



# Strata Title Law Reform

## Strata & Community Title Law Reform Position Paper



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November 2013

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## Minister's message



From the very beginning, it was clear that pursuing comprehensive reform to the strata and community title laws would be a mammoth task. In operation for more than 50 years, these laws have evolved into a complex and detailed legislative framework that has become out-dated. Currently there are more than 72,000 strata schemes in New South Wales with \$350 billion in assets, having a significant impact on the lives of approximately two million people. Within 20 years, half of the State's population is expected to be living or working in a strata or community scheme.

Despite various amendments to these laws over the years, it was clear that an extensive and thorough review of the entire legal framework was needed.

I would like to thank everyone who has been involved since the early stages of the review, including those who participated in the online consultation forum hosted by Global Access Partners (GAP) between December 2011 and February 2012. The strength of the response to the online forum provided a clear indication of the level of interest that could be expected for the review.

The review continued with the release in September 2012 of the Discussion Paper, *Making NSW No.1 Again: Shaping Future Communities*. More than 1,900 submissions were received in response. I was particularly impressed with the level of detail and significant effort that many people put into their submissions.

During 2013, a series of roundtable meetings were also held with key stakeholders in the sector to examine reform options in more detail.

The clear message from these stakeholders and the community is that the current strata laws are out-dated and need to be modernised. There has been clear support for greater owner participation, increased transparency and accountability, easier dispute resolution, reducing red tape, improving awareness through better educational resources and using modern technology for communication. The reforms will bring in a legislative framework that is open and transparent, provides more protection for homeowners, minimises disputes and enriches the lives of strata owners and residents.

This Position Paper contains reforms developed in consultation with the community. The Government is firmly focused on delivering change that will meet the needs of the strata and community title sector for the next fifty years.

The review of strata and community title laws forms part of the Government's broader reform agenda, including in the areas of home building, environmental planning and assessment, and dispute resolution. This is all part of the Government's efforts to make NSW number one again.

This reform process is an excellent example of how the Government, community and other stakeholders can work together to create an improved and enduring legislative framework.

A handwritten signature in blue ink, appearing to read 'Anthony Roberts', written in a cursive style.

Anthony Roberts MP  
**Minister for Fair Trading**

## Introduction

In September 2012, the NSW Government released the discussion paper, *Making NSW No. 1 Again: Shaping Future Communities*.

The discussion paper invited submissions and feedback from the community about options for creating a more modern, innovative and effective regulatory framework for strata and community schemes. Submissions were received from a broad cross section of the community, including owners, managing agents, caretakers, tenants, builders and developers.

The community told us that the current laws are out-dated and do not meet the current or future needs of the sector in an efficient and effective way. The laws are seen as overly formal and complex, creating unnecessary disputes and potentially hindering the future growth of the sector.

New South Wales now has more than 72,000 strata and community schemes and this number is set to rise in the coming decades as population growth and urban consolidation continue. More than two million people presently own, live or work in a strata or community scheme in New South Wales.

Many thousands of people are employed directly or indirectly in this sector. This includes tradespeople, building managers, solicitors, caretakers, valuers, surveyors, accountants and auditors, as well as more than 1,500 licensed strata and community scheme managing agents.

Given the size of the sector, its changing nature and its predicted growth, it is essential that New South Wales has laws that enable the sector to realise its full potential. The Government is keen to ensure that New South Wales, as the birthplace of strata and community title, is once again able to demonstrate world's best practice.

## *Strata Law Reform*

This paper outlines a comprehensive set of reforms to the strata laws that the Government intends to introduce. The reforms are designed to:

- empower communities to make their own decisions in a democratic way;
- foster a culture of community and cooperation;
- improve governance through greater transparency and accountability;
- help ensure building defects are identified and rectified earlier;
- establish a fair process for the collective sale and renewal of strata schemes;
- provide a simple and effective means for resolving disputes;
- recognise the importance of communication and education;
- provide protection for individuals from unfair practices;
- encourage participation in meetings and decision-making by residents and owners;
- be future orientated, with emphasis given to modern technology;
- establish flexible administrative and management arrangements; and
- reduce red tape, update terminology and simplify requirements.

The Government's proposed reforms are set out in the blue text boxes in the following pages, together with supporting background material and commentary.

The reforms have been developed in response to matters raised by the community, including through an online discussion forum hosted by Global Access Partners (GAP), which attracted more than 1,200 comments and over 600 suggested law changes. More than 1,900 submissions were received in response to the discussion paper and a series of roundtable meetings have been held with stakeholder groups.

The proposed strata reforms were also developed in the context of the Government's broader reform agenda, including proposed changes to the planning and home building laws and the *Building and Construction Industry Security of Payment Act 1999*.

The Government is currently drafting a Bill that will give effect to the reforms outlined in this paper and will aim to table the Bill in the Parliament in early 2014.

### *Community Title Law Reform*

A separate paper outlining proposed reforms to the community title laws will be released in the coming months. Having a separate paper focused exclusively on reforms to community title will allow for more targeted consultation with this part of the sector.

However, where appropriate, the Government will be looking to ensure consistency across the strata and community title laws. As a result, many of the reforms listed in this paper will also be applicable to the community title sector.

## Chapter 1: Governance

The management and administration of strata schemes requires a sensibly structured regulatory framework that promotes self-governance and democratic decision-making.

Every strata scheme is different. Schemes vary in size, composition and complexity. Some schemes are predominantly owner-occupied, while others are mainly tenanted. Some are entirely residential, while others are commercial, industrial or mixed-use schemes. About 60 per cent of strata schemes are managed by a managing agent and this figure increases to almost 100 per cent for larger and more complex schemes.

The new strata laws need to account for this diversity. The laws need to be flexible but at the same time ensure that those people who manage the scheme do so in an accountable and transparent way.

In particular, the community has told us that the laws need to do more to raise awareness of rights and responsibilities, support democratic processes, encourage participation and enhance communication. This needs to be done without placing unduly onerous responsibilities on the volunteers who devote time and effort to their strata communities.

***The community has told us that education is the key to a successfully run scheme. NSW Fair Trading together with Land and Property Information (LPI) play an important role in providing information to those involved in strata and community schemes. Over 50,000 phone calls and hundreds of letters and emails are received each year from people seeking information and advice. Information seminars are also regularly held around the state. Fair Trading and LPI will update and expand the information material available to the community as part of an enhanced strata education program.***

### Participation

Strata schemes work best when owners and residents take an active interest in how the scheme is run. However, getting people to volunteer their time to serve on committees or attend meetings is an ongoing challenge for many schemes. This is particularly the case in schemes where the majority of residents are tenants.

Just over half of all residential strata lots in New South Wales are investor owned.<sup>1</sup> Many of these investor-owners live inter-state or overseas, making it difficult for them to attend meetings or to take an active interest in the concerns of the residents.

Submissions have told the Government that the strata laws need to do more to encourage participation and provide more opportunities for people to be involved in decision-making. In particular, there was wide-spread support for the laws to account for changing technology and modern forms of communication.

**1.1 Allow schemes to choose alternative methods of attendance at meetings including social media, video and teleconferencing or other methods which may become available in the future. Schemes will also be allowed to accept postal or electronic votes from owners who are not physically in attendance.**

These forms of attendance and voting will not be mandatory. Owners corporations will have the flexibility to use these methods if they choose to do so. The legislation will include appropriate protections to ensure that individuals who are not willing or able to engage electronically can continue to participate in decision-making.

<sup>1</sup> *Governing the Compact City: Residential Strata in NSW*, City Futures Research Centre, October 2011.

1.2 Provide greater recognition for modern forms of communication by allowing documents to be held and distributed electronically.

The current laws can be quite restrictive in the way that notices and other documents can be served on owners, residents and other parties. Generally, documents are required to be given to a person in hard copy. The laws will be amended to allow for documents to be given to people electronically if the person has agreed to this form of communication. That is, owners who do not have the technological means to engage in this way will still be able to receive documents in hard copy.

Increasingly committees and managing agents want to be able to hold records and distribute documents electronically. This reform will enable this.

1.3 Include an exclusion of personal liability clause for committee members who act in good faith for the purpose of executing their functions under the Act.

Some people choose not to volunteer to be on a committee for fear that they will be held legally liable for the committee's decisions. While office bearers in some schemes have personal liability insurance, most do not. It is proposed that the law give appropriate protection to committee members who make decisions while acting in good faith. Similar protections are already in place in other Australian jurisdictions and in other laws of the State.

1.4 Introduce options for conducting secret ballots.

Some owners may choose not to vote on motions rather than risk being ostracised if they are seen to vote in a certain way. This can be a particular issue when the vote involves a more personal matter, such as the election of an office bearer. It is proposed that the law recognise that voting on a motion may be by secret ballot. As is the case now, schemes may adopt a by-law outlining the matters or class of matters that are to be subject to a secret ballot. Fair Trading will issue guidance material to help schemes understand the voting process, including the process for holding secret ballots.

1.5 Enhance opportunities for tenant participation in schemes.

Just over half of all lots in strata schemes are investor-owned and in some schemes tenants make up the majority of residents. Tenants should be recognised for their role in strata communities and many are willing and able to contribute in a positive way to the running of the scheme. Despite this, tenants currently have no rights to attend meetings or contribute to decisions that affect them.

It is proposed that the law give tenants the right to attend and participate in meetings of the owners corporation. It is also proposed that tenants be allowed to appoint a non-voting representative to the committee in circumstances where tenants occupy more than half the lots in a strata scheme. Consistent with community feedback on the discussion paper, tenants will not be given new voting rights.



## *Transparency and accountability*

Conflicts of interest can lead to decisions being made that are not in the best interest of the owners or residents. Trust in the decision-maker and the system can be eroded if conflicts of interest, real or perceived, exist.

The current strata laws contain only a few provisions dealing with conflicts of interest. For example, a strata managing agent or caretaker cannot use a proxy vote on a motion from which they may gain a material benefit.

