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1 March 2019

Strata Titles Act Reform
Landgate
1 Midland Square
MIDLAND WA 6056

Dear Strata Reform Team,

Submission on *Strata Titles Regulations Discussion Papers: Staged Subdivision & Dispute Resolution, Termination of Schemes and Management and Seller Disclosure*

The Property Council is grateful for the opportunity to provide feedback on the *Stata Titles Regulations Discussion Papers* and congratulates the McGowan Government on pursuing these welcome improvements to Western Australia's property industry.

The Property Council represents more than 300 companies across WA in the residential, retail, retirement living, industrial and hotel sectors. The property industry now employs more people in Western Australia than any other sector, with more than 233,500 jobs.

We have consulted with our members which include those that will be directly impacted by the proposed amendments in the Discussion Papers. The following comments are intended to provide insight into aspects of the reform that can add most value to the property industry, and assist with the critical role the industry plays in creating prosperity, jobs and strong communities for current and future generations of Western Australians.

The following detailed comments are provided on those aspects of the Discussion Papers which are most relevant to the property industry.

The Property Council thanks you for the opportunity to provide industry feedback on a critical reform initiative for the WA property industry and economy more broadly. Should you wish to discuss our comments, please don't hesitate to contact me on 08 9426 1200 or by email to sbrewer@propertycouncil.com.au.

Yours Sincerely,

S Brewer

Sandra Brewer
WA Executive Director

Schedule of questions and Property Council comments

	Management and Seller Disclosure
	Categorisation of by-laws – conduct or governance by-laws
	Which option should be provided for in the regulations? What more should be provided within the regulations in relation to by-laws?
	We support option two in the Discussion Paper.
	Enforcement of scheme by-laws: section 47
	What explanation should be provided within the notice given by the strata company about the effect of section 47 and the enforcement of by-laws? What should be the maximum amount for a penalty imposed by SAT for contravention of a scheme by-law? What should be the maximum amount for a daily penalty imposed by SAT for contravention of a scheme by-law? What category / class / types of by-laws should a daily penalty be an option for SAT to impose?
	We suggest penalties imposed be in line with NSW: $1,100 for an individual $2,200 for a corporation
	10 Year (reserve fund) plan: section 100
	What additional information should be included within a 10 year plan? Should the regulations provide for the preparation of the 10 year plan by a professional and if so, in what circumstances (for example: should schemes of 100 or more lots have to employ a specified class of professional to prepare such a plan)?

	Should a pro forma 10 year maintenance plan (similar to the owners corporation maintenance plan in Appendix 1) be included within the regulations for strata companies to use (on an optional basis)?
	No comment.
	Unpaid contributions – interest payable: section 100
	Should this interest rate remain the same and if not, what alternate rate should be specified? If an alternate rate is suggested, please provide reasons why you suggest the alternate rate.
	We suggest interest rates not to be compounding. Alternatively the rate should be simple interest between 12-15%.
	Designated strata company: section 100
	What type of strata company for a scheme should be listed within the regulations as a designated strata company (this will trigger the need for that strata company to establish a reserve fund and prepare a 10 year plan)? Should the classification be based on building replacement value for buildings within the scheme? If so, what amount should be set for the building replacement value? Should another criteria be used?
	We suggest a scheme with an insurance replacement cost of $2 million or greater.
	Requirements to be met by strata manager: section 144
	How often should a criminal record check be undertaken by a strata manager or a specified agent, employee or contractor of that strata manager (agents, employees and contractors of a strata manager who are performing scheme functions and the services that a strata manager provides)? Who should be able to verify the criminal record check (chairperson or others on the council of the strata company)? Who is required to obtain a criminal record check (all staff within a strata management business or only certain frontline staff)? What should be the minimum educational qualifications a strata manager should have?

