LandTasmania

Review of the *Strata Titles Act 1998*

Discussion Paper

May **2020**

Department of
Primary Industries, Parks, Water and Environment

Tasmanian Government

Contents

Introduction

The *Strata Titles Act 1998* (the Act) was introduced in 1998. The Act was intended to provide a framework for the development of land by way of strata titles, including staged development schemes and community development schemes, and the regulation of day to day living and administration of strata developments.

Prior to the introduction of the Act as the first specific piece of legislation for strata titles, strata title regulation was included in the *Conveyancing and Law of Property Act 1884*.

A post-implementation review commenced in 2005 with amendments to the Act introduced in 2006. In 2010 a further review commenced, and an Office Circular was issued seeking comments on the problems that had arisen regarding the practical application of the Act. In addition, the Land Titles Office undertook a section by section review of the Act. The results of the consultation process and the section by section review were consolidated and a set of recommendations developed for consideration by the Recorder of Titles.

For a variety of reasons including reviews being undertaken in other jurisdictions, the range of responses received to the 2018 consultation paper and a changing strata environment, the completion of the review has been delayed.

The current Minister for Primary Industries and Water has approved a further consultation period to ensure that all parties interested in strata developments are provided with an opportunity to participate in the review.

Aim of the Review

The review of the Act provides an opportunity to ensure that the legislative framework effectively supports the strata industry, particularly lot owners, whilst providing an appropriate level of regulation and achieving the right balance between the rights of lot owners and tenants and the responsibilities associated with community living.

Most concerns raised during previous consultation focus on the day-to-day administration of a strata development including the rights and responsibilities of bodies corporate, lot owners and tenants.

About this Paper

This paper focuses on areas of strata living which require review in consideration of changes in the strata environment since 1998. The number of strata developments represents 10.02% of land ownership in Tasmania. This number and the number of people living in strata developments have substantially risen and are both anticipated to continue to increase. It is also anticipated that future strata developments may be increasingly complex with larger numbers of lots and with mixed usage of lots. This paper aims to address areas of importance for both current and future strata developments.

Reviews in other States

Since 2010 reviews of strata or community living have been undertaken in New South Wales (September 2012), Queensland (August 2013), Western Australia (October 2014) and Victoria (August 2015).

The governments of these jurisdictions have acted in response to the reviews including legislative reform or intended legislative reform.

The reviews and subsequent legislative reform are valuable in that they address focus areas dealt with in this paper and provide insight into the different ways those areas have been addressed.

The South Australian and the Northern Territory legislation is not referred to as it has not been reviewed recently.

As a result of the above, for the purposes of this paper reference to jurisdictions means New South Wales, Queensland, Tasmania, Victoria and Western Australia.

Submissions in Response to this Paper

This discussion paper provides an opportunity to comment on the practical aspects of developments, administration of and living in strata developments and the effectiveness of the Act in establishing a framework for supporting strata developments. Submissions are welcome on any or all of the focus areas.

The purpose of the 'some matters for consideration' section at the end of each focus area is to prompt consideration and discussion. However, it is not intended that responses be limited to addressing these matters only.

Please note that in accordance with Government policy all submissions will be made publicly available, including being available on the Department's website.

Please forward submissions to:

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The closing date for submissions is by midnight Friday 19 June 2020.

If you have any queries as to this document or the review process, please contact Craig Pursell on (03) 6165 4150.

The Next Stage

A consultation report will be prepared providing the Minister for Primary Industries and Water with a summary of the responses to this paper and where relevant recommending amendment of the Act. Once the Minister's approval is received, Cabinet approval will be sought.

If Cabinet approves amendment of the Act, amending legislation will be prepared and tabled in Parliament.

1. Strata Titles Act 1998 – Review History

The Act regulates strata developments and day to day strata living in Tasmania.

Upon registration of a strata plan, all the owners of the lots in a strata scheme form the body corporate. A body corporate manages the day to day living in a strata scheme and is responsible for a range of compliance, financial, insurance and essential services matters.

The Act establishes the rights and responsibilities of individuals both as lot owners and as members of the body corporate.

In a residential strata scheme, housing is grouped. For many, this provides a secure, community atmosphere. Strata living is an attractive choice for people who are looking for a lower maintenance housing option with the benefit of shared facilities. Strata developments are also an attractive option for developers who are able to maximize the use of land which cannot be otherwise subdivided.

Strata ownership continues to grow within Australia, and with approximately **36,397** strata lot titles within Tasmania it represents **10.02%** of land ownership. The number of strata lot titles includes both residential and commercial use.

The current review of the Act commenced in 2010 when an Office Circular was issued by the then Recorder of Titles seeking comments on the practical application of the Act. In addition, a section by section review of the Act was undertaken by the Land Titles Office. The results of the consultation process and the section by section review were consolidated and a set of recommendations developed for consideration by the Recorder of Titles.

The Recorder of Titles reviewed the recommendations and developed lists of those that she supported which would require amendment of the Act, those that she supported that would require a change in policy/process or clarification by way of Land Titles Office publications, and those that she did not support.

In September 2012 the New South Wales Government commenced a review of its strata and community scheme laws including the release of the discussion paper – *Making NSW No.1 Again – Shaping Future Communities*. This was followed in November 2013 by the Strata Title Law Reform Position Paper. The then Recorder of Titles decided to delay the progression of the Tasmanian review until the New South Wales review had been completed and legislative amendments proposed. This allowed the Recorder of Titles to determine if Tasmania's review could incorporate any of these amendments as part of its legislative reform. The list of proposed amendments was refined in consideration of the New South Wales review.

It was determined that a further round of consultation was required, and a consultation paper was developed and released in 2018. The following key issues and options for dealing with them formed the basis of the paper:

1. Division of land by strata plan;

2. Effect of Registration;

3. Nomination of proxies;

4. Inspection and availability of records;

5. Insurance;

6. Model By-Law 1 – Duty to keep lot in good order and repair;

7. Amendment from "Community Scheme" to "Community Development Scheme";

8. Meaning of common property;

9. Time period for dealings lodged with the Recorder;

10. Unanimous and Ordinary Resolution;

11. Activation of a Body Corporate;

12. Education regarding Strata Ownership; and

13. Application for Relief Process.

Submissions were received in relation to other parts of the Act and other aspects of strata living outside of the issues listed above. Consequently, the approval of the Minister for Primary Industries and Water Ministerial was sought to undertake further consultation which focuses on key areas of strata living rather than distinct issues. In between the commencement of the review in 2010 and 2018, New South Wales, Queensland, Western Australia, and Victoria undertook reviews of their strata or community living legislation. These reviews and the respective government responses to these reviews, primarily through legislative reform, have been considered during development of this paper.

2. The Areas of Focus

While a comprehensive review of all aspects of the Act has been commenced, it is not possible for this discussion paper to cover every matter for consideration in such a process. For the purposes of prompting thought and discussion the paper has addressed areas of focus set forth below. It is acknowledged that it is not an exhaustive list and responses are not intended to be limited to addressing the matters specified for consideration. The areas of focus have been chosen based upon responses to the 2018 consultation paper, reviews in other jurisdictions and practical experience in the application of the Act.

The areas of focus are:

1. Planning and development of strata schemes;
2. Requirements for a strata plan;
3. Different regulatory frameworks depending on the number of lots, use of lots and/or the configuration of the development (conjoined, high-rise or villas);
4. Management or disclosure statements;
5. Unit entitlements;
6. Common property;
7. Activation of and functions of a body corporate;
8. Meeting procedures;
9. Quorum;
10. Access to and disclosure of body corporate records/information;
11. Roll or register for a body corporate;
12. Insurance;
13. Dispute resolution;
14. Strata Managers;
15. Keeping of Animals;
16. Future Maintenance Schedules;
17. Capital Funds and Sinking Funds; and
18. Compliance and Enforcement.

This section of the paper provides a brief description of the above focus areas, outlines the current legislative situation in Tasmania and some other States, and discusses similarities and differences in approach.

In examining these focus areas, it is considered that the primary purpose of the Act should be to provide a simple framework, including by-laws, to regulate the planning and development of, and day-to-day administration of strata developments. It should also clearly set out rights and responsibilities of bodies

corporate, lot owners, and strata managers and clearly define what is common property and common infrastructure and who is responsible for its maintenance.

This review provides the opportunity for submissions in relation to 'future proofing' the legislation. It's important that the Act reflects a changing housing environment. The Act should, as far as possible, provide a framework which regulates the future strata environment whereby it is anticipated that there will be more complex developments and more of them. The choice to live in a strata scheme should be based on the quality of that scheme and the lifestyle it offers as opposed to its lower price compared to a free-standing property. Strata title developments are also an option for addressing the need for affordable and social housing.

2.1 Area One - Planning and development of strata schemes

(i) Introduction

A strata scheme is one form of land development which, like a subdivision, requires planning and development approval from local government. The Act is only one of many pieces of legislation which regulate the development of land in Tasmania, and whilst it regulates the strata plan, it is not the sole piece of legislation which developments need to comply with for approval as a strata scheme. Legislation administered by councils including the *Land Use Planning and Approvals Act 1993*also needs to be complied with as part of a strata scheme development. A plan or diagram is prepared depicting the development, including the location of the strata lots and common property.

Whilst the Act Tasmania currently deals with both development and management of strata schemes Given the complexity of planning for strata schemes, mainland jurisdictions have decided to separate the regulation of the development phase of a strata scheme and the management phase of a strata scheme.

(ii) Tasmania

The first part of the Act deals with the division and development of strata schemes as opposed to the day to day administration which is dealt with in the later part of the Act. The Act outlines the requirements for division of land by strata plan, in particular the way in which a strata plan should be presented and the attributes of the land to be shown on the plan. A single strata plan is normally used to undertake a development of land resulting in a smaller number of units. For more complex strata schemes, a developer is able to develop the land either by a staged development scheme or community development scheme. A staged development scheme enables a developer to develop the land in stages whereby the first stage of the scheme when completed and sold finances further stages of the scheme.

A community development scheme is a complex development consisting of at least one strata scheme and other forms of land development such as subdivision and/or further strata schemes. This type of development can be used by developers who wish to create a combination of residential, commercial and/or sporting facilities. The requirements contained in the Act provide developers, council, potential purchasers and the Land Titles Office with information needed to either approve the development and/or choose to purchase a lot within the scheme. It should be noted that council approval is not limited to compliance with the Act but also extends to compliance with other planning legislation which may apply.

(iii) Other Jurisdictions

New South Wales

There is a dedicated Act dealing with the development stage of strata schemes which was introduced in 2015[1]. It covers the creation of lots and common property in a strata scheme through subdivision of land by strata plan. It also sets out the legislative framework for leasehold strata schemes.

It provides a process for obtaining a strata certificate from council or accredited certifiers which authorise the registration of a strata plan. The strata certificate is only issued where the proposed development meets the requirements as set out in Part 4.

Part 5 details the approval and implementation process for staged development schemes. Part 6 deals with strata management statements and Part 9 deals with the variation or termination of strata schemes. Part 10 deals with a strata renewal process. The purpose of this Part is to facilitate the collective sale or redevelopment of freehold strata schemes in accordance with the process set out in this Part.

Queensland

There are two pieces of legislation that cover the planning and development of community titles schemes.

Part 4 of the *Land Title Act 1994* sets out the plan requirements for a community titles scheme development. Part 6A deals with community titles schemes including community management statements, changes to community titles schemes under a reinstatement process, the amalgamation and termination of community titles schemes and the creation of a layered arrangement of community titles schemes[2] from basic schemes.

A community titles scheme can only be over freehold land.

Chapter 2 of the *Body Corporate and Community Management Act 1997* deals with the establishment and development of a community titles scheme including the creation of the body corporate, common property, body corporate assets, lot entitlements, and community management statements.

Victoria

The *Subdivision Act 1988* covers the subdivision of land with owners corporations. The planning requirements, including council requirements and the registration of certified plans, are dealt with in Parts 2-4.

Part 5 deals with subdivisions with owners corporations including the creation of an owners corporation, the creation of rules, specification of lot entitlement and lot liability, common property, and winding up of owners corporations.

[1] *Strata Schemes Development Act 2015* (NSW)
[2] A grouping of community titles schemes – see section 115C of the *Land Titles Act 1994* (Qld)

The management of owners corporations is subject to a separate piece of legislation, the *Owners Corporations Act 2006*.

Western Australia

The *Strata Titles Act 1985* deals with both the planning and development of strata schemes, and the management of strata schemes. Part 2 deals with the creation of strata schemes and survey-strata schemes including the creation of lots and common property, strata plan requirements, unit entitlements of lots, common property, council certificates and approvals. Part 3 deals with the variation, termination and conversion of strata schemes.

The proposed *Strata Titles Amendment Bill 2016* also deals with both aspects. Part 3 deals with planning and development including planning approvals, and Part 4 deals with scheme documents including scheme plans, schedule of unit entitlements, and scheme by-laws.

(iv) Summary

New South Wales and Victoria have specific legislation dealing only with the planning and development aspects of strata. In Queensland the planning and development aspects are split between two pieces of legislation, one of which also deals with its subdivision requirements. In Tasmania and Western Australia the planning and development aspects and management aspects are dealt with in the same legislation.

The more recent legislation of New South Wales and the proposed Bill in Western Australia appear to pay greater attention to planning and development.

Victoria combines their strata plan and development requirements with their subdivision requirements.

Area One – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Are the planning and development requirements in the Act effective?**
2. **What additional requirements, if any, should be included?**
3. **Are the current provisions in relation to community development schemes and staged development schemes easy to understand? If you find they are not, how do you suggest they be amended to provide further clarity?**

4. **Should the planning and development aspects of strata be dealt with in legislation separate from legislation dealing with strata scheme management?**

5. **Should the planning and development aspects of strata be contained in the same legislation as the planning and development requirements for a subdivision?**

6. **Should a review of the planning and development aspects of the Act form part of a more comprehensive of all legislation dealing with land development?**

2.2 Area Two – Requirements for a strata plan

(i) Introduction

The current requirements for registration of a strata plan include the depiction of boundaries and lots. The determination of where boundaries are located within a strata plan is a critical factor in determining the location of lots and common property. It is important that the requirements for plan depiction, boundary descriptions (both horizontal and vertical) and the link to boundary site definition enable clear identification of the location of lots and common property and their boundaries. There are perceived inadequacies in the current depiction of boundaries on strata plans.

(ii) Tasmania

The requirements for a strata plan are found in section 5 of the Act. Amongst other things, a strata plan must:

a) delineate the external surface boundaries of the site and the location of the buildings in relation to those boundaries; and
b) state the title reference to the site and other particulars of its location; and
c) include a drawing illustrating the lots and distinguishing them by numbers or other symbols; and
d) define the boundaries of each lot; and
e) show the approximate area of each lot; and
f) contain other information and features required by the Recorder of Titles.

If a lot is part of a building, the strata plan may define the boundaries of the lot by reference to boundary structures without necessarily delineating the boundaries or showing the dimensions of the lot.

If a lot is separated from another lot, or from common property, by a boundary structure, the boundary is, unless otherwise stipulated in the strata plan, the centre of the boundary structure.

A strata plan must be endorsed with a certificate of a registered surveyor, in a form approved by the Recorder of Titles, certifying that the building or buildings shown on the plan are within the boundaries of the site or that any encroachment beyond those boundaries is properly authorised according to law.

A strata plan lodged with the Recorder of Titles for registration must be endorsed with a certificate of approval issued by the council for the area in which the site is situated. The plan must be accompanied by any certificates of title for the site, and any other documents that may be required by the Recorder of Titles.

If satisfied that the requirements for registration have been complied with, the Recorder of Titles must register the plan.

(iii) Other Jurisdictions

New South Wales

The general requirements for strata plan are contained in section 10 of the *Strata Scheme Development Act 2015*.

A plan intended to be registered as a strata plan must amongst other things:

(a) include a location plan, a floor plan and an administration sheet, and

(b) if the proposed strata plan is intended to create a development lot--be accompanied by:

(i) the strata development contract relating to the lot, and

(ii) the certificate of the planning authority given under section 75 (2), unless the plan is lodged by the Crown.

If the floor plan for the proposed strata scheme does not provide for common property, the floor plan must show that at least one, or part of one, of the proposed lots is superimposed on another, or part of another, of the proposed lots.

The administration sheet for the proposed strata scheme must include a surveyor's certificate for the proposed strata plan and any other information or document prescribed by the regulations.

The Registrar-General may refuse to register a plan as a strata plan if the Registrar-General considers that the boundaries of the land over which the plan is to be registered are not sufficiently defined in a plan.

