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**IAIN FAIRHOLM | Strata Managers**  
**BRUCE BENTLEY | Building Defects**

**CHAIRPERSON:** Jeffrey Mueller | Partner | BCOM LLB

# **By-laws**

## **How will they operate under the proposed laws?**

**James Moir | Senior Lawyer | BA LLB**

# Strata Schemes Management Bill 2015

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## Changes to By-laws

# By-laws

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This presentation covers the following key areas from the proposed reforms:

- A. Renovation By-laws
- B. Common Property Rights By-laws
- C. What By-laws are in Force?
- D. Short Term Letting
- E. Guide or Hearing Dogs
- F. Registration of a By-law
- G. Proceedings for Breach of By-laws



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# Renovation By-laws



# Renovation By-laws

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## A. Renovation By-laws

1. Cosmetic renovations (s.109)  
No approval needed
2. Minor renovations (s.110)  
Ordinary resolution at a general meeting
3. Alterations or additions to Common Property (s.108)  
Special resolution at general meeting and by-law

# Summary of Types of Works & Differences

Type of work	Position under current Act	Position under new Act
Installation of built-ins	Special resolution and by-law needed if being bolted into a common property wall	No approval needed unless work involves structural changes
Installing blinds or curtains	Special resolution and by-law needed if alteration to common property (which is likely)	No approval needed unless there is a change to the external appearance of a lot in which case a Special Resolution and a by-law are required
Kitchen renovation with appliances staying in same position	Special resolution and by-law needed if any change to common property	Approval needed by ordinary resolution at a general meeting – possibly even if no change to common property
Changes to or installing new recessed light fittings i.e. within ceilings	Special resolution and by-law needed, as these are going above the paint on the ceiling (ie into common property)	Ordinary resolution at general meeting required
Other work involving change to external appearance of lot	If no change to common property, then no special resolution needed. Possible approval needed under by-law 17 (if not in keeping with the rest of the building)	Special resolution and by-law required
Installation of bathroom exhaust fan.	Special resolution and by-law needed, as this will penetrate a common property external wall	Approval required by ordinary resolution at general meeting



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# Common Property Rights By-laws





# Common Property Rights By-laws

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## B. Common Property Rights By-laws

1. New name for exclusive use and special privilege by-laws  
Whose Consent is required? *Young* or *James* position?
2. Common Property Memorandum  
Strata Schemes may decide to adopt a Common Property Memorandum
3. Lot Owner Suing for Breach of Statutory Warranty  
Back to *Seiwa* position

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# What By-laws are in Force?



# What By-laws are in Force?

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## C. What By-laws are in Force?

- For Strata Schemes registered from 1996-2014 (or really 30 June 2016) – those adopted or lodged with that Strata Plan (ie no change)
- For new Strata Schemes created after 1 July 2016, the by-laws in force are those that were adopted or lodged with that Strata Plan
- For Strata Schemes pre-dating 1996 – the by-laws in force are the by-laws set out in the *Regulations* to the new Act, “for the purposes of this section” including any changes

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# Short Term Letting



# Short Term Letting

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## D. Short Term Letting

- No more than 2 adults per bedroom
- Higher penalties for breach
- No effect if inconsistent with a planning approval

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# Guide or Assistance Dogs



# Guide or Assistance dogs

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## E. Guide or Assistance Dogs

- Currently (section 49(4)) cannot prevent the keeping of a guide or hearing dog
- New Act – extended to an assistance animal, which is an animal registered on a State register



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# Registration of a By-law



# Registration of a By-law

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## F. Registration of a By-law

- Currently within 2 years
- Under new Act, 6 months to register, and this may apply retrospectively to by-laws passed before the new Act came into effect

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# Proceedings for Breach of By-laws



# Proceeding for Breach of By-laws

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## G. Proceeding for Breach of By-laws – 'SIGNIFICANT CHANGES'

- The penalty for the 1<sup>st</sup> breach is 10 penalty units (\$1,100.00). This was formerly \$550.
- 2<sup>nd</sup> breach – currently, the owners corporation would have to serve another section 45 notice and then commence fresh penalty proceedings. Under new Act, the maximum penalty is doubled to \$2,200.00 for a 2<sup>nd</sup> breach.
- Breach of short term letting by-laws – 1<sup>st</sup> breach maximum penalty is \$5,500.00, 2<sup>nd</sup> breach doubled to \$11,000.00
- Costs – currently can be awarded (s204), under new Act only if special circumstances (section 60 NCAT Act)
- Biggest change – THE MONETARY PENALTY WILL BE PAID TO THE OWNERS CORPORATION

