Position Paper

strata community association WA

Priorities Not Addressed

A number of vital priorities have not been included in the draft Strata Titles Amendment Bill 2018 and require further consideration.

ISSUE 1 – Regulation/ Licensing of Strata Managers

Action SCA WA Seeks:
As part of the Strata Titles Act 1985 Reforms, SCA WA would like to see a minimum education requirement being the Certificate IV in Strata Community Management (this is in line with NSW legislation). Further, we would like a working group formed to develop a Licensing regime to move towards. These measures are both desirable and necessary to ensure effective consumer protection, minimum education, good character and trust accounting standards and sanctions for defaulting strata managers. Funds managed that are both collected and spent by strata managers in Western Australia alone, are estimated at over $1 billion per year.

SCA WA remains firmly of the view that licensing is the most appropriate way to regulate strata managers and urges the government to work towards licensing using the same model as many other occupations. The implementation of a registration scheme and a minimum education requirement (i.e. Certificate IV in Strata Community Management) for strata managers to be incorporated in to the Reforms of the Strata Titles Act would be a significant improvement in the interim.

Stakeholder Support:

In May 2017 SCA WA drafted a letter in support of the Reforms which was signed by the respective Presidents and CEOs of the Property Council of Australia, Urban Development Institute of Australia, Real Estate Institute of WA, Planning Institute of Australia, Australian Property Institute and Facilities Management Association.

This letter was presented to the Minister for Lands Hon Rita Saffioti MLA and detailed our combined support for the Reform process and acknowledged the commitment from both the Liberal and Labor Governments over the past 12 years for the Reforms, as well as the hard work that Landgate has put into the Reform process.

The jointly signed letter also emphasised the need to continue the Reform process following the Parliamentary approval of the current proposed Bill and the introduction of the Licensing of Strata Managers.

The Law Society and Real Estate Institute of WA have also previously joined SCA WA in a previous submission supporting licensing of strata managers.

It should also be noted that in a survey undertaken by WA Apartment Advocacy in March 2018 of strata property owners, 97% of participants wanted to see their strata managers licensed.

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Why?

Strata managers currently require no formal education or qualification, nor are there any restrictions on becoming a strata manager such as police clearances. Yet, they are in effective control of multi-million dollar assets and may hold anywhere between several million dollars to twenty to thirty million dollars on behalf of their clients with no requirement for audits. Consumers often incorrectly assume that they are dealing with qualified professionals who are regulated along the same lines as other industries.

As it currently stands, this 'open door' industry is in danger of attracting undesirable operators whilst failing to attract motivated professionals looking for a respected and acknowledged career. This is already evidenced by the severe labour shortage that many professional businesses are struggling with.

SCA WA is currently the only body offering membership, professional development and an accreditation pathway for strata managers, with approximately 100 strata management business.

In New South Wales where the industry is licensed, there are 1,656 licensed strata managers and 765 strata management businesses for 831,764 strata lots (as at July 2017). From this information, we could surmise that the Western Australian strata sector with 299,100 strata lots (as at August 2017, now over 300,000) supports 595 strata managers and 275 strata management businesses.

The given rationale for not progressing with licensing of strata managers is that it is not known how many strata managers operate in the industry in Western Australia. This justification is disappointing.

Ascertaining the number of strata managers in Western Australia is easy. The Yellow Pages online listings have shown 236 strata management businesses trading in Western Australia, and SCA WA have approximately 110 strata management business members. In addition to these searches, the need for strata managers based on the number of schemes in WA (which continues to increase) is clear.

However, the more pertinent issue is not the number of strata managers, but rather the number of consumers (strata companies and lot owners) and the size and importance of the sector that would benefit from licensing, with around 25% of residents in WA living in a strata titled property.

The proposed Reforms to the Strata Titles Act 1985 look to impose some requirements for strata managers however without licensing in place, these measures are inadequate.

For example, mandating trust account disclosure without also introducing licensing will achieve little. Strata managers who do not comply with the trust accounting requirements cannot be prevented from operating in the industry unless they have a licence that can be revoked. Having identified the need for a legislative requirement for strata managers to hold funds on trust, it seems bizarre that the case for licensing apparently has not been made out adequately to government.