A floor plan floor means a plan that:

(a) defines by lines (each a "base line") the base of the vertical boundaries of each cubic space forming the whole of a proposed lot, or the whole of a part of a proposed lot, to which the plan relates, and

(b) shows the floor area of each proposed lot, and if a proposed lot has more than one part--the floor area of each part together with the aggregate of the floor areas of the parts, and

(c) if a proposed lot or part of a proposed lot is superimposed on another proposed lot or part--shows the separate base lines of the proposed lots or parts, by reference to floors or levels, in the order in which the superimposition occurs[3].

A location plan means a plan that:

[3] Section 4 of the *Strata Schemes Management Act 2015* (NSW)

(a) relates to land the subject of a proposed strata scheme, and

(b) if the scheme does not relate to a proposed part strata parcel--delineates the perimeter of the land and the location, in relation to the perimeter, of each:

(i) building on the land, and

(ii) proposed lot or part of a proposed lot not within a building, and

(c) if the scheme relates to a proposed part strata parcel:

(i) delineates the perimeter of the site of the building of which the proposed part strata parcel forms part and the location, in relation to the perimeter, of the building and proposed part strata parcel, and

(ii) delineates the location, in relation to the perimeter of the proposed part strata parcel, of the part of the building the subject of the proposed strata scheme and each proposed lot or part of a proposed lot not within the building, and

(d) shows the particulars prescribed by the regulations.

The boundaries of a lot shown on a floor plan are:

(a) except as provided by paragraph (b):

(i) for a vertical boundary in which the base of a wall corresponds substantially with a base line--the inner surface of the wall, and

(ii) for a horizontal boundary in which a floor or ceiling joins a vertical boundary of the lot--the upper surface of the floor and the under surface of the ceiling, or

(b) the boundaries described on the floor plan relating to the lot, in the way prescribed by the regulations, by reference to a wall, floor or ceiling in a building to which the plan relates or to common infrastructure within the building.

Queensland

A plan of subdivision must —

a) distinctly show all roads, parks, reserves and other proposed lots that are to be public use land; and
b) include a statement agreeing to the plan and dedicating the public use land by—
c) the registered owner; or
d) if the mortgagee of the registered owner is in possession—the mortgagee in possession; and
e) show all proposed lots marked with separate and distinct numbers; and
f) distinctly show all proposed common property; and

g) show all proposed easements marked with separate and distinct letters; and
h) comply with the *Survey and Mapping Infrastructure Act 2003*; and
i) be certified as accurate by a cadastral surveyor within the meaning of the *Surveyors Act 2003*; and
j) have been approved by the relevant planning body, and
k) if the plan of subdivision provides for the division of 1 or more lots, or the dedication of land to public use—have been approved by the relevant planning body; and
l) be consented to by all registered mortgagees of each lot the subject of the plan and all other registered proprietors whose interests are affected by the plan; and
m) if the plan affects land subject of a conservation agreement under the *Nature Conservation Act 1992* — be consented to, in writing, by the chief executive of the department in which that Act is administered[4].

There are three formats of survey plans. A standard format plan of survey defines land using a horizontal plane and references to marks on the ground[5]. Common property for a community titles scheme may be created under the plan, but only if the plan also creates two or more lots, or the common property created is additional to common property already existing under the community titles scheme. The plan may create a lot from common property, other than common property created under a building format plan of subdivision, and within structural elements of a building or a volumetric format plan of subdivision[6].

A building format plan of survey defines land using the structural elements of a building, including, for example, floors, walls and ceilings[7]. Common property for a community titles scheme must be created under the plan unless the plan divides a lot, or amalgamates 2 or more lots, on an existing registered building format plan of subdivision. Two or more lots must be created under the plan unless the plan amalgamates two or more lots on an existing registered building format plan of subdivision, or common property for a community titles scheme is created under the plan, and the common property created is additional to common property already existing under the community titles scheme.

Except to the extent permitted under a direction given by the registrar, the boundary of a lot created under the plan, and separated from another lot or common property by a floor, wall or ceiling, must be located at the centre of the floor, wall or ceiling[8].

A volumetric format plan of survey defines land using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface[9]. Common property for a community titles scheme may be created under the plan, but only if the plan also creates two or more lots, or the common property created is additional to common property already existing under the community titles scheme.

[4] Section 50 of the *Land Title Act 1994* (Qld)
[5] Section 48B of the *Land Title Act 1994* (Qld)
[6] Section 49B of the *Land Title Act 1994* (Qld)
[7] Section 48C of the *Land Title Act 1994* (Qld)
[8] Section 49C of the *Land Title Act 1994* (Qld)
[9] Section 48D of the *Land Title Act 1994* (Qld)

The plan may divide a lot on a standard, building or volumetric format plan of subdivision[10].

Victoria

A strata plan means a plan of strata subdivision or strata redevelopment registered or approved —

a) before 30 October 1989; or
b) on or after 30 October 1989 under the provisions applied by section 44(3B) of the Act[11].

A boundary may be shown on a plan by reference to a building. Any building or part of a building that defines a boundary must be identifiable from the plan.

If a boundary on a plan is defined by reference to a building or part of a building, the plan must specify whether the boundary is one or more of the following—

a) Interior Face;
b) Median (floor and ceiling);
c) Median (wall, window, door, balustrade);
d) Exterior Face; and
e) In some other location.

Unless otherwise specified on the plan, the location of any building boundary defined as—

a) Interior Face lies along the interior face of any wall, floor (upper surface of elevated floor if any), ceiling (underside of suspended ceiling if any), window, door or balustrade of the relevant part of the building. Any internal coverings, waterproof membranes and fixtures attached to walls, floors, and ceilings are included within the relevant parcel;
b) Median (floor and ceiling) lies within the middle of the building structure of any floor or ceiling of the relevant part of a building which defines a boundary. Any elevated floor or suspended ceiling does not form part of the building structure;
c) Median (wall, window, door, balustrade) lies along the mid-point between exposed surfaces of any wall, window, door, and balustrade of the relevant part of a building. Any vertical projection of a boundary beyond the building is a projection of the median of the wall;
d) Exterior face lies along the exterior face of any wall (and vertical projection thereof), door, window, balustrade, foundation, overhanging roof, eave or guttering of the relevant external part of the building. Any vertical projection of a boundary beyond the building is a projection of the exterior face of the wall.

[10] Section 49D of the *Land Title Act 1994* (Qld)
[11] Regulation 4 of the *Subdivision (Registrar's Requirements) Regulations 2011* (Vic)

If all structures defining building boundaries and service installations or appurtenances not shown on the plan are within common property, a notation to that effect must be shown on the plan[12].

A boundary must be shown on a plan by a continuous thin line. The depiction of any structure or feature of a building on a plan that does not constitute a parcel boundary must differ significantly to that of an easement on the same plan, unless the structure or feature is the easement.

If the whole or part of a boundary is defined by a building or part of a building, the relevant boundaries must be identified on the plan by one or more of the following—

a) a thick continuous line (subject to this regulation); or
b) notation.

If the position of hatching along a parcel boundary, easement boundary, or feature of a building is used to define the location of the structure of a building, an appropriate notation to this effect must be shown on the plan[13].

Western Australia

Land may be subdivided into lots, or lots and common property, by the registration of a strata plan or a survey-strata plan.

A strata plan shall, amongst other things:

a) consist of a location plan and a floor plan in respect of the parcel; and
b) where required, contain a statement in the prescribed form describing all of the boundaries of a lot, or part of a lot, on the plan that are fixed by reference to a building or part of a building; and
c) bear a statement containing such particulars as may be necessary to identify the title to the parcel; and
d) have endorsed on it the name of the scheme; and
e) have endorsed on it the address of the parcel; and
f) contain such other features as may be prescribed[14].

A survey-strata plan shall, amongst other things —

a) contain a survey plan in respect of the parcel, that is a plan that defines, in the prescribed manner, the boundaries of lots and common property by dimensions and survey information obtained from a survey of the parcel; and
b) bear a statement containing such particulars as may be necessary to identify the title to such parcel; and
c) show the area of each lot and of any common property; and

[12] Regulation 10 of the *Subdivision (Registrar's Requirements) Regulations 2011* (Vic)
[13] Regulation 11 of the *Subdivision (Registrar's Requirements) Regulations 2011* (Vic)
[14] Section 5 of the *Strata Titles Act 1985* (WA)

d) have endorsed on it the name of the scheme; and
e) have endorsed on it the address of the parcel; and
f) contain such other features as may be prescribed.

Floor plan means a plan, consisting of one or more sheets, which —

a) defines by lines (referred to as base lines) the base of each vertical boundary of every cubic space forming the whole of a proposed lot, or the whole of any part of a proposed lot, to which the plan relates; and
b) shows the floor area of any such cubic space, and where any such cubic space forms part only of a proposed lot, the aggregate of the floor areas of every cubic space that forms part of the proposed lot; and
c) where proposed lots or parts thereof to which the plan relates are superimposed on other proposed lots or parts thereof to which the plan relates shows the base lines in respect of the proposed lots or parts thereof that are so superimposed separately from those in respect of the other proposed lots or parts thereof upon which they are superimposed, and specifies, by reference to floors or levels, the order in which that superimposition occurs.

Location plan, in relation to a strata plan, means a plan, consisting of one or more sheets, which relates to land and delineates the perimeter of that land and, in relation to that perimeter, the location of any building erected on that land and of any proposed lots or part of proposed lots not within any such building.

(iv) Summary

All jurisdictions recognise the importance of survey requirements, particularly in relation to the definitions of boundaries.

Some jurisdictions, such as Victoria and Queensland, appear to apply similar, if not the same, survey plan requirements for subdivisions to strata developments.

Western Australia and New South Wales require floor plans and location plans.

Area 2 – Some Matters for Consideration

<u>Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.</u>

1. **Are the current requirements for a strata plan adequate?**
2. **Do they provide for proper boundary definition?**
3. **What additional requirements should be introduced?**
4. **Should a location plan and floor plan be added to the requirements?**

5. What role does the Council play in relation to the approval of strata plans and what role should it play if you believe it should be different?

2.3 Area Three – Different regulatory frameworks depending on the number of lots, use of those lots and/or the configuration of the development (conjoined, high-rise or villas)

(i) Introduction

The nature of strata developments can differ based on the number of lots, use of those lots and/or the configuration of the development. In other States a typical strata development tends to be high-rise or conjoined side-by-side, with many being used as holiday rentals. The number of lots per typical strata development tends to be higher than in typical strata developments in Tasmania.

Villa units are popular in Tasmania with a boom in two-lot strata developments in the late 1980s and 1990s. It is anticipated that urban areas will, however, see more high-rise developments as smaller sized parcels form most of the land available for development.

A two-lot villa strata development entails different considerations to those in a twenty-lot development in a high-rise building. Anecdotal evidence suggests that some lot owners in two-lot strata developments are unaware it is a strata development, especially if there are two separate drive-ways and the lots are separated by a fence.

Legislation in mainland jurisdictions recognises the limitations of two-lot strata in terms of owner's time and resources, and the difficulty of passing resolutions that require a majority or unanimous resolution or reaching agreement. In practice it can prove more difficult to obtain agreement amongst lot owners in a two-lot development with majority votes impossible to achieve unless both lot owners agree. For example, agreement may not be reached on which insurance company to use.

In some jurisdictions, two-lot strata are exempt from a selection of requirements. In other jurisdictions requirements are based, in part, on the use of the lots in a development. Should Tasmania follow the lead of other jurisdictions and differentiate between developments based on size, use and/or configuration of the development?

(ii) Tasmania

The Act applies equally to all strata developments regardless of the number or type of lots or their use. Each development has a body corporate with the only difference being the number of members. Each body corporate has the same responsibilities.

The Act does not currently provide for differences either in terms of numbers of lots, the use of those lots, or the configuration of the development.

(iii) Other Jurisdictions

New South Wales

Special provisions are made for two-lot schemes. The two owners automatically form the Strata Committee removing the requirement for an election[15]. If the buildings in the scheme are physically detached from each other, the owners can decide NOT to have a Capital Works Fund provided there are no additional buildings or common property in the scheme[16].

Building insurance is NOT compulsory where the two buildings in the scheme are physically detached and there are no additional buildings on common property in the scheme. Each owner may then independently insure their own lot[17].

There are NO requirements for two-lot schemes to have any audit of accounts and financial statements UNLESS the annual budget exceeds $250,000[18].

Queensland

There are five types of community title schemes and for each there are regulation modules which contain the regulations that apply specifically to that type. There are also regulations that apply to all types.

The regulation modules are:

- Standard;
- Accommodation;
- Commercial;
- Small-Schemes; and
- Specified Two-Lot Scheme.

The Standard Module[19] is the regulation module that applies to a community titles scheme if no other regulation module applies to it.

The Accommodation Module is the regulation module that applies to a community titles scheme where the lots are predominantly accommodation lots , where the community titles scheme was first created it was intended that the lots were to be predominantly accommodation lots but did not occur, or where predominantly accommodation lots in the scheme were accommodation lots but are no longer.

[15] Section 30 of the *Strata Schemes Management Act 2015* (NSW)
[16] Both owners must decide this by unanimous resolution at a meeting otherwise a 10 year plan will have to be done
[17] Section 160 of the *Strata Schemes Management Act 2015* (NSW) - however, both owners must decide to forgo insurance cover by unanimous resolution at a meeting
[18] Section 95 of the *Strata Schemes Management Act 2015* (NSW)
[19] *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)

The Commercial Module[20] is the regulation module that applies to a community titles scheme where the lots are predominantly commercial lots[21], where the community titles scheme was first created it was intended that the lots were to be predominantly commercial lots but did not occur, or where predominantly commercial lots in the scheme were commercial lots but are no longer.

The Small Schemes Module is the regulation module that applies to a community titles scheme, if the scheme is a basic scheme, there is no letting agent for the scheme, and there are no more than six lots included in the scheme.

The Specified Two-Lot Scheme Module[22] is the regulation module that applies to a community titles scheme that is a specified two-lot scheme.

Victoria

Two-lot subdivisions are exempt[23] from many of the legal requirements placed on larger owners corporations (formerly bodies corporate).

If the owners corporation has two lots, it does not have to get a special resolution to bring legal proceedings, use approved forms as notices to collect fees, take out reinstatement and replacement insurance or public liability insurance for the common property in the name of the owners corporation, take out insurance for lots where a lot or common property is above or below another lot, give the chairperson a casting vote or restrict votes of lot owners if fees are unpaid.

The owners corporation is also exempt from legal requirements for unanimous resolutions, special resolution and interim special resolutions, financial reporting and financial statements, maintenance plans and funds, annual meeting, general meeting and ballot procedures and keeping records for and establishing an owners corporation register.

An owners corporation with two lots must prepare owners corporation certificates, repair and maintain any service relating to a lot that benefits more than one lot and common property, comply with other laws, for example, fences around swimming pools, and care for the common property.

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[20] *Body Corporate and Community Management (Commercial Module) Regulation 2008* (Qld)

[21] Regulation 3 of the *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (Qld) provides that ***commercial lot*** means a lot that—
(a)is used for commercial (including retail) or industrial purposes; and
(b)is not an accommodation lot or residential lot.

[22] *Body Corporate and Community Management (Specified Two-Lot Module) Regulation 20011* (Qld)

[23] Section 7(1) of the *Owners Corporations Act 2006* (Vic)
An owners corporation for a 2-lot subdivision, is exempt from compliance with—
(a) sections 18, 31, 32, 59, 60, 61, 62, 65, 93, 94, 95, 96 and 97; and
(b) Divisions 2, 3 and 4 of Part 3; and
(c) Divisions 1, 2, 3, 4 and 5 of Part 4; and
(d) Divisions 1 and 2 of Part 9; and
(e) Division 1 of Part 10.

Individual lot owners in a two-lot subdivision are responsible for any common property and risk significant legal and financial liabilities if someone is injured or the building is damaged.

Western Australia

Certain sections of the *Strata Titles Act 1985* do not apply to companies[24] for two-lot schemes[25], and three, four and five-lot schemes[26].

A two-lot scheme is not required to have minutes of meetings, books of account, statements of account, a mail box, roll of proprietors and related information, or funds for administrative purposes. Regulations may also be made prescribing other sections that do not apply to two-lot strata schemes.

The owners of the lots in a two-lot strata scheme can, however, decide that they will abide by these requirements.

A company of a three, four or five-lot scheme can, by resolution without dissent, make a by-law to the effect that it is not required to have minutes of meetings, books of account, statements of account, a mail box, roll of proprietors and related information, or funds for administrative purposes, or any other section prescribed in regulations.

(iv) Summary

Governments across Australia have been faced with the question of whether the same requirements apply equally to all schemes regardless of the use of the lots or the number of lots.

Out of the jurisdictions discussed above, Tasmania is the only jurisdiction that does not have different requirements depending on the use and/or the number of lots. New South Wales, Victoria and Western Australia differentiate based on the number of lots, and Queensland differentiates based both on the number of lots and the predominant use of those lots.

