

# NSW Stage 2 Strata Reforms

Strata Community Association NSW Submission  
27 March 2024

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# INTRODUCTION

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## 1. Strata Community Association NSW Overview

Founded in 1980, Strata Community Association NSW (SCA 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.<sup>1</sup>

## 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.<sup>2</sup> 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.<sup>3</sup>

## 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](mailto:Dylan.lin@strata.community)**

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<sup>1</sup> 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](https://cityfutures.adu.unsw.edu.au/documents/717/2022_Australasian_Strata_Insights_Report.pdf)

<sup>2</sup> Ibid, p.8-13

<sup>3</sup> Ibid, p.8.

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## NSW STAGE 2 STRATA REFORMS

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### 1. Overview

The Strata Community Association NSW (SCA NSW) is pleased to provide feedback on the consultation paper regarding the 139 recommendations from the 2021 Statutory Review of Strata Laws. The association provides insights and recommendations to inform the development and implementation of amendments related to the *Strata Schemes Management Act 2015* and the *Strata Schemes Development Act 2015*. This is to improve strata laws and regulations in NSW, ensuring they remain effective to address the needs of the strata community.

In this submission, SCA NSW addresses the key issues outlined in the consultation paper, focusing on the 45 questions presented therein. The association provided insights related to various aspects of strata management, including dispute resolution, roles and responsibilities of strata committees, strata management agency agreements and improvements to record access and oversight mechanisms.

## 2. SCA NSW's Response to the Consultation Paper Questions

### Questions 1-4: Shared Facilities and Management Statements

1. Do you think the Development Act should prescribe the circumstances that are considered a 'change of use'? If so, what do you think those circumstances should be?

**SCA NSW believes that the Development Act should prescribe the circumstances constituting a 'change of use'.** It is essential to specify in the Development Act the items considered to be 'a change of use' to eliminate existing ambiguity. These changes may encompass alterations in occupancy, business activities or alterations to the common property that affect its usage.

Additionally, another suggested circumstance involves a change in the stratum lot owners who benefit from and, consequently, are responsible for a facility. This would be particularly beneficial for staged developments or owners corporations that opt not to become a member of the building management committee in accordance with Clause 3(2) of Schedule 4 of the Development Act.

2. Do you support the proposal to require a building management committee to adopt any changes recommended by the review process (unless the management committee unanimously agrees not to adopt the recommendation)? Why or why not?

**SCA NSW does not support the proposal mandating a building management committee to adopt recommended changes from the review process.** The decision should not solely rely on the entity commissioning the review, as this could bias the outcome. Instead, the Supreme Court should be empowered to make the final decision in such cases to establish governance over these changes to uphold fairness. Alternatively, an independent body should be authorised to intervene in these instances to preserve the balance of power.

3. The requirement for a building management committee to review its allocation of costs for shared expenses applies to strata management statements registered from 30 November 2016. Do you think this requirement should also apply to older management statements, registered before this date? Why or why not?

**SCA NSW believes that this requirement should be extended to older management statements registered before this date.** Many strata management statements older than this date tend not to be as sophisticated as statements registered post this date and can lead to mismanagement and disputes. Shared facility statements, particularly those from the early 2000s, have outdated or originally incorrect distribution methods. Additionally, many have experienced substantial changes to essential services that are not accurately reflected in older schedules.

4. Are there any other matters that you think we should consider when clarifying the application of the review process?

**SCA NSW suggests that the Department take into account, during the clarification of the review process application, the identification of potential new facilities.** For instance, numerous statements lack mention of items that evidently benefit multiple stratum lot owners/entities and should thus be included in the shared facility register.



## Questions 5-7: Dispute Resolution

5. What other specific powers, if any, should the Supreme Court have in order to address disputes arising under management statements?

SCA NSW believes that the suggested powers will be a positive start. However, the Supreme Court should have a general decision-making power to deal with disputes concerning the strata management statement, similar to the general decision making powers provided in section 232 of the Strata Schemes Management Act 2015 provided to the NSW Civil and Administrative Tribunal (NCAT) for disputes in strata schemes.

