



Regulatory Impact Statement

Community Land Management Regulation – July 2018

Published by

NSW Fair Trading
PO Box 972
PARRAMATTA NSW 2124
Tel: 13 32 20
www.fairtrading.nsw.gov.au

Disclaimer

This publication avoids the use of legal language, with information about the law summarised or expressed in general statements. The information in this document should not be relied upon as a substitute for professional legal advice.

For access to legislation in force in NSW go to the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au.

Copyright Information

© State of New South Wales through NSW Fair Trading, 2018

The State of New South Wales, acting through NSW Fair Trading, supports and encourages the reuse of its publicly funded information. This publication is licensed under the Creative Commons Attribution 4.0 licence.

For more information, visit www.fairtrading.nsw.gov.au/ftw/copyright.page

Table of Contents

TABLE OF CONTENTS	2
CONSULTATION PROCESS	3
Making a submission	3
OBJECTIVE AND RATIONALE OF THE REGULATION	5
Objective	5
Rationale	5
Options for achieving objectives	6
IMPACT ASSESSMENT OF OPTIONS	7
Assessment of option 1	7
Assessment of Option 2	7
Summary of costs and benefits for each option	8
DISCUSSION OF THE PROPOSED REGULATION	11
APPENDIX 1	12
Background information	12
APPENDIX 2	13
List of stakeholders	13

Consultation process

Making a submission

Interested organisations and individuals are invited to provide submissions on any matter relevant to the proposed Regulation, whether or not it is addressed in this Regulatory Impact Statement (RIS). Matters covered by the principal Act - **Community Land Management Act 1989** (the Act) - are not the subject of the consultation process.

We prefer to receive submissions by email and request that any documents provided to us are produced in an 'accessible' format. Accessibility is about making documents more easily available to those members of the public who have some form of impairment (visual, physical, cognitive). Further information on how you can make your submission accessible is contained at <http://webaim.org/techniques/word/>.



Additional copies of the RIS and the proposed Regulation can be downloaded from www.fairtrading.nsw.gov.au. Printed copies can be requested from NSW Fair Trading by calling 13 32 20.

You can provide a submission by email to policy@finance.nsw.gov.au, or by post to the following address:

Community Land Management Regulation 2018
Regulatory Policy, BRD
Department of Finance, Services and Innovation
Level 5, McKell Building
2-24 Rawson Place
SYDNEY NSW 2000

The closing date for submissions is Wednesday, 1 August 2018.

Important note: release of submissions

All submissions will be made publicly available. If you do not want your personal details or any part of your submission published, please indicate this clearly in your submission together with reasons. Automatically generated confidentiality statements in emails are not sufficient. You should also be aware that, even if you state that you do not wish certain information to be published, there may be circumstances in which the Government is required by law to release that information (for example, in accordance with the requirements of the *Government Information (Public Access) Act 2009*). It is also a statutory requirement that all submissions are provided to the Legislation Review Committee of Parliament.

Identified stakeholders

Key stakeholders have been notified of the RIS and the commencement of the consultation period. A list of these stakeholders is provided at Appendix 2.

Evaluation of submissions

A major review of the Regulation is anticipated following the upcoming reforms to the Act. Therefore, no major changes have been included in the current remake of the Regulation.

However, all submissions are welcome and any issues identified will be taken into account as part of the next review.

Commencement of the Regulation

After the Minister for Innovation and Better Regulation has finalised the Regulation, it will be submitted to the Governor for approval.

Once approved by the Governor, the Regulation will be published on the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au and in the NSW Government Gazette. Information on how to access the Gazette is available on the NSW Parliamentary Counsel's website.

It is proposed the Regulation will commence on **1 September 2018**.

Objective and rationale of the Regulation

Objective

The Act provides a system for the management of community, precinct and neighbourhood schemes. This includes the management of funds and accounts, association and committee meetings, maintenance of association property, insurance, administration of and compliance with the management statement, and resolution of disputes.

The management and administration of community schemes requires a regulatory framework that promotes self-governance and democratic decision making.

The 2007 Regulation ensures there is an appropriate administrative framework in place to assist community associations to operate with clarity and certainty.

The Regulation:

- prescribes how records should be kept, including how long records should be retained, how receipts should be issued, how transactions should be recorded, etc;
- sets out how mediation should be carried out, including who must attend and how a mediation session may be terminated;
- sets out the procedure for nomination and election of executive committee members for associations;
- provides detail about required insurance cover; and
- prescribes fees payable and when fees can be waived or remitted.

