

Major changes to strata laws

New strata laws will start on **30 November 2016**. They have been modernised to fit the reality of living in a strata townhouse or apartment today.

The new building defect bond scheme will start on 1 July 2017.

Currently more than a quarter of NSW's population lives in, owns or manages strata.

Many new requirements will not impact strata communities immediately. This includes allowing time for pre-appointed strata managing agents, building managers and executive committee members to continue in their roles once the law reforms start.

Some key changes include:

- strengthening the accountability of strata managers
- allowing owners to adopt modern technology to conduct meetings, vote, communicate and administer their scheme
- the need for owners to review by-laws (strata community rules) within 12 months, which can be customised to suit their lifestyle - such as whether to allow owners to keep a pet by giving notice to the owners corporation
- a process for the collective sale and renewal of a strata scheme
- a simpler, clearer process for dealing with disputes
- broadening tenant participation in meetings
- a new option to manage unauthorised parking through a commercial arrangement between a local council and a strata scheme
- a clearer and simpler three-tier renovations process, which waives approval for cosmetic renovations within the strata lot (for example, installing handrails for safety).

There are also measures to reduce red tape, such as simplifying financial statements for owners.

Use the following information to understand how the new strata laws will affect you and subscribe to our Strata update newsletter.

Get ready for the reforms - attend an info session

For a full list of **free strata reforms information sessions** run by Fair Trading, visit the events register on the Fair Trading website.

Fair Trading has also partnered with Strata Community Australia (SCA) and the Real Estate Institute of NSW to run a New Strata Legislation Roadshow. Sessions for owners and tenants are free. Strata and property managers who attend seminars will earn professional development points. Find a session near you at the SCA NSW Strata Legislation Roadshow page as well as checking out their additional strata reforms events (nsw.stratacommunity.org.au).

Complying with the new laws

Strata schemes will have plenty of time to understand and adjust to new requirements after the reforms start.

Be aware that:

- decisions already made and financial contributions already levied under pre 30 November laws remain valid once new laws start.
- legal proceedings already underway will be dealt with under the former Act that was in place when proceedings began.

Managing the strata scheme

Previous appointments will be able to continue after the new laws as follows:

- if a **strata managing agent** is appointed before 30 November 2016, their term of appointment ends whichever is later:
 - up to 3 years after their term commenced (on the day the term is due to end), or
 - 6 months from the start of the new laws.
- contracts with **caretakers and building managers** in force before 30 November 2016 will remain in force after that date, until 10 years after the laws have commenced (unless the terms of the contract are for a shorter period, then that period will apply).

- the existing **owners corporation** continues to operate.
- the previous executive committee becomes the new 'strata committee'. There is no need to appoint people to the strata committee until the next AGM.

Key changes are explained in the following sections. Refer also to our Frequently asked questions - strata reforms page.

Modern and flexible strata schemes

The reforms will allow a strata scheme to adopt social media, video and teleconference to hold meetings. Voting will be able to occur electronically and through secret ballots. It will also be possible to distribute papers by email.

The new laws will also give owners corporations more flexibility around when to hold their AGM.

For more information, visit the Scheme management reforms web page.

Stronger accountability for strata managers and caretakers

Strata managing agents will have new requirements to disclose conflicts of interest, including financial interests. Strata managing agent agreements will be time limited to 1 year (in the first year of the strata scheme) and 3 years in following years, with possible 3-month extensions able to be granted.

If a strata managing agent or building manager/caretaker is not performing, owners will be able to apply to the Tribunal to vary or terminate the contract, or to be compensated.

Read the Strata managing agent reforms web page for more details.

Collective sale and renewal

This new process will allow owners to jointly end or wind up a strata scheme so the site can be sold or renewed.

The reforms will ensure that owners receive at least the market value of their lot, plus an extra amount for costs like those associated with moving.

Any plan for renewal will be referred to the Land and Environment Court for final consideration.

The Court will be able to reject a renewal plan if:

- it has not followed proper processes or been developed in 'good faith', or
- the amount to be paid to a dissenting owner was less than the compensation value of the lot, or
- the terms of settlement were not just and equitable in all the circumstances.

Fair Trading will establish a Strata Renewal Advice and Advocacy Program to provide free advice for vulnerable and elderly residents, including referrals to support services.

Similar collective sale and renewal models already operate in New Zealand, the majority of states of North America, and the United Kingdom.

Find out more about this reform by visiting the Collective sale and renewal reforms web page.

Maintaining the building's condition

The new building defect bond scheme will start on 1 July 2017. This start date will enable:

- strata buildings to be inspected for defects against the new Australian Standard, which will be introduced as the standard for inspections of group title buildings
- the necessary time for industry and stakeholders to prepare for this important change.

This reform introduces mandatory defect inspection reports and a building bond. The developer will also need to prepare a maintenance schedule, to be tabled at the first AGM of a new scheme to inform owners about their maintenance obligations.

These changes will increase builder and developer accountability, enable defects to be identified and fixed early, and prolong the life of the building.