6. Do you think it is appropriate that the Supreme Court be required to consider similar matters as those in section 9 of the Contracts Review Act 1980 when reviewing strata management statements? What other matters (if any) should the Supreme Court be required to take into account when determining a dispute involving a management statement?

SCA NSW believes it is worthwhile that matters outlined in the Contracts Review Act 1980, as referenced on page 10 of the consultation paper, are reasonable for consideration by the Supreme Court when reviewing strata management statements.

7. Are there any circumstances where an owner should be able to apply to the Supreme Court for relief without first following the dispute resolution provisions in the management statement? If so, in what circumstances should this be permitted?

SCA NSW asserts that issues not addressed by the strata management statement should be taken directly to the Supreme Court. Otherwise, there are no circumstances where an owner can seek relief from the Supreme Court without initially adhering to the dispute resolution provisions outlined in the management statement.

## Questions 8: Strata Committees

8. What additional roles, functions or responsibilities of the chairperson, secretary and treasurer of a strata committee do you think should be included in the Act? Why?

**SCA NSW contends that no additional roles or functions are required.** The Act thoroughly outlines the responsibilities of the roles and provides provisions for delegation to an agent when deemed necessary. The existing clarity in their duties is sufficient and delegation can be utilised as appropriate.

## Questions 9-11: Executing Documents

9. Do you have any feedback or suggestions about the proposed requirements above for executing documents by signature? For example, any issues with arrangements that allow remote witnessing via audio-visual link?

**SCA NSW has no additional feedback or suggestions regarding the proposed requirements outlined above for executing documents by signature.** The association finds no issues with this proposal; it aligns well with the increasing prevalence of electronic meetings. Ensuring that the execution of documents and contracts follows a similar approach is sensible and pragmatic.

10. Do you agree the above proposal will provide an adequate process for verifying authorised signatories? Why or why not?

**SCA NSW agrees that the proposed approach will establish a sufficient process for verifying authorised signatories.** Just as strata managers enable owners to vote electronically by verifying their identity, executing documents electronically for owners or committee members is equally feasible. This can be achieved through the use of verified email addresses or by employing two-factor authentication processes on electronic platforms like DocuSign or AdobeSign.



**11. Are there any other options for verifying authorised signatories that you think should be considered? If so, what are they?**

**SCA NSW supports an additional option of strata managing agent using databases. With access to the owners email addresses and phone numbers, two-factor authentication can be implemented for added security.** In cases where details are lacking, requesting ID verification like a driver's license or passport is sufficient. However, SCA NSW opposes any endeavour to implement non-strata manager databases of authorised signatories, such as Strata Hub.

## **Questions 12-19: Strata Managing Agents**

### **12. Do you support prohibiting the terms described above. Why or why not?**

**SCA NSW supports the prohibition of the terms outlined. It is unjust for Owners Corporations to bear the financial consequences of errors made by agents, which may lead to losses.** In instances where decisions made by Owners Corporations result in proceedings or losses for the strata managing agent, the agent should be indemnified by the owners corporation.

Insurance commissions represent a significant portion of the agent's expected income. Therefore, if owners corporations opt for insurance terms or policies not arranged by the agent, the agent should be compensated for additional insurance-related tasks. These tasks include providing certificates of currency, facilitating insurance claims, arranging assessors, completing insurance information declarations, arranging insurance valuations and other related duties. Should insurance commissions be eliminated, agents must be allowed to charge fairly for their time spent on insurance-related work, ensuring equitable treatment for all parties involved.

### **13. What decisions should be considered 'material decisions' for the purposes of the new reporting requirement? For example:**

- **payments (above a threshold amount) from the administrative fund or capital works fund,**
- **payments (above a threshold amount) for repairs or maintenance to the common property,**
- **any insurance claims made, and**
- **entering into contracts on behalf of the owners corporation such as for property maintenance.**

**SCA NSW opposes any additional reporting requirements as it would impose more administrative burden on strata managing agents and potentially consume more time for volunteers like the strata committee.** Financial reports should be readily available on a monthly basis, and in some cases, even daily, through web portals and apps for committee members who wish to review the scheme's expenses.

