

# ***Strata Managing Agents Legislation Amendment Bill 2024***

**The Real Estate Institute of New South Wales  
Limited**

**Submission on the *Strata Managing Agents  
Legislation Amendment Bill 2024***

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## 1. Introduction

This submission has been prepared by The Real Estate Institute of New South Wales Limited (**REINSW**) and is in response to the confidential draft *Strata Managing Agents Legislation Amendment Bill 2024 (Draft Bill)*.

REINSW is the largest professional association of real estate agents and other property professionals in New South Wales. REINSW seeks to promote the interests of its members and the property sector on property-related issues. In doing so, REINSW plays a substantial role in the formation of regulatory policy in New South Wales.

This submission has been prepared in consultation with REINSW's Strata Management Chapter Committee. These members are licensed real estate professionals with a high level of experience and expertise in strata management. They are able to draw upon their extensive expertise working in strata management and offer a unique perspective about how the proposed provisions in the Draft Bill might apply in practice.

This submission outlines issues and recommendations for Government to consider in relation to the Draft Bill.

## 2. General comments

**REINSW supports** the Draft Bill, in principle, subject to the comments it makes throughout this submission.

REINSW's view is that, in practice, most strata managing agents do the right thing and meet their disclosure obligations under the strata schemes management legislation. However, the changes proposed in this Draft Bill are both necessary and appropriate to protect consumers and to capture strata managing agents or strata management agencies who attempt to circumvent their statutory disclosure obligations. REINSW's view is that the proposed amendments will also help to deter undercutting practices, which is another problem in industry. Such practices include where a strata manager offers lower strata management agency fees to obtain the listing only to have them supplemented by additional revenue such as commissions.

REINSW is concerned, however, that there will be costs associated with implementing, and complying with, the proposed changes set out in the Draft Bill (especially for smaller strata management agencies) and that such costs will likely be passed onto consumers (for instance, in the form of higher strata management agency fees). REINSW is also concerned that the proposed reforms do not appear to have been based on any specific inquiry, report or cost benefit analysis (at least, not ones which are publicly available) and so generally encourages such analysis to ensure that any proposed reforms target the real issues arising in practice and will be effective in meeting Government's objectives.

Nevertheless, REINSW welcomes the proposed reforms, in principle, and is of the view that they will be a positive change for the industry, will offer more protection for consumers and will encourage more transparent disclosure practices.

### 3. Grace period

REINSW understands that certain provisions of the Draft Bill commence on the date of assent, while others commence on a day, or days, to be appointed by proclamation. **REINSW recommends** that industry be provided with a sufficient transitional period in which to educate themselves on, and implement, the changes proposed in the Draft Bill.

The Draft Bill makes important changes to key pieces of legislation which govern the property and strata management industry and will impact the day-to-day running of real estate and strata managing agencies. The proposed changes also introduce increased penalties, new penalty provisions and new requirements for terms to be included in strata management agency agreements, all of which will have significant consequences for agents if found to be non-compliant. It is important that industry have reasonable and sufficient time to understand and digest these changes, how they will affect agency practices and to adapt appropriately.

REINSW is concerned that strata managers, real estate professionals, industry stakeholders and registered training providers will also need to familiarise themselves with the proposed reforms and how they will affect them and industry. Further, these legislative changes will impact REINSW and other industry providers of template documents, as these proposed reforms impact agency forms and agreements used by the industry on a day-to-day basis such as strata managing agency agreements. As Government can appreciate, REINSW must cease trading any forms and agreements impacted by the legislative reforms that have not been updated on REI Forms Live by the commencement date for reasons of non-compliance. Accordingly, REINSW needs sufficient time to update its strata templates on REI Forms Live, but cannot begin updating new copies of these forms and agreements until it sees the final version of the amended legislation – an issue which is not unique to REINSW but will impact other industry providers of template forms and agreements as well. REINSW is concerned about potential turmoil and disruption in the industry if it has to cease trading forms and agreements for compliance reasons without having updated forms ready for release.

REINSW welcomed the grace period provided in relation to the remake of the *Property and Stock Agents Regulation 2022* (NSW) (**PSA Regulation**) by way of a Statement of Regulatory Intent and would **recommend** a similar approach be taken to the amendments set out in the Draft Bill which would greatly aid in the smooth transition and implementation of such reforms. **REINSW recommends** that a four (4) to six (6) month transitional period would be appropriate in the circumstances.