	What courses / units should be included within those educational qualifications? Should there be different levels of educational qualification depending on whether the strata manager is a principal, agent or employee? Should there be higher qualifications for a principal than for an employee? What supervision arrangements should be provided for a new employee who is providing strata management services? What transitional arrangements should be provided so that all existing strata managers have sufficient time to complete their course of study if they do not already hold the required qualifications? What minimum level of professional indemnity insurance cover should be maintained by a strata manager?
	With regard to the criminal record check: • Principals and personnel in effective control; • Strata managers; and • Any other agent, employee or contractor that carries out or has access to accounts related functions. With regard to the criminal record check: • Admin/ support staff to require a Certificate III that focusses on strata management or the first 5 modules of a Certificate IV that focusses on strata management. • Strata managers to require a Certificate IV that focusses on strata management. • Principals to require a Diploma level or higher in a business management related discipline or a Diploma level or higher that focusses on operating a strata management business. There should be a 3 to 4 year phase in period for the above. With regards to the PI cover: • $0 to $19,999,999 - $3mill • $20,000,000 - $99,999,999 • Greater than $100,000,000 - $10mill.
	Operations of accounts: section 148
	What other matters relating to the operation of trust accounts by strata managers should be provided in the regulations?

	We suggest the trusts should be audited annually in line with the REBA Act requirements.
	Protection of buyers: Pre-contractual information: section 156
	If a seller includes the pre-contractual information in the contract, what requirements, if any, should there be, for how that information must be presented in the contract? What changes should be made to forms 28 and 29? What additional warnings and information should be included in form 29 (being the general information about strata / survey-strata)?
	No requirements for presentation of information. However, if requirements are deemed necessary, we suggest that the information is contained in the prescribed forms which are included in the contract. Currently, most developers provide the disclosure information by including the Form 28 as an annexure to their sale contract. Similar to the retail shops and retirement villages legislation where prescribed forms are included within the contract. We suggest amalgamation of forms 28 and 29 to simplify and remove duplication. The forms should also be available in an editable electronic format.
	Protection of buyers: Notifiable variation: section 157
	What specified particulars of certain types of notifiable variations would be sufficient to enable a buyer to make an informed assessment of whether they are materially prejudiced by that notifiable variation? For example, if the notifiable variation is the strata company entering into a contract for the provision of strata management services, should the entire contract have to be disclosed or just specific information about the contract (such as the contracting party, duration of the contract, summary of services provided and remuneration under the contract)?
	Limit information to information listed above for service contracts (being the contracting party, duration of the contract, summary of services provided and remuneration under the contract). In addition to this information the termination rights of either party should be specified. We suggest that buyers have the right to request a full version of the proposed contract.

	Insurable asset: section 4(1)
	Are there any additional categories of *insurable asset* that should be added to the definition through the regulations? Are there any other items that should be excluded from the definition of *insurable asset*?
	No comment.
	Key document for a subdivision of land: section 3(1)
	Are there any additional categories of *key document* that should be added to the definition through the regulations? Some suggestions made in preliminary consultation are: • a list of building defects • contracts for the construction of buildings and improvements on the parcel.
	We suggest adding existing or proposed infrastructure contracts which is under section 64.
	Type 1 notifiable variation: section 3(1)
	Are there any additional categories of *type 1 notifiable variation* that should be added to the definition through the regulations?
	No. The existing list for type 1 is sufficient. If a buyer considers that any other change to the strata scheme (other than the changes listed as type 1 notifiable variations which provide buyers with right to terminate without establishing material prejudice) causes the buyer to suffer material prejudice, the buyer will still have the ability to terminate the contract as a result of the change. This provides sufficient protection for buyers.
	Common property (utility and sustainability infrastructure) easement: section 64
	What should the regulations provide about the information that must be included in the notice for the motion to approve the infrastructure contract (note that an ordinary resolution is required)? Should there be a sketch included with the motion showing where the infrastructure will be located on the common property? What terms and conditions should be implied within an infrastructure contract?

	The regulations will provide the following for the rights and obligations of the strata company and infrastructure owner: a) The easement area (a sketch specifying the location of the infrastructure on b) the parcel) c) If the easement is for a specified duration (which may be provided for in the d) infrastructure contract), the expiry date must be specified e) Subject to the Act, the infrastructure owner has the right to: i. install and remove utility conduits (pipes, wires, cables and ducts) on ii. the common property required to operate the infrastructure; iii. examine, maintain, repair, modify and replace those utility conduits; iv. enter the land at any time (if necessary with vehicles and v. equipment) to: I. install and remove the infrastructure or utility conduits required vi. to operate the infrastructure; and or vii. II. examine, maintain, repair, modify and replace the viii. infrastructure or utility conduits required to operate the ix. infrastructure x. vi. use the utility or sustainability infrastructure for the purpose provided xi. in the infrastructure contact. What other rights and obligations should be provided in the regulations?
	We suggest providing an implied term to say that if the infrastructure owner is a lot owner the strata company must insure the infrastructure however any increase in the premium would be a liability to the lot owner.
	Investing money from the administrative or reserve fund: section 116
	Should the regulations provide for the investing of money from the strata company's administrative or reserve fund?
	Stata companies should have the power to put only into an interest-bearing account with an ADI.

