SUBMISSION ON

DRAFT STRATA SCHEMES MANAGEMENT REGULATION 2016 and DRAFT STRATA SCHEMES DEVELOPMENT REGULATION 2016

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24 May 2016

The Responsible Officer

Draft Strata Regulations
Policy & Legislation
NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124

By submission to strataconsultation@finance.nsw.gov.au

Dear Sir/Madam,

RE: SUBMISSION ON DRAFT STRATA SCHEMES MANAGEMENT REGULATION 2016 and DRAFT STRATA SCHEMES DEVELOPMENT REGULATION 2016

The below table identifies a number of Regulations contained in the public consultation draft *Strata Schemes Management Regulation 2016* (**SSMR**) and associated provisions (where relevant) in the *Strata Schemes Management Act 2015* (**SSMA**) – setting out our proposed amendments and accompanying rationale.

Relevant section/ clause	Subject matter of the clause	Changes required-recommendation	Why the changes are required
6	Documents and records to be provided to owners corporation before first AGM	Insert a requirement to supply "a copy of the building contract including any variations and sub-contracts".	This is to be able to identify the relevant parties who are required to be notified of defects within 6 months of awareness as required by section 18BA(3)(b) of the Home Building Act 1989 and to determine if the contract was entered into after 1 February 2012 to determine the duration of the warranty under section 18E of the Home Building Act 1989.
6 (a)	Valuation of the building by original owner	Amend paragraph (a) of Regulation 6 as follows: *(a) if a building is required to be insured under Division 1 of Part 9 of the Act, a valuation of the building obtained in accordance with subregulation 40(4),* NOTE: Refer to discussion regarding proposed subregulation 40(4) below.	It is very common for new developments to be insured by the original owner/developer for an amount that represents their costs in construction (which is a retrospective sunk cost) as opposed to an amount which represents the costs to remove debris, engage professionals, and reinstate the building if it is destroyed at a time in the future – that is, for an amount that would satisfy the requirements for a damage policy pursuant to SSMA section 161. Our experience is that, owing to the (previously compulsory) requirement to obtain a valuation, many owners corporations ultimately have to increase the sums insured under their damage policies by 30-40% above the amounts for which the developer had insured.

			Our proposed amendment seeks to redress this issue, and is consistent with approaches adopted in other jurisdictions. In Queensland, for example, this problem is addressed by section 191 of the *Body Corporate and Community Management Act 1997* (Qld). That provision requires original owners – on establishment of a community titles scheme – to obtain an independent valuation from a quantity surveyor or registered valuer stating the replacement value of the building, and to take out insurance covering that replacement value.
7	Meeting of tenants prior to AGM -to elect tenant representative	1. The tenant meeting notice period be reduced to 14 days; 2. The tenant meeting notice is to be placed on the notice board only and not sent by post or email. This would be consistent with how tenants are required to be advised of other meetings; and 3. Change the timing of the tenant meeting to be <u>any time prior to the AGM as prescribed in the tenant meeting notice</u>. The results of election of the tenant representative should be announced at the commencement of the AGM and recorded in the AGM minutes; and 4. If recommendation 2 above is not adopted, then in the alternative, a prescribed form for notification of tenancies should be created which should include an email address to assist with electronic delivery of notification of tenancy meetings if required.	1. A requirement to hold a tenant meeting in addition to the AGM adds another layer of red tape and a significant additional cost for all schemes which would be disproportionate to small strata schemes. There are significant costs associated with this regulation in that the owners corporation will need to pay their managing agent's costs associated with organising and attending this meeting as well as the costs associated with postage of the notice to tenants. By definition, more than 50 percent of the lots are tenanted which is a significant postal cost to the scheme. We estimate this will require a minimum 2.5 hours of strata manager's time plus printing and postage. These costs will also have a disproportionate effect on small schemes as the costs associated with the managing agent organising and attending this meeting are likely to be very similar, except for postage costs, no matter whether the schemes is small or large, We <u>estimate there would be an additional $450 cost for a 6 lot scheme per annum.</u> 2. The person convening the AGM is required to give 21 days notice of the meeting of tenants to elect a representative – the meeting to take place no later than 7 days before that upcoming AGM. The practical effect of the 21 days notice including the required time for postage (Interpretations Act) means the owners corporation must fix and know its AGM date approx. 28 days prior to the AGM date, well in advance of the 7 days notice (plus postage time) for AGMs required under both the new and old Act. 3. In order to cut red tape and cost to the owners corporation, the timing of the tenant meeting should be amended so as it can be held any time prior to the AGM, as prescribed in the notice of tenant meeting (rather than no later than 7 days prior to the AGM as prescribed in regulation 7). Practically speaking it would be most cost effective and efficient to hold the tenant meeting 1 hour prior to the AGM for small schemes and 2 hours prior to the AGM for large schemes. We suggest flexibility.
9	Nomination of a strata committee	Clause 9 (2) should be amended to read:	Only Owners, as opposed to "person" or their nominated representatives can nominate.

