

JS Mueller & Co Forum: 25 October 2016

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**CHAIRPERSON:** Jeffrey Mueller | Partner | BCOM LLB



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# **Levy Collection**

## **Procedural Changes under the new laws.**

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**Faiyaaz Shafiq | Senior Lawyer | LLB, GDLP**



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# Levy Collection

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**Strata Schemes Management Act 2015 (SSMA)**  
**Strata Schemes Development Act 2015**



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# Levy Recovery

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This presentation covers the following key areas from the new reforms:

1. Current and New Position
2. Section 83 SSMA
3. Section 84 SSMA
4. Recovering Levies, Interest & Costs
5. Jurisdiction



# Current and New Position

Current Position	New Position
<p>Section 78 – regulates levy for:</p> <ul style="list-style-type: none"><li>○ owners</li><li>○ other persons; and</li><li>○ mortgagees in possession.</li></ul>	<p>OC to now raise levies under s83 SSMA 2015.</p>



# Section 83 SSMA

## Key Points

Current Position	New Position
<p>Section 78:</p> <ul style="list-style-type: none"><li>▪ one stop shop for owners, other persons and mortgagees in possession</li><li>▪ no specific date required in levy notice</li><li>▪ no obligation to issue notice</li></ul>	<p>Section 83:</p> <ul style="list-style-type: none"><li>▪ will regulate levies for owners</li><li>▪ date to be specified in the notice</li><li>▪ no obligation to issue notice</li></ul>



# Section 84 SSMA

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## Section 84

- regulates liability for other persons and mortgagees in possession
- adopts s78 (3), (4) and (5)
- Mortgagees in possession liable for costs (84(2) (c))
- s78 was silent

## Other Key Points

- 10% Interest retained. S85 (1)
- Waiver of interest
- Discount on levies
- Payment plans



# Recovering Levies, Interest & Costs

Current Position	New Position
<ul style="list-style-type: none"><li>▪ s80 (1) SSMA 1996 regulates this</li><li>▪ <i>"together with"</i> interest and expenses in the same one action</li><li>▪ Remember – Court of Appeal in Dimitriou</li><li>▪ Expenses - <i>"reasonably incurred"</i> and <i>"reasonable in amount"</i></li><li>▪ Court of law has jurisdiction to hear a levy recovery claim</li></ul>	<ul style="list-style-type: none"><li>▪ Sections 86(1) &amp; (2) – will now regulate recovery</li><li>▪ No <i>"together with"</i></li><li>▪ Dimitriou's case still good law on the reasonableness of the expenses</li></ul>





# Jurisdiction

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- OC can now recover in two places:
  - NCAT; and
  - Court of Law
- Under s86 (1) – query if the outstanding levies, interest and expenses a “*statutory debt*”
- Section 86(1) does not have the words “*statutory debt*” in it
- Under s86 (1) – query if the owners corporation can still include expenses on the owner ledger? Not clear and doubtful



# Jurisdiction

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- Section 86(2) – a better provision and similar to s80 (1)
- Under s86(2):
  - I. you go to Court to recover.
  - II. Levies, interest and expenses treated as a “*statutory debt*”.
  - III. no need to claim interest and expenses in the same one action because the words “*together with*” have been omitted.

## Splitting of Jurisdiction

- Query if you can commence action for levies in NCAT and action in Court for interest and expenses or vice versa.