# Thank You!

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# Meetings

## What are the changes under the proposed laws?

Adrian Mueller | Senior Lawyer | BCOM, LLB, FACCAL

# Strata Schemes Management Bill 2015

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## Reforms to Meeting Practice & Procedure



# Objective of Reforms to Meeting Procedure

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- The reforms concerning meeting practice and procedure are intended to modernise and improve the way strata schemes are managed.
- This will be achieved by:
  - Creating flexible meeting options;
  - Introducing new ways to vote at meetings;
  - Preventing proxy farming;
  - Improving tenants' participation in meetings; and
  - Making miscellaneous changes to meeting practice and procedure.

# Flexible Meeting Options

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- Meeting notices will be able to be sent by email to owners who provide an email address for service (without an empowering by-law).
- Attendance at meetings will be possible via video if permitted by an owners corporation.
- Flexible quorum arrangements – if no quorum, wait half an hour then declare a quorum.
- The AGM can be held at any time each financial year.



# New Ways to Vote

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- The owners corporation and strata committee will be able to determine that a vote at a meeting may be made other than in person (e.g. postal vote and votes cast by video-link).
- The strata regulations will provide for:
  - a) the means of voting (other than in person) that may be adopted;
  - b) procedures for voting by those means; and
  - c) prohibiting the use of specified means of voting
- This will allow voting by secret ballot.



# Proxy Farming

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- The new strata laws will curb proxy farming.
- The reforms will limit the number of proxy votes able to be held by one person to:
  - for schemes of up to 20 lots - one proxy vote only; or
  - for schemes with more than 20 lots - proxy votes of not more than 5% of the total number of lots.



# Tenants Participation

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- Where the majority of units are tenanted, tenants will be able to:
  - attend owners corporation meetings (but not vote);
  - speak at owners corporation meetings (if permitted to);
  - have an elected representative on the strata committee (who will not be able to vote).
- A tenant may be excluded from a meeting in certain circumstances (e.g. raising levies or terminating scheme).
- The new laws will only apply to those tenants who have been notified to the owners corporation under a written tenancy notice.

# 1<sup>st</sup> AGM

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- The agenda for the 1<sup>st</sup> AGM will now need to include motions to:
  - consider the strata manager's report concerning commissions;
  - receive the documents to be provided by the developer;
  - consider the developer's initial maintenance schedule;
  - consider building defects and rectification.



# AGM Notice

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- The notice of each AGM will now need to include:
  - a call for nominations to the strata committee and the nominations already received;
  - a motion to consider a report as to commissions by the strata manager;
  - a motion to decide how to deal with overdue levies.



- The AGM notice will no longer need to include financial statements



# Minutes

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- Minutes of meetings will now need to be given within 14 days after the meeting to:
  - each member of the strata committee;
  - each owner - if the strata scheme is not a large strata scheme;
  - any owner who requests a copy of the minutes - if the strata scheme is a large strata scheme and the owner requests a copy within the period of 7 days.



# Unfinancial Owners

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- Unfinancial owners will now be allowed to:
  - require motions to be included in the agenda for a general meeting;
  - nominate a candidate for election to the strata committee.
- Unfinancial owners will not be allowed to:
  - vote at general meetings;
  - be elected onto the strata committee
- A member of the strata committee will not be entitled to move a motion or vote if the member:
  - is unfinancial; or
  - was nominated by an owner who is unfinancial.

# Conflicts of Interest

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- A developer will not be entitled to vote or exercise a proxy vote on a matter concerning building defects.
- Members of a strata committee will need to disclose any pecuniary interest in a matter and, unless the committee otherwise determines:
  - must not be present for any deliberations on the matter; or
  - vote on the matter.



# Strata Managers

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- An owner who is seeking appointment as a strata manager will not be entitled to vote or cast a proxy vote on the appointment at a meeting of the owners corporation.
- A strata managing agent will need to report the following at each AGM:
  - a) whether any commissions have been paid to the agent (other than by the owners corporation) during the previous 12 months and particulars of any such commissions;
  - b) any such commissions and the estimated amount of any such commissions that the agent believes are likely to be received by the agent in the following 12 months.
- A strata manager will need to update the report concerning commissions if there are any changes.
- A strata manager who does not give or update that report will be liable to a penalty of up to 20 penalty units.

