



**Dynamic Property Services Pty Ltd**

Level 5, 162 Goulburn Street  
Sydney NSW 2010

DX 11643 Downtown Sydney

**T** (02) 9267 6334

**F** (02) 9263 9955

**E** [dps@pip.com.au](mailto:dps@pip.com.au)

ABN 67 002 006 760

28 November 2008

The Better Regulation Office  
GPO Box 5341  
SYDNEY NSW 2001  
[tradelicences@dpc.nsw.gov.au](mailto:tradelicences@dpc.nsw.gov.au)

**Submission;** Better Regulation Office  
Issues paper relating to  
licensing of selected occupations.

This document is submitted on behalf of Dynamic Property Services Pty Ltd, see attached corporate profile for details.

We note the New South Wales Government is committed to ensuring that regulation is appropriate, effective and efficient, with the objective of maximising net benefit to the community and minimising regulatory burden and red tape. We agree licensing imposes costs and should only continue if a clear net benefit can be identified.

Noting the background details supplied in the issues paper on reasons for occupation licenses, what they do plus the benefits and costs of licensing, we submit that the benefits of licensing for strata managing agents outweigh the costs.

NSW was the first state in Australia to introduce strata titling legislation. It has been seen as the leader in many aspects of this type of legislation and consequent ongoing management needs as schemes are established.

Using the specific points upon which views are sought, we submit the following views.

**- the benefits of the licensing regime including the protections offered to consumers and impacts on professional standards in the industry**

Control over licensed strata managers and holders of certificates of registration (certain employees of license holders) is exercised by the Office of Fair Trading (OFT). It imposes minimum educational standards and ongoing CPD requirements as an integral part of the licensing and registration process.

Annual statutory audit of strata manager's operations and trust account balances with reporting obligations by auditors to OFT is mandatory. With over \$500,000,000 of owners funds held in strata managers' trust accounts in NSW, this is a very important mechanism to provide consumer protection.



Partly as a result of legislation requiring all strata plans to undertake regular sinking fund assessments, we are seeing a significant increase in the funds held by strata plans, hence there is an increased need to ensure consumer protection and maintain security in the management of owners' funds

Maintenance of Fidelity Fund controlled by OFT to protect consumers, partly funded by contributions from licence and certificate holders and with recourse if claims exceed fund assets

"Fit and proper person" checks prior to granting of certificate or license and ability of regulators to impose fidelity guarantee insurance requirements if desired.

"Loss of license" sanctions available and ability of regulator to take control of trust accounts and license holder assets to protect trust fund holdings.

OFT maintains a central, publicly accessible listing of holders of a strata managing agent's license or certificate of registration. This also provides for listing regulatory action taken against particular license holders.

There is the ability to ensure knowledge and personal professional liability at board level for corporate license holders since there must be at least one director who holds a personal license.

At a time when strata legislation is being beefed up to provide greater protection for owners in strata developments (e.g. restrictions on proxies to developers, etc.), it would be a retrograde step to remove the licensing arrangements and thereby potentially lowering the level of training/expertise of strata managers.

Increasing legislative complexity and an apparent increase in the likelihood of litigation means it is important to continue to enhance the professionalism of the strata management industry. Licensing is a key component in maintaining/enhancing those professional standards.

***- the costs of the licensing regime including compliance costs for industry, impacts on labour mobility and competition between service providers***

With over 1300 license holders in NSW, there is ample potential competition to ensure a selection of service providers for consumers.

The "certificate of registration" provision for employees of licence holders ensures labour mobility with minimal education requirement before involvement in the industry but under the supervision of a licensee (who has ultimate responsibility and liability for actions of the certificate holder)

Compliance costs are not significant. There are several institutions providing initial training to become a licensed manager and generally the cost is around \$2,000. Larger businesses (including Dynamic) have considerable in-house training commitments, partly driven by a need to meet ongoing CPD requirements for a large proportion of staff members.

Ongoing training is readily available with many professional bodies providing training at no cost to licence or certificate holders. Ongoing CPD training costs are significantly lower than other professional bodies (e.g. accounting organisations).



**- whether there are any reasons why it is necessary to license this occupation in NSW when it is not considered necessary to license it in other States and Territories.**

NSW is one of two Australian states that has a licensing regime (the other being the Northern Territory). One other state (Victoria) has a lower level regulatory scheme. And other states are considering regulation.

It is not correct to assume that since other states and territories do not licence or regulate strata managers that NSW is out of step or wrong to do so.

In fact, the development of the strata management industry explains things since –

- strata title has only existed in Australia since the early 1960s and it was not until the mid 1970s that strata buildings were being created in any significant numbers,
- NSW was the first state to have strata title laws and has been a pioneer in strata title development and regulation, so other states have generally followed NSW's lead (in some cases 10-15 years later),
- strata managers were first regulated in 1981 in NSW,
- between the mid 1980s and now there has been an increasing number of strata schemes and strata lots created,
- in the 1990s the Northern Territory introduced licensing for strata managers,
- in the 1990s Queensland introduced professional training recognition for strata managers,
- in 2002 regulation of strata managers in NSW was increased with more controls introduced into the Property Stock and Business Agents Act 2002,
- in 2007 national competency standards for strata managers were approved to form the basis of competency based training programmes,
- in 2007 strata managers were regulated in Victoria under the Owners Corporations Act 2006,
- strata management associations have made submissions to state governments who are considering regulation (or more regulation) in Western Australia, South Australia, the Australian Capital Territory and Queensland.