Tasmania's strata environment is changing and there is value in considering different requirements dependent on both number of lots and their predominant use.

It should be noted that no jurisdiction differentiates on the configuration of the development.

[24] Means a body corporate constituted under section 32 whether for a strata scheme or a survey-strata scheme
[25] Section 36A of the *Strata Titles Act 1986* (WA)
[26] Section 36 B of the *Strata Titles Act 1986* (WA)

Area Three – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should different rules apply to strata developments, based on the number of residential lots in the strata development, the use of the lots, or the configuration of the development?**

2. **If you agree that different rules should apply based on size, use or configuration of the development, which rules should lots be exempted from and how is that exemption applied?**

3. **Should Tasmania adopt a similar model to that in Queensland were regulatory modules have been developed for different types of strata developments?**

4. **Given the increased need for affordable and social housing, moves towards increased density, inclusionary zoning, use of density bonus and the like (in Tasmania and in other jurisdictions), are there any considerations or specific provisions relating to social and affordable housing that should be considered?**

5. **Should different rules apply to strata developments that are in part or whole designed to encourage and deliver social and affordable housing? What might this look like?**

2.4 Area Four – Management or Disclosure Statements

(i) Introduction

Management or disclosure statements are statements that are lodged with a strata plan and provide information about the intentions of the developer for that development.

Management statements provide the relevant council and potential purchasers with an idea of how the development is to be undertaken (if there are stages, which one comes first, second, third), what it is going to look like, what is included in each stage and when they are to be started and completed, the materials and finishes for buildings, the shared spaces such as a green areas, facilities such as a swimming pool, and any other related information.

Management or disclosure statements are effective tools for setting out the rights and responsibilities of the body corporate, lot owners, and tenants. In addition, the management or disclosure statement could be used to better define and identify common property and shared infrastructure.

(ii) Tasmania

A disclosure statement is required for a staged development scheme[27] and a management statement is required for a community development scheme[28] and provides the type of information described above. The purpose of a disclosure statement is to provide detailed information regarding the proposed development both for the relevant council and for potential purchasers. A management statement in addition provides information regarding any bodies corporate that are to be established as part of the development.

No similar statement is required for a strata development that does not form part of a staged development scheme or a community development scheme.

(iii) Other Jurisdictions

New South Wales

The legislation requires a strata management statement for certain strata developments, unless this requirement has been waived by the Registrar-General[29].

Schedule 4 contains a list of the things that a strata management statement **must** provide for and includes the establishment of a building management committee and its office holders, the functions of the committee and the office holders, dispute resolution, and the method used to achieve a fair allocation of the costs of shared expenses, and the manner in which notices can be served[30]:

[27] Section 35(2) of the *Strata Titles Act 1998* lists what must be included in a disclosure statement (Tas)
[28] Section 52(2) of the *Strata Titles Act 1998* lists what must be included in a management statement (Tas)
[29] Section 99 of the *Strata Schemes Development Act 2015* (NSW)
[30] Schedule 4 of the *Strata Schemes Development Act 2015* (NSW)

A strata management statement **may** include provisions regulating, or providing for the regulation of the location, control, management, use and maintenance of a part of the building or its site that is a means of access, the storage and collection of garbage on and from the various parts of the building, meetings of the building management committee, and the keeping of records of proceedings of the committee.

A strata management statement **may** include particulars relating to safety and security measures, the appointment of a managing agent, the control of unacceptable noise levels, prohibiting or regulating trading activities, service contracts and an architectural code to preserve the appearance of the building.

Queensland

A community titles scheme requires a community management statement[31].

The community management statement for a community titles scheme, in addition to identifying the scheme land, must identify the name for the scheme, the name of the body corporate, the regulation model applying to the scheme, and include a contribution schedule, an interest schedule and services location diagrams for all service easements.

It also includes what the unit entitlements for contributions are and how they are calculated, and if they are different, an explanation as to why they are different, and if they do not reflect the respective market values of the lots, an explanation as to why they do not.

Further, it also includes by-laws unless the by-laws are to be the model by-laws, and whether the scheme is intended to be developed progressively.

Victoria

Victoria does not appear to have a requirement for either a management statement or a disclosure statement

Western Australia

The Western Australian consultation paper contained proposal 15 that a community development statement will be compulsory for every community title scheme and proposal 16 that a community development statement must be approved by the Western Australian Planning Commission (WAPC) before being registered with Landgate.

It is proposed that the development statement set out the detailed land use and development controls and developer covenants for the intended community title scheme. It is intended to fulfil a number of purposes for different parties including regulators, developers, utility service providers, architects, designers and builders, and owners and occupiers of individual lots[32].

Upon approval by the WAPC a community development statement will have the status and effect of a planning instrument for the purpose of planning decision-making and will provide details of planning, land use, design and implementation of the proposed development, including infrastructure, facilities and amenities to be provided.

[31] Section 66 of the *Body Corporate and Community Management Act 1997* (Qld)
[32] *Strata Titles Act Reform – Consultation Paper*, Landgate, October 2014, pp13-16 (WA)

It is proposed that the development statement may be in the form of text, maps, plans, tables, diagrams, sketches, specifications, or schedules as appropriate and required by the WAPC. Upon registration in Landgate, the development statement becomes binding on the developers and decision-makers.

However, the proposed Amendment Bill does not appear to include this proposal.

The current legislation does provide that when a strata/survey-strata plan is lodged for registration a management statement may be registered with it. A management statement is a document setting out the by-laws and may include by-laws in relation to any matter specified in Schedule 2A.

Schedule 2A includes the following:

1. the amendment or repeal of a by-law contained in Schedule 1 or Schedule 2;
2. any additional by-law that may be made under section 42;
3. the control or preservation of the essence or theme of the development under the scheme;
4. architectural and landscaping guidelines to be observed by proprietors;
5. plot ratio restrictions and open space requirements;
6. the control, management, use and maintenance of any part of the common property, including any special facilities provided on the common property;
7. matters affecting the provision of, and payment for internal fencing on the parcel;
8. the maintenance of water, sewerage, drainage, gas, electricity, telephone and other services;
9. insurance of the common property;
10. safety and security;
11. the carrying on of any business or trading activity by the strata company, and the method of distributing and sharing any profit or loss; and
12. procedures to be followed for the resolution of disputes as a prerequisite to the making of an application to the State Administrative Tribunal for relief under this Act.

(iv) Summary

Except for Victoria, all other jurisdictions require a form of statement in the form of a management, disclosure or development statement setting out information of value to several parties including regulators, potential lot owners, and the general public.

Western Australia is proposing that its community development statement has the status and effect of a planning instrument. A community development statement will be required for all community title schemes which may contain a mix of uses and have different management levels. A community development statement will differ depending on the complexity of the development.

The current legislative provisions in Tasmania require a disclosure statement for a staged development scheme and a management statement for a community development scheme. No statement is required for a strata scheme which is not part of a staged development scheme or a community development scheme.

Area Four – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should a management statement or disclosure statement be required for all strata developments, and if so, what should that statement cover?**

2. **What additional requirements would you suggest be included in a disclosure statement or management statement for a staged development scheme and community development scheme respectively?**

3. **Should a statement be used to establish what is common property, service infrastructure and respective maintenance responsibilities?**

4. **Should a penalty apply for non-compliance?**

2.5 Area Five – Unit Entitlements

(i) Introduction

Unit entitlements are extremely important as they are used as the basis for determining the share of costs incurred by the body corporate in relation to common property, for example insurance premiums. They are also used for determining how much weight your vote will have at meetings.

As a strata owner or a potential purchaser of a strata title property it is important to know what the unit entitlement for your lot is and what the total is for all unit entitlements in the development, and what a unit entitlement means.

(ii) Tasmania

Each lot created by a strata plan has a unit entitlement. There are two types of unit entitlements in Tasmania being general unit entitlements and special unit entitlements[33].

Unit entitlements must be fixed on a fair and equitable basis. There is no indication, however, of what this means and what should be considered when fixing unit entitlements.

A general unit entitlement operates for all purposes of the Act, except where a matter is the subject of a special unit entitlement. A general unit entitlement can be used to determine the portion of costs, for insurance or general maintenance for example, that owners of a strata are required to contribute to the body corporate. It is also used for the purposes of voting on resolutions put to the body corporate for decision and determines the share of common property.

A body corporate may, however, approve/create special unit entitlements which can be set at different values than the general unit entitlements.

Special unit entitlements can be made for fixing the proportionate contribution to be made by the owner of the lot to the body corporate, or the owner's proportionate interest in the common property, or the number of votes to be exercisable by the owner of the lot at a general meeting of the body corporate, or the proportion of the body corporate's income to be apportioned to the owner of the lot.

For example, in a three-lot development each lot has a general unit entitlement of one. The owners of the lots have agreed that a special unit entitlement will be set for fixing the proportionate contribution to be made to the body corporate, so that lot one has a special unit entitlement of two and lots two and three will have a special unit entitlement of one each. Lot one is therefore responsible for paying two quarters of the total contribution to be made to the body corporate while lots two and three are responsible for paying one quarter each.

[33] Section 16 of the *Strata Titles Act 1998 (Tas)*

Special unit entitlements are used to vary the unit entitlements for specific matters.

Unit entitlement values can be changed by a unanimous resolution of the body corporate[34]. In staged development schemes or community development schemes unit entitlements of the lot being developed will change over time as land is developed and removed from that lot. It will start with a very high unit entitlement and end up with a low unit entitlement.

(iii) Other Jurisdictions

New South Wales

The administration sheet for the proposed strata scheme, which accompanies the plan, must include a proposed schedule of unit entitlement relating to the scheme[35].

Unit entitlements for a strata scheme are apportioned on a market value basis[36]. Market value in relation to a building and its site, means the value of the building and its site determined in accordance with the regulations[37]. The basis for determining the value of a lot or development lot is to estimate the amount for which the lot or development lot would be sold by a willing but not anxious seller to a willing but not anxious buyer[38].

Queensland

A lot entitlement, for a lot included in a community titles scheme, means the number allocated to the lot in the contribution schedule or interest schedule in the community management statement[39].

For the contribution schedule for a community titles scheme allocating respective lot entitlements must be consistent with either the equality principle or the relativity principle.

The ***equality principle*** is the principle that the lot entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal[40].

The ***relativity principle*** is the principle that the lot entitlements must clearly demonstrate the relationship between the lots by reference to one or more particular relevant factors such as how the community titles scheme is structured, the nature, features and characteristics of the lots, the purposes for which the lots are used, the impact the lots may have on the costs of maintaining the common property, and the market values of the lots.

In deciding the contribution schedule lot entitlements for a community titles scheme or the interest schedule lot entitlements for a community titles scheme, regard must be given to how the scheme is structured, the

[34] Section 17 of the *Strata Titles Act 1998* (Tas)
[35] Section 10 of the *Strata Schemes Development Act 2015* (NSW)
[36] Clause 2 of Schedule 2 of the *Strata Schemes Development Act 2015* (NSW)
[37] Section 154 of the *Strata Schemes Development Act 2015* (NSW)
[38] Regulation 7 of the *Strata Schemes Development Regulation 2016* (NSW)
[39] Section 46 of the *Body Corporate and Community Management Act 1997* (Qld)
[40] For example, a commercial community titles scheme in which the owner of 1 lot uses a larger volume of water or conducts a more dangerous or higher risk activity than the owners of the other lots

nature, features and characteristics of the lots included in the scheme, and the purposes for which the lots are used.

The contribution schedule lot entitlement for a lot is the basis for calculating the lot owner's share of amounts levied by the body corporate, and the value of the lot owner's vote for voting on an ordinary resolution if a poll is conducted for voting on the resolution[41].

The interest schedule lot entitlement for a lot is the basis for calculating the lot owner's share of common property, the lot owner's interest on termination of the scheme, and the value of the lot, for the purpose of a charge, levy, rate or tax that is payable directly to a local government, the Commissioner of State Revenue, or other authority which is calculated and imposed on the basis of value.

Victoria

A plan providing for the creation of an owners corporation or for the merger of owners corporations must specify details of lot entitlement and lot liability. The basis for the allocation of lot entitlement and lot liability and any other prescribed information must be provided to the Registrar in a manner acceptable to the Registrar. The prescribed information that a document must contain is not limited to information about the owners corporation or lot entitlement or lot liability[42].

Lot entitlement means a number specified in the plan as the lot entitlement for that lot, representing the extent of the lot owner's interest in any common property[43].

Lot liability means a number specified in the plan as the lot liability for that lot, representing the proportion of the administrative and general expenses of the owners corporation that the lot owner is obliged to pay[44].

Lot liability and lot entitlement can be changed. If there is a unanimous resolution of the members, the owners corporation may apply to the Registrar to alter the lot entitlement or lot liability.

In making any change to the lot entitlement, regard must be had to the value of the lot and the proportion that value bears to the total value of the lots in the development.

In making any change to the lot liability, consideration must be had to the amount that it would be just and equitable for the owner of the lot to contribute towards the administrative and general expenses.[45]

Western Australia

A strata plan[46] or survey-strata plan[47] is to be accompanied by a schedule specifying, in a whole number, the proposed unit entitlement in respect of each lot into which the parcel is to be subdivided and specifying also the proposed aggregate unit entitlement.

[41] Other than for the owner of a lot included in a specified two-lot scheme
[42] Section 27F of the *Subdivision Act 1988* (Vic)
[43] Section 3 of the *Subdivision Act 1988* (Vic)
[44] Section 3 of the *Subdivision Act 1988* (Vic)
[45] Section 33 of the *Subdivision Act 1988* (Vic)
[46] Section 5 of the *Strata Titles Act 1985* (WA)
[47] Section 5A of the *Strata Titles Act 1985* (WA)

The unit entitlement of a lot determines the voting rights of a proprietor, the quantum of the undivided share of each proprietor in the common property, and the proportion payable by each proprietor of contributions levied.

Unit entitlements are to be set in accordance with valuations of the lots and must not be greater than 5% or less than 5% of the proportional value of the aggregate value of all lots in the development. In some cases, a certificate from a licensed valuer must accompany a change in unit entitlements[48].

It has been proposed in the 2014 Consultation Paper that where community lots are created in stages, unit entitlements be reallocated based on the values the Valuer-General issues for rating and taxing purposes[49].

Common property is held by lot owners as tenants in common in shares proportional to the unit entitlements of their respective lots.

(iv) Summary

Unit entitlements or lot entitlements exist in all jurisdictions mentioned in this paper. They are used to determine a lot owner's share of common property, a lot owner's contribution to the body corporate, and voting rights.

Queensland, Victoria and Tasmania have two types of entitlements. In addition to a unit entitlement Tasmania has special unit entitlements, Victoria has a lot liability, and Queensland has an interest schedule lot entitlement.

New South Wales and Western Australia only have one type of unit entitlement.

In New South Wales, Western Australia, Victoria and Queensland the basis of an entitlement is the value of a lot as a proportion of the total value of all lots in a development. In making any change to the lot entitlement, regard must be had to the value of the lot and the proportion that value bears to the total value of the lots in the development.

In Tasmania the method used for setting unit entitlements must be fair and equitable. There is no reference to values.

[48] Sections 14-15 of the *Strata Titles Act 1985* (WA)
[49] *Strata Titles Act Reform – Consultation Paper*, Landgate, October 2014, p 22 (WA)

Area Five – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **What do you think should be used as the basis for determining unit entitlements?**

2. **For what additional circumstances, if any, could a special unit entitlement be established?**

2.6 Area Six – Common Property

(i) Introduction

The question of what is and what is not common property can often be difficult to answer. Does it include all service infrastructure? Is it to the middle of the floor, walls and ceiling? Is the fence between two lots common property? These are some examples of the questions that can arise in relation to the legislative definition of common property. All jurisdictions face the same question.

Once the question of what is and what is not common property has been answered, related questions arise as to who is responsible for managing the common property, how is it to be maintained and who is responsible for paying that maintenance.

It is important to correctly answer these questions as significant costs may be incurred to repair or erect buildings on common property, and to undertake general maintenance of common property.

(ii) Tasmania

Land registered under the *Land Titles Act 1980* may be divided into lots and common property by registering a strata plan. Common property is generally a fundamental part of a strata scheme.

In Tasmania there are currently two sections in the Act which attempt to define common property. The first provides that common property for a strata scheme or community development scheme consists of all land within the scheme that is not within the boundaries of a lot; and all other property administered by the body corporate for the relevant scheme.

In a case where the roof of a building forms part of the common property, the guttering attached to the roof or part of the roof is taken to be included in the common property.

The common property for a strata scheme or community development scheme does not include land designated for future development in the master plan for a staged development scheme or a community development scheme[50].

The second provides that the common property consists of parts of a site (including buildings or parts of buildings and improvements) that are not within a lot, and the service infrastructure.

