

NEW SOUTH WALES
DRAFT GOVERNMENT BILL
CABINET-IN-CONFIDENCE

**Strata Managing Agents Legislation
Amendment Bill 2024**

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Working draft

NEW SOUTH WALES
DRAFT GOVERNMENT BILL
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**Strata Managing Agents Legislation
Amendment Bill 2024**

No , 2024

A Bill for

An Act to make miscellaneous amendments about strata managing agents; and for related purposes.

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Strata Managing Agents Legislation Amendment Bill 2024 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Strata Managing Agents Legislation Amendment Act 2024*.

2 Commencement

This Act commences as follows—

- (a) for the following provisions—on the date of assent to this Act—
 - (i) Schedule 1[1], [4] and [6],
 - (ii) Schedule 2[2] and [4],
 - (iii) Schedule 3[1], [5] and [7],
 - (iv) Schedule 4[2] and [4],
 - (v) Schedule 5[1]–[3] and [5]–[9],
 - (vi) Schedule 6[2] and [4],
- (b) otherwise—on a day or days to be appointed by proclamation.

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Schedule 1 Amendment of Strata Schemes Management Act 2015 No 50

[1] Sections 57(2), 60(1) and (2) and 71(1)

Omit the penalty provision wherever occurring. Insert instead—

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

[2] Section 57 Breaches by strata managing agent

Insert after section 57(3)—

- (3A) An owners corporation may only give approval under subsection (3)(b) or (c) by a resolution at a general meeting.
- (3B) The motion for the resolution must be accompanied by a document prepared by the strata managing agent containing—
 - (a) details about the commission or training service, including the following—
 - (i) for a commission—the amount of the commission and the method of its calculation,
 - (ii) for a training service—the monetary value of the training service, and
 - (b) details about the nature of the relationship between the person providing the commission or training service and the strata managing agent, and
 - (c) details about why the approval is in the owners corporation's interest, and
 - (d) a statement that the strata managing agent believes that accepting the gift or other benefit does not contravene the *Property and Stock Agents Regulation 2022*, Schedule 1, section 11.

Note— The *Property and Stock Agents Regulation 2022*, Schedule 1, section 11 provides that an agent must not accept an appointment to act, or continue to act, as an agent if doing so places the agent's interests in conflict with a client's interests.

[3] Section 60 Disclosure of commissions and training services

Insert after section 60(2)—

- (2A) A strata managing agent must give written notice to the strata committee before entering into a contract for the purchase of goods or services if either or both of the following apply—
 - (a) under the contract a commission or training service of the kind referred to in section 57(3)(b) or (c) may be provided to or paid for the agent,
 - (b) the contract is with a person connected with the agent.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

- (2B) The notice must include the following—

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Schedule 1 Amendment of Strata Schemes Management Act 2015 No 50

- (a) details, including the specific provision of the terms of appointment of the agent, if relevant, that demonstrate the payment of the commission or provision of the training service is permitted under section 57(3),
- (b) details about the commission or training service, including the following—
 - (i) for a commission—the amount of the commission and the method of its calculation,
 - (ii) for a training service—the monetary value of the training service,
- (c) details about the nature of the relationship between the person providing the commission or training service and the strata managing agent,
- (d) details about why the contract is in the owners corporation's interest,
- (e) a statement that the strata managing agent believes that entering into the contract does not contravene the *Property and Stock Agents Regulation 2022*, Schedule 1, section 11.

Note— The *Property and Stock Agents Regulation 2022*, Schedule 1, section 11 provides that an agent must not accept an appointment to act, or continue to act, as an agent if doing so places the agent's interests in conflict with a client's interests.

- (2C) A strata managing agent must give written notice to the owners corporation as soon as practicable after becoming aware of the following—
 - (a) a supplier of goods or services for the strata scheme becomes connected with the agent,
 - (b) the original owner of the strata scheme becomes connected with the agent,
 - (c) the agent acquires a direct or indirect pecuniary interest in the strata scheme.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

- (2D) The notice must include—
 - (a) for subsection (2C)(a) and (b)—details about the nature of the relationship between the agent and the supplier or original owner, and
 - (b) for subsection (2C)(a)—details about the goods and services provided by the supplier.

[4] Section 60(3)

Insert “or the Secretary” after “an owners corporation”.