Regarding contracts, one approach to allowing owners corporations to have their say is by expanding the list of contracts requiring approval through a general meeting. For instance, while strata management and building management agreements currently necessitate general meeting approval, contracts for services like cleaning and gardening do not. By broadening this list to include items of stakeholder concern, owners would have the opportunity to voice their opinions before decisions are finalised. However, caution must be exercised to avoid overly expanding the list, ensuring that routine decisions can still be made without the excessive administrative burden and expense of frequent general meetings.

**14. Do you think there is a need to impose a monetary threshold to report decisions, payments or contracts up to a particular amount? If so, what do you think the threshold amount should be? Why?**

**SCA NSW believes that imposing a monetary threshold to report decisions, payments or contracts up to a particular amount is unnecessary.** Strata managing agents already handle these matters within their agreements and delegation and it should remain as such. No changes are required to the existing procedures.

**15. Do you support the proposal that strata managing agents report within 14 days at the end of each quarter? If not, what is considered reasonable?**

**SCA NSW opposes the proposal requiring strata managing agents to report within 14 days at the end of each quarter.** Such a requirement would increase the costs and administrative burden on schemes unnecessarily. With lot owners already able to access live financial data through portals, additional administrative work is deemed unnecessary. Therefore, maintaining the status quo is preferable.

**16. Do you think there should be provisions to enable the strata committee to opt out of the process of reporting material decisions, change the threshold amount or impose other conditions, such as reporting by the strata managing agent be circulated to the owners corporation after received by the strata committee? Why or why not?**

**SCA NSW thinks there should be provisions enabling the strata committee to opt out of the reporting process for material decisions, change the threshold amount or impose alternative conditions.** For instance, reporting by the strata managing agent could be circulated to the owners corporation after being received by the strata committee. If reporting becomes mandatory, owners or committees should have the option to opt out. Some owners may have time constraints or trust their agent to manage the scheme effectively without requiring additional documentation to read or incurring extra costs for report generation.

**17. Which option or combination of options do you prefer? Why?**

**SCA NSW favours option 1** as it is optimal to require termination processes to be outlined in the agreement.

**18. Do you think that a remedial action notice, similar to Queensland laws, be introduced when**

- a managing agent engages in misconduct,
- fails to carry out duties under the contract or,
- is found to be in a breach under section 57 of the Act?

**Why or why not?**

**SCA NSW supports the introduction of a remedial action notice.** The association believes that such a notice for cases of serious misconduct and similar issues may effectively address these situations.

**19. Do you think that similar mandatory terms for termination should apply to building managers? Why or why not?**

**SCA NSW believes that similar mandatory terms for termination should apply to building managers.** This is because building management contracts often lack legislative recourse and should include provisions for termination.

## Questions 20-27: Records

### 20. Do you agree with the options above? Why or why not?

**SCA NSW agrees with the options outlined above.** Privileged documents should remain private to an owners corporation and not be available on a strata search, particularly in cases where proceedings are against a lot owner. This precaution is necessary to prevent lot owners from gaining an advantage by viewing the legal position of the owners corporation.

Moreover, restricting access to addresses, email addresses and phone numbers is essential. Every owner should have the right to safeguard their personal details from being sought without their consent.

### 21. Do you think that limited exemptions to record access be applied when a document contains commercially sensitive information? Why or why not? Can you provide specific examples of documents that could be considered commercially sensitive?

**SCA NSW believes that limited exemptions to record access should be applied when a document contains commercially sensitive information.** Documents such as deeds, court documents and affidavits for upcoming court proceedings are considered sensitive and warrant such exemptions.

### 22. Do you think there are any other exemptions or limitations to record access that should be included in the Act? Why?

