

Prepare for Increased Damages Claims Under Section 238A

With another wave of strata reforms on the horizon, new measures are being introduced to tighten compliance and improve the handling of statutory obligations. A key part of these pending reforms is the Strata Schemes Legislation Amendment (Miscellaneous) Bill 2025, which makes several 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:

- 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

- The Strata Schemes Legislation Amendment (Miscellaneous) Bill 2025 introduces new measures for handling breaches of statutory duty.
- 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.

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Prepared by Bannermans Lawyers

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