that the Tribunal may, on application by an owners corporation or owner, make an order awarding damages for breach of statutory duty under the following sections:

- Section 26 (Initial period restrictions - actions).
- Section 106 (Duty to maintain common property).
- Section 140 (Initial period restrictions – by-laws).

In addition, the section has been amended to clarify that the Tribunal has the power to:

- Make an order to pay damages under Section 238A. Application may be made by the owners corporation (other than in relation to Section 106) or an owner.
- To repay a bond or fee under Section 105AA. Application may be made by an owner or occupier.

How do these changes impact strata managing agents?

These reforms will have practical implications for strata managing agents, particularly in relation to dispute management. A few key impacts include:

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- New avenues for damages (e.g. financial loss) which create additional types of claims that may arise from statutory duty breaches.
- Greater exposure to statutory duty claims where the agents' actions contribute to breaches under Sections 26, 106 and 140.

- Increased need for accurate maintenance records to support or defend Section 106 claims.

- Closer monitoring of contractor performance to avoid exposure to damages claims linked to maintenance failures.

We have considerable experience with these reforms and could assist you with any practical issues you may be experiencing or expect.

If you are a Compliance Pack member, please click here to download the Strata Reforms Guide.

Key takeaways

- Section 238A allows the Tribunal to award damages for breaches of statutory duty, impacting owners corporations and owners.
- Strata managing agents will face new avenues for damages claims and increased exposure to statutory duty claims.
- Accurate maintenance records will be crucial for defending claims under Section 106.
- Contractor performance will require closer monitoring to mitigate risks associated with maintenance failures.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

Prepared by Bannermans Lawyers

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