	member	"A written or oral nomination of the election is ineffective if it is by an Owner other than the nominee unless it is supported by the consent of the nominee given: …" The current restriction under clause 2 of Schedule 3 of the SSMA restricting stacking of the executive committee by co-owners needs to be reinstated.	There is no explanation for the departure from the safeguards against co-owners stacking the executive committee in a scheme comprising 2 or more lots and these safeguards need to be reinstated.
13	Proxy Votes	1. Replicate / add the "Notes on appointment of proxies" and "Notes on the rights of proxies to vote" in the Form 1 Proxy Appointment Form into Regulation 13. 2. Replicate / add the requirements of Clause 25 (2) (b) in Schedule 1 of the Act into Regulation 13 clarifying that the proxy is entitled to vote on behalf of all proxies up to the new legislative limits on proxies for small and large schemes. 3. Regulation 13 should carry a direction as to how proxy votes in excess of the limit placed on a proxy holder exceeded (i.e. greater than one proxy for schemes with 20 lots or less AND proxies greater than 5% of the lots for schemes more than 20 Lots. Possible solution: The proxy form be amended to allow the appointment of person A---------- OR if not person B ----------; and, 4. Regulation 13 to specify that new proxies (issued after the relevant date and time of the original meeting) cannot be used at an adjourned meeting.	• Notes on a proxy from are not enforceable however by including those same instructions / requirements in Regulation 13, they become enforcement requirements in vetting proxies. • The substantive interpretations in the Notes on how a proxy can be used, and their right to vote should be included as part of regulation 13; and, The Notes on appointment of proxies, do not clarify which proxies are to be accepted by the Chairperson. There is a limit to the number of proxies that can be held by a person. If the strata scheme has 20 or fewer lots, a person can hold one proxy. If the strata scheme has more than 20 lots, a person can hold not more than 5% of the total number of lots as proxies. • Proxies are quite often directed to the Chairperson. If there are more proxies directed to the Chairperson (or any other person) than are permitted under the Act, which proxies are they to represent? All proxies are not necessarily of the same value when a poll vote is involved so, how does the proxy recipient decide? This would seem a sensible consideration as part of a regulation on proxies; • The Notes on the rights of proxies to vote specify that "(c) if appointed as a proxy for more than one person, may vote separately as a proxy in each case". This means that if voting was by way of a show of hands, then a person holding four proxies in a large scheme should have four votes; and, • It would be valuable to clearly describe how proxies are to be regarded at adjourned meetings. Confusion currently exists in industry practice. The dominant view in the strata profession, which is the common law view, is that new proxy forms cannot be used at an adjourned meeting. A clause confirming such in the Regulations would be helpful.
14	Other means of voting approved by Owners	1. Delete telephone attendance until technology improves; OR 2. Allow the chairperson the discretion	• The notion of voting by telephone at the meeting is impracticable and unmanageable and if it were possible, would prolong the length of the meeting;

	Corporation or Committee resolutions	during the meeting to exclude telephone voting if it renders the meeting unmanageable; 3. The adoption of alternative forms of voting should be a compulsory item on an AGM agenda that requires a normal resolution and bind the owners corporation for the next 12 months i.e. until the next AGM; 4. The Strata Committee should be able to determine the voting methods for Strata Committee meetings only.	• Practical problem of the verification of an owner on the telephone being at "a remote location". This is open to abuse; and, • Subclause (3) relating to postal voting is for future meetings rather than for a meeting where it is resolved to have postal votes. It would seem more appropriate that the approved form(s) of alternative voting be a matter on the AGM agenda which resolves the approved voting method up to and including the next AGM.
15	Pre meeting electronic voting using ballot by email or website	• Postal votes for ballots have the same statutory notice period for the meeting itself and that a ballot paper MUST be attached to the meeting notice; and • Remove the costly and bureaucratic requirement to provide 2 voting envelopes for postal voting and, • Remove clause 15 (5) and require the secretary or strata agent to keep the secret ballot papers in a secure palace. • In clause 15 (2) (b) amend "questions" to motions. Motions can be decided, not questions.	• REG 15 subclause (3) requires the secretary to provide electronic ballot papers and postal ballot papers at least 14 days (+ postage for postal votes) before the meeting is to take place. This is at odds with the Act's notice period for general meetings which is 7 days. The effect of this provision is to require the secretary to have the notice of meeting (agenda motions) in place 21 days prior to that meeting commencing in order that the motions are properly identified on the ballot paper; • Remove Reg 15(5) Secret ballot papers can only be completed in person at the meeting, as the determination to have a secret ballot occurs at the meeting itself ;and • REG 15 (5) A secret ballot (like a poll vote) may be called for at the meeting itself and thus all pre-meeting ballot paper votes will not comply with the protocol in Regulation 15(5) of not identify the voter in the regulation. The identity of the voter on the ballot paper is essential to determine their eligibility to vote; therefore the person's details need to be on the voting ballot paper.
16	Postal Voting of owners corporations	• Postal votes for ballots have the same statutory notice period as the meeting itself and the regulation should specify that the ballot paper MUST be attached to the meeting notice; and • Delete Clause 16(3)(d), 16(6) AND 16(7) Remove the costly and bureaucratic requirement to provide 2 voting envelops for postal voting and, • Remove 16 (5). Secret Ballots are determined at meeting therefore you will not know of the secret ballot when	• REG 16(3) requires the secretary to provide electronic ballot papers and postal ballot papers at least 14 days (+ postage for postal votes) before the meeting is to take place. This is at odds with the Act's notice period for general meetings which is 7 days. The effect of this provision is to require the secretary to have the notice of meeting (agenda motions) in place 21 days prior to that meeting commencing in order that the motions are properly identified on the ballot paper; • Remove Reg 16(5) Secret ballot papers can only be completed in person at the meeting, as the determination to have a secret ballot occurs at the meeting itself ;and • REG 16 (6) on postal voting contains a new requirement for the owners corporation to provide 2 additional envelopes, a *Voting*

