

Report 2 – Unit Titles Issues

Unit Titles Act and the Unit Title Schemes Act (Enforcement of Articles and By-laws and related issues) and combining of the Acts

CONSULTATION OUTCOMES

September 2013

This paper has been prepared for internal government discussion purposes only and any views expressed are not to be taken to represent the views of the Northern Territory Government, the Northern Territory Attorney-General and Minister for Justice or the Department of the Attorney-General and Justice.

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1. INTRODUCTION

1.1 *Current legislative scheme for shared ownership*

The current legislation for shared ownership of land (eg strata titles, condominiums, estate developments and the like comprises the *Unit Titles Act* and *Unit Title Schemes Act* (the Acts). The *Unit Titles Act* was enacted in 1974. It dealt with the subdivision of buildings into units. In the main it dealt with residential units – see Part III. Over the following 30 years it was substantially amended so that it applied to staged residential developments (called condominiums in the *Unit Titles Act*) (see Part IIIA), estate developments (eg suburb wide titling structures but with a capacity to further subdivide under Part IIIA) and building developments (common title for the building but with a capacity to further subdivide under Part III).

In 2008-2009 the *Land Titles and Related Legislation Amendment Act 2008* and the *Unit Title Schemes Act 2009* were enacted. They consolidated the various types of unit titles into one generic approach in terms of names and process. The *Unit Titles Act* remained in place for the purpose of applying to developments that had started at the time of the *Unit Title Schemes Act*. It also covered decision making arrangements for units that had been created under the *Unit Titles Act*.

The reforms of 2008-2009 focused on subdivision issues and the decision making processes. Those parts of the *Unit Titles Acts* dealing with enforcement issues were left largely intact.

The main objective of this report is to deal with enforcement issues concerning, in particular, by-laws. The discussion paper referred to in Part 1.2 also called for comments on other issues. The other issues identified as a result of that consultation paper will be dealt with in a separate report (Report 3) . Cancellation of title issues have been dealt with in a separate consultation and report process (Report 1).

This report also deals with the general issue of whether the two Acts should be combined.

1.2 *Release of the Discussion Paper*

Concerns were expressed to the Attorney-General and Minister for Justice that the Acts do not provide bodies corporate with adequate powers to enforce articles and by-laws, despite this being a significant part of their function. There was also concern that the *Unit Titles Act* and the *Unit Title Schemes Act* may not be meeting community expectations in a number of other different areas including in providing effective regulation of body corporate management agreements, insurance and overcrowding of units.

The purpose of the Discussion Paper, “*Enforcement of Articles and By-Laws under the Unit Titles Act and the Unit Title Schemes Act and Other Issues*”, was to seek contributions from the community on issues relating to the enforcement of articles and by-laws under the *Unit Titles Act* and *Unit Title Schemes Act*, with a view to reform both Acts. In addition, the Discussion Paper sought submissions on a range of other issues concerning the operation of the Acts. As mentioned before those issues will be dealt with in a separate report.

In February 2013 this Discussion Paper was publicly released via the Department of the Attorney-General and Justice website and letters were mailed directly to stakeholders and interested bodies informing them of the release.

1.3 Stakeholder submissions and comments

Submissions were received from the following stakeholders:

- Bruce MacDonald (Chair of the Evolution Apartments Body Corporate Committee)
- Darwin Community Legal Service Inc (DCLS)
- David Hibbert (Chair of the Baywatch Apartments Body Corporate Committee)
- Law Society Northern Territory
- Peter Hawke (Chair of the Skytower Apartments Body Corporate Committee) (Submission made in consultation with the Body Corporate Committee)
- Real Estate Institute of the Northern Territory (REINT) (Submissions made in consultation with Strata Community Australia NT and other stakeholders)
- Sterling Management Services
- W. W. Walker (previous body corporate committee member)

Prior to this formal consultation period, comments had also been received from Alecia Tollner of Altitude Management.

2 SUBMISSIONS ON REFORM OPTIONS

There was no great consensus among stakeholders regarding solutions to the issues arising from the *Unit Titles Act* and *Unit Title Schemes Act* in relation to the enforcement of articles and by-laws and related issues.