### 4. Definition of “commission”

REINSW notes that there is no definition of “commission” in the *Strata Schemes Management Act 2015* (NSW) (**SSMA**), despite it being used throughout. For clarity, **REINSW recommends** that the definition of “commission” in section 54 of the *Property and Stock Agents Act 2002* (NSW) (**PSA Act**) should be reflected in the SSMA (for instance, in section 57(4) of the SSMA).

### 5. Proposed amendment to section 57 of the SSMA

Section 57(3) of the SSMA provides exceptions to the general prohibition on accepting gifts and benefits, specifically in relation to certain monetary commissions and training services.

The Draft Bill proposes a new section 57(3A) and (3B) to be inserted into the SSMA which:

- requires that any approval by an owners corporation, of a monetary commission or training service, must occur by resolution at general meeting; and
- that a document containing specific details about the commission or training service accompany the motion for resolution.

**REINSW recommends** that proposed section 57(3A) address how the owners corporation is to approve a commission associated with the renewal of an insurance policy if the renewal occurs outside the time for the holding of the annual general meeting (**AGM**).

**REINSW recommends** that this document accompanying the motion for resolution should also prescribe whether there are any subsidiaries or other related companies (whether wholly or partially related to the strata managing agent) and the calculation of their fees, including the actual figures.

## 6. Proposed amendment to section 60 of the SSMA

The Draft Bill proposes a new section 60(2A) to be inserted into the SSMA which requires written notice to be provided to the strata committee before a strata managing agent enters into a contract for the purchase of goods or services, if the strata manager is connected to the person with whom the strata managing agent is contracting and they will receive a commission or training service. In relation to this proposed provision, **REINSW recommends** that:

- a strata managing agent should be required to give 60 days' notice to the strata committee, prior to entering into this contract;
- proposed section 60(2A) should be amended to clarify that written notice must be given to two (2) lot owners which must not be connected to the original owner, if no strata committee has been elected; and
- the details about commission or training service prescribed in proposed section 60(2B)(b) should also include the exact fee, and method of its calculation, in the case of a partially or wholly owned related company.

The Draft Bill proposes a new section 60(2C) to be inserted into the SSMA which requires that, as soon as practicable after the strata managing agent becomes aware of certain connections, including relevantly, that they have acquired “a direct or indirect pecuniary interest in the strata scheme”, they must provide written notice to the owners corporation. **REINSW recommends** that the Draft Bill provide greater clarity about the concept of a “pecuniary interest” to ensure that strata managers fully understand this term and their disclosure obligations in relation to it, especially as this is a penalty provision. **REINSW also recommends** that written notice of the disclosures referred to in proposed section 60(2C) be given within 28 days of becoming aware, rather than “as soon as practicable” after becoming aware (as currently proposed in the Draft Bill).

## 7. Proposed amendment to section 71 of the SSMA

The Draft Bill proposes a new section 71(2)(d) to be inserted into the SSMA which requires disclosure of “any dealing, whether under formal contract or not, the person had with the

original owner during the previous 2 years...”. REINSW’s view is that the concept of a “dealing” is very broad and **REINSW recommends** clarifying this term so that agents clearly understand their disclosure obligations. Furthermore, **REINSW recommends** that there should be a carve out for “dealings” that strata managers have with the original owner which occur in the ordinary course of providing their strata management services (for example, issuing the original owner agendas, and levy or meeting notices where the original owner is a lot owner in the strata plan managed by the strata manager).

## 8. Section 166 of the SSMA

**REINSW recommends** that the requirement for strata managing agents to obtain “not less than 3 quotations” from different insurance providers should be omitted from section 166 of the SSMA. While REINSW understands that the purpose of this provision is to ensure that an owners corporation is provided with choice about insurance providers, REINSW’s view is that, even without legislative direction, owners corporations could, and should, insist on multiple quotes. However, REINSW also notes that in practice there are generally only three or four companies in the market who provide insurance for strata schemes which impacts a strata manager’s (or broker, if one has been engaged) ability to obtain three different quotes. Even where a strata manager engages a broker to help obtain multiple quotes, brokers are not always able to obtain three quotes in practice.

## 9. Proposed amendment to section 62 of the *Strata Schemes Management Regulation 2016 (NSW) (SSM Regulation)*

Section 7(1)(f) of the SSMA defines “connected persons”, including, relevantly, any “connection or association with the principal person of a kind prescribed by the regulations”.

The Draft Bill proposes to insert a new section 62(1A) into the SSM Regulation which extends the definition of a “connected person” to include a “relative of a beneficiary” or a “relative of a spouse of a beneficiary” “in relation to a trust of which the principal person is, or has at any time been, a trustee”.

