

# Frequently asked questions

## Strata reforms

The following responses give more detail on what the strata laws changes will mean for strata communities. Learn more by visiting the strata reforms pages on our website.

## Collective sale and renewal

### What is collective sale and renewal?

Currently, a strata community can't decide to sell and redevelop their scheme without unanimous consent from all owners. Under the reforms, a developer or other person can present a case to the rest of the scheme for 'collective sale or renewal' of their scheme. Schemes that exist before 30 November 2016 will have to 'opt in' to the new law first.

The developer or other person must present their case for the building to be sold or redeveloped. The proposal must then be examined by the strata committee, and, if the owners corporation agrees, a strata renewal committee is formed to develop a plan. The plan can then be put to all of the lot owners, who must be given at least 60 days to consider it and seek advice (such as independent legal advice). The plan will have to include a full and frank statement by the proposed purchaser or developer of their intended use of the strata land parcel. The plan would need to explain the implications of selling the scheme, including practical considerations such as moving arrangements. 75% of lot owners will need to agree to the plan for it to go ahead.

Dissenting owners, who have valid grounds for disputing the collective sale agreement at the Land and Environment Court, will have their legal costs paid by the owners corporation. The owners corporation is not allowed to charge them levies to cover this cost, if levies need to be raised to meet it.

This process will guide lot owners to jointly assess options for the future of their scheme. It aims to make it easier for schemes to sell or overhaul run-down building

stock in NSW, where at least 75% of owners favour this approach.

### Will ending a scheme need unanimous agreement?

No. The reforms will allow the majority of owners (at least 75% - based on the number of lots, not on unit entitlement) to agree to end, sell or redevelop their strata scheme. Any scheme existing before the new laws commence will need to 'opt in' to have collective sale and renewal as an option for their scheme, by passing an ordinary resolution at a general meeting (at least 50%).

### What support will vulnerable residents receive?

A Strata Renewal Advice and Advocacy Program will provide targeted support for elderly and vulnerable owner-occupiers. It will provide advice and referrals to support services including information on alternative housing choices.

### How will lot owners who don't want to sell be compensated?

Where at least 75% of lot owners agree to end their strata scheme, the new laws will require all lot owners to receive compensation based on just terms. This will cover the market value for their property plus an amount to cover any loss caused by the disturbance. This includes legal and valuation costs and moving costs, as well as compensation for stamp duty.

### What will happen if there is a dispute about the process?

Plans for renewing a scheme will be reviewed by the Land and Environment Court to ensure the process has been properly followed and is 'just and equitable' (eg. fairly compensating all lot owners and taking into account their needs in the plan's development, as well as enabling each owner to consider and seek advice on the plan over a minimum period of 60 days). The Court can

resolve disputes and make minor adjustments to the plan, or reject it.

### **Will owners have to pay stamp duty in a redeveloped block?**

Yes, owners wanting to stay on in the new block would have to pay stamp duty. However, conditions for collective sale and renewal would ensure that the payment to compensate lot owners for their property factors in the cost of stamp duty when re-purchasing property in the redevelopment.

## **Managing defects**

### **How will defects be addressed in new buildings?**

The reforms that are anticipated to start from 1 July 2017 will introduce new protections for a new scheme, including:

- a mandatory defect inspection report and maintenance schedule
- a building defect bond, providing a form of security if defects are identified in the new building and not rectified.

These measures will prompt proactive maintenance and monitoring for defects in new buildings. The bond will encourage developers and builders to attend to any defects quickly to ensure they recover the bond amount. The bond can be used by the scheme to rectify defects the developer fails to rectify the issues or ceases to trade.

For more information, refer to the Major changes to strata laws page.

### **Who will manage building defect bonds?**

NSW Fair Trading will hold and manage the bonds. Developers will be required to lodge a bond worth 2% of the building's contract price to Fair Trading.

An administrative fee will be payable when developers lodge the bond (similar to the fee for retention trust fund

administration under the *Building and Construction Industry Security of Payments Act 1999*).

## **Key issues in strata communities**

### **How will the NSW Civil and Administrative Tribunal (the Tribunal) manage disputes?**

The Tribunal specialises in low-cost, neutral and timely adjudication of disputes, through a hearing or an alternative dispute resolution process.

Expanded powers will allow the Tribunal to:

- manage most disputes directly without referral to another judicial body
- issue increased penalties and impose orders sought by an owners corporation (eg. for repeat by-law breaches for excessive noise or overcrowding in units).

For more information, refer to the Managing dispute reforms page.

### **How will overcrowding be addressed?**

Owners corporations can make a new by-law limiting the number of people who live in a lot, as long as it allows for at least two adults per bedroom. The owners corporation will be able to issue a tenant or owner with a 'notice to comply' and ultimately seek an order in the Tribunal to enforce the by-law.

