

## MINISTER'S REPORT ON THE STRATA STATUTORY REVIEW

### REINSW'S LOBBYING INFLUENCE

#### 1. REINSW's lobbying efforts

Over the past five years, REINSW has considered reforms needed to the *Strata Schemes Development Act 2015* (NSW), *Strata Schemes Management Act 2015* (NSW) (**Management Act**) and the *Strata Schemes Management Regulation 2016* (NSW) (**Regulation**) (**Strata Legislation**), and has actively lobbied on behalf of its strata members in relation to the strata statutory review. By way of background, REINSW initially lodged a preliminary submission on 8 October 2020 which went on to inform the *NSW Government Discussion Paper on the Statutory Review of the NSW Strata Scheme Laws*. On 7 April 2021, REINSW lodged its submission in response to that Discussion Paper, enclosing our preliminary submission and Masson's submission (as REINSW supported some of the responses given in that submission). In November 2021, the NSW Government released a *Report Statutory Review of Strata Schemes Development Act 2015 and Strata Schemes Management Act 2015* (**Report**) whereby the Minister provided 139 recommendations.

This document compares REINSW's recommendations in the April submission as against the Report's recommendations and discussion, and has summarised the areas where our lobbying efforts have been successful, partially successful or persuasive. These have been categorised into:

- wins – where the Report adopted, or made similar recommendations to, those outlined in REINSW's submission.
- partial wins – where the Report partially addressed or made recommendations aligned with REINSW's responses.
- wins or partial wins for questions in which REINSW agreed with Masson's responses; and
- areas where REINSW's lobbying efforts were persuasive and influential. For example, REINSW's position was often specifically mentioned in the report (showing that REINSW is a valued industry stakeholder) even if the Report did not always implement REINSW's recommendation.

REINSW would like to thank the invaluable experience and time volunteered by members of its Strata Management Chapter Committee who contributed over 200 hours in and out of meetings to help REINSW prepare this influential and successful submission. To assist readers, this document sets out the corresponding question and page numbers from REINSW's submission (Q...,p...) and the recommendation and page numbers from the Report (Rec..., p...).

#### 2. REINSW's lobbying wins

- REINSW's view was that it was not always necessary to value all strata lots and that only lots affected by a subdivision should be valued. (Q39, p9) The Report recommended that not all lots should be valued where a valuer "considers the subdivision will result in changes to common property that are minor and would not impact the proportionate unit entitlement. (Rec 31, p31)

- REINSW recommended adopting a mandatory Code of Conduct, in consultation with industry stakeholders, for strata committee members. (Q45, p12) The Report recommended codifying “additional duties and obligations for strata committee members in the Management Act” and mentioned that REINSW was a stakeholder group who supported such a code. (Rec 40, p 37)
- REINSW recommended lowering the threshold for removal of a strata committee member from a special resolution to an ordinary resolution to make it easier to remove members where their “self-interest far outweighs or is in opposition to the interests of the strata scheme”. (Q44 and 47, p11-13). REINSW was one of two stakeholders specifically mentioned as suggesting this recommendation which was ultimately adopted as a recommendation. Additionally, the Report recommended limiting members who are removed from serving for a 12-month timeframe after removal. (Rec 40 - 42, p36-37).
- REINSW recommended, and was specifically mentioned in the Report as supporting, electronic meetings without the need for an ordinary resolution beyond the emergency measures of the COVID-19 pandemic. (Q50, p15) With the exception of pre-meeting voting, the Report recommended allowing meetings and voting to take place electronically without the need for a resolution. (Rec 52, p42-43).
- REINSW also lobbied for a non-exhaustive list of “reasonable steps” required to ensure lot owners know about, and can participate in a meeting (Q50, 14-15) – this was a recommendation that was adopted by the Report (rec 53, p42-43).
- REINSW opposed the Discussion Paper’s suggestion of a standard form contract for managing agents. (Q58, p20). The Report recommended against a standard form contract under the *Strata Schemes Management Act 2015* (NSW) (**Management Act**) – one of the reasons cited being an argument raised by REINSW in its submission that there was no prescribed contract under the *Property and Stock Agents Act 2002* (NSW). However, it did recommend that the remake of the *Property and Stock Agents Regulation 2014* (NSW) should include “mandatory or prohibited terms for strata management agency agreements”. (Rec 65, p52-53)
- REINSW recommended that the Management Act be amended to account for breaches of section 57 which were outside of the strata managing agent’s control. For example, where the owners corporation refuses to release the funds. (Q65, p23-34) The Report specifically mentioned this issue and recommended that the Management Act introduce a defence “against a claim for breach of duty where the agent was frustrated in carrying out its duty by the owners corporation”. (Rec 67, p54).
- REINSW recommended that multiple quotes should be obtained for high value services but not for “lower-value, regular and routine services”. (Q62, p22) This suggestion was adopted by the Report which recommended that “expenditure over \$30,000 on any one item, an owners corporation be required to obtain at least two quotes from unrelated entities”. (Rec 77, p62)
- REINSW recommended a non-exhaustive list of items to be paid from the administrative and capital works funds. (Q74, p27). REINSW was one of two stakeholders specifically mentioned in this section of the Report, as was an example it gave in its submission. The Report recommended that NSW Fair Trading should make sure that they provide clear guidance on the scope of expenses to be paid from each respective fund. (Rec 73, p59)
- The Report adopted REINSW’s suggestion to reduce the payment of levies for “urgent repairs which are necessary for health and safety reasons” from 30 days to 14 days (Q 76, p28; Rec 75, p60).

