SALAMANCA MEWS BODY CORPORATE

STRATA CORPORATION 115248

5-17 Gladstone Street, Battery Point 7004

16 June 2020

Craig Pursell
Review of the Strata Titles Act 1998
Land Tasmania
Department of Primary Industries, Parks, Water and Environment
GPO Box 44
HOBART TAS 7001

Dear Sir

On behalf of the committee of management of the Salamanca Mews Strata Scheme, I make the following submission to the review of the *Strata Titles Act 1998* ('the Act'). Although we have focussed on three areas in the discussion paper, the structures and controls evident in the more recent strata law of other states reveal the extent of change desirable for Tasmanian strata law.

Meeting Procedures and Quorum (areas eight and nine)

As a larger strata scheme, we have identified there can be difficulty securing a quorum with the physical presence of at least 50% of the members eligible to vote. Amongst the many reasons for this difficulty, two stand out – age and infirmity, and interstate ownership. Whilst the current interstate travel restrictions, and the stay-at-home recommendations to contain the covid19 remain in place, the capacity to obtain a quorum will be even more difficult. These restrictions are viewed as temporary, but they do exemplify the impact of travel, age, and health factors in securing physical attendance at general meetings.

The discussion paper raises several potential solutions to this predicament. The keys lie with the status of proxy votes, and with the description of a quorum.

The discussion paper makes the point there is no specific provision in the Act for the use of electronic technology for attending meetings and/or voting. It is a reality that electronic technology in various forms now is the main form of business transactions, and the revised legislation needs to accommodate this in the broadest description to ensure future communication technology is not inadvertently excluded.

Electronic technology will simplify proxy voting by members entitled to vote, as it avoids the current reliance on lodging a paper proxy or the additional processes to scan and email a proxy. This technology is expected to increase the number of people proxy voting at a general meeting, and simplify the management of votes at a general meeting.

The discussion paper also references the manner in which a proxy vote is counted for the purposes of determining whether a quorum at a general meeting is present. We note that under Queensland, New South Wales, and Western Australia provisions a proxy is taken to

be a voter present at the meeting[1]. We strongly support the making of similar provisions in amendments to be made to the Act.

However, the counting of a proxy vote towards determination of a quorum needs to be balanced by provisions to limit the number of proxies that can be held by a person. Without a limit, vote "harvesting" would have the potential for one or more persons to have undue power. This limit of the number of proxies to be held by a person could be set by reference to a maximum number[2] or by reference to a percentage in the case of a larger strata scheme.[3] We prefer the limit of the maximum proxies to be a specified percentage of the number of lots in a larger strata scheme: we favour the New South Wales provision whereby the total number of proxies that may be held by a person voting on a resolution, in a larger scheme, is a number that is equal to not more than 5% of the total number of lots.

The setting of a quorum at 50% of the persons eligible to vote (total membership) and present at a meeting is a familiar threshold with community recognition. The combined effect of electronic voting and the deeming of a proxy to be present for the purposes of obtaining a quorum is expected to have a beneficial outcome of that threshold being secured.

Although we support retention of the 50% threshold for a quorum, it is reasonable to make provision for efficient management of business if a quorum was not obtained. This is a situation that could arise regardless of the percentage required to establish a quorum. The discussion paper discloses the different approaches taken by other states to wrap up the business. There are three different approaches to resolve the no quorum, although all require an interval of 30 minutes from the scheduled start time of the meeting to elapse before taking further action.

Victoria's provisions of making interim resolutions is not supported because of the length of time and the potential complexities of processes to finalise the general meeting business. [4]

The 'sudden death' approach in the Western Australian process, to take those persons who are entitled to vote and present to constitute a quorum, seems to diminish the rationale for a quorum if it can be so lightly discarded.[5]

There are common elements in the approaches taken in New South Wales and Queensland[6] – adjourn for a period of (at least) seven days and, if no quorum is established at the adjourned general meeting, to take those present to constitute a quorum This 'second chance' approach preserves the voting rights of those who may have inadvertently or unavoidably missed the first general meeting, yet fixes a finite, and relatively brief, period to finalise business. This approach is preferred. New South Wales legislation[7] affords the chair of the general meeting the choice of an option apart from adjournment, that is to take action in the manner akin to the Western Australian provisions. Regardless of the view of action taken in that manner, having an option imposes an obligation on the chair of the general meeting to make a decision, without guidelines, that will affect more than the majority of persons in the scheme entitled to vote. This option is regarded as introducing unnecessary and avoidable inequity and complexity.

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[1] Schedule 1 *Strata Schemes Management Act* 2015 (NSW), section 130 *Strata Titles Act 1985* (WA), Regulation 82 *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)
[2] Regulation 101 *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld)
[3] Schedule 1 *Strata Schemes Management Act 2015* (NSW)
[4] Section78 *Owners Corporations Act 2006* (Vic)
[5] Section 130 *Strata Titles Act* 1985 (WA)
[6] Regulation 82 *Body Corporate and Community Management (Standard Module) Regulation 2008* (Qld
[7] Schedule 1 *Strata Schemes Management Act 2005* (NSW)

Strata Management (area 14)

Current Tasmanian strata law provides little accountability of strata managers in Tasmania. It does not impose responsibilities and obligations on the manager, other than a general provision that it is subject to control and direction of the body corporate through the committee of management.

We note other states highly regulate strata managers. In most states, if a strata manager receives a fee or reward for service the person must be licensed and regulated through a code of conduct or other mechanism. A voluntary strata manager is subjected to most of the same regulatory requirements imposed on a paid strata manager. Most states require the strata manager to give an annual accounting to the body corporate and hand over to the body corporate records for the preceding 12 months.

The review document puts two matters for consideration. One is whether strata managers should be regulated and/or licensed and, if so how and in what way? The second asks whether we have a preferred model of regulation and what matters should be regulated?

We submit there is merit in requiring a professional strata manager, being a strata manager paid a fee for service, to be licensed to ensure a standard of conduct and integrity. In this regard, we suggest the Tasmanian Real Estate Licence (https://ablis.business.gov.au/service/tas/real-estate-agent-licence/7369) appears to be a reasonable and appropriate model of the form of licensing.

We view the statutory regulation of strata managers, including voluntary strata managers most important: it adds a layer of protection for the body corporate against mismanagement, and ensures that the interests of the body corporate are being administered fairly, transparently, and without bias.

Many of the statutory regulatory provisions can be incorporated into a contract or agreement, however, the quality and efficacy of such provisions will vary with the contractual arrangements or agreements, the capability of body corporate oversight, and clear base line standards of performance - over time all of these can be expected to wax and wane. Statutory regulation of strata managers (paid or unpaid) appears to be the best way a body corporate can be assured that its interests are being properly managed. What should be regulated in this way could include such matters as the proper management of trust accounts for the strata scheme, including full accounting (such as details of all transactions - received and expended, and account balances), conflict of interest, accounting to the body corporate of actions taken in the previous reporting period, ownership and periodic handover of records, contract or agreement termination, insurance. This is list is illustrative, not complete.

Statutory regulation should have regard to the different sizes of strata schemes. While a larger scheme may benefit from strong regulation, compliance could impose an onerous burden on managers (often voluntary) of smaller strata schemes.

Submitted for your consideration.

Jim Miller
Chairperson
Salamanca Mews Committee of Management