

Strata Schemes Information Regulation: Explanatory Paper

October 2021



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1. Executive Summary

Purpose of this paper

This paper seeks to:

- set out the development of the Strata Hub and the reason for an annual reporting scheme in strata
- introduce the *Strata Schemes Management Amendment (Information) Regulation 2021* (the **Information Regulation**)
- explain how the proposed Information Regulation and the reporting obligations it details are designed to work
- invite feedback on the Information Regulation about the information that will be required, access to that information, associated costs and the proposed start date.

Call for feedback

The Department of Customer Service (**DCS**) is now seeking public feedback on the Information Regulation.

The Information Regulation and this Explanatory Paper are publicly available on the NSW Government's Have Your Say website: www.haveyoursay.nsw.gov.au/strata-report.

Interested organisations and individuals are invited to participate in the Have Your Say survey or provide a written submission. The questions in this Paper are intended to guide written submissions only and are formatted differently from questions in the survey. However, both the survey and this Paper explore the same issues about the Information Regulation.

All submissions will be considered before finalising the Information Regulation. This paper highlights the areas where feedback is sought, however comment may be provided on any aspect.

Commencement proposed for May 2022

It is proposed that the Information Regulation will commence on **1 May 2022**.

This would require all owners corporations that have held at least one AGM before 1 May 2022 to provide key information about their scheme by **1 August 2022**. Feedback is sought in section 3.1 on how these dates will impact owners corporations and other industry stakeholders.

This paper and the Information Regulation are open for feedback for three weeks, from 28 October 2021 to 18 November 2021. Following careful consideration of the feedback we receive, it is anticipated that the final Information Regulation will be published in December 2021.

2. Strata Hub and the annual reporting requirements

The NSW Government proposed the development of a Strata Hub in response to feedback from strata stakeholders, owners and residents that finding information on strata schemes is too difficult. The information is often hard to locate since it is fragmented across different platforms and agencies, and some types of information cannot be found at all since there is no requirement to report it.

The Strata Hub is intended to be a central access point that will make it easier for people who build, own, live or work in strata to get the information they need. The Hub forms a part of the NSW Government's broader transformation of the regulation of residential apartment buildings where transparency and better outcomes for consumers are paramount.

The Strata Hub will consolidate core information about NSW's more than 83,000 strata schemes in one place. It will also allow NSW Fair Trading to better monitor strata buildings' ongoing maintenance and defect management to ensure duties are being upheld and the safety and amenity of strata buildings is preserved.

The Strata Hub is being opened in phases

Phase one of the Strata Hub saw the Strata Building Bond and Inspections Scheme (**SBBIS**) function go live on 31 July 2021. The SBBIS requires developers to pay a two percent bond on newly constructed multi-story strata developments, which can then be used by owners corporations to fix defects. Moving the SBBIS into the Strata Hub has been the first step in making the building bond process for claims and inspections simpler and easier for everyone.

Phase two opens with the annual reporting scheme, which will require strata schemes to provide key information about their scheme to Fair Trading. Strata managing agents, lot owners, residents and members of the public will then be able to go to the portal for easy access to reliable information. Phase two is proposed to commence from 1 May 2022.

This consultation is all about phase two.

See section 3 of this paper for the proposed details of the annual reporting scheme, the reporting dates and commencement, and the information that may be made public.

Phase three of the Strata Hub will expand owners corporations' reporting to include further building compliance information and may include uploading documents (like the annual fire safety statement). The information in the third phase will allow Fair Trading to better oversee the health of

NSW strata schemes and ensure that owners and residents are not burdened with avoidable building defects, and that maintenance of the scheme is not neglected.

The exact information that is required for phase three is yet to be decided. We will consult the strata sector again prior to phase three on the information we propose to ask for.

Phase four will see the Strata Hub continuing to evolve, branching out to include information on community, precinct and neighbourhood schemes, which are like strata schemes but on a larger scale. The associations that run those schemes will have similar reporting requirements into a joint Strata and Community Hub.