However, a part of the service infrastructure within a lot, and solely related to supplying services to the lot, is common property only if it is within a boundary structure separating the lot from another lot or from common property[51].

[50] Section 3A of the *Strata Titles Act 1998* (Tas)
[51] Section 9 of the *Strata Titles Act 1998* (Tas)

The body corporate holds the common property in trust for lot owners with each lot owner being the beneficial owner of the common property holding it as tenants in common in shares proportionate to the unit entitlements of their respective lots[52].

(iii) Other Jurisdictions

New South Wales

Common property, in relation to a strata scheme or a proposed strata scheme, means any part of a parcel that is not comprised in a lot (including any common infrastructure that is not part of a lot[53]). Upon registration of a strata plan, plan of subdivision, or notice of conversion, the common property vests in the owners corporation of the strata scheme[54].

The owners corporation of a strata scheme holds the common property in the scheme as agent for the owners as tenants in common in shares proportional to the unit entitlement of the owners' lots[55].

A strata scheme has the option of having no common property[56].

Queensland

Common property is land that is not included in a lot. It is effectively, freehold land forming part of the scheme land but not forming part of a lot included in the scheme[57]. Each community title scheme must have common property[58]. Common property includes all utility infrastructure except in some circumstances detailed in section 20.

Common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.

Victoria

Common property is defined as meaning land shown as common property on a plan of subdivision or a plan of strata or cluster subdivision. The owners corporation is responsible for the common property. An owners corporation must repair and maintain the common property and the chattels, fixtures, fittings and services related to the common property or its enjoyment. A lot owner's interest in the common property is represented by the lot entitlement specified in the plan[59].

[52] Section 10 of the *Strata Titles Act 1998* (Tas)
[53] Section 3 of the *Strata Schemes Development Act 2015* (NSW)
[54] Section 21 of the *Strata Schemes Development Act 2015* (NSW)
[55] Section 28 of the *Strata Schemes Development Act 2015* (NSW)
[56] Section 29 of the *Strata Schemes Development Act 2015* (NSW)
[57] Schedule 6 of the *Body Corporate and Community Management Act 1997* (Qld)
[58] Section 10 of the *Body Corporate and Community Management Act 1997* (Qld)
[59] Section 3 of the Owners Corporation Act 2006 (Vic)

Western Australia

The 2014 Consultation Paper proposed that community title schemes may have two or three management levels with each level capable of having common property.

Unlike most other States, where common property is generally a fundamental part of community title schemes, it is proposed that common property is optional at all levels of a community title scheme[60].

It is proposed that the current approach of owners of lots in strata titles schemes co-own common property as tenants in common in shares determined by their relative unit entitlements. Therefore, at the community level community property will be owned jointly by the owners of the community lots. If community property is subject to a strata plan, owners of strata lots will co-own a share of common property in the strata scheme and a share of the community property as tenants in common[61].

(iv) Summary

The definition of common property used by jurisdictions is generally similar. In each jurisdiction the owners of strata lots have an interest in the common property.

A significant difference, however, is whether it is compulsory for a strata development to have common property. In New South Wales and Western Australia common property is optional. Tasmania, Victoria and Queensland appear to have a requirement that all strata developments must have common property.

Area Six – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should the option of having no common property be introduced in Tasmania, and if so, how would this be implemented?**

2. **Should the strata plan and associated management or disclosure statements include further definition and/or information regarding common property (i.e. describing further what it includes and excludes)?**

3. **Is a single comprehensive definition of common property required? If so, what should it include?**

[60] *Strata Titles Act Reform – Consultation Paper*, Landgate, October 2014, p 11 (WA)
[61] *Strata Titles Act Reform – Consultation Paper*, Landgate, October 2014, pp 11-12 (WA)

4. Are the current provisions clear as to when service infrastructure is common property? If it is unclear, what changes need to be made?

2.7 Area Seven – Activation of a Body Corporate

(i) Introduction

A body corporate or owners corporation is created upon registration of the strata plan. In many cases the developer responsible for the creation of the strata scheme is the only member of the initial body corporate or owners corporation. As the developer sells strata units the purchasers of those units automatically become members of the body corporate or owners corporation.

The most effective way of activating a body corporate is holding a meeting with a nominated person responsible for organising that meeting.

Some people who have purchased a strata unit in a two-unit development do not understand that they are a member of the body corporate or are led to believe that it is not a strata title unit.

Experience shows that a significant number of bodies corporate are inactive meaning that they do not carry out legislatively required functions such as, in Tasmania, holding the necessary insurance and enforcing the by-laws. What this means is that each member of an inactive body corporate is as equally liable for any loss suffered as a result of non-compliance with relevant legislation as an active body corporate. That is, inactivity does not relieve the owners of strata units in the scheme from their responsibility as a member of the body corporate.

(ii) Tasmania

Recent amendments aimed at clarifying the responsibility on the developer to activate the body corporate are set out in section 75.

Under section 75 it is the duty of the original proprietor (developer) to call and hold the first annual general meeting of the body corporate, which must be held either within three months after the registration of the strata plan, or on the sale of at least one-half of the lots contained in that plan whichever is the earlier.

A maximum penalty of 50 penalty units ($8 400) applies for non-compliance.

This section does not apply to those developments that were established before the amendment was introduced in 2006.

(iii) Other Jurisdictions

New South Wales

The original owner must convene and hold the first Annual General Meeting of the owners corporation no later than two months after the end of the initial period. Non-compliance with this requirement can result in a maximum penalty of 10 penalty units ($1100).

The initial period of an owners corporation of a strata scheme is defined as meaning the period commencing on the day the owners corporation is constituted and ending on the day there are owners of lots in the strata scheme (other than the original owner, the sum of whose unit entitlements is at least one-third of the aggregate unit entitlement)[62].

The first Annual General Meeting Agenda must include, amongst other things, the following items:

(a) to decide whether the amount of a contribution required to be made to the administrative fund or capital works fund should be confirmed or varied;

(b) to discuss the preparation of the 10-year capital works fund plan;

(c) to determine the number of members of the strata committee and to elect the strata committee;

(d) to decide whether insurance taken out by the owners corporation should be confirmed, varied or extended;

(e) to decide whether the by-laws for the strata scheme should be altered or added to;

(f) to decide whether a strata managing agent should be appointed by the owners corporation and, if appointed, what functions of the owners corporation should be delegated to the strata managing agent;

(g) to receive the documents required to be provided;

(h) to consider the accounting records and last financial statements prepared;

(i) to consider the initial maintenance schedule; and

(j) to consider building defects and rectification.

The documents that are to be provided at the first Annual General Meeting include:

(a) all plans, specifications, occupation certificates or other certificates (other than certificates of title for lots), diagrams, depreciation schedules and other documents (including policies of insurance) relating to the parcel or any building on the parcel;

(b) the certificate of title for the common property, the strata roll and any notices or other records relating to the strata scheme; and

(c) the initial maintenance schedule.

Non-compliance with this requirement can result in a maximum penalty of 100 penalty units ($11 000).

Queensland

The original owner must call and hold the first annual general meeting of the body corporate within two months after more than 50% of the lots included in the community titles scheme are no longer in the ownership of the original owner or six months elapse after the establishment of the scheme.

[62] Section 4 of the *Strata Schemes Management Act 2015* (NSW)

The agenda for the meeting must include the following items:

(a) adopting or reviewing budgets, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;

(b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;

(c) choosing the members of the committee;

(d) providing for the custody and use of the body corporate's seal;

(e) deciding what issues are reserved for decision by ordinary resolution; and

(f) deciding whether the by-laws should be amended or repealed.

Failure to hold the first meeting in accordance with this section has a maximum penalty of 150 penalty units ($20 017.50)[63].

If the original owner does not call and hold the first annual general meeting as required, the order of an adjudicator under the dispute resolution provisions may include an order appointing a person to call the first annual general meeting within a stated time. The original owner is still liable for not calling and holding the first annual general meeting.

Documents that the original owner must give to the body corporate at the first annual general meeting include:

(a) all policies of insurance taken out by the original owner for the body corporate;

(b) documents in the original owner's possession or control relevant to the community titles scheme, including, for example, the body corporate's roll, books of account, meeting minutes, registers, any body corporate manager or service contractor engagement or letting agent;

(c) administrative and sinking fund budgets showing the body corporate's estimated spending for the first financial year; and

(d) a detailed and comprehensive estimate of the body corporate's sinking fund expenditure for the scheme's first 10 financial years that must include an estimate for the repainting of common property and of buildings that are body corporate assets.

Failure to provide at the first meeting any or all document that are in possession of the original owner in accordance with this section has a maximum penalty of 150 penalty units ($20 017.50)[64].

[63] Regulation 77 of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)
[64] Regulation 79 of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)

Victoria

The applicant for registration of a plan of subdivision which provides for the creation of an owners corporation must convene the first meeting of the owners corporation within 6 months of the registration of the plan[65]. The documents that must be produced at this meeting include:

(a) the owners corporation register;

(b) any accounts or records made on behalf of the owners corporation;

(c) the maintenance plan (if any);

(d) any contracts, leases and licences binding on or benefiting the owners corporation; and

(e) any insurance policies in force in relation to the property .

Western Australia

The scheme developer of the initial subdivision of land by registration of a strata titles scheme must, within three months after registration of the scheme, convene a general meeting of the strata company for the scheme.

The scheme developer must do so even if the scheme developer is no longer a member of the strata company and even if there are no other members of the strata company.

If there is another member of the strata company, a member of the strata company may convene the meeting if the scheme developer fails to do so.

The scheme developer of a subdivision of land by a strata titles scheme must ensure that all the key documents for the subdivision that come into the possession or control of the scheme developer are retained. All the key documents for the subdivision that the scheme developer possesses or controls are to be given to the strata company at the first general meeting of the strata company following the subdivision, or if the key document comes into the possession or control of the scheme developer after that meeting as soon as reasonably practicable after it comes into the possession or control of the scheme developer.

(iv) Summary

The primary method used by all jurisdictions to activate bodies corporate is a requirement for the developer/first proprietor to hold a meeting and in some cases a requirement to provide specific documentation at that meeting. Queensland and New South Wales also stipulate what should be on the Agenda for the first Annual General Meeting.

Jurisdictions recognise the importance of holding the first Annual General Meeting of a body corporate or equivalent and with failure to comply risking a monetary penalty being applied.

[65] Section 66 of the *Owners Corporations Act 2006* (Vic)

These provisions are effective for ensuring that future bodies corporate are activated but unless specific legislation is passed, they do not act retrospectively to capture developments prior to the relevant provisions being introduced.

Non-active body corporates are at risk of being in breach of legislative provisions particularly where they are required to take positive action, for example obtain the required insurance. As all lot owners are members of the body corporate they are individually in breach as well as in breach as a body corporate.

Area Seven – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Who should be responsible for activation of a body corporate in existence prior to the current provisions requiring the original owner/developer to hold the first Annual General meeting, and who should be notified of its activation?**

2. **Should the Act provide what items should be included on the Agenda for the first Annual General Meeting?**

3. **What documents should be required to be presented by the original owner/developer at the first Annual General Meeting?**

4. **Are the current sanctions for non-compliance with a legislative provision adequate and appropriate?**

5. **Should there be certain disclosures or requirements in relation to the strata scheme on a sale of property within that scheme? If so, how should this be mandated and effected?**

2.8 Area Eight – Meeting Procedures

(i) Introduction

The holding of meetings is an important function of an active body corporate. The introduction of electronic communications such as email and skype provides an opportunity for unit owners to be included at body corporate meetings without being physically present and assists with obtaining a quorum. Legislation introduced in the 1990s or earlier may not specifically provide for the use of technology for meeting procedure requirements.

(ii) Tasmania

Sections 75-78 of the Act deal with procedures for meetings of the body corporate including voting. These sections do not refer to the use of electronic technology for attending the meeting and/or voting. This means that they are not specifically allowed or disallowed.

(iii) Other Jurisdictions

New South Wales

Recent legislative amendments introduced the use of technology as new options for attending meetings and voting. Schemes are allowed to hold meetings via social media, video and teleconferencing (or other methods which may become available in the future. Schemes are also allowed to accept postal or electronic votes from owners who are unable to attend the meeting[66].

Schemes are allowed to store all records and documents by electronic or other means. Schemes are also able to send any documents and serve notices electronically but only if this form of communication has been agreed.

Queensland

The Regulation Module for each type of strata development specifies the procedures for meetings. If the Regulation Module does not cover a matter that arises, then the body corporate decides how to deal with that matter[67].

The Regulation Models for all development types permit electronic communications. In relation to quorums, the regulations for the Standard Module, Accommodation Module, and Commercial Module provide that attendance at general meetings may be in person, by proxy or by written or electronic voting paper. In the Small Scheme Module lot owners may be present by a vote cast in a way decided by the body corporate.

Victoria

Notice of meetings can be sent electronically and a lot owner can participate in person, by teleconferencing in accordance with the regulations, by proxy, or in other manner provided for by the regulations[68]. Subject

[66] Regulation 14 of the *Strata Schemes Management Regulation 2016* (NSW)
[67] Section 104 of the *Body Corporate and Community Management Act 1997* (Qld)
[68] Section 80 of the *Owners Corporations Act 2006*

to the Act and the regulations, the procedure at a general meeting is in the discretion of the owners corporation.

Western Australia

The *Strata Titles Amendment Bill 2018* introduces the concept of remote meetings. The proposed section 121 provides that a person (including a proxy of a member of a strata company) may, in accordance with any requirements of the scheme by-laws, attend, and vote, at a meeting of a strata company by telephone, video link, internet connection or similar means of remote communication (provided that provision of relevant facilities does not place an unreasonable burden on the strata company).

A person attending a meeting by remote communication is taken to be present at the meeting.

(iv) Summary

The use of technology for attending and voting at meetings has been, or is proposed to be, addressed in legislation in New South Wales, Queensland, Victoria and Western Australia. Tasmania is the only jurisdiction that does not specifically refer to the use of technology in its legislation.

Jurisdictions appear to have recognised that permitting the use of technology enables owners to participate in meetings for which they would not otherwise be present and increases the likelihood of obtaining a quorum.

Area Eight – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should the *Act* specifically permit the use of technology to facilitate meetings?**
2. **What limits, if any, should be imposed on the use of technology?**
3. **In respect of what specified subject matters should the Act require ordinary resolutions?**
4. **In respect of what specified subject matters should the Act require special resolutions (noting that special resolution needs to be defined)?**
5. **In respect of what specified subject matters should the Act require unanimous resolutions?**

2.9 Area Nine – Quorum

(i) Introduction

A quorum is the minimum number of owners, which can also be referred to as a percentage, required to be present at a meeting to enable votes to be taken and decisions made effective. Obtaining a quorum for two-lot strata can prove to be difficult if one or both owners are unwilling or unable to attend a meeting.

(ii) Tasmania

By-law 10 of the Model By-laws states that a quorum at a meeting of the body corporate is a majority of the total number of the members of the body corporate. This by-law applies by default unless a different basis for a quorum is established by either amending model by-law 10 or making a new by-law replacing model by-law 10.

(iii) Other Jurisdictions

New South Wales

A quorum is present at a meeting of an owners corporation if one-quarter or more of the persons entitled to vote present either personally or by duly appointed proxy, or one-quarter or more of the aggregate unit entitlement of the strata scheme is represented by the persons who are present either personally or by duly appointed proxy.

In a case where there is more than one owner in the strata scheme and the quorum would be less than two persons a quorum is achieved if there are two persons who are present either personally or by duly appointed proxy.

A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person, by proxy for example, is taken to be present for the purposes of determining whether there is a quorum.

A quorum is present for a strata committee meeting only where in the case of a strata committee which has only one member, if the member is present, or in any other case, if not less than one-half of the persons entitled to vote on the motion are present.

A person who has voted, or intends to vote, on a motion or at an election at a meeting by a permitted means other than a vote in person is taken to be present, by proxy for example, for the purposes of determining whether there is a quorum.

If no quorum is present within a half-hour after the relevant motion or business arises for consideration at the meeting, the chairperson must choose either to adjourn the meeting for at least seven days, or declare that the persons present either personally or by duly appointed proxy and who are entitled to vote on the motion or election constitute a quorum for considering that motion or business and any subsequent motion or business at the meeting.

If a quorum is not present within a half-hour after the time fixed for the adjourned meeting, the persons who are present either personally or by duly appointed proxy and who are entitled to vote on the motion or election constitute a quorum for considering that motion or business and any subsequent motion or business at the meeting[69].

Queensland

The quorum for small schemes of less than seven and more than two, and for standard developments are the same.

A quorum at a general meeting is at least 25% of the number of voters for the meeting, except that if the number of voters for the meeting is three or more, two voters must be present personally; and if the number of voters for the meeting is fewer than three, there is a quorum if at least one voter is present personally.

As with New South Wales, the legislation sets out what forms a quorum at a second meeting if those present at the first meeting fail to form a quorum.

