

SUBMISSION TO

**DEPARTMENT OF PRIMARY INDUSTRIES, PARKS,
WATER AND ENVIRONMENT**

**Review of Strata Titles Act 1998
Discussion Paper**

Prepared By

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Area 1.1 Are the planning and development requirements in the Act effective?

Seems acceptable given that there is Council oversight

Area 1.2 What additional requirements, if any, should be included?

The prerequisite of accountability for architects, engineers developers and builders is essential to overcome the “quick” builds that lead to defects in buildings. Future owners are left with structural problems that should have been addressed during planning and construction. E.g. Opal building with structural defects and fire cladding issues found in several states.

independent building inspectors are required again with stronger laws and legislation. Plus, the impact on the insurances and values for those who purchased in good faith.

Self-assessment has proven inadequate, it seems independent building inspectors are required again with stronger laws and legislation to deliver quality strata developments.

Area 1.3 Are the current provisions in relation to community development schemes and staged development schemes easy to understand? If you find they are not, how do you suggest they be amended to provide further clarity?

Current provisions seem reasonable

Area 1.4 Should the planning and development aspects of strata be dealt with in legislation separate from legislation dealing with strata scheme management?

No. not necessary.

Area 1.5 Should the planning and development aspects of strata be contained in the same legislation as the planning and development requirements for subdivision?

No. Keeping the strata documentation together seems more appropriate

Area 1.6 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?

No. Keep the focus on strata planning and development.

Area 2.1 Are the current requirements for a strata plan adequate?

Issues found in several states.

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There needs to be a prerequisite of accountability for architects, engineers, developers and builders to overcome the “quick” builds that lead to defects in buildings. Future owners are left with structural problems that should have been addressed during planning and construction. E.g. Opal building with structural defects and the fire cladding issues found in several states

Plus, the impact on the insurances and values for those who purchased in good faith
Self-assessment has proven inadequate, it seems independent building inspectors are required again with stronger laws and legislation to deliver quality strata developments.

Area 2.2 Do they provide for proper boundary definition?

Height boundaries on older titles seem more difficult to determine

Area 2.3 What additional requirements should be introduced?

The Strata plan is the source document and needs to clarify all details.

Area 2.4 Should a location plan and floor plan be added to the requirements?

The present lot boundary outlines are adequate. Detailed internal floor plans may aid illegal activity

Area 2.5 What role does the Council play in relation to the approval of strata Plan and what role should it play if you believe is should be different?

The council approvals process has the obligation to review structural compliance and material compliance and other buildings with regulate construction standards to deliver quality Strata developments

Area 3.1 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?

No. Keeping a single base model is more effective in growing strata knowledge.

Area 3.2 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?

No. Do not see an advantage in different models. Keeping a single model is more effective.

Area 3.3 Should Tasmania adopt a similar model to that in Queensland were regulatory models have been developed for different types of strata development?

No. Not necessary for the numbers of developments involved.

Area 3.4 Given the increased need for affordable and social housing, moves towards increased density, inclusionary zoning, use of density bonus and the like (In Tasmania and in other jurisdictions), are there any considerations or specific provisions relating to social and affordable housing that should be considered?

No. Social housing and similar facilities would be better served outside strata system. Strata management is complex for residents to undertake. e.g. Body Corp meetings, levies and maintenance and when not managed and dealt with would most likely result in poorly maintained housing. Higher density seems to disadvantage mental health and general wellbeing.

Area 3.5 Should different rules apply to strata developments that are in part or whole designed to encourage and deliver social housing and affordable housing? What might this look like?

A strata development seems inappropriate for social and affordable housing. Strata management would impose complicated administrative procedures for residents to undertake. Costs associated with strata management may be just too much to manage. e.g. Body Corp meetings, levies and maintenance would most likely result in poorly maintained housing. Higher density seems to disadvantage health and mental health.

Area 4.1 Should a management or disclosure statement be required for all strata developments, and if so, what would that statement cover?

Yes. Management disclosure statements are essential for all strata developments.

Name of administration/manager, whether there is a committee in place, current levies, totals

held in sinking fund and administrative fund. The insurance details. Also, the maintenance required as measured against a maintenance schedule acquired from a suitably qualified professional and any legal action against the body corporate.

e.g. Qld BCCM - form 13

Area 4.2 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?

I would need to disclose that this is a staged development with a separate body corporate for that additional stage/s and disclose separate funds that apply to that particular stage.

Name of administration/manager, whether there is a committee in place, current levies, totals

held in sinking fund and administrative fund. The insurance details. Also, the maintenance required measured against a maintenance schedule acquired from a suitably qualified professional and any legal action against the body corporate.

Area 4.3 Should a statement be used to establish what is common property, service infrastructure and respective maintenance responsibilities?

Additional documents are unnecessary. The original Strata Title plan is the source document.