# Thank You!



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# **Works By-laws & NCAT**

## **How will they operate under the new laws?**

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**James Moir | Senior Lawyer | BA LLB**



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# Works By-laws

This presentation covers the following key areas from the new reforms:

- 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	<ul style="list-style-type: none"> <li>Pet option A – any animal can be kept (not only small dogs) on notice being given</li> </ul>
			<ul style="list-style-type: none"> <li>Smoking – 3 options now</li> </ul>
			<ul style="list-style-type: none"> <li>A – smoke must not penetrate CP or another lot</li> </ul>
			<ul style="list-style-type: none"> <li>B – smoking only allowed with consent of OC or in a designated area, plus smoke must not penetrate CP or another lot</li> </ul>
			<ul style="list-style-type: none"> <li>Massive by-law re 15 re disposal of waste</li> </ul>
			<ul style="list-style-type: none"> <li>By-law 17 – compliance with planning – much more basic than the Muellers short-term letting one</li> </ul>
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



# A. Summary of Relevant Legislation Con't

New Section	Old Section	Description	Comment
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

# A. Summary of Relevant Legislation Con't

New Section	Old Section	Description	Comment
109(1)	New	<p><u>Cosmetic work</u> can be done without needing approval, but subject to owner rectifying damage to CP and carrying out work properly</p> <p>By-law may specify additional work that is cosmetic, but can't be one of the exclusions in s109(5)</p>	Some of these items involve alterations to CP and 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	<p>Exclusions – this cannot be deemed cosmetic work:</p> <ul style="list-style-type: none"> <li>▪ minor renos (s110)</li> <li>▪ structural work</li> <li>▪ work changing the external appearance</li> <li>▪ waterproofing or work affecting plumbing or exhaust system</li> <li>▪ work affecting safety, like fire systems</li> <li>▪ reconfiguring walls</li> <li>▪ work needing a DA</li> </ul>	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.



# A. Summary of Relevant Legislation Con't

New Section	Old Section	Description	Comment
110(1)	New	Minor renovations can be done with the approval of OC by ordinary resolution, no by-law needed. Minor renos include:	Re the walls – this means altering non-structural walls can be done as a minor reno
		▪ kitchen renos	The OC can pass a by-law saying the strata committee (EC) can determine these applications
		▪ recessed light fittings	
		▪ hard flooring	
		▪ wiring or electrical work	
		▪ reconfiguring walls	
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.

# A. Summary of Relevant Legislation Con't

New Section	Old Section	Description	Comment
110(7)	New	Exclusions – this cannot be deemed a minor renovation:	The following works can be minor renos, as they are not excluded under 110(7) like they were under 109(5):
		▪ cosmetic work (s109)	▪ work affecting safety, like fire systems. Not excluded like it was for cosmetic work
		▪ structural work	▪ work affecting plumbing or exhaust system
		▪ work changing the external appearance	
		▪ waterproofing	
		▪ work needing a DA	
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 & means the James case position will continue to apply, & 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



## B. Summary of Changes to How Works are Dealt With

Type of work	Position under current Act	Position under new Act
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

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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:

## C. Generic or Blanket By-laws

- a. Structural work (internal walls)
- b. Work changing the external appearance (pergolas, awnings, & possibly solar panel & 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.

## C. Generic or Blanket By-laws

- Type 2

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

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);



## C. Generic or Blanket By-laws

- a. 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.
- b. 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



## D. Individual Works By-laws

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- 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.



# Differences Under the New Act – NCAT Proceedings

Item	1996 Act	2015 Act	Comments
<b>No more adjudication</b>	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)
<b>Changing unit entitlements</b>	s.182	s.236	Same
Orders about <b>by-laws</b> , 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
<b>Pets</b>	ss.150-151	ss.156-158	Slightly different wording, but the effect is the same.

# Differences Under the New Act – NCAT Proceedings

<b>Interim orders</b>	s.170	s.231	The same – urgent considerations need to justify the making of the order.
<b>General power</b>	s.138	s.232	<p>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:</p> <ul style="list-style-type: none"> <li>(b) Any agreement authorised/required under the Act;</li> <li>(d) An agreement appointing a strata managing agent/building manager;</li> <li>(d) An agreement between the OC and an owner;</li> <li>(f) An exercise/failure to exercise a function conferred or imposed under another Act</li> </ul> <p>It was previously not clear whether the Tribunal could make orders about agreements with strata managing agents, for example.</p>
<b>Costs</b>	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.