		voting by postal vote.	*Paper envelope* as well as a *Returning envelope*. This new requirement to use 2 envelopes for postal voting results in an unnecessary complication and additional cost as these marked envelopes will be at the additional cost to the owners corporation and is out of kilter with the delivery of voting granted via a proxy with full voting power which can be merely mailed or sent electronically without any envelopes or other means of security. • What happens if an owner chooses to receive the notice of meeting and papers electronically e.g. via email and then wants to post their votes but will not have the voting envelopes?
17	Informal votes	Change the term informal to "invalid".	The regulation 17 uses the term "informal" whereas the Act uses the term "invalid". This needs to be consistent. Informal appears to be confusing.
19 (g)	Contact details of Strata Committee member	Amend clause 19 (g) to allow for contact details of Strata Manager.	The Strata Manager is delegated the responsibility of debt collecting under their management agreement.
22	Calculation of annual budget	Delete this regulation. The purpose of this regulation is unclear.	Regulation 22 requires the contributions raised at any AGM to match the budget, yet there are a number of regular occurrences where contributions raised will not match the budget: • Capital works items may appear in the budget that are intended to be paid for in the coming year, for example, by using a surplus from the previous years i.e. use of Capital works funds (surplus) for schedule major works in the Sinking Capital works report. • The owners corporation may have a sizeable surplus in their Administration fund and wish to use part of that surplus to meet its administration expenses for the coming year. • Monies received from a settlement of building defect claims or income from rental of common property (e.g. Telecommunication equipment) would also be another example of funds used for upcoming expenditure that does not require further levy contributions. • It is unclear as to how this regulation would work where an owners corporation have chosen to keep their accounts using accrual accounting.
28	Minor renovations by owners	Delete reverse cycle split system air-conditioner and solar photovoltaic system or solar hot water.	Ordinary resolutions will not transfer obligations to repair and maintain beyond six years or to subsequent owners. These items will then be the responsibility of the owners corporation to repair and maintain and they are costly. As they are not within the Lot airspace, but located on common property.

29	Additional items	Add list of items to include: Gates Pumps Access control systems Intercom CCTV	These are necessary items.
30 and 31	Window safety devices	1. All window safety devices, no matter if fitted by a lot owner or the owners corporation, are to carry a certification that individually attests that they comply with the requirements regulation 30 (3); and, 2. More detail on 250 newtons strength testing, it should apply to the window itself as well as the safety device.	Certification surrounding window safety device installations is essential • No form of certification requirements are currently specified or required. A service provider is not required to certify to the owners corporation that the safety devices comply with subclause (3) of this regulation. This concern also applies where the regulation allows a lot owner to fit window safety devices and simply inform the owners corporation of such an installation as the ongoing maintenance and responsibility for the compliance of these devices rests with the owners corporation. • There is no provision in this regulation that requires the re-certification of the compliance of these devices. As with other essential compliance items such as smoke alarms and alike, window safety devices should be subject to a cycle of re-certification. As these devices are fixtures that are not expected to deteriorate in a short space of time, we would suggest re-certification be specified to occur every 3 years.
32	Disposal of abandoned goods : section 125 of the Act	1. Delete the words “and must keep the record for a period of not less than 12 months of the disposal”. 2. Amend clause 32 (3) (e) to include Strata Manager.	The notion of owners corporations keeping records for reduced periods of time, is problematic and a waste of time and effort and should deleted. Strata Manager is often delegated this responsibility.
35	By-laws for schemes before 1996	1. Regulation 35 should be removed. When read with Regulation 24 in the proposed Strata Schemes Development Regulations 2016 (requiring a consolidated set of Bylaws to be lodged with each by law change), and [Schedule 3 Clause 4(1) of the Strata Schemes Management Act 2015 (Act) requiring all strata schemes to review their by laws in the first 12 months after the Act‘s commencement, the replacement of many out of date by laws should occur in many schemes over the coming years which should be sufficient; and	It appears Reg 35 by repealing section 42 in the 1996 Act seeks to replaces existing original by laws with those in Schedule 2 of the regulations, with the addition of “any amendments or repeals to those existing by-laws registered for the strata scheme in force immediately before the repeal” of the section 42 in the 1996 Act. Please note that Schedule 3 Clause 1 (4) and Clause 4 (2) of the new Act have the effect of elevating the status of regulation 35 above that of the provisions of the Act. Thus the wording of regulation 35 needs to be carefully considered and revised such that the meaning is clear as to which by-laws prevail. We believe the intention was that the existing by-laws prevail over those set out in Schedule 2 no matter when the existing by-laws were registered.