The community has indicated that the laws need to do more to deal with conflicts of interest. Submissions were particularly concerned about the current proxy voting arrangements that, when misused, allow individuals or cliques to dominate decision-making. Concerns were also raised about the actions of strata managing agents, with many people stating that agents should be more accountable to the owners who employ them.

### **Strata committees**

A number of reforms are proposed concerning the way that the committee is appointed and operates. These reforms are designed to support democratic processes, enhance transparency and build trust in the committee.

#### **1.6 Change the name of the 'executive committee' to 'strata committee'.**

Committee members play an important role in running a strata scheme but the committee members do not have any special 'executive' status or authority over other owners in the scheme. Changing the name of the committee will help change people's perceptions about the role of the committee members and better reflect the purpose and function of the committee.

#### **1.7 Provide that the office bearers (chairperson, treasurer and secretary) are to be directly elected by the owners corporation at each annual general meeting.**

It is proposed to change the current arrangements where office bearers are appointed by committee members. The aim of this reform is to ensure all owners are given a direct say in who should perform these important roles. The committee will be able to fill vacancies on an interim basis between AGMs if necessary.

#### **1.8 Provide for written nominations for office bearers and committee members ahead of a general meeting.**

This reform is designed to improve transparency and give each owner time to consider the suitability of candidates ahead of the election. The nominations will need to be sent out along with the notice of a general meeting or otherwise prior to the meeting. In cases where there are an insufficient number of nominations, owners will still be able to nominate for unfilled positions at the general meeting.

#### **1.9 Allow schemes to appoint as many people as they wish to the committee provided that at least three people are appointed to the committee in large schemes.**

The Act currently sets an upper limit of nine for the number of people who can be appointed to the committee. While owners may find that having a small committee helps to ensure the

efficient management of the scheme, there is no clear reason why an upper limit needs to be provided for in the law. There are many different types of strata scheme and owners corporations should be able to appoint as many committee members as is necessary to effectively administer the scheme and to provide suitable representation.

As well as removing the upper limit, it is proposed to require committees in large schemes to have a minimum of three members. Schemes with budgets of more than \$250,000 per annum or with more than 100 lots face inherently greater risks and a minimum of three members supports fair decision-making.

1.10 Provide that committee members are to carry out their functions without favour, for the benefit of all owners and to act with due care, skill and diligence.

Including this duty in the Act will emphasise the standard of behaviour expected of the committee.

1.11 Require committee members to disclose any conflict of interest in a matter to be considered by the committee.

Disclosing conflicts of interest is an important aspect of democratic decision-making and will help to ensure confidence in the committee and the decisions it makes on behalf of the owners. Committee members who have a conflict of interest will be excluded from any vote unless the committee (without the conflicted person having a vote) decides that the conflict does not warrant this. Failure to disclose conflicts of interest will be an offence under the Act and may result in a penalty.

1.12 Prohibit non-owners with a financial interest in the scheme (for example, managing agents, letting agents and building managers) from being a member of the committee.

This proposed reform is designed to improve transparency, accountability and trust in the committee. Strata managing agents and other parties will still be able to attend committee meetings but only at the invitation of the committee in an advisory capacity. They will not have any voting rights.

### **Voting**

Many people who made submissions to the review identified proxy voting arrangements as a concern for their scheme. In particular, there were concerns that the current system enables an individual or small group of owners to gather enough proxy votes to dominate decision-making. There were also concerns as to how motions are raised at meetings. The reforms being proposed are designed to reduce the potential for misuse and further support democratic processes, which must be at the heart of each strata scheme.

1.13 Require all motions considered at a meeting to be accompanied by a short explanatory note that also identifies the person who submitted the motion.

This reform is designed to ensure that individuals are accountable for the matters being put to a vote. Providing this information in advance of the meeting will enable owners to consider the proposal before they vote. This process, which will be clearly defined in the Act, will also help to ensure that owners who cannot attend a meeting in person are given enough information to be able to make an informed vote via a proxy or absentee vote where these are allowed.

**1.14 Limit the number of proxies able to be held by any person to 5 per cent of the lots if the scheme has more than 20 lots, or one if the scheme has fewer than 20 lots.**

This proposed reform addresses the issue of ‘proxy farming’, where an individual or small group of owners gather large numbers of proxy votes in order to gain control of the decision-making process. Similar limits are already in place in Queensland.

Proxy farming can lead to decisions that are not always in the best interest of the strata community as a whole. The practice also builds resentment and further discourages participation by owners.

However, it is acknowledged that many schemes find it difficult to reach a quorum at meetings and the proxy voting system helps them to do so. Other reforms to be implemented will make it easier for schemes to declare a quorum and will boost participation, which will reduce reliance on proxies (see reforms 1.1 and 1.21).

### ***Strata managing agents***

Approximately 60 per cent of all schemes in NSW are managed by a licensed strata managing agent, with close to 100 per cent coverage in large and complex schemes. Most agents are dedicated to their work and perform their functions diligently and responsively.

However, not all agents perform their functions to the satisfaction of the owners. Fair Trading receives a large number of complaints each year about the conduct of managing agents and a number of submissions called for the law to do more to improve standards and address potential conflicts of interest in the sector.

Complaints to Fair Trading about managing agents are varied but they often have issues of transparency and accountability at their heart. A common cause for concern is that owners corporations are forced by the terms of their agency agreement to enter into service contracts that are not in their best interests.

**1.15 Introduce a new regime of disclosure and accountability for strata managing agents seeking commissions from third parties.**

Concerns have been expressed at the receipt of third-party commissions by strata managing agents. Some argue that such commissions represent a conflict of interest for the agent in their management role that can lead to mistrust between agents and owners. As such, it is vital that owners corporations are provided all necessary information about third party commissions and are empowered to make a decision as to whether this practice is best for the scheme and may proceed.

Commissions paid by insurance companies are the most common form of third party payment in the sector, though other service providers also engage in this practice. It is likely that insurers and service providers who pay commissions pass on this cost to the owners corporation by charging higher prices for products and services. While these arrangements may allow the strata manager to charge lower service fees, it may also provide an incentive to put the strata manager’s interest ahead of the owners corporation.

To address this concern the reforms will introduce a new regime of disclosure and accountability to ensure owners corporations are informed about the amount and nature of commissions received by a strata managing agent and make regular decisions as to whether they should proceed.

This will be achieved by:

- requiring the managing agent to disclose at each AGM the circumstances, dollar amount and services provided in respect of any commissions received during the previous 12 months;
- requiring the managing agent to disclose at each AGM a best estimate of the circumstances, dollar amount and services to be provided in respect of any commissions to be received in the next 12 months;
- requiring the managing agent to disclose at each AGM a fee for service based model (free of commissions), outlining the costs of services to be provided in the next 12 months;
- requiring owners corporations to decide at each AGM whether the managing agent is allowed to receive commissions (including in which circumstances) for the next 12 months;
- banning agents from receiving non-monetary benefits and gifts from third parties; and
- requiring the managing agent to get at least three quotes for certain products (for example, insurance) to ensure competition and choice for the owners corporation.

This regime will ensure there is transparency, accountability, choice and competition in this area of the strata marketplace. Appropriate sanctions will apply for misleading disclosures.

1.16 Provide that the term of a strata management contract cannot be longer than three years.

Owners have consistently raised concerns that it is difficult to dismiss managing agents despite poor performance.

In particular, Fair Trading receives regular complaints about long term contracts being entered into at the first AGM with agents who have essentially been chosen by the developer. In this circumstance, agents can be conflicted when the interests of the new owners do not accord with those of the original owner. While it is currently the case that agency agreements automatically terminate at the first AGM, owners corporations report that they often feel pressured by the developer into accepting a particular agent, and feel that they have little opportunity to identify alternatives.

Some agency contracts also include terms such as automatic rollovers that make it hard for owners to replace the agent. Automatic rollovers will no longer be allowed.

To further improve accountability, managing agents will be required to disclose any links to the developer and any other potential conflict of interest and will no longer be allowed to be appointed to the committee. (Refer to reform 1.12.) However, managing agents will still be able to attend meetings in an advisory capacity and to fulfil any delegated functions.

1.17 Enable the Tribunal to make orders with respect to strata management agency agreements similar to those relating to caretaker agreements under section 183A of the *Strata Schemes Management Act 1996*.

This will allow the Tribunal to make orders where the managing agent has refused or failed to perform in accordance with the agency agreement or has performed unsatisfactorily, the charges payable by the owners corporation under the agreement for the services of the agent are unfair, or the agreement is, in the circumstances of the case, otherwise harsh, oppressive, unconscionable or unreasonable.

1.18 Clearly provide that agency agreements are to be made available for inspection by an owner, on request.

The role of managing agents is often misunderstood by owners and residents. Owners often do not know what services the agent has been contracted to provide under the agency agreement. To address these misunderstandings, it is proposed that the agreement must be kept on the strata roll and made available to any owner, on request.

### ***Inspection of records and information access***

The owners corporation is required to keep up to date records of certain prescribed matters relating to each lot, the common property and the strata scheme. This includes financial statements, the sinking fund plan, and minutes of meetings. These records must be available for inspection and reporting purposes.

Access to this information is important for consumer protection. Potential buyers of a strata lot want timely and accurate reports about the scheme's finances and other matters before making a decision to buy into the scheme.

Stakeholders have told us that these records are often poorly maintained and that access can be a costly and time consuming process. While the Act allows for records to be stored electronically, some agents inappropriately restrict access to records, which makes the search process more difficult. The current Act enables the owners corporation to charge fees to inspect the records in person and to make copies.

1.19 Streamline the information required to be kept by the owners corporation and improve access to this information.

It is proposed to remove the obligation that the inspection of documents under section 108 must be in person. Authorised persons will now be able to request that the documents be sent by email or otherwise made available. In some cases inspections will still be in person but increasingly the relevant documents should be made available by email or online.