# Thank You!



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# Meetings

## What are the changes under the new law

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Adrian Mueller | Partner | BCOM, LLB, FACCAL



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# **Strata Schemes Management Act 2015**

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## **Reforms to Meeting Practice & Procedure**



# Objective of Reforms to Meeting Procedure

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- 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

- Meeting notices will be able to be sent by email to owners who provide an email address for service (without an empowering by-law).
- Attendance at meetings via:
  - Teleconference
  - Video-conferencewill be possible if permitted by an by an owners corporation.
- Flexible quorum arrangements – no quorum, wait half an hour then declare a quorum.
- The AGM can be held at any time each financial year.



# New Ways to Vote

- The owners corporation and strata committee will be able to determine that a vote before or at a meeting may be made other than in person (e.g. electronic vote and votes cast by phone or video-link).
- The strata regulations allow an owners corporation to permit voting by:
  - a) teleconference, video-conferencing, email or other electronic means while participating in a meeting from a remote location; and
  - b) email or other electronic means such as a website before the meeting at which the matter (not being an election) is to be determined.
- Postal voting is not permitted.
- This will allow voting by secret ballot.



# Proxy Farming

- 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.



# Tenants Participation

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- Where the majority of units are tenanted, tenants will be able to:
  - attend owners corporation meetings (but not vote);
  - speak at owners corporation meetings (if permitted to);
  - have an elected representative on the strata committee (who will not be able to vote).
- A tenant may be excluded from a meeting in certain circumstances (e.g. raising levies or terminating scheme).
- The new laws will only apply to those tenants who have been notified to the owners corporation under a written tenancy notice.



# 1<sup>st</sup> AGM

- The agenda for the 1<sup>st</sup> AGM will now need to include motions to:
  - consider the strata manager's report concerning commissions;
  - receive the documents to be provided by the developer;
  - consider the developer's initial maintenance schedule;
  - consider building defects and rectification.



# AGM Notice

- The notice of each AGM will now need to include:
  - a call for nominations to the strata committee and the nominations already received;
  - a motion to consider a report as to commissions by the strata manager;
  - a motion to decide how to deal with overdue levies.
- The AGM notice will no longer need to include financial statements



# Minutes

- Minutes of 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.



# Unfinancial Owners

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- Unfinancial owners will now be allowed to:
  - require motions to be included in the agenda for a general meeting;
  - nominate a candidate for election to the strata committee.
  
- Unfinancial owners will not be allowed to:
  - vote at general meetings;
  - be elected onto the strata committee
  
- A member of the strata committee will not be entitled to move a motion or vote if the member:
  - is unfinancial; or
  - was nominated by an owner who is unfinancial.





# Conflicts of Interest

- A developer will not be entitled to vote or exercise a proxy vote on a matter concerning building defects.
- Members of a strata committee will need to disclose any pecuniary interest in a matter and, unless the committee otherwise determines:
  - must not be present for any deliberations on the matter; or
  - vote on the matter.



# Strata Managers

- An owner who is seeking appointment as a strata manager will not be entitled to vote or cast a proxy vote on the appointment at a meeting of the owners corporation.
- A strata managing agent will need to report the following at each AGM:
  - a) whether any commissions have been paid to the agent (other than by the owners corporation) during the previous 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.
- A strata manager will need to update the report concerning commissions if there are any changes.
- A strata manager who does not give or update that report will be liable to a penalty of up to 20 penalty units.



# Insurance and Vacancy in Office

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## Insurance

- A strata manager will need to provide an owners corporation with at least 3 insurance quotes.
- If a strata manager provides less than 3 insurance quotes, written reasons will need to be given to the owners corporation.



## Vacancy in Office of Executive Committee Member

- A strata committee will now be able to fill a casual vacancy on the strata committee



# Budgets and Special Levies

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## Budgets

- The initial budget prepared before the 1<sup>st</sup> AGM will need to take into account the initial maintenance schedule provided by the developer.
- An owners corporation of a large strata scheme will need to explain any differences between the estimates in the budget and the estimates in the 10-year capital works fund plan.