Similarly, imposing a requirement to act in compliance with the Code of Conduct (as contained in the proposed Reforms) will do little to regulate unethical individuals as, once again, the individual

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cannot be prevented from operating in the industry should a serious breach occur. A breach of a Code of Conduct ought to be dealt with by disciplinary action, with sanctions that range from penalties, suspension and revocation of a licence. Effective regulation of strata managers will only occur when serious breaches of a Code of Conduct are met with suspension of a licence.

Precedent

Anybody working in Property Services in NSW is required to apply for a Certificate of Registration with the NSW Fair Trading Office, which involves gaining a Certificate of Registration qualification for property managers and strata managers.

Once they have successfully completed a Certificate of Registration in Strata Management and meet the eligibility requirements of the NSW Fair Trading Office, they are legally allowed to work in the Strata Services industry in NSW.

In order to apply for their Strata Managing Agent Licence they must complete Certificate IV in Strata Community Management. This is an additional in-depth training of the entire strata management process.

Once they have completed all modules, students may apply to the NSW Fair Trading for their Strata Agent licence, ultimately making them a Licensed Strata Manager.

In order to renew their registration with the NSW Fair Trading Department annually, both Certificate and License holders must complete a certain amount of study each year. This is called Continuing Professional Development or CPD. Licence and certificate holders undertake CPD by doing courses or learning activities that are delivered by training providers and industry experts.

ISSUE 2 – Protection for Purchasers Buying Off the Plan and for the Strata Company (Body Corporate/Owners Corporation)

Action SCA WA Seeks:

An Extraordinary General Meeting (EGM) is to be held within three months of the first AGM or following the settlement of one third of the lots in the scheme, whichever is sooner, to appoint a Council of Owners.

The original proprietor (developer) can be held liable by the strata company within the first two years of registration of the strata plan for the first annual budget (in line with NSW legislation); and the author and the date the budget is prepared is to be recorded on the budget within the Sales Contract.

The developer cannot vote on any defect or building issue relating to the strata company, nor can they vote on the appointment of themselves as a contractor for the strata company, including as the strata manager and they must fully disclose any potential conflicts of interest.

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The strata company is to budget for and undertake a detailed building defect and assessment report 12 months after registration of the strata plan and before the second annual general meeting of the strata company, prepared by an independent and suitably qualified building consultant.
At each annual general meeting for the first six years of the strata company, a resolution is to be passed acknowledging the complete list of known outstanding building defects that still need to be remedied.
The developer is to prepare an asset register for all plant and equipment within the scheme, as well as a detailed five year building inspection and maintenance plan for the improvements.

Stakeholder Support:

Purchasers buying into new schemes and owners having already bought in to new schemes.

Why?

When a strata plan is registered, it is common practice that the original proprietor (developer) and the strata manager hold the first AGM prior to the first settlement occurring.

At the first AGM, amongst a long list of requirements, the financial year is set, the building plans and other related documents are presented to the strata company, the budget and levy schedule is reviewed and passed, the council of owners is appointed and any formal contracts are acknowledged and resolved to be signed by the strata company.

SCA WA estimates that 50% of new strata companies need to hold an EGM following the first AGM to raise additional funds due to an inadequate budget being prepared for the sales contract. Whereas, one in two hundred existing schemes would need to hold an EGM to raise additional funds during their financial year.

There is very clear evidence that budgets are being prepared that do not adequately detail the insurance, management, service and maintenance costs of the strata company. Developers, sales agents and even the Department of Housing, are putting un-due pressure on keeping the budget and subsequently the levies low to aid in sales transactions.

Unless appropriate penalties are imposed on the developer and the author of the budget, new purchasers who have invested their significant savings buying into a new scheme will continue to be placed in financial hardship.

We are aware that developers are appointing themselves as building managers, maintenance managers and also as the strata managers at these meetings. In a lot of instances these contracts have not been properly disclosed within the sales contract nor have conflicts of interest been declared.

The developer should be required to fully detail all conflicts of interest that may exist, which should be minuted at the first AGM. It is important to note that in a lot of cases, the developer is the sales agent and the property manager and in some cases they are also the builder, so when it comes to appointing themselves as the strata manager, a conflict immediately arises given the agents and

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property managers are engaged on behalf of the developer, while the strata managers have a duty to work in the best interests of all owners within the scheme.

By ensuring an EGM is held within three months of the first AGM, a fair review of the minutes of the meeting can occur, along with any contracts that may be entered into by the strata company. In addition, more than one Councilor of the strata company can be elected. In most cases, it is currently only the developer that is the appointed office bearer of the strata company for the first year of the scheme, thus they have unvetted powers to approve all matters pertaining to the strata company.