**SCA NSW holds the view that no additional exemptions or limitations** to record access need to be included in the Act.

**23. Do you think that introducing these limited exemptions to record access be potentially misused? If yes, what do you consider as an appropriate dispute resolution mechanism, such as NSW Fair Trading mediation and/or NCAT?**

**SCA NSW is of the opinion that introducing these limited exemptions to record access can be potentially misused.** An appropriate dispute resolution process is NCAT intervention when necessary.

**24. Remote access would mean the ability to access a records, stored digitally, from any location. How do you think remote access to electronic records should occur? For example, sent via email or viewed through a portal? Why?**

**SCA NSW acknowledges that remote access facilitates inspectors' ability to access records without the need to travel to the offices of a strata managing agent.** However, the fee for this service has not been adjusted over time to adequately cover the expenses incurred by agents in terms of time and productivity. The fee should be commensurate with the time and hourly rate of the agent, considering the time required for setting up and facilitating the inspections.

Additionally, the prescribed fee for remote access has remained relatively minor given the work involved. Therefore, provisions should be made to recover costs associated with setting up and maintaining such services ([click here](#) for more information).

**25. What limitations or conditions do you think should apply to remote access of electronic records? What issues have you seen with remote access, if any?**

**SCA NSW firmly believes that no limitations should be imposed. Whether inspections are conducted in person or off-site through electronic means, the same conditions should apply.** However, with electronic inspections, there is a lack of control over how the inspector may handle or duplicate the records. Therefore, certain documentation such as court records, legal records protected by privilege or contact details of owners and occupants should be restricted to ensure confidentiality and privacy.



**26. Do you agree that the current prescribed fee for inspection of strata records is adequate? If not, what would you identify as an additional reasonable cost that could be added to the prescribed fee for either physical or remote inspection?**

**SCA NSW strongly believes that the current fee is inadequate.** Strata managing agents are tasked with various responsibilities such as making records available, establishing portal login details for electronic searches, receiving the fee, explaining and directing searchers on finding documents, ensuring the confidentiality of privileged information and addressing follow-up questions from searchers. All these tasks consume significant time and productivity. However, the fee has not been adjusted over time to adequately cover these expenses.

It is imperative that the fee be equivalent to the time and hourly rate of the agent, considering the efforts involved in setting up and facilitating inspections. **SCA NSW believes this would necessitate an increase to \$75, with an additional \$50 charge for each half-hour or part half-hour after the first hour of inspection for physical and online inspections.**

**27. Are there any other changes that need to be considered in relation to the prescribed fee? For example:**

- What could be the best suitable practice,
- the maximum cap on charging additional fee,
- whether any prescribed fee for copies of records is needed, or

**SCA NSW advocates for the removal of any maximum cap and suggests charging a fair price for the time required to organise and assist in the process.** Strata managing agents frequently receive numerous follow-up calls and emails from strata search contractors who may not have located or considered certain items. As a result, agents are often tasked with investigating matters to assist owners, who are typically attempting to sell their apartments and may field questions from potential purchasers themselves.

## Questions 28-34: Changes to Common Property

28. Do you think 'reconfiguring walls' should be considered a 'minor renovation' (requiring approval by resolution of the owners corporation) or major works (requiring approval by special resolution of the owners corporation)? Why?

**SCA NSW believes that reconfiguring non-loadbearing walls should be classified as a minor renovation.** Specifically, reconfiguring non-loadbearing lot property walls should fall under this category as they do not pose a safety risk and are contained within the lot. The association advocates for reducing unnecessary administrative burden and streamlining processes to allow owners to renovate their properties without excessive meetings and procedures.

29. To what extent would you consider 'reconfiguring a wall' within a lot to be a minor renovation, provided that the work is not structural and does not involve waterproofing? For example, would you consider the following to be a minor renovation:

- making an archway or opening in a wall,
- widening an existing opening, such as a doorway,
- adding a doorway,
- adding a wall or half wall, or
- removing a wall or altering it to be half wall.

**SCA NSW considers that amending, adding or removing a wall with no structural component** should be classified as reconfiguring a wall.

