

Strata Schemes Legislation Amendment Bill 2025: new wine in old wine skins?

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AIMS OF PRESENTATION

1. To provide an update on some of the key reforms in strata legislation introduced by the Strata Schemes Legislation Amendment Bill 2025.
2. Consider the implications and effectiveness of these changes.

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AGENDA

1. The Purpose of the Bill
2. The Law of Unintended Consequences
3. Accessibility Infrastructure
4. Levy Recovery
5. Scheme Property Obligations
6. Scheme Committees
7. Enforcement Provisions

The Purpose of the Bill

"The bill implements 37 recommendations from the 2021 statutory review of the Strata Schemes Development Act 2015 and the Strata Schemes Management Act 2015, as well as other reforms raised by stakeholders since the review.

*The Government remains committed to reforms that will **protect owners' corporations, improve the accountability of strata management services, ensure owners' corporations maintain their buildings and make strata living easier for residents.** That is what the bill does.*

The Government is committed to meeting our State's housing needs, and has already introduced significant reforms to planning, building quality and rental affordability.

*To meet our housing targets, we must make strata living a key part of the discussion, which **includes ensuring that people want to live in strata because it is safe, affordable and reliable.**"*

- Second reading speech, 20 November 2024

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The Law of Unintended Consequences

"In the world of public policy, it is commonplace to see policies or plans which when implemented have different and sometimes opposite effects to those intended."

- Steven Reynolds, 'Cane Toads, Notices of Motion and the Law of Unintended Consequences' (Paper presented at 60th Commonwealth Parliamentary Association Conference, Yaoundé, Cameroon, 2-10 October 2014)

ACCESSABILITY INFRASTRUCTURE

"...the bill will make it easier to install accessibility infrastructure to assist owners in better accessing the lot where they live and the common areas of their scheme..."

– Second Reading Speech

The Bill introduces a new definition of:

1. **“accessibility infrastructure”** to the SSMA: changes to any part of the common property to facilitate a person with a disability having access to the common property or the lot in which they reside; and
2. **“accessibility infrastructure resolutions”**: a motion to finance accessibility infrastructure, to add or alter the common property for accessibility infrastructure or to change the by-laws for the scheme in respect of accessibility infrastructure are

These changes mirror those enacted for sustainability infrastructure resolutions including a change to the definition of special resolution meaning a simple majority would be required for this type of resolution.

As the definition for **accessibility infrastructure** doesn't state exactly what does and what does not facilitate a person with a disability having access to the common property, the issue that may arise is schemes having disputes in respect of whether a particular change to common property is accessibility infrastructure or not and whether a supermajority or a simple majority is required.

ACCESSABILITY INFRASTRUCTURE

Disputes arose in respect of sustainability infrastructure even where the definition of sustainability infrastructure is much more expansive and express e.g. *Laws v The Owners – Strata Plan 97230 [2022] NSWCATCD 131*.

sustainability infrastructure means changes to part of the common property (which includes the installation, removal, modification or replacement of anything on or forming part of that property) for any one or more of the following purposes—

- (a) to reduce the consumption of energy or water or to increase the efficiency of its consumption,
- (b) to reduce or prevent pollution,
- (c) to reduce the amount of waste sent to landfill,
- (d) to increase the recovery or recycling of materials,
- (e) to reduce greenhouse gas emissions,
- (f) to facilitate the use of sustainable forms of transport,

Note. For example, installing electric vehicle charging stations.

- (a) a purpose prescribed by the regulations.

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Levy Recovery

*"...the bill proposes a suite of reforms that aim to assist owners experiencing financial hardship without restricting the ability of owners' corporations or associations to make decisions that suit the circumstances of their scheme. **While a payment plan can be reasonably refused, the impacted party will be able to challenge the decision in the tribunal where the refusal was not a reasonable refusal.** Further reforms include enhancing the take-up of payment plans **by prescribing processes and requirements of plan conditions and reasonable refusals in the regulations,** by preventing an owners' corporation or association from taking debt recovery action if a payment plan is being complied with..."*

- Second Reading Speech

Levy Recovery

Contributions & Payment Plans:

- Levy notices must contain information prescribed by the Commissioner: s83(1A). This is expected to be information on payment plans and financial counselling services.
- Payments plans continued to be limited to 12 months with provision for further plans to be made.
- Schemes cannot pass a blanket resolution to refuse payment plans but can only be refused on a case-by-case basis: s85 SSMA.
- Payment plans can only be reasonably refused: s85(5A) SSMA. The regulations may prescribe what constitutes a reasonable refusal: s85 (5B) SSMA.
- Payment plan eligibility, the form of request, evidence required and how the request is to be stored, secured, used and disposed of may be the subject of the regulations: s85(6) SSMA.
- The Tribunal may make order a payment plan be made following an unreasonable refusal is provided for: 85(9) SSMA.

Levy Recovery

Debt recovery:

- Where payment plans are entered and complied with schemes may not take debt recovery action: s86(6) SSMA.
- Payments must be applied to contributions in order of due date, then interest then the schemes expense (if an order was made to enable this) unless an order states otherwise: 86(7) & (8).
- Notice of debt recovery action will be increased from 21 days to 30 days: s86 SSMA.
- Schemes may not recover their reasonable costs of debt recovery action unless they have offered the option of a payment plan and the Tribunal or a court so orders: s 86(2AA) SSMA.

Levy Recovery

Potential issues?