## Special Levies

- Special levies will now be able to be raised to either the administrative fund or the capital works fund.



# Audits, Legal Action & Building Defects

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## Audits

- Audits will be mandatory for:
  - large strata schemes; or
  - strata schemes with an annual budget greater than \$250,000.

## Legal Action

- An owners corporation will still need to pass a resolution at a general meeting before taking certain types of legal action but if it fails to that will not invalidate any legal action it takes.

## Building Defects

- AGM agendas will need to include a motion concerning building defects until the end of any applicable statutory warranty period.



# Conclusion

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- 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.

# Thank You!



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# **Building Defects**

## **What impact will the new laws have?**

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**Anna Minassian | Lawyer | LLB BBC**



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# Strata Schemes Management Act 2015

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## Building Defects



# Building Defects

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This presentation covers the following key areas:

1. What the Act Covers
2. Interim Report
3. Final Report
4. Building Bonds



# What the Act Covers



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# What the Act Covers

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- 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.



# What the Act Covers

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- 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).



# What the Act Covers

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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?

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- 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.
  - work that is not done with due care and skill
  - work that is not done in accordance with plans and specifications
  - materials that are not fit for purpose
  - work that does not result in a dwelling that is fit for occupation as a dwelling



# When Does Time Start to Run?

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- 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 issue of an occupation certificate for the whole building.





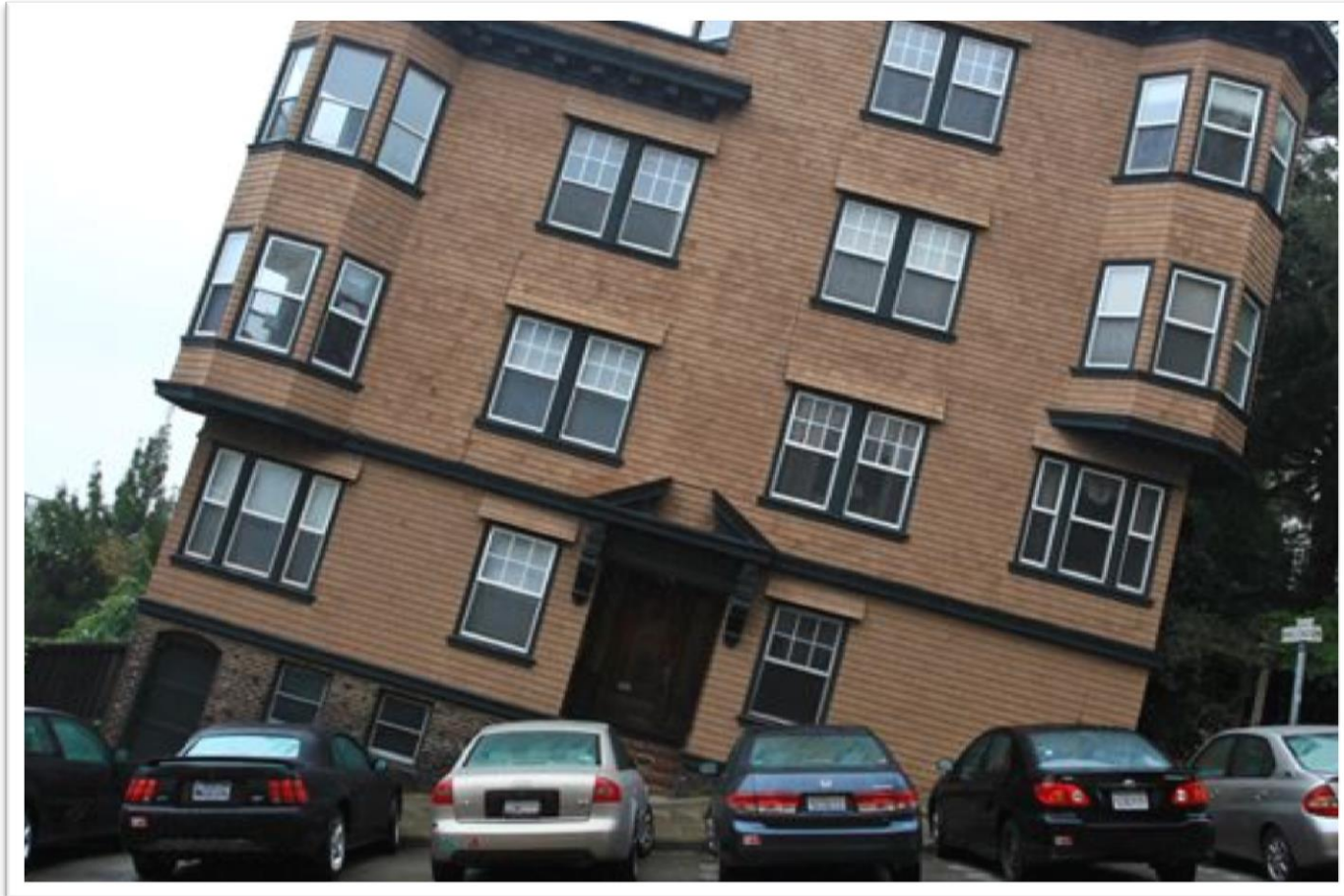
# When Does Time Start to Run?