Area 4.4 Should a penalty apply for non-compliance?

Yes. Penalties are needed for non-compliance.

e.g. if there is not an appropriately completed management disclosure statement attached to a contract for sale/purchase, the contract is null and void. This is the penalty.

This was simple and effective in Queensland

e.g. Qld BCCM – form 13

Area 5.1 What do you think should be used as the basis for determining unit entitlements?

Size of the unit together with physical location within the complex e.g. Good, better and best

but this is subjective

Area 5.2 For what additional circumstances, if any, could a special unit entitlement be established?

No need for special unit entitlements.

Area 6.1 Should the option of having no common property be introduced in Tasmania, and if so, how would this be implemented?

To have no common property is better catered for by a single real property title

A strata Title was developed to cater for and cover common property to create higher density.

Area 6.2 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)?

No. The original Strata Title is the source document. Anything else creates complications.

Area 6.3 Is a single comprehensive definition of common property required? If so, what should it include)?

The original Strata Title is the source document identifying common property.

Area 6.4 Are the current provisions clear, as to when service infrastructure is common property? If it is unclear, what changes need to be made?

Yes, it is clear, using the original Strata Title document as the source.

Area 7.1 Who should be responsible for activation of a body corporate in existence prior to the current provision requiring owner/developer to hold the first Annual General meeting, and who should be notified of its activation?

Queensland model seems to work quite well. Their high number of strata developments have helped to develop and improve requirements.

7.2 Should the act provide what items should be included on the Agenda for the first Annual General Meeting?

Queensland model seems to work quite well. Their high number of strata developments have helped to develop and improve requirements.

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

Queensland model seems to work quite well. Their high number of strata developments have helped to develop and improve requirements.

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

Queensland model seems to work quite well. Their high number of strata developments have helped to develop and improve requirements.

Area 7.5 Should there be certain disclosures or requirements in relation to the strata scheme on a sale of property within the scheme? If so, how should this be mandated and effected?

Yes, there must be full disclosure. Otherwise, buyers suddenly find themselves faced with huge sinking fund instalments or a special levy call to cover the backlog of maintenance. To be mandated through a compulsory management disclosure statement attached to contract for sale/purchase. Penalty is applied when the management disclosure statement does not have completed information or is not attached, making the contract Null and Void. Effective and used in Queensland. e.g. Qld BCCM – form 13

Area 8.1 Should the Act specifically permit the use of technology to facilitate meetings?

No, not for AGM. Owners still have work and life commitments to work around. Encouraging personal presence helps interaction between owners and development of ideas benefiting the body corporate. A vote in person is tamper proof. Protection from tampering with the votes, needs attention and ingenuity.

Area 8.2 What limits, if any, should be imposed on the use of technology?

AGM papers must be mailed out. There is no place for social media in strata management. Technology should have an opt out clause for owners & aged owners who may not have electronic devices.

Technology may be used for day to day communications. Not a reliable source for votes on projects or management problems. Records need to be available on request from owners.

Area 8.3 In respect of what specified subject matters should the Act require ordinary resolutions?

The current arrangement is adequate.

Area 8.4 In respect of what specified subject matters should the Act require special resolutions (noting that special resolution needs to be defined)?

The current arrangements are adequate.

Area 8.5 In respect of what specified subject matters should the Act require unanimous resolutions?

The current arrangements are adequate.

Area 9.1 Should the quorum requirement be contained in the body of the Act rather than in the Model by-laws?

No, not in the Act. The model by-laws is the best place.

Area 9.2 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?

Attendance and involvement is preferable and tamper proof. A quorum at a general meeting can be in person, by proxy, by written voting paper, or electronic voting paper. Protection from tampering with the votes, needs attention and ingenuity. Otherwise, Victorian model seems to have everything covered.

Area 9.3 Is 50% an appropriate requirement for a quorum in model by-law 10?

50% seems unrealistic in larger complexes. At least with required percentage of attendance in the model by-laws each body corporate can decide for themselves. And make appropriate changes.

Area 9.4 Should the percentage be different depending on the number of strata lots in a strata scheme?

With required percentage of attendance in the model by-laws, each body corporate can decide for themselves. And make appropriate changes.

Area 10.1 Are the current requirements for the provision of information adequate?

No. Obtaining information prior to having a formal interest seems impossible. A compulsory management disclosure statement would be beneficial here.

Area 10.2 Should the Act specially provide for the electronic provision of information?

Seems unnecessary to be in the Act, when it is widely being used for day to day communications now. AGM notifications must be posted to all owners, or owners without electronic devices would be disadvantaged.

Area 10.3 Should a body corporate be able to charge a fee for the provision of information?

Queensland works well, Victoria seems similar.

Area 10.4 Should a specific timeframe be included by which the information sought should be provided?

Queensland works well, Victoria seems similar.