**30. Do you consider the following minor renovations be reclassified as major works, and why:**

- installation of hard floor coverings,
- installation of reverse cycle air conditioning, or,
- kitchen renovations as they may impact waterproofing and cause damage to common property and other lots?

**SCA NSW believes that reconfiguring a wall and the items mentioned above should continue to be categorised as minor renovations unless they involve alterations to common property.** In such cases, they should be discussed at a general meeting and subject to approval via a special resolution.

**31. Please provide examples of works that may commonly be considered 'cosmetic work,' minor renovations' or 'major works'. Below are some examples that could be added to each category:**

**a. Cosmetic works**

- locking or other safety device for protection against intruders or to improve safety,
- screen to prevent entry of animals or insects to the lot
- screen or netting to prevent exit of animals from the lot,
- adjustments to/installation of fencing to prevent exit of animals or children from the lot,
- tactile strips in a lot marking a safe path,
- structure or device to prevent harm to children,
- installing ceiling installation (currently classified as minor renovation),
- installing ceiling fans, or
- wallpapering or decorative texturing of walls.

**b. Minor renovations**

- installing or replacing venting to carry exhaust air outside from items such as range hood, oven, shower, clothes dryer, gas heater,
- installing roof ventilation,
- installing of awning, shutter, pergola on the outside of a lot,
- installing skylight or solar tubes,
- installing an intercom system,
- adapted toilet with grab rails,
- installing motorised gates,
- installing stair lifts,
- installing deducted air conditioning (or major works?), or
- installing hot water system.

**c. Major works**

- installing roof storage area, or
- bathroom and laundry renovations.

**SCA NSW recommends maintaining the status quo as the current system is effective, with the exception of the notes provided under questions 29 and 30.** Concerning the proposed additions to minor renovations, SCA NSW strongly opposes installing roof ventilation, skylights or solar tubes and stair lifts.

**32. Are there any other terms or matters that we should consider in clarifying the operation of section 108-111 of the Act?**

**SCA NSW holds the view that there are no additional terms or matters** that need to be considered in clarifying the operation of sections 108-111 of the Act at this stage.

**33. Do you think the proposed two-month timeframe outlined above is appropriate? Why or why not?**

**SCA NSW asserts that the current timeframe is not appropriate and any deemed consent should not be imposed.** Strata committees can only authorize minor renovations if they have been delegated that function by way of a by-law, as per section 110(6) of the Strata Schemes Management Act 2015. Consequently, in certain strata schemes, obtaining consent for minor renovations may necessitate convening a general meeting of the owners corporation. In such cases, a two-month timeframe is deemed impractical and not appropriate. Alternative avenues such as mediation and NCAT proceedings already exist to address instances of unreasonable refusal of minor renovations.

**34. If the proposed two-month timeframe is not appropriate, what do you consider to be an adequate period of time? Why?**

**SCA NSW maintains that no timeframe is appropriate.** This stance extends to the approval process for major works through a by-law. The association believes that there should be no period of time in which there is deemed approval, nor should there be.

### **Questions 35-36: Common Property Memorandum**

**35. Aside from energy meter boards, do you think that there are items that are either not currently part of the common property memorandum (and should be included) or need to be changed or clarified? Examples include:**

- who has responsibility for meter boards,
- clarity about lot owner responsibility for entrance door locks,
- how common property applies to a tree within a lot that leaves the confines of the lot,
- meaning of 'plumbing of a building,'
- definition of 'maintenance' or
- how common property memorandum works with lot fixtures that are part of strata insurance.

**SCA NSW contends that further clarity is necessary concerning individual smoke alarms (to be considered lot property), door locks, window locks (including child safety window devices and window restrictors), in addition to energy meter boards.**

**36. What potential issues, do you think, could arise if the common property memorandum is applied to all new residential schemes' by-laws by default and how could these be mitigated? For example, if the common property memorandum is in conflict with a strata plan or a by-law, clarifying that the strata plan or the by-law would override the common property memorandum.**

**SCA NSW acknowledges a potential issue is that it could conflict with a strata plan, though the likelihood of such conflicts is minimal.** The association believes it is advisable to incorporate the common property memorandum into a by-law. This way, if there are contradictions with the strata plan, amendments or repeals can be easily executed. Applying it to all new plans by default isn't recommended; owners should have the discretion to choose whether to adopt it as a by-law.

