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STRATA MANAGERS EDUCATIONAL FORUM – ARE YOU READY FOR THE NEW STRATA LAWS?

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Work By-laws & NCAT

Under the Strata Schemes Management Bill 2015

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CHANGES TO BY-LAWS & NCAT
UNDER THESTRATA SCHEMES MANAGEMENT BILL 2015

This paper is split into 4 sections

A. Summary of new legislation affecting works by-laws

B. Summary of changes to works – old to new

C. Blanket or generic by-laws

D. Individual works/renovation by-laws

A. SUMMARY OF RELEVANT LEGISLATION

New section	Old section	Description	Comment
134(3) and Reg 35	New	By-laws for pre-1996 schemes are those in Schedule 2	This will repeal any existing ones, except special by-laws
Sched 3	New	New model residential by-laws, applying to newly registered schemes	• Pet option A – any animal can be kept (not only small dogs) on notice being given • Smoking – 3 options now A – smoke must not penetrate CP or another lot B – smoking only lowed with consent of OC or in a designated area, plus smoke must not penetrate CP or another lot • Massive by-law re 15 re disposal of waste • By-law 17 – compliance with planning – much more basic than the Muellers short-term letting one
106(1)	62(1)	Maintain CP and keep it in good and serviceable repair	No change, same wording used
106(3)	62(3)	Can decide by special res not to maintain certain CP	Same
106(4)	New	If an OC takes action against an owner for damage, it can defer compliance (obligation to maintain) until that action is determined, assuming no safety issues	New – previously there was no exemption
106(5)	New	Owner can sue for breach of statutory obligation (losses resulting from failure to maintain) for up to 2 years of becoming aware of the loss	Clarifies the case law which has gone back and forth on this issue. As the case law currently stands, this is a significant change.
106(7)	54(3) partly	Obligation to maintain is subject to any CP memorandum, any s108 by-law and any excl. use by-law	Probably the same position as current, but sets it out more clearly. S54(3) only applies to excl. use by-laws
108(1)	65A(1)	Can by special res add to, alter or erect a new structure on CP	No change, though we think s110(6) means this work can be deemed a minor renovation (and can be approved by the EC) unless it is a 110(7) exclusion
108(5)	65A(4)	If owner is to be responsible for maintenance, need by-law and owner's written consent	No change
109(1)	New	**Cosmetic work** can be done without	Some of these items involve alterations to CP and

		needing approval, but subject to owner rectifying damage to CP and carrying out work properly. By-law may specify additional work that is cosmetic, but can't be one of the exclusions in s109(5).	would previously have required a written approval under by-law 5 or a special res and by-law. For example inserting hooks, nails and screws, installing built-ins and installing internal blinds/curtains.
109(5)	New	Exclusions – this cannot be deemed cosmetic work: • minor renos (s110) • structural work • work changing the external appearance • waterproofing or work affecting plumbing or exhaust system • work affecting safety, like fire systems • reconfiguring walls • work needing a DA	A by-law can deem other work to be cosmetic so no approval is needed, as long as that work is not excluded from the section. For that work (eg structural work or a bathroom reno), you still need the usual blanket by-law specifically authorising that work.
110(1)	New	**Minor renovations** can be done with the approval of OC by ordinary resolution, no by-law needed. Minor renos include: • kitchen renos • recessed light fittings • hard flooring • wiring or electrical work • reconfiguring walls	Re the walls – this means altering non-structural walls can be done as a minor reno. The OC can pass a by-law saying the strata committee (EC) can determine these applications.
110(6)	New	Can provide that additional work is a minor reno, subject to 110(7)	The OC can pass a by-law saying all work that is not excluded can be approved by the strata committee. This is likely to become a popular new blanket by-law
110(7)	New	Exclusions – this cannot be deemed a minor renovation: • Cosmetic work (s109) • structural work • work changing the external appearance • waterproofing • work needing a DA	The following works can be minor renos, as they are not excluded under 110(7) like they were under 109(5): • work affecting safety, like fire systems. Not excluded like it was for cosmetic work • work affecting plumbing or exhaust system
111	New	An owner must not do work on CP unless authorised or under a by-law or by a special res	This sort of summarises the other sections.
143(1)	52(1)(a)	Common property rights by-laws (like exclusive use ones) can be made with the consent of each owner on whom rights are conferred	Currently says with the consent of the *owner of the lot(s) concerned*. This clarifies the legal position and means the *James* case position will continue to apply, and *Young's* case is history

B. SUMMARY OF CHANGES TO HOW WORKS ARE DEALT WITH

Type of work	Position under current Act	Position under new Act
Installing hooks, nails and screws	Under standard by-law 5, written approval required, maintenance and repair not clear	Can be done without approval
Installation of built-ins	Special resolution and by-law needed if being bolted into a common property wall	No approval needed unless work involves structural changes
Installing blinds or curtains	Special resolution and by-law needed if work constitutes an alteration to common property (which is likely)	No approval needed. Some argument that approval is needed if there is a change to the external appearance of a lot, but probably won't be interpreted that way
Kitchen renovation with appliances staying in same position	Special resolution and by-law needed if any change to common property	Only an ordinary resolution required and no by-law (and can be decided by SC meeting if power delegated)
Kitchen renovation with exhaust or plumbing changing	Special resolution and by-law needed if plumbing or exhaust penetrates common property, which is most likely	Only an ordinary resolution required and no by-law
Bathroom renovation with no change to waterproofing, (eg just changing vanity and shower screen)	Special resolution and by-law needed if changes to common property. Otherwise no approval needed.	Ordinary resolution only. Special res and by-law needed if change to waterproofing.
Installing or changing recessed light fittings i.e. within ceilings	Special resolution and by-law needed, as these are going above the paint on the ceiling (ie into common property)	Ordinary resolution only
Changes to wiring, cabling or power or access points	Most likely involves an alteration to common property, so special resolution and by-law required	Ordinary resolution only
Other work involving change to external appearance of lot	If no change to common property, then no special resolution needed. Possible approval needed under by-law 17 (if not in keeping with the rest of the building)	Special resolution and probably by-law required
Installation of bathroom exhaust fan	Special resolution and by-law needed, as this will penetrate a common property external wall	Ordinary resolution only
Solar panels	Special resolution and by-law needed as these are alterations to common property and exclusive use of it	Does it change the external appearance of the building, if the change can only be seen from the sky? If not, then not excluded under s110(7), so can deem that only ordinary res required
Air conditioners	Special resolution and by-law needed – through a wall, bolted to balcony, on an external wall etc	If it doesn't change the external appearance of the building, then OC can deem that only ordinary res required (and strata committee can deal with it)
Double glazing windows	Windows are usually common property, so by-law and special res needed	Not excluded under s110(7), so if new blanket by-law is passed, can be done with approval by SC
Ceiling insulation	Above the paint on the ceiling, so by-law and special res needed	Not excluded under s110(7), so if new blanket by-law is passed, can be done with approval by SC
Pergolas	Connected to CP, so by-law and special res needed	Probably approval needed as external appearance changed
Whirlybirds	Through CP, so by-law and special res needed	If hard or impossible to see from the street, can argue no change to external appearance, so can be one of the works which can be approved under a new blanket by-law

