



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Property:GUgl1156126

1 June 2016

Strata Schemes Development Regulation  
Legal Services  
Land and Property Information  
GPO Box 15  
Sydney NSW 2001

By email: [strataconsultation@finance.nsw.gov.au](mailto:strataconsultation@finance.nsw.gov.au)

Dear Sir/Madam,

### **Strata Schemes Development Regulation 2016**

The Law Society of NSW appreciates the opportunity to review the draft Strata Schemes Development Regulation 2016 ("Draft Regulation") and comment on the Regulatory Impact Statement for the Draft Regulation.

#### **1. Comments in response to the Regulatory Impact Statement**

The Law Society has made suggestions for further consideration in the attached table of responses to the questions raised in the Regulatory Impact Statement for the Draft Regulation.

The Law Society has several other concerns in relation to the Draft Regulation as set out below.

#### **2. Guidelines**

A number of issues referred to in the Draft Regulation will form the subject of guidelines. We look forward to being included in consultation on the development of the guidelines.

#### **3. Tenants and the renewal process**

The Law Society notes that in the strata renewal process, there is little reference to the position of tenants in a building which is the subject of a strata renewal. We suggest that the consequences of the renewal for the tenant's security of tenure need to be addressed. For example:

- If a landlord voted in favour of pursuing the strata renewal process, would that constitute a derogation from the grant of the lease, constituting a breach of the lease?
- To what extent can a tenant bind a landlord to vote in a particular manner when presented with a strata renewal proposal?

- How do the provisions of the *Retail Leases Act 1994* interplay with the renewal process?

#### **4. Consolidation of by-laws**

The Law Society supports the proposition that owners and occupiers should have access to a set of current by-laws in a user friendly format. However we have concerns in relation to the practical operation of the proposed requirement for the consolidation of by-laws.

The perceived benefit of a consolidated set of by-laws being registered and continually updated for a scheme, needs to be balanced against the expense, inconvenience and potential risks of the consolidation proposal. In addition to the practical difficulties for the proponent of a change to the by-laws, in our view, there are a number of unresolved practical issues. For example, what is the extent of the proponent's duty or liability in relation to lodging the consolidated set of by-laws when confronted with:

- a discrepancy between an earlier consolidation and a later consolidation;
- a by-law of doubtful validity; or
- an inconsistency or a typographical error?

If the proposal proceeds, we agree that there is little utility in including the currently applicable model by-laws (or for schemes which commenced prior to the *Strata Schemes Management Act 1996*, the legislated by-laws) within a consolidated set of the by-laws. The Law Society submits that these should instead be contained in permanently filed memoranda at Land and Property Information, which can then be referenced within any prepared consolidated by-laws dealing.

We also query the value in requiring a consolidated set of by-laws if the only change is to simply add a by-law. An alternate approach may be to only require consolidation for every fifth amendment or repeal of a by-law.

We note the Registrar-General's discretion to allow up to five changes without consolidation does give recognition to the inconvenience and work required by mandating consolidation. However in our view the discretion proposed in clause 24(3) may lead to uncertainty as to whether a consolidation is required in any specific case.

The Law Society is also concerned that the owners corporation may seek to pass on the cost of the consolidation of by-laws to a lot owner (or lot owners) seeking to have a by-law registered, such as a common property rights by-law under s 142 of the *Strata Schemes Management Act 2015*. Consideration could be given to stipulating that the cost of any consolidation required under clause 24 must be borne by the owners corporation, which must not seek to pass on such costs to a lot owner or lot owners seeking a change in the by-laws.

Should you have any queries about this letter, please contact Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or by email to [gabrielle.lea@lawsociety.com.au](mailto:gabrielle.lea@lawsociety.com.au)

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Michael Tidball', with a large, stylized flourish at the end.

Michael Tidball  
**Chief Executive Officer**

**Regulatory Impact Statement  
Strata Schemes Development Regulation 2016**

**Submission by the Law Society of NSW – June 2016**

No.	Questions	Comments
	<b>Option 1 – Best Practice procedures (self-regulation)</b>	
	<b>Option 2 – include matters in the Strata Schemes Development Act 2015</b>	
	<b>Option 3 – make the proposed Regulation</b>	The Law Society supports option three, the making of the proposed Regulation, subject to the issues raised in this submission.
1	Does the definition of “market value basis” provide a clear description of the basis to be used to apportion unit entitlements?	Yes.
2	Is the requirement for the valuation to be made “no more than 2 months before the plan is lodged for registration” appropriate?	Yes.
3	Are there any other matters that should be included in the development contract or could the form of the development contract be improved in any way?	No.
4	Are there any other matters that should be addressed where a developer signs a dealing, plan or instrument on behalf of an owners corporation under section 87 of the Act?	No.

