Review of the Strata Titles Act 1998 - 'Discussion Paper'

Submission from the St James Close Body Corporate No.152723
7 St James Close, Newstead, Tas 7250

Area 1 - Strata Titles Act 1998: Review History

Noted that the St James Close Body Corporate also provided a Submission to the 2018 Review per letter dated 24 July 2018. Our response comments set out below are sequenced with the references used in the current 'Discussion Paper':

Area 2.1 - Planning & Development of Strata Schemes

1. The current Legislative basis for Strata Schemes Developments is effective but it does require updating, particularly, to be more definitive and to provide clarification for Developers, Stakeholders, & Body Corporates, from an operational & management viewpoint.

   During the P&D process the 'Sealed Plan' is developed by the Developer, to the point of the 'Sealed Plan' being approved & registered. The process then ensues for the activation of the Body Corporate, & the sale of the Lots. Lot Owners are fully reliant on the Title & Sealed Plan documents they receive. Apart from completing the sale of the Lots, the Developer has no 'carry over' involvement with that Scheme, meaning the Body Corporate (i.e *the Owners)* assume total responsibility on the basis & knowledge it has of the Strata Sealed Plan. The Recorder of Titles & RMPAT provides an avenue for enforcement & dispute resolution.

   Given the processes that apply to creating & activating a Strata Scheme, it is of fundamental importance that the legislative foundation be as explicit as possible to provide for all types of Strata Development, & that the compliance / enforcement provisions, are adequately explained, clear to interpret, & will enable effective & efficient management.

2. The 'Review' information provided about the Strata requirements of mainland States, reveals they have updated to contemporary & more prescriptive statutory requirements, to remove issues with interpretation & management issues. Tasmania should assess the outcome of the mainland Reviews, and adapt suitable provisions to our current Review.

Specifically, interpretation should be clearer with regard to identifying Lot & Common Property boundaries, & required Easements. Also identifying the onus of responsibility should also be made clear so Body Corporates, Owners & prospective Owners, are firmly aware who is responsible for the liabilities & commitments that are required & associated with the Strata Sealed Plan Scheme. This is very important with regard to the Common Property, especially where boundaries are shared with the Lot Owners, and those boundaries are also shared with building frontages & infrastructure.

Given the, Developer is released from all responsibilities when the Sealed Plan is Registered, & the Plan moves to the implementation & management phases with the activation of the Body Corporate, it would be prudent to have the Developer retain a formal nexus with the Scheme (*until the Lots are sold, or for a specified longer period*), to ensure the interpretations & management proceed as per the Sealed Plan 'Management Disclosure Statement' as included in the Sealed Plan. This process would be of considerable direct assistance to Body Corporates & Owners. The nexus should be formal & supported with a form of Bond or Guarantee.

There is little public / community awareness or understanding of developments initiated by 'Strata Sealed Plans', especially residential strata schemes. The process is largely seen to be a normal subdivision process. Given that some types of Strata Development (*especially staged, & multi storey*), can be complicated, & presents issues of misunderstanding for the community. Section 30 does not require public notification, but Councils take up the requirement under their Planning Schemes, as a Strata Scheme would be classed as 'development'.

3. Yes, separate provisions should be maintained in the legislation for P&D and Management *(as is presently the case).* This system of separation should also apply to Schedules, Regulations, & By Laws. The current Strata Titles Act is structured with 11 Parts & 43 Divisions.

4. Yes, and again this could be achieved by maintaining separate Divisions in the one Act, as opposed to providing for Land Subdivisions to be in a separate Act. Property Subdivisions & Sealed Plans effectively 'divide' land for an array of property development purposes. Sealed Plans are tied to a specific strata development type, & in effect provides a relaxation of the normal land subdivision development Rules, to achieve a higher or more practical density of development. Maintaining a single Act with separate Parts/Divisions would be clearer to interpret for all Stakeholders.

5. Yes, it would be appropriate to have the P&D of Strata Schemes & land Subdivisions contained within the same Legislation, but set out in separate Parts / Divisions of that specific Legislation

6. No, a total Review of Land Development in Tasmania, due to the enormity of the task involved, would cause considerable further delay and would likely set aside the changes needed to upgrade the requirements for establishing & managing Strata Developments. Already 2 years has been 'lost' in finalising the current review. The more effective approach would be to complete & implement the changes required from the current 2020 Review. Should a more comprehensive Land Development review become necessary, the outcome of the current Review could be consolidated as appropriate into the subsequent Land Development review changes.