- REINSW recommended that NSW Fair Trading provide additional education to landlords about the need to notify the strata manager of tenant details (Q97, p37). The Report also recommended developing “further education material about tenancy related obligations under the Management Act” (Rec, 93, p72).
- The Report agreed with REINSW’s suggestion that electronically lodging records and documents for the first AGM (i.e.. plans, specifications, complying development certificates etc.) was a good idea. (Q101, p39) However, the Report notes that “implementing this proposal will need to involve further work with the sector to identify the most efficient, cost-effective and usable ICT approach, including exploring possible linkages with the Strata Hub”. (Rec 61, page 50).
- REINSW recommended that replacing or installing wood and hard floors and reconfiguring walls should not be considered “minor works” under section 110(3)(C) and should require a special resolution. (Q104, p40-41) The Report mentioned REINSW amongst stakeholders concerned with the classification of certain works. The Report recommended revising sections 108-111 of the Management Act to clarify the terms such as “reconfiguring walls” and to “re-classify” certain current minor works to require a special resolution. It also recommended incorporating “principle-based rules where possible, to better define the general character of minor, cosmetic and other renovations”. (Rec 95, p74-75)
- REINSW recommended that there needs to be more legislative guidance about the information to be contained in the initial maintenance schedule and suggested developing a template schedule to increase uniformity. (Q117, p45) The Report also recommended “further specific requirements regarding the content of the initial maintenance schedule, with consideration given to the development of a standard form in the Management Act and Regulation”. (Rec 108, p83-84).
- REINSW noted that some original owners/developers set levies at an incorrect level which can expose first owners to financial risk and recommended that levies be signed off by an independent party (such as a surveyor or registered valuer). (Q119, p46) This suggestion was adopted by the Report which recommended that the initial maintenance schedules and levy estimates be independently reviewed and certified (Rec 109, p84).
- REINSW requested legislative clarity about the information to be included in the 10-year capital works fund, that it include “annual savings requirements”, that a template form be produced and for a guidance note to be included as to who is qualified to prepare such a plan. (Q121, p47-48). The Report noted this feedback and suggested that more details should be included to make sure owners corporations are “adequately planning and saving for future works”. It recommended “greater detail on minimum requirements” for capital works fund plans, to “consider mandating an approved form of plan” and that future phases of the Strata Hub reporting “to consider inclusion of further detail on owners corporation’s capital works fund plans and progress with their implementation”. (Rec 111, 112, p84)
- REINSW recommended repealing section 132A(4) “so that agreements with embedded electricity networks are subject to the time limits set out in section 132(1)”. (Q125, p50) This recommendation was adopted by the Report and REINSW was one stakeholder mentioned as “supporting the removal of this exemption”. (Rec 120, p91-92) The Report additionally recommended redrafting this section to “provide greater clarity and certainty regarding its use”. (Rec 119, p92)