There is mounting evidence that developers are using their majority proxies to prevent matters pertaining to building issues and/or defects from being recorded on the strata plan. This may be happening because they do not want potential purchasers aware of any outstanding building issues. Thus, it is vitally important that they are prevented from voting on the matters pertaining to defects and/or obstructing the full disclosure of any outstanding building issues.

To ensure an independent and comprehensive list of defects is identified, a suitably qualified building consultant needs to be engaged and the subsequent report needs to be summarized and voted on at the AGM by the strata company. This needs to occur for the first six years of the scheme which is the statutory timeframe to lodge a building complaint with Building and Energy.

Too often, at practical completion the planning and building documents pertaining to the strata company are lost and/or not handed over to the strata manager to form part of the records of the strata company. In a lot of cases, not all pumps and other plant and equipment are adequately listed, thus a suitable service and maintenance plan is not put in place leading to the early failure of this equipment. The developer (helped by the building surveyor) should be required to provide a detailed asset register, along with a five-year service and maintenance plan. This plan would also aid in the budgeting for the required servicing and maintenance of this plant and equipment.

Precedent:

The 2017 approved amendments to the NSW Strata Schemes Management Act 2015 added the following legislative requirements:

- The developer cannot be elected to the Council of Owners;
- A 10-year Reserve Fund forecast be prepared for the first AGM;
- Estimates are prepared before the first AGM to take into account the maintenance schedule of the strata company;
- An order may be applied for by the Strata Company against the original proprietor, if levies or estimates set at the first AGM are inadequate up to three years after practical completion;
- The developer is required to provide before the first AGM an initial maintenance schedule;
- The developer is required to provide a building inspection report;
- 2% construction bond to be held for two years until the defects process and reports are finalised;
- The developer cannot vote on defect motions;
- Limit on proxies to one if under 20 lots, or 5% of total lots if over 20 lots;
- The first AGM is to include the appointment of a building inspector;

- The provision of valuations, manuals, warranties, building plans and specifications as well as approvals is required to be provided at first AGM;
- The original proprietor is required to provide a comprehensive maintenance and inspection plan for all parts of the common property (including plant and equipment);
- Any person connected to the new scheme (i.e. developer, sales agent, builder etc) cannot be appointed as the strata manager.

ISSUE 3 – Form 28 - Protections for Purchasers Buying into Strata

Action SCA WA Seeks:

The main aim of the Reforms is to ensure people owning and buying into strata are adequately protected. Currently, the Reform process is missing the opportunity to ensure adequate disclosures are being made.

The Form 28, which is the Disclosure Statement required to be completed by the sales agent, is woefully inadequate and purchasers are not being made aware of a range of issues that can directly affect them and may be impacting the strata company as a whole.
So that purchasers are aware, the Form 28 needs to detail the following:

- The balances of the Administrative and Reserve funds (along with any other accounts, including loans to the strata company);
- Any SAT/Court Orders made against the strata company that have not been actioned;
- Any proceedings being taken by or against the strata company at SAT/Court;
- Any complaints lodged by the strata company with the Department of Mines, Industry Regulation and Safety (Building Commission);
- Any by-laws that vary the levy payments of the lot being sold;
- Any by-laws that limit the use of and/or are directly related to the lot being sold;
- Exclusive use areas that benefit the lot being sold;
- Any outstanding building defects or maintenance items that have not been budgeted for.

Why?

Currently the Form 28 only requires that the levies pertaining to the strata company be disclosed, it does not require that the amounts sitting in the Administration and Reserve Funds be disclosed nor any outstanding loans that may be owing by the strata company. Thus, people buying into strata and the property industry as a whole are not adequately assessing the true value of lots when they are being transacted.

For example, two buildings that are next to each other and identical in every way; one has nothing in its accounts, the other, the owners have studiously budgeted and raised $500,000 into the Reserve Account to address future maintenance issues; which building do you want to buy into?

Current disclosure requirements mean this is not being taken into account and purchasers and owners of strata are not adequately valuing the importance of raising a Reserve Fund.

The Reforms currently propose to hand the regulation of the strata industry to the State Administrative Tribunal. It is therefore anticipated that there will be an increase in Orders made against strata companies. SCA WA believes in some cases this may not be adequately actioned by certain strata companies who could end up with a list of outstanding orders made against them. Purchasers buying into a scheme must be made aware of any Orders of current SAT matters pertaining to the scheme.