	Termination of Schemes
	Content of outline of termination proposal: section 175
	What information should the proponent include within the outline proposal about the funding the proponent must provide to all owners (along with additional funding for vulnerable owners) to obtain independent advice and or representation to respond to the full proposal (as required by section 190)? In addition to the information listed in section 175(1)(a) to (i), what other information should be included within an outline proposal?
	Provisions are currently onerous and prescriptive and adequately protects owners. We suggest capping the provision of expert advice for owners such as professional services (e.g. legal, valuation) both in time and value. SAT may play a role in setting the appropriate cap for these services / cost and we urge for lead times to be reasonable.

	Reference of full proposal to independent advocate: section 178A
	What qualifications should an independent advocate have? Should the independent advocate have the ability to contract out certain functions (also to an independent person), such as identifying vulnerable owners in a larger scheme? What experience, if any, should an independent advocate have? What should the regulations provide for the review of the termination proposal and the contents of the assessment of that proposal by the independent advocate? What should the regulations provide for in relation to the presentation by the independent advocate of the independent assessment? Should the regulations provide a time period within which the independent assessment of the full proposal needs to be given to the strata company and the presentation conducted? If so, what time period should be specified?

	For the purpose of determining the independence of the independent advocate from the strata company and proponent, should the regulations provide that the independent advocate must not be: • the proponent • an associate of the proponent • a member of the strata company (an owner of a lot within the scheme) • an associate of a member of the strata company or • the strata manager of that strata company? Should the regulations provide anything else about the independence of the independent advocate from the strata company and proponent?
	Independent advocate should not be required to be a legal practitioner. The independent advocate should have the ability to contract out functions to an independent expert (eg valuer, accountant, lawyer). Minimum requirements should include member of a property industry body, adequate industry experience and education. The advocate should not be: • the proponent • an associate of the proponent • a member of the strata company (an owner of a lot within the scheme) • an associate of a member of the strata company or • the strata manager of that strata company
	Content of full proposal: section 179
	Having regard to the information specified in section 179, is there any other information that should be included in the full proposal? Should the class of person required to prepare the second report within the termination infrastructure report (the scope of works to repair or replace the scheme buildings or infrastructure) be: a. a registered builder? b. another class of person? What should the regulations provide for the determination of the market value of a lot?

	What valuation methodology should be prescribed? The valuation of lots (contained within the termination valuation report) must be current as at a date that is not more than 21 days before the full report is submitted to the strata company. Should some other period be specified as to how current the valuations must be and if so, why? What should the regulations provide for the requirements to prepare or certify a termination infrastructure report or termination valuation report?
	No. The Act is already overly prescriptive. Valuation should be determined at the time of the outlined proposal being presented to the strata company. This is an essential element to avoid the action of speculators seeking to maximise future value. The period of 21 days may not be adequate in operation. We suggest a period of 90 days, in line with the lending institute.
	Regulations may impose additional requirements about the process required for consideration of a full termination proposal: section 181
	What additional requirements should be imposed about the process required for consideration of a full termination proposal?
	No additional requirements necessary.
	Vote: section 182
	What requirements should be imposed on the independent person in providing the record of the vote to the strata company? When should the record be provided? What additional requirements should be imposed on the voting process? Should the regulations include: • provisions detailing how the independent person (who tallies the votes) is determined to be independent of the strata company and proponent? • provisions specifying whether the independent person must be of a class of person with specified qualifications?