		2. For similar reasons we recommend that Regulation 24 (2) in the proposed Strata Schemes Development Regulations 2016 be removed as registration of a consolidated set of by laws provides clarity to all owners as to which by laws apply and changes thereto.; and 3. If Regulation 35 is to be retained, then: • It should specify that existing by-laws prevail over those set out in Schedule 2 where there is a conflict regardless of when the existing by-laws were registered. • The reference to "pre-1996 schemes" should be changed to Strata schemes registered before 1st July 1997. • Regulation 35 should not apply to strata schemes that have registered their own suite of specific by laws either by dealing on the common property certificate of title (CT) OR attached to the registration of the Strata Plan document. • All existing bylaws granting exclusive and special privilege to one or more lot owners regardless when created should continue to exist /apply.	Regulation 35 must not remove any existing by laws conferring "exclusive use and special privileges" to one or more lot owners regardless when created. These by exclusive use and special privilege laws must continue as they can only be repealed with the written consent of the affected owner (s)-refer section 143 of Act.
36	Occupancy limits-exception	1. Remove Regulation 36 altogether, as the related / family member exception render the enforcement of an occupancy limit restriction / by laws unmanageable.	The broad definition of family affiliation exception, allows a unit to be occupied by a large number of persons which poses a significant health and safety concern to the owners corporation and other occupants and can significantly advance the wear and tear of common property which are the central reasons for trying to imposing occupancy limits. A by-law that seeks to limit the number of adults may be difficult to enforce when the owners corporation has the burden of proof to establish that those occupants are not related to each other in the manner described in the regulation.

37	Occupancy limits-residents	1. A re-wording of the regulation 37 is required to ensure that where Council zoning permits short-term letting, the occupancy limit in the Regulation still applies. The definition of resident being someone whose principal place of residence is for more than 3 months will have the affect of: a. Authorise short term letting in all schemes and have no occupancy limit ;and 2. Allow short tem letters to use visitors parking spaces on common property without limitation.	The definition of "resident "will encourage short term letting and increased parking on common property visitors parking. The definition of who is a person who is considered to be a resident appears to invite short-term letting that escapes the occupancy limit.
38	Model by-laws	1. The impact statement and Fair Trading material on the finalized regulations need to make it clear that these by-laws will apply: a. if adopted by a developer for a new schemes registered after the commencement of the Act; OR b. If adopted by an existing scheme. 2. Model by-laws should be developed for other types of strata schemes in a manner currently provided in Schedules 3-7: • Mixed use schemes • Commercial /retail schemes • Hotel / resort schemes • Retirement village schemes • Industrial schemes	1. Model by-laws in draft Regulations are <u>*only*</u> for <u>*residential*</u> strata schemes; 2. Contrary to what the media might suggest, it is incorrect that banning smoking and not being able to ban pets in strata is going to apply overnight to all strata schemes. The model by-laws will only apply to strata schemes registered after the legislation becomes enacted and <u>*only*</u> where the developer has not already put in place an alternative set of by-laws. 3. These model by-laws where adopted apply after the commencement of the Act; 4. In the current regulations there are six sets of model by-laws, namely for: residential strata schemes; retirement villages, industrial schemes; hotel/resort schemes; commercial/retail schemes; and, mixed use schemes. At this stage, there are no model by-laws for these five types of schemes. The regulation is broad enough in its drafting to allow for sets of model by-laws for other types of strata schemes to be included in schedule 3, as this is not noted in the impact statement.
40(2)(b)	Escalation of the amount calculated pursuant to subclause 40(2)(a)	Delete the existing subclause and replace with the following: *(b) the estimated amount by which expenditure referred to in the preceding paragraphs may increase during the period of 24 months following the date of commencement of the damage policy.*	In our experience the current 'escalation provision' in SSMR regulation 40(2)(b), requiring an estimation of the amount by which expenditure may increase following commencement of the relevant damage policy, will be inadequate for many owners corporations. Allowing for a period of only 18 months does not adequately cater for situations involving a major or total loss occurring towards the end of the period of insurance – typically a 12 month period – potentially leaving only 6 months for, e.g., removal of debris, new planning approvals, and then full re-construction. Such a

