

**Publication Date: 19 October 2023**  
**YSP Podcast Transcript: 383. New Strata Laws Proposed for NSW:**  
**Here's the Need-To-Know**

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**Intro:** Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate and bite-sized information from an experienced and authoritative source.

**Amanda Farmer:** Hello and welcome to this week's podcast episode. I'm your host strata lawyer, Amanda Farmer. It is great to be here with you this week. And what a week it has been, especially for those of us in New South Wales.

We kicked off last week with the announcement that we have a strata commissioner. John Minns, the current property services commissioner is adding the title strata commissioner to his role and we have some new legislation to have a look at. A bill has been tabled in New South Wales Parliament, which is said to be implementing some of the recommendations from a 2021 review of the Strata Schemes Management Act and the Strata Schemes Development Act.

Some of you might remember that review process. Yes, it was almost two years ago now that we were asked to let the government know our thoughts on how our legislation had been operating here in New South Wales since its commencement in 2016. This was what they call a statutory review. So the government was legally required to review the legislation after it had been in place for 5 years. A discussion paper was put together, a list of 139 reform recommendations was drawn up and we're now seeing 31 of those proposed in what is called the Strata Legislation Amendment Bill 2023. There's a link to that bill in the show notes for this episode. I will also link to the second reading speech, which is a bit more palatable and we'll help you get the gist of these reforms.

We're told in that speech that this bill adopts the more pressing reforms, but it is just the beginning. The remaining reforms recommended in the review are proposed to be included in a draft bill for consultation in 2024. We're not told what part of 2024, but 2024 is the year and those later reforms will deal with embedded networks, sustainability infrastructure, repairs and maintenance, and further improving the governance of strata schemes.

We're told that our government is not going to rush these important reforms. They are complex. They are significant and there will be consultation with residents, stakeholders and industry to get the reforms right. But in order to deliver what we have now is this first tranche of reforms. I've had a look at the bill and what I've pulled out for you today are just 8 big changes that I think will most impact strata owners, residents and managers when this bill becomes law.

So it's not the law yet. Some of you already asked me, "*Amanda, when are these changes going to be in place?*" It's hard to say. It can take a few months for a bill like this to travel through parliament. It is only at the legislative council stage, the House of Representatives. It will need to go through the legislative assembly. There may be some changes proposed to the bill.

But indeed, if you're a listener to the podcast, if you are following our Facebook page, if you're following me on Instagram, those are the places to be to make sure you're the first to know when these changes become law or when we have some further changes proposed.

So today I'm going to walk you through the 8 big changes that I've pulled out from this bill. It's not all of them. The bill does cover other things, including recognising and resolving conflicts of interest in the strata renewal process. That's unlikely to affect the majority of you. What I'm focusing on today are those items that are going to change the way that we manage New South Wales strata communities, day to day.

So the first big change I wanna draw your attention to, it is proposed that when issuing notice of an annual general meeting, owners should be given 14 days' notice, that is up from the current 7 days. There's some discussion in the second reading speech to the effect that government was hearing owners needed more time to consider some of the more complex documents that might be attached to agendas for annual general meetings, including contracts, and that some owners were receiving those documents even after the AGM had taken place or with very limited time before the AGM to be able to take an informed position at the meeting.

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So general meetings that are not annual general meetings, 7 days notice will remain the requirement, but once it's an annual general meeting, an AGM, 14 days notice and that remains clear days notice. So we don't count the day the notice is put in the post, the day of the meeting. We must make sure that we're leaving sufficient days for postage in New South Wales. The rule is 7 working days for postage before a document is deemed served by post. So strata managers, I know at the moment, your rule of thumb for your AGMs is if they're being sent out by post. Those documents need to be in the mailbox about 3 weeks before the meeting date to make sure that owners are receiving their documents. 7 clear days before the meeting. I expect you're going to be upping that to 4 weeks. Our AGMs really are going to be planned very much in advance especially where those notices are being sent out by post.

Second big change that I have, second big change that I want to bring to your attention. Community association committees. Currently a community association, similar to a strata committee, can have up to 9 committee members. It's proposed to increase this number to 15, recognising that our community associations are generally much larger communities. They're comprised of different types of subdivisions they have within them subsidiary strata schemes.