History of the Strata Hub

Throughout 2019 and 2020, the Minister for Customer Service held six consultation roundtables with representatives of the strata sector to discuss the need for a single access point for strata information. The feedback from these meetings demonstrated strong support for a complete and easy-to-use repository of information on strata schemes.

This information repository – now the Strata Hub – is growing increasingly important as the uptake of strata living in NSW increases but key information about strata schemes remains hard to find or unavailable. Many living in strata schemes lack the key contact points for their scheme. The NSW Government also has no reliable way to directly communicate with strata schemes across the state in a crisis, especially self-managed schemes.

DCS created further opportunities in 2020 and 2021 for organisations in the strata industry and for members of the public to provide their thoughts on what sort of information the Strata Hub should include and how the information would be collected.

Based on this feedback, the NSW Government passed reforms to the *Strata Schemes Management Act 2015* in March 2021 to enable an annual reporting scheme to be established through the regulations.

It is important to note that access to information in the Strata Hub will not replace the need for people who are looking to buy a strata property to perform their due diligence enquiries. For strata, this includes checking the land titles registry through Land Registry Services (**LRS**) NSW and obtaining a strata information certificate (also known as a section 184 certificate) from the owners corporation.

3. Overview of the Information Regulation

The Information Regulation amends the *Strata Schemes Management Regulation 2016* to provide the details of the annual reporting scheme.

This section of the paper will explain, step-by-step, what the clauses in the Information Regulation mean and where we are seeking feedback.

A tip for reading the Information Regulation

When the Information Regulation mentions “the Secretary” (with a capital S), this is not the owners corporation’s secretary. This refers to the Commissioner for Fair Trading. You can interpret “the Secretary” as a reference to NSW Fair Trading.

PAGE 3 OF THE INFORMATION REGULATION

3.1 When the information must be provided (43(1))

Clause 43(1) sets the time limits for when an owners corporation must provide their annual report. It requires owners corporations to provide key information about their scheme for the first time by 1 August 2022. Since the Information Regulation is proposed to commence on 1 May 2022, this will allow owners corporations three months to submit their first report, that is, between 1 May and 1 August.

New owners corporations that have never held an annual general meeting (**AGM**) before 1 May 2022 are exempt from the 1 August deadline. They will instead have 3 months from the date of their first AGM to provide their first annual report.

After the first annual report has been submitted, all owners corporations will have to submit a report every year within three months after their AGM.

If an owners corporation does not provide their annual report within the allotted time then they can be fined a maximum of \$5,500.

Questions:

- 1. 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. See section 3.3 for the list of required information.**

- 2. 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?**

3.2 The fee paid to submit the annual report (43(2))

All owners corporations will be required to pay a nominal fee when they submit their report. This fee is required under clause 43(2), and all of the contributions will go towards the cost of running the Strata Hub. The proposed fee is proportional to each scheme and based on a cost-recovery calculation for the Department to operate the Hub.

If the Information Regulation commences as proposed on 1 May 2022, some owners corporations that hold their AGM in late 2022 may need to submit their information twice in one year. Owners corporations that submit twice in that year will only need to pay once.

There is a proposed fee of \$3 per lot

You can estimate how much a scheme would contribute to the Hub each year under the current model by multiplying the number of lots in the scheme by three.

For example, under the proposed fee of \$3 per lot, a two-lot scheme would contribute \$6 when submitting their report, versus a 100-lot scheme that would contribute \$300.

A 'per lot' calculation is proposed because it keeps the total fee affordable and in line with each scheme's ability to pay. It also means that larger schemes which have more people who may access the Hub will pay more, whereas smaller schemes that may use the Hub less will pay less.

An alternative option would be to charge a flat fee to all schemes. A flat fee model would require each scheme to contribute \$40 annually, regardless of size, to cover the costs of the Strata Hub. A flat fee is not proposed in the draft Information Regulation because of its disproportionate impact on smaller schemes.