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- 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

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# Interim Report

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- 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.
  
- The building inspector must:
  - inspect; and
  - report to the owners corporation;

not earlier than 15 months and not later than 18 months after completion.

# Interim Report

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- The Secretary must appoint a building inspector if:
  - the developer and the owners corporation fail to agree on the inspector; or
  - the developer does not appoint a building inspector.
- If the Secretary appoints a building inspector the owners corporation does not need to pass a resolution.



# Interim Report

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- 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.



# Interim Report

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- 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.
- The initial period commences when the owners corporation is constituted and ends when there are at least 1/3 of owners, calculated on a unit entitlement basis, not including the original owner.

# Final Report

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# Final Report

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- 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;
  - ensure the final report is completed not earlier than 21 months and not later than 2 years after the completion of the building work.



# Final Report

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- 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.



# Final Report

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- 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.

# Final Report

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- 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;



# Final Report

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- 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

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- 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.



# Delivery of Reports

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- 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

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



# Access

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- An appointed building inspector may enter and inspect any part of the strata scheme upon giving at least 14 days written notice.
- 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.



# Access

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- 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.

# Access

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- 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

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- 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

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# Building Bonds

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- The developer must give the Secretary a building bond.
- The building bond must be in the sum of 2% of the contract price 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.



# Building Bonds

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- The bond must be paid before an occupation certificate is issued for the building 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

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- 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.

# Payment Out of Building Bonds

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- 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.



# Payment Out of Building Bonds

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- 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 proposed payment; or
  - any application to review the Secretary's decision to pay the bond has been determined or withdrawn.



# Use of Building Bonds

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- 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

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- 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.



# Review of Decisions

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- 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.



# Review of Decisions

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- 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.



# Review of Decisions

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- 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?

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- The provisions in the Act will not affect other rights of an owners corporation in relation to defective work.
- For example, an owners corporation will still be able to take legal action against a builder and developer for defective work.