- REINSW recommended greater clarity around who can be appointed as a building manager (Q127, p50). The Report recommended that the definition of a building manager be amended to “refer to a person who is contracted by the owners corporation to manage the overall maintenance, repair and/or safety and of a scheme’s common property” as well as seeking further consultation on the definition of a building manager to “ensure that it aligns with industry practice and has the appropriate scope”. (Rec 124, p 95)
- REINSW supported the introduction of a duty of care on the building manager to act in the best interests of the owners corporation. (Q128, p51) The Report recommended that building managers be subject to such a statutory duty (Rec 129, p 97).
- REINSW recommended that building managers be subject to a “statutory duty of care with responsibility for the safety of the building” but should engage a qualified professional to assess defects and remedial action (Q131, p51-52). The Report recommended that building managers be subject to statutory duties to:
  - “disclose to the owners corporation the qualifications and experience that make them suitable for the role,
  - familiarise themselves with fire safety and building safety obligations to which the owners corporation is subject,
  - take all reasonable steps to ensure that the owners corporation complies with these obligations, and
  - promptly bring to the attention of the owners corporation any maintenance, repair or safety problems with the building, and provide a proposal for how these could be best addressed”. (Rec 130, 98-99)
- REINSW recommended that there should be “effective measures” for the “timely recovery of penalties and enforcement of Tribunal orders”. (Q139, p54) The Report specifically mentioned REINSW’s position on this issue and recommended that maximum penalty amounts be reviewed and, if appropriate, increased. It also recommended reviewing whether new penalty provisions should be added under the Management Act or Regulation or whether further penalty notice offences and increased penalty notice amounts should be added in Schedule 5 to the Management Regulation (Rec p137-138, p107).
- REINSW recommended the creation of a Property Services Commissioner. (Q140(a), p55-56) The Report noted that the NSW Government announced the creation of such a position in June 2021. (p108)
- REINSW recommended that where window safety devices have been installed by the owners corporation they become common property and noted various practical issues with the current legislative requirements including, amongst other things, clarifying who is responsible for their ongoing maintenance and ongoing inspections. (page 57-58) These two practical issues were discussed in the Report which recommended that the provisions in relation to window safety devices be “clarified” to make it clear that the owners corporation was responsible for the maintenance of window safety devices. (Rec 113, p85)
- REINSW recommended an amendment to section 178(1) to remove the mandatory requirement for lot owners to provide an email address, and raised concerns about privacy in relation to the Strata Portal and the implementation of safeguards to protect against the misuse of inspection of strata records (additional issues para 3.3, p59). The Report recognised the privacy concerns and addressed these through the following recommendations:
  - NSW Fair Trading provide clear guidance on an owners corporation’s privacy obligations and their application to access records

- The strata sector be consulted about a revision to Part 10 about potentially introducing exemptions to access of records in cases of significant privacy or legal concerns as well as a way of disputing such exemptions
  - The update of provisions relating to the inspection of records to clarify “how and when remote access to electronic records is to occur and any limitations or conditions that will apply to such access”. (Recs, 88-90, p70-71)
- REINSW supported the Discussion Paper’s suggestion to move the meeting procedure provisions from Schedule 1 to the Management Act to the Regulations to make them easier to change when necessary. (Q49, p14) The Report also recommended this change and REINSW was specifically mentioned as having supported this recommendation. (Rec 47, p39)

### 1. REINSW’s partial lobbying wins

- REINSW recommended that a strata managing agent’s appointment by a building management committee be the same length of time as that under the current Management Act (i.e. up to 3 years). (Q27, p6) Ultimately the report recommended that this term be limited to 5 years being the mid-point between a strata managing agent and building manager’s respective terms (noting that a building manager’s term is up to 10 years). (Rec 14, p22).
- REINSW lobbied for a NSW Fair Trading information pack to better educate strata committee members on their duties and responsibilities, or alternatively a short training course (Q42, p10). The Report recognised the need for “greater support and education” and “education and training for strata committee members”. It recommended partnering with stakeholders to create a “targeted program of support and education for strata residents to build capability in and an understanding of strata scheme operation and governance” (Rec, 39 page 35).
- REINSW recommended the professional management of strata schemes of more than 4 lots or where an owners corporation manages more than \$150,000 (being, the GST registration threshold figure). (Q59, p21) The Report noted significant stakeholder support for compulsory agents but that the threshold for appointment varied significantly. As an alternative, the Report recommended giving NSW Fair Trading the power to appoint a compulsory managing agent. (Rec 71, p57).
- REINSW suggested that model by-laws be added prohibiting voluntary works carried out by lot owners and residents where that work should be undertaken by an appropriately qualified and licensed professional. While this wasn’t specifically adopted, the Report did recommend adding model by-laws in relation to minor works authorities and renovations. REINSW also suggested model by-laws, for amongst other things, hotels and resort schemes. The Report recommended model by-laws for short term rental accommodation which may include such buildings (Q86, p32; Rec 80, p65).
- REINSW recommended repealing the section relating to use of the common seal and allowing documents to be signed by members of the strata committee as permitted by the COVID-19 emergency measures. (Q99, p38). The Report recommended retaining use of the common seal whilst also allowing digital alternatives. (Rec 54, p43-44).