Area 10.5 Should a penalty be included for non compliance?

Queensland works well, Victoria seems similar.

Area 11.1. Should a body corporate be required to create and maintain a roll or register?

Yes.

Area 11. 2 ?

1.2.3.4. Relating to roll?

Queensland works well. Victoria seems reasonable.

Consistency with all the guidelines is better approach.

Area 11.5 Should smaller developments be excluded from having to maintain a roll or register?

No, consistency is better.

Area 11.6 How does this proposal to create or maintain a roll or register relate to principals and legislation regulating privacy and personals safety?

Privacy Legislation seems misplaced within a body corporate as each owner is a member of the same group of owners, i.e. body corporate, governed by the same rules.
Personal safety can be compromised if the body corporate has common property defects or poor maintenance that may cause injury. Hence the need for good maintenance and insurance.

Area 12.1 Should smaller strata schemes (e.g. two-lot strata schemes) be exempt from the requirements 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)?

No exemptions. Both owners need protection of insurance. Unexpected and unfortunate incidents occur, needing insurance cover. One owner never knows the financial circumstance of the adjoining owner and their ability to provide emergency funding.

Area 12.2 If so, should this exemption be limited to certain circumstances, including where a unanimous resolution of the body corporate has been obtained?

No exemptions. If there are existing exemptions they may be overruled as both parties need to benefit from and know there is cover on the common property
One never knows the financial position of the other owner/s

Area 12.3 What should be insured (e.g. Improvements on the lots and on the common property, only improvements on the common property, etc)?

All improvements on the lots plus improvements and contents on common property that belong to the body corporate

Area 12.4 Should a monetary penalty apply for non-compliance?

Insurance is necessary, A penalty should apply. How will it be determined is the ,
question? Cont'd

It is our understanding that admin/managers can act as agent for insurance companies and receive a percentage fee when the insurance is arranged. Admin/mangers are acting for the body corporate. This seems inappropriate as it may influence the insurance cover.

Additional As part of disclosure of insurance details provisions should also include the amount and type of any financial benefit given by the insurer for the insurance being taken out, to any of the following, the body corporate, or member of body corporate or a person engaged as a body corporate admin/manager.

Ref Section 177 (g) of the BCCM Regulation 2008 (Qld)

Area 13.1 Should each body corporate be required to establish an internal dispute resolution process?

A simple internal dispute resolution process seems reasonable, but needs to have
The ability to refer to an independent external dispute resolution service, at their
Individual cost.

Area 13.2 What is the most appropriate external dispute resolution mechanism for dealing with strata-related?

The existing dispute resolution through the Strata Titles office seems effective.
Provision, made under this part of the Act, need to be accessible to interested persons.

Area 14.1 Should strata managers be regulated and/or licenced in Tasmania and if so how and in what way?

Strata Managers need regulation, they are being paid to act for the body corporate.

Area 14.2 If you have a preferred model of regulation, what mattes should be regulated, for example qualifications, operation of a trust account, and sanctions for non-compliance?

Victorian model covers most things, but needs to add specifically, transaction reports say quarterly, correspondence in/out quarterly, with the maintenance report included with AGM papers.

The maintenance report showing maintenance undertaken in the past year. Maintenance outstanding as assessed against the regulated surveyor's assessment. This report would assist with sinking fund budgeting.

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Additional As Insurance details are published in AGM papers they must also include the amount and type of any financial benefit given by the insurer for the insurance being taken out, to any of the following, the body corporate, or member of body corporate or a person engaged as a body corporate manager.

Ref Section 177 (g) of the BCCM Regulation 2008 (Qld)

Owners would have more information to assess administrator's performance.
Each managers' offer to manage put annually to AGM. Acceptance at AGM makes the appointment.

Area 15.1 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?

Model by-laws, is the best place to have the default setting of No Pets/animals
With the usual exemptions for guide dogs and specifically trained assistant dogs. Caters for
high-rises to units and villa units.

Each body corporate may change the model by-law.

Strata complexes that have the least issue with pets/animals have strict conditions.

Area 15.2 Should Model by-laws 7 be changed to permit the keeping of animals?

Definitely not. There is no description of what constitutes a pet/animal or how large?

There are no conditions in place if you automatically allow animals.

The strata complexes that have the least issues with pets/animals have strict conditions.

There are issues of noise, yapping/barking, and fouling of common property, to be
considered.

In owners' lots pets/animals scratch, causing damage to doors, windows and floor coverings,
stain and soil carpets leaving a terrible smell that permeates the concrete floor, which seems
impossible to remove.

It is unreasonable to force these problems on landlords.

Holland had a problem with animals being slaughtered on balconies, we hear Melbourne
had a similar problem.