The Government will continue to work with the industry to improve information management and access arrangements. This includes reviewing what fees (if any) can be charged for making records available and for giving a certificate under section 109. With the view to reducing red tape, the Government is also considering what other changes can be made to the list of documents that are currently required to be kept by the owners corporation.

## *Removing red tape*

One of the aims of this review is to remove unnecessary red tape, particularly for committees which are made up of volunteers who devote their time and service to the strata community. A number of the reforms listed in this paper will make it easier to run a strata scheme. Flexibility will be introduced where possible.

The community has told us that there are number of small changes that can be made to the law that will make it easier to run a scheme. Some of these changes are listed below.

### 1.20 Give owners corporations more flexibility about when they hold AGMs.

It is proposed to remove the current requirement for meetings to be held within one month of the anniversary of the first annual general meeting. In practice, this requirement is rarely observed by schemes. Provided that meetings are held on a regular basis (including to approve an annual budget), there appears to be no reason for mandating such strict timeframes.

The new laws will provide that an AGM must be held each financial year.

### 1.21 Allow the chairperson to declare a quorum, if after 30 minutes a quorum has not been achieved.

This will remove the current requirement for a second meeting to be called before a quorum can be declared.

### 1.22 Remove the requirement for an election to be called to fill a vacancy on a strata committee.

Some schemes may be perfectly content to carry a vacancy on the strata committee, particularly if the AGM is not far off or the other committee members are prepared to take on additional responsibilities. For example, another member of the committee may be prepared to step in and perform the role of the secretary if the previously appointed secretary resigns before the AGM.

The committee will be able to appoint someone to fill a vacancy until the next AGM if they wish to do so.

## Summary of reforms – Governance

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
1.1	New options for attending meetings and voting.	A vote can only be cast by proxy or in person at a general meeting of the owners corporation.	Schemes will be allowed to hold meetings via social media, video and teleconferencing (or other methods which may become available in the future).  Schemes will also be allowed to accept postal or electronic votes from owners who are unable to attend the meeting.
1.2	Greater recognition for modern forms of communication.	Documents must be provided to owners in hard copy, or posted on a notice board (if a scheme is required to have a noticeboard).  Documents can be provided electronically if a scheme has adopted the relevant by-law and owners have provided an email address.	Schemes will be allowed to store all records and documents by electronic or other means.  Schemes will be able to send any documents and serve notices electronically even if no by-law is in place, but only if this form of communication has been agreed.
1.3	Provide for an exclusion of personal liability.	There is no provision to exclude personal liability. Owners corporations can choose to take out personal liability insurance for executive committee members, but this is not compulsory.	An exclusion of personal liability clause will be introduced for committee members who act in good faith for the purpose of carrying out their functions under the Act.
1.4	Provide options and guidance for holding secret ballots.	The laws are silent regarding secret ballots.	The law will recognise that voting on a motion may be by secret ballot. Guidance material to be produced to help people understand voting processes.
1.5	Enhance opportunities for tenant participation.	The laws do not provide for any form of tenant participation.	Tenants will be allowed to attend and participate in meetings of the owners corporation. Tenants will be allowed to appoint a representative to the strata committee in circumstances where tenants occupy more than half the lots in a strata scheme. Tenants will not be given new voting rights.
1.6	Change 'executive committee' to 'strata committee'.	The 'executive committee' does not have any executive powers.	'Executive committee' will be renamed 'strata committee' to better reflect its role.
1.7	Provide for the direct election of office bearers.	The owners corporation elects the executive committee and the committee appoints the office bearers.	The office bearers (chairperson, treasurer and secretary) will be directly elected by the owners corporation at each AGM.
1.8	Provide for written nominations for office bearers.	Nominations for office bearers and executive committee members are usually made at the AGM.	Written nominations for office bearers and strata committee members will be required ahead of an AGM.  If there are no pre-meeting

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
			nominees, it will be possible for nominations to occur at the meeting.
1.9	Allow for more appointments to the strata committee.	No minimum number for committee members, but maximum limit is nine members.	Schemes will be allowed to appoint as many people as they wish to the committee.  In large schemes (that is, schemes with an annual budget of at least \$250,000 or more than 100 lots) at least three people must be appointed to the committee.
1.10	Clarify the committee's obligations to the owners and residents.	No specific obligation on committee members in undertaking their role.	Committee members will be required to carry out their functions without favour, for the benefit of all owners and to act with due care, skill and diligence.
1.11	Require greater disclosure of conflicts of interest.	Executive committee members do not have to disclose any conflict of interest.	Committee members will be required to disclose any conflict of interest in a matter to be considered by the committee.
1.12	Prohibit certain people from being on the strata committee.	No restrictions on who can serve on the committee providing they have been nominated by an owner.	Non-owners with a financial interest in the scheme (for example, managing agents and letting agents) will be prohibited from being members of the committee.
1.13	Require motions to be submitted ahead of a meeting with an explanation.	Motions are submitted to the secretary or managing agent before a general meeting with no need for an explanation or for the person moving the motion to be identified.	All motions to be considered at a meeting must be submitted in advance, circulated with the meeting notice, and accompanied by a short explanatory note that also identifies the person moving the motion.
1.14	Limit the number of proxy votes that can be held by any one person.	No limits on the number of proxy votes that can be held by any one person.	The number of proxies able to be held by any person will be limited to 5 per cent of the lots if the scheme has more than 20 lots or one if the scheme has fewer than 20 lots.
1.15	Greater disclosure requirements for agents who receive commissions.	Strata managing agents can receive commissions, benefits or gifts from third parties but these must be disclosed in the management agreement.	Strata managing agents will need to disclose commissions at AGMs and seek approval to continue receiving them.
1.16	Limit the terms of strata management contracts.	No limits on strata management contracts after initial period, and automatic roll-over clauses are not prohibited.	Strata management contracts will be limited to a maximum term of three years, with no automatic roll-over allowed.
1.17	Allow for Tribunal orders to be made regarding agent contracts.	The Tribunal only has power to make orders relating to caretaker agreements.	The Tribunal will be able to make orders with respect to agent contracts similar to those relating to caretaker agreements.
1.18	Allow agency agreements to be	Agency agreements are not specifically listed among the	Agency agreements will have to be made available for



	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
	inspected.	documents that owners can ask to inspect.	inspection by an owner on request.
1.19	Improve access to records.	The Act requires certain records to be held by the strata scheme. These records are to be made available to authorised persons. Inspection of the records is usually only available in person.	New access arrangements will be introduced that will allow the documents to be emailed or made available online.
1.20	Allow schemes more flexibility about when to hold AGMs.	AGMs must be held within one month (before or after) of the anniversary of the first AGM.	Schemes will be allowed to choose to hold the AGM at any time during the financial year.
1.21	Relax restrictions on declaring a quorum.	If after 30 minutes, a quorum has not been achieved, the meeting is adjourned for one week.  If a quorum is still not achieved 30 minutes into the second meeting, the chairperson can declare a quorum.	The chairperson will be allowed to declare a quorum, if after 30 minutes a quorum has not been achieved. There will be no need for a second meeting.
1.22	Allow greater flexibility with regard to filling vacancies on committees.	If a vacancy arises on the executive committee, a general meeting must be called to elect a new member.	The requirement for an election to be called to fill a vacancy on a strata committee will be removed. The committee will be able to appoint someone to fill a vacancy until the next AGM if they wish to do so.

## Chapter 2: Managing the built environment

For many people, ownership of a property in a strata scheme is the biggest investment they will ever make. Ensuring that the physical asset of the building is sound, properly managed and well maintained is crucial to protecting that investment.

Disputes regarding building defects and who is responsible for maintaining and repairing the common property are commonplace in strata schemes. These disputes can be difficult and costly to resolve.

The feedback we have received has told us that the laws need to be strengthened to provide greater protection for consumers and clarity about rights and responsibilities. The community has also argued for a better process for resolving disputes over defects.

### *Defects and maintenance*

Building defects, such as water leaks and structural cracks, are a common concern for all building types, but they are a particular concern for strata buildings. Fixing defects in strata buildings is often more difficult, costly and time consuming. This is because strata buildings are inherently larger and more complex than many other buildings and involve inter-dependent premises where a fault in one apartment may affect others nearby.



There are also inherent complications in identifying and rectifying defects in new strata buildings as owners often arrive on the scene well after the building work is complete, at different times from each other, and they do not usually have a contractual relationship with the builder.

Collective decision-making procedures within strata schemes also make it difficult for new owners to respond quickly and decisively to issues of defects and maintenance.

The community has been very clear that the Government needs to do more to protect consumers from poor building work. This includes encouraging builders to minimise defects and establishing fair and cost effective processes for rectifying defects when they do occur.

The NSW Government is actively pursuing reform in this area on a number of fronts. The reforms underway to planning laws will seek to improve building standards and certification, and reforms to home building laws<sup>2</sup> will see improvements to statutory warranty, dispute resolution and home warranty insurance arrangements.

***Under the Australian Consumer Law (ACL), all goods and services purchased by consumers are covered by statutory consumer guarantees. These guarantees include that the goods are of acceptable quality, that they match their description, and that they are fit for purpose. It is also a requirement that services are carried out with reasonable care and skill and that they are completed in a reasonable timeframe. More information about the ACL is available from [www.consumerlaw.gov.au](http://www.consumerlaw.gov.au).***

<sup>2</sup> The NSW Government has recently released a position paper outlining a set of reforms to the *Home Building Act 1989*. A copy of this paper is available on 'Have Your Say' section of the Fair Trading website.

2.1 Include defects and rectification as a compulsory agenda item for discussion at each AGM until the expiry of the statutory warranty periods under the Home Building Act.

Statutory warranties under the *Home Building Act 1989* expire two years after the building work is completed, and after six years for 'major/structural' defects. Many strata schemes only decide to pursue a defects claim at the end of these periods, when it can be harder to determine the cause of a problem because of uncertainty about whether a defect is to blame or whether it is a maintenance issue.