Area 2.2. - Requirements for the Strata Plan

1. No, the current requirements for a Strata Plan do need updating. The contemporary & more prescriptive standards as legislated by Mainland States, show that there are some Tasmanian provisions that are lacking in prescription & clarity, thus creating opportunities for issues to arise with interpretation, especially with the designation of liabilities.

2. Yes, but whilst Lot boundaries can be identified on a site plan in the Sealed Plan Scheme, there is insufficient information with regard to defining the responsibilities & liabilities pertaining to Lot boundaries. It is fundamental that key information should be embedded in the Strata Sealed Plan. Tasmania does not presently require this key information, thus causing issues for Body Corporates & Lot Owners. This is the case especially with boundaries adjoining other Lots & the Common Property, particularly so, where buildings (single & multi storey *houses, sheds, fences*) & infrastructure services (*water, sewer, drainage, power, gas communications etc*), are located/constructed on shared boundary lines. This issue is a 'gray area' of responsibility & liability, seemingly left for Body Corporates & Owners to interpret, manage, & to resolve disputes.

   Our Body Corporate has 12 single storey Townhouses that all share their Lot boundaries with the Common Property. Because the brick frontages of all Townhouses are built on their frontage Lot boundary, determining

responsibility & liability is a vexed issue, where interpretations vary considerably. What level of liability, if any, is the Body Corporate responsible for with buildings & fences on shared boundaries. Similarly, what is the liability position with maintenance of infrastructure (*water, sewer, drainage, power, gas communications etc*). What are the liabilities for Lot Owners ? It is these types of issues that may arise & become in dispute. Sealed Plans & the legislation should be clearer on these matters.

3. Suggest establishing a formal nexus (*by way of a Bond or Guarantee*) between the Developer & the Strata Sealed Plan development for the duration of the sale of all of the Lots, or for a specified longer period. In addition, introduce the contemporary statutory standards being applied in mainland States. These initiatives should considerably improve the development & management of Sealed Plan Schemes.

4. Yes, support a requirement to ensure location & accurate Floor Plans are added to the Sealed Plan documents. Additionally, as constructed Layout Plans of all utility services (*water, sewer, drainage, power, gas, communications*), that are provided to service the Lots & the Common Property, should also be lodged with the Sealed Plan, noting that requirement would need to be a subsequent action by the Developer to be undertaken prior to the sale of Lots.

5. Yes, Local Councils should be retained as a mandatory part of the application, consultative & management process for all Sealed Plan Schemes. Councils play a key role in determining regional & local planning requirements & developments, including infrastructure provision – e.g. water, sewer, drainage, power, gas communications. Councils have key municipal responsibilities in providing governance, management, social & welfare services to their communities. Local Councils also have control of approving local land subdivisions.

Area 2.3 - Different Regulatory Frameworks

1. Yes, differing Rules should be applied to strata developments, due to the varying sizes & types of Strata Sealed Plan developments. Again, careful attention should be given to ensure these provisions are specific & clear to interpret by all stakeholders.

2. Yes, exemptions from requiring a Sealed Plan Scheme should be provided for smaller Schemes (*up to 3*) of Lots, and also, where circumstances are justified, for Social & Affordable Housing. In all Exemption cases, a Strata Scheme Application should still be submitted. A request for an exemption should show the development's proposed planning, development & management details. The Exemption approval requirements should be check-listed against the compliance standards for that Sealed Plan, to identify the areas of non-compliance. Exemptions should not be granted where unreasonable liabilities are placed upon Lot Owners.

3. Yes, the Queensland model seems to illustrate the best set of 'Rules' for dealing with granting Strata Sealed Plan 'exemptions'.

4. Yes, Social & Affordable Housing strata developments should be aligned with the normal Sealed Plan processes, and dealt with as per Clause 2.

   In certain cases, proposals may only be seeking an 'interim or transit solution' to set-up or re-purpose at a particular temporary use site for a limited period of time.