			period of time is totally inadequate. The planning period itself could realistically take 6 months or more. We strongly recommend that this clause be redrafted to reflect a minimum period of 12 months from the expiry of the policy period (or 24 months from commencement), or as otherwise recommended by a valuer.
41(2)	Electronic Voting Records	Delete 13 months and leave as 7 years.	Owners corporations have been managing fine with the requirements to keep all records for the same time, there is no need to complicate this with different time periods. Are you simply trying to invoke people to destroy records to suit their political desires?
41(3)	Electronic Voting Records	Delete.	If the voting was rigged or incorrectly calculated an applicant or respondent should be able to submit the records. The whole of idea of secret ballots etc. has not operated in NSW.
50	Building bonds	Insert : a) If there is: i. no contract, or ii. the parties are connected within the meaning of clause 7 of the SSMA 2015, or iii. an "associate" and "related body corporate" under the Corporations Law", the contract price is as determined by an independent quantity surveyor; and b) If there is more than one contract to complete the works, the total of the price of all contracts.	In respect of a) often there is no contact as the builder and developer are the same entity and/or often the parties are related entities. In these circumstances an independent quantity surveyor should be briefed to determine the appropriate contract price. In respect of b) on many occasions more than one builder may be engaged to finish the works e.g. where there are disputes or the builder goes into external administration or the contract is split. The bond should be based off the total of those amounts. Comments referencing section 211 are unhelpful. How is a novice owners corporation with little experience or funds going to be in a position to apply for orders to determine the contract price within the first 2 years.
51	Maturity date for Bonds	Amend Regulation 51 to state the maturity for a building bond be not less than 3 years after it is given to the Secretary.	• We assume that maturity date should be/read "not less than 3 years rather than "not more than 3 years".

59(1)	Attendance and representation	Delete the reference to “must”.	The Strata Schemes Management Act 2015 provides the regulation may provide for a means of arranging. This does not extend to a position where parties must have attendees. What happens, if there are restraining orders in place if someone says they will not go as many do now?
52(f)	Additional documents to be lodged with building bond	Replace with "a copy of the contract including all variations".	Often the contract is varied and the price adjusted accordingly, so more than one page is required to determine the price. The whole contract should be submitted.
52(g)	Additional documents to be lodged with the building bond	(g) where there is not contract or the builder and developer are an “associate” and “related body corporate” under the Corporations Law,", a copy of a the brief and the report from the independent quantity surveyor determining the construction cost.	As mentioned in my comments in clause 50 of the SSMR a quantity surveyor should be used to determine the price where there is no contract or where the builder and developer or associated or related bodies corporate under the Corporations Law or persons connected within the meaning of clause 7 of the SSMA 2015.
56(3)	Review of decisions	Include a mechanism, whereby the other affects parties are afforded an opportunity to submit review for the review process.	It is inappropriate that any review of the decisions, be limited to the materials from the person seeking the review. All relevant parties must be able to respond to the materials provided in support of the review.
62	Gifts	Amend Regulation 62 as follows: 1. $60 limit on gifts should apply per item / gift 2. A Strata Managing Agent should be required to maintain a corporation gift register that can be inspected by appointment by their clients (owners corporations) 3. Strata managing agents should be allowed to include a disclosure in their agreements with owners corporations stating that from time to time it / their employees may receive gifts from service providers of $60 or less per item on special occasions such as Christmas 4. Increase the limit from $60.00 to $200.00.	Regulation 62 places a dollar value of $60 maximum gift applicable to Section 57(2) of the Act which specifies a strata manager must not accept a gift or another benefit in relation to their functions as a strata managing. <u>Issues</u> • In most cases an appointed strata managing agent is a corporation, not an individual therefore $60 limit for a corporation that employs upwards of 20 employees is absurd • Individual gifts including Christmas gifts provided to individual employees of strata corporations or to the corporation itself should be increased from $60.00 to $200.00 per item.
Schedule 1: Proxy Form	Proxy Form	Add a further note to the proxy form in Schedule 1 specifying that new proxies (issued after the relevant date and time of the original meeting) cannot be used at an adjourned	A further note should be added to the proxy describing whether proxies issued after the relevant date and time of the original meeting can be regarded at adjourned meetings of each of small schemes and large schemes. Confusion currently exists in the industry practice. The

