



THE LAW SOCIETY  
OF NEW SOUTH WALES

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Review Officer - Strata Schemes  
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Dear Sir/Madam,

**Regulatory Impact Statement – Strata Schemes (Freehold Development)  
Regulation 2012 and the Strata Schemes (Leasehold Development)  
Regulation 2012**

I am writing to you at the request of the Law Society's Property Law Committee ("Committee"). The Committee is grateful for the opportunity to review the proposed *Strata Schemes (Freehold Development) Regulation 2012* and the *Strata Schemes (Leasehold Development) Regulation 2012*.

The Committee makes the following comments on the proposed *Strata Schemes (Freehold Development) Regulation 2012*:

**1. Clause 5(1)(c)**

The Committee agrees with the principle underpinning the changes and the proposed changes to give effect to that principle.

**2. Clause 5(1)(f)**

The Committee agrees with the principle underpinning the changes and the proposed changes to give effect to that principle.

**3. Clause 5(2)(a)**

The Committee agrees with the objective of confirming current practice noted in the Regulatory Impact Statement. However, the insertion of the words "(being the lot or lots on which the building is situated)" only partly addresses the issue and the Committee suggests that clause 5(2)(a) should read as follows:

"the perimeter of the site of the whole building of which the stratum parcel forms part (including the lot or lots on which the whole building is situated),".

#### **4. Clause 7(7)**

The Committee agrees with the principle underpinning the changes and the proposed changes to give effect to that principle.

#### **5. Clause 15**

The Committee notes clause 15 has not changed from the 2007 regulation. The Committee queries whether it is necessary in clause 15(b) to include the words "specify the circumstances in which the instrument is executed".

The dealing, plan or instrument which is executed by the developer on behalf of the body corporate will have been disclosed in the strata development contract and accordingly, reference to any other circumstances is not necessary.

#### **6. Clause 16**

This clause requires that any motion dealing with a development concern must include certain words after the wording of the proposed motion.

It is the practice of most strata managing agents, when preparing motions, to indicate before the wording of the motion whether the motion requires a general resolution, a special resolution or a unanimous resolution.

Additionally, in the Committee's view, it would be better to alert the readers of the proposed motion to the purpose of the motion before reading it rather than after reading it.

Accordingly, the Committee recommends that the word "after" in the fifth line is replaced with "before".

#### **7. Clause 29**

Clause 29 as presently drafted, provides that an accredited certifier who issues a strata certificate must give a copy of that certificate, the proposed plan and any other relevant documents to the council within 7 days after issuing the certificate.

The Committee questions the relevance of sending these documents to a council and wonders whether clause 29(2) has historical significance only, being applicable at the time strata certification was first introduced.

If the clause is to be retained, the Committee suggests that the requirement to send the documents to the council should only arise after the strata plan, the strata plan of subdivision or notice of conversion is registered. There may be circumstances for example, where the certificate issued, but the plan or notice of conversion was never registered.

Any queries in relation to this matter can be directed in the first instance to Gabrielle Lea, Policy Lawyer for the Property Law Committee on (02) 9926 0375 or by email to [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au).

Yours faithfully,



**Justin Dowd**  
President