REINSW believes that this definition is too broad. REINSW’s view is that the term “relative of a beneficiary” or “a relative of a spouse of a beneficiary” could encompass distant relatives with whom which the principal person is not aware that they have a connection. **REINSW does not oppose** the principal person having to disclose as a “connected person” the relatives of a beneficiary, or relatives of a spouse of a beneficiary, if the principal person is aware of the connection at the time the disclosure is made. However, **REINSW opposes** requiring the principal person to have to make inquiries or investigations of relatives of a beneficiary, or relatives of a spouse of a beneficiary, as such a requirement would be costly, time consuming and unnecessarily onerous. **REINSW recommends** amending proposed section 62(1A) of the Draft Bill to clarify that relatives of a beneficiary and relatives of a spouse of a beneficiary are only “connected persons” if the that principal person is aware of the connection at the time of disclosure.

**REINSW also recommends** extending the definition of “connected persons” set out in proposed section 62(1A) to include the following, but only on the same basis as its recommendation above (that is, if the principal person is aware that they have a connection at the time disclosure is made and would not be required to make any further inquiries or investigations):

- an employee or relative of an employee; and
- where there is a financial or pecuniary benefit or gain.

**REINSW recommends** that such disclosures about connected persons should be made annually at the AGM which would provide further advice for all parties and would allow further discussion to be had if necessary.

## **10. Proposed amendments to the *Community Land Management Act 2021 (NSW)* and *Community Land Management Regulation 2021 (NSW)***

REINSW’s positions set out above in response to the proposed changes in the Draft Bill to the SSMA and SSM Regulation apply equally to the proposed changes in the Draft Bill to the *Community Land Management Act 2021 (NSW)* (**CLM Act**) and *Community Land Management Regulation 2021 (NSW)* (**CLM Regulation**).

Additionally, **REINSW recommends** expanding disclosures of “dealings” with the original owner in proposed section 75(2)(d) of the CLM Act to include a reference to a “strata plan” after the words “or another community plan”.

## **11. Proposed amendment to section 55 of the PSA Act**

The Draft Bill proposes to insert into section 55 of the PSA Act a new subsection (4) which provides that:

*“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”.*

However, section 55(1)(b) of the PSA Act already prohibits a licensee’s entitlement to commission or expenses unless “the agency agreement complies with any applicable requirements of the regulations”. Therefore, REINSW’s interpretation is that a licensee is already prohibited from claiming commission or expenses for “terms, conditions or other provisions that must not be contained in an agency agreement” as the inclusion of such terms, conditions or other provisions would make the agency agreement non-compliant with the PSA Regulation under section 55(1)(b). Two other possible interpretations are that proposed section 55(4):

- is intended to prevent the claiming of commissions or expenses unless they are disclosed by way of a term, condition or other provision in the agency agreement; or
- relates to strata companies adding a fee to the work order when approving a quote for a strata scheme which would be added back into the cost.



As these different interpretations demonstrate, Government's intention for this provision does not appear to be clear based on the current drafting. As such, REINSW is uncertain about the intended effect of this provision and **recommends** that the drafting be clarified (or omitted if the Government agrees that the issue is already addressed by section 55(1)(b) of the PSA Act).

If the proposed section 55(4) remains unchanged, **REINSW recommends** that the drafting be clearer by replacing "that must not be contained in an agency agreement" with "not included in an agency agreement or that must not be included in an agency agreement". At the very least, the word "contained" in proposed section 55(4) should be replaced with "included".

**REINSW also recommends** that section 55 of the PSA Act could be expanded so that an agent (or related party) may only receive remuneration from a client, or any other party, for the performance of its duties if disclosed in the agency agreement. REINSW's view is that this expanded definition would then capture related companies and in-house services (for example, in-house brokers, law firms or plumbers).

## 12. Proposed amendment to s182 of the PSA Act

The Draft Bill proposes to amend section 182 of the PSA Act to grant the Secretary the power to appoint a qualified person to examine a licensee's accounts. **REINSW recommends** that this provision should be extended to also cover the accounts of the licensee's related companies as some fees might not be reflected in a licensee's accounts if charged to a related company instead.

## 13. Proposed amendment to Schedule 12 to the PSA Regulation

Section 9(1) of the PSA Regulation requires agency agreements to comply with Schedules 5-12 of the PSA Regulation "as to the terms, conditions and other provisions an agency agreement must or must not contain". The Draft Bill proposes to insert new requirements into section 6 of Schedule 12 to the PSA Regulation whereby:

- (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"*.