		meeting	dominant view in the strata profession, which is the common law view, is that new proxy forms cannot be used at an adjourned meeting.
Schedule 2	By-laws for pre-1996 schemes	These by-laws should be creating greater freedoms for want to be pet owners and less freedoms for smoking as press releases indicated.	Your failure to address these freedoms will disappoint many in the community who have come to expect that you would be addressing these issues. The growing trend amongst developers is not to adopt your model by-laws, so therefore, these modifications will have very little impact in the community.
Schedule 2 & Schedule 3	By-law 2 : Vehicles & By-law 1 : Vehicles	Include "motor vehicle under of the control of".	Evidence wise it is difficult to obtain eye witness evidence of an offender actually parking the vehicle and NCAT routinely dismiss penalty applications for this reason. If the by-law is amended to include a motor vehicle "under the control of the owner or occupier" then this will enable easier enforcement of parking by-laws.
Schedule 2 & Schedule 3	By-law 10 : Drying of laundry items & By-law 14 Hanging of washing	Permit the hanging of washing, even where visible from outside the lot, but so long as it is not aesthetically displeasing e.g. not over the balcony.	Australians needs to reduce their carbon footprint.
Schedule 2 & Schedule 3	By-law 15 : Garbage Disposal & By-law 15 Disposal of Waste	Delete reference to "wrapping rubbish in plastic" and replace with "wrap rubbish where necessary"	Australians needs to reduce their carbon footprint.
Schedule 3	By-law 9 : Smoking	Redraft to prohibit smoking	Each of your by-law option permits smoking of some sort. Redraft to prohibit in either the lots or the common areas or both. The by-laws as drafted are no more meaningful that the current section 117 of SSMA 1996 concerning nuisance.
Schedule 3	By-law 16 : Change in use or occupation of lot to be notified	Insert after the word "way" in the second line, "including any change"	The scheme will need to more know about change of use beyond insurance purposes e.g. changes which could trigger compliance with WHS and the need to obtain asbestos reports etc.
Schedule 5	Penalty notice offices	Quadruple the penalty offence	The amounts for the offences are not adequate deterrents.
New clause required in the SSMR : Relevant	Connected persons	Insert: A person is connected with the principal person	The current definition in the Act can be easily circumvented by mere title changes within one of the relevant companies e.g. development and

corresponding section is section 7(1)(f) of the SSMA 2015		if they are an “associate” and “related body corporate” under the Corporations Law".	strata management companies. The regulation did not take the opportunity presented by section 49(3)(f) of the SSMA 2015 to prescribe pecuniary interest and there are no additional connections or associations prescribed by the regulations. This is at odds with analogous sections of the SSMA 2015. For example, section 197 in relation to building inspectors defines "connected with” as including a pecuniary interest.
New clause required in the SSMR: Relevant corresponding section is section 161 of the SSMA 2015	Manner of calculation of insurance limit under damage policy (for purposes of SSMA section 161)	Insert new subclause (4) as follows: *40(4) In establishing the amount to be calculated in accordance with subclauses (1) and (2) the owners corporation must:* *(a)* obtain an independent valuation from a suitably qualified professional valuer *at least once every three years;* *(b) insure the building for at least the value of the building indicated by the last valuation obtained for the building, and;* (c) *review and, if appropriate, alter the amount for which the building is insured for each subsequent 12 month period to account for changes in repair, restoration, rebuilding and reinstatement costs by reference to a housing construction cost index.*	(i) Compliance with the requirement to insure for at least the minimum amounts pursuant to SSMA section 161 can practically only be achieved with: (a) the assistance of a professionally qualified valuer determining those minimum amounts, through a periodic valuation process; and (b) indexation of sums insured in line with a building costs and labour index (such as those provided by Cordell or Rawlinsons) for the years in between valuations. (ii) Having repealed existing laws requiring valuations for insurance purposes at least once every five years (former section 85 of the *Strata Schemes Management Act 1996* (NSW)), New South Wales has now made backward progress against the challenge of dealing with underinsurance and, with this change, is now out of step with more progressive approaches in other jurisdictions including Queensland (see, e.g., section 181 of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)) and Victoria (see section 65 of the *Owners Corporations Act 2006* (Vic)). In both of these jurisdictions, the legal requirement for periodic valuations was introduced to help owners ascertain with a degree of certainty that they are meeting their legal obligation to comply with minimum insurance requirements, which essentially mirror those provided for in SSMA section 161. (iii) In the absence of professional assistance, owners face a very onerous task in accurately calculating the minimum amount for which a building is to be insured for purposes of SSMA section 160 by reference to the general requirements for a damage policy pursuant to SSMA section 161. This is an extremely dangerous change to the legislation, which further exposes owners in terms of their uncapped financial exposure to the unlimited liability of the owners corporation. (iv) Over the last 20 years, statistics published by the Cordell Housing Price Index – an index on construction costs (labour and materials) – shows that construction costs have grown at a rate of 1.5 to 2.0 times the