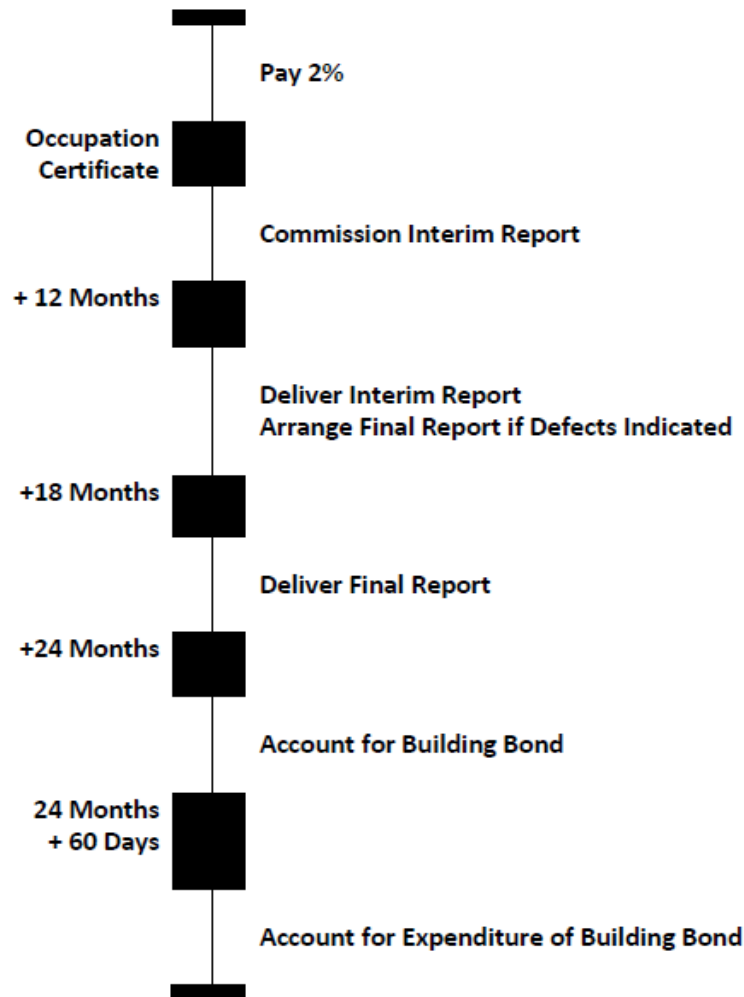
# Other Matters

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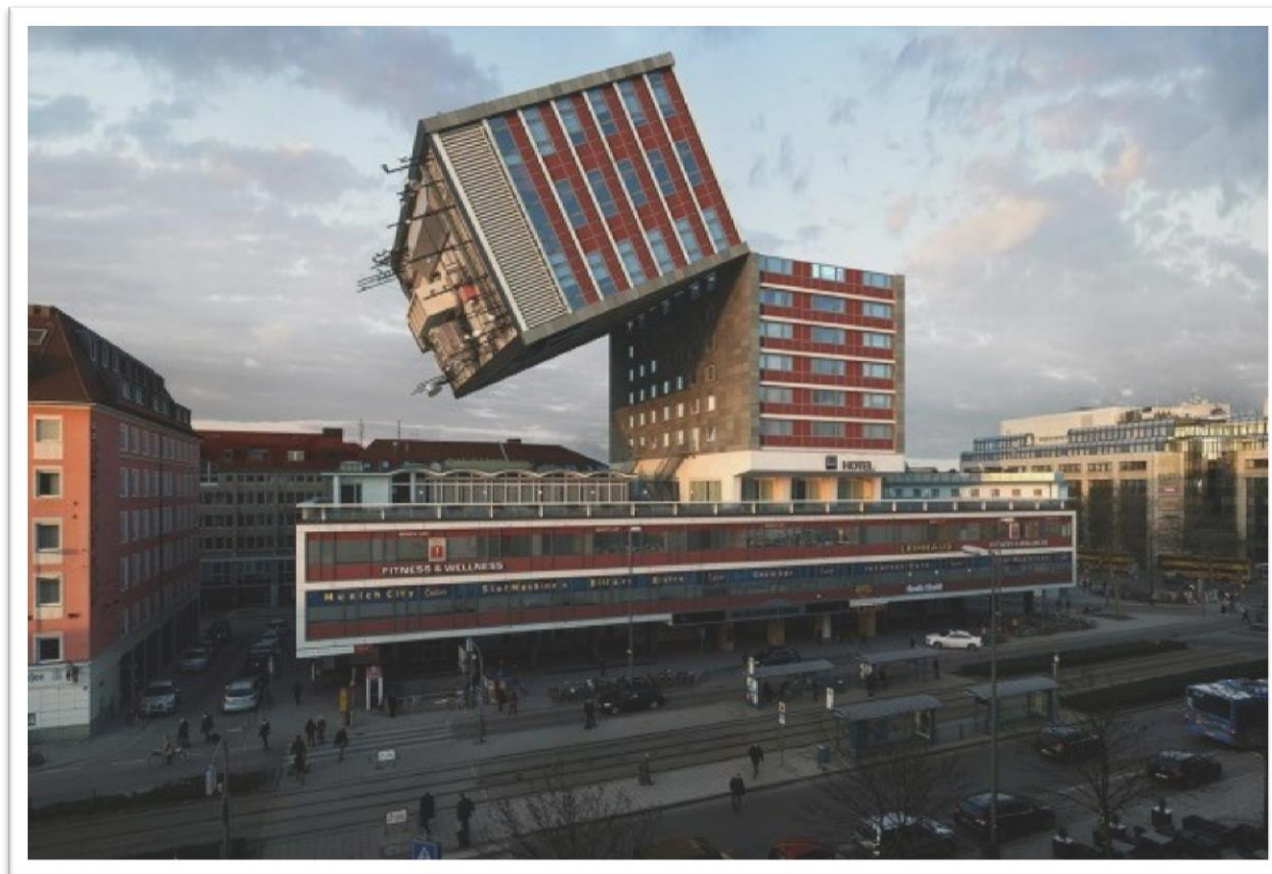
- The developer cannot cast a vote in person or by proxy on a motion on a matter concerning building defects.