# Insurance and Vacancy in Office

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## Insurance

- A strata manager will need to provide an owners corporation with at least 3 insurance quotes.
- If a strata manager provides less than 3 insurance quotes, written reasons will need to be given to the owners corporation.



## Vacancy in Office of Executive Committee Member

- A strata committee will now be able to fill a casual vacancy on the strata committee

# Budgets and Special Levies

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## Budgets

- The initial budget prepared before the 1<sup>st</sup> AGM will need to take into account the initial maintenance schedule provided by the developer.
- An owners corporation of a large strata scheme will need to explain any differences between the estimates in the budget and the estimates in the 10-year capital works fund plan.

## Special Levies

- Special levies will now be able to be raised to either the administrative fund or the capital works fund.

# Audits, Legal Action & Building Defects

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## Audits

- Audits will be mandatory for:
  - large strata schemes; or
  - strata schemes with an annual budget greater than \$250,000.

## Legal Action

- An owners corporation will still need to pass a resolution at a general meeting before taking certain types of legal action but if it fails to that will not invalidate any legal action it takes.

## Building Defects

- AGM agendas will need to include a motion concerning building defects until the end of any applicable statutory warranty period.



# Conclusion

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- The Bill contains some very useful reforms concerning strata meeting practice and procedure.
- The highlights of the new laws include provisions allowing:
  - meeting attendance and voting by video;
  - flexible quorum arrangements;
  - power to decide when to hold the AGM each year.
- The new laws that will outlaw proxy farming and clarify that strata committees will be entitled to fill casual vacancies on committees will also prove helpful.
- However the jury is still out on whether the reforms designed to increase tenant participation will prove worthwhile. And some of the new laws, particularly those giving more rights to unfinancial owners, will certainly prove controversial.
- Ultimately, the new laws will prove useful and should modernise and improve the way strata schemes are managed.

# Thank You!



# Levy Collection Procedural Changes.

Faiyaz Shafiq | Senior Lawyer | LLB, GDLP

# Strata Schemes Management Bill 2015

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## Levy Collection

# Building Defects

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This presentation covers the following key areas from the proposed reforms:

1. Current and Proposed Position
2. Section 83 SSMB
3. Section 84 SSMB
4. Recovering Levies, Interest & Costs
5. Jurisdiction

# Current and Proposed Position

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Current Position	Proposed Position
<p>Section 78 – regulates levy for:</p> <ul style="list-style-type: none"><li>○ owners</li><li>○ other persons; and</li><li>○ mortgagees in possession.</li></ul>	<p>OC to now raise levies under s83 SSMB.</p>

# Section 83 SSMB

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## Key Points

Current Position	Proposed Position
<p data-bbox="202 611 396 646">Section 78:</p> <ul data-bbox="272 701 875 1039" style="list-style-type: none"><li data-bbox="272 701 875 825">▪ one stop shop for owners, other persons and mortgagees in possession</li><li data-bbox="272 872 875 953">▪ no specific date required in levy notice</li><li data-bbox="272 1001 875 1039">▪ no obligation to issue notice</li></ul>	<p data-bbox="985 611 1174 646">Section 83:</p> <ul data-bbox="1054 701 1644 868" style="list-style-type: none"><li data-bbox="1054 701 1644 739">▪ will regulate levies for owners</li><li data-bbox="1054 758 1644 796">▪ date to be specified in the notice</li><li data-bbox="1054 815 1644 868">▪ no obligation to issue notice</li></ul>

# Section 84 SSMB

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## Section 84

- regulates liability for other persons and mortgagees in possession
- adopts s78 (3), (4) and (5)
- Mortgagees in possession liable for costs (84(2) (c))
- s78 was silent

## Other Key Points

- 10% Interest retained. S85 (1)
- Waiver of interest
- Discount on levies
- Payment plans



