



strata
community
association®
NSW

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PREPARED BY: SCA (NSW)

SUBMISSION

*Proposed Amendments to the
property, Stock and Business
Agents Regulation*

Introduction

Strata Community Association (NSW) is the peak industry body for Strata and Community Title Management in New South Wales. Membership includes strata managers, support staff, committee members and suppliers of products and services to the industry. SCA (NSW) has in excess of 3,000 members who help oversee, advise or manage a combined property portfolio with an estimated replacement value of over \$400 Billion. In the same way that our members act as professional advisers and advocates for owners' corporations, SCA (NSW) proudly fulfils the dual roles of a professional institute and consumer advocate.

Overview

SCA (NSW) is strongly supportive of the objectives of these regulations in working to raise the professional standards in the property services industry. Ultimately, consumers will benefit from clearer lines of accountability for achieving and maintaining standards. Our support, however, must be tempered by some practical considerations about the effect of these regulations as currently drafted in the context of the strata management industry as it operates today. The regulations would benefit from greater clarity in a number of specific areas.

Firstly, the regulations would appear to apply to a range of other occupations currently employed in strata management. For example, accountants are often responsible for the preparation of complex budgets and financial statements for strata buildings. This is a specialised role with its own well-established professional standards and qualification pathways. They perform these tasks under the supervision of Licensees in Charge who are accountable for compliance with relevant strata legislation and regulations. Similarly, other clerical and administrative staff perform a range of functions ranging from receptionists to mail and telephone duties.

As they currently read the regulations would seem to require all these staff to complete a certificate and follow the pathway to a licence. This would increase the cost and difficulty of staff recruitment – costs that would ultimately be passed on to consumers – and deliver little if any obvious benefit. This may be unintended and could easily be resolved with clear exemptions of certain roles.

Other unintended or undesirable consequences include interrupted periods of employment. The 4-year limit to complete a licence needs to make allowance for scenarios such as maternity, paternity or extended sick leave that could not have been anticipated when the employee starts down this pathway. This would be particularly unfair if they arose in the latter stages of the qualifying period.

It is also not clear why Licensees In Charge need to undertake more Continuous Professional Development than their Licensee colleagues or what is intended by the proposed restrictions on trust account transactions, which appear to create unnecessary confusion in their application to strata management.

Finally, there is also an opportunity to deal with a - perhaps similarly - unintended consequence in the existing legislation. Legal advice confirms that the Act require any holding company that owns a strata business to have at least one of its directors to hold a licence.

We suspect this is based on an outdated view of a strata management industry populated by sole traders and small owner-operated businesses or franchises. Many strata management businesses now operate as subsidiaries of larger corporations across multiple jurisdictions.

Licensing requirements

The definition of the functions being requiring a certificate or licence captures a range of staff that support strata managers. Accountants and clerical staff perform a variety of functions under the agency agreement and would be required to gain a certificate and work towards a licence within four years.

This work is already supervised by the strata manager and licensing will be a disincentive for many of those types of employees looking to work in our industry. Finance staff are already appropriately qualified. Even reception staff who organize inspections of books and records could be caught. Supplying fobs and access keys to lot owners and tenants are also functions carried out in under an agency agreement. Many work as casuals and there seems no need for qualifications for such routine administrative tasks or imposing those costs on their employers.

All these staff are supervised and directed by Licenced managers and it seems implausible that they were intended to be caught. This would be resolved by a declaration of exemptions in the regulations as to how the role of a strata managing agent, in the Act, should be understood for the purposes of licensing. Western Australia has introduced education requirements for strata managers in its *Strata Titles Act* and Regulation. A new draft Regulation¹ has the following provision:

94. Key role

- (1) A designated person has a key role in performing scheme functions if the designated person performs, or is expected to perform, one or more of the following tasks, with no supervision or minimal supervision by the principal of the business of the strata manager
 - (a) liaise with or report to a strata company or the council of a strata company;
 - (b) attend or conduct annual general meetings of a strata company or meetings of the council of a strata company;
 - (c) prepare or supervise the preparation of documents and correspondence associated with the management of a strata company;
 - (d) supervise the carrying out of administrative functions under a strata management contract including, without limitation, any of the following functions
 - (i) the collection of contributions on behalf of the strata company;

¹ <https://www.strata.wa.gov.au/assets/documents/Strata-Titles-General-Regulations-2019-Consultation-Draft.pdf>

- (ii) obtaining or renewing insurance on behalf of the strata company;
 - (iii) making or attending to claims against insurance on behalf of the strata company;
 - (iv) keeping the roll of the strata company up to date.
- (2) A designated person does not have a key role in performing scheme functions if the designated person's primary role is to provide assistance or support services to the principal of the business of the strata manager, or to another designated person who does have a key role in performing scheme functions, under the supervision of that principal or other designated person.
- (3) The following services are examples of assistance or support services
 - (a) data entry
 - (b) archiving and filing of documents;
 - (c) bookkeeping.

This would seem to be a useful template for resolving any such unintended consequences.

Absolute dates

The draft legislation requires completion of a licence qualification within 4 years of registration. While the objective of raising professional standards and qualification levels is supported, this is another example where the unintended consequences may cause significant difficulties.

As currently worded, there is no exception to the situation that where a licence is not achieved within 4 years and the individual "will not be able to renew their certificate of registration, meaning they will no longer be able to continue working in the property industry"

Exceptions should allow the clock to be stopped due to unanticipated personal circumstances. Where legislation has imposed such periods in other fields such as education, courts have ruled that in certain instances - such as an interruption due to pregnancy, birth leave and parental leave - such a prescription is discriminatory.

Continuous Professional Development (CPD) requirements

As the peak industry association SCA NSW is authorised to deliver Continual Professional Development under the Director Generals Guideline dated 16 August 2018. SCA NSW will be also seeking approval to deliver the Certificate of Registration qualification, in accordance with Division 2 Clause 15 of the Act, utilising its panel of qualified trainers.

Current requirements to obtain 12 points of CPD per year to maintain registration or a licence are proposed to be changed to:

- Separate CPD units (and content) for each category registration
- Hours of instruction instead of the current point system
- The equivalent of 6 hours of CPD for Licensees and 9 hours of CPD for Licensees In Charge (instead of the existing 4 hours to obtain 12 CPD points;

- Three hours of core compulsory units for both Licensees and Licensees In Charge.

Again, SCA (NSW) supports the objective of these changes but believe the consultation process would benefit from more explanation of the rationale for the specific measures proposed. For example, it is not clear why there are different CPD requirement for Licensees In Charge requiring more hours on “business skills topics”.

This seems to be based on the outdated assumption that Licensees In Charge are the owners or general managers of the business. More typically, in larger strata management companies, they will be the senior compliance officer with a well-qualified general manager heading the day-to-day administration.

Trust account administration

The draft regulations restricting an assistant manager from authorising a withdrawal from a trust account seem to conflict with Clauses 24 and 31 of the current Regulation regarding delegations. A director of a company (not necessarily Licenced) is currently authorised - as well as the Licensee In Charge or one of their two nominees. If the intention is to specifically exclude assistant managers, Clauses 24 and 31 should be amended.

Holding companies

Section 11 (1) of the current Act seems to require that the holding company of any strata management business has a director who holds an individual licence under the Act.

A holding company’s directors are appointed by key stakeholders such as shareholders, investors or financiers. Restrictions on the directorships of a holding company prevents the adoption of mature corporate structures and places anti-competitive restrictions on industry participants (for example, by indirectly restricting investors or financiers from obtaining usual commercial terms such as the ability to freely appoint directors).

The drafting of new regulations is an opportunity to exempt holding and parent companies of groups without affecting the requirements for any of their subsidiaries or employees to be suitably Licenced.