   In special cases for housing tenant(s) associated with Social & Affordable housing Strata Schemes, (*e.g. single, couple, homeless, destitute, emergency)* it should be permissible to vary the compliance for the recreation space ratio per Lot & Residence, where circumstances justify. The Sealed Scheme should be flexible to allow such exemptions.

5. Yes, the normal Applications processes should be applied to all Strata Development applications, with 'Exemptions' needing to register a less detailed Application for formal processing. Requirements associated with expediting Strata Sealed Plan approval may be granted. Where an 'Exemption' is granted, fees for Application processing may not be applied. Where an Application seeks to alter the requirement for Lot sizes, or building types or sizes, or to change infrastructure services provision, an assessment is to be undertaken by the Developer as to the reasoning & impact of the changes sought, & as to whether it is intended to achieve compliance, & what time period is required.

Area 2.4 - Management & Disclosure Statements

1. Yes, Management/Disclosure Statements must be provided & form part of the registered Sealed Plan, as per the current requirements.

2. Management/Disclosure Statements to be comprehensive about the total development envisaged in the Strata Scheme, particularly addressing Lot owner responsibilities & liabilities. If an exemption is being sought by the Developer, the reasons for seeking that exemption needs to be explained. Management/Disclosure Statements must be a recognised as a formal part of the Strata Sealed Plan.

3. Yes, Management/Disclosure Statements should clearly address the creation and purpose of the Common Property, and ensure that all boundaries & associated responsibilities are explained.

4. Yes, Developers should be subjected to statutory Penalties for instances of non-compliance in implementing Strata Sealed Plan development schemes. The Act is not clear on Penalty provisions with specific Penalties only applied for S.110 (Power to Obtain Information); S.133 (Imposition of Penalties; S.136 (Penalty of Contravention Part 9; & S.157 (Powers of Entry). These prescribed Penalties are restricted to specific compliance requirements, whilst the Act is silent on numerous other compliance requirements where Penalties should be prescribed. (*also See 2.18 1*).

Area 2.5 - General Unit Entitlement / Contributions

1. The current Tasmanian system of 1 Unit entitlement per Lot in a Strata Scheme is a 'fair & equitable' system for shared responsibility for Residential Strata developments.

   Body Corporates are empowered under S.83 (2) (a) of the Act to levy contributions in respect of the Lots proportionate to the General Unit entitlement. Body Corporates should be permitted to determine annual levies on a differential basis having regard to the Lot size, the size of buildings, and the use (*i.e. business, rental)* of the Lot buildings.

   The Act should also be made clear regarding liability for costs associated with the Common Property, and the apportionment of those costs to the Lot Owners. Should the apportionment be as per the General Unit

entitlement ? or should Body Corporates be empowered to vary the apportionment having regard to the Lot size, the size of Buildings, and the use (i.e. *business, rental*) of the Lot buildings.

2. Special Unit Entitlement should be applied where differing rights, benefits and/or liabilities can be demonstrated between Lots.

Tenants - Body Corporates cannot presently formally involve tenants in Body Corporate meetings or activities, only the Owners of the Lot(s) have that entitlement. It would be beneficial for Body Corporates, to have a optional mechanism to involve tenants of Higher Density Residential developments, such as Residential Care & Affordable Housing, & the private/public Rental Markets. Currently, Tenants do not have any 'membership' involvement with the Body Corporate. It could be an optional administrative provision for a Body Corporate to have authority to grant rental tenants a non-voting membership, as a means to obtain improved attendance & involvement at meetings. Body Corporates should have a specific authority to approve this option via a 'special resolution'.

Area 2.6 - Common Property

1. Support the preference that Tasmania retains the requirement for a Common Property Lot (s) to be designated on a Strata Development Plan showing all adjoining Lots. It is not sufficient to just make a notation on the actual Plan layout about the relationship & responsibilities of the Lots to each other. A Schedule should accompany the Sealed Plan explaining this important information.

2. Definitely yes. All information that defines/explains the Common Property boundaries, & its liability requirements for the Body Corporate, & all Lot Owners, can only be a major improvement. This 'Common Property information should be clearly explained & included as a part of the Strata Sealed Plan, and particularly, be included in the 'Strata Living Booklet'.