[5] Section 71 Interests must be disclosed by potential strata managing agents or building managers

Insert after section 71(2)(b)—

- (c) that the person is connected with another person (the *supplier*) who routinely supplies goods or services for other strata schemes for which the person is the strata managing agent,
 - (d) any dealing, whether under a formal contract or not, the person had with the original owner during the previous 2 years, including advice given to the original owner about the strata plan or another strata plan.
- (3) The disclosure must—

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Schedule 1 Amendment of Strata Schemes Management Act 2015 No 50

- (a) be made in writing, and
- (b) for subsection (2)(c)—include—
 - (i) details about the nature of the relationship between the person and the supplier, and
 - (ii) details about the goods and services provided by the supplier.

[6] Section 166 Strata managing agent to obtain insurance quotations

Insert at the end of the section—

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

[7] Section 166(2)

Insert after the section—

- (2) A quotation must include the following—
 - (a) a breakdown of charges, including the following if applicable—
 - (i) the base premium amount,
 - (ii) the commission to be received by the agent, expressed as an amount and as a percentage of the total quotation,
 - (iii) the referral fee received by the agent,
 - (iv) the stamp duty amount,
 - (v) levy amounts,
 - (vi) underwriting agency fees,
 - (vii) the broker fee, expressed as an amount and as a percentage of the total quotation,
 - (viii) the goods and services tax amount,
 - (b) a statement as to whether the person providing the quotation is connected with the agent.

Schedule 2 Amendment of Strata Schemes Management Regulation 2016

[1] Clause 62 Connected persons

Insert after clause 62(1)—

- (1A) For the Act, section 7(1)(f), a person (the *principal person*) is connected with another person if the other person is—
- (a) the trustee of a trust of which the principal person is a beneficiary, or
 - (b) one or more of the following in relation to a trust of which the principal person is, or has at any time been, a trustee—
 - (i) a beneficiary,
 - (ii) a relative of a beneficiary,
 - (iii) a relative of a spouse of a beneficiary.

[2] Schedule 5 Penalty notice offences

Omit “\$550 (in the case of an individual) or \$1,100 (in the case of a corporation)” wherever occurring in the matter relating to sections 57(2) and 60(1) and (2).

Insert instead “\$1,100 for an individual or \$2,200 for a corporation”.

[3] Schedule 5

Insert in appropriate order under the heading **Offences under the Act**—

Section 60(2A)	\$1,100 for an individual or \$2,200 for a corporation
Section 60(2C)	\$1,100 for an individual or \$2,200 (for a corporation

[4] Schedule 5

Insert in appropriate order in the matter relating to offences under the Act—

Section 71(1)	\$1,100 for an individual or \$2,200 for a corporation
Section 166(1)	\$1,100 for an individual or \$2,200 for a corporation

Schedule 3 Amendment of Community Land Management Act 2021 No 7

[1] Sections 61(2) and 64(1) and (2) and 75(1)

Omit the penalty provision wherever occurring. Insert instead—

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

[2] Section Breaches by managing agent

Insert after section 61(3)(b)—

- (b1) a training service provided to, or paid for, a managing agent, if it was related to management functions and the provision or payment is in accordance with the terms of appointment of the managing agent by the association or has been otherwise approved by the association, or

[3] Section 61(3A) and (3B)

Insert after section 61(3)—

- (3A) An association may only give approval under subsection (3)(b) or (b1) by a resolution at a general meeting.
- (3B) The motion for the resolution must be accompanied by a document prepared by the managing agent containing—
 - (a) details about the commission or training service, including the following—
 - (i) for a commission—the amount of the commission and the method of its calculation,
 - (ii) for a training service—the monetary value of the training service, and
 - (b) details about the nature of the relationship between the person providing the commission or training service and the managing agent, and
 - (c) details about why the approval is in the association’s interest, and
 - (d) a statement that the managing agent believes that accepting the gift or other benefit does not contravene the *Property and Stock Agents Regulation 2022*, Schedule 1, section 11.

Note— The *Property and Stock Agents Regulation 2022*, Schedule 1, section 11 provides that an agent must not accept an appointment to act, or continue to act, as an agent if doing so places the agent’s interests in conflict with a client’s interests.

[4] Section 64, heading

Insert “and training services” after “commissions”.