C. GENERIC OR BLANKET BY-LAWS

Once the new Act comes into effect, there will be two types of generic or blanket by-laws which will become very useful:

Type 1 The same one currently used, whereby specified works involving alterations or additions to CP are approved, subject to the conditions in the by-law. These will remain an option for the types of works they previously dealt with. They will become very useful for those which are exclusions under s110(7) and cannot be deemed minor renovations, being:

(a) Structural work (internal walls)

(b) Work changing the external appearance (pergolas, awnings, and possibly solar panels and skylights)

(c) Work involving waterproofing (most bathroom renos)

Again, in section 108(2), the work has to be *specifically authorised* by a special resolution. This is the same wording as is in s65A, so the *Stolfa* comments will continue to apply. A general approval of renovations will not be enough: it will have to be specific.

Type 2 A new type of generic/blanket by-law, whereby:

(a) All work not excluded under s110(7) is deemed to be a minor renovations for the purposes of s110 and specifically 110(6)(a). Despite ss108(1) & (2), this can include work changing or adding to CP as long as it is not excluded under s110(7) (ie structural, changing external appearance and waterproofing);

(b) The OC delegates its functions under s110 to the strata committee (EC). This is what we are commonly asked, for the EC to be able to approve works. Currently it cannot approve any work which involves an alteration or additional to CP, but after the new Act comes in, if this by-law is passed, it will be able to.

(c) The conditions set out in this by-law will apply if such work is carried out. We would set out the usual pre-work, during work and post-work conditions. Section 110 only includes that any damage to CP is repaired and the work must be done in a competent and proper manner.

D. INDIVIDUAL WORKS BY-LAWS

All works for individual lots will continue to require their own individual special resolution and by-law, if they are an alteration or addition to common property, *unless*:

- they are cosmetic work (eg nails, screws, built-ins); or
- they are one of the listed minor renovations (in s110(3)), such as kitchen renos, recessed light fittings or electrical work. In this case they will have to be approved by ordinary resolution, unless the Type 2 by-law has been passed; or
- the work has been deemed to be cosmetic work (s109(4)) or a minor renovation (Type 2). If cosmetic work then no approval needed, and if a minor renovation, then once the Type 2 by- law is passed, the SC can approve it.

Any works by an owner which constitute structural work, a change to the external appearance or a change to the waterproofing, must be passed by special resolution and by-law. If a Type 1 blanket by-law has been passed in respect of that specific work, this is enough.

Item	1996 Act	2015 Act	Comments
No more adjudication	N/A	N/A	All powers given to interested persons to go to the Tribunal now only relate to orders made by the Tribunal. There are no powers for Adjudicators to make orders. Any Adjudications lodged before 30 November 2016 will continue as if the 1996 Act was still in force (Clause 7 of Schedule 3 of the 2015 Act)
Changing unit entitlements	s.182	s.236	Same
Orders about **by-laws**, varying them, repealing them or ordering that owners unreasonably refuse to consent	ss.157-159	ss.148-150	Old s.159 gave an Adjudicator the power to invalidate a by-law if the owners corporation did not have the power to make the by-law. New s.159 is the same except that the Tribunal also has that power if the by-law is harsh, unconscionable or oppressive as well
Pets	ss.150-151	ss.156-158	Slightly different wording, but the effect is the same.

Interim orders	s.170	s.231	The same – urgent considerations need to justify the making of the order.
General power	s.138	s.232	Currently general power relates to the exercise/failure to exercise a function conferred or imposed by the Act or by-laws, or the operation, administration or management of a scheme. New Act adds the power to settle a complaint/dispute about:
			(b) Any agreement authorised/required under the Act;
			(d) An agreement appointing a strata managing agent/building manager;
			(d) An agreement between the OC and an owner;
			(f) An exercise/failure to exercise a function conferred or imposed under another Act
			It was previously not clear whether the Tribunal could make orders about agreements with strata managing agents, for example.
Costs	s.176	s.60 NCAT Act	Currently costs cannot be awarded for adjudications. As all matters will be hearings, costs will be able to be awarded in special circumstances, normally where an applicant seeks an order outside the Tribunal's jurisdiction, but there can be other circumstances justifying costs orders.

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Meetings

Under the Strata Schemes Management Bill 2015

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STRATA SCHEMES MANAGEMENT BILL 2015
REFORMS TO MEETING PRACTICE AND PROCEDURE

Introduction

The NSW Government is reforming NSW strata laws. The reforms seek to bring strata laws into the 21st century. The Government says the reforms will "create a modern framework for residents living in strata schemes today." The strata law reforms will include changes to meeting practice and procedure of owners corporations and executive committees. This paper will review those aspects of the reforms.

The Reforms

The strata law reforms are contained in the draft *Strata Schemes Development Bill 2015* and *Strata Schemes Management Bill 2015* which were released for public consultation on 15 July 2015. The reforms to meeting practice and procedure are contained in the *Strata Schemes Management Bill 2015* (**Bill**). The object of the Bill is to provide for the management of strata schemes and the resolution of disputes in connection with strata schemes. The Bill re-enacts the current law relating to the management of strata schemes with some important changes.

Object of Reforms to Meeting Practice and Procedure

The reforms concerning meeting practice and procedure are intended to modernise and improve the way strata schemes are managed. This will be achieved by:

- Creating flexible meeting options;
- Introducing new ways to vote at meetings;
- Preventing proxy farming;
- Improving tenants' participation in meetings; and
- Making miscellaneous changes to meeting practice and procedure.

Flexible Meeting Options

The strata law reforms will enable use of modern forms of communication in connection with meetings of owners corporations and executive committees.

Service of Meeting Notices

An owner of a lot will be able to give an owners corporation an email address as an address for service of meeting notices and other documents under the Bill (section 256).

Meeting notices will be able to be distributed to owners and others by email to any email address that is given as an address for service of documents without an empowering by-law (section 258).

