

ATTACHMENT A

**LEGISLATIVE COUNCIL STANDING COMMITTEE ON PUBLIC
ADMINISTRATION: REPORT IN RELATION TO THE INQUIRY INTO
WESTERN AUSTRALIAN STRATA MANAGERS**

GOVERNMENT RESPONSE

Recommendation 1

The Committee recommends that strata managers should be regulated by a system of positive licensing. Eligibility requirements for the granting of a license should include at a minimum:

- *Educational qualifications.*
- *Demonstration that the applicant is a fit and proper person to hold a licence.*
- *An indication the applicant has sufficient financial and material resources available to enable them to meet financial and operational requirements.*
- *Current professional indemnity insurance.*

Government response

On 31 October 2011 the Minister for Commerce released a Consultation Regulatory Impact Statement/Discussion Paper (RIS) inviting public comment on whether the State Government should introduce a licensing regime for strata managers. The RIS also invites comment on other options including the viability of regulating only the conduct of strata managers without a licensing regime.

The Government will be informed by the submissions received in response to the RIS and the analysis of the impacts of each option, including the likely cost to business and individual strata proprietors. Government support for licensing will depend on there being a clear demonstration of a net benefit.

Under the *Intergovernmental agreement for a National Licensing System for Specified Occupations*, the Government is precluded from implementing a stand alone licensing regime for occupations that are within the scope of the National Occupational Licensing Scheme (NOLS). Accordingly, if NOLS is introduced in Western Australia and the Government decides to introduce a licensing scheme for strata managers, they will be licensed in accordance with the NOLS model.

Recommendation 2

The Committee recommends that a transition period should apply to the implementation of the recommended licensing scheme.

Government response

If the Government decides to introduce a licensing scheme for strata managers, a transition period will be provided to give existing strata managers a reasonable opportunity to satisfy licensing requirements before the scheme is implemented. "Grandfathering" of existing strata managers into the new licensing scheme will only be considered if this is provided for in the NOLS model.

Recommendation 3

The Committee recommends that a new section be introduced into Part IV of the Strata Titles Act 1985 providing that:

- *All assets held by strata managers on behalf of strata companies should be deposited in a trust account held by the strata manager at an authorised deposit-taking institution.*
- *Strata managers must open separate trust accounts for each strata company.*
- *Transactions undertaken by the strata manager on behalf of the strata company are to be conducted through the relevant trust accounts.*
- *Trust accounts, held by strata managers, can be subject to audit by the regulatory body on a random basis or following a complaint.*

Government response

In evidence given to the Committee during the inquiry, Landgate advised that amendments to the *Strata Titles Act 1985* were already being drafted. These amendments are currently scheduled to be introduced into Parliament in 2012 and will include defining what a strata manager is and allowing strata companies to delegate functions to them. The amendments will make it clear that the role of the strata manager is defined in the contract with the strata company, which amongst other things, will allow strata companies to require strata managers to keep accounts and prepare statements of account. The requirements will support the notion of good financial management without being too prescriptive as to how this will be established.

The Government supports the proposed requirement for strata managers to hold monies in trust on behalf of strata companies though not, necessarily, separate trust accounts for each individual strata company.

The appropriate legislative vehicle for imposing trust account requirements will depend on the nature and extent of regulation eventually decided upon by the Government, which is contingent upon the outcome of the RIS and the implementation of the NOLS in Western Australia.

If the Government decides that strata managers should be licensed, the licensing framework is likely to be contained in separate legislation from that of the *Strata Titles Act 1985*. That legislation will be supported by a scheme of conduct regulation for strata managers and it is likely that those conduct requirements, insofar as they relate to trust accounts (including audit requirements), would be based on those that currently apply to the Real Estate and Settlement Agent industries.

