Poatina Village Body Corporate (PVBC)
Strata Title Act 1998 – Review (June 2020)

Possible Points of Consideration by PVBC.

Poatina Village Body Corporate
Stratum Plan 120167
Gordon Street, Poatina TAS 7302

The Strata Titles Act 1998 (the Act) was introduced in 1998. The Poatina Village Body Corporate (PVBC) was established in 1995. In May 2020, The Tasmanian government established a review of the 1998 Act, inviting any interested parties but particularly lot owners, to present views on the Act. This paper represents a response from the Committee of the PVBC. The *Strata Titles Act 1998* is referred to in the PVBC response as 'STA'.

The left hand column outlines the key content from the Review Discussion Paper. The right hand column represents the PVBC response. The key issue identified by PVBC for each area of interest is highlighted and summarised in a grey box in the right hand column. The remainder of the text is discussional and explanatory.

The discussion paper can be found on line at:
https://dpipwe.tas.gov.au/Documents/Review%20of%20the%20Strata%20Titles%20Act%201998%20Discussion%20Paper.pdf

Extracts of Discussion Paper Review of the Strata Titles Act 1998	**PVBC Review Response**
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.	This submission from the PVBC attempts to raise issues that might relate to PVBC directly as a Body Corporate, or indirectly to Fusion Property Ltd as the largest unit holder with undeveloped land, or to individual private unit holders. The Review Paper lists 18 areas which we address in turn…some more relevant than others to the Poatina situation. The key content of the Review *Discussion Paper* is extracted in the left-hand column to provide a point of reference.
Purpose of the Act The Act was intended to provide a framework for: 1. The development of land by way of strata titles, including:	Stratum Plan 120167, Poatina Village Body Corporate (PVBC) is a Body Corporate that came into existence in 1995. Fusion Property Ltd is the original owner and the largest unit holder.

(a) staged development schemes and
(b) community development schemes, and
2. the regulation of day to day living and administration of strata developments.

More on the Purpose of the review:
"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."

Fusion Property Ltd. owns a large amount of undeveloped land.
The PVBC is supported by the Northern Midlands Council as a 'Village' - "special single interest community" (3.6.1.8 NMC Interim Planning Scheme 2013).

Note also 16.1.2 – (with regard to limited infrastructure capacity !!)

> *Therefore it is the policy of NMC to promote growth by infill, but not expansion, of the settlements at Bishopsbourne, Conara, Deddington, Kalangadoo, Nile, and Poatina.*

Poatina owns its own sewerage works and has independent water supply arrangements with Hydro Tasmania. Poatina once accommodated 3,000 people, housing people where the Golf Course is now located.

It is unclear as to why the NMC has bundled Poatina in with the 'infill, but not expansion' tranche of towns when the infrastructure operates independently of the Council.

2.1 Area One - Planning and development of strata schemes

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 1993also 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.

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,

PVBC is a complex body corporate. It contains detached-only residential housing, a community hall, motel, shops, etc, as well as undeveloped land and substantial common property.

It has management responsibility for all its own infrastructure – roads are maintained and renovated at private cost to the PVBC, water is with private contract with Hydro, Sewerage is operated independently, public and street lighting is managed by Aurora & TasNetworks and privately. Waste Management is under private contract.

The Poatina Body Corporate was set up neither as a staged development, nor as a community development (these categories may not have existed in 1995).
Undeveloped land being developed has raised some issues with regard to procedure in the past at both the legal and municipal council levels in 2006-8.

NB: STA 31(6) when is a subdivision a subdivision?

The Local Government (Building and Miscellaneous Provisions) Act 1993 specifies the nature of a subdivision in Sec 81. Ff. –

> *Any division of land into two lots is a subdivision*.

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?

The STA 42 (4) (a): Consent from unit holders is required for changes in staged development. Does this imply consent from unit holders is required from all lot owners for any ad hoc development by Fusion Property Ltd.?

Extract from STA

18. Amendment of plan

A strata plan may be amended by registration of an amendment under this Division.