No.	Questions	Comments
5	Are there any other special requirements that should be prescribed for notices or for meetings called by or on behalf of a developer to give effect to a development contract?	No.
6	Are the current insurance requirements for vertical staged development adequate?	The Law Society queries whether the amount of \$20 million would be more appropriate in clause 15(1)(b) as that amount better reflects industry practice.
7	Are the requirements adequate for the inspection that must be made by a local council or accredited certifier before a strata certificate is issued for a proposed strata plan or strata plan of subdivision?	<ul style="list-style-type: none"> <li>• The Law Society has concerns about the addition of the words "substantially complete" in clause 17(2) as this may be open to abuse.</li> <li>• The Law Society notes that it is common practice for items such as grease traps, cool rooms, exhaust systems, air conditioning units and condenser units to be added as late as possible in new developments. To provide certainty as to whether or not such additions are common property, we consider it would be very useful to require the inspector to identify the presence of such items or features prior to the issue of the strata certificate. To that end we suggest the addition of a new subclause 17(1)(d) to specify that the inspector is satisfied that such items or facilities have been installed.</li> </ul>
8	Are the notice and record keeping requirements sufficient?	Yes.
9	Where there is no relevant planning approval, are the fire safety provisions that must be met before a strata certificate can be issued for a building adequate?	Yes.

No.	Questions	Comments
10	Is it appropriate that the registered consolidated version of the by-laws exclude applicable model by-laws? Is the Registrar General's discretion to allow up to 5 changes of by-laws without consolidation appropriate?	<ul style="list-style-type: none"> <li>• The Law Society agrees that the model by-laws should be excluded from the registered consolidated version of the by-laws, but strongly submits that the model by-laws should be contained in permanently filed memoranda at Land and Property Information. Please see the cover letter for further comments.</li> <li>• The Law Society does not support the proposed discretion in clause 24(3). Please see the cover letter for further comments.</li> </ul>
11	Is 7 years an appropriate amount of time for the retention of records?	Yes.
12	Are there any other specific factors that should be required to be considered when determining market value for the purpose of Part 10?	The Law Society supports the proposed definition of market value.
13	Is it appropriate that the returning officer is appointed by a majority of votes at the meeting of the owners corporation?	Yes.
14	Are there any other specific qualifications or exclusions that should be prescribed?	No.
15	Are there any other matters that should be addressed in a strata renewal proposal?	<ul style="list-style-type: none"> <li>• The Law Society suggests that the strata renewal proposal contain a warning to the effect that the rights of mortgagees, lessees and covenant chargees may be affected by the strata renewal proposal.</li> <li>• We suggest that clause 28(f)(iii) be amended to include a reference to any period that any part of the premises needs to be vacated for the redevelopment.</li> <li>• The proponent of the proposal should be obliged to provide detailed information in relation to payment of all costs in pursuing the proposal and whether any such costs are to be borne by the owners corporation.</li> </ul>

No.	Questions	Comments
		<ul style="list-style-type: none"> <li>• Information should also be provided in relation to the proposed funding of the proposal, including any finance obtained and the security to be given.</li> <li>• We suggest that the reference to "terms of settlement" in clause 28(f)(i) be further specified for clarity.</li> <li>• A detailed timeline for the renewal proposal should also indicate whether development approval will be sought prior to seeking approval of the strata renewal plan from the Land and Environment Court.</li> </ul>
16	Is there any other information that should be included in the prescribed form of notice that must be sent when a strata renewal committee is established?	The Law Society suggests inclusion of details of a point of contact for further information.
17	Are there any other details about costs and expenses that should be prescribed?	No but we foresee practical issues in determining the exact amount or an estimate where lot owners choose to engage different legal practitioners, and possibly real estate agents, when selling their lots pursuant to s 184(2).
18	Is there any other information that should accompany the strata renewal plan when it is given to owners?	<ul style="list-style-type: none"> <li>• No.</li> <li>• In relation to the proposed information sheet, we look forward to further consultation in relation to its proposed content.</li> <li>• In relation to the support notice, we suggest it would be more appropriate if this was a prescribed document rather than an approved form.</li> </ul>