There are often far more than 9 members in a community association. And this change is designed to ensure that more residents can have a representative sitting on a community association committee. When we see community associations take this up and have possibly 15 committee members.

I see that as a considerable administrative burden for our strata managers who are sending out notices to each of those committee members who are keeping each of them informed as to what's happening in the community. And are perhaps receiving instructions from each of the 15 committee members.

So do have a think, I suggest strata managers when you are reviewing, revisiting your management fees for your community associations clients you may want to bear in mind that this change is on the horizon.

The third big change that caught my attention, it's going to be easier to remove strata committee members from their positions. There is a recognition that some communities are struggling with committee members that don't understand or recognise or don't comply with their legal duties, their duty to act in good faith with due diligence and in the best interests of the owners corporation.

And in those circumstances, there are owners who would like to remove those committee members from their positions. It's something we've talked about before on the podcast. How do we, before their term is up, remove a committee member from their, remove a committee member. Well, at the moment, a special resolution is required.

A motion can be proposed at a general meeting to remove one committee member, two committee members, all of the committee members from their positions if a special resolution is achieved. In effect that means that at least 75% of votes cast on the motion need to be in favour of the positions being vacated.

And the value of those votes is calculated in accordance with unit entitlements. That's what a special resolution is in New South Wales. What's the change being proposed? Well, it's only going to take an ordinary resolution now to remove strata committee members from their positions. An ordinary resolution, that's a simple majority of votes cast based on a show of hands, not unit entitlement.

I know a few communities who, I know a few communities in which owners are unhappy with the way their committee is performing and indeed would be able to achieve an ordinary resolution not a special resolution but an ordinary resolution to remove committee members from their positions. So I can see this change being put to use. I'm going to say use, maybe good use in some communities, maybe not in others.

Now connected to this and the fourth big change I want to bring your attention to is that strata committee members who are removed from their positions by ordinary resolution will not be able to serve on their committee again for a period of a year. They have to have a time out. Time out for bad behaviour.

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Again, this is something that I've been asked by a few owners this year in particular. How do we stop poor performing, self-interested committee members with a bad track record from ever serving again on our committee?

Well you can't do that and it's not proposed that you can ban them for life but it looks like it is going to be possible to remove them from their positions and then make sure they cannot serve again for a one-year period.

Now while I'm on the subject of committees. There's also a clarification being inserted into our legislation. We know that our strata committee is elected at each annual general meeting of the owners corporation, but the question has come up. I think Reena and I have considered it here on the podcast previously. Can committee members be elected at other general meetings?

Can we call a general meeting simply to spill the committee and elect a new committee or do we have to wait for the annual general meeting to roll around? This is being clarified. Section 30 of our Strata Schemes Management Act is going to be amended to make clear that the members of a strata committee must be elected at each AGM. But also may be elected at another general meeting that is called to elect members of the committee. An important clarification there, I'm aware of a building I think Reena might have been involved in where that question came up and there was a difference of opinion.

Moving on to the fifth big change that I see in this bill. We are once again dealing with pets and pet ownership, specifically bonds or fees will not be able to be charged to pet owners. And pet owners cannot be required to obtain insurance for their pet.

The government has heard about communities where hundreds and hundreds apparently of dollars were being charged in the way of bonds and fees and this was an impediment to pet ownership. This legislation will make clear that is an unreasonable burden on anyone who wishes to keep an animal and will be expressly prohibited.

Connected to this, it's also going to be easier for those needing an assistance animal to apply for permission. It will be made clear that by-laws cannot affect the ability of assistance animals to perform their duty. For example, if there is a by-law that requires owners to carry their animal across the common property. This will not be able to prevent a vision impaired resident from using their guide dog to guide them through the common property. You'd think that was common sense. I imagine the government's heard that. I imagine our government's heard that these kinds of restrictions are being put in place in communities and being applied to people with assistance animals.

Another timely change in the context of assistance animals, it's being made clear that owners corporations cannot ask for medical or personal information about a person's disability when considering approval for an assistance animal.