3. Yes, a clear specification is required in the Strata Sealed Plan to define & clarify Common Property & Lot sizes. Lot Boundary relationships must be illustrated & explained, with the responsibilities clearly stated for each

boundary, especially where boundaries & buildings (*houses, sheds, fences*) perimeters are shared with the Common Property owner, i.e. the Body Corporate. In such situations involving the presence of building frontages adjoining the Common Property, infrastructure (*water, sewer, drainage, power, gas communications etc*) & roof lines, or fence lines, the apportioning of the 'shared responsibility' should be made clear.

4. No, the current provisions do not clearly designate the responsibilities for site infrastructure. Clarification should be provided as to the liability of the Body Corporate & the Lot Owners with regard to the responsibility for site infrastructure services (*water, sewer, drainage, power, gas, & communications*). Are Body Corporates responsible for the infrastructure located in the Common Property Lot & within the boundaries of the Owners Lot ? Or is the Body Corporate only responsible for & within the Common Property. Additionally, a definition should be provided as to what comprises 'infrastructure' - is it the main trunk system ? does it include take-off branch house connection lines within the Common Property ? and those within the Owner Lots ? Current provisions are unclear.

Area 2.7 - Activation of Body Corporate

1. Yes, the Developer should be the person responsible for activating the Body Corporate, and the appropriate notifications to be provided to the Local Council, to the Recorder of Titles, & to the Lot Owners.

2. Yes, the Act should prescribe the process required & time period(s) for activating a Body Corporate, as well as, prescribe the matters to be listed on the initial Body Corporate meeting Agenda (*as currently applies*). The Queensland model seems an appropriate option to consider.

3. Documents the Developer should at least include in the first Meeting Agenda should be :- a copy of the Sealed Plan; a copy of the Management & Disclosure Statements; a copy of the applicable Statutory compliance documents; the Common Property Title; an Infrastructure & Services Plan; a forward Capital Works Improvement Plan; a forward Maintenance Plan; a forward Operating Budget; a schedule of the proposed Owner Annual Levies, a copy of suitable Management Rules which the Body Corporate can

apply with Management; and the Member's Register. The Sealed Scheme Plan 'Disclosure/Management Statement' should confirm the Developer's responsibility to provide the aforementioned documents at the activation BC meeting.

4. No, the current prescribed Penalties for non-compliance by Developer for a activating a Body Corporate are not sufficient, and are not clear as to what Penalty applies (*if any ?*). Noted the Mainland States penalties are clearer & significantly higher than Tasmania, indicating a need exists to update Tasmania's penalties.

5. The Local Council is the appropriate authority to handle requests for specific disclosures / requirements for Sealed Plans (*as per current requirements*). This is a similar process that Councils follow with Planning, Subdivision, & Building Scheme developments. Local Councils are the best avenue to supply disclosures / requirements for properties. At the time of purchasing a Lot, processes ensue through Property Agents, for prospective Owners to obtain a property Certificate from the Local Council. In those Reports, advice is given as to what information the Council possesses concerning that individual property. By being a part of the Strata Sealed Plan process, a Council would reference in its response Certificate, the disclosures / requirements that pertain to the Sealed Plan.

Area 2.8 - Meeting Procedures

1. Yes, the Act should provide for the option for Body Corporates to use electronic / digital technology to facilitate Body Corporate meetings, & associated administrative processes.

2. Provided that a secure tracking record is available to the satisfaction of the Body Corporate, use of contemporary electronic / digital technology should be available to assist the Body Corporate with its responsibilities. Email notification is a prime example of an efficient contemporary practice. Also, options to permit meetings by video conferencing technology (e.g. Zoom) should also be available where a Body Corporate so chooses.

3. Meetings (*i.e. Chairperson*) should be encouraged to minimise the use of 'ordinary resolutions' requiring a mover/ seconder, and favour determining

matters by way of them being 'resolved', which also illustrates a unanimous vote. The use of a formal 'ordinary resolution' would be utilised for 'business' where there was apparent for and against proponents.