[5] Section 64(2A)–(2D)

Insert after section 64(2)—

- (2A) A managing agent must give written notice to the association committee before entering into a contract for the purchase of goods or services if either or both of the following apply—
 - (a) under the contract a commission or training service of the kind referred to in section 61(3)(b) or (b1) may be paid to the agent,

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Schedule 3 Amendment of Community Land Management Act 2021 No 7

(b) the contract is with a person connected with the agent.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

(2B) The notice must include the following—

- (a) details, including the specific provision of the terms of appointment of the agent, if relevant, that demonstrate the payment of the commission or provision of the training service is permitted under section 61(3),
- (b) details about the commission or training service, including the following—
 - (i) the amount of the commission and the method of its calculation,
 - (ii) for a training service—the monetary value of the training service,
- (c) details about the nature of the relationship between the person paying the commission or training service and the managing agent,
- (d) details about why the contract is in the association’s interest,
- (e) a statement that the managing agent believes that entering into the contract does not contravene the *Property and Stock Agents Regulation 2022*, Schedule 1, section 11.

Note— The *Property and Stock Agents Regulation 2022*, Schedule 1, section 11 provides that an agent must not accept an appointment to act, or continue to act, as an agent if doing so places the agent’s interests in conflict with a client’s interests.

(2C) A managing agent must give written notice to the association, as soon as practicable after becoming aware of the following—

- (a) a supplier of goods or services for the scheme becomes connected with the agent,
- (b) the original owner of the scheme becomes connected with the agent,
- (c) the agent acquires a direct or indirect pecuniary interest in the scheme.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

(2D) The notice must include—

- (a) for subsection (2C)(a) and (b)—details about the nature of the relationship between the agent and the supplier or original owner, and
- (b) for subsection (2C)(a)—details about the goods and services provided by the supplier.

[6] Section 64(3)

Insert “or the Secretary” after “an association”.

[7] Section 75 Interests must be disclosed by potential managing agents or facilities managers

Insert after section 75(2)(b)—

- (c) that the person is connected with another person (the *supplier*) who routinely supplies goods or services for other schemes for which the person is the managing agent,

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- (d) any dealing, whether under a formal contract or not, the person had with the original owner during the previous 2 years, including advice given to the original owner about the community plan or another community plan.
- (3) The disclosure must—
 - (a) be made in writing, and
 - (b) for subsection (2)(c)—include—
 - (i) details about the nature of the relationship between the person and the supplier, and
 - (ii) details about the goods and services provided by the supplier.

[8] Section 154 Managing agent to obtain insurance quotations

Insert at the end of the section—

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

[9] Section 154(2)

Insert after the section—

- (2) A quotation must include the following—
 - (a) a breakdown of charges, including the following if applicable—
 - (i) the base premium amount,
 - (ii) the commission to be received by the agent, expressed as an amount and as a percentage of the total quotation,
 - (iii) the referral fee received by the agent,
 - (iv) the stamp duty amount,
 - (v) levy amounts,
 - (vi) underwriting agency fees,
 - (vii) the broker fee, expressed as an amount and as a percentage of the total quotation,
 - (viii) the goods and services tax amount,
 - (b) a statement as to whether the person providing the quotation is connected with the agent.

Schedule 4 Amendment of Community Land Management Regulation 2021

[1] Section 4 Connected persons—the Act, s 6(1)(f)

Insert after section 4(1)—

- (1A) A person (the *principal person*) is connected with another person if the other person is—
- (a) the trustee of a trust of which the principal person is a beneficiary, or
 - (b) one or more of the following in relation to a trust of which the principal person is, or has at any time been, a trustee—
 - (i) a beneficiary,
 - (ii) a relative of a beneficiary,
 - (iii) a relative of a spouse of a beneficiary.

[2] Schedule 2 Penalty notice offences

Omit the matter relating to sections 61(2) and 64(1) and (2). Insert instead—

Section 61(2)	\$1,100	\$2,200
Section 64(1) and (2)	\$1,100	\$2,200

[3] Schedule 2

Insert in appropriate order in the matter relating to offences under the Act—

Section 64(2A) and (2C)	\$1,100	\$2,200
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[4] Schedule 2

Insert in appropriate order in the matter relating to offences under the Act—

Section 75(1)	\$1,100	\$2,200
Section 154(1)	\$1,100	\$2,200

Schedule 5 Amendment of Property and Stock Agents Act 2002 No 66

[1] Section 37 Rules of conduct for licensee's business

Omit section 37(2), penalty provision. Insert instead—

Maximum penalty—

- (a) for a corporation—1,000 penalty units, or
- (b) otherwise—200 penalty units.

[2] Section 38 Undertakings by licensees and registered persons

Omit the section.