If there is not a quorum within 30 minutes of the time scheduled to start the meeting, the meeting must be adjourned to be held at the same place, on the same day and at the same time, in the next week.

If at the adjourned meeting a quorum is again not present within 30 minutes of the time scheduled to start the adjourned meeting, the persons present (whether personally or otherwise) form a quorum if the chairperson is present personally, or the chairperson is not present personally, but a body corporate manager, exercising the powers of the chairperson under an authorisation given by the body corporate, is present personally[70].

Victoria

In Victoria a quorum for a general meeting is at least 50% of the total votes or if 50% of the total votes is not available the quorum is at least 50% of the total lot entitlement[71].

If there is not a quorum, the general meeting may proceed but all resolutions are interim resolutions. Notice of all interim resolutions and the minutes of the meeting at which the interim resolution is made must be forwarded to all lot owners within 14 days of the meeting. The minutes must be accompanied by a notice setting out that an interim resolution cannot be acted on for 29 days after it is made but if notice of a special general meeting is given within that 29 day period, the interim resolution cannot be acted on until the resolution is confirmed at that meeting (which must be held within 28 days after the notice is given) or if the meeting is not held, until the end of that 28 day period.

An interim resolution cannot be made in respect of a matter requiring a unanimous resolution or a special resolution[72].

[69] Clause 17 of Schedule 1 of the *Strata Schemes Management Act 2015* (NSW)
[70] Regulation 82 of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)
[71] Section 77 of the *Owners Corporations Act 2006* (Vic)
[72] Section 78 of the *Owners Corporations Act 2006* (Vic)

Western Australia

In Western Australia for a general meeting of a strata company for a two-lot scheme, a quorum is constituted if there are present persons who are entitled to cast the vote attached to each of the lots.

At a general meeting of a strata company for a strata titles scheme other than a two-lot scheme, a quorum is constituted if there are present persons who are entitled to cast the votes attached to 50% of the lots in the scheme[73].

A person who is a proxy of a person entitled to cast the vote attached to a lot is to be counted for the purposes of determining whether a quorum is present.

If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of a strata company for a strata titles scheme other than a two-lot scheme, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting.

A person who is a proxy of a person entitled to cast the vote attached to a lot is to be counted for the purposes of determining whether a quorum is present.

(iv) Summary

All jurisdictions bar Tasmania provide alternatives for when a quorum is not present at a meeting through either holding another meeting shortly after the first as in New South Wales, Queensland and Victoria or as proposed in Western Australia, those present after 30 minutes from the meeting time forming the quorum.

The different methods used for calculating a quorum is reflective of the different sizes of developments. It appears that some jurisdictions have recognised that achieving quorums in larger developments would be more difficult if the requirements for a quorum is 50% of all owners.

Area Nine – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should the quorum requirement be contained in the body of the Act rather than in the Model by-laws?**

[73] Proposed section 130 of the *Strata Titles Amendment Bill 2016* (WA)

2. **Should the Act include alternatives for when a quorum is not present at the commencement of a meeting as other jurisdictions have? If so, what should that alternative be?**

3. **Is 50% an appropriate requirement for a quorum in model by-law 10?**

4. **Should the percentage be different depending on the number of strata lots in a strata scheme?**

2.10 Area Ten – Access to and disclosure of body corporate records/information

(i) Introduction

Reasonable access to information held by or on behalf of the body corporate is necessary for owners and potential purchasers. Access to this information will assist in determining whether the strata development is one they wish to continue to own a unit in, or one which they would like to become a part.

The office holders of a strata committee or the body corporate itself have an important role in providing access to and disclosure of information.

(ii) Tasmania

The Act provides that the body corporate must provide information in certain circumstances. The body corporate must, at the request of the owner or occupier of a lot or a person authorised by the owner or occupier to make the request, provide a copy of the by-laws of the body corporate for the time being in force[74].

The body corporate must at the request of the owner of a lot produce for inspection the policies of insurance currently maintained by the body corporate under this Act[75].

The body corporate must, on application by an owner or a person having an interest in a lot, certify information regarding the amount of any contribution payable by the owner, the due date for payment, and any amount of unpaid contribution outstanding.

It must also certify the amount of any other liability to the body corporate that remains outstanding from the owner, information in relation to any funds of the body corporate administered by it and any legal action to which the body corporate is a party, and any other matters that the body corporate considers relevant[76].

(iii) Other Jurisdictions

New South Wales

An owner or a person authorised by an owner (for example a potential purchaser) for the prescribed fee may request an inspection of a variety of documents including:

[74] Section 97 of the *Strata Titles Act 1998* (Tas)
[75] Section 104 of the *Strata Titles Act 1998* (Tas)
[76] Section 83 of the *Strata Titles Act 1998* (Tas)

- the plans, specifications, certificates, diagrams and other documents required to be delivered to the owners corporation before its first annual general meeting by the original owner;
- any applicable 10-year capital works fund plan;
- the last financial statements prepared;
- every current policy of insurance taken out by the owners corporation and the receipt for the premium last paid for each such policy;
- a copy of the instrument of appointment of a strata manager; and
- any other record or document in the custody or under the control of the owners corporation.

The inspection can be in person, electronically, or through the provision of documents via email or post, as agreed between the owners corporation and the person applying to inspect the documents[77].

An owner may also request a strata information certificate which includes information in relation to monetary contributions and if there is any amount unpaid and by whom, any amount and rate of interest payable in relation to any unpaid contribution, and the matters set out in its 10-year capital works fund plan.

Information regarding the management of the scheme, including details regarding members of the strata committee or strata manager can also be requested and is to be provided by an owners corporation [78].

Queensland

The body corporate for a community titles scheme must keep rolls, registers and other documents, must give access to them, and may dispose of them, in the way, and to the extent, provided for in the regulation module applying to the scheme.

Within seven days after receiving a written request from an interested person[79] accompanied by the prescribed fee the body corporate must either permit the person to inspect the body corporate's records or give the person a copy of a record kept by the body corporate or do both as requested.

Failure to comply with this requirement attracts a penalty up to a maximum of 20 penalty units ($2 669).

The body corporate must, within seven days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, issue a body corporate information certificate in the approved form applying to the scheme giving financial and other information about the lot.

If the body corporate fails to provide the requested information in the prescribed time a maximum penalty of 20 penalty units applies ($2 .669).

[77] Section 183 of the *Strata Schemes Management Act 2015* (NSW)
[78] Section 184 of the *Strata Schemes Management Act 2015* (NSW)
[79] "interested person" means—
(a) the owner, or a mortgagee, of a lot included in the scheme; or
(b) the buyer of a lot included in the scheme; or
(c) another person who satisfies the body corporate of a proper interest in the information sought; or
(d) the agent of a person mentioned in paragraph (a), (b) or (c).

Victoria

An owners corporation must ensure that a copy of the rules of the owners corporation is given to each lot owner as soon as practicable after the rules are lodged with the Registrar; and if the rules are amended, a copy of the consolidated rules (incorporating the amendment) .
An owners corporation, on request by a lot owner, a mortgagee of a lot, a purchaser of a lot or the representative of a lot owner or mortgagee or purchaser of a lot, must make available the records of the owners corporation required to be kept or the owners corporation register to that person for inspection at any reasonable time, free of charge.

The owners corporation may at the request of a person entitled to inspect the records or the owners corporation register and on payment of a reasonable fee provide a copy of any record of the owners corporation. The reasonable fee cannot be greater than the maximum prescribed fee.

Any person may apply in writing to the owners corporation for an owners corporation certificate. The owners corporation must issue an owners corporation certificate within 10 business days after it receives an application and fee under this section.

An owners corporation certificate must contain the prescribed information relating to the owners corporation and a lot which includes fees in relation to the lot, insurance, repairs and maintenance, the financial status of the owners corporation, if there is a manager, and legal proceedings (if any).

The certificate is to be accompanied by a copy of the rules, or, if the rules have been amended the consolidated rules of the owners corporation as recorded on the Register; a statement in the prescribed form providing advice and information to prospective purchasers and lot owners, a copy of all resolutions made at the last annual general meeting of the owners corporation; and a statement advising that further information on prescribed matters can be obtained by inspection of the owners corporation register.

The owners corporation must not charge a person making an application a fee in excess of the relevant prescribed fee for the issue of an owners corporation certificate. A maximum penalty of 60 penalty units ($9 913.20) can be imposed for non-compliance.

Western Australia

A member of the strata company for the scheme, or a buyer who has entered into a contract for the sale and purchase of a lot in the strata titles scheme, or a mortgagee of a lot in the strata titles scheme, or a person authorised in writing by such a person, may apply in writing to the strata company for the scheme for contact information, inspection of material or a certificate.

Contact information means the name and address for service of a member of the council of the strata company or the name and address for service of an officer of the strata company.

A strata company commits an offence if it does not, within 14 days after being given an application for contact information provide the applicant as stated in the application, or if it does not make material available for inspection by the applicant at an agreed place and time, or if it does not provide the applicant with a certificate.

A maximum penalty of $3000 can be imposed for non-compliance.

The information may be made available in electronic or hard copy form.

A certificate certifies, as at the date of the certificate whether or not a strata management contract is in effect and, if so, when the contract starts and ends, details of any contracts of insurance maintained by the strata company, whether any transfer, lease or other disposition has been entered into or exclusive use by-laws have been made in favour of a person over the common property but not registered by the Registrar of Titles, and, if so, the name of the person and the nature and effect of the transaction or by-laws.

A certificate also certifies as at the date of the certificate the amount and due date of contributions determined for the lot and in the previous 12 months, any amount owed to the strata company by the owner or occupier of the lot that is outstanding, the date on which it became outstanding, and the nature of the payment and the rate of interest payable in respect of the outstanding amount.

(iv) Summary

All jurisdictions recognise the importance of access to information by lot owners and potential purchasers and legislatively provide that a body corporate or owners corporation must provide information when requested. The type of information differs between jurisdictions, and again reflects the relative complexity of the strata environment in each jurisdiction.

Queensland, Victoria and Western Australia have penalties for non-compliance with their provisions.

Certificates are used in all jurisdictions.

Western Australia and New South Wales refer to the provision of information via electronic means.

In Victoria and Queensland, a fee may be charged for the provision of information.

Area Ten – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. Are the current requirements for the provision of information adequate?

2. **Should the Act specifically provide for the electronic provision of information?**

3. **Should a body corporate be able to charge a fee for the provision of information?**

4. **Should a specific timeframe be included by which the information sought should be provided?**

5. **Should a penalty be included for non-compliance?**

2.11 Area Eleven – Roll or register for the body corporate

(i) Introduction

A roll or register is a place for recording important information about the body corporate, the original owner/developer and lot owners including contact information. A roll or register which is kept up to date records the history of the development and ensures that there is a central point for accessing body corporate information.

(ii) Tasmania

There is no requirement for a body corporate to maintain a roll or register.

(iii) Other Jurisdictions

New South Wales

An owners corporation must prepare and maintain a strata roll. Failure to do so may result in a maximum penalty of 5 penalty units ($550)[80].

The roll contains information about individual lots, the common property and the strata scheme in general.

In relation to individual lots the roll records the name of the owner of the lot, an address for service of notices, an Australian postal address, and an email address if they have one, if not provided as the address for service, and the name and address of their agent if they have one.

In relation to the common property of the strata scheme and the scheme in general the role records the strata plan number and the address of the strata scheme building, the names of the original owner and any strata managing agent of the owners corporation and their addresses for service of notices, the aggregate unit entitlement of the scheme and the unit entitlement of each lot, particulars of insurance taken out by the owners corporation, and the by-laws for the time being in force for the strata scheme[81].

An owner, mortgagee or covenant chargee of a lot in a strata scheme, or a person authorised by the owner, mortgagee or covenant chargee, may request the owners corporation to allow an inspection to be carried out of the strata roll.

The request must be made by written notice given to the owners corporation and be accompanied by the fee prescribed by the regulations[82].

[80] Section 177 of the *Strata Titles Management Act 2015* (NSW)
[81] Section 178 of the *Strata Titles Management Act 2015* (NSW)
[82] Section 182 of the *Strata Titles Management Act 2015* (NSW)

Queensland

The body corporate must prepare and keep a roll containing the name, residential or business address and address for service (if different from the residential or business address) of the original owner, the contribution schedule lot entitlement of each lot included in the community titles scheme, the interest schedule lot entitlement of each lot included in the scheme, the name, residential or business address and the address for service (if different from the residential or business address) of the current owner, or the current co-owners, of each lot included in the scheme.

Additionally, the roll must also record the corporation's Australian Company Number or Australian Registered Body Number if the original owner, or the owner of a lot, is a corporation registered under the Corporations Act, and if there is a mortgagee in possession of a lot, their contact details[83].

Victoria

The applicant for registration of a plan of subdivision that provides for the creation of an owners corporation must establish an owners corporation register.

Pre - existing owners corporations must establish an owners corporation register within the time prescribed by the regulations. The regulations do not contain a prescribed time[84].

The owners corporation register must include the owners corporation plan number and address, the name and address of each lot owner, the name of the manager, registration number of the manager and contact details of the manager (if any), total lot liability and total lot entitlements, lot liability and lot entitlements for each lot affected by the owners corporation, and the basis for the setting of lot liability and lot entitlement (if available).

The register must also include the date of each amendment to the owners corporation rules and the date of the recording of the consolidated rules (incorporating the amendment) in the Register kept under the Transfer of Land Act 1958, details of any notices or orders served on the owners corporation by a court or tribunal or under an Act, details of contracts, leases and licences entered into by the owners corporation, and details of the insurance policies taken out by the owners corporation[85].

The owners corporation, on request by a lot owner, a mortgagee of a lot or a purchaser of a lot or the representative of a lot owner or a mortgagee or a purchaser of a lot, must make the owners corporation register available to that person for inspection at any reasonable time, free of charge.[86]

Western Australia

A strata company shall prepare and maintain a roll.

[83] Regulation 196 of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)
[84] Section 147 of the *Owners Corporations Act 2006* (Vic)
[85] Section 147 of the *Owners Corporations Act 2006* (Vic)
[86] Section 150 of the *Owners Corporations Act 2006* (Vic)

The particulars to be entered in the roll are the plan number, the name and address of each proprietor, the address for service of any proprietor or mortgagee of a lot who has notified an address for service to the strata company, the name and address of any agent of the strata company employed by it to carry out duties of the strata company in relation to the scheme, the name of any lessee or tenant of a lot notified to the strata company, and the name and address of any mortgagee of a lot notified to the strata company[87].

(iv) Summary

All jurisdictions bar Tasmania require the creation and maintenance of a roll or register recording various information regarding the original owner/developer, lot owners, lots, managers and the strata scheme generally.

The roll or register is to be created and maintained by the equivalent of a body corporate. Access to the roll or register is generally dealt with as part of access to body corporate information, however Victoria and New South Wales have specific provisions for access to the roll or register.

Area Eleven – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should a body corporate be required to create and maintain a roll or register?**
2. **If so, what information should be included in the roll or register?**
3. **Who should have access to the roll or register, and what fee should be payable?**
4. **Should a penalty be included for non-compliance?**
5. **Should smaller developments be excluded from having to maintain a roll or register?**
6. **How does this proposal to create or maintain a roll or register relate to principles and legislation regulating privacy and personal safety?**

[87] Section 35A of the *Strata Titles Act 1985* (WA)

2.12 Area Twelve – Insurance

(i) Introduction

The inclusion of common property in a strata scheme has associated risks in terms of liability for personal or property damage which are required to be covered by insurance. Buildings on common property or individual lots are also required to be covered by insurance. Questions arise, however, as to what type of insurance should be obtained, and by whom – a lot owner or the body corporate?

The requirement for insurance to be obtained by a body corporate ensures that, as a minimum risk associated with damage to or damage caused using common property, and buildings on common property and strata lots are covered, and the costs of obtaining that insurance appropriately shared. If this insurance is not obtained, each lot owner is responsible for any damage caused and therefore responsible for paying a portion of costs associated with that damage. It should also be noted that they are in breach of the current provisions regarding insurance for which there is a financial penalty. Further, shared insurance is likely to be cheaper than taking out individual insurance as the premium is divided across all lot owners.

(ii) Tasmania

The body corporate for a strata scheme must take out and maintain a policy of insurance for the buildings and other improvements (if any) on the site.

The policy of insurance must cover damage from fire, storm, tempest or explosion, any other prescribed risks, and costs incidental to the reinstatement or replacement of the buildings, including the cost of removing debris and the fees of architects and other professional advisers, and must provide for the reinstatement of the buildings and improvements to their condition when new.

In addition, the body corporate for a community scheme must insure property in accordance with the requirements (if any) of the scheme[88].

Failure to obtain the required insurance may result in a fine not exceeding 50 penalty units ($8 400).