However, there was general agreement that this is an issue and some type of reform should be considered to allow unit owners and tenants to enjoy their use of their property and live in a cohesive environment.

An issue among stakeholders was that of trying to develop a balance between allowing bodies corporate to more readily enforce articles and by-laws and ensuring that bodies corporate are not in a position where powers can be abused to the detriment of unit owners and tenants.

It was also apparent that the complexity of the Acts as well as the inconsistency between them was an issue for many stakeholders. The rights of stakeholders are implicated by their lack of understanding of their responsibilities under the Acts.

3 SUMMARY OF PROPOSALS

Proposal number (and paragraph in the report)	Details of the proposal
5.1.4	Repeal the <i>Unit Titles Act</i> by moving most its operational parts into either the Unit Title Schemes Act or regulations made under that Act
5.2.4	The court be given the power to impose costs if it considers that there is a significant risk that the actions brought were of a vexatious or unreasonable nature.
5.3.4	The <i>Unit Titles Schemes Act</i> be amended so that it is clear that bodies corporate can issue infringement notices instead of taking action in the courts and without the need to have first issued a contravention notice.
5.4.4	That the <i>Unit Titles Act</i> be amended so that it is clear that breaches of the articles carry penalties with breaches being enforced through court action or by way of infringement notices.
5.4.4	That the legislation be amended so that infringement notice debts or court imposed fines (including orders regarding costs) accumulate as if they are levies
5.5.4	Remove the requirement that by-laws be approved by the Minister under section 63 of the <i>Interpretation Act</i> . This would be replaced by a requirement that they be certified by a lawyer (as being lawful) and that they be registered by the Registrar-General (but removing the need for the replacement of the whole scheme statement).
5.6.4	Amend the legislation so it is clear that online meetings or email exchanges that constitute a meeting are permissible
5.7.4	Amend the legislation so that bodies corporate are entitled to be provided with ownership details by the Registrar of Motor Vehicles for the purpose of dealing with alleged illegal parking.

5.7.4	Amend the default articles and by-laws so that the body corporate has, for alleged illegal car parking, powers to issue infringement notices, clamp vehicles, remove vehicles and receive payment for the costs of these actions.
5.8.4	It is recommended that a new by-law and article under the Acts is introduced to prohibit overcrowding in unit complexes which would specify what constitutes overcrowding (measures by person per room or by person per square meter). The limit should be relatively high to account for concerns of increasing rates of homelessness.
5.9.4	The Government, in cooperation with industry bodies, should develop informational materials
5.10.4	No legislative action is required concerning infrastructure.
5.11.4	Issues concerning body corporate managers be the subject of a separate discussion paper

4 BACKGROUND OUTLINE OF THE LEGISLATION

4.1 Terminology

In order to understand this paper there is a need to note some of its background and some of the terminology. In brief:

- The *Unit Titles Act* was enacted in 1974. In its original form it mainly dealt with the subdivision of residential buildings into flats that could have separate legal ownership but with a body corporate that owned communal property. This Act provided for a default set “articles” that contained the behavioural rules for owners and their tenants.
- Between 1974 and 2008 the *Unit Titles Act* was amended do as to provide for staged condominium developments (1980s), estate developments (1990s) and building developments (mixed use) (early 2000s). Each type of development had different processes, terminology and requirements. Bodies corporate for estate developments and mixed used building developments were also given the power to make by-laws that created offences.