[3] Part 3, Division 6 Unjust conduct by licensees

Omit the division.

[4] Section 55 No entitlement to commission or expenses without agency agreement

Insert after section 55(3)—

- (4) A licensee must not require a person to pay a commission or expense in accordance with a term, condition or other provisions that must not be contained in an agency agreement.

Maximum penalty—

- (a) for a corporation—100 penalty units, or
- (b) otherwise—50 penalty units.

[5] Section 102 Offence

Omit “100 penalty units” from the penalty provision.

Insert instead “200 penalty units”.

[6] Section 182 Appointment of accounts examiner to examine licensee's accounts

Omit section 182(1). Insert instead “The”.

- (1) The Secretary may, at any time and from time to time, appoint an appropriately qualified person as an accounts examiner to examine the accounts kept by a licensee in connection with the licensee's business.

[7] Section 182(1A)

Insert after section 182(1)—

- (1A) The Secretary may only exercise the function under subsection (1) for the purpose of—
 - (a) safeguarding the Compensation Fund in relation to the affairs of the licensee, or
 - (b) investigating compliance with this Act or the regulations.

[8] Section 207 Obstruction etc of authorised officers

Omit “100 penalty units” from the penalty provision.

Insert instead “200 penalty units”.

[9] Section 210A

Insert after section 210—

210A Enforcement of undertakings

- (1) The Secretary may accept a written undertaking given by a holder of a licence or certificate of registration in connection with a matter in relation to which the Secretary has a function under this Act.
- (2) Without limiting subsection (1), the Secretary may accept an undertaking to do one or more of the following—
 - (a) refrain from conduct that contravenes this Act or the regulations,
 - (b) take action to prevent or remedy a contravention of this Act or the regulations,
 - (c) take action to resolve a complaint against the licensee or certificate holder,
 - (d) pay into the NSW Consumer Law Fund established under the *Fair Trading Act 1987*, section 79Y an amount not more than the amount of financial benefit that the licensee or certificate holder has obtained directly or indirectly and that is reasonably attributable to a contravention of this Act or the regulations,
 - (e) pay the Secretary's costs in relation to the negotiation and enforcement of the undertaking.
- (3) The licensee or certificate holder may withdraw or vary the undertaking at any time, but only with the written consent of the Secretary.
- (4) The consent of the Secretary is required even if the undertaking purports to authorise a withdrawal or variation of the undertaking without that consent.
- (5) The Secretary may apply to the Supreme Court for an order under subsection (6) if the Secretary considers that the licensee or certificate holder who gave the undertaking has breached any of the undertaking's terms.
- (6) The Court may make all or any of the following orders if satisfied that the licensee or certificate holder has breached a term of the undertaking—
 - (a) an order directing the licensee or certificate holder to comply with that term of the undertaking,
 - (b) an order directing the licensee or certificate holder to pay to the State an amount not more than the amount of financial benefit that the licensee or certificate holder has obtained directly or indirectly and that is reasonably attributable to the breach,
 - (c) any order the Court thinks appropriate directing the licensee or certificate holder to compensate a person who has suffered loss or damage as a result of the breach,
 - (d) another order the Court considers appropriate.

Schedule 6 Amendment of Property and Stock Agents Regulation 2022

[1] Schedule 12 Terms specific to agency agreement for management of strata or community title land

Insert after section 5—

6 No commission or expenses for work not done

- (1) The agency agreement must not contain a provision that permits the agent to require the person for whom the agent is acting, or another person, to pay a commission to the agent in relation to the purchase of an insurance policy where the agent has not performed any work in relation to the purchase.
- (2) The agency agreement must contain a provision that prohibits the agent requiring the person for whom the agent is acting, or another person, to pay a commission to the agent in relation to the purchase of an insurance policy where the agent has not performed any work in relation to the purchase.

[2] Schedule 13 Penalty notice offences

Omit the matter relating to section 37(2). Insert instead—

Section 37(2)	\$1,100	\$2,200
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[3] Schedule 13

Insert in appropriate order under the heading **Offences under the Act**—

Section 55(4)	\$1,100	\$2,200
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[4] Schedule 13

Omit the matter relating to sections 102(1) and (2) and 207(a)–(c).

Insert appropriate order—

Section 102(1)	\$2,200	—
Section 102(2)	\$2,200	—
Section 207(a)	\$2,200	—
Section 207(b)	\$2,200	—
Section 207(c)	\$2,200	—