



# Regulatory Impact Statement

Strata Schemes Management

Regulation 2016

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Fair  
Trading

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## Executive summary

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The Strata Schemes Management Regulation 2016 (the Regulation) will support the new *Strata Schemes Management Act 2015* (the Act) which is due to come into effect in late 2016.

The Act will provide a set of laws that modernise the way strata schemes operate and facilitate continued growth of strata title in NSW. The Act seeks to:

- help strata schemes be future-orientated with emphasis given to modern technology and contemporary methods of communication
- make it easier for owners corporations to manage issues like parking, pets, overcrowding and smoke drift
- establish a process for ensuring building defects are rectified early in the life of a new strata building
- improve the accountability of strata managers
- provide simple and effective means for resolving disputes and compliance with strata laws
- improve the management of scheme finances including record keeping □ establish flexible administrative and management arrangements.

The new Act requires new regulations to provide necessary administrative and procedural detail. The proposed Regulation will provide this detail and ensure the objectives of the Act can be achieved efficiently and effectively. The proposed Regulation seeks to ensure the Act's objectives are met by:

- providing a mechanism for nomination and appointment of strata committee members
- providing for modern forms of communication to be used for voting on motions and elections
- providing the operational detail for the new defect bond scheme
- providing fair and reasonable model by-laws that can be adopted or adapted by strata schemes □ prescribing the necessary forms and fees.

This Regulation Impact Statement (RIS) sets out the rationale and objectives of the proposed Regulation and various options for achieving those objectives. It also provides an assessment of the costs and benefits of each of the alternative options. The proposed Regulation is the alternative which provides the greatest net public benefit.

This RIS contains a detailed discussion on important aspects of the proposed Regulation and seeks feedback from stakeholders and the strata community. Submissions are invited on any of the matters

raised in the discussion or anything else contained in the proposed Regulation. All submissions will be considered and evaluated and any necessary changes will be made to address the issues identified before the final Regulation is published.

## Consultation process

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### Making a submission

Interested organisations and individuals are invited to provide a submission on any matter relevant to the proposed Regulation.

Matters covered by the principal Act – the *Strata Schemes Management Act 2015* – are not the subject of the consultation process.

We would prefer to receive submissions by email and request that any documents provided to us are produced in an ‘accessible’ format.

Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.

We invite you to read this paper and provide comments. Additional copies of the RIS and the proposed Regulation can be downloaded from [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au). Printed copies can be requested from NSW Fair Trading by phone on (02) 9895 0791.

You can make submissions by:

- email to:  
[Strataconsultation@finance.nsw.gov.au](mailto:Strataconsultation@finance.nsw.gov.au)
- post submissions to the following address:

Strata Schemes Management Regulation 2016  
Policy & Strategy  
Fair Trading Policy  
PO Box 972  
PARRAMATTA NSW 2124

**The closing date for submissions is COB Friday, 27 May 2016.**

#### Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons.

Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be



circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

### **Identified stakeholders**

The RIS has been provided directly to some stakeholder organisations. A list of these stakeholders is provided at Appendix 4.

### **Evaluation of submissions**

All submissions will be considered and assessed and the proposed Regulation will be amended, if necessary, to address issues identified. If further information is required targeted consultation will be undertaken before the Regulation is finalised.

### **Commencement of the Regulation**

After the Minister for Innovation and Better Regulation has finalised the Regulation it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au) and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

Depending on the nature and scale of issues raised in submissions, we anticipate that the Act and Regulation will commence by the end of 2016.

# Objective and rationale of the Regulation

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## Rationale

It is necessary to make new regulations because:

- The current Strata Schemes Management Regulation 2010 made under the *Strata Schemes Management Act 1996* will cease to have effect when the new Act commences.
- The new Act will introduce significant changes through a new legislative framework for strata living. Supporting regulations must be made to prescribe the necessary administrative detail so that the new Act can operate efficiently.
- Without supporting regulations, the new Act cannot be effectively administered or enforced.

## Objectives

The proposed Regulation will support the Act. It is integral to the Act's effective operation and the achievement of its aims. The main purpose of the Act is to provide a set of laws to allow owners corporations to effectively manage strata schemes and resolve disputes if they arise. It recognises the high level of governance and decision-making required to successfully run and operate a scheme, and provides owners with the powers required to carry out democratic elections, create modern by-laws, set levies and undertake legal action where appropriate.

The Act is designed to find a balance between freedom and flexibility for schemes to make collective decisions while ensuring there are sufficient safeguards in place to guard against unfair practices.

The primary objective of the Regulation is to provide the legislative support and administrative detail necessary for the operation of Act, enabling it to function efficiently and allow for the effective management of strata schemes

The proposed Regulation will provide details for many features of the Act including:

- the functions of owners corporations which may only be delegated to a strata committee or strata agent
- procedures for the election of strata committees and tenant representatives
- voting procedures for owners corporations and strata committees including secret ballots; electronic and remote voting; and pre-meeting voting



- financial matters including requirements for accounting records, expenditure on legal services for which owners corporation approval is not required, matters to be included in overdue contribution payment plans and statements of key financial information
- model by-laws for use by strata schemes
- insurance requirements for an owners corporation
- persons who may be appointed as building inspectors for the purposes of reporting on building defects in new strata schemes
- building bonds for building work in new strata schemes, including the basis for determining the amount of a bond, documents to be lodged with a building bond, procedures for payment of a bond and reviewable decisions relating to building bonds.

## Options for achieving objectives

The objective of the proposed Regulation is to provide operational and administrative detail to support the Act. Options for achieving those objectives are:

### Option 1

Maintain the status quo – Do not make the proposed Regulation, and instead remake the Regulation to be identical to the existing Regulation.

### Option 2

No action – Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

### Option 3

Make the proposed Regulation – the provisions of the Regulation will provide updated legislative support and administrative detail for the Act.



# Impact assessment of options

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## Assessment of option 1

Maintain the status quo – Do not make the proposed Regulation and instead remake the Regulation to be identical to the existing Regulation.

### Option 1 - Costs

This option would remake the existing Regulation and therefore would be unlikely to impose new direct costs on the sector. There would be no additional costs for lot owners, owners corporations, strata managing agents or the Government. Systems and procedures would not need to be modified and the strata community would not need to adapt to many of the changes in the Act.

However, the Government has identified the need for modern strata policy that facilitates growth and development in the sector and ensures that strata schemes are sustainable, now and in the future. A growing number of people are living and working in strata (currently 25 per cent of the NSW population) and this number is expected to nearly double by 2040. Amendments in the Act have been developed to provide for long-term planning and management of strata schemes. The Act will support this growth and provide a framework for schemes to operate effectively and efficiently.

If the Regulation is not updated to accommodate amendments in the Act, the new legislation would be without the necessary administrative detail and support required to fully achieve its objectives. This means that there is a significant opportunity cost created by this option. Many of the amendments in the Act that would not be able to operate effectively without the proposed Regulation. This would mean that the sector would not be able to benefit from reforms such as allowing modern communication methods for meetings, improved processes for dealing with abandoned goods and the protections of the strata defects bond scheme.

### Option 1 - Benefits

The primary benefit of this option is that owners corporations and other strata stakeholders would not be required to update any systems or process, or adjust to the new legislative requirements in the Act. However, the current Regulation is outdated and does not provide the flexibility and efficiency that the proposed Regulation offers. As a result the associated benefits of this options are likely to be minimal for lot owners, owners corporations and associated stakeholders.

## **Option 1 - Conclusion**

Option 1 is unlikely to have any substantial positive impact. The full benefits and objectives of the new Act cannot be realised without an updated Regulation. Consequently, the overall benefit of this option has been assessed as low for strata stakeholders.

## Assessment of Option 2

No action – Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

### Option 2 - Costs

The current Regulation has been in place since 2010 and would be automatically repealed in September 2017 if it is not remade under the sun setting provisions contained in the *Subordinate Legislation Act 1989*.

Allowing the 2010 Regulation to lapse would be likely to create confusion and disruption for most stakeholders in the strata sector. Further, without a Regulation the Act would not have the necessary legislative support to achieve its aims and operate effectively.

Similar to option 1, there would be no support for the substantial amendments to the Act, creating a significant opportunity cost. To operate effectively the Act relies on details to be prescribed in the Regulation. If the current Regulation lapses and is not replaced by the proposed Regulation, the majority of the Act's reforms will be inoperable.

### Option 2 - Benefits

There are likely be minimal benefits resulting from this option.

### Option 2 - Conclusion

Allowing the current Regulation to lapse would likely result in costs for the sector and be unlikely to deliver any benefits. The overall benefit of this option is estimated to be low.

## Assessment of Option 3

Make the proposed Regulation.

### Option 3 - Costs

Commencing the new Act and the proposed Regulation is likely to result in adjustment costs for various stakeholders in the strata community. Residents of strata schemes and those that provide support services (e.g. strata managers, lawyers) will need to understand the provisions of the new Regulation and adjust their practises accordingly. There are also likely to be associated compliance costs for the strata industry.