			rate of CPI (inflation). Therefore, assuming an owners corporation has at any point in time managed to establish insurance sums insured sufficient to satisfy minimum statutory requirements per SSMA sections 160 and 161, these sums insured would still need to be indexed for each subsequent 12 month period (or other period of insurance) in-between valuations in order to ensure ongoing compliance with the requirements of SSMA sections 160 and 161. At present, this concept of indexation is adopted within the industry albeit inconsistently – with best practice of astute owners corporations seeing indexation applied each year in-between professional valuations that are obtained at least once every three years. <u>Additional commentary on the removal of requirements for periodic insurance valuations</u> <u>*Background to this change*</u> In September 2014 the New South Wales Independent Pricing & Regulatory Tribunal (IPART) undertook a review of licensing, with a view to assisting the Government achieve a target of $750,000 reduction in "red tape." IPART's ultimate recommendation involved removing the requirement for real estate valuers to be registered under the *Valuers Act 2003* (NSW). In late 2015 the NSW Parliament passed the *regulatory Reform and Other Legislative Repeals Act 2015* (the Reform Act), which repealed the *Valuers Act 2003* (NSW) – removing the requirement for registration of valuers in NSW as from 1 March. The Reform Act also made a number of consequential amendments, including to strata and community title schemes legislation. Specifically, amendments made to the *Strata Schemes Management Act* 1996 and the *Community Land Management Act 1989* included removing the requirement for five-yearly valuations of buildings situated on common property or association property. The rationale for removing this requirement, according to the Explanatory Note accompanying the *Regulatory Reform and Other Legislative Repeals Bill 2015* [NSW] (Explanatory Note), was that the "…requirement is redundant because the Act and its regulation provide that the minimum amount is to be determined by adding up estimates of costs that would be incurred in replacing the buildings."

			Implications The rationale provided as per the Explanatory Note grossly oversimplifies the complex and technical calculations required to arrive at sums insured adequately reflecting legislative requirements. This is not as simple as adding up "estimates of costs" in "replacing the buildings." Specifically, the calculations required include arriving at the sum of the following amounts: (a) the estimated cost (as at the date of the contract of insurance) of rebuilding the building, or replacing it with a similar building, so that every part of the rebuilt building or replacement building is in a condition no worse than that in which it was when new; (b) the estimated cost (as at the date of the contract of insurance) of removing debris in the event of the building being destroyed by an occurrence specified in the policy; (c) the estimated fee (as at the date of the contract of insurance) payable to architects and other professional persons employed in the course of the rebuilding or replacing referred to in (a); and (d) the estimated amount by which expenditure referred to in paragraphs (a), (b) and (c) may increase during the period of 18 months following the date of the contract of insurance. It is obvious that an owners corporation or community association will be unable to ascertain insurance sums insured to a sufficient degree to satisfy these legal requirements in the absence of a report from a professional valuer. This change, apparently introduced without any industry or stakeholder consultation, represents a retrograde step in terms of dealing with the widely acknowledged problem of underinsurance.
New clause required in the SSMR : Relevant corresponding section is section 164(2) of the SSMA 2015	Minimum liability insurance limit	Introduce a new Regulation in the SSMR for purposes of subsection 164(2) of the SSMA, specifying that the insurance taken out in accordance with subsection 164(1)(b) must be for a cover of not less than $30,000,000 for each event for which any claim or claims may be made or, in the alternative, that the prescribed minimum limit of $30,000,000 apply at least with respect to *large strata schemes*.	Subsection 164(2) of the SSMA provides that insurance in respect of damage to property, death or bodily injury for which an owners corporation could become liable in damages (liability insurance) must be taken out and be for a cover of not less than $10,000,000 for each event for which any claim or claims may be made or, if the regulations provide for another amount, that other amount. We counsel that the currently proposed $10,000,000 limit is significantly below the optimal minimum level of protection required by *any* owners corporation – an unlimited liability legal entity that has an inherent "crowding" risk. Our recommendation would be to increase the minimum limit from $10,000,000 to $30,000,000 in respect of *all* owners corporations or, failing this, to increase the minimum limit from $10,000,000 to $30,000,000 at least in respect to *large strata schemes*. We note that determination of a suitable definition for the term "large strata scheme" for these purposes (noting that a definition is already

