

20 August 2024

Draft Strata Managing Agents Legislation Bill 2024 (NSW)

REINSW’s Lobbying influence on the Draft Strata Managing Agents Legislation Bill 2024

REINSW has lobbied for important changes to the strata industry in light of the Strata Managing Agents Legislation Amendment Bill (**Strata Bill**).

On 3 July 2024, REINSW lodged a submission in response to a confidential draft of the Strata Bill (**Draft Strata Bill**) (**Strata Submission**), noting that both the Draft Strata Bill and Strata Submission are confidential at this stage so cannot be publicly disclosed.

A summary of our wins, partial wins and losses as a result of our lobbying efforts in relation to the Draft Strata Bill is set out in the table below, with outcome categories as follows:

- Wins – where the Strata Bill has included, or made changes similar to, recommendations proposed by REINSW in its Strata Submission.
- Partial Wins – where the Strata Bill has partially addressed or included responses as proposed by REINSW in its Strata Submission.
- Losses – where the Strata Bill has not included or made changes aligned with responses proposed by REINSW in its Strata Submission.

Recommendations proposed by REINSW in its Strata Submission and whether included in the Strata Bill
REINSW recommended that industry be provided with a sufficient transitional period in which to educate themselves on, and implement, the changes proposed in the Strata Bill. REINSW recommended a grace period of 6-12 months for industry to adapt – <u>REINSW is still consulting with Government on this</u>
REINSW recommended that the definition of “commission” in section 54 of the <i>Property and Stock Agents Act 2002</i> (NSW) (PSA Act) should be reflected in the <i>Strata Schemes Management Act 2015</i> (NSW) (SSMA) – <u>Partial Win</u> . A new definition has been included simply to clarify that a commission includes an insurance broker fee.
REINSW recommended 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 annual general meeting – <u>Loss</u> .
REINSW recommended that the 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 – <u>Loss</u> .
REINSW recommended, in relation to proposed sections 60(2A) and 60(2B) of the SSMA that: <ul style="list-style-type: none"> • 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 <u>Loss</u>

REINSW recommended, in relation to proposed section 60(2C) of the SSMA, that the concept of “pecuniary interest” be clarified and that written notice be given within 28 days of becoming aware, rather than “as soon as practicable” after becoming aware of relevant disclosures – **Loss**.

REINSW recommended 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 – **Win**. The concept of dealing has been removed in the Strata Bill.

REINSW recommended 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 – **Loss**. However, NSW Fair Trading has noted the practical difficulties with obtaining 3 quotations and will consider as a separate consultation in the future (no time set for this).

REINSW recommended amending proposed section 62(1A) of the *Strata Schemes Management Regulation 2016* (NSW) (**SSM Regulation**) to clarify that relatives of a beneficiary and relatives of a spouse of a beneficiary are only “connected persons” if that principal person is aware of the connection at the time of disclosure – **Win**. Although our recommendation was not implemented, the concept of a relative of a beneficiary or relative of a spouse of a beneficiary has been removed. REINSW is of the view that to include relatives is too broad – hence, its deletion.

REINSW recommended 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 – **Loss**.

REINSW recommended that such disclosures about connected persons should be made annually at the AGM – **Loss**.

REINSW recommended expanding disclosures of “dealings” with the original owner in proposed section 75(2)(d) of the *Community Land Management Act 2021* (NSW) (**CLM Act**) to include a reference to a “strata plan” after the words “or another community plan” – **Win**.

REINSW recommended that the changes it proposed to the SSMA and SSM Regulation apply equally to the CLM Act and CLM Regulation – The wins and losses above with respect to the SSMA and SSM Regulation apply equally with respect to REINSW’s recommendations in relation to the proposed changes to the CLM Act and CLM Regulation.

REINSW recommended 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 recommended 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” – **Win**. Proposed section 55(4) has been clarified to ensure that a licensee must not require a person to pay a commission or expense in accordance with a prohibited provision. A prohibited provision is a term, condition or other provision that is prohibited by regulation from being included in an agency agreement.

REINSW recommended 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 – **Loss**.

REINSW recommended 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 – **Loss**.

REINSW recommended that the drafting for proposed section 6 of Schedule 12 to the PSA Regulation be clarified if it 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 – **Win**.

REINSW also recommended:

- that where the owners corporation 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

Loss. However, REINSW has discussed with Government the issues and consumer risks associated with an owners corporation independently obtaining insurance quotes and purchasing insurance policies without involvement of the strata manager. They don't have the knowledge or expertise to do this and may not take out sufficient coverage, which ultimately exposes them and places strata managers at risk of liability. Government has noted this issue and will consult on it separate to the Strata Bill.