However, NSW Fair Trading will support the operation of the proposed Regulation by administering an information and education campaign to help strata communities understand their new rights and obligation. This activity will assist stakeholders to adjust to the new provisions and should help to mitigate some of their adjustment costs. The campaign will include outputs such as web pages, fact sheets and face-to-face presentations.

### **Option 3 - Benefits**

The new Act includes a number of amendments that will improve the way schemes are administered, allow for better enforcement of by-laws and improve the management of building defects. The proposed Regulation will give effect to significant parts of this regulatory framework.

For example, the Act requires the preparation of a maintenance schedule by an original owner to ensure the owners corporation has all the necessary information it requires to effectively maintain the property.

The proposed Regulation outlines what is to be included or attached to the initial maintenance schedule. This will help owners corporations maintain the life of the building and assist it to estimate and establish an adequate capital works fund for future work.

Reforms are also designed to increase accountability for owners corporations regarding financial management and provide better information to lot owners. The Act requires owners corporations to prepare financial statements as well as a statement of key financial information for each reporting period for the administrative and capital works funds and any other fund kept by the scheme. These key financial information statements condense and simplify information contained in the financial statements for the scheme and ensure lot owners are able to access a summary of key information to assist them to easily understand the scheme's financial position. They will act as an alternative to distributing full financial statements to owners which can be detailed and difficult for owners to understand.

The proposed Regulation contains prescribed forms for the Act and provides for the actual content of these key financial information statements and will enable owners corporations to adhere to this new requirement in the Act and ensure owners receive the benefit of this reform.

The proposed Regulation provides suggested by-laws to help schemes better manage issues relating to smoke drift, pet ownership, parking and overcrowding.

NSW Fair Trading and local councils regularly receive feedback that strata lots only meant for a small number of people are being occupied by large numbers of people, a problem better known as 'overcrowding.' Section 137 of the Act aims to address this issue by providing for a by-law to be approved by an owners corporation limiting the number of unrelated adults who may occupy a bedroom in a lot. The proposed Regulation contains specific provisions to support the way this by-law operates and introduce safeguards to ensure families are not disadvantaged or discriminated against.

In response to community feedback, the Regulation provides model by-laws to make it easier to keep pets as opposed to automatically prohibiting pet ownership. Model by-law 5 contains alternative options for owners corporations to adopt and contains specific provisions to ensure these by-laws operate effectively.

The proposed Regulation also introduces a new model by-law that deals exclusively with the issue of smoke drift in schemes to enable schemes to choose an option that will suit their schemes.

Under the proposed Regulation, owners corporations will be provided with a mechanism to deal with the disposal of abandoned goods and the issue of motor vehicles left on common property, which has previously caused schemes frustration and expense.

The proposed Regulation also sets out a number of operational provisions for the strata building defects bond scheme that will allow it to operate effectively. Without this detail set out in the proposed Regulation the new defect bond scheme would be unable to operate and the significant benefits that the scheme will provide to strata consumers and stakeholders would not be recognised.

### Option 3 - Conclusion

The practical application of many parts of the Act rely on the proposed Regulation being made. The benefits to stakeholders and the strata community of option 3 have been assessed as high and are considered to substantially outweigh any costs to be borne by Government and the industry.

## Summary of costs and benefits for each option

Option	Likely costs	Likely benefits	Overall benefit
Option 1	Low	Low	Negative
Option 2	High	Low	Negative
Option 3	Medium	High	Positive

*Figure 1.0: Summary of costs and benefits for each option*

### Preferred option

Option 3 - making the proposed Regulation, is the preferred option as it will facilitate the operation of the new Act that will deliver strata stakeholders a modern and more efficient regulatory framework.

## Discussion of the proposed regulation

Submissions are welcome on any aspect of the proposed Regulation or any other relevant issue. Feedback on issues is encouraged regardless of whether the issue has been specifically raised in this RIS.

The following discussion points provide greater context for some provisions in the proposed Regulation and seek feedback on some important aspects.

A summary of the proposed Regulation is provided at Appendix 3.

## Owners corporations and strata committees

### Functions that may only be delegated to strata committee member or strata managing agent (clause 4)

Section 13 of the Act sets out a number of owners corporation functions that may only be delegated to a strata committee or a strata managing agent (if one has been appointed). These functions are considered key functions to the running of a scheme and therefore should be carried out by a person who holds a position of responsibility. They include the levying of contributions, handling the money of the owners corporation, taking out insurance for the scheme and maintaining records. Additional functions can also be prescribed in the Regulation.

Clause 4 of the proposed Regulation lists additional functions that may only be delegated to a strata committee or a strata managing agent. These include giving certificates under section 184 and arranging for the inspections of records and other documents under section 183 of the Act and are the same functions listed in the current Regulation.

**1. Are there any other functions of the owners corporation that should only be able to be delegated to a member of the strata committee or a strata managing agent?**

### Agenda for first annual general meeting (AGM) (clause 5)

The original owner (usually the developer) must hold the first AGM within two months of the end of the initial period. The initial period ends when two thirds of the lots in a scheme have been sold.

1. The first AGM is particularly important for new lot owners as a number of significant items are considered such as the number of members of the **strata** committee, whether a strata managing agent should be appointed and the handover of important documents from the original owner.

Section 15 of the Act sets out the agenda for the first AGM and provides for additional items to be prescribed in the Regulation. Clause 5 sets out these additional items which include the recognition of

the nomination of a tenant representative for the strata committee (if one has been nominated) and the appointment of a building inspector for the purposes of Part 11, which relates to building defects.

**2. Are there any additional items that should be included in the agenda of the first AGM of the owners corporation?**

**Documents and records to be provided to owners corporation before first AGM (Clause 6)**

Under section 16 of the new Act, the list of documents that must be handed over to the owners corporation by the original owner or developer at the first AGM has been updated and consolidated. The original owner is obliged to hand over documents such as plans, specifications, the certificate of title for the common property and any interim report of a building inspector under Part 11 of the Act.

Clause 6 lists additional documents and records that must be provided before the first AGM and includes any valuation of the building obtained for insurance purposes and any maintenance and service manuals that the original owner may hold.

These documents help the owners corporation make informed decisions about their scheme and how the building should be maintained. The original owner is required to provide these documents no later than 48 hours before the first AGM commences.

If the original owner does not supply the required documents to the owners corporation by the first AGM, a maximum penalty of \$11,000 may be imposed by the Tribunal.

**3. Are there any additional documents or records that the original owner or lessor should be obliged to provide to the owners corporation before the first AGM?**

**Tenant representatives (clauses 7 and 8)**

The new Act recognises the important position that tenants play in the life of their strata scheme. The proposed Regulation sets out the procedures for the nomination of a tenant representative. A representative can only be nominated if the scheme has tenants in at least half of the number of lots.

The tenant representative is entitled to attend and speak at meetings of the committee, however they could be excluded if certain financial matters are to be discussed. Tenant representatives cannot make up a quorum for a meeting and do not have any formal voting rights.



Clause 7 provides that the person who convenes the AGM must also convene a meeting of eligible tenants so they can nominate a person for the position of tenant representative. Notice must be given in writing to each eligible tenant (who has been notified to the owners corporation) at least 21 days before the meeting is scheduled, and at least 7 days before the AGM. The tenant representative is determined by majority vote of the tenants present at the meeting. The tenant representative's term commences at the end of the AGM.

Clause 8 sets out the circumstances, and the procedures that must be followed, when a tenant representative ceases to hold office. This includes when a tenant ceases to be a tenant of the scheme, if they resign from the position or at the end of the next AGM when another representative is appointed.

**4. Are the procedures for nominating a tenant representative to the strata committee set out in clauses 7 and 8 fair and reasonable? If not, what procedures would be preferable and why?**

#### **Election of strata committee (clauses 9 and 10)**

The strata committee of the owners corporation administers the day-to-day running of the scheme and is elected at each AGM. The strata committee then elects the officer bearers - the Chairperson, Secretary and Treasurer.

Clauses 9 and 10 of the proposed Regulation outline the procedures to be followed for electing members of the strata committee. Clause 9 sets out how nominations can be made and how nominees may be declared elected to the positions if the number of nominees equal the number of positions. Clause 10 outlines how the ballot should be conducted if there are more nominees than positions.

Clause 14 provides that owners corporations can vote to adopt various forms of electronic voting. This is a new provision encouraging owners corporations to use modern forms of technology to conduct meetings such as specialised voting websites, email and skype.

Schedule 1, clause 5 of the Act provides that candidates can be nominated for election prior to a meeting or at the meeting. As nominations can be accepted at the meeting, pre-meeting voting cannot be used for the election of the strata committee.

**5. Are the procedures for electing the strata committee set out in clauses 9 and 10 appropriate? If not, what procedures would be preferable and why?**

## **Priority votes (clause 12)**

A priority vote is a vote cast by a mortgagee or covenant chargee of a lot. A vote at a meeting by the owner of a lot will not count if a priority vote is cast on the same issue. Two days' written notice must be provided to the lot owner of an intention to cast a priority vote.