# Recovering Levies, Interest & Costs

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Current Position	Proposed Position
<ul style="list-style-type: none"><li>▪ s80 (1) SSMA regulates this</li><li>▪ <i>“together with”</i> interest and expenses in the same one action</li><li>▪ Remember - Court of Appeal in Dimitriou</li><li>▪ Expenses - <i>“reasonably incurred”</i> and <i>“reasonable in amount”</i></li><li>▪ Court of law has jurisdiction to hear a levy recovery claim</li></ul>	<ul style="list-style-type: none"><li>▪ Sections 86(1) &amp; (2) – will now regulate recovery</li><li>▪ No <i>“together with”</i></li><li>▪ Dimitriou still good law on the reasonableness of the expenses</li></ul>

# Jurisdiction

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- OC can now recover in two places:
  - NCAT; and
  - Court of Law
- Under s86 (1) – query if the outstanding levies, interest and expenses a “*statutory debt*”
- Section 86(1) does not have the words “*statutory debt*” in it
- Under s86 (1) – query if the owners corporation can still include expenses on the owner ledger? Not clear and doubtful

# Jurisdiction

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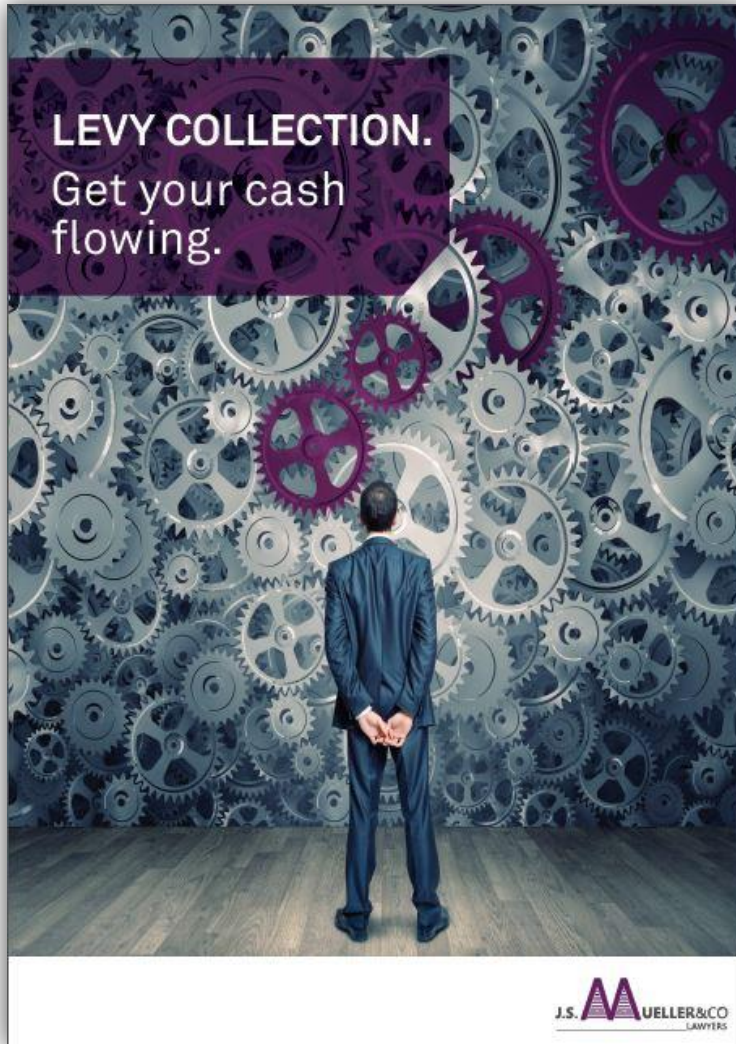
- Section 86(2) – a better provision and similar to s80 (1)
- Under s86(2):
  - I. you go to Court to recover.
  - II. Levies, interest and expenses treated as a “*statutory debt*”.
  - III. no need to claim interest and expenses in the same one action because the words “*together with*” have been omitted.

## Splitting of Jurisdiction


- Query if you can commence action for levies in NCAT and action in Court for interest and expenses or vice versa.

# Thank You!

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flowing.

J.S.  UELLER & CO  
LAWYERS

The advertisement features a man in a dark blue suit standing with his back to the camera in a room. The walls and floor are filled with a dense field of interlocking gears of various sizes and colors, including shades of grey, blue, and purple. The lighting is dramatic, highlighting the man and the gears. The text 'LEVY COLLECTION. Get your cash flowing.' is overlaid in the upper left corner. The logo for J.S. Mueller & Co. Lawyers is in the bottom right corner of the ad.