Attendance at Meetings via Video

The strata regulations that will supplement the Bill (which have not been released) will allow attendance at meetings through social media, video and teleconference.

This is because:

- the owners corporation or strata committee (as the executive committee will become known) will be able to allow votes to be cast at meetings other than in person (Schedule 1, clause 28; Schedule 2, clause 10); and

- a person who votes, or intends to vote, at a meeting by a permitted means other than a vote in person will be taken to be present for the purposes of determining whether there is a quorum (Schedule 1, clause 17; Schedule 2, clause 12).

Flexible Quorum Arrangements

If there is no quorum for business at a general meeting, the chairperson, after half an hour, will be able to declare that the persons present constitute a quorum for that purpose (Schedule 1, clause 17). The chairperson will also still be able adjourn the meeting for at least 7 days.

Timing of AGMs

The new strata laws will also give owners corporations flexibility to determine when their annual general meetings are held. Under the reforms, the annual general meeting of an owners corporation will need to be held once in each financial year rather than within 1 month of the anniversary of the first annual general meeting (section 18).

New Ways to Vote

The owners corporation and strata committee will be able to determine that a vote at a meeting may be made other than in person (e.g. a postal vote or vote cast by electronic means) (Schedule 1, clause 28; Schedule 2, clause 10).

The strata regulations will provide for the means of voting (other than in person) that may be adopted by an owners corporation, procedures for voting by those means, and prohibit the use of specified means of voting (Schedule 1, clause 28; Schedule 2, clause 10).

Voting including on an election of the strata committee will also be able to occur by secret ballot if the strata committee or at least one-quarter of the persons entitled to vote agree (Schedule 1, clause 29). The strata regulations will make provision for voting by secret ballot.

Proxy Farming

Many people have raised concerns about the practice of proxy farming in strata schemes. This occurs where one person controls the decisions made by the owners corporation by obtaining a majority of votes using proxies.

The new strata laws will curb proxy farming. The reforms will limit the number of proxy votes able to be held by one person to:

- for schemes of up to 20 lots - one proxy vote only; or
- for schemes with more than 20 lots - proxy votes of not more than 5% of the total number of lots;
- except where the proxies are held as the joint owner of a lot (Schedule 1, clause 26).

A provision of a contract for the sale of a lot, and any provision of an associated contract or arrangement, that requires the owner of a lot to vote as directed at a meeting of an owners corporation or to give a proxy will be void and unenforceable (Schedule 1, clause 27).

Tenants' Participation

The new strata laws will allow tenants in schemes where the majority of units are tenanted to take part in owners corporation meetings and have an elected representative on the strata committee, while respecting the financial decisions of owners. The new laws concerning tenants will only apply to those tenants who have been notified to the owners corporation under a written tenancy notice.

The notice for the first annual general meeting will need to be given to each tenant of a lot at least 14 days before the meeting (section 14). The agenda for each other general meeting will need to be given to each tenant at least 7 days before the meeting (Schedule 1, clause 11).

A tenant will be entitled to attend a general meeting but not to vote (unless a proxy holder) and may be excluded from a meeting when financial matters (such as the raising and recovery of levies) and termination of a strata scheme are being discussed or determined (Schedule 1, clause 21). A tenant will not be entitled to speak at a meeting unless permitted to do so by resolution of the owners corporation.

A tenant representative on the strata committee may be nominated by the tenants of lots in the strata scheme but will not be able to vote on committee decisions and may be excluded from discussion about certain financial matters (section 33; Schedule 2, clause 9).

Miscellaneous Changes

1st AGM

The agenda for the first annual general meeting of an owners corporation will now need to include motions to:

- consider the report by any strata manager as to whether, and what, commissions have been paid or are likely to be payable to the strata manager for the following 12 months;
- receive the documents required to be provided by the developer under section 16;
- consider the initial maintenance schedule provided by the developer;
- consider building defects and rectification (section 15).

AGM Notice

The notice of each annual general meeting of an owners corporation will now need to include:

- a call for nominations for members of the strata committee at least 7 days before the meeting and the nominations already received (Schedule 1, clause 5);
- a motion to consider a report as to commissions by any strata managing agent of the owners corporation (Schedule 1, clause 9);
- a motion to decide how to deal with overdue contributions payable to the owners corporation (proposed clause 9).

The notice of an annual general meeting will no longer be required to include the last financial statements prepared by the owners corporation, but these must be provided to an owner or mortgagee who asks for them at least two days before the meeting (Schedule 1, clause 10).

Minutes

Minutes of general meetings and strata committee meetings will now need to be given within 14 days after the meeting, to:

- each member of the strata committee;
- each owner - if the strata scheme is not a large strata scheme;
- any owner who requests a copy of the minutes - if the strata scheme is a large strata scheme and the owner requests a copy within the period of 7 days (Schedule 1, clause 22).

Unfinancial Owners

An owner will be able to require that a motion be included on the agenda for a general meeting of an owners corporation even though the owner cannot vote because of unpaid strata contributions (Schedule 1, clause 4). Any requirement given by an owner must include an explanation of the motion of not more than 300 words in length (Schedule 1, clause 4).

An owner will be able to nominate a candidate for election to the strata committee even though the owner is unfinancial (Schedule 1, clause 5).

An unfinancial owner will not eligible for appointment or election to the strata committee (section 32).

An unfinancial owner will still not be allowed to vote at general meetings (Schedule 1, clause 23).

A member of the strata committee will not be entitled to vote on any motion put or proposed to be put to the strata committee if the member was, or was nominated as a member by a member who was, an unfinancial owner at the date notice of the meeting was given and the amounts owed by the unfinancial owner were not paid before the meeting (Schedule 2, clause 9).

A committee member will not be entitled to move a motion at a committee meeting unless the person is entitled to vote on the motion (Schedule 2, clause 14).

Conflicts of Interest

A developer will not be entitled to vote or exercise a proxy vote on a matter concerning building defects or rectification of building defects (Schedule 1, clause 15).

Members of a strata committee will need to disclose any pecuniary interest in a matter that is being or is about to be considered at a meeting of the committee and, unless the committee otherwise determines, must not be present for any deliberations on the matter or vote on the matter (Schedule 2, clause 18).

Strata Managers

An owner who is seeking appointment as a strata managing agent will not be entitled to vote or cast a proxy vote on the appointment at a meeting of the owners corporation (Schedule 1, clause 49).