The maximum penalty is increased to \$5,500, and \$11,000 if the 'overcrowding by-law' is breached again within 12 months of the Tribunal imposing a penalty.

For more information, refer to the By-law reforms page.

### **Will Councils be able to fine unauthorised parking in a strata scheme?**

Yes. However, the owners corporation would firstly need to have their local council agree to providing parking management services in a commercial arrangement. The Council could then have its Parking Officers inspect and manage parking spaces on the common property.

## Will a scheme be able to ban pet ownership?

Yes. A scheme will be able to keep its current pet by-law if they wish. However, they may wish to adopt one of the new model by-law options on pets or write their own by-law on pets. Such updates could be made as a result of the strata scheme reviewing their current by-laws by 30 November 2017, as required under the new laws.

One of new model by-law options on pets will recognise an owner's right to seek permission to keep a pet, and maintain that this could not be refused on unreasonable grounds. If refused, the owner could appeal the decision at the Tribunal.

No by-law can ban lot owners from having assistance animals, such as guide dogs or hearing dogs.

For more information, refer to the By-law reforms page.

## How will I be able to stop a neighbour's smoke drifting into my property?

To deal with 'smoke drift', an owners corporation could choose to adopt a new model by-law on the issue. This would help restrict smoke negatively impacting other residents in their lot or while using the common property.

After adopting the model by-law, an owners corporation could then enforce it with a 'notice to comply' and ultimately seek an order in the Tribunal.

Residents in schemes without a smoking by-law who are being negatively affected by smoking may be able to take action under the Act. The Act requires owners, occupiers and other persons to not create a nuisance or hazard for other residents. If smoke was unreasonably interfering with a resident's use or enjoyment of the common property or their lot, this could be considered a nuisance or hazard. A resident could then apply for strata mediation. If mediation was not successful, they may then apply to the Tribunal for assistance.

## Will owners still be able to give their proxy vote to another owner?

Yes. However, the reforms seek to end the 'proxy farming' practices that can lead to a minority of owners controlling the scheme. The number of proxy votes able to be given to one person will be limited to:

- one proxy vote for schemes with less than 20 lots
- 5% for schemes with more than 20 lots.

## Other questions

### How will we be able to reset levies to raise enough funds to cover the costs of running our scheme?

If the levies were inadequate for the initial period (when a strata plan is registered) and for the first year after the scheme begins, owners will be able to seek compensation from the developer through the Tribunal. The owners corporation could then adjust the levies to adequately meet financial obligations.

Schemes will still be able to recover outstanding levies from other residents through the Local Court, but can also enter into payment plans with residents who owe outstanding levies if they wish to do so.

For more information, refer to the Major changes to strata laws page.

### Will owners be able to renovate without approval?

This depends on the renovation. A tiered process will guide owners when renovating, allowing certain modifications without approval or with minimal approvals.

Generally the level of approvals needed would be:

- no approval for minor or cosmetic renovations (eg. hanging pictures)

- before carrying out more substantial renovations (eg. kitchen renovations), approval of the owners corporation by general resolution
- before making structural or permanent changes, or doing any renovations that need development consent, seeking owners corporation approval first by special resolution. This includes changes which would significantly affect other residents or which would change the outside appearance of the lot.

After the new Regulation is published, Fair Trading will provide more information to explain to lot owners and owners corporations what approvals should be met when renovating.

For more information, refer to the By-law reforms page.

### **Will new meeting practices recognise a vote by teleconference or email?**

Yes, if the scheme has agreed to this meeting practice. The reforms will allow schemes to use modern communications tools to broaden participation in decision-making and streamline administration of their scheme.

Social media, teleconference, videoconference and other technologies and platforms can be adopted to communicate, keep records and run meetings in response to lot owners' wants and needs.

Electing members of the strata committee cannot be done by pre-meeting electronic voting. The new laws require nominations to be made *during* a meeting.

For more information, refer to the Scheme management reforms page.

### **Will schemes be protected from strata managing agents' misconduct?**

The reforms will make it easier for an owners corporation to remove an agent who has refused or failed to perform their duties.

For more information, refer to the Strata managing agent reforms page.

### **Will tenants be able to attend meetings?**

Yes, they can attend owners corporation meetings although they can be excluded when certain matters are being discussed (eg. financial statements).

Tenants do not have a vote, unless they hold a valid proxy of an owner, and cannot speak at a meeting unless the owners corporation allows them to.

Also, if tenants occupy more than half the lots in a scheme, they will be able to nominate a representative on the strata committee. The tenants' representative similarly does not have a vote, but does have the right speak. They do not contribute towards the quorum for a meeting, and can be excluded when certain financial matters are discussed.

For more information, refer to the Scheme management reforms page.