4. 'Special Resolutions' should be utilised for 'important/special business' matters concerning adoption/changes to the Constitution, By Law or Management Rules, and any particular important business item as deemed by the Body Corporate. A 75% vote in favour should apply.

5. The Act should not specify any subject matter to require a 'unanimous resolution'. That practice is not contemporary, is unnecessary, & would only serve to cause unwanted disruption for the Body Corporate & the Owners. One negative vote could continually obstruct the determination of a matter that has (in our case) an 11 / 12 majority. A 'Special Resolution' should suffice for important business.

Area 2.9 - Meetings Quorum

1. Yes, Quorum provisions should be specified in the Act (or Regulations, or By Law). Given the varying types of Strata Schemes, achieving Quorum numbers can be an issue. However, a Quorum Schedule could be prescribed & be utilised based upon the Lot Owner Entitlements, as applicable to the differing types of Strata developments. A Quorum of 50% of the Membership, is a common application for local Associations. The Chairperson has responsibility for adjourning meetings within a set time period (*usually 1 hour*) when a quorum is not present.

2. As indicated above, the meeting/quorum provisions applying in Tasmanian Local Associations (*see Associations Incorporations Act & Model By-Law)* for would be relevant for Body Corporates to adopt & follow.

   PROXIES - The use of Proxy attendance & voting should be seriously reviewed, & if to continue, the provisions should be tightened to apply to genuine non attendance cases. Proxies should not be used by Lot Owners as an ongoing 'standing permanent arrangement' to go on indefinitely for every meeting, and be applicable for all business items. Proxies should be restricted to apply for the next meeting, & for subsequent meetings where

a genuine reason is provided and is acceptable by the Body Corporate for non-attendance. Proxies should also be specific to a particular business item(s) as opposed to a 'blanket cover' for every business item.

3. Yes, a 50% attendance requirement is an appropriate level for a Quorum.

4. Yes, it would be reasonable to reduce the 50% quorum requirement, where circumstances are such to warrant acceptance of a lesser meeting attendance %. This provision should require a particular Body Corporate being able to make an Application to the Recorder of Titles for permission for a lower % quorum. The process should be in the By Law.

Area 2.10 - Access & Disclosure of Body Corporate Records/Information

1. The current requirements in Tasmania for the disclosure of Body Corporate information are less prescriptive than mainland States. However, it would be appropriate for Tasmania to update its provisions to the standard of mainland States, whilst ensuring consistency with the requirements of the Freedom of Information legislation.

2. Yes, the Act (*or Regulation, or By Law*) should permit the use of electronic / digital information to Lot Owners. With regard to <u>prospective Lot purchasers</u> this is not supported, as anybody can turn up & indicate they are a 'prospective purchaser'. In such cases, they should obtain the information from the Lot Owner(s), or their Agent.

3. Yes, a Body Corporate should be enabled to have the option of charging a Fee for supplying information. Any such Fee to be relative to the reasonable cost of supplying the information. It should not be necessary for the Act or By-Law to state a Fee amount, the provision should only be an enabling provision for the Body Corporate.

4. Yes, a time frame for supply information is reasonable, but this may need a delay option if circumstances exist to warrant a delay. A seven (7) day time frame would suffice for routine enquiries, but a longer period should be permitted for non-routine enquiries.

5. No, a penalty should not be applied to Body Corporates for non-compliance, unless wilful circumstances are apparent & can be demonstrated via the Dispute Resolution process.

Area 2.11 - Roll / Register for Body Corporate

1. Yes, a Body Corporate should create & maintain a Roll / Register.

2. Information to include in Body Corporate Roll / Register being:-
    - Name of Lot Owners & contact references
    - Reference details & Copy of the Body Corporate 'Sealed Plan'
    - Formula used for establishing Lot Owner entitlements
    - Lot Owner Annual Fees & Calculation method
    - Body Corporate current Office Bearers
    - Body Corporate Manager & contact details
    - Body Corporate contact details
    - Copy of Management By Law / Management Rules
    - Insurances Coverage Certificate
    - Statement of Assets & Liabilities
    - Financial Budget - Annual
    - Financial Statement – Annual

3. The Body Corporate Roll / Register should be open for inspection by :-
    - The Body Corporate
    - Individual Lot Owners and/or their nominated Agent
    - Others persons lawfully empowered

4. No, a penalty should not be applied for non-compliance, unless wilful circumstances are apparent & can be demonstrated. A Dispute Resolution process could be followed.