A priority vote may be cast in the circumstances set out in Schedule 1, clause 24 of the Act. A priority vote may relate to insurance, budgeting or fixing a levy, a motion that requires a special resolution or unanimous resolution or a motion that requires expenditure by the owners corporation of an amount that exceeds the amount prescribed by the regulations.

Clause 12 sets this amount as the amount calculated by multiplying \$1,000 by the number of lots in the scheme. This is the same multiplier as in the current Regulation and applies for all lots in all types of strata schemes and is not differentiated for large schemes.

### **6. Is the current multiplier of \$1,000 per lot an appropriate amount for priority votes?**

## **Voting (clauses 14, 15 and 16)**

Many decisions impacting a strata scheme must be decided by vote by the owners corporation or the strata committee. Clause 14 allows owners corporations and strata committees to vote to adopt modern electronic means of voting. This may include voting via telephone, video-conferencing, email or other electronic means. Owners corporations can also adopt postal voting for motions if they choose to do so.

Pre-meeting electronic voting provides flexibility to schemes and may enable more lot owners to participate in meetings, particularly those who do not reside in the scheme or who are unable to attend AGMs in person. However, as previously noted, pre-meeting electronic voting cannot be used for the election of members of the strata committee as nominations may be made during a meeting.

Clause 15 sets out procedures for pre-meeting electronic voting and clause 16 set out the procedures that must be used for postal voting to ensure probity and fairness.

### **7. Are the procedures for electronic, pre-meeting electronic and postal voting set out in clauses 14, 15 and 16 fair and reasonable? If not, what procedures would be preferable and why?**

## Financial management

### Payment plans for unpaid contributions (clause 19)

Owners corporations can sometimes experience difficulty recovering outstanding contributions from lot owners. Section 85(5) of the Act provides that owners corporations may decide either generally or in particular cases to enter into payment plans with lot owners in order to recover unpaid contributions.

Clause 19 sets out the requirements for what must be included in a payment plan. A payment plan must be in writing and must include information such as the name and address of the lot owner, the amount of any overdue contribution and any interest payable, the manner in which the payments are to be made, the contact details of a member of the strata committee who is responsible for dealing with any matters arising from the payment plan and a statement that the existence of the payment plan does not limit the right of the owners corporation to take action to recover the amount of the unpaid contribution.

#### 8. Is there any other information that should be included in a payment plan?

### Notice of recovery action for unpaid contributions (clause 20)

Under section 86 of the Act the owners corporation can seek to formally recover unpaid money. The owners corporation can apply to the Tribunal or directly to the NSW Local Court for a judgement debt against a person who has unpaid contributions or interest and can also claim any costs incurred in recovering the debt. Recovery actions in the NSW Local Court include garnishee of wages and garnishee of rental money owed to a landlord from a real estate agent's trust account.

To do this the owners corporation must first issue a notice a notice to the lot owner setting out the amount owed, including interest or expenses sought to be recovered, the proposed recovery action and other matters prescribed by the Regulation.

Clause 20 sets out additional information that must be included in a notice of recovery action. This includes the date the amount was due to be paid, the manner in which the payment may be made, whether a payment plan may be entered into and any other action that may be taken to arrange for payment of the amount.

#### 9. Is there any other information that should be included in a notice of recovery action?

## Accounting records (clause 23)

Section 96 sets out the accounting records that must be kept by an owners corporation. Section 96(3) requires that separate accounting records must be kept for the administrative fund, the capital works fund and any other fund kept by the owners corporation.

Clause 23 sets out the additional accounting records that an owners corporation must keep for the purposes of section 96 of the Act. These are:

- consecutively numbered receipts
- a statement of deposits and withdrawals for the owners corporation accounts
- a cash record
- a levy register.

**10. Are there any other accounting records that the owners corporation should keep?**

## Limits on spending by large schemes (clause 26)

The Act requires the owners corporation of large schemes to obtain at least two quotes for expenditure over the amount prescribed by the Regulation. The proposed limit is \$30,000. This limit is the same as in the current Regulation and has not changed since 2010.

This limit seeks to ensure owners corporations or strata committees acting on their behalf are not making purchases or seeking services of significant value without getting the best price possible for goods or services. The limit does not apply to expenditure on legal services or in emergency situations such as burst water pipes, or serious damage caused by fire or storm or any other natural disaster.

**11. Is \$30,000 still an appropriate limit for expenditure by large schemes not requiring at least two quotes? If not, what would be an appropriate amount and why?**

## Property management

### Common property memorandum (clause 27)

Owners corporations and lot owners are sometimes unsure about the division of responsibilities for maintaining parts of the strata property. Section 107 of the Act provides that scheme by-laws can adopt a common property memorandum prescribed by the regulations which defines who is responsible for repairing, replacing or maintaining items or areas of the scheme. Clause 27 prescribes the Common

Property Memorandum that may be adopted for the purposes of section 107 of the Act, which will be published in the NSW Government Gazette and on the NSW Fair Trading website. A copy of the proposed Common Property Memorandum is at Appendix 2.

The Common Property Memorandum has been developed in close consultation with industry and reflects the consensus on what constitutes common property in a strata scheme and is therefore the responsibility of the owners corporation and what is the responsibility of the individual lot owner.

The owners corporation can only modify the Common Property Memorandum to provide that it does not apply to specific items, such as items that are not common property of that particular strata scheme; or that are the subject of a common property rights by-law or a by-law made under section 108 of the Act. Section 108 allows an owners corporation to make by-laws authorising changes to the common property and makes provision for lot owners to have the ongoing responsibility for the care and maintenance of that common property.

**12. Does the proposed Common Property Memorandum appropriately set out maintenance responsibilities? If not, what responsibilities or items should be amended and why?**

**Minor renovations by owners (clause 28)**

Section 110 of the Act allows owners to do certain 'minor renovations' to their lot if approved by a general resolution of the owners corporation. This category includes work that is more significant than cosmetic work but would not likely have a major impact on common property such as changing recessed light fittings, renovating a kitchen and reconfiguring walls. Other minor renovations can be prescribed by the regulations.

When applying for approval the owner must provide certain information to the owners corporation including plans, times and dates for the work and who will be carrying out the work.

Owners corporations will not be allowed to unreasonably reject approval of renovations, but approvals may include conditions such as using licensed tradespersons and how rubbish is to be removed. The Tribunal will be able to determine what is reasonable. If they wish, owners corporations can delegate responsibility for this decision-making to their strata committee.

Minor renovations also include installing or replacing wood or other hard floors. Changes to flooring can often result in an increase in the transmission of noise to other lot owners who may live below the lot, sometimes causing great distress and often leading to disputes within schemes.

Clause 28 therefore adds removing carpet or other soft floor coverings to expose underlying wooden or other hard floors as a minor renovation for the purposes of section 110 of the Act, as this could have a similar impact to installing hard floors.

**13. Are there any other types of renovations that should specifically be included as minor renovations?**

**Initial maintenance schedule (clause 29)**

The Act requires original owners to provide an initial maintenance schedule to the owners corporation. This schedule is intended to help the owners corporation understand their obligations and costs associated with maintaining the common property. The maintenance schedule will also be used for setting annual budgets and levies during the initial period.

Clause 29 details the items of the common property that a maintenance schedule must address such as air conditioning systems, fencing, electrical and mechanical systems, pools and lifts.

The clause also details what is to be included or attached to the initial maintenance schedule such as warranties for systems and equipment, manuals or maintenance requirements provided by manufacturers and the name and contact details of the manufacturer and installer of any of those items.

**14. Is the list provided in clause 29(1) appropriate for a maintenance schedule? Should any other items be included?**

**Window safety devices (clause 30)**

To prevent children falling from windows, all strata buildings in NSW must be fitted with devices that allow windows to be locked at 12.5 centimetres from 13 March 2018.

Clause 30 sets out the requirements for the device and which windows the requirements apply to. Clause 30 is essentially the same as the current Regulation, which provides that the requirements apply to a window in a building if the internal floor is two metres or more above an external surface below the window. However, stakeholders have requested some clarification on this.

Some unconventional or older complexes have windows that open onto another external surface, such as awnings, roofs, stairwells or balconies. While these external surfaces may not strictly be two metres or more below the internal floor, they may still leave children exposed to falls if that external surface is two metres or more above the ground surface of the strata complex.

Clause 30(2)(d) of the proposed Regulation therefore amends the requirements to refer to the ground surface or any external surface. The requirements will now include circumstances where the internal floor is above an external surface that is not two metres or more below it, but is two metres or more above the ground surface.

