18 September 2018

Honourable Donna Faragher MLC
By email: donna.faragher@mp.wa.gov.au

Dear Ms Faragher,

**Strata Titles Amendment Bill 2018**

As the peak industry body for the strata sector in Western Australia, Strata Community Association WA Inc. (SCA WA) have been consulting closely with Landgate on the *Strata Titles Amendment Bill 2018*. During this consultation, SCA WA has been seen as a trusted advisor due to the wealth of strata titles knowledge held by our members.

Upon reviewing the final Bill, we have identified some clauses which we do not believe accurately reflect the intent of this legislation to provide a simpler, modernised, transparent and accountable strata framework for WA.

We have outlined these clauses below as well as our suggested amendments for your consideration.

1) The existing primary obligation on strata companies to ‘enforce’ the by-laws under section 35(1)(a) has been removed. Instead the Bill only requires the strata company to ‘monitor’ the by-laws (under proposed new section 112). This is a very significant weakening of an important obligation and will allow majority owners in schemes to flout the by-laws. An obligation to ‘monitor’ is a long way short of an obligation to ‘enforce’. This change was introduced without consultation. We respectfully suggest this issue could be resolved by amending proposed new section 112 as follows:

   **Section 112** - A strata company has the function of complying with the scheme by-laws and enforcing compliance with those by-laws by others to whom they apply.

2) There is a problem in the use made of the phrase ‘owner of a lot’ as follows:

   **Section 3(1) - owner of a lot means —**

   (a) for a lot in a freehold scheme —

   (i) a person who is registered under the *Transfer of Land Act 1893* as the proprietor of an estate in fee simple in the lot; or

   (ii) if the fee simple is divided into a life estate with a remainder or reversionary interest — a person who is registered as the proprietor of a life estate in the lot to the exclusion of the proprietor of the remainder or reversionary interest in the lot; or
(iii) if a mortgagee is in possession of the lot — the mortgagee to the exclusion of the persons referred to in the preceding paragraphs;

However, in section 13(7), the phrase ‘owner of the lot’ is used in a different sense:

Section 13(7) - A strata title for a lot in a freehold scheme confers on the owner of the lot —
(a) rights as the proprietor of a fee simple estate in the lot under the Transfer of Land Act 1893; and
(b) an undivided share of the fee simple estate in the common property (other than temporary common property) as a tenant in common with the other owners of lots in the scheme, proportional to the unit entitlements of their respective lots; and
(c) an undivided share of the temporary common property as a tenant in common with the other owners of lots in the scheme, proportional to the unit entitlements of their respective lots.

We respectfully suggest this could be resolved by amending proposed new section 13(7) as follows:

Section 13(7) - A strata title for a lot in a freehold scheme confers on the registered proprietor of the lot under the Transfer of Land Act 1893 —
(a) ... 

3) The existing default obligation under section 42(11) on owners with the benefit of exclusive use by-laws is to, in summary, repair and maintain and, where necessary, renew and replace the exclusive use common property. That is a succinct and ‘real world’ appropriate statement of the obligation that ought to lie on owners with the benefit of exclusive use by-laws. Proposed new section 43(3) replaces this with a more diffuse and lesser obligation on owners to ‘manage and control’ that common property. We respectfully suggest this issue could be resolved by amending proposed new section 43(3) as follows:

Section 43(3) - Subject to the terms of exclusive use by-laws, the obligations that would, apart from this subsection, fall on the strata company under section 91(c) fall instead on the owners of the special lots.

4) The current default by-laws appropriately require the strata company to provide a description of the general nature of the business for each matter requiring an ordinary resolution. Proposed new section 123(7)(a) requires every ordinary resolution to be on notice (not just those ordinary resolutions voted on outside of a general meeting). For example, when discussing a budget at an Annual General Meeting, the owners at the meeting will often make changes to the budget during the meeting. It is often appropriate and necessary to do so. Under the draft Bill, this would not be possible as the strata company would be required to adopt the exact budget that had been included in the notice of meeting. This will make it significantly more difficult for strata companies to adapt the budget that had been included in the notice of meeting. This will make it significantly more difficult for strata companies to do what they need at meetings to meet their obligations and for owners to have any meaningful input at meetings into decisions. We respectfully suggest this issue could be resolved by amending proposed new section 123(7) as follows:
Section 123(7)(a) - for a resolution outside of a general meeting, 14 days' notice of the terms of the proposed resolution is given to each member of the strata company before voting on the resolution opens;

5) The current sections 7 and 7A do not allow owners to apply for permission to remove a structure within their lot. The implications of this became evident in the Tipene case. We respectfully suggest this issue could be resolved by amending proposed new section 86 as follows:

Section 123(7)(a) - structural alteration of a lot means —
(a) the erection of a structure within the lot; or
(b) an alteration of a structural kind to, or extension of, a structure within the lot; or
(c) the removal of a structure within the lot;

6) We are concerned about part of clause 166 of the Bill, which amends the current subdivisional and development approval processes for strata lots. We appreciate that there can sometimes these processes do need to be integrated. However, proposed new section 164A(3) Planning and Development Act 2005 would make this 'integration' the default requirement for all strata subdivisions and development approvals. With respect, this 'default requirement' is legislative overreach. As is, it would oblige even small developers to obtain development approval for and then to build a new house in a 2 lot 'battle-axe' subdivision, before subdivision approval was given. This would be a significant change from current practice, without consultation or apparent justification as the 'default' position. We respectfully ask that proposed new section 164A(3) Planning and Development Act 2005 in clause 166 of the Bill be deleted.

We offer our strong support for the Bill and commend the State Government on steering the passage of it through the Legislative Assembly. However we strongly recommend the amendments outlined above be considered before the Bill's passage in the Legislative Council.

SCA WA believes that if the Bill passes as is in the current draft, it may cause unnecessary and potentially significant ramifications for the strata sector in WA and it will be an opportunity lost to provide the very best version of this legislation that we can.

Lastly, we note that comments in the Legislative Assembly supported the decision not to license the strata management industry due to the relatively low number of individuals and businesses acting as strata managers in WA. SCA WA remains firmly of the view that licensing of the strata management industry is essential and that a working group should be established immediately following the passing of the current Bill to consider the implementation of a licensing regime.

When considering the need for licensing in WA, we must consider not only the number of businesses and individuals acting as strata managers, but more importantly the number of consumers that a strata managers’ activities impact and the amount of money that strata managers’ hold on the consumers’ behalf. More than 600 000 people live in or own strata property in WA and this number is rapidly growing. Strata managers are holding and managing many millions of dollars of client funds, and are guiding inexperienced volunteers (the owners) to manage multi-million dollar assets.
Although the inclusion of statutory duties for strata managers in the draft Bill is a step in the right direction, it does not go anywhere far enough. Under the proposed model, a client can take their strata manager to the State Administrative Tribunal for failing to meet their statutory obligations. The SAT may assist that particular client. However, the SAT cannot stop the strata manager from acting as a strata manager or take any action to protect other current or future clients of that strata manager.

We would appreciate an opportunity to brief you on the above issues and answer any queries you may have, and we invite you to contact SCA WA General Manager, Kara Grant at gm.wa@stratacommunity.org.au or 9381 7084 to arrange a meeting.

Yours sincerely,

Scott Bellerby
President