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Draft Strata Regulations

Policy & Legislation

NSW Fair Trading

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## **Draft Strata Schemes Development Regulation 2016 and Draft Strata Schemes Management Regulation 2016**

Thank you for the opportunity to comment on the draft *Strata Schemes Development Regulation 2016* and the draft *Strata Schemes Management Regulation 2016*. The Urban Taskforce has long supported a less litigious and simpler approach to resolving defects in apartment buildings and therefore supports the intent of the *Strata Schemes Management Act 2015* (the Act) and the associated Regulations. We are however concerned that some of the content of the proposed Regulations may increase complexity and still lead to potential disputes between the parties. Our comments on the draft Regulations follow.

### ***The Urban Taskforce supports the intention of the strata reforms***

The Urban Taskforce supports the intention of the proposed strata reforms, in particular the change to enable a strata to be collapsed or ended by only 75% of owners, rather than 100%. This will enable the renewal and redevelopment of ageing strata buildings. The checks and balances contained in the Act and the Regulations are sufficient to ensure owners are compensated in a fair and equitable manner. The process to approve the end of the strata plan is rigorous and will protect elderly and vulnerable owner occupiers. Supporting services such as the free advocacy program to assist vulnerable owners will ensure that these renewals do not have negative social consequences.

### ***The Draft Strata Scheme Management Regulation 2016 does not provide sufficient clarity on a number of key issues***

There are a number of key issues which the Strata Schemes Management Regulation 2016 (the Regulation) do not address adequately. Lack of certainty and clarity increases financial risk for property developers. These issues are outlined below.

- ***Building inspectors***

Clause 45 of the Regulation provides that building inspectors will be members of a strata inspector panel established by a range of industry groups.

The Regulation does not identify any of the criteria the various industry groups should use to determine whether a proposed inspector is qualified to take on this role. In order to ensure consistency in the competency of building inspectors, the Regulation must identify the

minimum skills and expert knowledge required by an individual to qualify as a member of a strata inspection panel.

Buildings vary greatly in their typology and complexity. Building inspectors must demonstrate they possess the relevant skill sets and technical expertise prior to being accredited to inspect complex buildings. A blanket accreditation which permits all building inspectors to inspect any type of building should not be permitted.

- **Interim Reports**

Section 199(2) of the Act requires an interim report must be in the form and content prescribed by the regulations; identify any defective building work of a kind required by the regulations to be reported on by the regulations and, if reasonably practicable, identify the cause of that defective building work.

Clause 47 of the Regulation states '*An interim report by a building inspector must be in the form approved by the Secretary and contain the matters specified in the form.*'

The Urban Taskforce was told verbally at an industry round table hosted by NSW Fair Trading that Standards Australia have been asked to produce an Australian Standard detailing the requirements of the interim and final report on Group Title Buildings, and that this draft Standard is not due to be issued for public consultation until September 2016.

The Regulation, as it stands, does not provide sufficient information to enable a building inspector to understand the report requirements and may lead to inadequate interim and final reports. Until the report requirements have been identified and finalised, it would be inappropriate to allow the Act and the Regulation to commence (with regard to the provisions relating to the interim and final reports).

- **Final reports**

Clause 48 of the Regulation specifies that the final report must be in the form and contain the matters prescribed in the Regulation. At this stage, the Regulation contains no detail around the form of the report.

Until the report requirements have been identified and finalised, it would be inappropriate to allow the Act and Regulation to commence (with regard to the provisions relating to interim and final reports).

- **Maturity dates for building bonds**

The maturity date of the required bond is unclear. Clause 51 states that '*The maturity date for the building bond must not be more than 3 years after it is given to the Secretary.*'

The defect identification process contained in the Act is assumed to take approximately 2 years to complete. The Regulation should state that the bond lodged with the Secretary should be valid for at least 2 years but no longer than 3 years.

- **Costs of the reports and appointment of building inspector**

The Act provides that the regulations may include details of the fees that may be charged for an interim or final inspection report. The Regulation does not provide any guidance on the costing of these reports.

It is important that the cost of producing these reports is controlled and mandated by government. The process established in the Act the developer has very little control to choose the building inspector to undertake the building inspection, but is entirely responsible for payment of the building inspector's costs. The developer has no bargaining power with the building inspector and the inspector may take advantage of this and charge excessively high prices for the interim and final reports.

The developer must be able to negotiate a commercially acceptable fee with regards to the inspectors report.

Rather than the Secretary appointing one building inspector as provided in the Act, three building inspectors should be identified by the Secretary and the developer provided with the option of seeking a quote from each of the building inspectors. The developer should then be permitted to select from any of the three building inspectors.

We suggest that building inspection costs established in the Regulation and are scaled according the floor space ratio, construction investment value (CIV) or complexity and type of building.

- **Provision of information to be lodged with the building bond**

Clause 52 of the Regulation contains some basic information which the developer must provide to the Secretary when lodging a building bond. While this information is of assistance to the Secretary, the documents do not provide sufficient information on what was developer and constructed by the developer and builder.

Additional documents including relevant contracts, specifications and warranties should be provided when the building bond is lodged.

**Developer must able to appoint another builder to undertake defect rectification work**

The Act provides various circumstances when a builder who is responsible for defective building work is unavailable, including death of the builder or insolvency.

However, the builder may choose to be evasive, unresponsive or unwilling to remedy the situation in a reasonable time period. In these circumstances, the developer should be permitted to appoint another builder to undertake the defect rectification work.

**Builders should be included as an 'interested person'**

The Act permits an 'interested person' to apply for a review of a reviewable decision. The definition of 'interested person' includes the developer, an owner's corporation, and various other interested parties, but does not include the builder.

Developers may request that the builder secure the 2% bond as part of the construction contract. Given their financial stake in the development, the builder should be included in the definition of 'interested person'.

The Urban Taskforce is always willing to work closely with the Government to provide a development industry perspective on these Plans. Please feel free to contact me on telephone number 9238 3955 to discuss this further.

Yours sincerely

Urban Taskforce Australia



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