	• further requirements about how the voting is to be conducted by secret ballot?
	No comment.
	Confirmation of termination resolution by Tribunal: section 183
	What other materials should the proponent include with the application to the Tribunal for confirmation of the termination resolution: • the outline proposal? • approval of a plan of subdivision as referred to in section 177 of the Act? • details of what payments the proponent has made to the strata company as required by section 189? • details of what arrangements and payments the proponent has made for each owner of a lot within the scheme and for each vulnerable owner of a lot within the scheme to obtain independent advice or representation as required by section 190? • other materials? What other materials should the strata company provide to the Tribunal after being notified of the application for confirmation of the termination resolution: • the roll of the strata company? • records and statements of account made or kept under section 101? • each lease accepted under section 92 and any instrument of surrender of such a lease? • each lease, licence or other document granting a special privilege over the common property (other than exclusive use by-laws)? • the independent advocate's
	Materials should be limited to those described.
	Costs of process: section 189
	Should the regulations impose a limit on the fees which the strata company may charge the proponent to cover the strata company's costs of responding to the termination proposal? If so, what limits are suggested?
	Reasonable fees with the ability of SAT to determine what is reasonable.
	Independent advice and representation for owners: section 190
	What amount of funding should each owner of a lot in a strata titles scheme receive to obtain independent advice or representation in connection with the full termination proposal?

	What additional amount of funding should each vulnerable owner of a lot in a strata titles scheme receive to obtain fuller and more extensive independent advice or representation in connection with the full termination proposal? What should the regulations specify the funding can be used for? Should the regulations provide that only certain classes of person can provide the advice or representation? What should the regulations specify about the independence of advice and representation? How should vulnerable owner be defined under the regulations, having regard to the criteria provided in section 190(1)(b)(i) and (ii)? What should the regulations provide on the process for identifying owners as vulnerable owners? What should the regulations provide for the terms of the trust? Should the regulations specify: • a class of person who may be a trustee? • that the trustee must be independent of the proponent and the strata company? • when the trustee needs to pay money to owners and to vulnerable owners and in what circumstances? • what the trustee must do with surplus money held in the trust? • what records the trustee must keep and who those records must be provided to? • whether the trustee is entitled to renumeration and that the remuneration is to be paid for by the proponent?
	Reasonable fees with SAT to determine what is reasonable. Classification of an owner as a vulnerable person should be assessed by SAT. Classification of an owner as a vulnerable person should be limited to those owners who have existing support requirements for their incapacitation. Examples include recipient of NDIS services, aged care services and treatment for life threatening illnesses. To be classified as a vulnerable person the owner must be a resident of the affected building. Non-resident owners should be excluded from this classification. Additional funding for vulnerable owners should be reasonable and related to the costs of services to the vulnerable person provided by their attorney or other legal representative. Regulations should provide for a single advocate for multiple vulnerable owners in the same strata scheme. Identify one independent advocate for multiple vulnerable owners.

	Staged Subdivision and Dispute Resolution
	Sufficient compliance with by-laws: section 36
	What types of variations to a stage of subdivision should be treated as minor (and not require a unanimous resolution of the strata company and consents of holders of designated interests)? Who should determine whether a variation to a stage of subdivision is minor or not? Review of determination: Should the determination of whether a variation to a stage of subdivision is minor or not be reviewable? If so, who should be able to apply for the review? How should the strata company and the people with a designated interest be notified of the determination? What time limit should be imposed on making an application to review the determination?
	The list of variations that are considered minor under the current Act are overly restrictive; such that developers can be required to seek owner/interest holder consents where the stage development plans are modified due to construction issues or changes in market conditions. The introduction of the deemed consent regime (whereby an owner/interest holder must give reasons for not consenting to the subdivision, must act reasonably in withholding its consent and that decision can be reviewed by SAT), provides a significant improvement to the current regime (where an owner/interest holder can withhold its consent to changes to a plan of subdivision in its discretion). However, it still leaves open the question of when SAT may determine that an owner/interest holder is acting reasonably in withholding its consent. We suggest that the following specific examples should, at a minimum, be considered minor variations that do not require owner/interest holder consents: 1) modifications to the internal configuration of a building. For instance, if the staged by-laws disclosure a 6 storey apartment building, any change to the total number of lots within that 6 storey building and the respective unit entitlements of those lots should be a minor variation. Whether the building comprises predominantly 2 bedroom or 3 bedroom apartments should not be a matter of concern to owners in earlier stages; 2) the creation of additional common property in a subsequent stage, where the owners of the subsequent stage will be solely responsible for the costs associated with that additional common property. A developer should have the ability to increase the