A strata managing agent will need to report the following at each annual general meeting:

a) whether any commissions have been paid to the agent (other than by the owners corporation) in connection with the exercise by the agent of functions for the scheme during the preceding 12 months and particulars of any such commissions;

b) any such commissions and the estimated amount of any such commissions that the agent believes are likely to be received by the agent in the following 12 months (section 60).

A strata manager will need to inform the strata committee of any changes that need to be made to the report presented at the annual general meeting as soon as practicable if, for example, commissions are paid to the strata manager which differ from those referred to in the report (section 60).

A strata manager who does not give or update that report will be liable to a penalty of up to 20 penalty units.

Insurance

A strata managing agent will need to provide an owners corporation with not less than 3 quotations from different providers for each type of insurance proposed by the agent to the owners corporation or provide written reasons to the owners corporation if less than 3 quotations are provided (section 167).

Vacancy in Office of Executive Committee Member

A strata committee will now be able to appoint a person eligible for election as a member to fill a vacancy in the office of a member of the strata committee or an office bearer, other than a vacancy arising as a result of the election of a new committee at an annual general meeting (sections 35 and 45). Currently there is some doubt about the committee's ability to fill a casual vacancy on the committee. The reforms will remove that doubt.

Chairperson

For the first time, some of the functions of the chairperson of the owners corporation will be prescribed (section 42). The functions of the chairperson will include the following:

a) to preside at meetings of the owners corporation and the strata committee of the owners corporation;
b) to make determinations as to quorums and procedural matters at meetings of the owners corporation and the strata committee of the owners corporation.

Budgets

The initial budget for the administrative and sinking funds prepared before the first annual general meeting will need to take into account the initial maintenance schedule provided by the developer for that meeting (section 79).

An owners corporation of a large strata scheme will need to include in the budget for the capital works fund (previously known as the sinking fund) prepared at each annual general meeting a note as to any difference between the estimates in the budget and the estimates in the 10-year capital works fund plan and the reasons for the difference (section 79).

Special Levies

Special levies will now be able to be raised at a general meeting to either the administrative fund or the capital works fund (section 81).

Audits

The owners corporation for a large strata scheme, or a strata scheme for which the annual budget exceeds $250,000, will need to ensure that the accounts and financial statements of the owners corporation are audited before presentation to the annual general meeting (section 95). Currently, this requirements only exists for large schemes.

Legal Action

An owners corporation will still need to pass a resolution at a general meeting before obtaining certain types of legal services or taking certain types of legal action but if it fails to that will not invalidate any legal action it takes (section 103).

Building Defects

The agenda for the annual general meeting of an owners corporation will need to include consideration of building defects and rectification until the end of any applicable statutory warranty (Schedule 1, clause 6).
As mentioned earlier, the developer will not be entitled to vote or exercise a proxy vote on a matter concerning building defects or rectification of building defects (Schedule 1, clause 15).

Strata Inspections by Developers

For the purpose of complying with requirements for giving notice of a meeting of the owners corporation, the developer or an agent authorised in writing by the developer will be entitled to inspect the strata roll without payment on making a written application (section 183).

Conclusion

The Bill contains some very useful reforms concerning strata meeting practice and procedure. The highlights of the new laws include provisions allowing:

- meeting attendance and voting by video;
- flexible quorum arrangements;
- power to decide when to hold the AGM each year.

The new laws that will outlaw proxy farming and clarify that strata committees will be entitled to fill casual vacancies on committees will also prove helpful.

However the jury is still out on whether the reforms designed to increase tenant participation will prove worthwhile. And some of the new laws, particularly those giving more rights to unfinancial owners, will certainly prove controversial.

Ultimately, the new laws will prove useful and should modernise and improve the way strata schemes are managed.

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Levy Collection

Under the Strata Schemes Management Bill 2015

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UNDER THE STRATA SCHEMES MANAGEMENT BILL 2015

Introduction

The New South Wales Government has recently passed the Strata Schemes Management Act 2015 (SSMA 2015) and the Strata Schemes Development Act 2015. The new legislation will commence operation later in 2016.

The Acts are designed to overhaul the way strata schemes will be managed in the future in New South Wales. Consultation in relation to these new changes commenced in 2011 when submissions were invited from key stakeholders in the industry and strata experts. The new legislation is said to reflect community sentiments and the submissions received by the government during the consultation process.

This paper is limited to the consideration of levy recovery under the SSMA 2015. In particular it focuses on some of the important changes proposed in the area of collecting overdue contributions, interest and costs. In this paper contributions will be referred to as levies.

Levy Recovery

- It is settled law that before an owners corporation (OC) can recover outstanding levies it has to levy a contribution to be paid into the Administrative or Sinking Funds of the OC by a lot owner.

Current Position

- Currently the raising of a levy is governed by Section 78 of the Strata Schemes Management Act 1996 (the SSMA).

Section 78 of the SSMA states:-

1) *An owners corporation levies a contribution required to be paid to the administrative fund or sinking fund by an owner of a lot by serving on the owner a written notice of the contribution payable.*

2) *Contributions levied by an owners corporation must be levied in respect of each lot and are payable (subject to this section and section 77) by the owners in shares proportional to the unit entitlements of their respective lots.*

3) *If, at the time a person becomes owner of a lot, another person is liable in respect of the lot to pay a contribution, the owner is jointly and severally liable with the other person for the payment of the contribution and interest on the contribution.*

4) *A mortgagee or covenant chargee in possession of a lot (whether in person or not) is jointly and severally liable with the owner of the lot:*

   a) *For any regular periodic contributions to the administrative fund or sinking fund together with any interest on those contributions, and*

   b) for any other contribution together with interest on that contribution if the mortgagee or covenant chargee has been given written notice of the levy of the contribution.

5) *Subsection (4) does not affect the liability of an owner of a lot for any contribution levied under this section.*

6) *Regular periodic contributions to the administrative fund and sinking fund of an owners corporation are taken to have been duly levied on an owner of a lot even though notice levying the contributions was not served on the owner."*

New Position

- Under the SSMA 2015 the levying of contributions will now be contained in Section 83 which states as follows:-

1) *An owners corporation levies a contribution required to be paid to the administrative fund or capital works fund by an owner of a lot by giving the owner written notice of the contribution payable.*

2) *Contributions levied by an owners corporation must be levied in respect of each lot and are payable (subject to this section and section 82) by the owners in shares proportional to the unit entitlements of their respective lots.*

3) *Any contribution levied by an owners corporation becomes due and payable to the owners corporation on the date set out in the notice of the contribution. The date must be at least 30 days after the notice is given.*

4) *Regular periodic contributions to the administrative fund and capital works fund of an owners corporation are taken to have been duly levied on an owner of a lot even though notice levying the contributions was not given to the owner."*

Key differences between Sections 78 -v- 83

- Section 78 at present regulates levying of contributions on owners of lots within a strata scheme and the liability of mortgagees in possession and other persons for such contributions.