# **Strata Managers**

## **How will the proposed laws affect you?**

**Iain Fairholm | Lawyer | BA (Hons) LLB**

# Strata Schemes Management Bill 2015

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## The Changing Landscape for Strata Management



# Key Results

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The NSW Government has identified the following key desired results from the proposed reforms:

1. Improved Accountability
2. Greater Disclosure



# Improved Accountability

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The attainment of this goal is to be achieved through the following proposed changes:

- Changes to the term of appointment strata managers
- Additional administrative requirements to be placed on strata managers
- Increased powers to be given to the NSW Civil & Administrative Tribunal (**NCAT**)
- Breaches by strata managing agent



# Term of Appointment

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- Currently unlimited
- Proposed to limit term of appointment to:
  - 12 months (if appointed at 1<sup>st</sup> AGM); or
  - 3 years
- Strata manager must give prior notice before end of appointment:
  - 3 months; or
  - 7 days (before end of any “roll-over” period)
- Strata committee can extend appointment by monthly intervals

# Transfer of Agreements

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- Transfers of agency agreements must be approved in general meeting
- Strata committee cannot approve transfer of agreement

# Record Keeping

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- Hard vs Soft Copy
- Who gets to decide?
- Owners corporation can determine how records will be kept

# NCAT

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- Currently NCAT cannot interfere with strata management agency agreements
- NCAT will now have power to interfere with agency agreements
- NCAT will only have power to interfere on application of an owners corporation
- Rogue lot owners will not be able to ask NCAT to interfere with agreements

# NCAT

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- NCAT will be able to make orders:
  - Terminating an agency agreement
  - Varying any terms of an agency agreement
  - Requiring payment of compensation
  - Requiring the taking of action under an agency agreement
  - Restraining the taking of action under an agency agreement
  - Resolving disputes about agency agreements

# NCAT

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- NCAT will make those orders if:
  - A strata manager is not performing
  - The charges under an agency agreement are unfair
  - A strata manager has failed to disclose commissions
  - A strata manager has failed to disclose connections to:
    - The developer
    - The building (e.g. the strata manager is a lot owner)
  - A strata manager has failed to provide prescribed financial information to an owners corporation
  - The agency agreement is unfair

# Greater Disclosure

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The attainment of this goal is to be achieved through the following proposed changes:

- Disclosure of third party commissions
- Requirement to disclose any links to the Developer of the scheme
- Control on the receipt of nominal gifts or benefits





# No Gifts

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- A strata manager will not be allowed to:

- Request; or
- Accept

a gift or other benefit:

- from another person; and
- for the strata manager or another person;

in connection with the provision of services as a strata manager.

- Limited exceptions (e.g. commissions)

# Disclosure of Commissions

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- A strata managing agent will need to report the following at each AGM:
  - a) whether any commissions have been paid to the agent (other than by the owners corporation) during the previous 12 months and particulars of any such commissions;
  - b) any such commissions and the estimated amount of any such commissions that the agent believes are likely to be received by the agent in the following 12 months.
- A strata manager will need to update the report concerning commissions if there are any changes.
- A strata manager who does not give or update that report will be liable to a penalty of up to 20 penalty units.

# Disclosure of Connections

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- A strata managing agent will need to disclose:
  - a) any connections to the developer;
  - b) any financial connections to the building (e.g. the strata manager is a lot owner).
- A strata manager will need to make that disclosure before being appointed.
- A strata manager who does not disclose will be liable to a penalty of up to 20 penalty units.

# Thank You!

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# **Building Defects**

## **What impact will the proposed laws have?**

**Bruce Bentley | Partner | BA LLB, LLM, AIAMA, FACCAL**

# Strata Schemes Management Bill 2015

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## Building Defects

# Building Defects

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This presentation covers the following key areas from the proposed reforms:

1. What the Act Covers
2. Interim Report
3. Final Report
4. Building Bonds

# What the Act Covers

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# What the Act Covers

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- The Act will make provision for defective building work contained in a building or part of a building that forms part of a strata plan if the work was carried out by or on behalf of the original owner for the purposes of or contemporaneously with the registration of a strata plan being building work completed after the commencement of the Act.
- The provisions will cover residential strata schemes and mixed use strata schemes that include a residential purpose but will not include completely non-residential schemes.
- The provisions do not apply to schemes which are subject to the requirement to obtain home building compensation insurance (exceeds 3 storeys or work is \$20K or less).
- Defective building work is defined in terms of the *Home Building Act 1989* warranties.