19. Application for amendment

(1) An application for registration of an amendment to a strata plan may be made –
(a) if the body corporate is authorised by ordinary resolution to make the application, by the body corporate; or

(b) jointly by the owners of lots affected by the amendment.

(2) The application must be accompanied by the following:
(a) if the application is made by the body corporate, a copy of the resolution authorising the application certified under the body corporate's common seal;

(b) if the amendment affects the boundaries of lots or common property –
(i) a plan showing the amendment certified, in a form approved by the Recorder, by a registered surveyor; and

(ii) a certificate of approval issued under the authority of the council for the area in which the site is situated; and

(iii) evidence that the registered mortgagees of any lots affected by the amendment consent to the amendment;

(c) if the amendment affects unit entitlements, a revised schedule of unit entitlements;

(d) if the Recorder so requires, any certificates of title affected by the amendment;

(e) the prescribed fee.

(3) The Recorder may dispense with a registered mortgagee's consent under subsection (2)(b)(iii) if satisfied that the interests of the mortgagee would not be prejudiced by registration of the amendment or that the mortgagee has unreasonably withheld consent.

19A. Alteration or addition of buildings

Where –
(a) a building on a lot or on common property is altered; or

(b) a new building is added to a lot or common property –

and the alteration or addition requires the approval of the council, an amendment to the strata plan is to be lodged with the Recorder for registration under this Division

Unanimous agreement / vote is too high a bar in the case of PVBC but we recognise that it does offer significant protection to the common good. However in a complex Body Corporate unanimity may be both impossible and an impediment for appropriate development.

2.2 Area Two – Requirements for a strata plan

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.

In 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

Area 2 – 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 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? Review of the Strata Titles Act 1998 Discussion Paper Department of Primary Industries, Parks, Water and Environment 22
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?

Because PVBC is not merely residential, but commercial and communal with artistic enterprises that could also be classed as light industrial, together with farming activities, PVBC will have to be able to maintain its ‘special purpose’ Classification, with the Bylaws determining what is reasonable within the confines of the PVBC, as long as it does not impact the environment and neighbours in negative ways.

PVBC recommends that large and complex Body Corporates need to have some freedom from municipal councils with regard to planning and zoning requirements, as a “special single interest community”.

The Act must require that local Councils cannot zone an area under the jurisdiction of a Body Corporate without full, actual and evidential consultation with the relevant Body Coprorate/s. This would apply particularly to large and complex Strata Titles and Body Corporates that have a focus on social and affordable housing.

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)

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?

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.

For consideration:

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

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?

As PVBC is a large and complex Body Corporate, with potential and plans for growth, we see considerable benefit in having differentiated treatment in legislation.

The Act should reflect the principle of encouraging social and affordable housing that is supported by local Council planning schemes not stymied by them.

Strata Titles that are designed to encourage social and affordable housing should be the subject of special mention in the Act and attract special rules that both encourage do-ability and affordability without compromising planning or building standards.

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

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.

Tasmania
A disclosure statement is required for a staged development scheme27 and a management statement is required for a community development scheme28 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.

For Consideration
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?

Neither of staged development nor community development applies to Poatina.

In Poatina, any ‘developer’ is a member or unitholder of the Body Corporate.

Further and as yet unspecified development is possible at Poatina with the consent of the Body Corporate and within agreed Council development requirements and opportunities.

2.5 Area Five – Unit Entitlements

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

On what basis does a Body Corporate allocate unit entitlements?

Land valuation with improvements is a good guideline as a measure of services taken up. Special unit entitlements option in the current Act

your lot is and what the total is for all unit entitlements in the development, and what a unit entitlement means.

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 entitlements33.
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.
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 corporate34. 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

For Consideration
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?

should continue to provide some flexibility in allocating unit entitlements.

Other criteria need to be explored overtime to reflect fairness across all owners in relation to levies and voting rights.

We support legislation which continues to allow for the allocation of special unit entitlements. Their operation must be specified in the Bylaws.