This reform is designed to draw the attention of owners to the important issue of defects and help ensure that defects are dealt with in a timely and systematic way.

2.2 Provide that an independent defects report be prepared for the owners corporation.

The developer/builder and the owners corporation will need to agree on a suitable expert or experts to undertake a defects inspection of the strata building. If they cannot agree, the appointment will be made by Fair Trading.

The inspection is to be paid for by the developer/builder and conducted between 12 and 18 months after the building is complete (that is, after the occupation certificate is issued). This will help to ensure that any defects are identified and rectified early in the life of a building rather than years down the track when it becomes less clear whether the defect is the result of the initial building work, wear and tear or lack of proper maintenance.

Having an independent expert (or experts) prepare a single defects report will help to avoid the situation where the parties to a dispute each spend thousands of dollars commissioning competing reports.

Guidance material will also be prepared to better inform owners about the process and who is suitably qualified to undertake the inspections.

2.3 Provide that the developer of a high-rise strata building is to pay a bond, which will be held in trust until the independent inspector agrees that identified defects have been fixed.

Builders and developers of most residential strata buildings are required to take out home warranty insurance under the *Home Building Act 1989*. This means that homeowners have protections in certain circumstances where a builder or developer has failed to rectify defective work. However, for various reasons multi-unit strata developments over three storeys high are not required to be covered by these insurance arrangements.

There have been a number of instances where developers and builders of high rise strata buildings have been reluctant, unwilling or unable to fix defects. Some developers and builders cease to trade after a building is complete, meaning that there is little incentive for them to do a good job or to remedy defects. This can leave owners of new high rise strata buildings with few options but to pursue costly litigation or rectify the defects at their own expense.

Accordingly, it is proposed that the developer of a high-rise strata building pay a bond or arrange a bank guarantee (or other approved product) that will only be released once the independent defects inspector (see reform 2.2) agrees that identified defects have been rectified. The bond will be equivalent to two per cent of the contract amount for the building work and will need to be held by an independent third party (for example, NSW Fair Trading). The objectives of this reform are to provide an added incentive to developers and builders to rectify defects early and to provide recourse to consumers if the developer or builder fails to do

so. Along with the preceding reform, it will provide for a system that helps avoid the need for drawn out and costly legal disputes.

**2.4 Restrict the right of the developer and people connected to the developer from voting on matters relating to building defects.**

Some developers use their influence, either directly or indirectly, to delay or stifle a scheme taking action over defects. In particular, this can occur where a developer retains voting rights in relation to unsold lots. This reform is designed to remove this conflict of interest from the decision-making process.

**2.5 Require the builder/developer to prepare a maintenance schedule to help the owners corporation understand their obligations and the likely costs associated with maintaining the common property.**

The maintenance schedule is intended to include information about items of the common property that are likely to require servicing or maintenance over the coming years. For example, information about how often the air conditioning system needs to be serviced and when protective treatments should be renewed. NSW Fair Trading will prepare guidance material to assist developers/builders prepare a maintenance schedule.

The maintenance schedule will complement the building manual that is proposed under the planning reforms, but will be prepared primarily for the information of the owners corporation. Adherence to the maintenance schedule is not compulsory after the initial period and non-adherence by the owners corporation cannot remove a builder or developer's liability for any building defects. However, the maintenance schedule can be used as evidence in any subsequent Tribunal or court hearing. The maintenance schedule will be used for setting the annual budgets and levies during the initial period (see reform 3.2).

**2.6 Introduce an obligation for developers to provide any documents that are reasonably necessary to enable or assist the owners corporation to run the scheme and maintain the building.**

It is currently the case that the original owner of a strata building must deliver certain documents to the owners corporation at the first annual general meeting. These documents include building plans and certificates of title to help the new owners understand and run the strata scheme. It is proposed to expand the list of documents that must be provided to include documents that will enable the owners corporation to determine the completion date of the building<sup>3</sup> and to properly maintain the asset (for example, the proposed maintenance schedule and building manual).

**New window safety laws to prevent child falls**

***The Government will be amending the strata laws to require all windows in residential strata schemes that pose a safety risk to young children to be fitted with window safety devices. Owners corporations will need to ensure that the safety devices are properly fitted before March 2018 or face possible fines. More information about these new safety requirements is available from the Fair Trading website.***

<sup>3</sup> For strata schemes the date of completion will be the date of issue of the occupation certificate (or interim occupation certificate, where relevant) under planning laws.

## Reforms to home building laws

The NSW Government is currently pursuing reforms to the *Home Building Act 1989* and has released a Position Paper outlining its reform proposals.

The Home Building Act is the principal piece of legislation regulating the home building industry in NSW. It provides homeowners with a level of protection from the risks associated with building or renovating a home, which represents a substantial investment for most homeowners.



The proposed reforms cover various aspects of the home building legislation – dispute resolution, statutory warranties, home building contracts, owner-builders, home warranty insurance, licensing and the scope of the legislation.

In particular, the reforms include a proposal to introduce, as a pilot, an expert determination process to enable the facts and technical issues about home building defects in dispute to be quickly, cost-effectively and conclusively established before a matter is litigated.

It is also proposed to simplify the test for determining what home building defects are ‘major defects’ that require a longer warranty period and provide greater clarity about the rights and obligations that flow from the statutory warranty provisions.

More information about the Home Building Act and its reform is available on the [NSW Fair Trading website](#).

## Reforms to planning laws

The NSW Government is undertaking the biggest ever reform to the state’s planning system. In April 2013, the Hon Brad Hazzard MP, Minister for Planning and Infrastructure, released a White Paper that outlines how the Government intends to transform the planning system from an overly regulated and prescriptive system to a simpler and performance based approach.

The White Paper sets out important changes to building regulation and certification to ensure better quality of construction and fire protection over the life of buildings.



Building defects impact on the quality and liveability of buildings, affect property values and rental incomes and can lead to ongoing damage to a building. Significant defects can occur during construction, particularly in relation to water penetration, structural faults, fire safety and defective services. The Better Building Model in the new planning system will seek to improve building standards, which will play an important role in minimising defect-related disputes in the future.

More information about the planning system reforms is available on the [Department of Planning and Infrastructure’s website](#).

## Collective sales and renewals

An important feature of the strata legislation is that it allows unit owners to have title to land. However, strata title involves different rights and obligations to conventional land ownership. The extent of a strata lot owner's title is defined by a building, which is collectively owned.

Each lot owner has his or her own views about how to make the most of their investment in the land and building.

Some stakeholders have told the Government that the existing framework requiring agreement by 100 per cent of lot owners to apply to the Registrar General to terminate or renew a scheme is a key limiting factor to redevelopment, urban consolidation and economic growth in the housing sector. Owners can also apply to the Supreme Court for termination orders, but the costs and complexity of doing so are deterrents.

The review has made one thing clear: where the owners can't agree, there needs to be an open, fair and transparent process for these matters to be decided.

It is therefore proposed to establish a process to facilitate the collective sale or renewal of a strata scheme where there is less than unanimous support from the owners. The process will account for the views of each lot owner and seek to develop a consensus and collective decision-making, where possible.



***Only 826 strata schemes have been terminated since 1961. This is out of over 72,000 schemes in New South Wales. Almost all of these terminations have been made following an application to the Registrar General unanimously signed by the lot owners, with only five schemes being terminated by Supreme Court orders.***

***Approximately 30 per cent of residential strata schemes in the Sydney metropolitan area were registered more than 30 years ago and some of these buildings are now nearing 100 years old. While many of these buildings are well maintained, others are in need of repair and may be reaching the end of their economic life. That is, the cost of repairing and maintaining the property may be more than it is worth to many of the owners.***

2.7 Introduce a process to facilitate the collective sale or renewal of a strata scheme where there is less than unanimous support from the owners.

Key features of the proposed NSW model for collective sales and renewals include:

- an opt-in provision, which means that a general resolution is needed before owners can begin discussions about a collective sale/renewal proposal;
- a further general resolution is required to appoint a 'strata renewal committee' to oversee the development of a collective sale/renewal plan;
- an opportunity for lot owners to seek their own advice on the plan;
- oversight of the process by an independent Strata Commissioner at the Land and Environment Court to ensure fairness; and
- conciliation and mediation to encourage consensus.

The threshold required to initiate a collective sale/renewal under the proposed model is 75 per cent of lot owners, where each lot has one vote (that is, the decision is not based on unit entitlements). Fair Trading along with Land and Property Information (LPI) will publish guidance material to help owners and residents understand and navigate the sale/renewal process.

Further details on this process can be found in the box over the page.

## **Proposed NSW model to facilitate collective sales and renewals**

### **1. Vote to 'opt in' to sale/renewal process**

Before a proposal to sell or redevelop a strata building can be formally considered by an owners corporation, the owners corporation must first agree to 'opt-in' to this process. This means that if a simple majority (that is, 50 per cent) of the owners aren't interested in entertaining a collective sale or renewal, then no further action can be taken and the process outlined below will not apply. The opt-in vote can be held at any time prior to step 3 below.

### **2. Initiation of sale/renewal proposal**

A proposal to sell or renew a strata scheme must first be submitted to the strata committee for consideration. If the committee thinks that there is merit to the proposal then a general meeting is called. If the committee fails to call a meeting, one can be called with the support of 25 per cent of the lot owners.

### **3. Formation of strata renewal committee**

If the owners corporation agrees to further investigate a proposal, it must elect a strata renewal committee comprising lot owners and provide the committee with a budget for expenses. The strata renewal committee will be responsible for investigating and further developing the proposal in consultation with all interested parties. The committee will be allowed to appoint professional advisers, such as real estate agents, lawyers, valuers, tax experts etc to help them develop the plan.

The strata committee will be required to inform all owners and residents of the decision to develop a plan and to provide them with information about the process.