			provided for in SSMA section 6) may require further industry and stakeholder consultation, however such a definition could be provided for in the body of the new Regulation itself, and the concept is not without precedent. Comparable legislation in Victoria, by way of example, has introduced the concept of "prescribed owners corporations" in order to differentiate between smaller and larger strata schemes for purposes of insurance-related requirements on the basis of number of lots and value of annual fees levied: see section 65 of the *Owners Corporations Act 2006* (Vic), and *Owners Corporations Regulations 2007* (Vic) – Reg 5.
New clause required in the SSMR : Relevant corresponding section is section 182(3)(k) of the SSMA 2015	Request for inspection of records of the owners corporation	Include, "documents from archive storage, if any" and "email correspondence".	These items are often the most commonly withheld documents, which should not be withheld and for the sake of clarity this should be expressly set out.
New clause required in the SSMR : Relevant corresponding section is section 207(7) of the SSMA 2015	Rectification of defects	Include a provision providing that the builder can be denied access, where "the builder is unlicensed" or "the builder fails to comply with a reasonable scope of works" or "where the owners corporation for reasonable grounds has lost faith in the builder's ability to undertake the works" or where the builder has not supplied evidence of appropriate insurance.	These changes must be made, otherwise all variety of problems will arise e.g. unlicensed works, in appropriate scopes covers up defects only to resurface after the 2 year warranty expires, builders causing damage or personal injury which is uninsured and where typical public liability policies paid for by owners corporation are suspended.
New clause required in the SSMR : Relevant corresponding section is section 213(2) of the SSMA 2015	Review of decisions	Include a provision that the builder can apply for a review.	I anticipate that there may be instances where the bond, may well be the builder's retention sum and should be able to seek a review. Further, I anticipate that given it is the builder performing the work and subject to an indemnity owed to the developer it should be able to seek a review.
New clause required in the SSMR : Relevant corresponding section is clause 1(4) of Schedule 3 of the SSMA 2015	Part 1 : General : Savings and Transitional provisions	Include a provision which provides that : Clause 55(2) of the SSMA 2015 does not need to be complied until 18 months after the legislation commences.	Strata management software does not currently function to provide this sort of reporting. This should allow sufficient time for software upgrades and thereafter implementation of the data and provision of the reports.

New clause required in the SSMR : Relevant corresponding section is section 156(2) of the SSMA 2015	Submission of strata renewal proposal	Insert a requirement to submit a report of an independent valuer : a) that includes details of the market value of the whole building and its site (at its highest and best use) ; and b) Which is expressed in favour of the owners corporation and able to be relied upon by the owners corporation.	The provision of a valuation upfront will enable owners to better evaluate whether to accept the proposal. The requirement that the valuation to be expressed in favour of the owners corporation will place responsibility on the valuer to ensure that it is accurate and not undervalued.
New clause required in the SSMR : Relevant corresponding section is section 103(3)(2)(b) of the SSMA 2015	Legal Services approved by general meeting	Insert $12,500 or a higher figure to match current legislation.	The regulation has inadvertently omitted to refer to the current rate of $12,500 as set out in the SSMR 2010, plus there is no allowance upwards for the last 6 years.
New clause required in the SSMR : Relevant corresponding section is section 103(3)(3)(c) of the SSMA 2015	Legal Services approved by general meeting	Insert : a) To lodge a defence; b) To apply for interim orders under section 231 of the Strata Schemes Management Act 2016 c) To lodge a payment schedule or respond to an adjudication application under The Building & Construction Security of Payments Act 1999; d) To lodge a claim in respect of preserving a statutory warranty under the Home Building Act 1989; and e) Obtaining legal advice of below either $10,000 or $12,500, dependent of the upper limit in the regulation.	a) to d) lists the typical proceedings that owners corporation become embroiled in where there is inadequate time to follow the procedures under the legislation to convene a meeting to enable steps to be taken to preserve the scheme's legal rights. Typically, executive committees are faced with having to make the decision and hope that it is ratified at a subsequent general meeting. The list provided is not exhaustive, however, the total action may will exceed $10,000 or $12,500, but still be necessary to protect the interests of the owners corporation. Furthermore, at e) the action of obtaining advice below $3,000 without general meeting approval should be included. The cost of a general meeting could easily exceed the cost of the advice. Furthermore, with requirements to convene meetings within 14 days and to include motions requisitioned will lead to disputes if owners cannot vote without advice and the motion is defeated for that reason.

Review of the Strata Schemes Development Regulation 2016

Relevant section or clause	Subject matter of the clause	Changes required	Why the changes are required
Clause 24(2) of the SSDR	Lodgement of consolidated by-laws	Delete sub-clause 2	The model by-laws should be included, there is often confusion about which model by-laws apply, plus the sake of simplicity, one document comprising all of the by-laws is the goal, not two.
Clause 27 of the SSDR	Returning officer	Delete and replace with someone within your office	The returning officer should be someone from your office. This is an important roll and needs to be conducted by someone who is truly independent.
Clause 30 of the SSDR	Strata renewal proposal	Correct typographical error : section 170(1)(b)(v) is the correct reference.	Typographical error
New clause required in the SSMR : Relevant corresponding section is section 156(2) of the SSDA 2015	Submission of strata renewal proposal	Insert a requirement to submit a report of an independent valuer that includes details of the market value of the whole building and its site (at its highest and best use)	The provision of a valuation upfront will enable owners to better evaluate whether to accept the proposal and take it further and save them the expense of obtaining one which many owners may not be able to afford. It is bizarre that this was not part of the Act as the current format only requires a valuation be presented in the Land & Environment Court proceedings after owners have had to decide whether or not to consent to the proposal.

We would be pleased to meet with you to discuss any issues raised in our submission, or generally.

If you have any questions or require further information please do not hesitate to contact Daniel Linders on 02 9492 8200 or dlinders@stratachoice.com.au

Yours sincerely,

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