- The new Section 83 is in part similar to Section 78 but not entirely.

- Section 83 will now be the new provision which will regulate levying of contributions on owners within a strata scheme. It will no longer be the provision which will also regulate the levying of contributions on persons other than owners such as a mortgagee in possession.

An entirely new provision, namely Section 84, will now regulate the liability of persons other than owners for contributions such as a mortgagee in possession. (See discussion below re: Section 84).

At present there is no requirement under Section 78 that requires a levy notice to specify that a levy will become due and payable 30 days after the levy notice is given. However, Section 80 of the SSMA 1996 enables recovery of outstanding levies at the end of 30 days.

- The new Section 83(3) now specifically states that any contribution becomes due and payable on a date specified in the levy notice which "must be a date at least 30 days after the notice is given".

- It appears that s83(3) will now require a levy notice to specify a specific date when the levy will become due and payable which must be a date at least 30 days after the notice has been given.

Issuing levy notices

- One issue that is always raised by lot owners in defending a levy claim under the current law is the need for the OC to issue a levy notice.

- In most defended levy collection claim, lot owners would often claim that they did not receive a levy notice and therefore they are not entitled to pay the levy, interest or costs.

- Section 83(4) retains Section 78(6) of the SSMA 1996 and therefore there will be no legal obligation for an OC to issue a levy notice (even though this is done) to an owner under Section 83(4) for ordinary levies.

- If the proposed changes were to require the issuance of a levy notice as a precondition to the collection of an outstanding levy then the process of collecting same would have been cumbersome and time consuming. Luckily from an OC's perspective the new proposed section 83(4) does not require a levy notice to be issued even though all most all strata schemes do issue levy notices to owners.

- The onus therefore under the new regime still remains with the lot owner i.e. it is the owner who has to be proactive and diligent in paying levies even though a levy notice may not have been issued by the OC.

Liability of mortgagees in possession and other persons to pay contributions

- A new Section 84 will now separately deal with a liability of former owners and mortgagees in possession of a lot.
- Section 84 states:

1) *If, at the time a person becomes the owner of a lot, another person is liable to pay a contribution in respect of the lot, the owner is jointly and severally liable with the other person for the payment of the contribution and any interest on the contribution.*

2) *A mortgagee or covenant chargee in possession of a lot is jointly and severally liable with the owner of the lot:*

   a) *for any regular periodic contributions to the administrative fund or capital works fund together with any interest on those contributions, and*
   b) *for any other contribution together with interest on that contribution taken to recover unpaid contributions, if the mortgagee or covenant chargee has been given written notice of the levy of the contribution, and*
   c) *for any costs payable as a debtor in respect of enforcement action to recover unpaid contributions.*

3) Subsection (2) does not affect the liability of an owner of a lot for any contribution levied under this section."

- The liability for other persons to pay contributions under s.84 is the same as that contained in the present Section 78(3), (4) and (5); however, Section 84 goes a step further.

- Section 84(c) states that the mortgagee in possession will be jointly and severally liable "for any costs payable [emphasis added] as a debtor in respect of enforcement action to recover unpaid contributions."

- At present, Section 78 does not say that a mortgagee in possession of a lot is also required to pay costs and expenses incurred in an action to recover outstanding levies, although, levy recovery lawyers always argued that since the mortgagee in possession was in the shoes of the lot owner, therefore, it is obliged to pay such costs of a recovery claim. The mortgagee in possession obviously argued otherwise.

- Section 84(c) now clarifies this dilemma by making sure that a mortgagee in possession is also liable for any recovery expenses for unpaid contributions.

10% Interest

- Section 79(2) of the SSMA 1996, states that if a contribution is not paid at the end of one month after it becomes due and payable, that contribution attracts 10% interest or any other rate if such is prescribed by the regulations.

- Section 79(2) is retained in the new Section 85(1).

- Section 85(1) states:

1) *A contribution, if not paid when it becomes due and payable, bears until paid simple interest at an annual rate of 10% or, if the regulations provide for another rate, that other rate."*

- Section 85 is in two parts. Section 85(1) and (2).

- Section 85(1) – states that a contribution if not paid when it becomes due and payable, bears until paid, simple interest at an annual rate of 10%.

- Section 85(1) omits from it the words "*at the end of one month after ....*" which is contained presently in section 79(2).

- Instead of keeping these words in Section 85(1) there is now a new Section 85(2) which is a separate provision.

- Section 85(2) states exactly the same thing which is said in the current Section 79(2) but with more clarity that no interest will accrue if the contribution is paid no later than one month after it becomes due and payable.

Waiver of interest on overdue levies

- Presently Section 79(3) states that the owners corporation may by "*special resolution*" decide that no interest will be payable on a contribution. To obtain such a resolution, the legislation requires a

general meeting to be requisitioned and a motion carried through at that general meeting to waive the interest in favour of the lot owner who has requested a waiver of interest.

- In the new Section 85(3), it is interesting to observe that a special resolution is no longer necessary. A simple resolution will suffice. In other words the executive committee is able to pass a resolution agreeing to a request for the waiver of interest. The executive committee can convene a meeting and resolve that the OC will waive interest either generally or in a particular case.

- The proposal seems to be making the process of granting a request for the waiver of interest in certain cases, much easier than it is presently.

Discounts

- Similarly the existing Section 79(4) is a provision where a lot owner can request the owners corporation to determine that a person will pay 10% less of a contribution if the person pays the contribution before the due date of the contribution. This request at present can only be approved by the owners corporation at a general meeting and by special resolution.

- Under the new section 85(4) a special resolution is no longer required.

- Therefore if a person pays a contribution before it becomes due and payable, the OC, if requested, may give a discount of 10% to that person without any need for the OC to approve such a discount by a special resolution at a general meeting.

Payment Plans

- Under the current SSMA 1996, there is no specific provision or allowance to cater for payment plans for the payment of contributions.

- Even though there is no such requirement allowing the OC to enter into payment plans, a number of strata schemes have been entering into payment plans on an ad hoc basis and in appropriate cases.