- In 2008 the *Unit Titles Act* was amended by the *Land Title and Related Legislation Amendment Act 2008* so that the subdivision provisions of the *Planning Act* applied to the 1970s style subdivision of buildings into units (noting that the *Planning Act* had always applied to subdivisions underpinning estate developments and mixed use building developments)
- In 2009 the *Unit Title Schemes Act* was enacted. For developments commencing after its commencement it sought to have one set of terminology and processes for all types of development. It did not provide for a default set of articles. Rather all bodies corporate created under it were given the power to make by-laws but with a default set of by-laws contained in schedule 2 (see also section 95 of the Act).
- The 2009 legislation also provided for a common set of terminology, replicated in both Acts, for decision making as follows:
 - **Unanimous resolution** – all units must support the decision (ie all owners must actually vote in favour of a decision) (see section 7(4) of the Unit Titles Act and section 79(4) of Unit Title Schemes Act)
 - **Resolution without dissent** – there is no vote against the proposed decision) (see section 7(5) of the Unit Titles Act and section 79(5) of Unit Title Schemes Act)
 - **majority resolution** – the number of votes in favour of the decision must be at least 50% of all units (see section 7(6) of the Unit Titles Act and section 79(6) of Unit Title Schemes Act)
 - **ordinary resolution** – the number of votes in favour of the decision are more than the votes against (unless the management module provides for something different) (see section 7(7) of the Unit Titles Act and section 79(7) of Unit Title Schemes Act)
 - **special resolution** – the number of votes in favour of the decision must be at least 66.67% of all units and the number against must not be more than 25% (see section 7(8) of the Unit Titles Act and section 79(8) of Unit Title Schemes Act)
- Each provision of each Act that provided for decision making specifies what kind of decision applies. Some examples of uses of the various types of terms is as follows:
 - **Unanimous resolution** – all units must support the decision (ie all owners must actually vote in favour of a decision) (see section 7(4) of the Unit Titles Act and section 79(4) of Unit Title Schemes Act)
 - **Resolution without dissent** – there is no vote against the proposed decision) (see section 7(5) of the Unit Titles Act and section 79(5) of Unit Title Schemes Act)
 - **majority resolution** – the number of votes in favour of the decision must be at least 50% of all units (see section 7(6) of the Unit Titles Act and section 79(6) of Unit Title Schemes Act)

- **ordinary resolution** – the number of votes in favour of the decision are more than the votes against (unless the management module provides for something different) (see section 7(7) of the Unit Titles Act and section 79(7) of Unit Title Schemes Act)
- **special resolution** – the number of votes in favour of the decision must be at least 66.67% of all units and the number against must not be more than 25% (see section 7(8) of the Unit Titles Act and section 79(8) of Unit Title Schemes Act)

5 ISSUES CONSIDERED

5.1 *Should the Acts be combined?*

5.1.1 *Single Unit Title Schemes Act and transitional regulations*

Combining the two Acts would involve the repeal of the Unit Titles Act and transitional provisions to be added into the Unit Titles Schemes Act.

5.1.2 Submissions

REINT did not support the suggestion to combine the *Unit Titles Act* and the *Unit Title Schemes Act*. REINT suggested that each Act may be strengthened by developing regulations that are applicable to both Acts. The idea being that the Regulations would guide bodies corporate on the daily operating of the unit plan or scheme, for example processes for dealing with issues such as tenant behaviour, illegal parking, non-compliance of payment of contributions and other disputes that currently can only be resolved by an application to the Local Court. It can be noted that, for the NSW review, the REINSW supported consolidation of the legislation.

Sterling Management Services were of the view that there should be one Act and one set of Regulations, which should have a simple reference system and clear and concise instructions of the duties of bodies corporate. By creating one set of legislation, many of the issues regarding inconsistencies between the current Acts will be resolved.

Sterling Management Services also submitted a recommendation as a short term solution where bodies corporate under the *Unit Titles Act* can choose to adopt the *Unit Title Schemes Act* by majority resolution. They indicated an alternative option of the automatic adoption of by-laws under the *Unit Title Schemes Act* for bodies corporate operating under the *Unit Titles Act*.

Alecia Tollner, Altitude Management expressed hope that the two Acts could be combined.

5.1.3 Discussion.

In the usual course of events new legislation replaces old legislation. In the case of the *Unit Titles Act* and the *Unit Title Schemes Act* this did not occur. It was considered appropriate to retain the *Unit Titles Act* because most unit title bodies corporate were created under it and, at the time of the commencement of the *Unit Title Schemes Act* were still being created.

However, with the passing of time, it appears appropriate to place all current operational provisions into the one Act (namely the *Unit Title Schemes Act*).

At present with both Acts being reviewed both would need to be amended to bring about the same set of reforms. It seems better to only make the reforms once and to then deal with an integrated set of laws with the differences based on history being mainly accommodated for in regulations.