# What the Act Covers

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- Completion of building work is defined in accordance with s3C of the *Home Building Act 1989*. That section provides that where the issue of an occupation certificate is required to authorise commencement of the use or occupation of the building the completion date of the building work occurs on the date of issue of an occupation certificate authorising occupation and use of the whole of the building.
- The provisions will not affect other rights of the owners corporation in relation to defective work.
- If the residential building work comprises the construction of two or more separate buildings the date of completion of that work is determined as if they were separate buildings constructed under separate contracts with a separate completion date for each building capable of being used and occupied separately from any other building.

# Interim Report

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# Interim Report

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- The developer must appoint an unconnected qualified building inspector approved by the owners corporation not later than 12 months after completion of the building work to inspect and report to the owners corporation not earlier than 12 months and not later than 18 months after completion.
- If the initial period has not expired within 12 months after completion of the building work the original owner must notify the Chief Executive who will appoint a building inspector to carry out an inspection and report to the developer, the owners corporation, if the initial period has ended, and the Chief Executive.
- If the original owner and the owners corporation fail to agree on a building expert or the developer fails to comply with the requirement to appoint a building inspector, the owners corporation may advise the Chief Executive who will appoint a building inspector to carry out an inspection and report to the developer, the owners corporation, if the initial period has ended, and the Chief Executive.

# Interim Report

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- The report must:
  - Identify any defective building work;
  - If reasonably practicable identify the cause of that defective building work;
  - Be in the form and contain the matters prescribed by the Regulations.
  - The cost of the report is to be borne by the developer.
- An appointed building inspector may enter and inspect any part of the strata scheme upon giving at least 7 days written notice of intention to enter. The owners corporation, the strata manager, the building manager, owners, occupiers and exclusive users must provide reasonable assistance to enable the inspection to take place.

# Final Report

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# Final Report

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- The developer must, not later than 18 months after the building work is completed, arrange for the building inspector who prepared the interim report to do a final inspection and prepare a final report not earlier than 18 months and not later than 2 years after the completion of the building work and if that building inspector is unavailable to advise the Chief Executive who will appoint another qualified building inspector.
- If the developer fails to arrange for a building inspector to prepare a final report the owners corporation may notify the Chief Executive who must appoint a qualified person to provide the final report.
- If the interim report identified no defective building work a final report does not have to be prepared.



# Final Report

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- The final report must:
  - Identify defective building work identified in the interim report that has not been rectified;
  - Identify any defective building work arising from rectification of defective building work identified in the interim report;
  - Specify how the defective building work identified in the report should be rectified and the estimated costs of rectification;
  - Not contain matters that relate to defective building work not identified in the interim report other than work arising from rectification of defective building work;
  - Be in the form and contain the matters prescribed by the Regulations.
- The builder may enter the strata scheme at any time before completion of a final inspection on the giving of at least 7 days written notice to rectify any defective building work.



# Building Bonds

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# Building Bonds

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- A building bond in the sum of 2% of the contract price for the building work (to be defined by the Regulations) is to be paid to the Chief Executive before an occupation certificate is issued for the building work for the purpose of securing funding for the payment of the cost of rectifying defective work identified in a final report.
- The whole or part of the building bond is payable as follows:
  - To the owners corporation to meet the estimated cost of rectifying defects identified and estimated in the final report.
  - To the developer if there is no defective building work or no further costs for rectification identified in the final report.
  - To the owners corporation with the consent of the developer on joint application to the Chief Executive made within 30 days after the final report is given to the developer.

# Building Bonds

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- To the developer with the consent of the owners corporation on joint application to the Chief Executive made within 30 days after the final report is given to the developer.
- To the owners corporation or the developer in accordance with an order of the Tribunal or the Supreme Court.
- The developer cannot cast a vote on a motion on a building defect matter.
- The bond is payable to the owners corporation irrespective of whether the developer is liable to the owners corporation or the owner of a lot in relation to the defective work.
- The building bond must be paid out within either 2 years after the date of completion of building work or 60 days after the final report is given to the developer, whichever is later.