Rationale

The Regulation provides the administrative detail needed to ensure the effective operation of the Community Land Management Act.

It is necessary to remake the Regulation at this time, because the current Regulation will be automatically repealed on 1 September 2018 under the sunset provisions contained in the *Subordinate Legislation Act 1989*.

Options for achieving objectives

The primary objective of the proposed Regulation is to provide operational and administrative detail to support the operation of the Community Land Management Act. Options for achieving those objectives are:

Option 1

Maintain the status quo – Remake the Regulation to be identical to the existing Regulation.

Option 2

No action – Allow the existing Regulation to lapse under the sunset provisions of the *Subordinate Legislation Act 1989* and do not make any replacement Regulation.

Note: The Community Land Management Act was subject to a major review in association with the most recent review of the strata scheme management laws. A package of reforms to the Act has been developed which are to be introduced into the NSW Parliament. Once the law reform package has been passed by Parliament, there will need to be a complete review of the Community Land Management Regulation involving further public consultation.

The only changes made to the Regulation at this time are machinery in nature. Items 3-6 in Schedule 2 of the Regulation have been removed as they are already covered by Schedule 2 of the Civil and Administrative Tribunal Regulation 2013 (CAT Regulation). Further, clause 22(2) of the Regulation has been removed, as this is already covered by clause 6(4) of the CAT Regulation.

While all submissions received as part of this statutory review will be carefully considered, it is possible that any proposals for changes to the Regulation will be retained for assessment and consideration during the next review process.

Impact assessment of options

Assessment of option 1

Maintain the Status Quo

This option involves remaking the existing Regulation with no changes.

Option 1 – Costs

This option will not increase existing costs for community schemes.

The proposed Regulation will impose the same costs as the existing Regulation. However, due to the varied sizes and complexities of community schemes, it is difficult to determine generic costs for every individual scheme. While the Regulation prescribes some fees, the costs of complying with all the regulatory requirements would vary widely from scheme to scheme.

Option 1 – Benefits

This option maintains the current benefits of providing ongoing continuity and certainty for community schemes. The proposed Regulation provides guidance on key operational matters including dispute resolution, how financial and other records must be kept, election procedures and insurance coverage.

These are important processes that contribute to ensuring fairness, accountability and transparency within community schemes, and support the democratic basis of community associations.

Option 1 – Conclusion

The Regulation remake is non-contentious and machinery in nature.

Remaking the Regulation with no changes is the most cost-effective option at this point in time. The overall benefit is estimated as positive, as the current Regulation will continue to provide legislative support and administrative detail needed to ensure the continued operation of the Act, until the next review of the Regulation after the upcoming law reforms come into force.

This is the preferred option.

Assessment of Option 2

Allow to lapse

This option would allow the existing Regulation to lapse on 1 September 2018 under the sunset provisions of the Subordinate Legislation Act without making any replacement Regulation.

Option 2 - Costs

If the Regulation is allowed to lapse, this will give rise to a range of challenges for the governance of community schemes, creating potentially significant problems and associated costs for these schemes, owners and residents, executive committees and strata and community managers.

In the absence of regulatory guidance, community schemes will need to develop, establish and maintain all their own systems for compliance with statutory obligations. These systems could involve significant costs and require some time to introduce.

Option 2 – Benefits

It could be considered that the absence of regulatory guidance may lead community associations to develop more innovative means to operate community schemes and comply with statutory obligations. Although in some cases this may create benefits if more cost-effective processes are introduced, as noted above this would more likely involve potentially significant start-up costs, would take time to establish, and could lead to inconsistent outcomes across the sector with subsequent detriments for residents.

Option 2 - Conclusion

This option is not considered feasible.

Summary of costs and benefits for each option

Option	Likely costs	Likely benefits	Overall benefit
Option 1	Low	High	Positive
Option 2	Medium-high	Low	Negative

Preferred option

Option 1 – maintaining the status quo, is the preferred option as it will continue to provide legislative support and administrative detail needed to ensure the continued operation of the Community Land Management Act and give full effect to its provisions.

The current Regulation provides for the making, maintenance, retention and inspection of the records of community associations, the mediation of disputes, the election of executive committees of associations, property insurance and other insurance, as well as fees payable under the Act. The Regulation is integral in ensuring the effective operation of community schemes, including fair and effective administration and decision making by community associations.