(iii) Other Jurisdictions

New South Wales

The owners corporation for a strata scheme for the whole of a building must insure the building and keep the building insured under a contract of insurance that insures the building if it is destroyed or damaged by fire, lightning, explosion or any other occurrence specified in the policy.

[88] Section 99 of the *Strata Titles Act 1998* (Tas)

Failure to obtain the required insurance may result in a maximum penalty of 5 penalty units ($550).

The owners corporation for each strata scheme for part of a building and any other person in whom is vested an estate in fee simple in part of the building that is not included in the parcel of the strata scheme must insure the building and keep the building insured under a damage policy.

Failure to obtain the required insurance may result in a maximum penalty of 5 penalty units ($550).

This requirement does not apply to an owners corporation for a strata scheme comprising two lots if the owners corporation so determines by unanimous resolution, the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and no building or part of a building in the strata scheme is situated outside those lots[89].

Queensland

In Queensland the body corporate must insure, for full replacement value the common property, and the body corporate assets[90].

If one or more of the lots included in the community titles scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision the body corporate must insure, for full replacement value, each building in which is located on a lot included in the scheme, to the extent that the building is scheme land[91].

The body corporate is also required to take out insurance for buildings with common walls[92].

The body corporate need not insure a building or a part of a building if the insurance otherwise required, and the insurance is in place.

Victoria

An owners corporation must take out reinstatement and replacement insurance for all buildings on the common property. The insurance must include reinstatement and replacement insurance for the owners corporation's portion of any shared services[93].

An owners corporation must take out public liability insurance for the common property. The limit of liability for this insurance is a minimum of $10 000 000, or if another amount is prescribed, that other amount, in any one claim and in the aggregate during any one period of insurance[94].

[89] Section 160 of the *Strata Schemes Management Act 2015* (NSW)
[90] Section 112 of the *Body Corporate and Community Management Act 1997* (Qld)
[91] Section 113 of the *Body Corporate and Community Management Act 1997* (Qld)
[92] Section 114 of the *Body Corporate and Community Management Act 1997* (Qld)
[93] Section 59 of the *Owners Corporations Act 2006* (Vic)
[94] Section 60 of the *Owners Corporations Act 2006* (Vic)

In relation to multi-level developments, if a building on a plan of subdivision is located above or below common property a reserve or a lot, the owners corporation must take out the reinstatement and replacement insurance and public liability insurance for all buildings on each lot for all lots in the plan[95].

By unanimous resolution, an owners corporation may resolve that, if there is no common property, each lot owner must arrange for the lot owner's own insurance[96].

If the owners corporation has two lots, it does not have to take out reinstatement and replacement insurance or public liability insurance for the common property in the name of the owners corporation[97].

Western Australia

Under the proposed Strata Titles Amendment Bill 2018 a strata company must ensure that all insurable assets of the scheme must be insured and the strata company must be insured against damage to property, death, bodily injury or illness for which the strata company could become liable in damages to an amount of not less than $10,000,000 or, if some other amount is determined under the regulations, that amount[98].

The owner of a lot in a survey-strata scheme is responsible for insurance for infrastructure on the lot, and for damage to property, death, bodily injury or illness for which the owner could become liable.

This proposed section does not affect a strata company's responsibility for complying with any other requirement imposed on a strata company to obtain insurance (for example, for workers' compensation or by resolution of the strata company), or the power of the strata company to obtain other insurance in its capacity as a body corporate.

(iv) Summary

All jurisdictions recognise the importance of insurance being acquired to mitigate personal or property loss or damage related to use and enjoyment of common property including buildings. The responsibility for obtaining insurance sits with the body corporate or owners corporation.

Queensland and Tasmania also require the body corporate to take out insurance relating to all lots in a strata scheme.

New South Wales specifically provides that the insurance requirements do not apply to two-lot strata if certain conditions are met.

[95] Section 61 of the *Owners Corporations Act 2006* (Vic)
[96] Section 63 of the *Owners Corporations Act 2006* (Vic)
[97] Section 7 of the *Owners Corporations Act 2006* (Vic)
[98] Proposed section 97 of the *Strata Titles Amendment Bill 2018* (WA)

In Victoria, if the owners corporation has two lots, it does not have to take out reinstatement and replacement insurance or public liability insurance for the common property in the name of the owners corporation.

Area Twelve – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should smaller strata schemes (eg two-lot strata schemes) be exempt from the requirement for the body corporate to take out insurance (bearing in mind that where there is common property, they will be personally responsible for any damage arising out of the use of that common property)?**

2. **If so, should this exemption be limited to certain circumstances, including where a unanimous resolution of the body corporate has been obtained?**

3. **What should be insured (e.g. improvements on the lots and on the common property, only improvements on the common property, etc)?**

4. **Should a monetary penalty apply for non-compliance?**

2.13 Area Thirteen – Dispute Resolution

(i) Introduction

Disputes may arise in strata schemes involving the body corporate, strata lot owners, tenants, strata managers, and/or visitors. As with any neighbour dispute a cost-effective dispute resolution mechanism is required. Internal dispute resolution mechanisms may be available for use before resorting to an external dispute resolution mechanism such as an administrative tribunal or, as in Tasmania, the Recorder of Titles.

The question arises as to who is best placed with the right skill set to determine disputes that arise in strata schemes that cannot be otherwise solved through an internal dispute resolution mechanism.

(ii) Tasmania

An application for relief can be made to the Recorder of Titles. The Recorder may apply to the Resource Management and Planning Appeals Tribunal (RMPAT) for directions on any matter arising in the course of examining and investigating an application for relief.[99]

Decisions of the Recorder of Titles can be appealed to RMPAT.

An interested person may appeal to RMPAT against a decision or order made by the Recorder on an application under the Act, or a decision by a council on an application for approval under the Act.

Interested persons for the purposes of an appeal are:

(a) the applicant for the decision or order;
(b) in the case of a decision or order in relation to an application for relief, a person who was entitled to make, and made, written submissions to the Recorder in connection with the application for relief;
(c) in the case of an order, a person required by the order to do, or refrain from doing, a specified act; and
(d) any other person classified by the regulations as an interested person in relation to a decision or order of a specified kind[100].

The Recorder of Titles is not a party to any appeal.

On an appeal, RMPAT may confirm, vary or revoke the decision or order under appeal, and make any further or other decision or order that may be appropriate in the circumstances.

[99] Section 105 of the *Strata Titles Act 1998* (Tas)
[100] Section 144 of the *Strata Titles Act 1998* (Tas)

RMPAT must give written notice of its decision on an appeal to the Recorder and to all persons interested in the appeal[101].

A party to an appeal before RMPAT may appeal to the Supreme Court, on a question of law, from any decision of RMPAT in the appeal[102].

(iii) Other Jurisdictions

New South Wales

An owners corporation for a strata scheme may establish, by any means it thinks fit, a voluntary process for resolving disputes between any one or more owners of lots in the scheme, other interested persons, the owners corporation, the strata committee, the strata managing agent and the building manager[103].

The Civil and Administrative Tribunal has the power to make orders to settle disputes about certain matters relating to the operation and management of a strata scheme.

Initially, an application for an order is processed by a registrar of the Tribunal. The registrar must refuse to deal with a matter if satisfied that mediation was appropriate and was not attempted.

A person may either apply to the Secretary for mediation of a matter or make other arrangements for mediation. If mediation of a matter is unsuccessful or a matter is not appropriate for mediation, the registrar may accept the application for the order[104].

On receipt of an application for mediation, the Secretary must, if the Secretary thinks the circumstances of the case are appropriate, arrange for mediation in accordance with the regulations. The Secretary may dismiss an application for mediation if the Secretary believes that the application is frivolous, vexatious, misconceived or lacking in substance[105].

The owners corporation, an officer of the owners corporation, a strata managing agent for the scheme, an owner of a lot in the scheme, a person having an estate or interest in a lot or an occupier of a lot, or if the strata scheme is a leasehold strata scheme, the lessor of the scheme are able to make an application to the Tribunal.[106]

Queensland

Queensland has a complex but comprehensive dispute resolution system.

[101] Section 146 of the *Strata Titles Act 1998* (Tas)
[102] Section 25 of the *Resource Management and Planning Appeal Tribunal Act 1993* (Tas)
[103] Section 216 of the *Strata Schemes Management Act 2015* (NSW)
[104] Part 12 of the *Strata Schemes Management Act 2015* (NSW)
[105] Section 218 of the *Strata Schemes Management Act 2015* (NSW)
[106] Section 226 of the *Strata Schemes Management Act 2015* (NSW)

Chapter 6 of the *Body Corporate and Community Management Act 1997* deals with dispute resolution. In this Chapter the position of Commissioner for Body Corporate and Community Management (Commissioner) is created with responsibility for administration of Chapter 6.

In particular, the Commissioner has responsibility for providing a dispute resolution service. The Commissioner is subject to the direction of the chief executive in administering this Chapter, but must act independently, impartially and fairly in making decisions about particular persons[107].

To assist the Commissioner the chief executive can appoint appropriately qualified persons as department conciliators and department adjudicators. The chief executive may also enter into a contract with an appropriately qualified person under which the person agrees to provide department adjudication or department conciliation and is appointed as a department adjudicator for conducting department adjudication, or as a department conciliator for conducting department conciliation, for applications referred to the person while the contract is in force.

The only remedy for a complex dispute is the resolution of the dispute by an order of a specialist adjudicator under chapter 6 or an order of the Queensland Civil and Administrative Tribunal (QCAT) exercising the tribunal's original jurisdiction under the QCAT legislation, or an order of the appeal tribunal on appeal from a specialist adjudicator or QCAT on a question of law.

Proceedings can be commenced in a court of competent jurisdiction or the QCAT for a debt dispute or a related dispute to a debt dispute.

An application can be made under Chapter 6 once a reasonable attempt has been made to resolve the dispute by any available internal dispute resolution process. A person, including the body corporate for a community titles scheme, may make an application if the person is a party to, and is directly concerned with, a dispute to which Chapter 6 applies, and has made reasonable attempts to resolve the dispute by internal dispute resolution[108].

The Commissioner may refer a matter to Department conciliation, the dispute resolution centre, specialist mediation and conciliation, or specialist adjudication[109].

Victoria

A lot owner or an occupier of a lot or a manager may make a complaint to the owners corporation about an alleged breach by a lot owner or an occupier of a lot or a manager of an obligation imposed on that person by this Act or the regulations or the rules of the owners corporation[110].

Alternatively, VCAT may hear and determine a dispute or other matter arising under this Act or the regulations or the rules of an owners corporation that affects an owners corporation (an owners corporation

[107] Section 232 of the *Body Corporate and Community Management Act 1997* (Qld)
[108] Section 238 of the *Body Corporate and Community Management Act 1997* (Qld)
[109] Chapter 6 of the *Body Corporate and Community Management Act 1997* (Qld)
[110] Section 152 of the *Owners Corporations Act 2006* (Vic)

dispute) including a dispute or matter relating to the operation of an owners corporation, or an alleged breach by a lot owner or an occupier of a lot of an obligation imposed on that person by this Act or the regulations or the rules of the owners corporation, or the exercise of a function by a manager in respect of the owners corporation[111].

A manager or former manager, a lot owner or former lot owner, the owners corporation, an occupier or former occupier of a lot, a mortgagee of a lot, an insurer under a policy taken out by the owners corporation, and the Director may apply to VCAT to resolve an owners corporation dispute[112].

Western Australia

In Western Australia applications for relief are made to the State Administrative Tribunal[113]. An application to the State Administrative Tribunal for an order must be accompanied by a certificate given by the applicant either that there are no relevant provisions in the by-laws of the strata company for the scheme that relate to the resolution of the matter in dispute, or that there are such provisions and the applicant has, so far as is possible, complied with them[114].

The general right to make an application for relief does not affect any rights of remedies that a party may have in a lot or the common property, including an appeal to the Supreme Court[115].

(iv) Summary

All jurisdictions have a dispute resolution system that include an external arbiter. In those jurisdictions that have a requirement for an internal dispute resolution mechanism they require that be used before resorting to external dispute resolution options.

Tasmania is the only State where the dispute is dealt with by the Land Titles Office. Other States rely on other government bodies to provide external dispute resolution options.

Civil and administrative tribunals in Western Australia, Victoria and Queensland are the key external dispute resolution mechanism for their jurisdiction.

Area Thirteen – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. Should each body corporate be required to establish an internal dispute resolution process?

[111] Section 162 of the *Owners Corporation Act 2006* (Vic)
[112] Section 163 of the *Owners Corporations Act 2006* (Vic)
[113] Section 77 of the *Strata Titles Act 1985* (WA)
[114] Section 77B of the *Strata Titles Act 1985* (WA)
[115] Section 122 of the *Strata Titles Act 1985* (WA)

2. What is the most appropriate external dispute resolution mechanism for dealing with strata-related disputes?

2.14 Area Fourteen – Strata Managers

(i) Introduction

Strata managers can be appointed or engaged voluntarily to assist in the management of the day-to-day affairs of a strata scheme. They play an important role where a body corporate or owners corporation is unable to carry out its legislated functions.

The duties a strata manager undertakes have been delegated to them usually through a service contract or other written agreement. The duties that they perform are those that would normally be the responsibility of the body corporate or owners corporation.

(ii) Tasmania

The role of a strata manager is not licenced or regulated in Tasmania. Those strata schemes that do have a strata manager have been appointed by the Recorder of Titles as administrator[116] or have been engaged voluntarily by a body corporate[117]. The conduct of a real estate agent who acts as a strata manager for a strata scheme (including the operation of a trust account) is regulated by the *Property Agents and Land Transactions Act 2016*.

(iii) Other Jurisdictions

New South Wales

Strata managing agents are licenced and highly regulated.

An owners corporation for a strata scheme may appoint a person who is the holder of a strata managing agent's licence under the *Property, Stock and Business Agents Act 2002* to be the strata managing agent of the scheme[118].

The appointment is to be made by instrument in writing authorised by a resolution at a general meeting of the owners corporation.

An owners corporation may delegate to the strata managing agent all of its functions, or any one or more of its functions specified in the instrument, or all of its functions except those specified[119].

A strata managing agent who exercises a function of the owners corporation or of an officer of the owners corporation must, immediately after its exercise, make a record specifying the function and the manner in

[116] Section 127 of the *Strata Titles Act 1998* (Tas)
[117] Section 80 of the *Strata Titles Act 1998* (Tas)
[118] Section 49 of the *Strata Schemes Management Act 2015* (NSW)
[119] Section 52 *Strata Schemes Management Act 2015* (NSW)

which it was exercised. The strata managing agent must give a copy of the records kept for the preceding 12 months to the owners corporation at least once each year[120].

An owners corporation may require a strata managing agent to provide detailed information regarding the payment and receipt of money. An owners corporation may also require a strata managing agent to provide full particulars of any specified transaction that has been entered into by the agent on behalf of the owners corporation.

Queensland

In Queensland a code of conduct has been developed which applies to a body corporate manager in performing obligations under the person's engagement as the body corporate manager[121].

It provides that a body corporate manager or caretaking service contractor must have a good working knowledge and understanding of this Act, including the code of conduct, relevant to the person's functions[122].

Victoria

An owners corporation may appoint a person to be the manager of the owners corporation. If the manager is to receive a fee or reward for carrying out the functions of manager, a person is not eligible to be appointed unless the person is a registered manager[123].

A person must not be appointed as a manager for fee or reward unless the person holds professional indemnity insurance that is sufficient to meet claims up to a level of the prescribed amount in any one year.

A manager must act honestly and in good faith in the performance of the manager's functions, must exercise due care and diligence in the performance of the manager's functions, and must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person.

A manager holds all money held on behalf of an owners corporation on trust for the owners corporation, and must account separately for the money held for each owners corporation by the manager.

The manager of an owners corporation must submit a report of the manager's activities to each annual general meeting of the owners corporation. The report must include details of the professional indemnity insurance held by the manager[124].

[120] Section 55 *Strata Schemes Management Act 2015* (NSW)
[121] Section 118 of the *Body Corporate and Community Management Act 1997* (Qld)
[122] Schedule 2 of the *Body Corporate and Community Management Act 1997* (Qld)
[123] Section 119 of the *Owners Corporations Act 2006* (Vic)
[124] Section 126 of the *Owners Corporations Act 2006* (Vic)

Western Australia

A strata company may authorise a person (a strata manager) to perform a specified scheme function subject to any conditions specified by the strata company and may be varied or revoked by the strata company[125].

If the performance of a function of a strata company requires a unanimous resolution, resolution without dissent, special resolution or ordinary resolution, the strata manager may perform the function only if a vote has been taken on a proposed resolution and it has been passed as a resolution of the relevant kind.

