



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: PLC:JWgl121121

12 November 2021

Mr Lachlan Malloch
Manager, Real Estate and Housing Policy
NSW Department of Customer Service
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150

Via digital portal: <https://www.haveyoursay.nsw.gov.au/strata-report>

Dear Lachlan,

New annual reporting for strata schemes

The Law Society of NSW welcomes the opportunity to provide comments on the Explanatory Paper and draft Strata Schemes Management Amendment (Information) Regulation. The Law Society's Property Law Committee has contributed to this submission.

Our responses to questions in the Explanatory Paper are provided in the attached comments table. We also set out some additional comments below.

General comments

We support the phased approach to the implementation of the strata hub and the considerations given to who should be able to access certain information. Broadly speaking, we think an appropriate balance has been struck regarding those items that should be publicly accessible and those items that should only be accessed by a restricted class of persons, such as lot owners, although we suggest that some restricted items could be made publicly available, as set out in our response to question 11.

Additional items for inclusion in the strata hub

Having regard to the nature of the various heads of information currently set out in cl 43A(1), we suggest that consideration be given to adding two further items:

- Whether or not a scheme is part of a Building Management Committee and if so, the composition of the Committee (for example, other strata plans in the Committee). In a sense this is similar to providing information as to whether a scheme is part of a community or precinct scheme as provided in cl 43A(1)(c) and (d).
- The last valuation of the building for insurance purposes, to assist with the utility of the information collected under cl 43A(1)(l) regarding the replacement value of each building, or part of a building, of the strata scheme.

If not appropriate to include in phase two, perhaps these additional items could be considered and potentially added in phase three of the implementation.

THE LAW SOCIETY OF NEW SOUTH WALES

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Draft Strata Schemes Management Amendment (Information) Regulation

The Law Society proposes that for the purpose of clarity, cl 43A(1) items could be re-ordered to reflect the level of permissible disclosure by the Secretary under cl 43C, that is, listing the publicly disclosable items first, then items disclosable to certain persons, followed by the items which are not disclosable.

In relation to cl 43A(1)(i), we note that the terminology of “interim” or “final” occupation certificate is no longer used in the *Environmental Planning and Assessment Act 1979*. That Act now contemplates only one category of an occupation certificate but envisages that a certificate may issue for a whole building or part of a building under s 6.9. We suggest that it may be useful to reframe cl 43A(1)(i) more broadly and include a definition of occupation certificate that encompasses any occupation certificate, whether issued under the old or new provisions of the *Environmental Planning and Assessment Act 1979*.

We thank you for the opportunity to comment and look forward to ongoing consultation throughout the implementation timeline. Any questions in relation to this letter should be directed to Gabrielle Lea, Policy Lawyer on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'JW', followed by a horizontal line extending to the right.

Juliana Warner
President

Encl.

**Strata Scheme Information Regulation: Explanatory Paper
Comments from the Law Society of NSW – November 2021**

NO.	QUESTIONS	COMMENTS
3. Overview of the Information Regulation		
3.1 When the information must be provided (43(1))		
1.	<p>Will your owners corporation, or the owners corporations you manage, be able to provide all the information needed for the first report by 1 August 2022? If not, please give details, including what information will be difficult to provide within the timeframe or what other timeframe is preferred. <i>See section 3.3 for the list of required information.</i></p>	<p>The Law Society generally supports the proposed timeframe, and we expect that compliance will be achievable for most schemes, especially more recently registered schemes.</p> <p>In our view, older schemes may have difficulties providing the date of issue for their interim or final occupation certificate (cl 43A(1)(i)). Some older schemes will have been established prior to the operation of the occupation certificate regime. On that basis we suggest consideration be given to limiting the obligation to provide details of relevant occupation certificates to those schemes whose occupation certificate issued in the last 10 years, having regard to the 10 year limitation period in s 6.20 of the <i>Environmental Planning and Assessment Act 1979</i>. Pursuant to s 6.20, a civil action for loss or damage arising out of or in connection with defective building work or defective subdivision work cannot be brought more than 10 years after the date of completion of the work. We suggest that provision of this information beyond the 10 year period is of limited utility and unwarranted given the difficulties that may be encountered in obtaining this information.</p> <p>In relation to the obligation to provide the date of the most recent annual general meeting of the owners (AGM) (cl 43A(1)(p)), the Law Society notes that some schemes may not have been obliged to hold an AGM if the initial period has not expired.</p>
2.	<p>After their first report, strata schemes will have to submit an annual report once a year within three months after the AGM. Is this sufficient time for owners corporations to lodge their annual report? If not, please provide details on why an alternate timeframe is preferred?</p>	<p>The Law Society is of the view that the three-month timeframe is appropriate.</p> <p>We note that under s 18 of the <i>Strata Schemes Management Act 2015</i> an owners corporation must hold an annual general meeting once in each financial year of the corporation. Given this flexibility for the holding of an AGM, it is possible that in some instances the “annual” report may not be required to be lodged for up to almost two years after the previous annual report was lodged.</p>