Recommendation 4

The Committee recommends that section 50 of the Strata Titles Act 1985 be amended to provide as follows:

- i) Appointment of a proxy is to be confined to one meeting.*
- ii) The person entitled to vote at a general meeting must not appoint a strata manager of the scheme as a proxy.*
- iii) A strata manager or an associate of the strata manager cannot act as the chairperson of the strata company for the purposes of a general meeting.*
- iv) Recommendations 4(ii) and (iii) will apply in circumstances where the strata manager is also a lot proprietor of the scheme.*
- v) A member of the strata council may not appoint a lot proprietor, or a person representing a corporation which is a lot proprietor, to act in their place at a strata council meeting if the lot proprietor or representative is the strata manager of the scheme.*
- vi) A proxy is to be appointed using a form prescribed in regulations.*
- vii) The prescribed form should include provision for the giving of:*
 - specific voting instructions;*
 - a general voting power; or*
 - the power to abstain from voting on particular motions.*

Government response

A mentioned previously in response to Recommendation 3, amendments to the Strata Titles Act 1985 are already being drafted. The proposed amendments will include provision for setting rules in relation to proxies and how they can be managed.

While the Government supports, in principle, proposed amendments to the *Strata Titles Act 1985* to prevent the abuse of proxies by strata managers it must be recognised that any significant restriction on the use of proxies may create practical problems and may limit the ability of strata companies to satisfy their obligations under the *Strata Titles Act 1985* (for example, limiting the use of proxies may make it difficult to even convene meetings of a strata company).

Recommendation 5

The Committee recommends that Part IV of the Strata Titles Act 1985 be amended to include a new section requiring a contract appointing a strata manager to be in the prescribed form.

The prescribed form should include as a minimum:

- A comprehensive list of functions that can be delegated to a strata manager by the strata company with the capacity to include or exclude functions as desired.*
- Termination provisions.*

- *A requirement for the declaration of any commissions, payments or benefits payable to the strata manager other than those payable by the strata company under the terms of the contract.*

Government response

The Government does not support the prescription of contracts between strata companies and strata managers per se, as such contracts are commercial in nature. However, the Government would support requiring contracts to address, as a minimum, certain elements such as: the functions of the strata manager; termination; and disclosure of any commission, payment or benefit from a third party.

Although minimum requirements for contracts could be provided for in the *Strata Titles Act 1985* or regulations under that Act, the Government believes that the appropriate legislative vehicle will depend on the nature and extent of regulation of strata managers eventually decided upon by the Government.

Recommendation 6

The Committee recommends that Part IV of the Strata Titles Act 1985 be amended to include a section providing that, on the appointment of a strata manager, the manager shall provide to the lot proprietors a plain English statement containing the following information:

- *Services they have agreed to provide.*
- *Services provided for an additional fee.*
- *Services they will not provide.*
- *Details of how an individual lot proprietor can raise concerns, seek information, approvals or have matters included on a general meeting agenda.*

Government response

The Government supports, in principle, the proposed requirement for strata managers to provide a statement of services they have agreed to provide; those they will not provide; which services will be provided for an additional fee; and details on how lot proprietors can raise concerns, seek information and have matters considered at a meeting.

Although a requirement to provide a statement of services could be provided for in the *Strata Titles Act 1985* or regulations under that Act, the Government believes that the appropriate legislative vehicle will depend on the nature and extent of regulation of strata managers eventually decided upon by the Government.

Recommendation 7

The Committee recommends that Part IV of the Strata Titles Act 1985 be amended to include a section providing that:

- i) A strata manager must disclose to the strata company all commissions or moneys payable to the strata manager in the course of the strata manager's term of engagement.*
- ii) Failure to disclose a commission is an offence.*
- iii) A strata company at all times retains the discretion to withhold its consent to the strata manager seeking or receiving a commission.*

Government response

The Government supports giving strata companies the right to determine a strata manager's entitlement to commissions and requiring strata managers to disclose any commissions they receive in their capacity as a strata manager. The Government also believes that failure to disclose a commission should be an offence.