- Disputes may arise as to whether a refusal to provide a payment is reasonable or unreasonable.
- Debt recovery could be on foot where there is dispute as to whether a refusal of a payment plan is reasonable or unreasonable, as section 86(6) only prohibits an owners corporation to take action whilst a payment is being complied with.
- This might put the burden on lot owners to have to file interim applications at NCAT to stay a local Court proceeding, and would the Local Court accede to such an NCAT order?
- On the other hand, these amendments basically means that delinquent levy payers (who have no legitimate reason to delay) might be able to delay payment of levies with no real penalties, e.g. costs. Such an owner can delay until proceedings are commenced and then immediately pay back the levies. How would this impact scheme finances?

"The non-payment of levies can be a significant issue for strata and community land schemes. If levies are not paid on time, there can be detrimental impacts, particularly if the levies are for urgent or necessary maintenance or repair work."

-Second Reading Speech

SCHEME PROPERTY OBLIGATIONS: SECTION 106

"The bill will address noncompliance with the owners' corporation and association's obligation to look after its building by stopping an owners' corporation or association from deferring works if safety or access or use of a lot or common property is affected."

– Second Reading Speech

- *Limitation on deferring repairs:* Schemes will not be able to defer their obligation if it affects a person's access to or use of the common property or a lot in the scheme: s106(4)(b).
- *Time limit for damages:* The time from which a lot owner must take action against the scheme for damages after they first become aware of their loss is to be extended from two years to six years.
- *Additions & Alterations:* Special resolutions **must** now specify whether the ongoing maintenance obligation is assigned to the scheme or the relevant lot owner: s108(3) SSMA.
- *Minor renovations:* Strata committees that refuse applications for minor renovations under s110 SSMA must provide written reasons within three months of the application s110(6B). Failure to do so (or to make a decision) results in the deemed acceptance of the works application: s110(6B). Schemes must keep written records of minor renovations for ten years: s110(6C).

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SCHEME PROPERTY OBLIGATIONS: SECTION 106

Potential issues?

- Deferral pursuant to section 106(4), the defer use to be disengaged where it affects safety, this has now been extended to “a person’s access to or use of the common property or a lot in the strata scheme”: section 106(4)(b)(ii). This seems to widen the scope to mean almost anything. Would it render section 106 otiose?
- Its unclear from when does the increased limitations for section 106(6) applies: retrospective; only for the future; for issues that are current. Usually, such provisions would have transitional provisions, but the text of the amendments to the Act doesn’t contain such provisions, and we may have to await amendments to the Regulations.
- The expanded section 110 might see an increase of disputes as to whether the relevant works are “*minor renovations*”, especially as to whether the automatic lapsing approval is engaged.

SCHEME COMMITTEES

“While many members take this duty seriously, there are concerns that many are falling short of expectations.”

– Second Reading Speech

- Currently, committees must act for the benefit, so far as practicable, of their scheme with due care and diligence: section 37 SSMA
- The bill expands committee members obligations to require that they:
 - act with “honesty and fairness” and with “due care and diligence”,
 - act so as to comply with the Act and regulations; and
 - only use or disclose information obtained as a committee member (including information about a lot owner) as required to carry out their function or as authorised by law
 - not behave in a way that “unreasonably affects a person’s lawful use or enjoyment” of a lot or the common property
- New obligation to complete training. Time limits will apply to complete the mandatory training.

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SCHEME COMMITTEES

- It is already very difficult to persuade lot owners to take on executive committee member responsibilities. Would these changes put further downward pressure on the potential pool of candidates who are able or willing to join an executive committee?
- There remain no penalties for executive committee members who breach their obligations, and removal may not be a strong enough remedy, to ensure those who fall short of expectations will now take their duty seriously.
- There are penalties in respect of section 188, but those apply to any person and not just in respect of committee members.

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ENFORCEMENT PROVISIONS (section 188)

*"The bill will address noncompliance with the owners' corporation and association's obligation to look after its building by ... enabling **NSW Fair Trading** to enter into enforceable undertakings with, or issue compliance notices to, owners' corporations or associations **to take action to remedy a breach of duty to maintain and repair property**. NSW Fair Trading will also have associated powers to help investigate compliance with the duty to maintain and repair, including powers to **require information and records, require answers, enter premises and issue search warrants.**"*

- Second Reading Speech

ENFORCEMENT PROVISIONS (section 188)

- These powers are in respect of strata schemes delinquent on their section 106 obligations: section 188B(a). The breadth of these are to be further determined by any regulations.
- The Commissioner's powers are expanded to enable investigations, monitoring and enforcement of obligations to maintain and repair scheme property and obtain information or records required for enforcement purposes: s188B SSMA.
- They can require document to be provided (s188D), answers to be given (s188E), record answers for evidence purposes (s188F), enter premises (s188G) and apply for search warrants (s188H).
- They can issue compliance notices, and it is an offence not to comply with a compliance notice.
- They can accept undertakings (if authorised by special resolution of the scheme).

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ENFORCEMENT PROVISIONS (section 188)

- It remains to be seen however, how effective such powers are, where the Secretary/Commissioner has absolute discretion with respect to these enforcement orders and where individual lot owners and owners corporations who are complaining about maintenance failures have no standing.
- Additionally, the powers of the Secretary/Commissioner to issue a penalty under these powers seems to include any person, including lot owners, and tenants, and not restricted to the owners corporation and their strata manager, which is where the failure, based on the Second Reading Speech, would lie.

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MORE INFORMATION

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