If an owners corporation delegates its duty to report to a strata managing agent, they may then have additional costs. Estimates of the size of these costs will be valuable in understanding the financial impact of the annual reporting requirement on owners corporations.

Questions:

- 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.**
- 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.**

5. If you are a strata managing agent who expects this duty to be delegated to you, will it fit into your existing fee structure or represent a separate additional charge?
If you expect to charge separately for this report, will it be a modest or substantial increase in costs for owners corporations? Can you provide an estimate?

3.3 The information that is required in the annual report (43A)

Clause 43A(1) lists the information that all owners corporations will be required to report annually.

According to this clause, the owners corporation must provide specific information to Fair Trading.

This information falls into the three categories below.

Items (a) – (g): Basic information about the scheme

- a) the strata plan number for the strata scheme
- b) the date that the strata scheme's plan was originally registered
- c) for strata schemes that are part of a larger community scheme, the date registration for the community scheme and its plan number
- d) for strata schemes that are part of a precinct scheme, the date registration for the precinct scheme and its plan number
- e) the address of the strata scheme
- f) the total number of lots that are in the scheme
- g) how many lots are used:
 - o as residences (like townhouses and apartments, but excluding retirement villages)
 - o for a retirement village
 - o for commercial activity (such as an office or shop), or
 - o for any other purpose

Items (h) – (k): Building and safety information

- h) if the scheme has any NABERS ratings¹, the ratings that are assigned to the strata scheme
- i) the date that the strata scheme's interim and final occupation certificates² were issued, if the scheme received these certificates
- j) the date of the most recent annual fire safety statement, for buildings that must have one
- k) for any class 2 buildings³ in the scheme, how many storeys the building has above ground

¹ NABERS is a national rating system that measures the environmental performance of a building in energy efficiency, water usage, waste management and indoor environment quality. Not all schemes will have a rating. Only schemes that have a rating must provide one. See clause 43A(2) of the Information Regulation.

² A final occupation certificate is what allows residents to move into a residential building once it has finished being built. The certificate also starts reporting periods for warranties and defects in the building. Before December 2019, some buildings were also issued with interim occupation certificates. This allowed people to move in even when development was still ongoing. If an interim certificate was issued, a final certificate was still required once all the building work was complete.

³ A 'Class 2 Building' generally refers to a multi-unit apartment building. Different classes of buildings are defined in the *Building Code of Australia*. To learn more, go to: <https://www.abcb.gov.au/resource/understanding-ncc/building-classifications>.

- l) the insured replacement value⁴ for the strata scheme or – if the strata scheme is only a part of a larger building – the replacement value for the part of the building that holds the scheme

Items (l) – (q): Information on the management of the scheme

- m) the contact details for the secretary of the owners corporation:
- name
 - phone number
 - email address
- n) the contact details for the strata managing agent (if there is one):
- name
 - phone number
 - email address
 - licence number
- o) the contact details for the building manager (if there is one)
- name
 - phone number
 - email address
- p) the date of the most recent AGM
- q) the balance of the scheme's capital works fund, as reported in its most recent financial statement
- r) whether the strata scheme has formed a strata renewal committee⁵

Some information will be pre-populated

To reduce the burden on owners corporations, information that is already known by Fair Trading will be pre-filled when entering the Strata Hub for the first time to report. For pre-filled information, the representative of the owners corporation will need to check and validate the content. Other information that is unlikely to change – such as the number of lots or storeys – may need to be provided in the first report but can then be pre-populated in subsequent reports and only edited if needed.

The required information should be submitted by either the secretary of the owners corporation or the strata managing agent (if any).

Please note that not all information provided will be publicly available. See section 3.5 of this paper to read about the proposed restrictions to accessing this information.

⁴ Strata Schemes are required to hold an insurance damage policy to replace all the buildings (or parts of a building) in the scheme in the case of total destruction. The 'insured replacement value' refers to the amount the scheme is covered for in their damage policy to replace everything. See clause 43A(2) of the Information Regulation.