**15. Does the proposed amendment in clause 30 clarify the window safety requirements for unconventional or older strata complexes?**

**Disposal of abandoned goods and payment of proceeds (clauses 32 and 33)**

Clause 32 deals with goods left on the common property, other than motor vehicles (which are dealt with under clause 34) and things permitted by the owners corporation. It allows owners corporations to dispose of goods provided they give sufficient notice. A disposal notice containing certain information must be placed on or near the goods indicating that the item will be disposed of if not removed within the period specified (this cannot be less than 48 hours). If the goods block an entrance or exit or otherwise cause a hazard, they can be moved before having a disposal notice placed on them.

Owners corporations can dispose of the goods by selling them or by any other lawful manner if the required procedures have been followed. If the goods are perishable or consist only of rubbish, they can be disposed of immediately.

The owners corporation is not liable for its handling or disposal of the goods if the requirements of the Regulation have been complied with and any purchaser of the goods receives good title to the items.

Clause 33 allows the person who owned the goods to apply to the Tribunal for an order that the owners corporation pay them any proceeds of sale (less reasonable costs). The owners corporation must keep a record of goods sold for up to 12 months.

**16. Does clause 32 provide a fair and reasonable process for dealing with abandoned goods on common property? If not, how could the process be improved?**

**Removal of motor vehicles (clause 34)**

Clause 34 offers a remedy for owners corporations if a motor vehicle is left on the common property and blocks and exit or entrance or otherwise obstructs the use of common property. It provides that an owners corporation can move a vehicle to another location, or to the nearest place to which it may be lawfully moved, if a removal notice has been placed on or near the vehicle and the vehicle has not been moved within the specified period (this cannot be less than 48 hours).



The notice will include:

- a description of the vehicle
- the date and time the notice was issued
- the date and time the vehicle will be moved from the common property if it is not moved or collected.

The owners corporation is not be liable for its handling of the motor vehicle if they have complied with the requirements of the Regulation.

**17. Does clause 34 provide a fair and reasonable process for dealing with abandoned vehicles on the common property?**

## By-laws

### Occupancy limit by-laws (clauses 36 and 37)

Section 137 of the Act provides that a by-law may limit the number of adults who can reside in a lot. The limit cannot be less than 2 adults per bedroom. The by-law must be consistent with any planning approval or other applicable law and the Act also provides that the Regulation may prescribe certain circumstances where such a by-law has no effect.

Clause 36 of the proposed Regulation provides that if all the adults who reside in the lot are related to each other, such a by-law will have no effect. This includes if the person is a parent, guardian, grandparent, son, daughter, grandchild, brother, sister, uncle, aunt or cousin of the other person. The clause also recognises de facto and carer relationships.

For a person who is Aboriginal or Torres Strait Islander, the exception also includes extended family or kin according to the indigenous kinship system of the person's culture.

This will help ensure that occupancy by-laws are not used to disadvantage families or people from cultural backgrounds in which extended families generally live together.

Clause 37 defines a person who is considered a 'resident' of a lot for the purposes of a by-law made under section 137 of the Act. The clause defines someone as a resident if the lot is their principal place of residence for three months or more.

**18. Are there any circumstances which should be exempt from an occupancy by-law?**

**19. Is the proposed definition of 'resident' appropriate? If not, what would be a more appropriate definition?**

## Insurance

### Calculation of insurance limit and minimum insured amount (clause 40)

Clause 40 sets out the manner of calculating the insurance limit under a damage policy. The amount is calculated by adding together the estimated cost of carrying out the work that a damage policy is required to provide for and the estimated cost of making the payments that a damage policy is required to provide for. This also sets the minimum amount a building must be insured for as required by section 161(1)(a) of the Act and is the same as the requirements under the current Regulation.

**20. Is the proposed setting of the minimum insured amount appropriate? If not, how should the minimum insured amount be determined?**

## Records and information about strata schemes

The Act and Regulation require owners corporations to keep certain financial and administrative records for the scheme. Owners corporations are able to charge a fee for inspection of these records, to recoup the costs of storing and providing the records. There is no requirement to keep or provide the records electronically, however electronic records could make inspection of strata records much more efficient and effective for owners and potential buyers. Electronic storage may also ultimately lower costs for owners corporations and therefore lower fees could be charged to those who wish to inspect the records. Alternatively, the fees able to be charged by an owners corporation for inspection of records in paper form could be lower in order to provide an incentive to schemes to convert to electronic records.

**21. Should strata scheme records be required to be kept and made available in electronic form?**

**22. Alternatively, should electronic storage be encouraged by setting lower fees that may be charged for inspection of paper records?**

### Electronic voting records (clause 41)

During consultation on the new strata laws, the Government identified the need to improve the governance and operation of owners corporations by encouraging greater participation by lot owners. The new laws deliver on this by allowing electronic voting methods, postal voting and secret ballots.

Section 180(1) of the Act requires certain records be retained for a period of seven years. This includes records such as meeting minutes, financial statements, proxies and copies of any strata managing agent agreement or building manager agreement entered into by the owners corporation. These documents are considered to be the owners corporations key business records.

Section 180(2) of the Act allows for a different time period to be prescribed for keeping certain records. Clause 41 of the proposed Regulation provides that records of voting papers, including electronic voting records, must only be kept for 13 months.

This will allow voting records to be held for sufficient time to be inspected under section 182 of the Act and used in any appeal situation if required. Records of decisions made via the voting will all be recorded in the minutes of meetings which will still be retained for seven years.

The 13 month retention period will not apply to voting papers in relation to the collective sale and renewal scheme in the *Strata Schemes Development Act 2015*. These documents will still be kept for seven years.

### 23. Is 13 months an appropriate period of time for keeping voting records?

## Building defects

The Act provides for a building defects bond and rectification scheme which aims to reduce the costs associated with building defects for all parties, minimise time delays and reduce the incidence of drawnout and expensive legal action. The scheme will encourage developers and builders to minimise defects and establishes processes for rectifying defects when they do occur.

### Building inspectors (clause 45)

An important part of the process is the appointment of suitably qualified building inspectors who will carry out a defect inspection of a new strata building. Section 193(2) of the Act provides that the Regulation will prescribe the class of persons qualified to be appointed as a building inspector.

Clause 45 provides that the class of persons will be members of a strata inspector panel established by the:

- (a) Housing Industry Association
- (b) Master Builders Association of NSW
- (c) Australian Institute of Building
- (d) Australian Institute of Building Surveyors
- (e) Australian Institute of Building Consultants
- (f) Engineers Australia
- (g) Australian Institute of Architects
- (h) Association of Accredited Certifiers.

Only members of the strata inspector panels established by these bodies will be qualified to be inspectors, not general members of the associations. It is considered that these professional bodies are

best placed to determine the skills and knowledge required by the role. It is acknowledged that the establishment of these panels may take time, however inspections will not be required until buildings begun after the commencement of the new Act are completed.

This panel process, together with requirements in the legislation for the independence of the inspector and the vetting of the appointment by the owners corporation, will help ensure that appointed inspectors are professional, qualified, and independent inspectors who will discharge their duties effectively and efficiently within the time constraints imposed by the legislation.

**24. Are there any other professional bodies that building inspectors could be drawn from? If so, what are they and why?**

#### **Disclosure of previous employment by developer (clause 46)**

Section 195(2) of the Act places a positive requirement on both the developer and the building inspector to disclose to the owners corporation if the inspector has previously been employed by the developer, or by a contractor of the developer, before the owners corporation considers the appointment. This allows the owners corporation to make a fully informed decision about the appointment of the inspector. A penalty of 200 penalty units (\$22,000) applies for a breach of this requirement.

Clause 46 prescribes a period of 2 years before appointment as a building inspector within which such employment must be disclosed.

**25. Is the disclosure period of 2 years between employment by the developer and consideration of appointment as a building inspector appropriate? If not, what should the period be, and why?**

#### **Building bonds (clause 50)**

Section 207(2) of the Act provides that the amount secured by a building bond is to be two per cent of the contract price for the building work. The building bond will be the money available to the owners corporation to rectify any remaining defects not rectified by the builder. The determination of the contract price is therefore very important. Section 189 of the Act provides that the definition of *contract price* is the price determined by the regulations.

Clause 50(1) provides that the contract price for building work is the price paid under the contract for that work, or if the work has not been completed, the reasonable estimate of the price payable under the contract for that work.

Under section 211 of the Act, the Tribunal may make an order determining the contract price of building work for the purposes of determining the amount of a building bond.

Clause 50(2) of the Regulation provides that for the purposes of section 208 of the Act, a building bond may be in the form of an insurance bond. This clause provides flexibility in the form of the bond that is to be lodged by a developer under the scheme, allowing for the reduction of red tape and lower costs.

**26. Should *contract price* be determined in some other way? If so, how and why?**

#### **Use of building bond to meet costs of inspections or report (clause 54)**

Section 210(2) of the Act prohibits the use of the building bond to meet the costs of defect inspections or reports. This is to preserve the building bond for use by the owners corporation to rectify any defects that remain at the end of the process.

Clause 54 provides one exception to this prohibition providing that where the developer is bankrupt or insolvent and costs or fees associated with inspections or reports have not been paid, they may be paid from the building bond. This ensures that the building inspector is able to complete the required inspections and produce the interim and final reports to assist the owners corporation.