**Area 15.3 Should the provisions regarding animals be in the body of the Act rather than the Model by-laws
which can be changed?**

No Not in the Act. In the model by-laws is best. There can be the usual exemptions for guide-
dogs and for specifically trained assistant dogs. Body corporate of different types, e.g. lots
with land, are better able to have animals and pets without impacting common property.

Area 15.4 If it is moved to the body of the Act, what should the provisions be?

If is moved to the Act, the position must be NO animals or pets as the default.

With the usual exemptions for guide dogs and specifically trained and certified
assistant dogs.

**Area 16.1 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?**

There must be a maintenance plan. Victorian maintenance plan seems to have everything
covered.

**Area 16.2 What reporting, if any, should be required in relation to the maintenance plan or schedule and for
what time period?**

Reporting of maintenance should be circulated with the AGM papers.

e.g. To show maintenance undertaken past year, items still outstanding and what is due next
year. Adding the anticipated funds required for the next year.

Larger items outstanding against the plan will require an accumulation of funds over a longer
time frame e.g. roof replacement, driveway replacement.

The day the building is completed and occupied, deterioration starts and accidental damage
may occur, provisions to repair these situations need to be in the fund.

**Area 17.1 What funds, if any, should be mandated and if they are mandated should there be a minimum and
maximum amounts set either in legislation or by-laws?**

The two funds to be mandated are the administrative fund, to cover actual and expected
recurring expenditure for the next twelve months.

The sinking fund to cover expenditure of a capital nature, applied to the maintenance plan

schedule. Queensland mandated maximum amounts per lot the committee may approve seems to work well. Owners can approve higher amount/s of spending at the AGM. is sinking funds also need to be accumulating funds for the larger items over a longer term. e.g. roof replacement, driveway replacement.

Area 17.2 Should the funds established reflect the required costs identified in a maintenance schedule management statement or disclosure statement?

Funds must reflect the costs identified in maintenance schedule, management statement and disclosure statement.

Area 17.3 Should smaller strata schemes (e.g. two-lot strata schemes) be exempt from the requirements to establish a fund to meet anticipated and actual cost, and have the choice of opting in?

Should not be exempt. Smaller strata schemes still have common property requiring insurance and upkeep.

For consistency they need to be included in the scheme, have insurance to cover accidents while being able to satisfy compulsory disclosure statement at point of sale.

Area 17.4 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 Government Bond Authority be responsible for regulating the use of money?

Should be no exemptions. Consistency is better. The funds can be managed by the owner group

Minutes kept and signed if necessary and kept in a designated account.

Usual dispute resolution process is available here too.

Area 18.1 How should non-compliance with legislative orders by-laws and provisions be dealt with?

Summary shows a way forward.

There is dispute resolution procedure.

Area 18.2 What are the legislative requirements in respect of which there should be an enforcement regime, and how should the enforcement regime operate?

With better reporting by the admin/manager, owners are better able to self-manage

There is a dispute resolution process.

The compulsory management disclosure statement would help incoming owners and existing owners understand and appreciate the need for compliance.

Area 18.3 What level of responsibility should a body corporate assume in relation to compliance and enforcement, and what should this involve?

Body corporate is totally responsible for compliance and enforcement.

Build more understanding of the necessary requirements with all owners

Better reporting of maintenance progress and forecasts, sinking fund balances, and administrative fund balance will go a long way to educating existing owners to make more informed decisions.

The compulsory management disclosure statement would help educate new owners as to their responsibilities.

Area 18.4 Which external body should be responsible for enforcement if a body corporate is unsuccessful in dealing with non-compliance?

The introduction brief for Tasmanian has it covered.

ADDITIONAL COMMENTS

Financial Obligations

Over a period of time bodies corporate can hold substantial funds, and in the case where these are held by an admin/manager, these funds are usually held in a pooled account controlled by the admin/manager. In the case of Macquarie Bank, interest is paid on the account which in turn is retained by the admin/manager.

This practice raises a number of questions:

- The Body Corporate does not have direct access to the funds
- Difficulty with Auditing
- Non- disclosure by the admin/manager of this practice/benefit (The fact interest is retained by the Admin/manager becomes an issue as interest rates rise).
- Without the need for Admin/managers to be licenced or regulated, there is no obligation for funds to be held in trust.

Committee Limits on Spending

At present the strata act does not provide for limits on spending by the committee.

Other states stipulate within the Act on spending limits by committees which vary from \$200 per lot to \$1200 per lot.

PART 9 – Strata titles Act 1998 - Dispute Resolution

Provision, made under this part of the Act, need to be accessible to interested persons.

Ref Section 299 of the Qld BCCM Act 1997

Strata Titles Act1998

Division 4 – Management Sec 79

Three members with no limitations or directions have far too much authority over spending amounts and usually seem to have no regard for the standards needed to act in the best interest of all owners. Dissolving this committee and absorbing it into the usual committee structure, Chairman, Secretary, Treasurer, plus 4 members would be more effective.