



Draft Strata Legislation Amendment Bill 2023 Feedback

Strata Community Association (NSW) Submission
1 September 2023

INTRODUCTION

1. Strata Community Association (NSW) Overview

Founded in 1980, Strata Community Association (NSW) was formerly known as the Institute of Strata Title Management. SCA (NSW) serves as the peak industry body for Strata and Community Title Management in New South Wales. The association proudly fulfils a dual role as both a professional institute and consumer advocate.

2. Membership

SCA (NSW) boasts a membership of over 3,000 members, including lot owners, suppliers, and professional strata managers who oversee, advise, and manage a combined property portfolio estimated to be worth over \$450 Billion.

3. Strata and Community Title Schemes in NSW

NSW is home to 89,049 Strata and Community Title Schemes. A significant 95 per cent of these schemes are comprised of residential lots. Altogether, the total number of Strata and Community Title lots in NSW stands at 1,043,690.¹

4. NSW as a Leader in High-Density Living

According to the 2022 Australasian Strata Insights Report, there are 2,501,351 people residing in apartments across Australia. A majority of these apartment dwellers (51 per cent) are in NSW. ² NSW also leads the way in the trend to higher density living in Australia and boasts the highest proportion of apartment households relative to all occupied private dwellings, standing at 22 per cent.

5. Employment Impact

Strata is a significant employer, directly providing jobs to 1,413 managers throughout NSW, as well as an additional 1,317 other related employees. ³

6. Promoting Professionalism

1. SCA (NSW) is dedicated to fostering a high standard of professionalism in the strata industry with initiatives like the Professional Standards Scheme (PSS), which contributes to ensuring strong consumer outcomes for over 1 million strata residents in NSW.
2. SCA (NSW) membership encompasses a wide range of entities, from large corporate companies to small family businesses to dedicated volunteers. Members possess expertise in all aspects of strata management, service provision, and governance.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA (NSW). Dylan.lin@strata.community

¹ Hazel Easthope, Danielle Hynes, Yi Lu and Reg Wade, Australasian Strata Insights 2022, City Futures Research Centre, UNSW, Accessed at https://cityfutures.adu.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf

² Ibid, p.8-13

³ Ibid, p.8.

SCA (NSW)'S RESPONSE TO THE DRAFT STRATA LEGISLATION AMENDMENT BILL 2023

Introduction

SCA (NSW) is delighted to formulate this submission in response to the Department of Customer Service's solicitation for feedback regarding the draft Strata Legislation Amendment Bill 2023. The association extends our appreciation for the extensive consultation process that has led to the creation of this bill. It serves as a testament to the collaborative endeavours that have moulded its framework, embodying a wealth of valuable insights from industry experts and the strata community.

In its current iteration, this bill embodies a diverse array of constructive legislative amendments. These modifications hold the potential to create positive and transformative shifts in the realm of strata management. Understanding the significance of this undertaking, SCA (NSW) would like to convey our gratitude for the dedication and diligence exhibited by all stakeholders involved.

Considering the advanced stage of this legislative journey, SCA (NSW) has provided extensive feedback on several of the proposed recommendations. These suggestions are tailored to refine the overall effectiveness and applicability of the proposed amendments. As the peak industry body for Strata and Community Title Management in NSW, the association's intention is to contribute to the enhancement of the bill, ensuring its alignment with the needs and aspirations of the strata community.

The following feedback is presented in the same order as the recommendations listed in the draft Strata Legislation Amendment Bill 2023 summary document. It's important to note that not all recommendations were commented on by SCA (NSW), as the association held either a neutral or positive stance on certain recommendations. The feedback has been selectively provided, focusing on areas where amendments are required to enhance the effectiveness of each recommendation.

Draft Strata Legislation Amendment Bill 2023 Feedback

1. Recommendation 42

In relation to Recommendation 42, **SCA (NSW) is of the opinion that adopting an ordinary resolution to remove a committee member, along with subsequent disqualification of the said member or members from committee service for a period of 12 months is a beneficial revision.**

2. Recommendation 74

Regarding Recommendation 74, the proposal involves amending section 76(2) of the Strata Schemes Management Act 2015 (“The Management Act”) to provide clarity on the process when the owners corporation determines that a repayment is necessary for the amount transferred between the administrative and capital works funds, or vice versa. Under this amendment, the owners corporation is granted a three-month period to reach a decision on the required contribution that facilitates the repayment.

SCA (NSW) views this proposed amendment as practical. It serves to elucidate the procedure for addressing situations in which funds are shifted between accounts or drawn from an incorrect fund. The provision mandates that the owners corporation undertake a decision-making process concerning the repayment of the transferred or misallocated funds. This decision, including considerations about associated fees, is to be finalised within the initial three-month span following the transfer or payment.

3. Recommendation 75

In relation to Recommendation 75, **SCA (NSW) is concerned about the proposal to reduce the grace period for special levies from one month to 14 days, particularly for special levies raised to address urgent repairs that are essential for health and safety reasons.** The concern lies in the definition of “urgent repairs” because there is already a strict liability under Section 106 to carry out all repairs as “urgent”. The proposed change may lead to subjective interpretations, potentially enabling individuals to categorise an item as an emergency to bypass the requisite 30 days’ notice.