**27. Are there any other circumstances in which the building bond should be able to be accessed to meet the costs of inspections or reports? If so, what are they?**

#### **Payment of building bond (clause 55)**

Clause 55 provides that the Secretary of DFSI cannot pay the whole or any part of the building bond unless 14 days written notice is first given to the owners corporation and the developer of the strata scheme. This provides both the owners corporation and the developer with an opportunity to apply for a review of the decision.

Clause 55(2) provides that if an application for a review is made, the amount is not to be paid until the application for review is determined.

**28. Is 14 days adequate notice of the proposed payment of the bond by the Secretary?**

## Alternative dispute resolution

### Attendance and representation, costs and termination (clauses 59, 60 and 61)

Under the new Act, mediation will continue to be the preferred way to resolve disputes if the parties cannot achieve agreement between themselves. Section 227 of the new Act provides that most applications to the Tribunal cannot be accepted without the parties first attempting to resolve their dispute through mediation. Exceptions to this include applications for orders to appoint a strata managing agent or an order to allocate unit entitlements.

Mediation is an informal negotiation process in which a neutral mediator assists those involved in a dispute to achieve their own settlement. Clause 60 of the Regulation provides that a mediation session must be attended by each party, or a representative of the party if all other parties consent to the representation. Other parties may attend a mediation session with the leave of the mediator.

Clause 61 provides that the parties to a mediation are to pay their own costs associated with the mediation.

Clause 62 provides that a mediator may terminate a mediation at any time. A party may terminate a mediation at any time by giving notice to the mediator and each other party.

**29. Are the requirements in clauses 60, 61 and 62 appropriate for the conduct of mediations? If not, what should they be and why?**

## Miscellaneous

### Limit for gifts to strata managers (clause 62)

More than 1,600 strata managing agents are licensed with NSW Fair Trading. As the sector grows, the Government needs to ensure adequate checks and balances are in place for agents who provide these services – activities that can have a huge impact on the quality of life of those living and working in strata communities.

Under section 57(2) of the Act, strata managing agents cannot, in connection with the provision of their services as an agent, request or accept gifts or benefits for themselves or another person. The Act provides that this restriction does not apply to gifts or benefits of a value under the limit prescribed by the Regulation. Clause 62 sets this at \$60.

This amount is similar to restrictions placed on employees in comparable areas of responsibility. It will allow the acceptance of gifts and benefits such as reasonable refreshments, pens, books and other small token gifts.

It is important to note that the requirements do not affect any gifts or other benefits an agent's employer may provide during the course of their employment. The restriction does not relate to conferences and other training provided to a strata managing agent by their employer, or payment in accordance with the terms of the appointment of the strata managing agent or which has been otherwise approved by the owners corporation.

NSW Fair Trading will provide guidelines for agents and owners corporations during implementation of these new requirements.

### **30. Is the prescribed limit of \$60 for gifts to strata managers an appropriate amount?**

#### **Amendment to clause 1(5) of Schedule 3 to the Act (clause 66)**

Clause 66 replaces clause 14(1) of Schedule 3 of the Act as a transitional provision for the terms of appointment of strata managing agents, including circumstances where an agent may be reappointed before section 50(1) of the new Act commences.

Section 50(1) of the Act provides that the term of appointment (including any additional term under an option to renew) of a strata managing agent expires (if the terms of the appointment does not end earlier or is not ended earlier for any other reason):

- if the strata managing agent is appointed by the owners corporation at the first AGM, at the end of the period of 12 months following that appointment
- in any other case, at the end of the period of three years following the appointment.

Clause 14 of Schedule 3 addresses transitional provisions that are to support the new Act in relation to strata managing agents who may have been appointed to manage a scheme prior to the new Act commencing.

Clause 14(1) provides that the term of appointment (including any reappointment) ends on the day that is three years after the day that the term commenced or that is six months after the commencement of the clause (whichever occurs later).

The transitional arrangements, while assisting strata managing agents, are also meant to assist owners corporations if they wish to make new management arrangements under the provisions of the new Act.

During consultation on the new laws, some stakeholders raised concerns that a number of current contracts have a rollover that is part of the term (a successive term). In these cases, the provisions of clause 14(1) would apply and the existing contract could be extended for an additional three years, increasing the term up until three years more than the time that may be left in the original contract. If a



contract ended one month after the Act commences, the same issue would arise. There would also be problems if the contract was already in 'rollover' at the time of the new legislation commencing.

The amendment of clause 14(1) addresses the roll over period to provide certainty in ending a contract once the new laws commence. Clause 66 now replaces the wording in clause 14(1) providing that the term of appointment of a strata managing agent appointed or reappointed before the commencement of section 50(1) of the Act, that is in force on at commencement, ends on the following day:

- if the agent was appointed or reappointed for a term (including any rollover or extension period) of three years or more, on the day that is three years after the term commenced or that is 6 months after the commencement of section 50(1) of the Act, whichever is the later, or
- if the agent was appointed or reappointed for a term (including any rollover or extension period) of less than 3 years, on the day that the term ends or that is 6 months after the commencement of section 50(1) of the Act, whichever is the later.

## Forms

### **Strata information certificate (Form 4 of Schedule 1)**

A strata information certificate, which is issued under section 184 of the Act, provides essential financial and management information about the strata scheme. The certificate provides crucial information such as whether any special levies have been imposed by the owners corporation, or whether a strata renewal committee has been formed to examine the possibility of selling the scheme.

An owner, mortgagee or covenant chargee of a lot in a strata scheme, or a person authorised by them, can request the certificate. A potential purchaser may request the certificate in order to examine the finances of the scheme, including details of the administrative fund and the capital works fund.

Form 4 of Schedule 1 sets out the requirements of the strata information certificate and replaces the current form under section 109 of the *Strata Schemes Management Act 1996*.

**31. Is there any additional information that should be included in the strata information certificate in Form 4?**

## Model by-laws

### **Model by-laws for residential strata schemes (Schedule 3)**

The proposed Regulation provides a set of model by-laws which strata schemes can choose to adopt. In some cases, the model by-laws may be put in place by the original owner of a new scheme before the

first AGM. However, owners corporations are free to amend the model by-laws at any point to suit their circumstances.

All owners and tenants in a scheme are legally obliged to comply with the by-laws of that scheme. The new Act increases the maximum civil penalty for a breach of a by-law from five to 10 penalty units (from \$550 to \$1100). If a further breach of the same by-law is detected within 12 months of the Tribunal imposing a penalty for an earlier breach, the maximum penalty is doubled. Owners corporations are also not obliged to serve a notice of compliance to the owner or occupier for a subsequent breach.

Below are some of the amendments included in the new model by-laws for residential strata schemes

### **Model by-law 5 – Keeping animals**

During consultation on the new laws, NSW Fair Trading received many submissions from the community and stakeholders that pet ownership was unreasonably restricted in many schemes. This is a particular problem for pet owners looking to buy or rent a unit, and those people looking to downsize from a house with a yard where a pet is kept, to a unit.

The new model by-law makes it easier to keep pets in a scheme. The current model by-laws include three options for regulating pet ownership in schemes. One of these options imposes a total ban on pet ownership which has been removed in the new model by-law.

Owners corporations will still be able to vote to adopt a different pet by-law to better suit their scheme (as they are able to now).

The new model by-law replaces the current three options with two options:

**Option A** – allows a lot owner or occupier to keep any animal once they notify the owners corporation in writing. The owner or occupier must keep the animal within the lot, supervise the animal when it is on the common property and clean up after the animal on all areas of the lot or the common property.

If the owners corporation or a lot owner considers that a particular animal is a nuisance or hazard or interferes unreasonably with enjoyment of the common property, they can apply to the Tribunal for an order under section 158 of the Act to have the animal removed or otherwise deal with the nuisance or hazard.

**Option B** – provides that an owner or occupier may keep an animal on the lot or the common property with the written approval of the owners corporation. The owners corporation must not unreasonably withhold its approval. If approval is withheld, the lot owner or occupier can apply to the Tribunal for an order permitting the keeping of the animal.

An owner or occupier who keeps a pet must adhere to the same requirements for supervising the animal as in option A above.

Option B also includes that the owners corporation may require evidence from an owner or occupier wishing to keep an animal that it is an assistance animal as referred to in section 9 of the Commonwealth *Disability Discrimination Act 1992*.

Section 139(5) of the Act provides that a by-law cannot prevent the keeping of an assistance animal. Assistance animals are trained and certified to provide specialised assistance to people, including those whose eyesight is impaired and people with severe epilepsy.

Option A is the default option if the owners corporation does not choose an option when registering the model by-laws.

**32. Does the keeping of animals model by-law provide useful options for regulating pet ownership in strata schemes? If not, what other options would be preferable and why?**

### **Model by-law 7 – Behaviour of owners, occupiers and invitees**

This by-law requires that residents and invitees must be adequately clothed and not use language or behave in a manner likely to cause offence to other residents when on common property. Residents must also take all reasonable steps to ensure that invitees do not behave in a manner likely to interfere with the peaceful enjoyment of other residents or people using the common property.