### **Questions 37-38: Assistance Animals**

- 37. Do you agree that types of evidence detailed above should be prescribed in the Regulation as types of evidence that can be requested about an assistance animal? Why or why not?**

**SCA NSW agrees that the types of evidence outlined above in the Regulation are acceptable forms of evidence for requesting information about an assistance animal.** This approach ensures clarity, conciseness, and eliminates ambiguity on the matter.

- 38. What other types of evidence about an assistance animal do you think should be included in the Regulation? Why?**

**SCA NSW has no additional recommendations regarding the types of evidence concerning an assistance animal to be incorporated into the Regulation.** The proposed forms outlined in the proposal are already prescribed in the regulations, rendering further evidence unnecessary.

### **Questions 39-40: Embedded Networks**

- 39. Do you think this proposal is appropriate to provide effective disclosure of embedded networks to buyers of strata units off the plan and in established buildings? If not, what improvements do you think could be made?**

**SCA NSW strongly advocates for the outright prohibition of embedded networks due to several key concerns, primarily aimed at eliminating the practice of side agreements.** Embedded network providers often impose infrastructure costs on owners corporations through long-term contracts, concealing these expenses and burdening owners with costs that developers should bear. Moreover, owners corporations frequently find themselves compelled to sign a wide array of complex contracts with limited to no choice of provider.

However, should the complete ban on embedded networks be unfeasible, **SCA NSW agrees that this proposal is appropriate to provide effective disclosure of embedded networks to buyers of strata units off the plan and in established buildings.**



**40. Embedded networks are generally associated with electricity supply, but infrastructure relating to other services (like gas, water and internet access) may be embedded during construction. What other types of embedded utility infrastructure should vendors and developers be required to disclose?**

**SCA NSW contends that in addition to infrastructure costs,** vendors and developers should be obligated to disclose information regarding stormwater filtration services.

## **Questions 41-43: Accessibility Infrastructure**

### **41. Which option or combination of options do you prefer? Why?**

**SCA NSW prefers Option 1** as it allows for the approval of accessibility infrastructure installation through an ordinary resolution, providing a more straightforward and practical solution compared to requiring a special resolution where no more than 25 per cent of votes are cast against the resolution.

### **42. Do you think it is unreasonable for an owners corporation to refuse to pass a common property rights by-law that provides that the requesting owner will pay for the costs of installing and maintaining? Why or why not?**

**SCA NSW does not believe it is unreasonable for an owners corporation to refuse passing a common property by-law requiring the requesting owner to cover installation and maintenance costs.** This is due to the potential adverse impacts on other owners and residents, requiring separate consideration, possibly through independent review by NCAT.

### **43. What could be considered reasonable reasons for an owners corporation to refuse to install accessibility infrastructure?**

**SCA NSW believes the following could be considered reasonable reasons for an owners corporation to refuse the installation of accessibility infrastructure:**

1. Limitations on regular use of stairs or accessways due to space constraints, which may hinder adequate utilisation of common areas by others. Additionally, if lot owners anticipate the owners corporation to fund the installation, it may render the proposal unreasonable.
2. Inadequate space on stairs for both the accessibility infrastructure and pedestrian use, a determination that could be made independently through NCAT.
3. Potential impact on other owners and occupants resulting from the installation.

## Questions 44-45: Unpaid Levies

### 44. Which option or combination of options do you prefer? Why?

- a. Require owners corporations (or strata committee, if delegated) to pass a resolution before they can initiate action to recover unpaid levies through the Tribunal, court or a debt collector/agency. The owners corporation could be required to consider the costs of recovery against the total debt owed.

**SCA NSW believes that this approach is not practical for large strata schemes, where multiple owners may be in arrears simultaneously.** Levy recovery constitutes a routine procedure for strata businesses, with typically 1-2% of the portfolio's levies in arrears beyond 90 days at any given time.