# Building Bonds



# Thank You!



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# **LevyCollect**

## **How does it benefit you?**

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**Trish Smith | Paralegal**



**JS MUELLER & CO**  
LAWYERS

# Levy Collections

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**24 Hours and we're on to it!**



# **Welcome to the intelligent approach to Levy Collections**

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**What's so intelligent about the  
JS Mueller & Co  
Levy Collection service?**



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# JS Mueller & Co Levy Collection

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- Specialise in the Strata Industry
- Levy Collection for more than 30 years
- In-depth knowledge and experience of all things strata
- Dedicated Paralegal
- Monitored by experienced Senior Lawyers
- From your first instruction we act within 24 hours
- No commissions and all costs are recovered from the debtor

# **Rely on the Difference**

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## **Levy Collect – a Secure Online Debt Collection System**



# LevyCollect

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- Reduces your workload – gives you time back
- Gives you greater access to your Levy Collection matters
- All of your matter communication will be located in one place
- You choose when you access your matters
- 24/7/365 access from your desktop, laptop, smartphone or tablet – anywhere, anytime
- Regular reporting - you choose when you want to receive your reports
- LevyCollect comes FREE with our service Levy Collection service





# How does LevyCollect work?

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# LevyCollect

Red Rain RedView - MatterSummary - Internet Explorer

https://apps.redview.com.au/1033001#/mattersummary/

File Edit View Favorites Tools Help

Welcome LevyCollect | logout

## Summary List

Search... Include Complete

General Documents Updates

Drag a column header and drop it here to group by that column

File No	Matter Type	Client	Matter Title	Other Side	Status	FIRBStatus
28820	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 3 - Brown	Brown	In Progress	
28821	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 32 - Huang	Huang	In Progress	
28822	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 11 - Schultz	Schultz	In Progress	

Showing 3 Matters in total

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# LevyCollect


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File Edit View Favorites Tools Help

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**Summary List**  ☐ Include Complete

[General Documents](#) [Updates](#)   

