

Strata & Community Titles: Strata Reforms introduced 11 December 2023

Allison Benson 18.2.2024 Lookup Strata

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AIMS OF PRESENTATION

1. To provide an overview of some of the key reforms in strata and community title introduced by the Strata Legislation Amendment Act 2023
2. The amending legislation also amends the Community Land Development Act 2021 ("CLDA") and the Community Land Management Act 2021 ("CLMA") and corresponding regulations
3. BUT it is restricted in that it responds to only 31 of the 139 reform recommendations.

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THE LEGISLATION

Strata Title	Community Title
<i>Strata Schemes Management Act 2015 (SSMA)</i>	<i>Community Lands Management Act 2021 (CLMA)</i>
<i>Strata Schemes Management Regulations 2016</i>	<i>Community Lands Management Regulation 2021</i>
<i>Strata Schemes Development Act 2015 (SSDA)</i>	<i>Community Lands Development Act 2021 (CLDA)</i>
<i>Strata Schemes Development Regulations 2016</i>	<i>Community Lands Development Regulation 2021</i>

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COMMITTEES

- Strata and association committees must be elected at an Annual General Meeting (“**AGM**”) however they may now also be elected at other general meetings: s30 SSMA & s32 CLMA
- Committee members:
 - must disclose direct and indirect pecuniary interests and may not participate in discussion or voting in relation to that interest (sch 2, cl 18(4) SSMA & Sch 2 cl 16(4) CLMA)
 - may be removed by an ordinary rather than a special resolution: s35(1)(e) SSMA & s38(1)(h) CLMA. If removed by ordinary resolution, a person cannot be a committee member for 12 months from the date of the resolution: s32(5) SSMA & s35(4)CLMA.
- Associations may now have up to 15 committee members up from nine: s30 CLMA.

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MANAGING AGENTS

- Managing agents must now give notice of the expiry of their agreement not more than six months and not less than three months before it expires: s50(6)(a) SSMA & s54(6)(a) CLMA. Previously, the requirement was to provide notice three months beforehand.
- In respect of associations, section 25(d) of the CLMA now restricts the term of appointment of strata managers and facilities managers in the scheme's initial period to be until the first annual general meeting.
- NOT YET IN EFFECT: The Commissioner for Fair Trading will be a person eligible to make an application to appoint a compulsory manager for both strata schemes and associations



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FINANCES & FINES

- Schemes can now raise funds quickly for emergency repairs with such contributions to be due and payable after 14 days' notice: s83(3A) SSMA and S88(3) CLMA. Emergency repairs are defined as urgent repairs to a building in the strata scheme or a building on association property that are necessary to mitigate a serious and imminent threat to the health or safety of the occupants. All other contributions still require 30 days' notice.
- Schemes (except two-lot strata schemes) that have used money from one fund that should have been paid from the other fund may resolve at general meeting to reimburse all, part or none of the money or to raise a contribution to repay the money to a specific fund: s76 SSMA & s80 CLMA. Previously, schemes had three months to repay the money.
- Two independent quotations for expenses over \$30,000 must be obtained except when for emergency purposes: s102 SSMA & s105A CLMA Previously only large strata schemes had to do so. If unable to obtain the required quotations, then an agenda item at the next general meeting must note the expenses and why two independent quotations could not be provided.

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ANIMALS

- Schemes are prevented from requiring fees, bonds or insurance as a condition of keeping an animal: s105A SSMA and s108A CLMA.
- Schemes are prevented from imposing an unreasonable burden on a person using an assistance animal on the common or association property and limiting the evidence required of an occupant with an assistance animal: ss 139 SSMA and 130A CLMA.
- Only evidence of accreditation under the *Disability Discrimination Act 1992* or a statutory declaration verifying the animal has received training referred to in that Act is permitted. Strata and community title regulations may, but do not currently, prescribe further acceptable evidence.
- NOT YET IN EFFECT but associations will soon have the same restrictions as strata schemes in relation to the unreasonable refusal to keep an animal.

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RECORDS

- From 10 May 2024, schemes must keep their records electronically but are not required to electronically reproduce records kept prior to this date: s176 SSMA & s 164 CLMA.
- Under sections 258 of the SSMA and s219 of the CLMA, where a lot is leased, the “relevant person”, who may now be the lessor or their real estate agent, must provide notice of the tenants to the scheme: s258 SSMA & s219 CLMA. Note that a real estate agent may now be fined for non-compliance. Tenants may now also provide notice and must now be provided with both the registered by-laws and all applicable management statements.
- Changes to how notices may be served. Essentially, they enable service of documents by electronic transmission to a nominated address or location: ss261 – 264 SSMA and ss224-227 CLMA.