- Cases which have proceeded to Court for a recovery action, a number of strata lawyers have used payment plans or instalment orders as a way of settling levy claims. Often a clause will be negotiated for inclusion in the consent orders stating that if the judgment debtor defaults on any instalment then the entire sum, i.e. the entire judgment sum, will become due and payable less any payments made such that the OC can continue with the recovery of the debt.

- Currently, the OC has no legal obligation to accept payment plans. In other words, the existing law treats all owners equally and makes no allowance for owners facing financial stress.

- During the consultation period, it was suggested to the NSW Government that executive committees or agents be given the ability to defer the whole or any part of the levies for a reasonable period on conditions as it thinks fit, or approve a flexible payment plan if an owner is facing genuine financial hardship.
- It was further suggested that if an OC unreasonably refuses any request of deferring payment of contributions or payment plans, then the owner should be able to apply for an appropriate order.

- Payment plans are now reflected in the new section 85(5)-(7) of the SSMA 2015. For the first time the owners corporation will be given a right to enter into payment plans for the payment of overdue contributions, by approving such by a resolution.

- It is important to note that a special resolution is not required for the approval of a payment plan if the OC was minded to enter into one.

- Section 85 further states that the regulations may prescribe the requirements for payment plans. At present, the regulations have not been finalised but they have just been released for discussions.

- *Clause 19* of the draft *Strata Schemes Management Regulation 2016* provides how a payment plan is to be managed.

- It provides that the owners corporation will have to do the following things in relation to a payment plan:

19 ayment plans for unpaid contributions: section 85 (6) of the Act

1) A payment plan for the payment of overdue contributions is to be in writing and is to contain the following:

a) *the name of the lot owner and the title details of the lot,*
b) *the address for service of the lot owner,*
c) *the amount of the overdue contributions,*
d) *the amount of any interest payable for the overdue contributions and the way in which it is calculated,*
e) *the schedule of payments for the amounts owing and the period for which the plan applies,*
f) *the manner in which the payments are to be made,*
g) *contact details for a member of the strata committee who is to be responsible for any matters arising in relation to the payment plan,*
h) *a statement that a further plan may be agreed to by the owners corporation by resolution,*
i) a statement that the existence of the payment plan does not limit any right of the owners corporation to take action to recover the amount of the unpaid contributions.

2) The strata committee must give a lot owner who has entered into a payment plan a written statement for each calendar month of the plan that sets out the payments made during that month and the amount of unpaid contributions and interest owing.

- The regulations do not provide the requirements that will trigger the need for a payment plan.

- Section 85 further states that a payment plan will not limit the right of the OC to take action to recover the amount of unpaid contributions.

- The suggestion that the OC or the agent be given the authority to defer in whole or in part the levies have not been adopted in the new Act.

- Some concerns have been raised in relation to payment plans.

- Even though the OC may enter into a payment plan, there is nothing to prevent the OC from taking action to recover unpaid levies.

- This was said to bring about some level of confusion and unfairness. It was suggested that section 85(7) should be amended to clarify that the OC cannot take any action to recover levies the subject of a payment plan where there is no default under that payment plan. This suggestion was not adopted.

- Conversely, if an owner does not comply with a payment plan and defaults under it, the legislation should provide that the OC can immediately recover the balance with or without interest. Although this has not been expressly stipulated nonetheless under section 85 (7) the OC's rights to recover is not limited.

- Section 85 allows payment plans for overdue contributions.

- Is overdue interest covered under the payment plan? Yes it is. The overdue interest is now reflected in Clause 19 (1) (d) of the proposed regulations. The regulation requires the amount of interest to be stated in the payment plan and how it has been calculated.

- The use of the phrase "*generally or in particular cases*", in section 85(5) is vague. The phrase is not defined and therefore it is unknown what can be a general or a particular case. It was expected that the regulations will give some guidance as to what will amount to a general or a particular case but the proposed regulation is silent on this issue at present.

- Commentators had previously requested that the new Act should spell out the circumstances which could lead to the establishment of a payment plan such as the owner suffering financial hardship due to unemployment, illness, a special levy or any other reasonable cause. This has not been adopted in the new Act.

- Entry into the payment plan is not mandatory because of the use of the word "*may*" in section 85(5). In other words, it is the OC which holds the sole right to determine whether it will enter into a payment plan or not, rather than the owner having a legal right when experiencing financial hardship to ask for and be granted an appropriate payment plan. The owners corporation can choose not to enter into a payment plan for any reason that it chooses or, for that matter, no reason at all.

- Representatives of the owners previously argued that the new legislation gave an incentive to debt collectors and lawyers to be litigious rather than resolving disputes and encouraging payment arrangements.

- As a consequence of this imbalance of power, it was strongly argued that there was a need to establish in section 85 a right for an owner to enter into a payment plan in deserving cases and a further right to be given to the owner to a review process if such becomes necessary.

- Section 85(5) only allows entry into a payment plan when contributions have become overdue. The section prevents the OC from entering into a payment plan prior to any contribution becoming overdue.

- In other words, an owner cannot expect an OC to agree to a payment plan until such time that the levy has become overdue, even though the owner may wish to enter into a payment plan knowing full well that a contribution, or a set of contributions, will in all likelihood in the future not met.

Recovery of Unpaid Contributions and Interest

Current Position

- At present, the OC recovers any overdue levies, interest and expenses due to it from a lot owner under section 80(1) of the SSMA.

- Section 80(1) of the SSMA states as follows:

1) An owners corporation may recover as a debt a contribution not paid at the end of one month after it becomes due and payable, together with any interest payable and the expenses of the owners corporation incurred in recovering those amounts."

- Section 80(1) requires an OC to recover as a debt a contribution "*together with*" any interest and expenses.

- It is settled law that under section 80(1) an overdue contribution, interest and any expenses incurred in recovering contributions are treated as a **statutory debt** because section 80 says so.

- In the case of *Dimitriou* the NSW Court of Appeal held that the word "*expenses*" in section 80 includes "legal expenses" reasonably incurred and is reasonable in amount.

- Interest and expenses as explained in *Dimitriou* requires that such be claimed in the same proceedings that have been brought for the recovery of levies because of the words "together with" in section 80.

- Currently it is only a Court of Law that has jurisdiction to hear levy recovery claims and not the NCAT.

Position under the new Act

- Sections 86(1) and (2) will become the substantive section that will regulate the recovery of unpaid contributions, interest and expenses.

- Section 86(1) states as follows:

1) The Tribunal may, on application by an owners corporation, order an owner of a lot in the strata scheme, or other person, to pay any of the following that are payable by the owner or other person under this Act:

a) *a contribution not paid at the end of one month after it becomes due and payable,*
b) *any interest payable on an unpaid contribution,*
c) *the expenses of the owners corporation incurred in recovering any such amounts.*

Note. Section 78 of the Civil and Administrative Tribunal Act 2013 provides for the recovery as a judgment debt of amounts ordered to be paid by the Tribunal.