⁵ A strata renewal committee is formed when a strata scheme is considering a strata renewal proposal for the collective sale or redevelopment of the scheme. If the scheme is sold or redeveloped under this proposal, the owners corporation will be terminated.

Questions:

- 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?**
- 7. If you are an owners corporation secretary, or a strata managing agent who expects this duty will be delegated to you, how long do you think it will take on average to:**
 - a) collect all of the information for the annual report?**
 - b) input this information into the Strata Hub?**

3.4 Correcting or updating out-of-date information (43B)

Clause 43B is about how and when owners corporations must correct or update information they have provided in their annual report.

If either the secretary or the strata managing agent becomes aware that any of the information provided is incorrect or is out-of-date, then they have 28 days to update it. If the information is not updated within the 28-day timeframe then the owners corporation can be fined a maximum of \$2,200.

The 28-day timeframe is in line with the timeframes used in other Fair Trading reporting schemes. Requiring strata schemes to correct their information will ensure that it remains useful and up-to-date for the people who need it.

It should be noted that information on the balance of the capital works fund only needs to be reported as it appears on the last financial statement of the owners corporation. Therefore, it does not need to be updated each time the balance changes.

Questions:

- 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?**
- 9. Is there any information that cannot be updated within the 28-day timeframe?**

3.5 Who can access information about a strata scheme (43C)

The Information Regulation includes limits for Fair Trading on what information we provide publicly about your scheme. These limits are found in clause 43C.

The information we collect that will be published includes:

- the strata plan number, address and date of registration
- the number and purpose of lots in the scheme
- whether the strata scheme is part of a parent community or precinct scheme
- the number of storeys above ground (for apartment buildings), and
- the date of the most recent AGM.

The NABERS ratings will not be listed on the Strata Hub, but may be available from the NABERS website: <https://www.nabers.gov.au/ratings/find-a-current-rating>.

To see contact details you will need to verify your identity

Some information will not be available to everyone. This includes:

- the contact details for the secretary of the owners corporation
- the contact details for the strata managing agent (if any)
- the contact details for the building manager (if any)
- the date of the last annual fire safety statement
- whether or not a strata renewal committee has been formed.

Clause 43C(2) restricts Fair Trading to only provide this information to a person who is on the strata roll for that scheme.

The strata roll is a record of people who live or own in a particular scheme, including tenants. Although these people should already have access to contact details for their owners corporation, feedback has shown that for many these details are hard to find, out-of-date or are not given to them.

Clause 43C ensures that Fair Trading can provide the contact details to people in the scheme who need them, without making the details available to every person accessing the Hub. In practice, restricting this information means that someone wanting to access these details will need to verify their identity when accessing the information.

Emergency services, such as NSW Police and Fire & Rescue NSW, may also view details for a scheme through information sharing arrangements with Fair Trading. This will enable these services to contact the right people for access to a scheme when responding to an emergency, if necessary.

Fair Trading will hold some information for compliance purposes only

Other information that will only be seen by Fair Trading and other regulatory authorities includes:

- NABERS ratings
- the date of issue of the interim or final occupation certificate

- the insured replacement value of the scheme
- the balance of the capital works fund, as listed on the last financial statement

This information is collected to help us ensure that strata schemes are keeping up with their obligations and can manage ongoing care of the strata scheme buildings.

It is important to note that all information collected on the Strata Hub will also be subject to the *Government Information (Public Access) Act 2009*, which means DCS may be required by law to release certain information.

Questions:

10. Is there any information that is proposed to be publicly accessible that you think should not be published?

11. Restricted information will include the scheme's contact details, date of last annual fire safety inspection, and status of a strata renewal committee.

Do you think any of this information should be made publicly available? Why?

3.6 Any other feedback is welcome

The questions in this paper target specific areas where we are seeking input. However, submissions may comment on any aspect of the Information Regulation. If you have additional comments that have not been addressed by the questions above or by the survey on the Have Your Say website, you can include them as part of your written submission.

END OF PAPER