Instead the owners corporation can require evidence that the animal holds an accreditation or has received training referred to under the Disability Discrimination Act or other types of evidence that will be prescribed in the regulations. But material that would breach the privacy of residents especially when it's going to be kept on the books and records of the owners corporation will not be able to be requested. Now that's specifically in the context of residents wishing to keep assistance animals.

Sixth big change to draw your attention to. A strata levy that is struck for the purpose of carrying out emergency repairs will be able to be made due within 14 days. Now currently the law in New South Wales is that levies cannot be made due earlier than 30 days after the levy is struck at a meeting.

So that's a significant shortening of that time for levies strictly for the purpose of carrying out emergency repairs. And yes, that term is going to be defined. Emergency repairs means urgent repairs to a building in the strata scheme that are necessary to mitigate a serious and imminent threat to the health or safety of the occupants. That's what's set out in the bill. I can see a little room for improvement there in that definition.

When I posted this one on our Facebook page earlier in the week there were some comments. There was some surprise expressed that amounts that may be quite large. The cost of repairs for example to a leaking roof might be made due payable within 14 days. That could put a significant burden on owners especially at a time when we're talking a lot about rising costs of living and

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rising strata levies. But this change is indeed proposed in the bill.

Seventh big change. It's intended that an owners corporation will need to obtain at least two independent quotations for proposed expenditure on any one item that is more than the amount prescribed by the regulations. Let me say that like a human being.

At the moment. The current law is That buildings with more than 100 lots must get two quotes, must get at least two quotes if they're going to spend more than \$30,000 on any one item. That might be the engagement of a strata manager, the engagement of a building manager. If that contract is going to be for more than \$30,000, there do need to be, there does need to be two quotes obtained.

What's being proposed here is that same requirement be extended to all buildings, not just large strata schemes. Seem sensible enough. \$30,000 is a lot of money. That figure comes from the regulations. It may change if the regulations are amended but at the moment \$30,000 is the prescribed amount.

There is a get out clause proposed in the bill. If an owners corporation is not able to comply with this requirement to get two quotes, then the secretary must add an item to the agenda of the next general meeting to note the reasons why the owners corporation was not able to get the two quotes.

So if you can't do it, it's okay, but you got to explain why. I expect this to be a popular change. one that is generally supported. I know many of you tell me how surprised you are that there's no requirement to get more than one quote for anything in a building that's not a large strata scheme.

Indeed, how surprised you are sometimes when you find out that the strata committee has the power to approve expenditure on repairs and maintenance. The strata committee doesn't have to go to a general meeting to get those expenses approved.

The strata committee has quite a lot of power to make decisions about repair and maintenance items, different of course, if we're talking about upgrades or improvements to the common property. This part of the bill doesn't change that. Strata committees will still be able to make decisions without going to a general meeting when they're dealing with repair and maintenance issues. But it does insert this requirement to get two quotes for large items of expenditure.

And the final big change that I want to bring to your attention today. It's proposed that an owner corporation books and records must be kept in electronic form. Now important to note that this is not intended to be retrospective and expressly is only going to apply to records that are made or kept 6 months, records that are made 6 months from the date of commencement of the legislation.

And it doesn't and it doesn't prevent an owners corporation from keeping duplicate records in a form that is not electronic. So you can still have your hard copies, but anything new that is made or kept 6 months from the date this legislation starts must be in electronic form.

Now those are 8 big changes that are being proposed that I wanted you to be aware of today. I want to be clear. That's not everything in the bill and you'll probably hear me in the coming weeks, talk about some of the other changes that are there.

Do have a read, head over to the show notes and access the material I'm going to link to. If you are reading the second reading speech. Just be aware that like my podcast episode, that doesn't cover all of the changes either. If you want to be across all of the changes, read the text of the bill and keep tuning in.

If you're not getting this podcast to your inbox each week, you want to head over to [yourstrataproperty.com.au](http://yourstrataproperty.com.au) and sign up to our email list. That'll make sure you're first in line to receive my updates on any changes, any additions, any amendments to this law.

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Also, head over and follow our Facebook page. That's called Your Strata Property, conveniently or my Instagram, at Your Strata Property. I'd love to see you over there. That's all from me this week. Thanks for joining me. I'll catch you all next time. Bye for now.

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