

New strata laws transitional provisions

On 30 November 2016 the *Strata Schemes Management Act 2015* (the new Act) commenced and the *Strata Schemes Management Act 1996* (the old Act) was repealed. Transitional provisions in the new legislation ensure that certain things that happened under the authority of the old Act retain their validity to smooth the transition from the old Act to the new Act.

Owners corporations

An owners corporation constituted, or taken to have been constituted, under section 11 of the old Act is taken to have been constituted under section 8 of the new Act.

Annual general meetings

The new Act now requires owners corporations to hold their annual general meeting once in each financial year of the corporation. Owners corporations are free to choose the date, but may, for convenience, wish to hold their meeting on the same date each year, although this is unnecessary. Unless an owners corporation specifically wants to, there is no need to hold an annual general meeting immediately after 30 November 2016.

By-laws

All by-laws that were in place for a strata scheme before the commencement of the new Act, including any amendments, remain valid as long as they were valid under the old Act.

During the strata law reform consultation, stakeholders highlighted the importance of by-laws in better managing everyday issues for strata residents. As by-laws are so important, the new Act required that all owners corporations of existing strata schemes review their by-laws not later than 12 months after the commencement of the new Act, that is by 30 November 2017.

As part of this review the owners corporation may choose to amend their existing by-laws, introduce new by-laws, or leave the by-laws as they are. A strata scheme's by-laws that were in place before the new laws started on 30 November 2016 continue to remain in force, unless they

are changed. Any changes require a special resolution vote at a meeting of the owners corporation.

After the review, the owners corporation must lodge the new by-laws with the Registrar General within 6 months after the special resolution has been passed. This can be done by lodging a 'Consolidation/Change of By-Laws' dealing form for recording on the common property folio. For more information, visit the NSW Land Registry Services website. The Model by-laws in the Strata Schemes Management Regulation 2016, are a set of carefully thought out draft by-laws that owners corporations can consider, and choose to adopt or amend to suit their own particular circumstances if they wish. They are not, and cannot be, the by-laws of your scheme unless adopted at a general meeting of the owners corporation and subsequently registered with NSW Land Registry Services.

Strata committees (previously known as executive committees)

Executive committees that were in place before the commencement of the new Act remain as they are, but their name changes to a 'strata committee', to more accurately reflect their purpose. Executive committee members retain their membership and any position held on the committee for the balance of their term under the old Act until the next annual general meeting. There is no requirement for owners corporations to hold a meeting immediately after 30 November 2016 to elect a new strata committee, unless they want to.

Previous decisions by owners corporations and executive committees

A decision, consent or approval of an owners corporation or an executive committee under the old Act is taken to have been made by the owners corporation or the strata committee under the new Act, and is therefore recognised under the new Act.

Contributions

Any contributions levied under the old Act are taken to have been levied under the new Act. However the provisions of the new Act will apply to the recovery and payment of any unpaid contributions.

Existing proceedings and orders under the old Act

Any proceedings commenced but not determined or finalised under a provision of the old Act are to be dealt with and determined as if the old Act had not been repealed. The NSW Civil and Administrative Appeals Tribunal (Tribunal) will therefore use the old Act in determining any such matter. Adjudicators will remain to deal with any matter lodged with the Tribunal prior to the commencement of the new Act.

An order made by an Adjudicator or a Tribunal under the old Act, and in force immediately before the commencement of the new Act, is taken to have been made by the Tribunal under the corresponding provision of the new Act.

Terms of appointment of strata managing agents

The new Act limits the term of appointment for a strata managing agent to three years whereas the old Act had no limitation on the length of an appointment.

For those agents who were appointed under the old Act for a term of more than three years, their appointment ends three years after the commencement of the appointment or six months after the new Act commences (that is six months after 30 November 2016), whichever is the later date.

For those agents who were appointed under the old Act for a term of less than three years, their appointment ends at the end of that term or six months after the new Act commences (that is, six months after 30 November 2016), whichever is the later date.

Agents appointed after 30 November 2016 will be appointed under the provisions of the new Act.

Note: The appointment of an agent includes a reappointment for a term (including any roll over or extension period).

Caretakers and building managers

The new Act refers to building managers (referred to as caretakers in the old Act) and extends the requirements of appointing such a person and the form of agreement.

A reference in any instrument to a caretaker of a strata scheme is taken to be a reference to a building manager in relation to that scheme.

An agreement in force immediately before the commencement the new Act is taken to be a building manager agreement for the purposes of the new Act if it provides for the appointment of a person to carry out any of one or more of the following functions of the owners corporation:

- managing common property
- controlling the use of common property by persons other than the owners or occupiers of lots
- maintaining and repairing common property

In addition the primary purpose of the agreement must be to provide for that appointment and related matters and the person is entitled to exclusive possession of a lot or common property in the strata scheme.

A building manager agreement expires 10 years after the commencement of the new Act (that is, 10 years after 30 November 2016) unless the terms of the agreement provide that it expires on an earlier day or the agreement is terminated on an earlier day.

Approved insurers

An insurer that was an approved insurer under the old Act immediately before the commencement of the new Act is taken to be an approved insurer under the new Act.

Window safety devices

The new Act requires that an owners corporation must ensure that there are complying window safety devices for all applicable windows of each building in the strata scheme. The new requirements include some changes, and these should be examined carefully. An owners corporation is not required to comply with this requirement until 13 March 2018. For more information, visit the Window safety device requirements page.

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