



Strata Managing Agents Legislation Amendment Bill 2024

Strata Community Association NSW Submission
3 July 2024

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.

STRATA MANAGING AGENTS LEGISLATION AMENDMENT BILL 2024

Introduction

The Strata Community Association NSW (SCA NSW) welcomes the opportunity to provide feedback on the *Strata Managing Agents Legislation Amendment Bill 2024*. This legislation seeks to fortify the existing regulatory framework governing strata managing agents (“agents”), thereby enhancing transparency and accountability in the sector. The proposed amendments to the Strata Schemes Management Act 2015 (“SSMA 2015”), Property and Stock Agents Act 2002, and Community Land Management Act 2021 are poised to elevate the standards of disclosure, compliance and enforcement in the strata sector.

In alignment with SCA NSW’s commitment to advocating for our members and the broader strata community, SCA NSW overall supports the Bill's focus on ensuring that agents operate with greater transparency, particularly concerning commissions and related entities, thereby protecting consumers and strengthening trust in the strata sector.

SCA NSW Recommendations

1. Section 57 - Approval of Commissions and Disclosure of Benefits

Approval of Commissions at General Meetings

SCA NSW believes that the proposed amendment of section 57 of the SSMA 2015 requires that commissions, particularly insurance commissions, be approved at a general meeting through an ordinary resolution is a positive amendment to improve transparency and disclosure in the strata management industry. This approval should be a retrospective approval of insurance commissions received for the last 12 months. The arrangement must relate to the agency agreement in place with each Strata Scheme. There should be a transition period for the insurance providers to improve their reporting systems for agents to meet legislative requirements.

Disclosure of Benefits

Point (3B)(d) mandates that a statement must be made for each benefit, such as Christmas gifts or insurance commissions, to be approved at a general meeting. **While SCA NSW agrees that this requirement enhances transparency, there are concerns about practical implementation for disclosing gifts.** With increased fines and heightened sector awareness, there is a risk of penalties against agents for minor benefits, such as a bottle of wine, if gifts are not clearly documented and approved through a formal motion.

Due to their size, larger strata management businesses will face greater challenges in managing and accounting for gift disclosures of every gift at every general meeting. We do not believe that this level of reporting is necessary. Suppose the government wishes to implement this change. In that case, SCA NSW recommends that the dollar value of disclosure on all gifts over \$60 be set as the minimum amount required for a gift to be disclosed to clients at each Annual General Meeting. If this change is accepted, SCA NSW will recommend to our members that they don't receive gifts, as the legislative benefits exceed the benefits.

Intersection with Section 60(1)

SCA NSW seeks clarification on how the proposed insertions in sections 57 (3A and 3B) intersect with the current insurance commission provisions listed in section 60 (1) of the SSMA 2015.

2. Section 60 - Bulk Tendering

Impact on Bulk Tendering

The proposed amendment to section 60(2) will affect activities such as bulk tendering on energy agreements where a benefit is received. SCA NSW views this as a positive step toward improving the financial benefits of these arrangements.

Clarification of 'Connected Person'

The proposed amendment to section 60(2C) requires further clarification, particularly regarding the definition of a 'connected person.' While the SSMA 2015 provides a reasonable definition, the amendment introduces ambiguity. **SCA NSW recommends clarifying the definition in simpler and easy-to-understand terms to ensure all parties understand the requirements and avoid any uncertainty.**

Clarification of the Term "Commission"

SCA NSW seeks clarification and explanation in the legislation on using the term 'commission.' The association is unclear whether this captures insurance commissions, insurance brokerage, rebates etc. The term is too generic; without clarification, some important financial benefits received and not disclosed by agents may not be captured.

Training Services Intention

SCA NSW is also unclear about the training service disclosure intention, particularly around placing a value on the training services provided. CPD training does not sufficiently detail important legislation changes in the Design & Building Practitioners Act 2020, Defect Remediation, Strata Loans, and new legal cases. If agents do not receive regular training from industry experts such as builders, engineers, and lawyers, significantly worse outcomes for owners corporations will occur due to agents' lack of knowledge of important subject matter areas.

Breach Penalties

If found guilty, SCA NSW believes offenders should be required to reimburse the commission or benefit and pay the fine, as the proposed fines are much less than the benefit obtained in many instances.

3. Section 71 - Conflicts of Interest

Managing Conflicts of Interest

SCA NSW believes the proposed addition to section 71 will be cumbersome to manage due to its ambiguity. The current draft needs to clearly outline what specific conflicts it aims to prevent, rather than imposing another administrative burden to maintain registers and report conflicts.

Definition of 'Supplier'

Additionally, the SSMA 2015 does not define the term "supplier" in the context of declaring conflicts. SCA NSW understands that "supplier" might extend to relationships with developers. This term should be conclusively defined, **or section 71 should be amended to clarify this point.**

4. Section 210A - Enforcement of Undertakings

SCA NSW views Section 210A as the most significant change for agents. This section grants the Office of Fair Trading (OFT) substantial new powers and imposes considerable obligations on agents.

Clause 1 - Entering into Undertakings

Clause 1 permits the OFT to enter into undertakings with agents. While this provision appears reasonable, these undertakings will likely be drafted by the Secretary's legal counsel. Therefore, agents must seek thorough legal advice to fully understand and comply with the terms of any undertaking they enter.

Clause 2(e) - Financial Implications for Agents

Clause 2(e) stipulates that agents must bear all costs associated with external audits, investigations or reviews initiated by the OFT. These processes are often triggered by complaints and can be highly expensive. SCA NSW believes this clause effectively shifts the financial burden of regulatory enforcement onto agents. Most agents may find it financially unfeasible to cover these costs. Consequently, **SCA NSW recommends that the regulator secure additional funding to perform these tasks internally rather than imposing the costs on agents.**

Complexity and Legal Concerns

SCA NSW also believes that Section 210A is challenging to comprehend. For instance, the OFT could investigate commissions of \$100,000 paid to an entity and require the agent to deposit \$100,000 into an account and pay for the investigation. This approach seems contrary to established legal principles, where costs are typically recovered only if guilt is established. This provision is similar to Project Intervene's, where builders must cover inspection costs, raising similar concerns about fairness and financial impact.

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