Although requirements relating to commissions and the disclosure of commissions could be provided for in the *Strata Titles Act 1985*, the Government believes that the appropriate legislative vehicle will depend on the nature and extent of regulation of strata managers eventually decided upon by the Government.

Recommendation 8

The Committee recommends that:

- The Department of Commerce should be the lead agency for strata title matters.*
- The current Act should be divided into two new Acts.*
- Act 1 should provide for all matters in relation to creation, variation, termination and conversion of all strata schemes and be administered by Landgate.*
- Landgate should maintain responsibility for the registration of strata titles.*
- In the interim Landgate should be given power to prosecute offences under the Strata Title Act 1985 and be funded accordingly.*
- The Department of Commerce should administer Act 2 which should contain the strata manager licensing and conduct provisions along with strata company management provisions.*
- The Department of Commerce should be funded to provide an information, conciliation and initial legal advice service for all strata title queries.*
- The Department of Commerce be responsible for coordinating the provision by Landgate of advice in its area of expertise through the one stop service. This relationship should be formalised either through a memorandum of understanding or in another form.*
- Landgate should be required to do all things necessary to facilitate the provision of its advice through the one stop service.*

- *Any legislation developed in relation to strata titles should contain an express power for prosecution of offences by the relevant government department.*

Government response

The Government believes that Landgate should remain the lead agency for strata title matters in Western Australia. However, if the Government decides to introduce a licensing scheme for strata managers, the Government believes that the Department of Commerce should be the lead agency for the administration of that licensing scheme.

The Government wishes to make WA more attractive for strata titled developments and to encourage investment in innovative, sustainable and affordable strata products. In this regard the Government is considering expanding the range of strata tenure options and allow for strata tenures and land uses to be combined within the same strata scheme.

Landgate is responsible for the administration of the *Strata Titles Act 1985*. The Strata Titles Act, insofar as it relates to the management of strata properties, currently provides a set of rules that govern the relationship between individual proprietors in strata developments. The Act also provides for the incorporation of strata companies, made up of individual strata proprietors, to govern that relationship.

The Government does not support dividing the *Strata Titles Act 1985* into two Acts to separate the creation, variation, termination and conversion of strata schemes from the management requirements of strata schemes themselves. The Government believes that there is an inextricable link between the conception and creation of new strata schemes and the management needs of those schemes as they evolve. Separating the management function runs the risk of stifling future innovation.

The Government does not support widening the existing role of the Department of Commerce to include the provision of conciliation services or legal advice to strata companies or strata proprietors in their dealings with each other. However, the Government believes that it does have a responsibility to provide a low cost forum to resolve disputes. In this regard the *Strata Titles Act 1985* already provides for disputes to be heard and settled by the State Administrative Tribunal. Under the *State Administrative Tribunal Act 2004*, the Tribunal is also empowered to mediate disputes.

The core function of the Department of Commerce (Consumer Protection) is to oversee the conduct of traders engaged in trade or commerce, in their dealings with consumers of goods and services. In recognition of the imbalance of bargaining power that often characterises the relationship between consumers and traders, Consumer Protection provides a conciliation service to consumers where required. Consumer Protection does not provide legal advice to consumers.

Strata companies and strata proprietors do not acquire or consume goods or services in their dealings with each other. As the relationship between individual strata proprietors is of a private nature, the Government believes that it would be inappropriate to provide a conciliation service or legal advice to those individuals at public expense.

Private disputes by their very nature can be extremely complex and difficult to resolve through conciliation due to the infinite range of issues that could arise and the myriad of personalities of individuals involved. A conciliation service would likely be very expensive to deliver with little or no prospect of cost recovery from users, therefore leaving the service to be funded by taxpayers.

Disputes of a private nature have historically remained outside the province of government. With associations, for example, the legislation has been framed so as to regulate the affairs of associations but still allow internal disputes within associations to be resolved by the members themselves rather than through Government intervention.