REINSW assumes that these proposed amendments are intended to prohibit a strata manager from claiming commissions for the purchase of an insurance policy where the owners corporation has obtained the insurance quotes and has organised the policy independently of the strata manager. Firstly, if this assumption is correct then **REINSW recommends** it be

made clear in the Draft Bill. On the basis of this assumption, **REINSW makes the following recommendations** in relation to these terms for agency agreements:

- REINSW is concerned about the owners corporation sourcing insurance quotes independently of the strata manager. Ensuring that the strata scheme is adequately insured is one of the most important aspects of strata management. If a strata scheme is damaged or destroyed (for example, if a strata scheme burns down) and it is not properly insured, or not insured for the correct amount of cover, it can have significant adverse consequences for the owners corporation and lot owners, and would also leave a strata manager open to liability and a potential class action. For example, REINSW is aware that one strata scheme had a few lots destroyed by fire but the insurance provider required the whole strata scheme to be rebuilt in order to meet modern day building and insurance standards. Had the strata scheme not had sufficient insurance cover, this would have had serious consequences for the owners corporation. It is also important that any strata insurance covers voluntary workers so that if, for example, a friend or family member of a lot owner carries out work on the common property (for example, changing a light bulb) and is injured in the process, the strata scheme is not held liable.

REINSW's view is that the owners corporation might not have the knowledge and experience necessary to source and select the right type and level of cover. The owners corporation might select the most cost effective quote, which is not always the most appropriate one. Insurance policies for strata schemes differ significantly from other types of insurance cover, such as house insurance. The quotes should be obtained by, and the policy purchased by, strata managers who have experience in such matters. **REINSW recommends** that it is best practice for strata managers to obtain insurance for a strata scheme. Where an owners corporation chooses to obtain their own insurance quotes, **REINSW recommends** amending these proposed requirements to make it very clear that:

- the owners corporation should be required to present those quotes at an AGM (as the strata manager is expected to do) as this allows for discussion with other lot owners, ensures that the price of the policy fits within the insurance budget which is determined at the AGM and ensures that the strata manager still has some level of involvement in the process; and
  - were the owners corporation to choose to source insurance quotes and organise the strata scheme's insurance policy independently of the strata manager, the strata manager would be exempt from any liability connected with the insurance quotes and policy (such as not being able to make a claim on the insurance or that there was inadequate cover).
- The drafting of these provisions should be clarified, especially in relation to the phrase "where the agent has not performed any work in relation to the purchase". REINSW's view is that prohibiting a "fee in lieu" of not doing any work in relation to the purchase is too broad. Strata managers may still need to undertake "work in relation to the purchase" of an insurance policy even if they don't source the quote, or organise the policy. For example, strata managers would still need to pay the insurance premium, disclose it to the owners corporation at the AGM and on status certificates, update the strata scheme's books, records and software, and update the Strata Hub with the strata scheme's latest insurance details. **REINSW recommends** clarifying the nature and scope of "work" which would entitle, or prohibit, a strata manager from claiming commission in these circumstances.



- These proposed new requirements should not just be limited to insurance policies but should extend to other commissions or benefits received for services performed in connection with a strata manager's term of appointment.

## 14. Summary

In summary, REINSW:

- Supports the Draft Bill, in principle, subject to the comments made in this submission.
- Recommends that industry be provided with a sufficient transitional period in which to educate themselves on, and implement, the changes proposed in the Draft Bill. In relation to this grace period, REINSW recommends a similar approach be taken to the grace period provided in relation to the remake of the PSA Regulation by way of a Statement of Regulatory Intent and that a six (6) to twelve (12) month transitional period would be appropriate in the circumstances.
- Recommends that the definition of "commission" in section 54 of the PSA Act should be reflected in the SSMA (for instance, in section 57(4) of the SSMA).
- Recommends that proposed section 57(3A) of the SSMA address how the owners corporation is to approve a commission associated with the renewal of an insurance policy if the renewal occurs outside the time for the holding of the AGM.
- Recommends that the document accompanying the motion for resolution in proposed section 57(3B) of the SSMA should also prescribe whether there are any subsidiaries or other related companies (whether wholly or partially related to the strata managing agent) and the calculation of their fees, including the actual figures.
- Recommends, in relation to proposed sections 60(2A) and 60(2B) of the SSMA that:
  - a strata managing agent should be required to give 60 days' notice to the strata committee, prior to entering into the contract for the purchase of goods or services;
  - proposed section 60(2A) should be amended to clarify that written notice must be given to two (2) lot owners which must not be connected to the original owner, if no strata committee has been elected; and
  - the details about commission or training service prescribed in proposed section 60(2B)(b) should also include the exact fee, and method of its calculation, in the case of a partially or wholly owned related company.
- Recommends, in relation to proposed section 60(2C) of the SSMA, that the Draft Bill clarify the concept of "pecuniary interest" and that written notice be given within 28 days of becoming aware, rather than "as soon as practicable" after becoming aware of relevant disclosures (as currently proposed in the Draft Bill).
- Recommends clarifying the concept of "dealing" in proposed section 71(2)(d) of the SSMA and that there should be a carve out for "dealings" that strata managers have with the original owner which occur in the ordinary course of providing their strata management services.