By-laws can be limited to and directly impact lots within a strata company. This includes by-laws limiting the use of a lot or requiring that an additional levy needs to be paid by a lot or certain lots. With the exception of reading the management statement and/or by-laws in their entirety, purchasers are not being made aware that the lot they are looking to acquire is directly impacted upon.

The by-laws in a number of schemes grant exclusive use to certain lots over common areas, for example, areas such as car bays, storerooms and balconies. SCA WA too often finds that where these areas are not allocated for exclusive use and lots have been occupying areas of common property for an extended period of time, owners and in some cases sales agents, incorrectly assume they do belong to their lot. There are numerous examples where car bays have it written on a sign that the bay is for the use of a lot, however, this is not registered on the strata plan and thus the bay is actually common property. By requiring exclusive use areas to be disclosed at the point of sale, this confusion would be eradicated and it would be clear to all parties what can be occupied by the residents of the lot.

As is expanded upon in the below Issue 4, the Form 28 should disclose any building defect reports obtained by the strata company. There are numerous examples where people have accumulated their life savings to buy into a strata scheme, only to find there is a significant building defect they were not made aware of and the strata company is now required to raise a special levy. This can amount to tens of thousands of dollars to fix the issue.

It would a massive failing of the Reform process if this is not adequately addressed.

Priorities Addressed in Strata Titles Amendment Bill 2018

SCA WA has long lead the call for reform of this legislation and we support the proposed amendments contained in this Bill. We are pleased to see that several priorities have been addressed, including:

Improved Management Provisions

Action SCA WA Sought:

Reforms to the Strata Titles Act 1985 (the Act) which improve strata management provisions to reflect the demands of contemporary strata living.

Reforms should include:

- making strata managers, original owners and members of a strata council more accountable;
- simplifying management processes;
- allowing electronic notices, voting and record keeping;
- broadening the powers of the strata company to improve the scheme;
- making it easier to enforce by-laws and resolve disputes;
- ensuring by-laws are not unreasonable or oppressive;
- making it easier to install sustainability infrastructure;
- making it easier to improve common property;
- providing a clear framework for the Termination of Schemes;
- introduction of Community Titles.

Stakeholder Support:

Property Council of Australia
REIWA

Why?

The Strata Titles Act 1985 (the Act) provides the regulatory framework for the management of strata companies. It also sets out the establishment, constitution, duties and powers, meeting and voting arrangements for strata companies and strata councils.

The current Act is very outdated as we have seen a huge amount of change in the strata industry since 1985. Proposed Reforms should introduce more flexibility, more accessible and practical management options, and also require people who manage the scheme to do so in a more accountable and transparent way. These measures are essential in making strata communities more livable and therefore attracting more people to invest and live in high density property, which is necessary for the future development of the state.

The introduction of the **Termination of Schemes** provision in the Act will provide a clear documented process that ensures a fair and balanced approach is taken. The provisions require that

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a detailed proposal be presented to the owners, including the assessment of market value undertaken by a licensed valuer. Further, it requires the further approval from the State Administrative Tribunal allowing for all opponents and proponents to present their case.

The introduction of the **Community Titles Act** will bring WA in line with the rest of Australia and enable the creation of schemes within schemes. Community Titles Schemes will provide for more flexible and sustainable housing options, ensure better activation of important transport nodes and help create diverse communities that meet individual's specific needs and are enjoyable places for people to live, work and socialise. They will also deliver new development options that will drive economic growth in WA and build vibrant communities.

Precedent:

As part of the New South Wales's strata law Reform, changes were introduced to improve strata management provisions and strata management accountability.

As one example, the Reforms require managers to disclose any commissions received in respect of insurance. Owners can also use electronic communications for things such as online voting, emailing meeting papers and using phone-in for meetings, greatly increasing the ability of absentee owners to be involved in meetings and ensuring important decisions can be made.

The new legislation also made it easier and more practical for strata companies to enforce by-laws, firstly by doubling the maximum fines for by-law breaches and unless the tribunal decides otherwise, allowing those fines to be paid to the strata company by default.

Compulsory Maintenance and Reserve Funds

Action SCA WA Sought:

The compulsory requirement for strata companies to have maintenance and reserve funds in place to fund future capital works on common property and respond to emergencies.