### **4. Development of strata sale/renewal plan**

The strata renewal committee will develop a plan. The plan will need to address certain prescribed matters (for example, the amount that each lot owner will receive from a collective sale) and contain sufficient detail to enable each lot owner to make an informed decision about whether to support the collective sale/renewal proposal.

### **5. Consideration of strata sale/renewal plan by owners**

The final plan will be provided to all lot owners and mortgagees who will have a minimum of 60 days to consider the proposal and to seek independent advice. Any decision by a lot owner to support the proposal would become void after 12 months if the plan has not progressed.

### **6. The Strata Commissioner**

If more than 75 per cent (but less than 100 per cent) of the lot owners support the plan, an application to terminate the scheme can be made to the Strata Commissioner, a person at the Land and Environment Court. The Strata Commissioner will consider whether the process has been properly followed and that all the owners have been treated fairly.

The Strata Commissioner will initially seek to resolve any dispute through conciliation or mediation. If the matter can't be resolved in this way, it will go to a hearing of the Land and Environment Court. The Court will listen to any dissenting arguments when considering if the process has been followed and everyone has been treated fairly.

The aim of this process is to ensure that every lot owner is kept well informed, is able to provide input to the proposal, is treated fairly and has their views taken into consideration.



## *Common property, repairs and responsibilities*

It is not always clear what is common property and what is the individual lot. This creates arguments about whether the owners corporation or a lot owner is responsible for the repair or maintenance of a particular item.

The basic rule is that everything inside the airspace of the unit, including all internal walls, fixtures, carpet and paint on the walls is usually the lot and therefore the responsibility of the lot owner. Everything outside that airspace including walls, windows, doors, and tiles fixed to the floor and boundary walls is usually common property and therefore the responsibility of the owners corporation.

However, these are general principles only. What is common property is not the same for all schemes. It often requires an interpretation of the registered plan and the fine print written on the plan by the property developer.

The community has called for greater clarity and guidance around the issues of maintenance and repair and for some common sense solutions to everyday matters concerning the common property.

2.8 Provide that schemes can adopt a maintenance by-law that will be based on a memorandum to be developed by the Strata Industry Working Group to assist in clarifying who is responsible for what.

Schemes will be able to adopt a model maintenance by-law, based on a memorandum developed by the Strata Industry Working Group, which identifies items of common property that a lot owner is responsible for maintaining and repairing.

The model by-law will list specific everyday items and identify who is responsible for upkeep or repair. It will provide a simple reference for owners corporations and lot owners to identify their responsibilities easily and prevent disputes over minor maintenance matters from developing. Schemes will be able to adopt the model by-law in full or exclude certain items that are not relevant to that particular scheme. Adoption of the maintenance by-law will not change the definition of common property.

The model by-law will not include major items of common property. Any significant items will still require a special by-law in order to provide a lot owner with exclusive use of any common property.

2.9 Establish new requirements with regard to owner renovations, so that:

- an owner does not need approval to make minor or cosmetic changes to the common property inside a lot (for example, inserting a picture hook, painting a wall or installing handrails around the house to assist elderly people);
- notice must be given to the strata committee before changes are made to common property inside a lot that are not minor or cosmetic (for example, refitting a bathroom or installing recessed light fittings); and
- owners corporation approval is needed for all renovations that change the external appearance of the lot, are structural or permanent, that require development consent or are likely to have a significant impact on the amenity of other residents (for example, installing hardwood floors, knocking out an internal wall, installing an air conditioning unit, or installing access ramps to the front door).

The current laws require owners corporation approval before a lot owner can make even a small change to the common property (such as inserting a picture hook into a common property wall). This reform supports a common sense approach to maintaining the building and will eliminate a lot of red tape for schemes.

Guidance material will be produced in consultation with stakeholders to help ensure a common understanding of the three categories of renovation. Schemes will also be encouraged to adopt the memorandum to be developed by the Strata Industry Working Group to help clarify responsibilities for maintaining and repairing aspects of the common property (see reform 2.8).

It is still the case that a lot owner is liable for any damage to common property or other lots caused by work done to their lot (see reform 2.12). Schemes will also be able to pass an exclusive use by-law to the effect that a particular lot is responsible for the repair and maintenance of an item of common property if this is considered necessary as a result of the renovations.

2.10 Amend the definition of “structural cubic space” so that it provides a more effective statutory easement for pipes, wires and other services that run through lots and common property.

This reform to the strata development laws is designed to clarify that pipes and other service lines that serve more than one lot remain common property for the full length of the service line.

2.11 Allow an easement to be created without the need for a special resolution where the easement benefits the common property and does not impose any obligation on the owners corporation.

This amendment will simplify the procedure for creating easements that provide a benefit to a strata scheme. An example would be where an easement is to be provided over adjoining land to drain water from a strata scheme.

2.12 Provide that when an owner/resident causes damage to the common property, the owners corporation may seek an order from the Tribunal requiring the damage be rectified or to recoup repair costs.

The current law requires an owners corporation to repair any damage to common property. This reform gives the owners corporations the option of seeking an order for the repairs to be made by the party who caused the damage in the first place. This reform received significant community support during consultation.

2.13 Provide certain new exceptions from the obligation on the owners corporation to maintain common property, including when the damage is subject to a claim against a builder or an owner/resident, or when the building is the subject of a collective sale/renewal plan.

This reform follows on from the reform above and provides only limited exceptions to the obligation for an owners corporation to maintain and repair common property.

The Strata Schemes Management Act already provides that a particular item of property does not need to be maintained if the owners corporation determines by special resolution that it is inappropriate to maintain, renew, replace or repair the property and that its decision will not affect the safety of any building, structure or common property in the strata scheme or detract from the appearance of any property in the strata scheme. Similar protections will be employed for this reform.

2.14 Establish processes, similar to those that exist under residential tenancies law, for dealing with abandoned goods.

The current laws provide no guidance or protection to owners corporations wishing to dispose of goods abandoned on the common property, perhaps by a former tenant or owner. A process similar to that which applies under residential tenancies legislation will be extended to the strata laws. However, under these changes the owners corporations will not have to arrange for the secure storage of the abandoned goods.

2.15 Enable an owners corporation to lease a strata lot within the scheme or to lease non-contiguous land outside of the scheme, provided it is 'relevant' to the scheme.

This expansion of the current leasing powers will give an owners corporation more flexibility to acquire additional common property for the benefit of the owners. An owners corporation with a temporary need for additional common property within a scheme, for a caretakers office or a meeting room, for example, will be able to lease a strata lot, or part of a lot, for an agreed period. Similarly, a scheme looking for additional common property, to be used for parking or some other purpose, will be able to lease nearby land that does not strictly adjoin the strata parcel.

## *Part strata and staged development*

To encourage innovative development that can accommodate evolving community needs, the strata legislation must provide a flexible way to complete a scheme in stages. It must also provide appropriate ways to structure mixed use schemes. The consultation revealed a number of areas where the current legislation needs amendment, either to add flexibility or to provide additional regulation.

**2.16 Provide that a registered Building Management Statement remains in place if a part of the building is subdivided by a strata plan. There will be no need for registration of a further Strata Management Statement.**

Buildings that contain more than one strata scheme need a management statement to regulate how the different parts of the building will work together. This reform will ensure that only one management statement will be needed for the building. To allow for better forward planning for this type of development, the management statement will be able to be registered before the first strata scheme. The existing procedure for amending a management statement will be retained.

**2.17 Require all new strata and building management statements to provide for allocation of the cost of shared facilities and to disclose the cost apportionment method used to allocate shared expenses.**

One of the most important functions of a building or strata management statement is to apportion the cost of shared services between the building's owners. Although most management statements do include a schedule or table apportioning the shared costs, there is no legislative requirement to do so and no guidelines on how the apportionment should be made. It is not proposed that the legislation will mandate a set method that must be used to make the apportionment. For transparency and to avoid dispute, the method that is used will need to be clearly identified.

**2.18 In a staged strata scheme, enable a strata development lot to be subdivided by a further strata development lot.**

This amendment to the strata development legislation will give developers more flexibility in planning the staggered release of a staged strata development. There will be no change to the existing provisions that require a developer to carry work only in accordance with the registered strata development contract.

## Summary of reforms – Managing the built environment

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
2.1	Encourage defects to be dealt with early.	Defect rectification does not have to be discussed at AGMs.	Defect rectification will be a compulsory agenda item for discussion at each AGM until the expiry of the statutory warranty periods as defined by the <i>Home Building Act 1989</i> .
2.2	Provide for an independent defects report	An independent defects report is not required.	An independent defects report is prepared for the owners corporation.
2.3	Require a bond be paid by the developer.	The payment of a bond is not required.	The developer of a high-rise strata building (that is, buildings with more than three storeys) must pay a bond as assurance that defects will be rectified. This money will be held in trust until the independent inspector agrees that any identified defects have been fixed.
2.4	Restrict the right of developers to vote on defects matters.	The developer has the right to vote on defects matters, albeit with a reduced entitlement.	The right of developers or anyone connected to the developer to vote on matters relating to building defects will be removed.
2.5	Provide for a maintenance schedule.	No requirement for preparation of maintenance schedules.	The builder/developer will be required to prepare a maintenance schedule for the owners consideration.
2.6	Improve the disclosure of information about the building to the owners corporation.	The Act lists the documents which a developer must provide to the owners corporation at the first AGM.	Developers will also be obligated to provide any documents that are reasonably necessary to enable or assist the owners corporation to run the scheme and maintain the building.
2.7	Establish a process to facilitate the collective sale or renewal of a strata scheme.	Strata schemes can be wound up with the unanimous support of owners or by an order of the Supreme Court.	A process to facilitate the collective sale or renewal of a strata scheme where there is less than unanimous support from the owners will be introduced with oversight by a Strata Commissioner.
2.8	Introduce a maintenance model by-law.	Owners corporations are ultimately responsible for maintenance of common property, but confusion can arise over the responsibilities of lot owners.	Schemes will be allowed to adopt a maintenance by-law based on a memorandum to be developed by the Strata Industry Working Group to aid the identification of common property items that the owners corporation is required to maintain.
2.9	Establish a common sense approach to owner renovations.	Owners must not alter common property without the approval of the owners corporation. Any changes to the common property must be approved by a special resolution.	New requirements with regard to owner renovations will be introduced, as follows: <ul style="list-style-type: none"> <li>• work without consent will be allowed for minor cosmetic changes to the common property within a lot;</li> <li>• the committee is to be notified before other, more substantial changes are made to a lot; and</li> <li>• owners corporation approval will be needed for renovations that change the external appearance of a lot, are structural or permanent, that require development consent or are likely to have a significant impact on the amenity of other residents.</li> </ul>
2.10	Clarify the definition of 'structural cubic	'Structural cubic space' is currently defined as:	This reform to the strata development laws is designed to clarify that pipes