2.6 Area Six – Common Property

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.

By PVBC experience it is vital that the Strata Plan and the By-Laws both:

a. Clearly and visually defines the areas known as common property, and
b. Explains in words the technical distinction between what is private and what is common – e.g. The lot owner is responsible for any plumbing within a building and all plumbing up until the main sewerage or water mains. The water and sewerage mains are common property and are the responsibility of the Body Corporate. Any work carried out privately

	on a property that damages a main will be fixed at cost to the lot owner.
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. 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. 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 For Consideration: 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? 4. Are the current provisions clear as to when service infrastructure is common property? If it is unclear, what changes need to be made?	The Act should require that both the By-Laws and the Strata Plan contain an inarguable outline of what is common property. When a lot is being sold, the vendor of a lot must supply a Strata Plan and a copy of the By-Laws to the intending purchaser. The Body Corporate should also be required to produce a Disclosure Statement / A common Property Schedule with regard to what is Common Property in relation to the property being purchased and to the Body Corporate as a whole and signal any cost implications on the unit holders.
2.7 Area Seven – Activation of a Body Corporate	
	Not relevant to PVBC
2.8 Area Eight – Meeting Procedures	
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. 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. For Consideration: 1. Should the Act specifically permit the use of technology to facilitate meetings?	A provision of Model By-laws as an appendix to the Act is useful. There exists a wide variation in size and function of Body Corporates requiring that By-Laws reflect unique purposes and contexts of each Body Corporate. By-laws need to be able to be tailored to particular needs of a Body Corporate. By-laws that countermand provisions in the STA should be disallowed by the Recorder of Titles. The Act should specify and allow for the opportunities provided by current and future

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?

technology for full participation and voting in meetings provided they are secure, respect privacy (maybe secret ballots) and are not open to meeting stacking or vote rigging.

Permission to attend and vote by video link should be specifically included in the act, to remove any uncertainty.

2.9 Area Nine – Quorum

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.

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 bylaw 10.

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

The Poatina Village Body Corporate has many absentee owners, and as technology exists for secret ballots to be held by video conference, they would appreciate:

(i) the time and cost saving in not having to travel to a meeting from interstate or internationally, or

(ii) the ability to be involved directly in the meeting rather than by a proxy.

The Quorum requirements should be supported by the Act, but set out in the By-laws and reviewed by unit holders when significant changes occur in the Body Corporate.

It would be useful if the Act can legitimise alternatives for when a quorum is not present – with a notification to all unitholders and a limited response period allowed for.

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

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.

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.
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.
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

It is in the interests of ***members*** of a Body Corporate to have access to the records, especially when there is a lack of transparency in the reporting of the business of the Body Corporate. There should be no disclosure of records other than to an auditor, the Recorder of Titles, a Mortgager, or an intending ***bona fide*** purchaser.

This does raise privacy issues such as disclosing addresses, financial arrangements etc. But a Body Corporate needs to have some transparency and mutual accountability amongst its members.

We suggest that the STA and the Privacy Act be amended in such a way that unedited disclosure of Body Corporate records is not illegal as under the Privacy Act. Provision for limiting access in special cases for personal security (to avoid harassment, abuse, etc), upon special application to the committee of the Body Corporate, should be allowed.

corporate is a party, and any other matters that the body corporate considers relevant.

For Consideration:

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?

A reasonable fee for inspection of the records, say up to $50 (indexed), within a ten day time limit, seems to be a reasonable arrangement that should be legislated for also.

2.11 Area Eleven – Roll or register for the body corporate

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.

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

For Consideration:

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?

It should not be a public document like an electoral roll, or a shareholder register but limited availability to members of the Body corporate only. This should be a legislative requirement.

Legislation should require a roll of members to be kept up to date with contact details, nature of the holding (solely or jointly etc) and the listing of any mortgages, the mortgagor and their contact details and any other encumbrances or liabilities on a particular unit.
Legislation should also indicate that to supply a roll of members to a Body Corporate member is not a breach of the Privacy Act.