The broad details of these proposals would be as follows:

1. Repeal the *Unit Titles Act* and the *Real Property (Unit Titles) Act*
2. Make transitional regulations under the *Unit Title Schemes Act* dealing with re-subdivisions, alteration of boundaries and the like (as currently contained in Part IIIA (sections 21A-21G), Part IVA, Part IVB and Part IVC of the *Unit Titles Act*).
3. Enact a transitional section in the *Unit Titles Schemes Act* providing that subdivisions still occurring under the *Unit Titles Act* can continue to occur as if that Act had not been repealed;

The outcome of these amendments, combined with the proposals dealing with cancellation (Report 1) and the proposals to be dealt with in Report 3, would be a single Act that would deal with new titles, management and cancellation issues. The only points of difference would those necessitated by history. For example, articles for unit plans created under the *Unit Titles Act* would continue to be called articles.

5.2 Issue – awarding of costs in legal proceedings

5.2.1 Costs in legal proceedings

Should the Unit Titles Act and Unit Title Schemes Act be amended so as to provide for the Local Court to award costs for all disputes (no matter their value) and increase the courts power to make parties pay a bond for costs when they take proceedings.

5.2.2 Submissions

The Law Society submitted that this proposal was reasonable and potentially workable for the majority of unit complexes.

5.2.3 Discussion

Under current law, disputes are, as a general rule, dealt with as part of the Local Court's small claims jurisdiction. Under the Small Claims Act the court has limited power to award costs. Costs can only be recovered by parties if over \$5,000.00 is claimed.

5.2.4 Proposal

It seems appropriate that the court be given this power to impose costs if it considers that there is a significant risk that the action brought was of a vexatious or unreasonable nature.

5.3 Issue – imposing of fines/issuing of infringement notices

5.3.1 Fines and infringements notices

Should the Unit Titles Act and the Unit Titles Schemes Act be amended so as to provide a body corporate express authority to impose infringement notices for breach of by-laws.

Under the Unit Title Schemes Act bodies corporate may issue contravention notices which may require someone to stop the contravention. Failure to comply with the notice is an offence with a maximum penalty of 20 penalty units (1 penalty unit is \$144).

5.3.2 Submissions

Allowing bodies corporate to issue infringement notices is seen by some to be a swifter, less costly, more effective and enforceable process than the current court-based system. However, such processes could be abused with certain individuals or groups targeted ie tenants or those who have a falling out with the committee.

The Law Society raised several concerns regarding this proposal. The Law Society was mindful that the intended purpose of the reform is to empower bodies corporate to more effectively perform their functions in the interests of owners and tenants but was concerned at the potential for the increased powers to be abused by bodies corporate. The Law Society expects that there would be reasonable protection for owners and tenants to be included in the legislation to control this power. For example a body corporate may be required to hold minimum evidentiary requirements before a fine can be imposed.

DCLS opposed the ability of a body corporate to issue fines for breaches of by-laws. They submitted that the discussion paper correctly identified the potential for bodies corporate to abuse power to the detriment of individuals living within the complex.

Mr Hibbert (Chair, Baywatch Apartments) suggested that prominent and appropriately placed displays of the 'house rules' (the articles) would assist in sustaining a considerate and neighbourly culture. The implementation of such measures at Baywatch Apartments has been successful in achieving this.

Mr Hawke (Chair, Skytower Apartments) noted that the *Unit Titles Act* allows for the enforcement of articles but is silent as to when, how and to what extent a corporation may enforce the by-laws. He noted that there is increasing frustration among bodies corporate in dealing potential breaches of articles and by-laws. Mr Hawke stated that in giving power to bodies corporate to enforce articles and by-laws committee would need to act responsibly and give adequate and appropriate notice to take action.

Mr Hawke considered that the proposal has merit as the current processes for enforcing articles and by-laws is time consuming, frustrating, ineffectual and costly. Body Corporate Committees in the NT need to be able to respond to breaches in a timely and responsible manner. This is particularly important due the transient nature of the NT populations. The percentage of owner occupiers in the NT is high in comparison with other jurisdictions, and often where there is a high owner occupier percentage breaches occur less often and are easily rectified.