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
	space’.	<ul style="list-style-type: none"> <li>• cubic space occupied by a vertical structural member, not being a wall, of a building;</li> <li>• any pipes, wires, cables or ducts that are not for the exclusive enjoyment of one lot and are in a building or in a part of a parcel that is not a building; and</li> <li>• any cubic space enclosed by a structure enclosing any such pipes, wires, cables or ducts.</li> </ul>	and other service lines that serve more than one lot remain common property for the full length of the service line.
2.11	Make it easier to create certain easements.	A special resolution is required for the creation of easements.	Provide that a general resolution is needed to create an easement that provides a benefit to a strata scheme.
2.12	Provide options to repair common property damaged by an owner or resident.	The current law requires an owners corporation to repair any damage to common property.	Owners corporations will be able to seek an order for the repairs to be made by the party who caused the damage in the first place.
2.13	Provide further (limited) exceptions from the obligation on the owners corporation to maintain common property.	The owners corporation is obligated to maintain the common property and keep it in good and serviceable repair.	Provide certain new exceptions to the obligation on the owners corporation to maintain common property, including when the damage is subject to a claim against a builder or an owner/resident, or when the building is the subject of a collective sale/renewal plan.
2.14	Establish processes for dealing with abandoned goods.	The law is silent in regard to abandoned goods.	Processes will be established for dealing with abandoned goods similar to those that exist under residential tenancies law.
2.15	Provide more flexibility for schemes wishing to lease a strata lot or land outside the strata scheme.	Schemes currently can’t lease any lots or land that is non-contiguous.	New leasing powers will give an owners corporation more flexibility to lease a lot without converting it to common property or lease land outside the scheme for the benefit of lot owners.
2.16	Provide that a Building Management Statement can remain in place if part of a building is subdivided by a strata plan.	Building Management Statements must be replaced once a strata scheme is built.	A registered Building Management Statement will remain in place if part of the building is subdivided by a strata plan. There will be no need for registration of a further Strata Management Statement. However, the existing procedure for amending a statement will be retained.
2.17	Provide for greater disclosure of the cost apportionment method in a Building Management Statement.	In the early stages of a community scheme, the full cost of shared facilities may not be apparent to potential or new lot owners as the original owner pays the majority of these costs.	All Strata and Building Management Statements will be required to make provision for allocation of the cost of shared facilities and to disclose the cost apportionment method used to allocate shared expenses.
2.18	Enable a strata development lot to be subdivided in a staged scheme.	The Strata Development Act prohibits the subdivision of strata development lots once a scheme has been registered.	It will be made possible for a strata development lot to be subdivided by a further strata development lot to allow the development to be staged.

## Chapter 3: Budgets and levies

An owners corporation is responsible for the same type of expenses as a conventional householder. These include water and electricity charges for common areas, building and public liability insurance, and repairs and maintenance.

In a strata scheme, there may also be additional costs to do with the running of the scheme such as general administration costs, fees for a managing agent, workers compensation insurance or building valuations.

Many disputes in strata schemes centre on money. Submissions argued that the law needs to provide greater fairness, transparency and accountability when it comes to the way money is managed. These reforms seek to address this without placing too heavy a burden on the people who administer the scheme's funds.

**3.1 When registering a scheme, unit entitlements must be determined based on an independent valuation.**

Developers are responsible for determining the unit entitlements of each lot when a strata scheme is first registered. There is often no scientific method in allocating unit entitlements and there have been cases where unit entitlements have been set in an unfair way, either intentionally or unintentionally.

Sometimes lots may be given the same unit entitlement, despite the lots being different sizes. Other times, different unit entitlements are allocated to lots that are essentially the same size. This reform will introduce more transparency to the way unit entitlements are set.

Unit entitlements are important as this is how levies are determined. Some votes of the owners corporation can also be on the basis of unit entitlements.

**3.2 Require realistic levies to be set in the initial period and for the first year after the initial period ends. The budget is to account for the supplied maintenance schedule.**

There have been cases where developers use their influence either in the initial period or at the first AGM to set the annual levies at unsustainably low levels in order to help with unit sales. This can lead to a big jump in levies in future years as the new owners face the realities of running a strata scheme.

To avoid this happening in the future, the owners corporation will be able to take the original owner (that is, the developer) to the Tribunal if it can be shown that the original owner used its influence to set unrealistic levies during the initial period and/or for the first year of a scheme after the initial period ends. The Tribunal will be given the power to make an order that the original owner be required to pay compensation to the owners corporation if the Tribunal determines that the budget and levy amounts were not adequate, taking into account the maintenance schedule and other reasonable costs of running the scheme.

**3.3 Require schemes to identify how the 10-year sinking fund plan will be funded.**

This reform is designed to encourage schemes to actively consider how future maintenance and capital works will be funded. The aim of this reform is to avoid situations where unplanned special levies or loans are needed to cover large capital expenses when more gradual contributions to the sinking fund over time might have been preferred by the owners.

3.4 Require strata committees to prepare and distribute key financial information (one page) to all owners ahead of each Annual General Meeting.

It is currently the case that each lot owner must be provided with a full copy of the last financial statement prepared by the owners corporation ahead of each AGM. Some lot owners can be overwhelmed by the amount of financial information contained in these statements. Costs associated with producing and distributing such documents can also be significant.

Accordingly, it is proposed that the full set of financial statements be replaced with a one page summary of key financial information. This is expected to help lot owners better understand the general state of the scheme's finances and to engage in discussions at the meeting. Copies of the full financial statements will still need to be made available to owners who request them and some schemes may decide that the full financial statements must continue to be provided.

3.5 Schemes with an annual budget of more than \$250,000 to have their accounts audited each year.

A large scheme, that is, a scheme comprising more than 100 lots, currently must have its accounts audited each year. It is proposed to expand the definition of 'large scheme' to include all schemes with an annual budget in excess of \$250,000.

3.6 Allow for income earned by a scheme and any special levy to be paid into either the administrative fund or sinking fund.

Some schemes earn income from external sources, such as from rents, which must be paid into the sinking fund. This can result in excessive amounts accumulating in the sinking fund, which owners are not reasonably able to use. It is proposed to allow this income to be paid into either the administrative fund or the sinking fund. This will enable schemes to direct resources to where they are most needed.

When schemes raise special levies it is often to meet expenses of a capital nature that may not have been fully budgeted for, yet the current law restricts special levies to the administrative fund. This restriction will be removed.



3.7 Establish a stepped process to allow schemes to recover outstanding levies, including by seeking an order in the Tribunal.

The recovery of outstanding levies is a significant issue in many strata schemes. If levies go unpaid, or are not paid on time, there can be significant financial impacts on the strata scheme and the other lot owners.

Submissions argued that owners corporations need more options for recovering outstanding levies, particularly from investor owners who may not live in New South Wales.

The stepped process will involve:

- continuing to provide that a simple interest rate of 10 per cent applies to unpaid levies after a grace period of one month;
- continuing to prohibit owners who have not paid by the end of the grace period from being a member of the strata committee or voting on a motion at a general meeting;
- seeking an order in the Tribunal if levies remain unpaid. Rental income from a tenant may be used to satisfy this debt ; and
- enforcing the Tribunal's order or otherwise pursuing the debt in the Local Court.

## Summary of reforms – Budgets and levies

	Reform	Current laws	New laws
<b>Budgets and levies</b>			
3.1	Provide that unit entitlements are to be determined by an independent valuation.	When a scheme is registered, the original owner determines the allocation of unit entitlements.	When a scheme is registered, determination of unit entitlements will have to be based on an independent valuation.
3.2	Require developers to set realistic levies.	There are no requirements for setting of levies for the first year of the scheme.	Developers will be required to set realistic levies in the first year of a scheme. The budget must also account for the supplied maintenance schedule.
3.3	Require schemes to identify how 10-year sinking fund plans are to be financed.	Schemes must develop 10-year sinking fund plans and set annual sinking fund levies but do not have to determine how the plan is to be funded.	The requirement for schemes to develop a 10-year sinking fund plan will be retained but schemes will also be required to identify how it will be funded in the longer term.
3.4	Require a one page summary of key financial information to be distributed to owners.	General meeting notices must include the last set of financial statements.	Committees will be required to prepare and distribute key financial information to all owners ahead of each AGM. The full set of statements will only be given to those people who request a copy.
3.5	Provide that schemes with budgets greater than \$250,000 must have their accounts audited.	Schemes with over 100 lots must have the accounts audited annually. An owners corporation can also decide to have their accounts audited.	Schemes with an annual budget of more than \$250,000 will also be required to have their accounts audited each year.
3.6	Allow certain income to be paid into either the administrative or sinking fund.	Any income earned by an owners corporation that is not specifically for the administrative fund must be paid into the sinking fund.	It will be possible for certain income earned by an owners corporation or special levies to be paid into either the administrative fund or sinking fund.
3.7	Establish a stepped process for recovering outstanding levies.	Owners corporations cannot seek an order in the Tribunal regarding the payment of outstanding levies.	A stepped process will be established to allow schemes to recover outstanding levies, including by seeking an order in the Tribunal.