The proposed Bill includes a list of actions a strata manager cannot be authorised to perform including determining contributions, commencing proceedings on behalf of the strata company in the Tribunal or in a court or other tribunal, or authorising a person to sign documents on behalf of the strata company or on behalf of the council or an officer of the strata company.

The authority of a strata manager to perform a scheme function does not prevent the function from being performed by the strata company, council or officer (as the case requires). However, if the strata company, council or officer performs such a function, the strata company, council or officer must notify the strata manager authorised to perform the function of that fact.

A person is not authorised to perform functions as a strata manager unless a contract or volunteer agreement (a strata management contract) is in force between the strata manager and the strata company, and the requirements of the regulations are met by the strata manager and each agent, employee or contractor of the strata manager for the conduct of, and verification of the conduct of, criminal record checks, educational or other qualifications, and any other matter relevant to the performance of functions as a strata manager. The strata manager must also maintain professional indemnity insurance as required by the regulations[126].

The proposed Bill also sets out the minimum requirements for a strata management contract[127] and the general duties of a strata manager and how to deal with potential or real conflicts of interest[128]. The proposed Bill contains a comprehensive list of the circumstances in which, and the process by which, a strata management contract can be terminated, including where a strata manager has contravened the Act or their contract is a bankrupt or insolvent or the strata manager or a director of chief executive officer of the strata manager is convicted of an offence and imprisoned for 12 months or longer[129].

(iv) Summary

Strata managers in New South Wales, Victoria and Queensland are regulated. Western Australia's proposed legislative amendments includes a new regime for the regulation of strata managers. Tasmania is the only State that has no regulation for the role of strata manager.

[125] Proposed section 143 of the *Strata Titles Amendment Bill 2018* (WA)
[126] Proposed section143 of the *Strata Titles Amendment Bill 2018* (WA)
[127] Proposed section 145 of the *Strata Titles Amendment Bill 2018* (WA)
[128] Proposed sections 146 – 150 of the *Strata Titles Amendment Bill 2018* (WA)
[129] Proposed section 151 of the *Strata Titles Amendment Bill 2018* (WA)

Strata managers play an important role for larger complexes, and for complexes where a body corporate or its equivalent are unable to manage the day-to day affairs of a strata scheme and/or meet its legislative responsibilities.

Strata managers are only able to undertake the functions that are delegated to them and where appointed voluntarily by a body corporate or its equivalent have a duty to report to that body.

Area Fourteen – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should strata managers be regulated and/or licenced in Tasmania and if so how and in what way?**

2. **If you have a preferred model of regulation, what matters should be regulated, for example qualifications, operation of a trust account, and sanctions for non-compliance?**

2.15 Area Fifteen – Keeping of Animals

(i) Introduction

A question often asked is can an animal (usually a pet) be kept in a unit? The answer will depend on the by-laws for the strata scheme and whether the animal is needed for medical reasons. Generally, strata schemes are not suited to large animals. The question regarding animals should be asked prior to purchasing or living in a strata unit.

(ii) Tasmania

Model by-law 7 provides that the occupier of a lot must not, without the body corporate's written approval bring an animal onto, or keep an animal on, the lot or the common property, or permit an invitee to bring an animal onto, or keep an animal on, the lot or the common property.

An exception to this rule is if a person reasonably requires the assistance of a guide-dog by reason of impairment of sight or hearing, the person is entitled to be accompanied by a guide-dog while on a lot or the common property and, if the person is the owner or occupier of a lot, is entitled to keep a guide-dog on the lot[130].

It should be noted that the Model by-laws can be amended or replaced.

(iii) Other Jurisdictions

New South Wales

The Tribunal may, on application by an interested person, order a person to cause an animal to be removed from a parcel within a specified time, and to be kept away from the parcel, if the Tribunal considers that the person is keeping an animal on the parcel in contravention of the by-laws.

An order under this section ceases to have effect if the keeping of the animal is subsequently authorised in accordance with the by-laws.

The Tribunal may, on application by the owner or occupier (with the consent of the owner) of a lot in a strata scheme, make an order declaring that the applicant may keep an animal on the lot or common property.

The Tribunal must not make the order unless it is satisfied that the by-laws permit the keeping of an animal with the approval of the owners corporation and provide that the owners corporation cannot unreasonably withhold consent to the keeping of an animal, and the owners corporation has unreasonably withheld its approval to the keeping of the animal on the lot or common property[131].

[130] Model by-law 7 of the Model by-laws in Schedule 1 of the *Strata Titles Act 1995* (Tas)
[131] Section 156 of the *Strata Schemes Management Act 2015* (NSW)

The Tribunal may, on application by an interested person, make an order against a person who is keeping an animal on a lot or common property in accordance with the by-laws for a strata scheme, if the Tribunal considers that the animal causes a nuisance or hazard to the owner or occupier of another lot or unreasonably interferes with the use or enjoyment of another lot or of the common property.

The Tribunal may order that the person cause the animal to be removed from the parcel within a specified time, and be kept away from the parcel, or within a time specified in the order, take such action as, in the opinion of the Tribunal, will terminate the nuisance or hazard or unreasonable interference[132].

Queensland

The occupier of a lot must not, without the body corporate's written approval bring or keep an animal on the lot or the common property or permit an invitee to bring or keep an animal on the lot or the common property.

The occupier must obtain the body corporate's written approval before bringing, or permitting an invitee to bring, an animal onto the lot or the common property.

A person with a disability under the *Guide, Hearing and Assistance Dogs Act 2009* who relies on a guide, hearing or assistance dog and who has the right to be on a lot included in a community titles scheme, or on the common property, has the right to be accompanied by a guide, hearing or assistance dog while on the lot or common property.

They also have the right to keep a guide, hearing or assistance dog on the lot[133].

A by-law cannot exclude or restrict these rights.

Victoria

There is no blanket prohibition on the keeping of an animal. Schedule 2 of the *Owners Corporations Regulations 2018* contains the model rules. Model rule 4 deals with the use of common property.

It provides that if the owners corporation has resolved that an animal is a danger or is causing a nuisance to the common property, it must give reasonable notice of this resolution to the owner or occupier who is keeping the animal[134].

It requires that an owner or occupier of a lot who is keeping an animal that is the subject of a notice must remove that animal[135].

These sub-rules do not apply to an animal that assists a person with an impairment or disability[136].

[132] Section 158 of the *Strata Schemes Management Act 2015* (NSW)
[133] Model by-law 11 (Qld)
[134] Rule 4(4) of the Model Rules in Schedule 2 of the *Owners Corporations Regulations 2018* (Vic)
[135] Rule 4(5) of the Model Rules in Schedule 2 of the *Owners Corporations Regulations 2018* (Vic)
[136] Rule 4(6) of the Model Rules in Schedule 2 of the *Owners Corporations Regulations 2018* (Vic)

Western Australia

Scheme by-laws are invalid to the extent that they prohibit or restrict the keeping on a lot of an animal that is used as an assistance animal by a person with a disability who is an owner or occupier of a lot to the extent that they prohibit or restrict the use on the parcel of an assistance animal by a person with a disability[137].

Without limitation, the Tribunal on application may make an order to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal on a lot or common property.

The Tribunal cannot make an order to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal on a lot or common property unless satisfied that the strata company has acted unreasonably[138].

(iv) Summary

The approach to the keeping of animals in strata schemes is inconsistent. The approach in Victoria is limited to animals and the use of common property. Western Australia's approach is based on an order being made either to allow the keeping of an animal on a lot or common property or to make an order prohibiting the keeping of an animal on a lot or common property. The Tribunal's power to make an order allowing an animal to be kept can only be exercised where it is satisfied that the strata company has acted unreasonably.

Tasmania, Victoria and New South Wales prohibit the keeping of an animal unless authorised by the body corporate in writing which may be in the form of a by-law.

All jurisdictions recognise the need to exclude assistance animals and guide dogs from any prohibition or limitation.

Area Fifteen – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should the reference to keeping animals be removed from the model by-laws thereby allowing individual bodies corporate to determine whether they are allowed or not?**
2. **Should Model by-law 7 be changed to permit the keeping of animals?**
3. **Should the provision regarding animals be in the body of the Act rather than the Model by-laws which can be changed?**

[137] Proposed section 46 of the *Strata Titles Amendment Bill 2018* (WA)
[138] Proposed section 200(2)(v) of the *Strata Titles Management Bill 2018* (WA)

4. If it is moved to the body of the Act, what should the provision be?

2.16 Area Sixteen - Future Maintenance Schedules

(i) Introduction

Strata schemes which have common property including shared facilities such as a swimming pool, car parks, driveways, and footpaths will incur costs to repair and maintain that property. A maintenance schedule that sets out a schedule for the works that need to be undertaken or may need to be undertaken in the future enables a body corporate to effectively plan to ensure that they have the money available to fund these works and to engage contractors as and when required.

A strata scheme that does not have a maintenance schedule may have to raise a special levy to pay for the work needed alternatively the work may not be carried out due to a lack of funds and/or available contractors.

(ii) Tasmania

The Tasmanian legislation does not include a requirement for an original owner to develop an initial maintenance schedule or a requirement for a body corporate to develop and maintain a future maintenance schedule.

(iii) Other Jurisdictions

New South Wales

The original owner must cause an initial maintenance schedule to be prepared for the maintenance of the common property of a strata scheme. The purpose of the initial maintenance schedule is to provide information to the owners corporation about obligations and costs relating to the maintenance of common property.

An owners corporation is not required by this Act to comply with the initial maintenance schedule for the maintenance of common property vested in it.

However, the initial maintenance schedule may be considered in any proceedings for the purpose of determining whether or not a defect in or damage to a building could have been avoided by the taking of specified action[139].

An estimate prepared before the first annual general meeting of an owners corporation is to take into account the initial maintenance schedule provided by the original owner for that meeting[140].

[139] Section 115 of the *Strata Schemes Management Act 2015* (NSW)
[140] Section 79(4) of the *Strata Schemes Management Act 2015* (NSW)

An owners corporation may specify whether an owner of a lot or the owners corporation is responsible for the maintenance, repair or replacement of any part of the common property in the common property memorandum[141].

A special resolution that authorises action to be taken in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner. If a special resolution under this section does not specify who is responsible for ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.

A special resolution that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless the owners corporation obtains the written consent of that owner to the making of a by-law to provide for the maintenance of the common property by that owner, and the owners corporation makes the by-law[142].

Queensland

The Queensland legislation does not include a requirement for a maintenance statement. It does, however, require that a body corporate manager must give to each member of the body corporate a written report about the administration of the community titles scheme.

The report must include details of repairs and maintenance to the common property and body corporate assets proposed to be carried out in the three months following the date of the report, any matters known to the body corporate manager about the condition of the common property or the body corporate assets and that the body corporate manager reasonably considers to be relevant to future performance of the body corporate's duty to maintain common property and body corporate assets. The report must also include the body corporate's expenses, including repair and maintenance costs, for the three months immediately preceding the date of the report.

The report must be given within 21 days after the end of each 3 months for which the person is engaged as a body corporate manager[143].

Victoria

A prescribed owners corporation must prepare a maintenance plan for the property for which it is responsible[144]. An owners corporation that levies annual fees in excess of $200 000 in a financial year, and an owners corporation that consists of more than 100 lots are prescribed owners corporations[145].

[141] Section 107 of the *Strata Schemes Management Act 2015* (NSW)
[142] Section 108(3) of the *Strata Schemes Management Act 2015* (NSW)
[143] Regulation 62 of the *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)
[144] Section 36 of the *Owners Corporations Act 2006* (Vic)
[145] Regulation 6 of the *Owners Corporations Regulations 2018* (Vic)

An owners corporation (other than a prescribed owners corporation) may prepare a maintenance plan for the property for which it is responsible.

The maintenance plan must set out:

(a) the major capital items anticipated to require repair and replacement within the next 10 years;

(b) the present condition or state of repair of those items;

(c) when those items or components of those items will need to be repaired or replaced;

(d) the estimated cost of the repair and replacement of those items or components;

(e) the expected life of those items or components once repaired or replaced; and

(f) any other prescribed information.

Regulation 7 of the *Owners Corporations Regulations 2018* classifies as major capital items, common property structures, including the roof, stairways, balustrades, and window frames, common property services, such as shared water, gas and sewerage pipes, pumps, drains, electrical and telephony infrastructure, and common property assets, such as fences, pools, and water tanks.

The owners corporation must report to the annual general meeting in relation to the implementation of its approved maintenance plan[146].

Western Australia

Western Australia does not have a specific provision requiring a maintenance plan. Schedule 2A does, however, set out matters that may be provided for in a by-law as part of a management statement which includes the control, management, use and maintenance of any part of the common property, including any special facilities provided on the common property, and the maintenance of water, sewerage, drainage, gas, electricity, telephone and other services[147].

(iv) Summary

New South Wales, Victoria and Queensland have a specific requirement regarding the identification and documentation of current and future maintenance in the form of a maintenance plan, maintenance schedule or report in relation to administration of the scheme. Expenses can be estimated, and funds required raised. Reports are then required regarding maintenance and repairs undertaken. These requirements reflect contemporary business practice.

[146] Section 39 of the *Owners Corporations Act 2006* (Vic)
[147] Schedule 2A of the *Strata Titles Act 1985* (WA)

In most cases this would avoid raising special levies for maintenance and repairs which could and should have been anticipated.

Whilst Western Australia does not have a specific provision requiring a maintenance plan it's management statement includes the control, management, use and maintenance of the common property.

Tasmania has no requirement for a maintenance schedule, plan or report.

Area Sixteen – Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **Should a requirement be introduced that all or some strata schemes have a future maintenance plan or schedule, and if so, what time period should that plan cover?**

2. **What reporting, if any, should be required in relation to the maintenance plan or schedule and for what time period?**

2.17 Area Seventeen – Funds established for various purposes

(i) Introduction

The day-to-day administration of a strata scheme incurs costs, as does the maintenance and repair of common property. Contributions are collected from strata lot owners to cover both the costs that have been incurred and those that are to be incurred in the future.

The money contributed can then be set aside for those purposes. The way the funds are raised, the information to be provided about those funds including receipt and payment of money is important information that all lot owners have an interest in receiving.

(ii) Tasmania

A body corporate must maintain a fund for the purpose of meeting its financial obligations under the Act. All income must be paid into the fund and all expenditure must be made from the fund.

If the body corporate thinks fit, the fund may be subdivided into separate parts, one related to recurrent expenditure and the other related to capital expenditure. The fund must be maintained at a level sufficient to meet reasonably foreseeable expenditure to be incurred by the body corporate[148].

(iii) Other Jurisdictions

New South Wales

An owners corporation must establish an administrative fund and a separate capital works fund. A list of what amounts must be paid into each fund is provided, as is a list of what may be paid into each fund,[149] and the purposes for which payments can be paid from each fund.

An owners corporation for a strata scheme comprising two lots need not establish a capital works fund if the owners corporation so determines by unanimous resolution, where the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and no building or part of a building in the strata scheme is situated outside those lots[150].

An owners corporation must, no later than 14 days after the constitution of the owners corporation and at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure to maintain in good condition on a day-to-day basis the common

[148] Section 82 of the *Strata Titles Act 1998* (Tas)
[149] Sections 73-74 of the *Strata Schemes Management Act 2015* (NSW)
[150] Section 73 of the *Strata Schemes Management Act 2015* (NSW)

property and any personal property vested in the owners corporation, and to provide for insurance premiums, and to meet other recurrent expenses[151].

An owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its capital works fund for actual and expected expenditure for painting or repainting any part of the common property which is a building or other structure, and to acquire personal property, and to renew or replace personal property, and to renew or replace fixtures and fittings that are part of the common property, and to replace or repair the common property, and to meet other expenses of a capital nature[152].

An owners corporation is required to prepare a plan of anticipated major expenditure to be met from the capital works fund for a 10-year period commencing on the first annual general meeting of the owners corporation.

An owners corporation is required to prepare a plan for each 10-year period following the 10-year period to which the first plan applied. The plan is to be prepared for the annual general meeting at which the period covered by the previous plan expires.

An owners corporation may, by resolution at a general meeting, review, revise or replace a 10-year plan and must review the plan at least once every 5 years[153].

The owners corporation must determine the amounts to be levied as a contribution to the administrative fund and the capital works fund to raise the amounts estimated as needing to be credited to those funds.

If the owners corporation is subsequently faced with other expenses it cannot at once meet from either fund, it must levy on each owner of a lot in the strata scheme a contribution to the administrative fund or capital works fund, determined at a general meeting of the owners corporation, in order to meet the expenses[154].

Queensland

An owners corporation must establish an administrative fund and a separate capital works fund. A list of what amounts must be paid into each fund is provided, as is a list of what may be paid into each fund, and the purposes for which payments can be paid from each fund[155].

