

## Submissions on the Strata Schemes Management Regulation 2016 and Strata Schemes Development Regulation 2016

**TO:** **The Responsible Officer**  
Review of Strata and Community Title Laws  
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**SUBJECT:** Submissions on the Strata Schemes  
Management Regulation 2016 and Strata  
Schemes Development Regulation 2016

## 1. Introduction

This is a submission from BannerMans Lawyers addressing a number of issues with the draft Strata Schemes Management Regulation 2016.

BannerMans Lawyers is a Sydney based practice focused on property law, particularly strata law. The practice employs approximately 20 solicitors and a number of support staff, all of whom are actively engaged in legal matters relating to the strata industry, including acting for developers, builders, owners corporations, community associations, neighbourhood associations, building management committees, lot owners, strata managing agents, building managers, insurance industry businesses and contractors. In the course of this practice, we have gained considerable experience in relation to the ways in which the strata legislation impacts on these stakeholders and the potential for specific reforms to either address existing issues or introduce new problems.

We make this submission in the context of the stated objectives of the strata law reform process, namely:

1. making the strata laws simpler and more certain for all involved, while improving the governance of schemes and developing better ways to manage buildings, money and disputes.
2. (reforms) premised on guidelines, including the following:
  - a. adequately protect consumers.
  - b. provide fair, accessible and practical democratic processes.
  - c. raise the level of transparency and accountability.
  - d. make schemes as easy to run as possible.
  - e. encourage self-governance.
  - f. are future orientated.
  - g. are appropriate and scalable for different types of schemes.

In our view, the draft regulations do not satisfy these guidelines in numerous respects and could be improved. In particular:

1. Some provisions introducing new requirements cannot practically be implemented, because of inadequate provision for the action or information which would be required or inadequate clarification of the terms used.
2. Some provisions impose impractical administrative burdens.
3. Some provisions remove established safeguards of the interests of particular stakeholders.
4. Some provisions impose an inappropriate burden on particular stakeholders, including provisions creating unreasonable liability or prejudice in dealings with other stakeholders.

We have listed our specific concerns below. We are happy to meet with you to discuss any of the issues in our submission or generally.

**Review of the Strata Schemes Management Regulation 2016**

<b>Relevant section or clause</b>	<b>Subject matter of the clause</b>	<b>Changes required</b>	<b>Why the changes are required</b>
Clause 6 of the SSMR	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.
Clause 9 of the SSMR	Election of the strata committee	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.
Clause 28 of the SSMR	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.
Clause 32 of the SSMR	Disposal of abandoned goods : section 125 of the Act	Delete the words "and must keep the record for a period of not less than 12 months of the disposal".	The notion of owners corporations keeping records for reduced periods of time, is problematic and a waste of time and effort and should be deleted.

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Clause 37 (3) of the SSMR	Occupancy limits - residents	This should be deleted.	How is a scheme to limit to the number of occupants staying via Airbnb etc if they cannot fall foul of this restraint unless they are occupying for more than 3 months. If the difficulty is defining a resident, then define a visitor and the balance being residents.
Clause 41(2) of the SSMR	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.
Clause 41(3) of the SSMR	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.
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.

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<p>New clause required in the SSMR :            Relevant corresponding section is section 103(3)(3)(c) of the SSMA 2015</p>	<p>Legal Services approved by general meeting</p>	<p>Insert :</p> <ul style="list-style-type: none"> <li>a) To lodge a defence;</li> <li>b) To apply for interim orders under section 231 of the Strata Schemes Management Act 2016</li> <li>c) To lodge a payment schedule or respond to an adjudication application under The Building &amp; Construction Security of Payments Act 1999;</li> <li>d) To lodge a claim in respect of preserving a statutory warranty under the Home Building Act 1989; and</li> <li>e) Obtaining legal advice of below either \$10,000 or \$12,500, dependent of the upper limit in the regulation.</li> </ul>	<p>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.</p> <p>Typically, executive committees are faced with having to make the decision and hope that it is ratified at a subsequent general meeting.</p> <p>The list provided is not exhaustive, however, the total action may will exceed \$10,000 or \$12,500, but still be necessary to the protect the interests of the owners corporation.</p> <p>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.</p>

Relevant section or clause	Subject matter of the clause	Changes required	Why the changes are required
Clause 50 of the SSMR	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	<p>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.</p> <p>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.</p> <p>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.</p>
Clause 51 of the SSMR 2016	Maturity dates for building bonds	Change “not more” to “not less than”.	This appears to be a typographical error as the bond needs to be available for at least 2 years.

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Clause 59(1) of the SSMR	Attendance and representation	Delete the reference to “must”.	<p>The Strata Schemes Management Act 2015 provides the regulation may provide for a means of arranging.</p> <p>This does not extend to a position where parties must have attendees.</p> <p>What happens, if there are restraining orders in place if someone says they will not go as many do now.</p>
Clause 52(f) of the SSMR	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.
Insert a new clause 52(g) of the SSMR	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.
Clause 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.

Relevant section or clause	Subject matter of the clause	Changes required	Why the changes are required
Clause 62 of SSMR	Limit for gifts to strata managing agents	Increase \$60.00 to \$200.	Why is that that a strata manager cannot be taken for dinner and drinks, but a building manager, property manager, community title manager and company title manager can.
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.	<p>Your failure to address these freedoms will disappoint many in the community who have come to expect that you would be addressing these issues.</p> <p>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.</p>
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.



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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 corresponding section is section 161(2) of the SSMA 2015	Limit sum liability	Insert a new regulation to require valuations by registered valuers every 3 years.	Inadvertently, recent reform removed the inappropriate 5 year term that was in place for renewing valuations. 3 years is more suitable as the valuation requirement is only for the current rectification costs etc plus an 18 month price adjustment. The former gap is 3.5 years is inappropriate.

Relevant section or clause	Subject matter of the clause	Changes required	Why the changes are required
<p>New clause required in the SSMR :            Relevant corresponding section is section 7(1)(f) of the SSMA 2015</p>	<p>Connected persons</p>	<p>Insert:</p> <p>A person is connected with the principal person if they are an “associate” and “related body corporate” under the Corporations Law”.</p>	<p>The current definition in the Act can be easily circumvented by mere title changes within one of the relevant companies e.g. development and strata management companies.</p> <p>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.</p> <p>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.</p>
<p>New clause required in the SSMR :            Relevant corresponding section is section 182(3)(k) of the SSMA 2015</p>	<p>Request for inspection of records of the owners corporation</p>	<p>Include, “documents from archive storage, if any” and “email correspondence”.</p>	<p>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.</p>
<p>New clause required in the SSMR :            Relevant corresponding section is section 207(7) of the SSMA 2015</p>	<p>Rectification of defects</p>	<p>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.</p>	<p>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.</p>

Relevant section or clause	Subject matter of the clause	Changes required	Why the changes are required
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 SSSDA 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.

**Review of the Strata Schemes Development Regulation 2016**

<b>Relevant section or clause</b>	<b>Subject matter of the clause</b>	<b>Changes required</b>	<b>Why the changes are required</b>
Clause 24(2) of the SSSDR	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 SSSDR	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 SSSDR	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 SSSDA 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).	<p>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.</p> <p>It is bizarre that this was not part of the Act as the current format only requires a valuation be presented in the Land &amp; Environment Court proceedings after owners have had to decide whether or not to consent to the proposal.</p>