The by-law is intended to ensure residents behave appropriately when using the common property but also ensure that the people they invite into the scheme behave appropriately as well.

**33. Is this model by-law appropriate to address poor behaviour by guests and other short-term visitors?**

### **Model by-law 8 – Children playing on common property in building**

This by-law has been updated to accommodate the growing number of families living in strata schemes and the ability for children to play in designated areas. The new by-law also recognises the growth in large-scale schemes that provide recreational facilities for residents on the common property.

The by-law allows children to play under adult supervision in particular designated areas. It also prohibits children playing in dangerous areas such as laundries and car parking areas.

**34. Is this model by-law appropriate for dealing with children playing on common property?**

## **Model by-law 9 – Smoke penetration**

A new model by-law concerning smoke penetration has been included in the proposed Regulation. The by-law specifically addresses the problem created by smoking tobacco products or any other substance on a lot and allowing smoke to drift into the common property or another lot. The by-law also addresses the issue of smoking in the common property, or part of the common property in contravention of requirements set out by the owners corporation.

The model by-law provides three options:

**Option A** – a lot owner or occupier must ensure that if they, or an invitee, smoke tobacco or any other substance on the lot then the smoke does not penetrate into the common property or any other lot.

**Option B** – includes the same prohibition on smoke drift when smoking in a lot as in Option A but also includes that a lot owner or occupier, or an invitee, is only able to smoke on the common property in an area designated as a smoking area by the owners corporation, or with the owners corporation's written approval. The smoker must ensure the smoke does not drift into any other lot.

**Option C** – includes the same prohibition on smoke drift when smoking in a lot as in Option A but also prohibits a lot owner or occupier or an invitee from smoking on the common property.

It's important to note that while the model by-law does not prohibit the smoking of tobacco or any other substance inside a person's lot, it prohibits smoke drift that may impact others living in the scheme.

For example, lot owners and occupiers would need to ensure that if they or any invitee chooses to smoke on balconies or in rooms opening to balconies, or near doors opening to common property passageways, that the smoke does not drift into another lot or the common property.

Owners corporations will be able to enforce smoke drift restrictions on residents by using the standard by-law enforcement process.

**35. Does this model by-law provide effective options for dealing with the issue of smoke penetration that may affect other residents?**

## **Model by-law 14 – Hanging out of washing**

This by-law provides that residents may hang out washing on lines provided by the owners corporation for that purpose, for a reasonable period. Residents may also hang washing anywhere on their lot provided it is not visible from street level outside the scheme, unless they have written permission by the owners corporation. This by-law may oblige strata residents with public-facing lots or balconies to use clothes dryers rather than air drying their washing, which is a less environmentally sustainable alternative.

**36. Is this model by-law appropriate or should it be removed to encourage strata residents to avoid using clothes dryers and reduce their energy usage?**

### **Model by-law 15 – Disposal of waste**

This by-law simplifies and combines by-laws 9 and 16 from the current Regulation. An owner or occupier must not deposit or throw rubbish, dirt, dust or other material on common property. An owner or occupier also must not dispose of inappropriate items into a toilet or introduce them into the plumbing system (for example, nappies, baby wipes, kitty litter).

This amendment responds to concerns raised by some stakeholders about occupants disposing of such items through the plumbing system rather than the garbage, which can result in schemes having to pay to clear these obstructions.

**37. Is this model by-law appropriate for the disposal of waste?**

### **Model by-law 16 – Change in use of lot to be notified**

This by-law has been updated to require an occupier to notify the owners corporation in writing of any change of use. This includes any lease, however short, 21 days before the change occurs. Change of use that results in a lot being used for commercial or industrial purposes will also require notice being given under these arrangements.

The new notice requirements will help ensure that owners corporations are informed of leases, particularly those that may be short-term, such as AirBnB leases. Section 139(2) of the Act provides that a by-law cannot prevent the devolution of a lot or a transfer, lease, mortgage or other dealing. However, this model by-law will assist owners corporations to check compliance with development approvals and be aware of people entering and leaving the scheme to maintain the security of the premises as much as possible.

**38. Is the model by-law appropriate for dealing with change of use notification?**

## **Fees and penalties**

### **Fees (Schedule 4)**

Schedule 5 prescribes the fees payable under the Act to an owners corporation or to the Secretary of DFSI. The fees payable to an owners corporation assist in recovering the costs involved in identifying

and providing records of the scheme as required by the Act and Regulation. The fees payable to the Secretary help to fund the mediation services provided for in the Act.

The Secretary may waive the fee for mediation, or repay the fee, if the Secretary considers it appropriate to do so, as is the case under the current Regulation.

### **Penalty notice offences (Clause 64 and Schedule 5)**

Section 250 of the Act provides that the regulations can prescribe an offence as a penalty notice offence. Penalty notices are an effective tool for ensuring compliance with the legislation. Schedule 5 lists the offences for which a penalty notice may be issued and the penalty notice amounts for each offence.

Notices can be issued for offences such as strata managing agents not reporting commissions or other benefits at an AGM and owners corporations not providing access to the scheme for a fire safety inspection under section 123 of the Act.

If a person does not wish to have the offence determined by a court, they can pay the penalty within the time specified in the notice. By paying the penalty, it precludes further action from being taken for the offence and is not regarded as an admission of liability. However it does not affect any civil claim arising from the matter.

NSW Fair Trading has established guidelines on the use of penalty notices to ensure that the integrity of the penalty notice scheme is maintained and that it is used consistently for appropriate offences.

Circumstances where stronger disciplinary action may be more appropriate might include repeat or deliberate offences or behaviour that has caused serious detriment to consumers.

## **Appendix 1**

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### **Background information**

In NSW, strata schemes are regulated by two legislative frameworks – a management Act, and development legislation which is administered by NSW Land and Property Information.

On 27 October 2015, the NSW Parliament passed the new Act, together with the Strata Schemes Development Act 2015. The new laws contain around 90 changes to the existing laws and will replace the Strata Schemes Management Act 1996, the Strata Schemes (Freehold Development) Act 1973, and the Strata Schemes (Leasehold Development) Act 1986.

The development of the new Act followed over four years of exhaustive consultation with the community and industry, beginning in late 2011 with an online consultation forum hosted by Global Access Partners. In September 2012, the release of the Strata and Community Title Law Reform Discussion Paper

attracted more than 1,900 submissions. A series of roundtable meetings were then held with key stakeholders in 2013 which examined options for reform in more detail.

In November 2013, a Position Paper was released proposing a range of wide-ranging reforms. Further targeted consultation was then undertaken on two drafts of the Strata Schemes Management Bill in mid2015.

Over 3,000 submissions and comments were received from the community during these extensive rounds of consultation and emerging from this process was a blueprint for reform of strata title laws in NSW.

These reforms signal one of the biggest overhauls of the laws since 1961 when strata schemes were introduced. The changes will update the 50-year-old laws and improve day-to-day strata living for the 2 million people living and working in strata schemes across the state.

The new laws seek to create a modern framework for managing strata schemes providing flexibility, encouraging participation, improving governance and accountability and ensuring that schemes are supported to manage their community's needs into the future.

## Appendix 2

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### Common Property Memorandum

#### Owners corporations responsibilities for maintenance, repair or replacement

<b>1. Balcony and Courtyards</b>	(a) columns and railings door, (b) windows and wall (c) balcony ceilings (including painting)  (d) security doors, other than those installed by an owner after registration of the strata plan (e) tiles and associated waterproofing, affixed at the time of registration of the strata plan (f) common wall fencing, shown as a thick line on the strata plan  (g) awnings within common property outside the cubic space of a balcony or courtyard (h) walls of planter boxes shown by a thick line on the strata plan
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	(i) trees – that part of a tree which exists within common property.
<b>2. Ceiling/Roof</b>	<ul style="list-style-type: none"> <li>(a) false ceilings installed at the time of registration of the strata plan (other than painting, which shall be the lot owner's responsibility)</li> <li>(b) plastered ceilings and vermiculite ceilings (other than painting, which shall be the lot owner's responsibility)</li> <li>(c) ceiling cornices (other than painting, which shall be the lot owner's responsibility)</li> <li>(d) guttering</li> <li>(e) membranes</li> </ul>
<b>3. Electrical</b>	<ul style="list-style-type: none"> <li>(a) air conditioning systems serving more than one lot</li> <li>(b) automatic garage door opener, other than those installed by an owner after the registration of the strata plan and not including any related remote controller</li> <li>(c) fuses and fuse board in meter room</li> <li>(d) intercom handset and wiring serving more than one lot</li> <li>(e) electrical wiring serving more than one lot</li> <li>(f) light fittings serving more than one lot</li> <li>(g) power point sockets serving more than one lot</li> <li>(h) smoke detectors connected to the fire board in the building</li> <li>(i) telephone, television, internet and cable wiring within common property walls</li> <li>(j) television aerial or satellite dish serving more than one lot and regardless of whether it is contained within any lot or on common property</li> </ul>
<b>4. Entrance Door</b>	<ul style="list-style-type: none"> <li>(a) original door lock or its subsequent replacement</li> <li>(b) entrance door to lot including all door furniture and automatic closer</li> <li>(c) security doors, other than those installed by an owner after registration of the strata plan</li> </ul>
<b>5. Floor</b>	<ul style="list-style-type: none"> <li>(a) original floorboards or parquet flooring affixed to common property floors</li> <li>(b) mezzanines and stairs within lots, if shown as a separate level in the strata plan</li> <li>(c) original floor tiles and associated waterproofing affixed to common property floors</li> <li>(d) sound proofing floor base (eg magnesite), but not including any sound proofing installed by an owner after the registration of the strata plan</li> </ul>
<b>6. General</b>	<ul style="list-style-type: none"> <li>(a) common property walls</li> <li>(b) any window or door in a common property wall (including all window and door furniture)</li> <li>(c) skirting boards, architraves and cornices on common property walls</li> <li>(d) tiles and associated waterproofing affixed to the common property walls at the time of registration of the strata plan.</li> <li>(e) ducting covering stack</li> <li>(f) ducting for the purposes of carrying pipes servicing more than one lot</li> <li>(g) exhaust fans outside the lot</li> </ul>
	<ul style="list-style-type: none"> <li>(h) hot water service serving more than one lot</li> <li>(i) letter boxes within common property</li> </ul>