New South Wales Civil & Administrative Tribunal (NCAT)

- For the first time, jurisdiction will be given to NCAT by extension to allow NCAT to accept and determine levy recovery claims.

- Section 86(1) is not designed to give NCAT the exclusive jurisdiction to hear levy recovery actions but it is an alternative route.

- Section 86(1) states that the Tribunal "*may*" on application order an owner to pay a contribution, interest and expenses.

- The use of the word "*may*" indicates that it is not mandatory that levy recovery claims, interest and expenses be lodged in the Tribunal.

- If a claim is to be lodged in NCAT and a judgment is given in favour of the OC, then section 78 of the *Civil and Administrative Tribunal Act 2013* requires the Registrar to issue a certificate which can then be filed with a Court of competent jurisdiction and registered as a judgment of that Court for enforcement purposes.

- One interesting observation of section 86(1), in comparison to section 80(1) of the SSMA 1996, is that section 86(1) does not say that the outstanding contribution, interest and expenses is or will be treated in the Tribunal as a "statutory debt" to begin with, although it is anticipated that the Tribunal is more than likely to hold that such is a statutory debt in light of Dimitriou.

- Further, section 86(1) does not have the words "together with" as is the case presently under section 80(1) of the SSMA 1996.

- On the one hand, the exclusion of the words "together with" is a favourable development for the OC as it allows the owners corporation not to be forced into bringing a claim for any interest and expenses in the same proceedings for the claim for outstanding levies.

- In other words, under section 86(1), if the owners corporation decides to go to NCAT, separate proceedings can still be brought to claim interest and expenses if they have not been brought as part of the same proceedings for recovering levies.

- To minimise costs, it is anticipated that action will still be brought for levies, interest and expenses in the same proceedings and a second or third action may only become necessary if the OC has missed out on any interest or expenses that should have been claimed in the first instance.

- As stated above, section 86(1) nonetheless gives the OC an option to go to NCAT to recover outstanding levies, interest and the expenses although it is to be noted that the right of getting an order for costs in NCAT is limited.

- Section 86(2) of the new Act on the other hand is similar to section 80(1) of the SSMA 1996 as this section gives an OC the right to recover contributions, interest and expenses in a Court of competent jurisdiction and the outstanding contributions, interest and expenses are treated under this section as a "statutory debt" as is the case currently under section 80(1).

- Section 86(2) also omits from it the words “together with”, which means a levy recovery claim does not necessarily have to also be a claim together with interest and expenses.

- It is common for an OC to incur in some cases substantial enforcement costs after the conclusion of the proceedings.

- Under section 80(1) of the SSMA 1996 and in the light of what has been said in Dimitriou, enforcement costs which come after the conclusion of the proceedings cannot be claimed in later proceedings. This meant that the OC had to fund such from its own pocket.

- With the omission of the words “together with” from sections 86(1) and (2), it means that further proceedings can be commenced to recover any interest and expenses that the OC may have missed or not claimed as part of the initial proceedings.

- One further observation in relation to section 86(1) and (2) is, that it does not pick up the comments in Dimitriou that expenses have to be reasonable. The word “reasonable” does not appear in 86(1) and (2).

- Some commentators had argued that the legislation should have inserted instead of the words “the expenses” in section 86(1) and (2), the words “the reasonable expenses ” [my emphasis added] to reflect what the Courts have recently said in relation to the recovery of expenses.

- It was argued that these sections should have been amended and as a bare minimum, the word “reasonable” inserted so as to avoid any doubt that only expenses that have been reasonably incurred and are reasonable in amount were recoverable. This was not adopted in the new Act.

- In the author’s view it does not really matter whether the word “reasonable” was introduced or not in sections 86(1) and (2) because the Court of Appeal in Dimitriou has explained that the recovery of expenses incurred in recovering outstanding contributions have to be reasonably incurred and reasonable in amount before they are recoverable. In light of this there is no need to insert the word “reasonable” in sections 86(1) and (2).

Conclusion

- The SSMA 2015 does not in the area of levy recovery bring about any drastic changes in comparison to what is the existing position such as to place the OC at a serious disadvantage when it comes to collecting overdue levies, interest and costs.

- The proposed changes have attempted to strike a fine balance between the rights of the OC and the lot owner.

- There were some outrageous suggestions received by the government during the consultation process which if it was adopted would have made recovering of levies, interest and costs much more difficult.

- As the regulations have just been released it will be interesting to see in the months to come what further changes may be brought about to the regulations.

- I suggest to all participants that you keep a close watch of our website as we will bring to your attention further developments in relation to the framing of the regulations

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BUILDING DEFECTS

Under the Strata Schemes Management Bill 2015

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BUILDING DEFECTS UNDER THE STRATA SCHEMES MANAGEMENT BILL 2015

What the Act Covers

- The *Strata Schemes Management Act 2015* (Act) contains new laws concerning building defects.
- These new laws are contained in Part 11 of the Act.
- The new laws are expected to commence on 1 July 2017.
- The new laws impose obligations on developers to arrange:
    - An interim defects report;
    - A final defects report;
    - Payment of a building bond.
- The new laws will apply to:
    - Residential strata schemes;
    - Mixed use strata schemes with residential components;
    - New buildings (i.e. Building work carried out by or on behalf of a developer for the purposes of, or contemporaneously with, the registration of a strata plan).
- The new laws will not apply to:
    - Wholly commercial and industrial buildings;
    - Buildings that have or should have Home Building Compensation Fund Insurance (i.e. low rise buildings);
    - Building work for which the contract was entered before the commencement of the new laws;
    - Building work, for which there is no contract that was started before the commencement of the new laws.

What Defects Are Covered?

- The new laws in the Act cover defective building work.
- Defective building work is defined in the Act by reference to the *Home Building Act 1989* warranties (i.e. work that is not done with due care and skill).

When Does Time Start to Run?

- Time for events to occur under the Act starts to run from the date of completion of building work.
- Completion of building work is defined in accordance with s3C of the *Home Building Act* 1989.
- Typically, the date of completion of building work will be the date of issue of an occupation certificate authorizing occupation and use of the whole of the building.
- If the building work involves construction of two or more separate buildings there will be separate dates of completion of that building work.