- Recommends that the requirement for strata managing agents to obtain “not less than 3 quotations” from different insurance providers should be omitted from section 166 of the SSMA.
- Recommends amending proposed section 62(1A) of the SSM Regulation to clarify that relatives of a beneficiary and relatives of a spouse of a beneficiary are only “connected persons” if the that principal person is aware of the connection at the time of disclosure.
- Recommends extending the definition of “connected persons” set out in proposed section 62(1A) of the SSM Regulation to include an employee, or relative of an employee, or where there is a financial or pecuniary benefit or gain but only if that principal person is aware of the connection at the time of disclosure.
- Recommends that such disclosures about connected persons should be made annually at the AGM.
- Recommends expanding disclosures of “dealings” with the original owner in proposed section 75(2)(d) of the CLM Act to include a reference to a “strata plan” after the words “or another community plan” but that otherwise REINSW’s positions set out above in response to the proposed changes in the Draft Bill to the SSMA and SSM Regulation apply equally to the proposed changes in the Draft Bill to the CLM Act and the CLM Regulation.
- Recommends that the drafting for proposed section 55(4) of the PSA Act be clarified or omitted if the Government agrees that the issue is already addressed by section 55(1)(b) of the PSA Act. If the proposed section 55(4) remains unchanged, REINSW recommends that the drafting be clearer by replacing “that must not be contained in an agency agreement” with “not included in an agency agreement or that must not be included in an agency agreement”. At the very least, the word “contained” in proposed section 55(4) should be replaced with “included”.
- Recommends that section 55 of the PSA Act could be expanded so that an agent (or related party) may only receive remuneration from a client, or any other party, for the performance of its duties if disclosed in the agency agreement so that this expanded definition would then capture related companies and in-house services.
- Recommends that the proposed amendment to section 182 of the PSA Act should be extended to also cover the accounts of the licensee’s related companies.
- Recommends, if its assumption is correct that proposed section 6 of Schedule 12 to the PSA Regulation is intended to prohibit a strata manager from claiming commissions for the purchase of an insurance policy where the owners corporation has obtained the insurance quotes and has organised the policy independently of the strata manager:
  - that this be made clear in the Draft Bill;
  - that it is best practice for strata managers obtain insurance for a strata scheme. However, were the owners corporation to choose to source insurance quotes and organise the strata scheme’s insurance policy independently of the strata manager, these proposed requirements should clarify that the owners corporation should present those quotes at an AGM to allow for discussion

with other lot owners, to ensure the policy fits within the insurance budget and to ensure that the strata manager still has some level of involvement and that the strata manager would be exempt from any liability connected with the insurance quotes and policy;

- that the nature and scope of “work” which would entitle, or prohibit, a strata manager from claiming commission in these circumstances be clarified; and
- that these proposed new requirements should not just be limited to insurance policies but should extend to other commissions or benefits received for services performed in connection with a strata manager’s term of appointment.

## 15. Conclusion

REINSW has considered the Draft Bill and has provided its comments above, aiming to provide input on as many pertinent aspects of the Draft Bill as possible. However, REINSW’s resources are very limited and, accordingly, it does not have the capacity to undertake a thorough review and is unable to exhaustively investigate all potential issues in this submission. Nonetheless, REINSW has identified a number of matters that it believes will cause significant consumer detriment, some of which appear above. As a consequence of the Government requesting feedback on the Draft Bill within 5 business days of its issue and with REINSW’s limited capacity to undertake the required review, REINSW considers it inappropriate to advise Government and other stakeholders that we have been consulted in relation to the Draft Bill.

REINSW appreciates the opportunity to provide this submission and would be pleased to discuss it further, if required.

Yours faithfully



Tim McKibbin  
**Chief Executive Officer**