- b. Require owners corporations to first pass a resolution at a general meeting to charge interest (generally or in a particular case).

According to the Act, an interest rate of 10% per annum can be applied when levies remain unpaid for more than one month after their due date, without requiring a resolution from the owners corporation. However, the owners corporation can opt to waive this interest through a resolution. **SCA NSW contends that this provision may potentially undermine the recovery process, as the majority of schemes are likely to pass such a motion.**

- c. Allow the strata committee to waive interest or enter into a payment plan rather than requiring a resolution of the owners corporation at a general meeting.

**SCA NSW supports the proposal, advocating for the consideration of waivers in cases of owner financial hardship.** The association suggests that the strata committee should report such decisions during the annual general meeting and provide explanations for any refusal of payment plans. While the proposal is feasible, its effectiveness hinges on the clear demonstration of financial hardship, without which implementing it might pose challenges.

- d. Increase the period from which interest can be charged on unpaid levies from one month from the payment's due date to, for example, three months. This option would provide an opportunity for an owner to repay overdue levies without incurring escalating interest costs.

**SCA NSW opposes the suggestion** to extend the period for charging interest on unpaid levies from one month to three months as it is not suitable.

- e. Prohibit by-laws which have debt recovery action (Tribunal, court, debt collector) as the first step in recovering unpaid levies.

**SCA NSW suggests implementing a minimum term of 60 days and two reminder notices** before legal recovery proceedings can commence.

- f. Prescribe more requirements about payment plans as owners corporations may not be equipped to determine what is an appropriate plan. This could include a requirement to provide refusal reasons.

**SCA NSW supports this recommendation.** Regarding the requirement to provide reasons for refusal, the potential consequence of acting unreasonably could be the overturning of the decision by NCAT.

- g. Require owners corporations to make reasonable attempts to enter into a payment plan before action can be taken in a court or Tribunal.

**SCA NSW agrees** with this recommendation.

- h. When a payment plan is in place and maintained, or a dispute resolution process over the fees or payment of fees is underway, that:

– no interest be charged,

**SCA NSW disagrees** with this aspect of the recommendation.

– that debt recovery by a debt collector either not commence or must cease,  
and/or

**SCA NSW agrees** with this aspect of the recommendation.

– that no debt recovery action be taken at the Tribunal or court.

**SCA NSW agrees** with this aspect of the recommendation.

- i. **Consider a prescriptive process for recovering debt in the legislation, making the process transparent and the roles of each stakeholder clear. Strata managers would be empowered to operate objectively by simply following steps in the legislation.**

**SCA NSW believes that with appropriate stakeholder engagement,** this approach could be suitable.

- j. **Clarify the Act to make clear that debt recovery costs cannot be added to an owner's levies and must be recouped from the administrative fund, unless the Tribunal or a court has ordered them to be paid by the debtor. This is the current position under the Act, however this change will make it clearer.**

**SCA NSW believes that organising meetings for large schemes incurs significant costs and sending committee meeting notices to all owners, especially for one arrears matters, leads to additional expenses as an unintended consequence.**

Allowing arrears costs to be added to an owner's levies should be permissible, with such costs required to be added to an owner's lot. It is unreasonable to expect owners corporations to bear the expenses of arrears proceedings stemming from non-payment of levies; otherwise, owners corporations would be unduly burdened with the cost of recovery.

- k. **Require payments by owners to first be applied to levies, followed by interest and any debt recovery costs recoverable by order of the Tribunal or court.**

**SCA NSW disagrees with this recommendation** as introducing such a provision would burden owners corporations with the cost of recovery.

**45. What other options should the Department consider to support owners who are unable to pay their strata levies? Why?**

**SCA NSW does not have additional options at present for the Department to consider in supporting owners who struggle to pay their strata levies.** The Department should consider the financial impact on owners corporations burdened with levy recovery, along with the significant time and resources expended by strata managers in this process. Introducing further support measures might deflect responsibility for levy payments and could lead to increased arrears.

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