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[151] Section 79 of the *Strata Schemes Management Act 2015* (NSW) - recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawn mowing services and the like and minor expenses relating to maintenance of the common property.
[152] Expenses of a capital nature would include expenses in relation to major repairs or improvements to the common property or personal property of the owners corporation, such as replacement of roofing, guttering or fences and the like
[153] Section 80 of the *Strata Schemes Management Act 2015* (NSW) - a plan under is to include the following--
(a) details of proposed work or maintenance,
(b) the timing and anticipated costs of any proposed work,
(c) the source of funding for any proposed work,
(d) any other matter the owners corporation thinks fit,
(e) any other matter prescribed by the regulations for the purposes of this section.
[154] Section 81 of the *Strata Schemes Management Act 2015* (NSW)
[155] Sections 73 – 74 of the *Body Corporate and Community Management Act 1997* (Qld)

An owners corporation for a strata scheme comprising two lots need not establish a capital works fund if the owners corporation so determines by unanimous resolution, where the buildings comprised in one of those lots are physically detached from the buildings comprised in the other lot, and no building or part of a building in the strata scheme is situated outside those lots.

An owners corporation may invest any money in its administrative fund or capital works fund with any interest received on an investment forming part of the fund to which the investment belongs[156].

Money from one fund can be transferred to the other to meet expenditure of the other fund. A contribution, however, must be levied within three months of the transfer or use to reimburse the amount transferred from the fund[157].

An owners corporation for a strata scheme may, in accordance with a unanimous resolution, distribute between the owners any money in its administrative fund or capital works fund that is not, in the opinion of the owners corporation, required for the purposes of either fund in the same proportion that the unit entitlement of the lot bears to the aggregate unit entitlement.

An owners corporation must at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure[158].

An owners corporation must, at each annual general meeting, estimate how much money it will need to credit to its capital works fund for actual and expected expenditure for painting or repainting any part of the common property which is a building or other structure, to acquire personal property, to renew or replace personal property, to renew or replace fixtures and fittings that are part of the common property, to replace or repair the common property, and to meet other expenses of a capital nature[159].

An owners corporation is to prepare a plan of anticipated major expenditure to be met from the capital works fund for a 10-year period commencing on the first annual general meeting of the owners corporation[160]. An owners corporation is to prepare a plan for each 10-year period following the 10-year period to which the first plan applied. An owners corporation may, by resolution at a general meeting, review, revise or replace a 10-year plan prepared under this section and must review the plan at least once every 5 years.

[156] Section 75 of the *Body Corporate and Community Management Act 1997* (Qld)
[157] Section 76 of the *Body Corporate and Community Management Act 1997* (Qld)
[158] Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawn mowing services and the like and minor expenses relating to maintenance of the common property.
[159] Expenses of a capital nature would include expenses in relation to major repairs or improvements to the common property or personal property of the owners corporation, such as replacement of roofing, guttering or fences and the like.
[160] A plan under this section is to include details of proposed work or maintenance, the timing and anticipated costs of any proposed work, the source of funding for any proposed work, any other matter the owners corporation thinks fit, and any other matter prescribed by the regulations for the purposes of this section.

The owners corporation must determine the amounts to be levied as a contribution to the administrative fund and the capital works fund to raise the amounts estimated as needing to be credited to those funds.

If the owners corporation is subsequently faced with other expenses it cannot at once meet from either fund, it must levy on each owner of a lot in the strata scheme a contribution to the administrative fund or capital works fund, determined at a general meeting of the owners corporation, in order to meet the expenses.

Victoria

An owners corporation that has an approved maintenance plan must establish a maintenance fund in the name of the owners corporation. The maintenance fund of an owners corporation must be used for the implementation of the maintenance plan of the owners corporation[161]. A list is provided of what monies must be paid into the maintenance fund[162].

Western Australia

In Western Australia a strata company is required to establish a fund for administrative expenses that is sufficient in the opinion of the company for the control and management of the common property, for the payment of any premiums of insurance and the discharge of any other obligation of the strata company.

A strata company may establish a reserve fund for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the strata company likely to arise in the future[163].

A two-lot strata company does not have to establish a fund for administrative purposes. If a two-lot strata company does want to establish such a fund it can only do so through a by-law made by it[164].

(iv) Summary

All jurisdictions recognise that costs will be incurred through the day-to-day administration of a strata scheme, and the maintenance and repair of common property. Each jurisdiction requires funds to be established for these purposes. The names and types of funds to be established differ but they all have the same underlying principle of ensuring that enough money is available to meets these costs.

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[161] Section 40 of the *Owners Corporations Act 2006* (Vic)
[162] (a) any part of the annual fees that is designated as being for the purpose of the maintenance plan;
(b) any amounts received under an insurance policy in respect of the damage or destruction of property covered by the maintenance plan;
(c) any interest earned on the investment of the money in the fund,
(d) any amounts of a prescribed kind;
(e) any amounts of a kind determined by the owners corporation.
[163] Section 36 of the *Strata Titles Act 1985* (WA)
[164] Section 36A of the *Strata Titles Act 1985* (WA)

All jurisdictions regulate the way in which money is to be collected through contributions, and the way in which that money is then managed by a strata manager or committee of the body corporate. Reports are required to be made at regular intervals.

Western Australia, New South Wales and Queensland exempt two-lot strata from the requirement to establish a fund.

Area Seventeen- Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **What funds, if any, should be mandated and if they are mandated should there be minimum and maximum amounts set either in legislation or bylaws?**

2. **Should the funds established reflect the required costs identified in a maintenance schedule, management statement or disclosure statement?**

3. **Should smaller strata schemes (e.g. two-lot strata schemes) be exempt from the requirement to establish a fund to meet anticipated and actual costs, and have the choice of opting in?**

4. **Are the current sanctions for non-compliance with a legislative provision adequate and appropriate?If the strata scheme does not have a strata manager and the scheme has established a fund, should an independent government agency similar to the Tasmanian Government Bond Authority be responsible for regulating the use of that money?**

2.18 Area Eighteen – Compliance and Enforcement

(i) Introduction

The importance of compliance and enforcement in the strata environment should not be underestimated. Effective enforcement provisions play an important role in ensuring compliance with legislative requirements enforcement of by-laws, and enforcement of orders.

(ii) Tasmania

Various provisions throughout the Act provide for the sanction of a monetary penalty in circumstances where there is a failure to comply. There are other provisions that require certain conduct, but which do not apply any sanction for non-compliance.

In relation to the enforcement of by-laws if the owner or occupier of a lot contravenes a by-law, the body corporate may give a written notice requiring the person, in the case of a continuing contravention, to refrain from further contravention, and in any case, to take specified action to remedy the contravention within a specified period (which must be at least 30 days) stated in the notice.

The body corporate may, in addition to or instead of taking this action, make an application for relief[165].

If the owner or occupier of a lot fails to comply with a notice from the body corporate regarding a contravention of a by-law, the body corporate may apply to RMPAT for an order for enforcement of the relevant by-law.

RMPAT may choose to impose a fine (not exceeding 50 penalty units ($8 400) on the person in default, and/or make other orders it considers appropriate for the enforcement of the relevant by-law. A fine imposed by RMPAT is recoverable by the body corporate as a debt. A person must comply with an order and failure to do so may result in a fine not exceeding 50 penalty units ($8 400).

RMPAT may adjourn proceedings under this section and refer the matter to be dealt with using the application for relief process[166].

In relation to enforcement of orders made by the Recorder of Titles, if a person is required by an order to take or refrain from taking specified action, and the person fails to comply with the order within the time allowed by the order, any other person with a proper interest in the matter may apply to the Recorder for an order authorising the applicant to take or refrain from taking the necessary action, and if appropriate, requiring the person in default to reimburse the applicant for the cost of taking the relevant action.

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[165] Section 95 of the *Strata Titles Act 1998* (Tas)
[166] Section 96 of the *Strata Titles Act 1998* (Tas)

An order cannot be made if the time for commencing an appeal against the original order has not yet expired or, if an appeal has been commenced, until the appeal has been determined, withdrawn or discontinued[167].

If the Recorder of Titles makes an order for the payment of money, the order may be registered in a court having jurisdiction for the recovery of debts up to the amount ordered to be paid. Proceedings for the enforcement of an order so registered may be taken as if the direction were a judgment of the court in which the order is registered[168].

(iii) Other Jurisdictions

New South Wales

An owners corporation for a strata scheme may give a notice to the owner or occupier of a lot in the scheme requiring the owner or occupier to comply with a specified by-law if the owners corporation is satisfied that the owner or occupier has contravened that by-law. The notice must contain a copy of the specified by-law.

A notice must not be given unless a resolution approving the issue of the notice, or the issue of notices for the type of contravention concerned, has first been passed by the owners corporation at a general meeting or by the strata committee of the owners corporation[169].

The Tribunal may, on application by an owners corporation, order a person to pay a monetary penalty of up to 10 penalty units ($1 100) if the Tribunal is satisfied that the owners corporation gave a notice to the person requiring the person to comply with a by-law, and the person has since contravened the by-law.

The Tribunal may, on application by an owners corporation, order a person to pay a monetary penalty of up to 20 penalty units ($2 200) if the Tribunal is satisfied that the person has contravened a by-law within 12 months after the Tribunal had imposed a monetary penalty on the person for a previous breach of the by-law.

The Tribunal may, in dealing with a contravention of a by-law relating to occupancy limits[170], impose a monetary penalty of up to 50 penalty ($5 500) or a monetary penalty of up to 100 penalty units ($11 000) depending on the contravention.

A monetary penalty is payable to the owners corporation, unless the Tribunal otherwise orders. [171]

The Tribunal may, on application by an authority having the benefit of a positive covenant, order an owners corporation or an owner of a lot in a strata scheme to comply with an obligation imposed by the covenant

[167] Section 137 of the *Strata Titles Act 1998* (Tas)
[168] Section 138 of the *Strata Titles Act 1998* (Tas)
[169] Section 146 of the *Strata Schemes Management Act 2015* (NSW)
[170] Section 137 of the *Strata Schemes Management Act 2015* (NSW)
[171] Section 147 of the *Strata Schemes Management Act 2015* (NSW)

and relating to the maintenance, use, repair or insurance of a building or lot in the scheme, if the Tribunal considers that the owners corporation or owner has failed to comply with the obligation[172].

An authorised officer[173] may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence[174].

The amount payable under a penalty notice is the amount prescribed for the alleged offence by the regulations (not exceeding the maximum amount of penalty that could be imposed for the offence by a court)[175].

This does not limit the operation of any other provision of any legislation relating to proceedings that may be taken in respect of offences.

The Secretary may, if they believe on reasonable grounds that an offence under this Act has been or may be committed, exercise the following powers to investigate the grounds for the belief:

(a) enter common property,

(b) enter a lot at a reasonable time on notice given to the occupier; and

(c) request an owners corporation to provide information to the Secretary and allow the Secretary to inspect its records.

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court[176].

Queensland

Where a body corporate for a community titles scheme with more than two-lots reasonably believes that an owner or occupier of a lot included in the scheme is contravening a provision of the by-laws for the scheme, and the circumstances of the contravention make it likely that the contravention will continue, may by giving a continuing contravention notice require the person to remedy the contravention[177].

The notice includes, amongst other things, that if the person does not comply with the notice the body corporate may, without further notice start proceedings in the Magistrates Court for the failure to comply with the notice; or make an application for resolution of the dispute through the dispute resolution process set out in the Act.

[172] Section 234 of the *Strata Schemes Management Act 2015* (NSW)
[173] means a person employed in the Department of Finance, Services and Innovation authorised in writing by the Secretary as an authorised officer for the purposes of this section
[174] A penalty notice offence is an offence against the Act or the regulations that is prescribed by the regulations as a penalty notice offence.
[175] Section 250 of the *Strata Schemes Management Act 2015* (NSW)
[176] Section 251 of the *Strata Schemes Management Act 2015* (NSW)
[177] Section 182 of the *Owners Corporation and Community Management Act 1997* (Qld)

Non-compliance with the continuing contravention notice may result in a penalty up to 20 penalty units ($2 669).

A similar process applies if the body corporate for a community titles scheme with more than two-lots reasonably believes that an owner or occupier of a lot included in a community titles scheme has contravened a provision of the by-laws for the scheme, and the circumstances of the contravention make it likely that the contravention will be repeated. The body corporate may, by a future contravention notice require the person not to repeat the contravention[178].

The future contravention notice has effect for three months after it is given to the person, or a shorter period mentioned in the notice.

The same penalty provision applies for non-compliance.

A similar process also applies for two-lot schemes except that the notice is provided by a lot owner to the body corporate, the other lot owner and /or occupier of the other lot[179].

If a copy of an adjudicator's order for the payment of an amount, certified by the commissioner as a copy of the adjudicator's order or a sworn statement by the person in whose favour the order is made stating the amount outstanding under the order, is filed with the registrar of a Magistrates Court the registrar must register the order in the court.

The order may be enforced as if it were a judgment of the court properly given in the exercise of its civil jurisdiction[180].

If a copy of an adjudicator's order, other than an order for the payment of an amount, certified by the commissioner as a copy of the adjudicator's order or a sworn statement by a person in whose favour the order is made, stating that an obligation imposed under the order has not been performed are filed with the registrar of a Magistrates Court the registrar may register the order in the court.

The Magistrates Court may, by order, appoint an administrator, and authorise the administrator to perform obligations, under the adjudicator's order, of the body corporate, the committee for the body corporate, a member of the committee or the owner or occupier of a lot the subject of the order[181].

Victoria

If an owners corporation decides to take action in respect of an alleged breach by a lot owner or an occupier of a lot or a manager of an obligation imposed on that person by the Act or the regulations or the rules of the owners corporation, it must give notice of the allegation to the person alleged to have committed the breach.

[178] Section 183 of the *Owners Corporation and Community Management Act 1997* (Qld)
[179] Sections 183C and 183D of the *Owners Corporation and Community Management Act 1997* (Qld)
[180] Section 286 of the *Body Corporate and Community Management Act 1997* (Qld)
[181] Section 287 of the *Body Corporate and Community Management Act 1997* (Qld)

A notice must specify the alleged breach and require the person to whom the notice is given to rectify the breach within 28 days after the date of the notice.

If the person alleged to have committed the breach is an occupier of a lot affected by the owners corporation, the owners corporation must give a copy of the notice to the lot owner[182].

If the person to whom notice is given does not rectify the breach within 28 days after the date of the notice the owners corporation may decide to give the person more time to comply with the notice or to give the person a final notice[183].

If the owners corporation decides to give a final notice, the notice must state that the person must within 28 days after the date of the notice rectify the breach, and that if the breach is not rectified within that time, the owners corporation may decide to apply to VCAT for an order requiring the rectification of the breach.

If the person who is given a final notice fails to rectify the breach within the required time, the owners corporation may decide to apply to VCAT for an order requiring the rectification of the breach or to take no further action in respect of the breach[184].

Western Australia

An application for an order can be made by a person who was the applicant in a proceeding under this Act in which an order to act was made.

If the Tribunal is satisfied that an order to act has not been complied with, or has been complied with in part only, by the person to whom it was given, the Tribunal may vary, revoke or substitute the order to act, or make an order that the person to whom the order to act was given pay to the applicant a specified amount by way of compensation for the failure to act or to refrain from acting[185].

(iv) Summary

All jurisdictions include in their legislation compliance requirements in relation to rules or by-laws or general provisions of the legislation regulating strata or community developments. All jurisdictions also have enforcement provisions where there is non-compliance.

Tasmania, New South Wales, Queensland and Victoria provide a body corporate or owners corporation with authority to issue a notice whereby a person is given notice of a breach of a by-law, rule or legislative provisions. A period is provided by which time the breach must cease or be remedied. If there is continued non-compliance a further notice may be issued.

[182] Section 152 of the *Owners Corporations Act 2006* (Vic)
[183] Section 156 of the *Owners Corporations Act 2006* (Vic)
[184] Section 157 of the *Owners Corporations Act 2006* (Vic)
[185] Proposed section 207 of the *Stata Titles Amendment Bill 2018* (WA)

Penalty provisions also play an important role in encouraging and enforcing compliance.

There is in all of the compliance and enforcement strategies used by jurisdictions a reliance on the involvement of bodies corporate or owners corporations to attempt to address non-compliance before seeking assistance from an external body such as a tribunal.

Area Eighteen- Some Matters for Consideration

Your feedback is sought in respect of this area of focus including consideration of the following matters. It is not intended that feedback be limited to the matters below.

1. **How should non- compliance with legislative, orders by-laws and provisions be dealt with? What should the consequences of non-compliance be?**

2. **What are the legislative requirements in respect of which there should be an enforcement regime, and how should that enforcement regime operate?**

3. **What level of responsibility should a body corporate assume in relation to compliance and enforcement, and what should this involve?**

4. **Which external body should be responsible for enforcement if a body corporate is unsuccessful in dealing with non-compliance?**