- REINSW did not support a public register to verify execution of documents for privacy reasons as it would show the names and details of strata committee members (Q100, p38) – a point raised in discussion in the Report (see page 43). The Report did not suggest use of a public register but did recommend a record-keeping system of authorised officers for verification purposes - it recommended that this be developed in consultation with stakeholders. (Rec 55, p43-44).
  - REINSW noted that there is a seven-year record keeping requirement in relation to minor renovations and this can lead to disputes about whether the lot owner or owners corporation is responsible for maintenance of minor works. (Q107, p42) Although the Report didn't adopt REINSW's recommendation for a minor works register, it did raise the issue generally and recommended that "records of minor renovation approvals be kept for a minimum of 10 years unless they form part of a registered by-law". (Rec 101, p77).
  - REINSW recommended that building manager terms be the same as that of strata managers (i.e.. 3 years). (Q130, p51) The Report recommended further industry consultation to "determine the appropriate limitation on contract terms for building managers". (Rec 126, p95-96)
- 2. REINSW supported certain responses given in Masson's submission (see Annexure B to REINSW's submission). Below are some of the wins and partial wins in relation to these responses.**
- Masson's submission raised the issue of "restrictive" and sometimes "unworkable" timeframes involved in the strata renewal plan. (Q7, p5) One of the recommendations in the Report was to "consult with industry stakeholders on ways to incorporate flexibility in current restrictive timeframes". (Rec 17, p25). It also recommended increasing the period of operation of the strata renewal committee to 2 years, "providing additional flexibility" for minor instances of non-compliance (Rec 20 & 21, p26).
  - Masson's submission noted issues with renewal plans accidentally lapsing (for example, because a deadline was missed) and suggested that lapsing of a strata renewal should not occur "by default", rather should occur by way of an owners corporation's resolution. (Q5.2, p3) While the Report did not adopt this recommendation specifically, it noted the concern of stakeholders in this regard and recommended "more flexibility for lapsing provisions to allow correction of a minor procedural error". (Rec 28, p28).
  - Masson's submission agreed with Question 16 from the Discussion Paper that the "current requirement to act in good faith and to disclose conflicts of interest" should extend to dissenting owners and that this should be a consideration of the Court in determining an application and objection to a strata renewal plan. (Q16, p9) The Report recommended extending the requirements for "supporting owners and renewal committee members to act in good faith and disclose conflicts of interest to all owners, including dissenting owners", consult with stakeholders to explore whether "imposing continuous disclosure obligations in the strata renewal process" would be feasible, and clarify that for objections and applications of a strata renewal plan the Court must consider potential conflicts of interest before ordering the approval of the plan. (Rec 23-25, p27).
  - Masson's submission stated that, when making a cost order, the Court should consider if the dissenting owner has objected on "unmeritorious grounds". (Q17, p10) The Report recommended that the Court's powers to award costs against a dissenting owner, and it's discretion to award costs on an ordinary or indemnity basis, be clarified. (Rec 26, 27, p10).

### **3. Where both REINSW and the Report recommended no change to current legislative provisions**

- REINSW’s view was that all lot owners should have a right to object to a proposed subdivision (Q38, p9) and the Report’s recommendation was that approval for a change in unit entitlements where common property was involved by way of a special resolution should remain unchanged (Q32, p31).
- REINSW’s view was that the requirement for a qualified valuer’s certification to determine unit entitlements was working well in practice. (Q36, p8). The Report’s recommendation was to retain this without change. (Rec 30, p30).
- REINSW submitted that the objectives of the Management Act were valid and that no further objectives should be added (Q41, p9). The Report recommended that no change to the objects of the Management Act should be made. (Rec 38, p34).
- The Discussion Paper asked whether the developer should present three different strata managers as options to the owners corporation at the first AGM. REINSW’s submission was that this was not appropriate because the process would be time consuming. (Q56, p18-19) The Report’s feedback was that this would be “cumbersome” and “its costs would be likely to outweigh potential benefits”. It did not recommend this reform. (Report page 46).
- In the Report, REINSW was one of the stakeholders mentioned as supporting the current six-month period of registration (Q80, p30) and the recommendation arising from stakeholder feedback was to retain this lodgment period (Rec 33, p32).
- Recommendation 36 of the Report was to retain the Registrar General’s power to allow certain changes to by-laws to be lodged separately as opposed to in a consolidated form, which coincided with REINSW’s position on this issue. (Q81, p30; Rec 36, p 33)
- REINSW’s view was that the minor renovation decision-making provisions were working well in practice and did not need to be changed (Q105, p41). The Report did not recommend any change to these provisions. (Report p75).