<b>7. Parking / Garage</b>	<ul style="list-style-type: none"> <li>(a) carports, other than those within the cubic space of a lot and referred to in the strata plan, or which have been installed by an owner after registration of the strata plan</li> <li>(b) electric garage door opener (motor and device) including automatic opening mechanism which serves more than one lot</li> <li>(c) garage doors, hinge mechanism and lock, if shown by a thick line on the strata plan or if outside the cubic space of the lot</li> <li>(d) mesh between parking spaces, if shown by a thick line on the strata plan</li> </ul>
<b>8. Plumbing</b>	<ul style="list-style-type: none"> <li>(a) floor drain or sewer in common property</li> <li>(b) pipes within common property wall, floor or ceiling</li> <li>(c) main stopcock to unit</li> <li>(d) storm water and on-site detention systems below ground.</li> </ul>
<b>9. Windows</b>	<ul style="list-style-type: none"> <li>(a) windows in common property walls, including window furniture, sash cord and window seal</li> <li>(b) insect-screens, other than those installed by an owner after the registration of the strata plan</li> <li>(c) original lock or subsequent replacement, other than those installed by an owner after registration of the strata plan.</li> </ul>

### Lot owner responsibilities for maintenance, repair or replacement

<b>1. Balcony and Courtyards</b>	<ul style="list-style-type: none"> <li>(a) Awnings, deck, pergola, privacy screen, louvres, retaining walls, planter walls, steps or other structures within the cubic space of a balcony or courtyard and not shown as common property on the strata plan</li> <li>(b) Trees: that part of a tree within the cubic space of a lot</li> </ul>
<b>2. Ceiling/Roof</b>	<ul style="list-style-type: none"> <li>(a) False ceilings inside the lot installed by an owner after the registration of the strata plan</li> </ul>
<b>3. Electrical</b>	<ul style="list-style-type: none"> <li>(a) air conditioning systems, whether inside or outside of a lot, which serve only that one lot</li> <li>(b) fuses and fuse board within the lot and serving only that lot</li> <li>(c) in-sink food waste disposal systems and water filtration systems</li> <li>(d) electrical wiring in non-common property walls within a lot and serving only that lot.</li> <li>(e) light fittings, light switches and power point sockets within the lot serving only that lot</li> <li>(f) smoke detectors in the lot which are not connected to the fire board in the building</li> <li>(g) telephone, television, internet and cable wiring within non-common property walls and serving only that lot</li> <li>(h) telephone, television, internet and cable service and connection sockets</li> </ul>
<b>4. Entrance Door</b>	<ul style="list-style-type: none"> <li>(a) door locks additional to the original lock (or subsequent replacement of the original lock)</li> <li>(b) keys, security cards and access passes</li> </ul>
<b>5. Floor</b>	<ul style="list-style-type: none"> <li>(a) Floor tiles affixed after registration of the strata plan;</li> <li>(b) Lacquer and staining on surface of floorboards or parquet flooring;</li> <li>(c) Internal carpeting and floor coverings, unfixed floating floors</li> <li>(d) mezzanines and stairs within lots, and not shown or referred to in the strata plan</li> <li>(e) original floor tiles and associated waterproofing affixed to common property floors</li> </ul>
<b>6. General</b>	<ul style="list-style-type: none"> <li>(a) internal (non-common property) walls</li> <li>(b) paintwork inside the lot (including ceiling and entrance door)</li> <li>(c) built in wardrobes, cupboards, shelving</li> <li>(d) dishwasher</li> <li>(e) stove</li> <li>(f) washing machine</li> </ul>

	<ul style="list-style-type: none"> <li>(g) hot water service exclusive to a single lot (whether inside or outside of the cubic space of that lot)</li> <li>(h) internal doors (including door furniture)</li> <li>(i) skirting boards and architraves on non-common property walls</li> <li>(j) tiles and associated waterproofing affixed to non-common property walls</li> <li>(k) letterbox within a lot</li> <li>(l) pavers</li> </ul>
<b>7. Parking / Garage</b>	<ul style="list-style-type: none"> <li>(a) garage door remote controller</li> <li>(b) garage doors, hinge mechanism and lock where the lot boundary is shown as a thin line on the strata plan and the door is inside the lot boundary.</li> <li>(c) light fittings inside the lot</li> <li>(d) mesh between parking spaces where shown as a thin line, dotted line or no line on the strata plan. This will be treated as a dividing fence to which the <i>Dividing Fences Act, 1991</i> applies.</li> </ul>
<b>8. Plumbing</b>	<ul style="list-style-type: none"> <li>(a) pipes within a lot, serving only that lot</li> <li>(b) pipes and “S” bend beneath sink, laundry tub or hand basin</li> <li>(c) sink, laundry tub and hand basin</li> <li>(d) toilet bowl and cistern</li> <li>(e) bath</li> <li>(f) shower screen</li> <li>(g) bathroom cabinet and mirror</li> </ul>
<b>9. Windows</b>	<ul style="list-style-type: none"> <li>(a) window cleaning – interior and exterior surfaces (other than those which cannot safely be accessed by the lot owner or occupier)</li> <li>(b) locks additional to the original (or subsequent replacement of the original)</li> <li>(c) window lock keys</li> </ul>

## Appendix 3

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### Summary of the Regulation

**Clauses 1** and **2** provide the name and date of commencement of the Regulation.

**Clause 3** provides references to definitions included in the Regulation.

**Clause 4** sets out the functions that may only be delegated to a strata committee member or strata managing agent by the owners corporation.

**Clause 5** sets out the additional matters that must be included in the agenda for the first AGM of the owners corporation.

**Clause 6** prescribes the additional documents and records that the original owner must provide to the owners corporation prior to the first AGM of the owners corporation.

**Clause 7** sets out the nomination procedures for the appointment of a tenant representative.

**Clause 8** sets out the circumstances when a tenant representative will cease to be a tenant representative, and the procedures for replacing that representative.

**Clause 9** sets out the procedures for the nomination and election of the members of the strata committee by the owners corporation.

**Clause 10** sets out the procedures if a ballot is required for the election of members of the strata committee by the owners corporation.

**Clause 11** sets out the procedures for nomination of officers of the strata committee.

**Clause 12** provides that a priority vote may be cast on a motion if the motion would require expenditure that exceeds the amount calculated by multiplying \$1,000 by the number of lots in the strata scheme.

**Clause 13** provides that for the purposes of clause 26(2) of Schedule 1 to the Act, an instrument appointing a proxy is to be in or to the effect of Form 1 in Schedule 1.

**Clause 14** sets out the other means of voting that an owners corporation or strata committee may adopt by resolution, including telephone, video-conferencing, email or other electronic means, and postal voting (except for elections).

**Clause 15** sets out the procedures that must be followed in relation to pre-meeting electronic voting by means of email or accessing a voting website.

**Clause 16** sets out the procedures that an owners corporation must follow for the determination of a vote (other than for an election) by postal voting.

**Clause 17** sets out when a vote is considered to be an informal vote, and the consequences of such a vote.

**Clause 18** sets out the responsibilities of the secretary of an owners corporation after the close of the ballot for a postal vote, or a pre-meeting electronic vote.

**Clause 19** sets out the requirements for payments plans for the payment of overdue contributions.

**Clause 20** sets out the information that a notice of recovery action for unpaid contributions.

**Clause 21** provides that for the purposes of section 94(1) of the Act, the statement of key financial information for an administrative fund or capital works fund must be in or to the effect of Form 2 in Schedule 1. It also provides that for the purposes of section 94(2) of the Act, the statement of key financial information for any other fund must be in or to the effect of Form 3 in Schedule 1.