# Building Bonds

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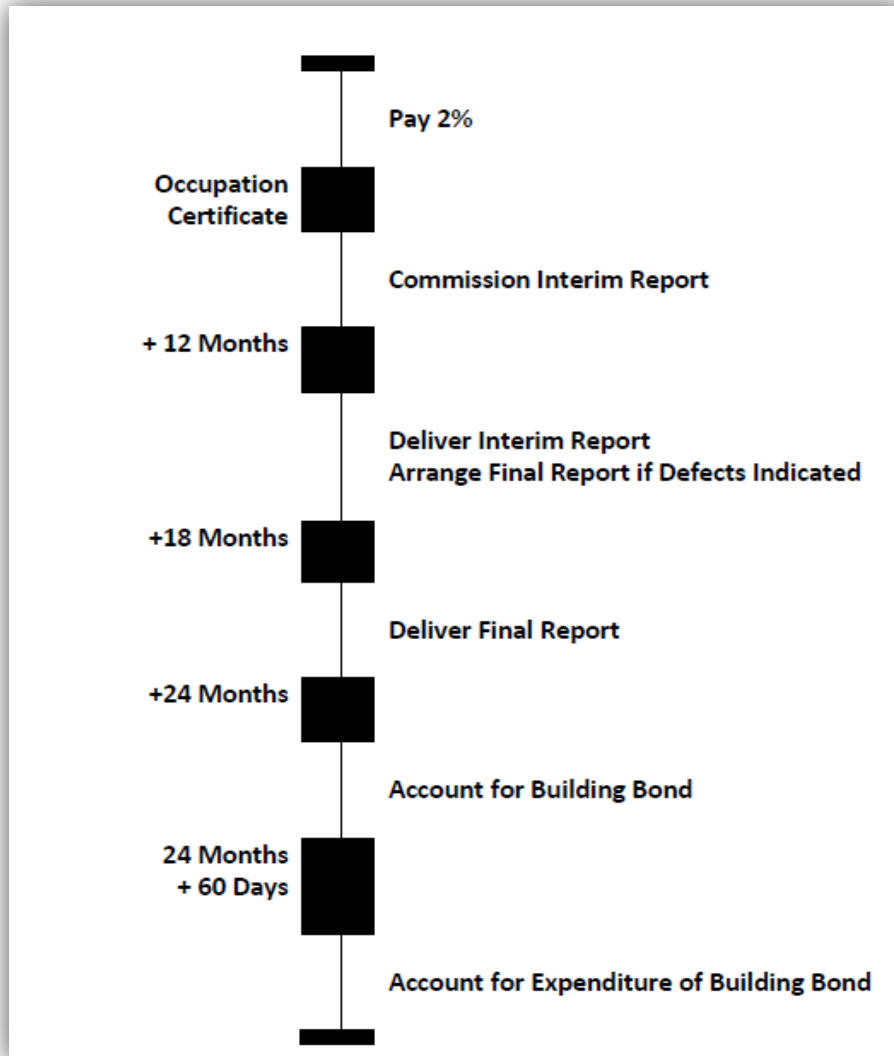
- An owners corporation that has been paid either the whole or part of a building bond must within a reasonable time use the amount paid for or in connection with rectifying the defective building work for which it was received or costs related to the rectification and must repay to the developer any amount of a building bond that is not required for such a purpose and give to the developer written notice of the completion of the rectification work.
- The owners corporation or a person carrying out rectification work for the owners corporation is entitled to enter any part of the strata scheme on giving at least 7 days written notice to the owner of any affected lot.
- The Tribunal may make orders requiring any occupier to grant access for inspection or rectification of defective building work on the application of an owners corporation, developer, building inspector or builder.

# Building Bonds

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- The Tribunal may on application by an owners corporation, developer or the Chief Executive make any of the following orders:
  - An order that the Chief Executive not pay, or pay, the whole or part of the amount of a building bond to a specified person.
  - An order that an amount of building bond be repaid by an owners corporation to a developer.
  - An order specifying the amount of the contract price of building work for the purpose only of determining the amount of the building bond.
  - An order varying the time within which an action is required to be taken under this part, if the application for the order was made by or with the consent of the Chief Executive.

# Building Bonds



# Thank You!

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# Thank You!



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