### **4. Areas in which REINSW influenced the Minister’s Report**

- REINSW noted issues in relation to how quorum is reached in clause 17(2) and recommended that the clause be re-drafted so that it is clearer, particularly in relation to small strata schemes. (Q48, p13-14). Although the Report did not address this issue in detail, it noted “how quorum is reached” amongst areas of particular concern in relation to meeting procedures and recommended “reviewing and refining the current requirements to improve clarity” when transferring these provisions to the Regulation - so this issue may be addressed in further detail at the time the Regulation is redrafted. (Rec 48, p39).
- REINSW lobbied for the removal of the tenancy participation provisions. (Q54, p 17) While the Report did not adopt REINSW’s suggestion, it mentioned REINSW’s position in its discussion and recommended monitoring the changes proposed in the Report’s recommendations 91-93 in relation to tenancy notices before considering this issue further. (Rec 50, page 41).

- REINSW recommended that strata managers should not be expected to have a specialist knowledge of building defects and that instead an appropriately qualified professional should be engaged. (Q72, p26). The Report did not deal with this issue specifically but mentioned it, as well as REINSW's position, under a broader topic of education and training. While "no major reforms" were required, it recommended that the Department of Customer Service "should work with the Property Services Expert Panel to identify gaps in managing agent knowledge and develop appropriate mandatory CPD topics". (Rec 70, p56-57).
- REINSW recommended that NSW Fair Trading strictly enforce the obligation to notify the strata manager of tenants' details so that the strata roll remained up-to-date. While this wasn't specifically recommended by the Report, it did recommend extending the penalty for non-compliance with tenancy notice obligations and providing tenants with by-law information to the landlord's real estate agent (as opposed to just being an obligation on the landlord). (Rec, 91, p72)
- Although the Report ultimately recommended extending the limit for making claims for an owners corporation's breach of a statutory duty from two years to six years, REINSW was specifically mentioned in the Report as being one such major stakeholder who felt that the two-year timeframe was appropriate. (Q118, p44; Rec 106, p82)
- REINSW stated that it would like to see further measures to encourage smaller and older schemes to install sustainability infrastructure, where appropriate. (Q122, p48) While the Report did not specifically address this, it did recommend developing "model by-laws for the installation of sustainability infrastructure" to make it "easier and less expensive for owners corporations to install certain kinds of sustainability infrastructure" (thus removing the need for by-laws of this kind to be drafted or reviewed by lawyers). (Rec 114, p85). It also recommended prohibiting by-laws which prevent the installation of sustainability infrastructure on grounds of appearance alone. (Rec 115, p86).
- REINSW recommended the re-instatement of the provisions requiring a building insurance valuation every five years. (Q123, p48-49) Although the Report did not adopt this recommendation, it specifically acknowledged REINSW's response and agreed that obtaining a valuation every five years was "best practice". (Report p90).
- REINSW recommended amending clause 39(2)(a) of the Regulation to "exclude the application of section 161(1)(c) of the Act, which as it currently stands, includes the valuation of both replacement and reinstatement, thus making this provision consistent with the previous version of the Management Act, which worked well in practice. (Q123, p48-49) While the Report did not ultimately adopt this recommendation, it did specifically acknowledge REINSW's response in its discussion of this issue (Report p90).
- REINSW noted the lack of consistency in relation to Tribunal decisions for breach of damages of statutory duties. It recommended that the Tribunal should not be able to award damages for such a breach. (Q136, p54). The Report addressed REINSW's response in its discussion of the Report, particularly noting REINSW's concern about inconsistent decision-making and, to address this issue, recommended amending the Management Act in order to confirm the Tribunal's power to award damages (Rec, 134 p 104).
- The Report recommended that the Department of Customer Service should work with the Department of Communities and Justice to consider whether the Tribunal's monetary jurisdiction should be capped - but specifically noted REINSW's response as supporting no cap. (Q138, p54; Rec 135(a), p106).