5. Smaller Body Corporates (*3 Lots or less*), should have the option of whether or not to keep a Roll / Register.

6. Dependent upon the contents prescribed to be kept in the Roll / Register, & the extent of access permitted, the disclosure of the information should not breach privacy or personal safety, as the information will be known to

all Lot Owners. As indicated above, the Roll / Register should be private to the Body Corporates & Lot Owners. This removes the likelihood of any privacy or personal safety issues.

Area 2.12 - Insurance

1. There should not be any exemption for smaller Strata Schemes to provide replacement cover insurance for its assets & activities. Strata Insurance requirements should be applied to all Strata Schemes, including the Common Property. If the Lots are in separate ownership, the insurance liability requirement should be the same. It would not seem to be prudent to effect an 'Insurance' exemption, and to rely upon the personal responsibility position.

2. An 'exemption' should not be an option, meaning there is no need for the Body Corporate to determine the matter.

3. The Insurance requirement should be applied to the replacement value of all improvements on all Lots, including the Common Property. There should be no discretionary options.

4. No, a penalty should not be applied for non-compliance, unless wilful circumstances are apparent & can be demonstrated.

Area 2.13 - Dispute Resolution

1. It would be an advantage for all types of Body Corporates to determine & have access to an 'internal' dispute resolution process. An enabling provision could be made by Regulation or by By Law.

2. The current provisions for an 'external' dispute resolution process via the Recorder of Titles & RMPAT provide an appropriate 'external' process.

Area 2. 14 - Strata Managers

1. Provision should be made for Managers of larger size Strata Schemes (*more than 15 Lots*) in Tasmania, to be regulated as to their qualifications and competency to undertake the management role. However, the smaller Body Corporates should retain the option whether or not they want to appoint a regulated / qualified Manager, or whether they prefer to follow

other options. The major issue for smaller Body Corporates is the cost of a professional Manager which can be in the order of $15K to $20K p.a. This represents a significant cost & would be beyond smaller Body Corporates.

.

2. The Managerial standards applying for mainland States *(insurance, competencies, info technology, fiscal, legislation, reporting, character, certifications*) all would be appropriate for undertaking the Body Corporate's Manger role in Tasmania. Other components being, the need for interpersonal skills, human resources, & good communication abilities.

   The important issue being that the management of the smaller Body Corporates are performing to compliance standards with their management, fiscal & administrative duties. Perhaps introducing management monitoring guidelines, and an annual Check List, would be of assistance in this regard.

Area 2.15 - Keeping of Animals

1. Keeping of animals should be retained in the By Law, & be determined on a case by case basis by the Body Corporate.

2. Retain the keeping of animals provision in the By Law.

3. No, do not include in the keeping of animals provisions in the Act, as it's a management matter that should be controlled and determined by each Body Corporate, given their local circumstances.

Area 2.16 - Future Maintenance Schedules

1. Yes, it should be a prescribed requirement for Developers to prepare a 'Future Maintenance Plan' to form part of the Strata Sealed Plan Scheme.

2. Yes, a requirement should be prescribed in the legislation, preferably in the By Law, for Body Corporates to prepare & maintain a 'Maintenance Plan' for its Common Property. A 'Maintenance Plan' should at least be for an Annual Period, with a review requirement annually coinciding with the Annual Budget. The BC Manager should Report at least annually on the 'Maintenance Plan'. Small sized residential Strata Schemes (*less than 15+*

Lots) should be exempt if their circumstances warrant an exemption *(e.g. having a nil, or small area of Common Property).*

Area 2.17 - Funds Established for Various Purposes

1. Yes, the establishment or requirement of a Fund(s) should be mandated in legislation for Body Corporates, to provide for a proper management & control system for Body Corporate financials (*i.e. operating income / expenses, & capital works*). There should only be a need for 2 Funds, one for the Operational Annual Budget, the other for Capital Special Works . (*Additional Funds may be required if multiple Capital Projects are being undertaken).* Separate records to be maintained for each Fund.