Interim Report

- The developer must appoint an unconnected, qualified building inspector approved by the owners corporation not later than 12 months after completion of the building work to inspect and report to the owners corporation not earlier than 15 months and not later than 18 months after completion.
- If the developer and the owners corporation fail to agree on a building inspector or the developer fails to comply with the requirement to appoint a building inspector, the owners corporation may advise the Secretary who will appoint a building inspector to carry out an inspection and report.
- The report must:
    - Identify any defective building work;
    - If reasonably practicable, identify the cause of that defective building work;
    - Be in the form and contain the matters prescribed by the Regulations.
- The cost of the interim report is to be borne by the developer.
- The developer will not need to arrange an interim report if the initial period does not expire within 12 months from the date of completion of the building work.

Final Report

- The developer must, not later than 18 months after the building work is completed, arrange for the building inspector who prepared the interim report to do a final inspection and prepare a final report not earlier than 21 months and not later than 2 years after the completion of the building work.
- If the building inspector who prepared the interim report is unavailable, the developer must advise the Secretary who will appoint another qualified building inspector to prepare the final report.
- If the developer fails to arrange for a building inspector to prepare a final report the owners corporation may notify the Secretary who must appoint a qualified person to provide the final report.
- If the interim report identified no defective building work, the developer can apply to the Secretary for permission to dispense with the need to prepare a final report.

- The final report must:
    - Identify defective building work identified in the interim report that has not been rectified;
    - Identify any defective building work arising from rectification of defective building work identified in the interim report;
    - Specify how the defective building work identified in the report should be rectified;
    - Contain an assessment of the likely cost of rectifying defective work not rectified since the interim report or that arises from rectification of any such work;
    - Not contain matters that relate to defective building work not identified in the interim report other than work arising from rectification of defective building work;
    - Be in the form and contain the matters prescribed by the Regulations.

Delivery of Reports

- A building inspector must give a copy of an interim report or a final report not later than 14 days after completing the report to the developer, the owners corporation, if the initial period has ended, the Secretary, and the builder responsible for any defective building work identified in the report.
- An owners corporation must give written notice to the owners of lots in the strata scheme of the receipt of an interim report or a final report not later than 14 days after receiving the report.
- An interim and final report must be considered by a court or tribunal in any building defects claim.
- The Secretary can vary the time to provide an interim or final report.

Cost of Reports

- The developer must pay the costs of obtaining an inspection and report by a building inspector.

Access

- An appointed building inspector may enter and inspect any part of the strata scheme upon giving at least 14 days written notice of intention to enter for the purpose of preparing a report. The owners corporation, the strata manager, the building manager, owners, occupiers and exclusive users must provide reasonable assistance to enable the inspection to take place.
- The builder may enter the strata scheme at any time before completion of a final inspection on the giving of at least 14 days written notice to the owners corporation, the developer, and the owner and occupier of any lot, to rectify any defective building work.
- The Tribunal may make orders requiring any occupier of a lot to grant access for inspection or rectification of defective building work on the application of an owners corporation, developer, building inspector or builder.

Qualifications of Building Inspector

- To be eligible for appointment as a building inspector, a person must be a member of a strata inspector panel established by one of various building industry bodies such as the Master Builders Association of NSW.
- A building inspector must disclose previous employment with, or contractor work for, the developer that occurred at any time within the period of 2 years before appointment as a building inspector.

Building Bonds

- The developer must give the Secretary a building bond in the sum of 2% of the contract price for the building work before an occupation certificate is issued for the building work.
- The contract price for the building work is the price paid under the contract for that work, or if the work has not been completed, the reasonable estimate of the price payable under the contract for that work.
- The purpose of the building bond is to secure funding for the payment of the cost of rectifying defective work identified in a final report.

Payment Out of Building Bonds

- The whole or part of the building bond is payable as follows:
    - To the owners corporation to meet the cost of rectifying defects identified in the final report.
    - To the developer if there is no defective building work or no further costs for rectification identified in the final report.
    - To the owners corporation, with the consent of the developer, on joint application to the Secretary made within 14 days after the expiry of a period of 2 years from the date of completion of the building work or 60 days after the Secretary is given the final report by the building inspector (whichever occurs later).

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- A building inspector must disclose previous employment with, or contractor work for, the developer that occurred at any time within the period of 2 years before appointment as a building inspector.

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    - To the owners corporation to meet the cost of rectifying defects identified in the final report.
    - To the developer if there is no defective building work or no further costs for rectification identified in the final report.
    - To the owners corporation, with the consent of the developer, on joint application to the Secretary made within 14 days after the expiry of a period of 2 years from the date of completion of the building work or 60 days after the Secretary is given the final report by the building inspector (whichever occurs later).
- The building bond must be paid out within either 2 years after the date of completion of building work or 60 days after the final report is given to the Secretary by the building inspector, whichever is later.
- The Secretary must not pay a building bond unless the Secretary has given at least 14 days written notice to the owners corporation and the developer of the strata scheme of the proposed payment or any application to review the Secretary's decision to pay the bond has been determined or withdrawn.

Use of Building Bonds

- An owners corporation that has been paid a building bond must:
    - within a reasonable time use the amount paid for or in connection with rectifying the defective building work for which it was received or costs related to the rectification;
    - repay to the developer any amount of a building bond that is not required for such a purpose; and
    - give to the developer written notice of the completion of the rectification work.

Review of Decisions

- Many decisions of the Secretary are reviewable. These include decisions to:
    - appoint a building inspector to carry out a final report;
    - exempt a developer from the need to arrange a final report;
    - vary the period within which an interim report or final report is to be provided, or other action is to be done;
    - release a building bond for payment to an owners corporation, developer or other person.
- A decision by the Secretary to claim or realise a building bond for payment is not reviewable if the amount has been paid in accordance with the decision.
- An application for a review of a decision of the Secretary must be made not later than 14 days after notice of the decision is given by the Secretary to the interested person.
- The application to review a decision of the Secretary must:
    - be in writing and signed by the applicant, and
    - specify the decision for which a review is sought and the grounds on which the review is sought, and
    - specify any additional information that is provided by the applicant for the purposes of the review and indicate why the information was not previously provided, and
    - provide an address for giving notice to the applicant of the decision by the Secretary on the review.
- The review is conducted by a member of staff of the Department of Finance, Services and Innovation who was not involved in making the decision under review.

Are Other Rights Affected?

- The provisions in the Act will not affect other rights of an owners corporation in relation to defective work

Other Matters

- The developer cannot cast a vote in person or by proxy on a motion on a matter concerning building defects.

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About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for almost 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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