2.12 Area Twelve – Insurance

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.

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

2.12 Area Twelve – Insurance

For Body Corporates such as Poatina Village which have stand-alone buildings, collective insurance by the Body Corporate is unavailable or prohibitively expensive and should not be a legislative requirement.

Instead, the Body Corporate should be required to maintain an up-to-date Insurance Register that demonstrates that every unitholder has provided a Certificate of Currency for appropriate insurance cover to the managers within 14 days of renewal of the policy.

In the event that a unitholder does not supply evidence that the property is fully and appropriately insured the Act requires that the Body corporate takes out insurance on that property at the expense of the unitholder.

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 scheme88.
Failure to obtain the required insurance may result in a fine not exceeding 50 penalty units ($8 400).

For Consideration:

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

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.

The Recorder is the last port of call in a dispute. Bylaws should have a dispute resolution process specified in the Bylaws.

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.
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.

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

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.

For Consideration:

1. Should each body corporate be required to establish an internal dispute resolution process?
2. What is the most appropriate external dispute resolution mechanism for dealing with strata-related disputes?

2.14 Area Fourteen – Strata Managers

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.

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 or have been engaged voluntarily by a body corporate. 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*.

For Consideration:

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?

Real Estate Agents are regulated. We are not aware of any managers of Body Corporates that are not registered.

2.15 Area Fifteen – Keeping of Animals

A question often asked is can an animal (usually a pet) be kept in a unit? The answer will depend on the bylaws 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.

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 lot130.
It should be noted that the Model by-laws can be amended or replaced.

For Consideration:

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?

The Model Bylaws do not allow pets/animals. This sets the scene for pets as privilege, rather than right. Bylaws can override the clauses in the Model Bylaws.

Keep the Model Bylaws as is, with regard to pets/livestock etc.

3. Should the provision regarding animals be in the body of the Act rather than the Model bylaws which can be changed?
4. If it is moved to the body of the Act, what should the provision be?

2.16 Area Sixteen - Future Maintenance Schedules

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.

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.

For Consideration:

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?

There is a need to have a long term view of maintenance of fundamental infrastructure such as water, sewage, roads, and street lighting. Body Corporates should have a risk assessment on infrastructure and a financial plan on how to ameliorate the risks. Disclosure at the time of sale/purchase seems appropriate. This should be embedded in legislation.

2.17 Area Seventeen – Funds established for various purposes

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.

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.

For Consideration:

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

Body Corporates over a particular figure – perhaps over $50,000 p/a – should be required to be audited annually. In doing this it avoids the necessity to have a separate statutory body to regulate the use of the funds.

A financially responsible and independent Body Corporate, would be given the freedom to operate within acceptable corporate and governance standards without extra legislative restrictions, such as (but not restricted to):

a. Running annually audited accounts
b. Operates a consultative budget that includes realistic contingency funding
c. Operates a full and up-to-date register as at 2.11
d. Is fully covered by insurance either by corporate insurance or individual certificates, as at 2.12
e. Has a comprehensive Risk Management Plan and
f. And has an agreed long term (5-15 year) maintenance/upgrade schedule

However, if a Body Corporate does not wish to run audited accounts, and manage other corporate and

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?

governance aspects of responsible management then it could be useful to offer a Bond Authority like facility.

A financially responsible and independent Body Corporate, would be given the freedom to operate within acceptable corporate and governance standards without extra legislative restrictions

2.18 Area Eighteen – Compliance and Enforcement

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.

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.

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.

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.

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.

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.

For Consideration

Compliance and enforcement is a very current topic within the PVBC members and other residents.

Body Corporate members do no to feel it is appropriate that committee members act as ‘police’ to enforce the By-Laws and ensure compliance and seek other ways of calling on residents’ sense of communal responsibility and mostly this works.

The current courses of action available to committee and members to manage non-compliance within the Act and regulations are enough. We don’t foresee any real need for change in the Act

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?	