2. The Fund(s) need to be designated as Operating or Capital as applicable, there should be no requirement for any other specification.

3. All Sealed Plan Schemes should be required to have an Operating Fund, & a Capital Fund *(when Capital Work is being carried out).* Exemptions should not be granted.

4. Existing Penalties for breaches are considerably less than mainland States, particularly Queensland (Penalty $20,000). The application of Tasmania penalties is not clear, except for certain specified breach, the maximum being up to 50 Penalty Units (x$160 p/unit) = $8400, plus 1 Penalty Unit (x$160) per day the contravention continues. Tasmanian penalties should be more clearly designated, & aligned with contemporary standards.

   Not all Body Corporates should be subjected to scrutiny by a State Agency for the Funds they establish. Tasmania already has an effective legislative system for monitoring/auditing of 'Local Associations'. Refer to the Associations Incorporation Act, S.24, which provides an exemption from annual auditing where its annual revenue is less than $250,000. This provision would be ideally suited for application to Body Corporates.

Area 2. 18 - Compliance & Enforcement

1. Tasmania has a contravention process in place, whereby if the Body Corporate determines an Owner is in breach of its By Law, the Body

Corporate can either serve a Notice of the contravention on the Owner, allowing at least 28 days remedying the contravention; or following up with a referral to RMPAT. The Act is not clear with who is responsible to initiate complaints for contravention of provisions of the Act, however, four Parts of the Act have penalties prescribed *(see Sections 110, 133, 136 & 157*) It seems that the Body Corporate cannot initiate Complaints under the Act, & is limited to the By Law process. In the case of a contravention under the Act, it seems that the Body Corporate would need to make application to the Recorder / RMPAT to initiate the remedial & penalty actions required. Section 133 should be amended to provide for Body Corporates to submit contravention Applications under the Act & By Law to the Recorder, and/or to RMPAT.

It would be of benefit to review the penalties currently prescribed in the Act, and consider removing those current penalty Clauses *(Sections 110, 133, 136 & 157*), and replace them with an all encompassing Section of the Act, or Schedule, that prescribes Penalties for breaches of the Act. That could be one single set of Penalties, or a series of Penalties specific to the particular Act provisions. These Penalties should have relativity to the By Law penalties, and should be set at a level that reflects consistency with other mainland States. Monetary penalties are the only practical option to pursue to achieve compliance.

2. The existing contravention process in Tasmania provides a process for a Body Corporate to follow. That process is similar to Victoria. It is of considerable importance the follow up process being clear and not costly for both the Body Corporate and the offender Owner. Also, given that the breach has arisen from non-compliance with a Sealed Strata Scheme, it is appropriate that the specific expertise of the Recorder & RMPAT be involved as a 'tribunal' to determine the breach non-compliance. This is far better scenario, than involving the avenue of a Magistrate's Court, whereby getting a hearing & the time for the hearing would be difficult, plus the costs would be much higher for both parties.

3. Body Corporates rightly have the immediate responsibility for ensuring compliance with the Sealed Strata Plan requirements, and the statutory

requirements set down in the Act & by Law. Detection of contraventions should be formally determined by the Body Corporate in the first instance.

4. The Recorder of Titles & RMPAT are the appropriate 'external bodies' for enforcing statutory requirements & compliance, beyond the authority of the Body Corporate.

OTHER RELEVANT REVIEW MATTER

New Edition of Strata Living Booklet - This Booklet was intended to be reviewed in 2018, with a wide distribution to stakeholders in electronic & hard copy format, namely, to Body Corporates, Lot owners, prospective Lot Purchasers, Developers, Local Councils, Lawyers, & Estate Agents. Our Body Corporate has not to date received the 'new' Booklet. Has the review & update to hard copy & electronic version occurred ?

If this Review work is still current, it is suggested the Booklet should have a Section inserted explaining the first Body Corporate meeting, and referencing the Sealed Plan Strata Scheme documents requirements to be presented at that meeting. Particular reference should be made to the Owner/Developer's Plans and descriptions of Lots, especially the Common Property. A Schedule should also be provided regarding the ongoing maintenance requirements, and the foreseeable associated costs.

----- ooOOoo ----

17 June 2020