As a result, **SCA (NSW) holds concerns regarding the necessity of implementing a grace period for levies.** Enabling any owner to abstain from paying or delaying the payment of levies, irrespective of the circumstances, would place the burden of financial support on other owners. This contradicts the fundamental purpose of being a member of an owners corporation, which is not intended to require such unequal financial contributions among members.

4. Recommendation 77

Regarding Recommendation 77, which proposes that an owners corporation is required to obtain at least two quotes from unrelated entities for expenditures exceeding \$30,000 on any one item, **SCA (NSW) holds the viewpoint that this monetary threshold might be inadequate for larger strata schemes while being substantial for smaller ones.** Consequently, the association suggests that an improved method for determining the threshold could be explored. Given that the average number of lots in NSW is approximately 10, an alternative threshold of \$3,000 per lot (\$30,000/10 lots) could be considered.

An additional factor to take into consideration when conducting these calculations is the evolving monetary value of \$30,000 over the next 10 years. The value of money is susceptible to change due to influences such as inflation and other economic factors. Accordingly, the same nominal amount holds a different real-world value in the future compared to its value today. To address this issue, **SCA (NSW) believes it would be a judicious approach to express the proposed expenditure threshold as a proportion relative to the total annual budget.** Furthermore, there is ambiguity surrounding whether the expenditure amount of \$30,000 excludes “urgent repairs”, making this a subject requiring further investigation and discussion.

5. Recommendation 83

In relation to Recommendation 83, which intends to amend the Community Land Management Act 2021 to harmonise community land schemes with recent strata reforms to the keeping of animals, **SCA (NSW) emphasises that the unreasonable prohibition of pets in strata schemes was never justified. Additionally, the association asserts that demanding a bond, fee, or insurance from individuals for owning a pet is not acceptable under any circumstances.**

6. Recommendation 105

Regarding Recommendation 105, **SCA (NSW) does not support introducing into Section 106 of the Management Act an offence provision for instances where an owners corporation fails in its statutory duty to maintain and repair common property.** This stance is based on the fact that the Management Act already contains provisions for assessing damages in such cases.

7. Recommendation 87

In relation to Recommendation 87, **SCA (NSW) holds the view that this recommendation could be enhanced to require strata managers to itemise electronic documents instead of dispatching a multitude of unnamed documents to new managers.** The prevailing issue of receiving bundles containing thousands of unorganised documents poses an ongoing challenge for strata businesses during the process of onboarding new clients.

8. Recommendation 49

Regarding Recommendation 49, **SCA (NSW) is against the proposal to extend the minimum notice period for Annual General Meetings from 7 to 14 days.** The current methods of distributing and delivering these notices are already highly efficient, making a 14-day notice period unnecessary. This is because most SCA (NSW) members receive these notifications promptly through electronic channels like email; therefore, the current 7-day notice period remains appropriate and sufficient.

9. Recommendation 51

In relation to Recommendation 51, **SCA (NSW) holds a neutral stance on refining the provisions concerning proxies, specifically with regard to including powers of attorney and company nominees as proxy types subject to the same restrictions on the maximum number of votes a single person can hold.**

Typically, powers of attorney would be employed to execute a proxy. However, the new development allows the use of powers of attorney for voting purposes. SCA (NSW) views this matter as inconsequential since one could still employ powers of attorney to execute a proxy, and ultimately, the decision rests with the strata managing agent or chairperson to determine the extent of authority granted by the powers of attorney. Consequently, **SCA (NSW) maintains an impartial stance on this recommendation, believing it does not significantly alter the status quo.**

10. Recommendation 56

Regarding Recommendation 56, **SCA (NSW) does not support introducing exceptions for issuing a notice to comply with a by-law without a resolution by the owners corporation.** The intention appears to be allowing one lot owner to serve a notice to comply with another lot owner, yet the wording remains unclear. While subsection one still mandates the owners corporation to serve the notice, subsection three contradicts this by stating that a notice must be given without requiring an owners corporation resolution. Even if this provision were to function as intended, **SCA (NSW) would not recommend enabling one lot owner in a two-lot scheme to serve a compliance notice against another lot owner.** The better approach would be to limit the second lot owner's options to pursuing mediation or orders.

11. Recommendation 23

In relation to Recommendation 23, **SCA (NSW) is not in favour of extending the current requirements in the strata renewal process, which pertain to supporting owners and renewal committee members to act in good faith and disclose conflicts of interest to all owners, including those who dissent.** Instead, the association suggests maintaining the status quo.

The most recent alteration pertains to pecuniary interests in strata committee meetings, where it has been proposed to eliminate the provision that permits a person with a pecuniary interest to attend a meeting under the condition that the strata committee allows it. This means that if an individual holds a pecuniary interest, they cannot participate or be present at the meeting, except if the strata committee decides otherwise. However, this approach could complicate the quorum requirements. Allowing owners or the committee to decide whether concerns exist regarding a pecuniary interest may lead to opposition or deduction of the person from the quorum while still maintaining a quorum. Effectively, treating them as non-financial for quorum purposes could be challenging, necessitating a re-evaluation of the quorum process in line with general meeting principles based on entitlement percentages or voting rights.

For further information about this consultation, please contact Dylan Lin, Policy and Advocacy Officer, SCA (NSW). Dylan.lin@strata.community