How the process will work

The building bond will be for the construction of strata buildings over three stories high. Developers will be required to lodge a 2% bond for the final contract price of the building, as a form of security to fix any defective work.

Developers will need to pay to engage an independent building inspector to provide defect inspection reports. A first report is due between 15 and 18 months after the completion of the building. The final report must be provided between 21 months and no later than 2 years after the building work is completed.

The owners corporation must agree to the appointment. If there is no agreement or the developer ceases to trade after the building work is complete, Fair Trading will arrange for an inspector to be appointed. If the defects are not rectified, the building bond will be used to carry out the repairs. If there are no defects or they are rectified, the bond will be returned to the developer.

Owner renovations

Current laws can make it difficult for owners to carry out minor renovations to their lot.

The reforms will provide clearer, common sense approvals for owner renovations. They will waive restrictions for cosmetic changes to lots such as inserting a picture hook.

Renovations with a lasting impact, such as installing floorboards, will still require approval but only a general resolution (50% of the vote). Renovations like those that affect the structure or external appearance of the building, or waterproofing, will still require a special resolution (75% of the vote).

Proxy voting

Changes to proxy voting will prevent an individual controlling owners' decisions by obtaining a majority of proxy votes (that is, voting rights delegated to them by other owners).

Proxy votes able to be held by one person will be limited to:

- one proxy vote only for schemes with less than 20 lots, or
- 5% for schemes with more than 20 lots.

Read more on the changes by visiting the Scheme management reforms web page.

By-laws

Reforms will introduce a model by-law dealing with smoking that intrudes into the common property or another person's lot. The reforms will also amend the model by-laws to make it easier to keep pets as opposed to automatically prohibiting pet ownership in a scheme. Model by-laws are suggested by-laws that an owners corporation can choose to adopt, or use to amend their current enforceable by-laws if they wish. Model by-laws do not remove a scheme's ability to make its own rules about smoking and pets. The model by-laws are not the by-laws of a scheme unless they are formally adopted.

Reforms will allow schemes to take more action against the misuse of parking spaces and excess noise, as well as introduce increased fines for non-compliance.

The changes will introduce measures to help address overcrowding in strata schemes.

For more information on these changes visit the By-law reforms web page.

Tenant participation

Tenants will have a right to attend owners corporation meetings, no matter how many of the lots are tenanted in their scheme. Tenants may vote only if they hold a proxy (giving them voting rights on a lot owner's behalf). The owners corporation may vote to allow a tenant to speak on a particular matter. Tenants can be excluded from a meeting when financial matters are discussed.

If at least half the lots are tenanted, a tenant representative can be nominated as a non-voting member of the strata committee. The representative may still be excluded from meetings when financial issues are

discussed, such as the collective sale or renewal process.

Visit the Scheme management reforms web page for more information.

Levies and capital works funds

New laws will require developers to set realistic levies during the period between when the strata plan is registered, and the developer has sold at least one third of the unit entitlements in the scheme (the initial period) and for the subsequent year after.

Owners corporations will be able to more easily recover outstanding levies that are mainly used to pay for the scheme's day-to-day expenses.

Dispute resolution

The reforms will expand the Tribunal's power to exclusively deal with most strata disputes, including orders to recover outstanding levies.

As well as being able to register outstanding levies as a debt in the Local Court, owners corporations will be able to enter into payment plans with lot owners if they wish, for up to 12 months. This would allow a lot owner to make periodic payments of their debt to the owners corporation. If an outstanding debt is registered with the Local Court, it can order debt recovery (including garnishee orders on the lot owner and, for the first time - if necessary - any rent paid by a tenant to a real estate agent) to recover the debt.

The Tribunal's expanded powers will help it ensure owners corporations can run more smoothly where there is dysfunction in a scheme. These include removing members of the executive committee and the strata managing agent and forcing elections of office holders.

Currently the only option for the Tribunal is to appoint another strata managing agent to replace one who isn't performing. This may not be the best response to a number of these issues. It can be costly to a scheme and create disharmony for lot owners.

The Tribunal will also be able to limit the matters that committees can make decisions about, and require votes on certain matters.

Read the Managing dispute reforms web page for more information.

Common property memorandum

Under the reforms, strata schemes will be able to adopt the Common property memorandum into their by-laws by special resolution.

The Common property memorandum sets out whether the owners corporation, or an owner of a lot, is responsible for the maintenance, repair or replacement of any part of the common property.

If adopted, the Common property memorandum can only be changed to exclude certain items as 'common property'. This includes items that are:

- not common property for that particular strata scheme, or
- part of a common property rights by-law or a by-law made under section 108 of the new *Strata Schemes Management Act*. If there is a conflict between the Common property memorandum and any such by-law, then the by-law applies.

Download a copy of the Common property memorandum from the NSW Fair Trading website.

More information

For background on the consultation on the laws, and to download the Strata Acts and Regulations, refer to the Reform of strata laws page.

We also have translated information on some of the key strata law changes available in Arabic, Chinese, Korean and Vietnamese. Access the Changes to strata laws fact sheet in the relevant language (available from the Translated publications section of our Download publications page).

www.fairtrading.nsw.gov.au
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This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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