The Government believes that it has a responsibility to provide information to strata companies and strata proprietors about their rights and obligations under the *Strata Titles Act 1985*. Where strata companies and strata proprietors are properly resourced with relevant information but are still unable to resolve a dispute, it is open to them to seek a resolution through the State Administrative Tribunal as provided for in the *Strata Titles Act 1985*.

Although the Government believes that Landgate has primary responsibility to provide information about legislation within its portfolio, the Government also recognises that strata companies and strata proprietors may not intuitively seek out information from Landgate in the first instance.

The Government does not support a one stop shop model for the delivery of information to strata companies and strata proprietors. However, to ensure that information is more widely available the Government will instead look to provide a seamless delivery of services by establishing a range of places within Government from which strata companies and strata proprietors may access information. This could include, for example, the recently established Seniors Housing Information Service, within the Department of Commerce, as well as Landgate. The Department of Commerce will be given responsibility to coordinate the establishment of a seamless service delivery model in conjunction with Landgate.

With regard to licensing of strata managers, the Government recognises that strata managers provide services in the course of trade or commerce to strata companies and, by extension, to individual strata proprietors. If the Government decides to introduce a licensing scheme for strata managers, the Government believes that the Department of Commerce would be best placed to administer the scheme given its existing responsibility for licensing of other property occupations.

As with other legislation regulating property occupations, any new licensing regime for strata managers will contain express powers that allow the Department of Commerce to prosecute offences committed by strata managers.

Recommendation 9

The Committee recommends that:

(1) *Landgate, in conjunction with Strata Community Australia (WA) Inc and consumer representatives, work with the strata title industry to develop a set of requirements for:*

- *Keeping books of account.*
- *The content of financial statements of account including at a minimum:*
 - i) *a statement of cash flow;*
 - ii) *an income and expenditure statement;*
 - iii) *a balance sheet; and*
 - iv) *copies of the statements provided by the authorised deposit taking institution related to the trust accounts that the strata manager is required to operate in keeping with Recommendation 3.*

(2) *The requirements in (1) above be prescribed in the Strata Titles General Regulations 1996.*

Government response

The Government supports, in principle, the need to develop and implement specific requirements for keeping accounts relating to the management of strata complexes.

If the Government decides to introduce a licensing scheme for strata managers, the Department of Commerce will consult with Strata Community Australia (Inc) and other interested stakeholders to develop mandatory requirements.

Recommendation 10

The Committee recommends that:

- *Landgate in conjunction with Strata Community Australia (WA) Inc, the strata title industry and consumer representatives, develop a list of operational reports to be presented to lot proprietors, at the annual general meeting and on one other occasion during the course of a year.*
- *The above requirements be prescribed in the Strata Titles General Regulations 1996.*

Government response

The Government supports, in principle, the need to develop standard reporting requirements for strata councils.

If the Government decides to introduce a licensing scheme for strata managers, the Department of Commerce, in consultation with Landgate, will consult with Strata Community Australia (Inc) and other interested stakeholders to develop standard reporting requirements.

Recommendation 11

The Committee recommends that:

- *Section 84 of the Strata Titles Act 1985 is amended so the maximum monetary limit that the State Administrative Tribunal can award is equal to the Magistrates Court jurisdiction.*
- *Section 104 (2) of the Strata Titles Act 1985 be amended to allow s79 of the State Administrative Tribunal Act 2004 to apply.*

Government response

The Government supports the proposed amendment to *the Strata Titles Act 1985* to allow the State Administrative Tribunal to make awards up to the same amount as that of the Magistrates Court. The Government also supports the proposed amendment to section 104(2) of the *Strata Titles Act 1985* to align it with the requirements of section 79 of the *State Administrative Tribunal Act 2004*. Consideration will also be given to allowing the State Administrative Tribunal to issue orders prior to the release of written decisions or transcripts of proceedings.

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