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MEETINGS

- Notice periods for holding an AGM have increased to 14 clear days' notice for owners corporations and neighbourhood associations: Sch 1 cl 7(3) SSMA & Sch 1 cl 6(3) CLMA. The notice periods for other general meetings remains the same. Meeting notices must include a call for committee nominations.
 - Section 5(2A) of the SSMA prevents an original owner's vote in a two lot strata scheme from being reduced by changing the definition of a special resolution which also means the original owner retains the ability to elect officers of an owners corporation and strata committee members.
 - New restrictions apply to the voting rights of company nominees and under powers of attorney. If the strata scheme has:
 - 20 lots or less (or the association scheme has 20 development or neighbourhood lots or less) then a company nominee or attorney can exercise voting rights on behalf of one owner.
 - more than 20 lots (or the association scheme has more than 20 development or neighbourhood lots) then the attorney or company nominee can exercise voting rights on behalf of not more than 5% of the total number of lot owners.
- Note this differs slightly to existing restrictions on holding proxies.
- The time for original owners to provide key information to schemes is increased to 14 days prior to the first AGM or, for associations, within three years of the scheme being registered whichever is the sooner: s 16(1) SSMA & s14 CLMA.

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BY-LAWS & TWO LOT SCHEMES

By-laws

- Strata by-laws can be consolidated following a special resolution even with no changes made: s141(4) SSMA. Written consent of an owner with a common property rights by-law is not required unless their by-law is to be changed: s141(5) SSMA. Amendments to the SSMA's transitional provisions make it clear that although a scheme's registered by-laws can continue in force, they are not valid if they contravene the SSMA.

Two-lot strata schemes

- In addition to the change in the definition of a special resolution, two-lot schemes no longer require a notice to comply with a by-law to be authorised by a resolution of the owners corporation or strata committee (s146(4) SSMA) preventing a lot owner blocking enforcement action.

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STRATA RENEWAL & TERMINATION

- A new definition of “relevant interest” is provided at section 154A of the SSDA underpinning new disclosure requirements during the strata renewal process. It captures not just an interest due to a connection to a proposed developer or purchaser but also due to a prospective developer or purchaser and interests arising from options with these entities. Disclosure must be made before election to the strata renewal committee and is continuous with a requirement that general meetings consider the interest and whether that person should be restricted from being present during discussions or votes in relation to their interest: s165 SSDA. Further, the term of a strata renewal committee has been extended to two years: s166 SSDA.
- When considering whether a strata renewal proposal warrants further interest, strata committee members must disclose relevant interests and must not, unless the committee determines otherwise, take part in discussions or voting on the proposal. Lot owners at a general meeting must also disclose relevant interests at certain key decision points in the process: s187A SSDA.
- The Court may now make orders giving effect to a strata renewal plan if there is a procedural irregularity provided it has not, and will not, cause substantial injustice: s182(4) SSDA. The Court may also make costs orders against objectors if they are not acting in good faith under s188 SSDA.
- Where lot owners in a scheme unanimously wish to terminate the scheme require notification in a manner the Registrar-General considers appropriate to ensure it comes to the attention of the public not less than 14 days before and not more than six months before the application to terminate is made: s 142 SSDA and s 69 CLDA.

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WHY IS STRATA & COMMUNITY TITLE LAW IMPORTANT?

- More than 85,000 strata schemes in NSW and more than 980,000 strata lots (2nd reading speech Strata Legislation Amendment Bill 2023)
- As at November 2014 there were 709 community schemes, 30 precinct schemes & 1,459 neighbourhood schemes
- Approx. 15% of people in NSW live in strata but it comprised 19% of all NSW households
- Total est. value of strata property in NSW \$404,358,229,265 (this is not a typo)

Details from the Australian Strata Insights 2020 Report published by City Futures Research Centre UNSW

<https://cityfutures.be.unsw.edu.au/research/projects/2020australasian-strata-insights>

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SOME FACTS ABOUT THE CONSTITUTION OF STRATA RESIDENTS

Country of birth

Less than half of all apartment residents are born in Australia

Australia 40% India 5%
China 8% Other 47%



Language spoken

Most apartment residents speak a language other than English at home

English 45% Cantonese 3%
Mandarin 8% Other 44%



- Australian Strata Insights 2020 Report published by City Futures Research Centre UNSW
- <https://cityfutures.be.unsw.edu.au/research/projects/2020australasian-strata-insights>

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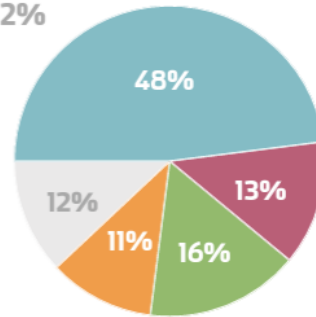


SOME FACTS ABOUT THE CONSTITUTION OF STRATA RESIDENTS

Tenure

More apartment households rent than are owner-occupied

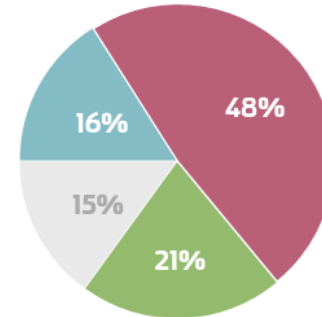
Rented 48%
Owned outright 13%
Owned with a mortgage 16%
Unoccupied 11%
Other 12%



Age

Almost half of all apartment residents are 20-39 years old

Under 20 - 16%
20-39 - 48%
40-59 - 21%
Over 60 - 15%



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