A requirement for the strata company to prepare a 10-year maintenance plan and take steps to implement that plan.

The owners must now consider how the strata company will repair and maintain common property and raise sufficient funds to cover the costs.

Stakeholder Support:

REIWA
Property Council of Australia

Why?

It is part and parcel of responsible community living to have reserve funds (known as sinking funds elsewhere) in place to ensure required maintenance is planned for and affordable.

We see the compulsory nature of these funding schemes as a necessity to ensure schemes are adequately maintained and the owners' interests are protected. Currently, with no statutory requirement to have a reserve fund in place, many schemes fail to plan and put funds aside for future, capital expenditure. This inevitably results in schemes falling in to a state of disrepair and puts owners at the time in a position to pay large special levies (which are often unaffordable) in order to keep the scheme in operation.

We have seen, on many occasions, owners forced to sell their property because they cannot afford the special levies (this then devalues the property as purchasers demand compensation for the unusually large outgoings). We have also seen schemes refused public liability and building insurance, with areas of the common property blocked off for years due to the extreme state of disrepair that the owners cannot afford to rectify.

Strata properties are multi-million-dollar assets but without the proper maintenance activity, this asset can become a 'money pit' and that's why there is a need for compulsory funding for necessary maintenance activities.

Reserve funds are collected by a levy system over time, so that money is on hand when it is needed and the strata company (the owners) are therefore in a position to act on important maintenance requirements when they arise. For example, repainting is generally required every 7 to 10 years. If the painting is not maintained as required, it can cause render to crack and break down, which can ultimately lead to severe water ingress issues (resulting in properties being uninhabitable) and render coming loose (this would be extremely dangerous on a high-rise building). Painting of Highrise schemes often costs hundreds of thousands of dollars which is simply not affordable if money has not been put aside over many years.

Beyond the everyday maintenance measures, it's vitally important that strata companies have reserve funds on hand to deal with the emergency issues like major weather events and damage to the property.

The one-off events hurt the most, with many communities in cyclone and flood prone areas surviving thanks to reserve funds for emergency repairs.

In addition to the requirement for a reserve fund, the requirement for long term maintenance plans/ forecasts are equally as important as the two measures go hand in hand. Maintenance forecasts are prepared by professional building/ asset consultants and predict the future maintenance requirements for strata schemes so that the reserve fund contributions can be raised to meet the forecasted expenditure.

The Reserve Fund and the Long-Term Maintenance Plan would also protect purchasers looking to buy into a strata scheme. Currently a review of the minutes for an AGM would in most cases not highlight any long-term maintenance issues. This is a trap for new owners, who can buy into a strata

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scheme and suddenly find a special levy needs to be raised for a building defect that has been known about for a number of years yet has not been actioned by the strata company.

Precedent:

In Victoria, from 2007, 'prescribed' strata schemes are required to have a 10-year maintenance plan and if approved by the members, then it must be funded.

In Queensland since 1997 all strata companies have been required to have maintenance plans and funds. The ACT and SA also require them.

The situation in NSW is that maintenance [i.e. known as "sinking" in NSW] plans were phased in over a 3-year period as a requirement for all strata companies regardless of size.
An important difference, although there is a requirement to prepare a 10-year maintenance plan report, it is not a requirement that strata companies have to act on the plan and implement a maintenance [i.e. sinking] fund.

So, the situation in NSW is that all strata companies have to undertake a maintenance plan but none of them have to implement it with a maintenance fund. The 10-year plan must be approved by owners at an annual general meeting (AGM) and must be reviewed and adjusted, if required, in the first five years.

South Australia has legislation that all strata companies must establish a sinking fund for irregular maintenance or capital works and make annual estimates, or budgets, of future spending. Contributions to the sinking fund can, however, be set at negligible levels.

Under the Strata Titles Act, there is no requirement to have a sinking fund. However, strata and community corporations other than small groups (6 or less) are required to prepare a longer-term forward budget for maintenance and capital works.

- Medium sized groups of between 7 and 20 lots or units have to prepare a 3 year sinking fund budget to be reviewed every 3 years; and
- Large groups of over 20 lots or units have to prepare a 5-year budget and review it every 5 years

Groups with 6 or less lots or units, and community corporations with common property insurance cover of $100,000 or less are exempt from the requirement for these longer-term sinking fund budgets.

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