## Chapter 4: By-laws

The by-laws of a strata scheme are a set of rules that govern behaviour and the use of common property by residents. All strata schemes are subject to a set of by-laws, which must be lodged with the Registrar General. Many schemes simply adopt the model by-laws that are set out in the regulations, while other schemes devise their own set of by-laws.

The application and enforcement of by-laws received a lot of attention in submissions. Concerns were raised about ignorance of the by-laws, particularly among tenants, and the difficulties faced by owners and residents in obtaining a full and up-to-date set of the by-laws.

Submissions also argued that the by-laws are not always fair, that they are inconsistently applied, are sometimes difficult to enforce and that the model by-laws need to be updated to better reflect changing community attitudes.

4.1 Establish broad principles in the Act for the setting of by-laws, including that they cannot be unreasonable, oppressive or discriminatory.

There are currently no limits on the matters about which by-laws can be made, providing that they are not inconsistent with the law. Some people have argued that by-laws, because of the way they are drafted or enforced, can have a detrimental and unfair impact on an individual or a minority of residents. This reform, along with reform 1.10, will help address this concern, including in the Tribunal.

4.2 Require the secretary of a scheme (or delegated strata managing agent) to keep a consolidated set of the by-laws and require a consolidated set to be lodged with the Registrar General each time an amendment is made.

A consolidated set of by-laws will need to be held by Land and Property Information (LPI) and recorded on the common property title. Schemes will need to provide LPI with a consolidated set on the next occasion that they amend the by-laws. Guidance material will be produced by Fair Trading and LPI to help schemes understand the process for identifying, updating and registering their by-laws.

4.3 Require schemes to review their by-laws and consider whether any changes are needed within 12 months of the legislation coming into force.

'Review of the by-laws' will be listed as a compulsory agenda item for the first AGM held after the legislation comes into force with a view to adopting new model by-laws that will be published by Fair Trading. Schemes will be encouraged to review their by-laws on a regular basis to ensure that they remain relevant and reflect the interests of the owners and residents. Any amendments to existing by-laws will still require a special resolution.

4.4 Allow schemes to voluntarily adopt a charter that outlines the 'spirit' of the strata community.

Schemes will be able to prepare their own charter or mission statement, as a means to explain the character or outlook of the scheme and the intentions of the owners for its governance. If the owners corporation agrees by special resolution to adopt a charter, it must be recorded in the strata roll and made available to all owners and residents of the scheme. The terms of the charter will not be enforceable and it will not form part of the by-laws.

**4.5 Amend the current residential model by-laws to deal with the impacts of cigarette smoke on other residents.**

It is proposed to introduce a model by-law that deals exclusively with the issue of smoke drift in strata schemes.

The model by-law will reflect the provisions that are already set out in section 117 of the Act. That is, the model by-law will ban smoking in a lot or on any part of the common property where the smoke causes a nuisance or hazard or otherwise interferes unreasonably with the use or enjoyment of a lot by another resident.

Incorporating these provisions into a model by-law will help to ensure that everyone in a strata scheme is aware of their rights and responsibilities. The owners corporation will also be able to issue a notice to the offending resident if the by-law is breached and seek an order in the Tribunal if the behaviour continues.

Further to this reform, the law will clarify that any smoke that drifts into a residential lot may be regarded as a nuisance or a hazard.

**4.6 Amend the current residential model by-laws to require owners corporation approval to install wooden or other hard floors (other than in a kitchen or bathroom).**

Intrusive floor noise caused by the replacement of carpet with floating or polished floorboards or other hard floors, is a common cause of dispute, which can be extremely difficult and expensive to rectify after the event.

The current model by-laws dealing with floor covering will be amended to require owners corporation approval before hardwood floors can be installed in residential strata lots. The owners corporation can impose conditions on any approval.

**4.7 Amend the current residential model by-laws to allow pet ownership with permission, which can not unreasonably be refused and also provide that certain small pets can be kept without permission.**

The current model by-laws include three options for regulating pet ownership in schemes. One of these options is to impose a total ban on pet ownership.

It is proposed to replace the current options with a single by-law that will allow certain pets (that is, cats, small dogs, birds and fish) to be kept without permission and all other pets with permission, which cannot unreasonably be refused. Reasonable grounds for an owners corporation to refuse permission might include that the pet is likely to impact other lot owners' use or enjoyment of their lot or the common property.

There was a strong view in the submissions that pet ownership was unreasonably restricted in many strata schemes. This is a particular problem for pet owners looking to buy or rent a unit. It is thought that by changing the model by-laws, more and more schemes will allow pets to be kept over time.

It is important to note that schemes will still be able to ban pets or certain types of pets if they wish to do so.

4.8 Provide that schemes can adopt a by-law to limit the number of people who can occupy lots on an ongoing basis.

To deal with the issue of over-crowding, schemes will be able to place a limit on the number of people who can occupy lots. However, this limit cannot be fewer than two adults multiplied by the number of bedrooms shown in the building plans (or an approved renovation). Where overcrowding is apparent, schemes will be able to seek an order in the Tribunal against the residents or lot owner.

4.9 Clarify that ignorance of the by-laws does not constitute a defence in the Tribunal.

The reforms will make it easier for residents to obtain a copy of the by-laws and the current provisions will be strengthened to make it clear that ignorance of the by-laws is not a defence before the Tribunal. Residents will still need to be given a 'notice to comply', so that they are warned that similar future conduct could result in penalties.

4.10 Provide that if a by-law has been repeatedly breached and the Tribunal has previously imposed a penalty in the last twelve month period, that the owners corporation can apply directly to the Tribunal for a further penalty without having to issue a new notice to comply or undertake mediation.

This reform is designed to make it easier for owners corporations to enforce the by-laws on repeat offenders.

4.11 Increase penalties for by-law breaches to give the Tribunal scope to escalate penalties for repeat offences.

In some cases higher penalties are needed to encourage compliance with the by-laws where a resident continues to breach the same by-law. The penalties will be increased to a maximum of 10 penalty units (\$1,100) to give the Tribunal this flexibility.

4.12 Provide that penalty payments are to be payable to an owners corporation rather than to the Commissioner for Fair Trading and provide that penalties incurred by an owner can be added to the owner's levy account.

Enforcing by-laws is a matter between the owners corporation and another party. The government is not involved in the dispute and there is usually no broader community impact associated with the by-law breach. However, the Tribunal will still have the power to require the penalty be paid to the government if there are extenuating circumstances.

Allowing for a penalty to be added to an owners levy account will provide additional options for the owners corporation to recover the outstanding debt.

4.13 Amend the *Conveyancing (Sale of Land) Regulation 2011* to require that a copy of all registered by-laws (not just exclusive use by-laws) must be annexed to the contract for sale of land. Both landlords and their agent will be responsible for ensuring a copy of the by-laws is provided to tenants.

This reform is designed to ensure that all new owners and residents are made aware of the rules that govern a scheme. In the case of tenants, it is already the case that a landlord is

required to provide a copy of the by-laws to a tenant. In practice, this is rarely done. By extending this obligation to the landlord's agent, it is hoped that compliance rates will improve.

4.14 Establish a regulatory framework that allows schemes to better manage disputes about parking, including establishing conditions of use and arranging for penalties to be issued for non-compliance.

One of the most common disputes in strata schemes relates to unauthorised parking, where residents misuse visitor parking spots or people not connected to the strata scheme park on the common property without approval.

Accordingly, it is proposed to allow owners corporations to enter into arrangements with the local council for the issuing of penalty notices to owners of offending vehicles. Authorised council officers will be allowed to enter private property to issue notices. These arrangements would be voluntary both for schemes and councils and would need to be developed on commercial terms. For example, councils will need to be able to fully recover any costs associated with providing this service.

Before owners corporations can pursue this option, they will need pass a general resolution agreeing to begin negotiations with the council and then pass the necessary by-laws to define the terms-of-parking rules. Signage and access arrangements to the property will need to form part of any agreement.

NSW Fair Trading will issue guidance material to assist owners corporations better understand what options are available for managing parking on the common property.



## Summary of reforms – By-laws

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
4.1	Establish broad principles for the setting of by-laws.	By-laws can be made regarding a list of matters. By-laws must not be inconsistent with the strata law or any other law.	Broad principles will be established in the Act for the setting of by-laws, including that they cannot be unlawful, unreasonable, oppressive or discriminatory.
4.2	Make it easier to obtain a consolidated set of the scheme's by-laws.	The by-laws must be kept on the strata roll. There is sometimes confusion about whether exclusive use by-laws need to be included. Only new by-laws are required to be provided to the Registrar General.	The secretary of a scheme (or delegated strata managing agent) will be required to keep a consolidated set of the by-laws.  A consolidated set of the by-laws will have to be lodged with the Registrar General each time an amendment is made.
4.3	Require by-laws to be reviewed.	There are no requirements for a scheme to review its by-laws.	Schemes will be required to review their by-laws within 12 months of the legislation coming in to force.
4.4	Allow schemes to adopt a charter.	The Act is silent on this issue.	A provision will be included to allow schemes to adopt a charter that outlines the 'spirit' of the strata community.
4.5	Amend the model by-laws to deal with the issue of cigarette smoke drift.	No current by-laws dealing with cigarette smoke.	Introduce a model by-law dealing with smoke drift and make it clear that cigarette smoke can be a nuisance or a hazard to other residents.
4.6	Amend the model by-law to require owners corporation approval to install hardwood floors.	Model by-laws exist regarding flooring, but these do not require owners corporation approval.	The residential model by-laws will be amended to require owners corporation approval to install wooden or other hard floors (other than in a kitchen or bathroom) in any lot.
4.7	Modernise the model by-laws to encourage more schemes to allow pets.	The current model by-laws include an option for schemes to ban pets.	Certain pets to be allowed and all other pets allowed with permission, which can not unreasonably be refused.
4.8	Amend the model by-laws to deal with the issue of over-crowding.	The current model by-laws provide that an owner or occupier of a lot must ensure that the lot is not occupied by more persons than are allowed by law to occupy the lot.	Schemes will be able to adopt a by-law to limit the number of people who can occupy a lot even where this is not provided for under other laws.
4.9	Clarify that ignorance of the by-laws is not a defence.	The owners corporation can issue a 'notice to comply' with a by-law following a breach. If the same breach happens again, an application can be made to the Tribunal for a penalty to be imposed. The Tribunal has on occasion accepted a defence that the occupier was unaware of the by-law.	It will be clarified that ignorance of the by-laws does not constitute a defence in the Tribunal.
4.10	Provide a streamlined process for dealing with repeat breaches of the by-laws.	The owners corporation must serve a notice under section 45 on the person requiring the person to comply with a particular by-law before taking a matter to mediation	The Act will allow that if a by-law has been breached and the Tribunal has previously imposed a penalty in the last twelve months, that the owners corporation can