NO.	QUESTIONS	COMMENTS
3.2 The fee paid to submit the annual report (43(2))		
3.	What financial impact – moderate or substantial – will the proposed '\$3 per lot' contribution have on you or your owners corporation? If you expect that the impact will be substantial, please say why.	The Law Society considers that the \$3 per lot fee is appropriate. On the basis of fairness, where a scheme includes separate utility lots, we suggest that utility lots should be excluded from the calculation of the fee.
4.	The Information Regulation proposes a per lot fee, but another option is a 'flat' fee. Do you support the use of a per lot fee or a flat fee? Please provide details to explain your preference.	The Law Society is of the view that a per lot fee is fairer and therefore preferable to a flat fee.
3.3 The information that is required in the annual report (43A)		
6.	Does your owners corporation, or the owners corporations you manage, have or know how to acquire all of the information needed for the annual report? If not, what information is missing? What information is difficult to acquire?	<p>See our answer above at 1 in relation to the obligation to provide the date of issue for interim and final occupation certificates for older schemes (cl 43A(1)(i)).</p> <p>In relation cl 43A(1)(f), we suggest that the total number of lots in the strata scheme should be clarified to distinguish between utility lots and other lots.</p> <p>In relation to cl 43A(1)(g), we suggest that the classification of the purpose of lots may be difficult in some circumstances and that purposes may overlap. Consideration could be given to adding a definition of what constitutes 'commercial purposes'. Classification may also be difficult where there are mixed-use lots, such as a home office.</p>
3.4 Correcting or updating out-of-date information (43B)		
8.	If you are an owners corporation secretary, or a strata managing agent who expects this duty will be delegated to you, how many times do you expect to have to update information in a year?	<p>The Law Society suggests that the two items most likely to need updating outside of the AGM/ annual statement cycle will be:</p> <ul style="list-style-type: none"> • the date of the most recent annual fire safety statement (cl 43A(1)(j)); and • the replacement value of each building, or part of a building, of the strata scheme (cl 43A(1)(l)). The insurance renewal cycle may operate on a different annual cycle, although the amount will only need updating when it is altered.

NO.	QUESTIONS	COMMENTS
9.	Is there any information that cannot be updated within the 28-day timeframe?	No, but education to raise awareness of the obligation to make such updates will be important.
3.5 Who can access information about a strata scheme (43C)		
10.	Is there any information that is proposed to be publicly accessible that you think should not be published?	No, in our view there is no information that it is proposed to be made publicly accessible that should not be published.
11.	<p>Restricted information will include the scheme's contact details, date of last annual fire safety inspection, and status of a strata renewal committee.</p> <p>Do you think any of this information should be made publicly available? Why?</p>	<p>The Law Society considers that the following information should be made publicly available on the basis that it is informative to a prospective purchaser:</p> <ul style="list-style-type: none"> • any NABERS rating ((cl 43A(1)(h)); • the annual fire safety statement (cl 43A(1)(j)); • the details of the strata managing agent (cl 43A(1)(n)); and • whether a strata renewal committee has been established (cl 43A(1)(r)). <p>In saying this, we note that perusal of the strata hub should not be regarded as a substitute for obtaining a strata records inspection report.</p> <p>The Law Society is of the view that the provision of the telephone number of the secretary of the owners corporation, even on a limited basis as provided under cl 43C(2), is inappropriate and email contact details would be sufficient.</p>