So, the trend is for more regulation of strata managers – not less. It's just that the development of the strata management industry has not yet been completed.

Strata management is not like the other 10 occupations listed in the Issues Paper.

Those differences include the following.

- Strata managers are 'agents' acting for principals with fiduciary duties. Only an entertainment industry agent or manager is also an agent but in their case that is a limited agency to represent someone in business, whereas strata managers have a continuous agency that permits them to do all things (if delegated) for a strata scheme.
- Strata managers hold (on a continuous basis) significant money for their principals in their trust accounts whereas the other occupations do not.
- Strata managers are responsible for the care and administration of significant assets (the strata properties of the scheme owners) for their principals whereas the other occupations do not.
- Strata managers have long term arrangements with their customers (extending over many years) whereas the other occupations do not (usually only having one off short term transactions).



- Strata managers have multiple customer interactions (dealing with many scheme unit owners) whereas the other occupations do not (usually dealing with only one customer at a time).

So, very different considerations apply to licensing strata managers than the other occupations.

Despite increasing efforts to educate the public and consumers about strata title generally and strata management specifically, consumer knowledge is low.

Whereas strata manager knowledge is high as a result of educational entry requirements to strata management, the licensing required and continuing professional development.

So, there is a significant difference in knowledge and understanding between strata managers and consumers. With increasing complexity in strata buildings and more intricate legal controls that gap is likely to widen before closing.

It is also difficult for consumers to find out more since the OFT generally only provides information about basic strata management issues (and not about strata manager issues). In fact, the only real source of information about strata management in NSW is the real estate licensing branch of the OFT (which would not do so if licensing was removed).

Additionally, there are at least 1,500,000 people affected (as owners, occupiers or working in strata and community title lots and schemes) in NSW so the impact on consumers is high.

The work of strata managers affects many people in significant ways.

Those people include –

- Developers of properties which are subdivided under the strata or community schemes development legislation. The developer often relies upon professional input from strata managing agents during the pre-registration phase, especially relating to by-laws or management statements that will impact on the practical ongoing management of the development and the provision of initial budgets that will apply from date of registration. Many developers also rely on strata managing agents to establish the statutory and other records for the scheme following registration, obtaining complying insurances, holding inaugural meetings and undertaking other functions that are the original owner's responsibility prior to the first annual general meeting.
- the owners corporations for the strata and community schemes as a collective,
- the executive committee members who rely on strata managers for compliance with legal obligations and guidance on fulfilling their duties,
- the owners of strata lots whose real property investments and their levies are in the care and control of the strata manager,
- occupiers of strata lots (residential and commercial) whose living and working circumstances are in the care and control of the strata manager,
- members of the public who enter the public and private areas of strata schemes as visitors whose safety and security depends on the effective management and maintenance of those buildings,
- contractors, tradespeople and other service providers who do work in and for strata schemes whose safety and security depends on the effective management and maintenance of those buildings,



- contractors, tradespeople and other service providers who do work in and for strata schemes whose business relations and economic viability rely on the proper management and administration of the strata scheme, and
- government whose private sector housing requirements are in an increasingly significant way being met (in part) by the effective and improving management of medium and high density strata title buildings.

Continuing to properly regulate strata managers (who play a pivotal role) is important for all those reasons.

Additionally, strata manager are required to hold professional indemnity insurance as a requirement of the NSW Property Stock and Business Agents Act 2002 (although this obligations has not yet been activated) as an additional protection to the public.

In general, titling complexity and the scale of developments in NSW increases scope and size of risk compared to other states with the possible exceptions of some of the major developments on the Gold Coast, Melbourne inner city and Docklands).

A number of registered title documents (Strata and Building Management Statements and Community Management Statements) incorporate provisions requiring the Building Management Committee or Community Association to appoint a strata managing agent to manager the statutory and other obligations as well as have control of funds. These documents contemplate (and in some cases require) the strata managing agent to be licensed and very wide powers are generally granted/delegated to the strata managing agent based on the expectation of licensing protection (example wording; The *Strata Managing Agent* must have and keep current all licences required by law for a strata managing agent.)

Even with licensing requirements in place we still have many strata management companies not complying with the various pieces of legislation in place, but at least trust funds are protected and there is an avenue for consumer recourse through OFT against the licensee where non compliance occurs.

In some other states, a franchise model is in place and people with no background knowledge can purchase a franchise and have access to large sums of money belonging to consumers (bodies corporate or community associations).

For clarification or additional information, contact Wally Patterson on 9263 9901 or mobile 0418 280 032, email [wallyp@dps.net.au](mailto:wallyp@dps.net.au)

A handwritten signature in black ink, appearing to read "Wally Patterson".

Wally Patterson  
Managing Director