**Clause 22** provides that for the purposes of section 95(4) of the Act, the amount of the annual budget is to be the amount of contributions levied for the year concerned (whether or not they have been paid).

**Clause 23** sets out the accounting records required to be kept for the purposes of section 96(4) of the Act.

**Clause 24** sets out the information that the levy register is required to have recorded in respect of each lot in a scheme that is not a utility lot.

**Clause 25** sets out the information that each receipt issued by the treasurer of the owners corporation must contain, as required by section 97(2) of the Act.

**Clause 26** provides that for the purposes of section 102(1) of the Act, the amount over which large schemes must obtain at least 2 quotations for expenditure (except for emergency purposes) is \$30,000.

**Clause 27** prescribes the common property memoranda that may be adopted by the by-laws for a strata scheme for the purposes of section 107(1) of the Act.

**Clause 28** prescribes additional work that is prescribed as a minor renovation for the purposes of section 110(3) of the Act, requiring a general resolution of the owners corporation for approval.

**Clause 29** sets out the things that an initial maintenance schedule for the maintenance of the common property must contain in accordance with section 115 of the Act.

**Clauses 30 and 31** set out the requirements for window safety devices under section 118 of the Act.

**Clause 32** sets out the procedures (including notice provisions) that an owners corporation is required to follow in order to dispose of goods (other than motor vehicles), that have been left on the common property. Owners corporations will be able to move goods that block an entrance or exit.

**Clause 33** provides that the Tribunal may, on application by the owner of goods sold by the owners corporation under clause 32, order that the owners corporation pay the proceeds of the sale to the owner, less the reasonable costs incurred by the owners corporation in selling the goods.

**Clause 34** sets out the procedures (including notice provisions) that an owners corporation is required to follow in order to move a motor vehicle left on the common property so that it blocks an entrance or exit or otherwise obstructs the use of the common property.

**Clause 35** provides that for the purposes of section 134(3) of the Act, the by-laws for a strata scheme that was in existence before the commencement of the *Strata Schemes Management Act 1996* are the by-laws set out in Schedule 2, and any amendments or repeals to those by-laws registered for a strata scheme as in force immediately before the repeal of section 42 of that Act.

**Clause 36** provides that for the purposes of section 137(3)(b) of the Act, a by-law that limits the number of adults who may reside in a lot has no effect if all of the adults who reside in the lot are related to each other. The clause provides a definition of when a person may be considered to be related to another person.

**Clause 37** sets out when a person may be considered to be a *resident* for the purposes of section 137(5) of the Act (occupancy limits).

**Clause 38** provides that for the purposes of section 138 of the Act, the by-laws set out in Schedule 3 are the model by-laws that may be adopted as the by-laws for a strata scheme.

**Clause 39** provides that a Lloyds underwriter authorised to carry on insurance business, or exempted from authorisation, under the *Insurance Act 1973* of the Commonwealth is an approved insurer for the purposes of paragraph (b) of the definition of *approved insurer* in section 4(1) of the Act.

**Clause 40** provides the method for calculating the minimum amount for which a building is to be insured under a damage policy, which is also the amount to which an insurer may limit their liability under a damage policy.

**Clause 41** provides that for the purposes of section 180(1)(j) of the Act, records of electronic voting for the purposes of resolutions must be retained by the owners corporation. It also requires that records relating to voting on resolutions and elections only be retained for a period of 13 months, unless the papers relate to decisions in connection with Part 10 of the *Strata Schemes Development Act 2015*, which relates to collective sale and renewal. The clause restricts who may access the records whilst they are retained by the owners corporation.

**Clause 42** provides that for the purposes of section 182(3)(k) of the Act, the owners corporation must make available for inspection the accounting records and other records relating to the strata scheme that are kept by the strata managing agent.

**Clause 43** provides that for the purposes of section 184(6) of the Act, the strata information certificate must be in or to the effect of Form 4 in Schedule 1.

**Clause 44** provides that words and expressions used in Part 8 of the Regulation (*Building defects*) have the same meaning as they have in Part 11 of the Act, which also deals with building defects.

**Clause 45** sets out, for the purposes of section 193(2) of the Act, the bodies whose membership of its strata inspector panel qualifies a person to be appointed as a building inspector.

**Clause 46** provides for the purposes of section 195(2) of the Act, the disclosure period for building inspectors in relation to their previous employment with, or contractor work for, a developer.

**Clause 47** prescribes the form of the Interim Report for the purposes of section 199(2) of the Act.

**Clause 48** prescribes the form of the Final Report for the purposes of section 201(2) of the Act and the matters that it must contain.

**Clause 49** sets out the requirements for the Notice to owners of receipt of Reports under section 202(3) of the Act.

**Clause 50** defines *contract price* for the purposes of section 189 of the Act, and that for the purposes of section 208 of the Act, a building bond must be in the form of an insurance bond.

**Clause 51** provides that the maturity date for a building bond must not be more than 3 years after it is given to the Secretary.

**Clause 52** sets out the additional information that a developer must give to the Secretary when giving a building bond.

**Clause 53** provides that for the purposes of section 209(2) of the Act, an application to pay a building bond to the owners corporation must be made not later than 14 days before the last day on which the building bond must be claimed or realised under that section.

**Clause 54** provides that for the purposes of section 210 of the Act, an amount secured by a building bond may be used to meet the costs of an inspection or a report under Division 2 of Part 11 of the Act, including any fee for the appointment of a building inspector by the Secretary, if the developer of the strata scheme is bankrupt or insolvent and the costs or any fee have not been paid.

**Clause 55** provides that the Secretary must provide at least 14 days written notice to the owners corporation and the developer before paying the whole or part of an amount secured by a building bond. It also provides that if an application to review a decision to pay the whole or part of the building bond is made, payment is not to be made until the application is determined or withdrawn.

**Clause 56** sets out the decisions made by the Secretary that are reviewable decisions and the requirements for making an application for a review of a decision.

**Clause 57** provides that Part 9 applies to a mediation conducted under section 218 of the Act.

**Clause 58** provides that subject to the Act, the Secretary may give written directions for regulating and prescribing the practice and procedure to be followed in connection with a mediation session, including the preparation and service of documents.

**Clause 59** sets out the attendance and representation requirements for persons participating in a mediation session.

**Clause 60** provides that the parties to a mediation are to pay their own costs associated with the mediation.

**Clause 61** provides that a mediator may terminate a mediation at any time, and that a party to a mediation may also terminate a mediation at any time by giving notice of the termination to the mediator and each other party.

**Clause 62** provides that for the purposes of section 57(3)(d) of the Act, the amount prescribed as the limit for gifts to strata managing agents is \$60.

**Clause 63** provides that the fees payable under the Act are set out in Schedule 9

**Clause 64** provides that for the purposes of section 250 of the Act, the penalty notice provisions, including the offences created, and the penalty amounts for each offence are as set out in Column 1 and Column 2 in Schedule 9 respectively.

**Clause 65** provides a saving provision relating to the seals of owners corporations.

**Clause 66** amends Clause 1(5) of Schedule 3 to the Act by omitting clause 14(1) and inserting a replacement clause to clarify the effect of the rollover provisions that may be included in a strata managing agent's agreement, in relation to section 50(1) of the Act.

**Schedule 1** sets out the forms referred to in the Regulation.

**Schedule 2** sets out the by-laws for pre-1996 strata schemes.

**Schedules 3** sets out the model by-laws that may be adopted by residential strata schemes.

**Schedule 4** sets out the fees payable to the Secretary of the DFSI and fees payable to an owners corporation.

**Schedule 5** sets out the offences under the Act for which penalty notices apply in column 1, and the penalty amounts that apply to each offence in column 2.

## Appendix 4

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### List of stakeholders

#### Key stakeholders

The following key stakeholders have been provided with a copy of the proposed Regulation and this RIS:

- Strata Community Australia (NSW)
- Owners Corporation Network

- Urban Development Institute of Australia (NSW)
- Real Estate Institute NSW
- Property Council of Australia (NSW)
- Law Society of NSW
- Australian Property Institute
- Urban Taskforce
- Housing Industry Association (NSW)
- Master Builders Association (NSW)
- EAC Multilist
- Council on the Ageing
- City Futures Research Centre, UNSW
- Combined Pensioners & Superannuants' Association
- Australian College of Community Association Lawyers
- Brookfield Multiplex
- Meriton
- The Australian Institute of Building
- The Australian Institute of Building Surveyors
- The Australian Institute of Building Consultants
- Engineers Australia
- The Australian Institute of Architects
- The Association of Accredited Certifiers
- Building Professionals Board
- Fire Protection Association Australia
- Cancer Council of Australia
- Royal Society for the Prevention of Cruelty to Animals (RSPCA)
- Insurance Council of Australia
- CHU Strata Insurance





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