Drag a column header and drop it here to group by that column

File No	Matter Type	Client	Matter Title	Other Side	Status	FIRBStatus
28820	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 3 - Brown	Brown	In Progress	
<div>Details Messages Documents Defendant Lot No. Address on Strata Roll Property Invoice Date of Last Printout Debt Details Last Levy inc. in Action</div> <div><div>Reference: -</div><div>File Number: 28820</div><div>Status: In Progress</div><div>Type: Levy Collection</div><div>Client Name: The Owners - Strata Plan No. 123456</div><div>Other Side: Brown</div><div>File Location: -</div><div>Last Update: 2-Aug-2016 4:18 PM</div><div>Completed/Settled: </div></div>						
28821	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 32 - Huang	Huang	In Progress	
28822	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 11 - Schultz	Schultz	In Progress	

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https://apps.redview.com.au/1033001/#/mattersummary/

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### Summary List

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General Documents Updates

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File No	Matter Type	Client	Matter Title	Other Side	Status	FIRBStatus
28820	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 3 - Brown	Brown	In Progress	

Details Messages Documents Defendant Lot No. Address on Strata Roll Property Invoice Date of Last Printout Debt Details Last Levy inc. in Action

Post a Message

Posted By: LevyCollect

Write message here..

Apply

Posted	Posted By	Internal	Messages
01-Jun-2016 12:35:26	Trish Smith		06/06/16 - Bob Brown called. He didn't receive levy notices. Explained to him his obligations under the Act. He grumbled but eventually said that he would pay Letter SENT 01/06/16 FOR \$3,657.29
01-Jun-2016 12:33:38	Trish Smith		Search Summons Service Field Call Judgment

28821	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 32 - Huang	Huang	In Progress
28822	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 11 - Schultz	Schultz	In Progress

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Start

3:00 PM 19/10/2016

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### Summary List

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General Documents Updates

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File No	Matter Type	Client	Matter Title	Other Side	Status	FIRBStatus
28820	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 3 - Brown	Brown	In Progress	

Details Messages Documents Defendant Lot No. Address on Strata Roll Property Invoice Date of Last Printout Debt Details Last Levy inc. in Action

Show ☒ Our Documents ☒ Their Documents

Title	Creation Date	Added By	Notes
New instruction - Lot 3 in SP123456	12/07/2016		
Letter of Demand - SP	1/06/2016		

28821	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 32 - Huang	Huang	In Progress	
28822	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 11 - Schultz	Schultz	In Progress	

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# LevyCollect

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6 December 2018

J Yang  
429/42 Rosebery Avenue  
ROSEBERY NSW 2018



**JS MUELLER & CO**  
LAWYERS

Our Ref: JSM:TAS:33476

Dear Yang

**RE: THE OWNERS - STRATA PLAN NO. 93491 -V- YANG**

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**JS MUELLER & CO**  
LAWYERS

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File Edit View Favorites Tools Help

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**Summary List**   General Documents Updates

Drag a column header and drop it here to group by that column

File No	Matter Type	Client	Matter Title	Other Side	Status	FIRBStatus
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28821	Levy Collection	The Owners - Strata Plan No. 123456	Levy Collection - Lot 32 - Huang	Huang	In Progress	
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Details Messages Documents Defendant Lot No. Address on Strata Roll Property Invoice Date of Last Printout Debt Details Last Levy inc. in Action

Show ☒ Our Documents ☒ Their Documents

Title	Creation Date	Added By	Notes
Email from client to enter Judgment	1/06/2016		
Email to client - seeking instructions for judgment	1/06/2016		
Writ for the Levy of Property	1/06/2016		
Default Judgment - SP	1/06/2016		
Statement of Claim - SP	1/06/2016		
Email from client to issue SOC	1/06/2016		
Email to client - seeking instructions for statement of claim	1/06/2016		
Letter of Demand - SP	1/06/2016		

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# Trial LevyCollect Today!

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# THANK YOU

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P: 9562 1266 | E: [enquiries@muellers.com.au](mailto:enquiries@muellers.com.au) | W: [muellers.com.au](http://muellers.com.au)



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