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
		and then to the Tribunal.	apply directly to the Tribunal for a further penalty without having to issue a new notice to comply or undertake mediation.
4.11	Allow for greater penalties for people who repeatedly breach the by-laws.	The Tribunal can currently impose a penalty of up to 5 penalty units (\$550) for the breach of a by-law.	The Tribunal will be able to impose a penalty of up to 10 penalty units (\$1100).
4.12	Penalties payable to the owners corporation.	Penalties are usually paid to the Commissioner for Fair Trading.	Most penalty payments will be made directly to an owners corporation.
4.13	Raise awareness of the by-laws.	New owners may be made aware of some by-laws from a section 109 certificate that is provided to finalise the sale of a strata lot. Tenancy agreements provide for the by-laws to be given to new tenants.	It will be required that a copy of all registered by-laws be attached to the contract of sale for a strata lot. Landlords and their agents will both be responsible for ensuring that tenants have a copy of the by-laws.
4.14	Provide more options for schemes to deal with unauthorised parking.	Schemes can adopt by-laws regarding parking, but they only apply to residents.	A regulatory framework will be established to allow schemes to better manage disputes about parking, including establishing conditions of use and entering into an agreement with the council for penalties to be issued for non-compliance.



## Chapter 5: Managing disputes

There will always be disputes in strata schemes. Strata living means that people with diverse interests and ideas live in close contact with one another. Most of the time disputes are resolved by talking with each other about the problem and through developing tolerance and an understanding of others' views. However, there are times when disputes can only be resolved with outside help.

The strata law already provides for an external process for resolving disputes. There is the option for an owners corporation, owner or resident to take action through mediation, adjudication and the Tribunal process.

Submissions were broadly supportive of the established dispute resolution process but did include suggestions for strengthening and streamlining the process and improving access, including by expanding the jurisdiction of the Tribunal to deal with the majority of strata-related disputes.

These reforms aim to deliver on many of the suggestions raised in submissions and will account for other reforms that are occurring across government such as the planned establishment of the NSW Civil and Administrative Tribunal (NCAT).

### 5.1 Recognise internal dispute resolution mechanisms within schemes in the Act.

It is proposed that the Act recognise internal dispute resolution procedures, which some schemes may wish to formally establish. Establishing these procedures would be voluntary and participation optional. Fair Trading will develop a model process in guidance material that schemes can adopt or modify for their particular needs.

### 5.2 Further encourage attendance by parties at mediation by allowing the Tribunal to issue cost orders against the party that does not attend.

Mediation has proven to be a successful and cost effective way to resolve many disputes. The success rate of mediation run by Fair Trading is close to 70 per cent. While mediation is nominally compulsory, a respondent can currently refuse to participate for any reason without consequence. It is therefore proposed that the Tribunal be allowed to order the person who fails to attend a scheduled mediation to pay any costs associated with the mediation.

### 5.3 Remove certain provisions relating to Tribunal processes and how matters are heard from the strata law and include them in the *Consumer, Trader and Tenancy Tribunal Act 2001*. Ensure greater consistency between the strata law and the laws governing the Tribunal.

This reform will allow the Tribunal more flexibility in the way it deals with disputes and help facilitate its transition to NCAT.

All reference to adjudication will be removed from the strata laws and all applications and orders will be to and by the Tribunal. Provisions relating to the hearing of disputes will be removed in favour of the provisions to be set out in the NCAT Act. These include matters relating to the issuing of interim orders, transitional provisions for appeals against orders of the Adjudicator, certain orders relating to costs, and provisions relating to how a person can be represented before the Tribunal.

## **NCAT**

***The NSW Government will establish the NSW Civil and Administrative Tribunal, to be known as NCAT. More than 20 of the state's tribunals will be integrated into NCAT, which will provide a single gateway for tribunal services to the people of NSW. NCAT's establishment is part of the Government's commitment to improving the quality, consistency and transparency of public services. NCAT will begin operating on 1 January 2014.***

***Matters that are currently heard by the Consumer, Trader and Tenancy Tribunal will now be dealt with by the Consumer and Commercial Division of NCAT. The transition to NCAT will not impact those matters currently before the CTTT and new applications can continue to be lodged with the CTTT.***

***More information about NCAT is available at: [www.tribunals.lawlink.nsw.gov.au](http://www.tribunals.lawlink.nsw.gov.au).***

### **5.4 Establish a duty advocate service to assist parties in preparing for mediation sessions and Tribunal hearings.**

Consideration is being given to whether applicants need additional assistance in preparing their cases for consideration by the Tribunal. This reform will receive further consideration in the context of the establishment of NCAT.

### **5.5 Extend the Tribunal's jurisdiction to deal with the majority of strata disputes, including actions to recover outstanding levies.**

It is proposed to expand the jurisdiction of the Tribunal to allow it to deal with matters relating to the recovery of outstanding levies from owners, claims for the cost of repairing damage caused to the common property, disputes over building management committees in part strata schemes, and disputes about the refusal of a scheme to sign a development application for an owner wishing to renovate. This reform will help to avoid the current situation where some parts of a dispute are heard in the Tribunal and other parts of the dispute are heard in the Courts.

### **5.6 Enable the Commissioner for Fair Trading to issue penalty notices for appropriate offences under the Act.**

Penalty notices can be a useful tool for ensuring compliance with the law and are suitable for offences that involve clear physical elements that an enforcement officer can easily apply to make a reliable and objective assessment of guilt. For example, if the owners corporation fails to keep the required accounting records.

Further consultation will occur before any decision is made about which offences are suitable for inclusion in a penalty notice regime.

### **5.7 Remove the assumed right to legal representation in mediation and in the Tribunal. Instead allow parties to apply for leave to be legally represented, consistent with Tribunal legislation.**

This will help to keep the costs associated with Tribunal hearings to a minimum and establish a consistent approach to legal representation across all divisions of the Tribunal.

5.8 Provide additional options for resolving dysfunction in schemes, including enabling Tribunal orders to remove persons from strata committees, require new elections of office holders, limit the matters that committees can make decisions about, put certain decisions of the committee to a vote of the owners corporation, and require self-managed schemes to appoint their own agent.

Currently the main option to deal with a dysfunctional scheme is for the Tribunal to appoint a strata managing agent. This may not be the best outcome in all cases.

5.9 Enable a summons or other legal process to be served on the owners corporation by post to the address recorded in the Register folio.

This reform is designed to bring the strata laws into line with the processes for serving notices on companies under corporations laws.

## Summary of reforms – Managing disputes

	<b>Reform</b>	<b>Current laws</b>	<b>New laws</b>
5.1	Recognise internal dispute resolution mechanisms.	The law does not formally recognise internal dispute resolution mechanisms.	Dispute resolution mechanisms within schemes will be formally recognised and guidance material issued to help schemes establish processes for resolving disputes internally.
5.2	Further encourage attendance at mediation.	There is no penalty for refusal to attend mediation.	Attendance by parties at mediation will be encouraged by allowing the Tribunal to issue cost orders against the party that does not attend.
5.3	Remove certain provisions relating to Tribunal processes from the strata laws.	Many of the Tribunal's processes are duplicated in different legislation.	Provisions relating to Tribunal processes and how matters are heard will be moved to the Tribunal Act.
5.4	Provide for the establishment of a duty advocacy service in the Tribunal.	Tribunal staff can only provide administrative guidance to applicants.	A duty advocate service will be considered in the context of broader reforms to tribunal processes in NSW.
5.5	Allow the Tribunal to deal with most strata-related disputes.	Some strata disputes cannot be dealt with by the Tribunal. It is currently the case that some aspects of a complaint may be dealt with in the Tribunal but other aspects must be referred to the courts.	The jurisdiction of the Tribunal will be extended to deal with the majority of strata disputes, including actions to recover outstanding levies.
5.6	Enable the Commissioner to issue penalty notices for certain breaches of the Act.	The Commissioner for Fair Trading does not currently have these powers in relation to strata schemes.	The Commissioner for Fair Trading will be able to issue penalty notices for appropriate offences.
5.7	Legal representation in mediation and in the Tribunal will be allowed by exception.	Parties have an assumed right to legal representation at mediation or in the Tribunal.	The implied right to legal representation in mediation and in the Tribunal will be removed. Instead, parties will be allowed to apply for leave to be legally represented under the Tribunal's legislation.
5.8	Give the Tribunal more options for dealing with dysfunctional schemes.	The Tribunal can order a scheme to appoint a strata managing agent.	The Tribunal will be provided with the options to; <ul style="list-style-type: none"> <li>• remove a member of the committee;</li> <li>• require new elections to be held;</li> <li>• limit the matters that the committee can make decisions about;</li> <li>• put certain decisions to a vote of the owners corporation; and</li> <li>• require self-managed schemes to appoint their own agent.</li> </ul>
5.9	Enable a summons or other legal process to be served on the owners corporation by post.	A summons or legal process can only be served on an owners corporation by leaving it with the chairperson, secretary, or other committee member.	Allow for a summons or other legal process to be served on the owners corporation by post to the address recorded in the Register folio.

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