Maintaining the status quo will ensure that there will be an appropriate Regulation in place that will help community associations to continue operating with clarity and certainty until the Regulation is further reviewed following passage of the community scheme law reforms.

The following table gives a brief description of the proposed Regulation:

Part	Description
Part 1 Preliminary	This part provides the name of the Regulation, commencement date, and definitions.
Part 2 Records of Association	<ul style="list-style-type: none"> • cl 4: this prescribes the periods for retention of records. • cl 5: this prescribes how accounting records are to be kept, how they are to be stored, and the maximum penalty available for breach of this section. • cl 6: this states that a receipt must be issued for each amount of money received and prescribes what particulars must be included in each receipt. • cl 7: this prescribes how and when cash transactions must be recorded. • cl 8: this provides for what the levy register for a fund must include. • cl 9: this provides that a scheme must make available for inspection the trust account ledger for an association where some of the duties of the association have been delegated to a managing agent (for the purpose of schedule 4, clause 1 of the Act).
Part 3 Mediation	This part states how the Director-General may give directions in relation to mediation, who must attend a mediation session, and how a mediation session may be terminated.
Part 4 Election of Executive committee	This part provides the procedure for nomination and election of an executive committee for an association with a membership of 4 or more.
Part 5 Insurance	<p>This part provides detail for the purposes of:</p> <ul style="list-style-type: none"> • s39 the Act, relating to the possible costs that must be covered in an insurance policy against damage to association property

	<ul style="list-style-type: none">• s40 of the Act, relating to the prescribed amount of cover for other required insurance policies.
Part 6 Miscellaneous	This part provides detail for fees payable and waiver and remission of fees under the Act.

Discussion of the proposed regulation

It is anticipated that the Regulation will be remade without any amendments at this time.

Nonetheless, submissions are welcome on any aspect of the Regulation or any other relevant issue and all submissions will be carefully considered.

The submissions will also be retained for further consideration during the review of the Regulation that will commence after the community scheme law reforms have been passed by Parliament.

Date of Commencement

The proposed Regulation provides for commencement on **1 September 2018**.

Appendix 1

Background information

A major review of the *Community Land Management Act 1989* was undertaken in conjunction with a review of strata scheme laws. The Community Schemes Law Reform Position Paper outlines 58 reforms. The Position Paper is available from the Fair Trading website (www.fairtrading.nsw.gov.au).

Given the strong similarities in many areas of strata schemes and community schemes, the reforms in the Position Paper mirror many of the strata scheme law reforms that commenced in November 2016. However, some of the proposed reforms may only be practical for neighbourhood associations.

The community schemes law reforms include:

- alternative methods of attendance at meetings including video and teleconferencing
- postal or electronic voting, and secret ballots
- storage and distribution of documents electronically
- requiring committee members to act with due care and diligence and to disclose any conflicts of interest
- limiting the number of proxies able to be held by any person, and the matters for which a priority vote can be used
- prohibiting non-owners with a financial interest in the scheme (for example, managing agents and letting agents) from being a member of the strata, neighbourhood, precinct or community committee
- a new regime of disclosure and accountability for managing agents, with a contract term of 3 years maximum
- more flexibility regarding AGMs and quorums
- restricting developers' rights to vote on matters relating to building defects
- expanding the range of disputes that can be dealt with by the NSW Civil and Administrative Tribunal (NCAT)
- requiring developers to set realistic levies during the initial period and first year after
- better ways to control parking within schemes
- increasing penalties and streamlined enforcement for by-laws
- allowing penalties to be paid directly to schemes.

Once the community scheme law reforms have been passed by Parliament, there will be a complete review of the Regulation.

Appendix 2

List of stakeholders

Key stakeholders

The following stakeholders have been notified of the publication of this RIS on the Fair Trading website:

- Board of Surveying and Spatial Information of NSW
- Strata Community Australia (NSW)
- Owners Corporation Network
- Urban Development Institute of Australia (NSW)
- Real Estate Institute NSW
- Property Council of Australia (NSW)
- Law Society of NSW
- Australian Property Institute (NSW)
- Urban Taskforce
- Housing Industry Association (NSW)
- Master Builders Association (NSW)
- Estate Agents Cooperative
- Council on the Ageing
- City Futures Research Centre, UNSW
- Combined Pensioners & Superannuants' Association
- Australian College of Community Association Lawyers
- NSW Civil and Administrative Tribunal