	level of facilities available in a subsequent stage provided this does not impose any additional financial burden on the owners in earlier stages; 3) where a change to the unit entitlements, from any disclosed in the staged by-laws, results predominantly from changes in market conditions rather than from a modification to the physical development. In mixed use buildings, in particular, there is scope for the assessment of unit entitlements to change over time due to changing market conditions; for instance, residential lot values may increase as compared to commercial lots values. Such a change to the unit entitlements is entirely outside of a developer's control. More generally, we considered the inclusion of a "catch all" minor variations, being changes that do not make the existing owners any worse off. However, owners must already act reasonably if their consent is sought to a change and SAT can review that decision. If an owner is no worse off as a result of change to the staged by-laws, then the owner will not be able to reasonably withhold its consent to the change. We suggest that a surveyor and a valuer should determine whether a change is minor. That decision should be reviewable by SAT. Short timeframes should be provided for the strata company/owners/interest holders to seek to review the surveyor's/valuer's decision. That review may, in many circumstances, occur shortly after practical completion of the relevant stage. At the point, a delay in obtaining titles caused by the SAT review may have significant financial consequences for the developer.
	Requirements for staged subdivision by-laws: section 24
	What should the regulations require for staged subdivision by-laws? If a proposed plan for each stage of subdivision in a strata titles scheme is required by the regulations: a) which of the requirements of a scheme plan in section 32 should be required for a proposed plan of subdivision contained within the staged subdivision by-laws? b) should a proposed plan of subdivision for each stage of subdivision need to be prepared and certified by a licensed surveyor in an approved form? If a proposed schedule of unit entitlements for the strata titles scheme is required for each stage by the regulations: a) should the proposed schedule of unit entitlements set out the proposed unit entitlement of each lot to be created by each stage of subdivision, any change to the unit entitlement of lots in the scheme and the aggregate unit entitlement of all lots in the scheme on completion of each stage? b) does the proposed schedule of unit entitlements need to be certified by a licensed valuer in an approved form?

	Should the regulations for staged subdivision by-laws require the inclusion of any proposed additional by-law(s), repeal of by-laws or amendments of by-laws that are to be made and registered when the amendment of the scheme plan and schedule of unit entitlements is registered (to give effect to that stage of subdivision)? Is there a need for staged subdivision by-laws to include a summary of the stages of subdivision? Should the staged subdivision by-laws contain warnings that staged subdivision by-laws do not bind the: • Planning Commission or a local government to give a planning approval for an agreed stage of subdivision? • scheme developer of a stage of subdivision to undertake the subdivision?
	We do not support the imposition of further requirements for the staged subdivision plan in the regulations. To provide flexibility for developers where market conditions allow, staged by-laws would ideally have accommodated the provision of concept plans or flexible/variable proposals for subsequent stages. That would not have involved the preparation of a proposed strata plan or schedule of unit entitlement for the further stage. However, section 42(2) requires the staged subdivision by-laws to "describe in detail" the stages of subdivision that are agreed and any amendments to the scheme plan and schedule of unit entitlements that will be made on completion of each stage of subdivision. As a result, it seems that the Act already requires the disclosure of a proposed scheme plan and schedule of unit entitlement in the staged by-laws. We suggest that the staged subdivision by-laws should contain warnings that staged subdivision by-laws do not bind the: • Planning Commission or a local government to give a planning approval for an agreed stage of subdivision. • scheme developer of a stage of subdivision to undertake the subdivision.
	Review of Planning Commission decision: section 27
	Should the *prescribed period* in section 27 remain as 40 days or should it be some other period?
	No comment.
	Review of Local Government decision: section 28

	Should the *prescribed period* in section 28 remain as 40 days or should it be some other period?
	No comment.
	Scheme disputes: section 197
	Are there any additional classes of dispute that should be included as a scheme dispute? Are there any additional types of dispute that the regulations should provide are not a scheme dispute?
	No comment.
	Certain powers only exercisable by judicial member or legally qualified member: section 203
	Which orders to resolve a scheme dispute should only be exercised by a judicial member of the Tribunal? Which orders to resolve a scheme dispute should only be exercised by a legally qualified member of the Tribunal?
	No comment.
	Limitations on orders: section 204
	Are there any additional types of orders the Tribunal should not be able to make? If so, under what circumstances?
	No comment.
	Internal review of order or declaration: section 210
	What types of orders and declarations should be subject to internal review?
	No comment.

	General regulation making power: section 224
	What decisions made under the regulations should be subject to the review by the Tribunal? What other matters should be provided for arising from the review by the Tribunal of a decision made under the regulations?
	No comment.