South Australian Model

A number of submissions from stakeholders supported the South Australian model for enforcing by-laws.

Recent amendments to the *Community Titles Act 1996* and *Strata Titles Act 1988* in South Australia allow both strata corporations and community corporations to impose a penalty of up

to \$500 for breaches of a by-law, which must be paid to the strata corporation. The fines may be imposed on members of the corporation or any other person, including visitors or outsiders. After a fine is issued to a person in breach of a by-law, that person has the right of appeal in the Magistrates Court if they wish to contest the matter. The onus of proving the breach lies with the corporation, on the balance of probabilities.

Sterling Management Services was of the view that the most practical and simple solution to overcoming issues of enforcement of by-laws would be to follow the South Australian Model. They suggested that where matters are contested they should go through an existing NT Tribunal.

Mr Hawke (Chair, Skytower Apartments) also supported the current South Australian processes and procedures. He submitted that the issues in SA are similar to issues faced by the NT and would therefore be a suitable guide to amend the *Unit Titles Act* and *Unit Title Schemes Act*. Mr Hawke particularly supports a process that does not require a body corporate to make an application to a court or tribunal to enforce by-laws under the legislation, as this step is too onerous.

Mr MacDonald (Chair, Evolution Apartments) was of the view that adopting the South Australian model to assist in the enforcement of articles and by-laws would be appropriate for NT bodies corporate.

5.3.3 Discussion

The suggestion has been made that bodies corporate should be able to issue fines. It is rare, if non-existent, for a NT legislative body to impose fines other than as the outcome of a contested hearing before a court or tribunal. The more acceptable way of permitting administrative bodies to impose penalties is to permit them to issue infringement notices. Infringement notices as used, for example, for breaches of traffic or parking laws, are allegations that a breach of the law has occurred. The person who is alleged to have breached the law can either pay the fine or challenge the allegation in court.

The *Fines and Penalties (Recovery) Act* provides a system for the recovery of outstanding fines. In general the system under that Act (and the additional penalties such as loss of a driver's licence) is designed to deal with offences of the criminal law, including restitution.

Fines and Penalties (Recovery) Act is not designed to deal with civil matters nor matters when the fines are not paid to Government. In this case whilst the bodies corporate can create fines as penalties the activities for which they are imposed are civil activities rather than offences under the Criminal law.

Accordingly it is not appropriate that the Fines and Penalties (Recovery) Act (and Regulations) be amended so as to allow outstanding fines to be referred to the Fines Recovery Unit.

Despite the fact that the debt collection regime under the Fines and Penalties (Recovery) Act (and Regulations) is not intended to apply there is no reason why the bodies corporate should not be able to issue infringement notices which, subject to appropriate compliance rules, lead to a debt that is owed by the offender to the body corporate (see discussed in Part 5.3).

5.3.4 Proposal

That the *Unit Titles Schemes Act* be amended so that it is clear that bodies corporate can issue infringement notices instead of taking action in the courts and without the need to have first issued a contravention notice.

That the *Unit Titles Act* be amended so that it is clear that breaches of the articles carry penalties with breaches being enforced through court action or by way of infringement notices.

5.4 Issue – mechanisms for recovering fines or administrative penalties

5.4.1 Recovery of fines and administrative penalties

If the articles and by-laws of a corporation allow the body corporate to issue their own fines/infringement notices should unpaid fines be added to the levies of owners and should owners be given the power, in turn, to recover the amount from tenants including through forfeiting the tenants' bond held under the Residential Tenancies Act and should owners be vicariously liable for breaches committed by their tenants.

5.4.2 Submissions

For the South Australia Model, which is supported by some stakeholders fines are recovered by the strata or community corporation and an application to the court can be made for contested fines or unpaid fines. Fines are issued directly to the person that breaches the by-law, whether they are an owner, tenant or visitor. There is no responsibility of the owner in relation to breaches of a by-law or article by a tenant.

Sterling Management Services suggested that the body corporate have the power in the first instance to issue fines to unit owners who fail to conform to by-laws. In the case of tenants, fines should be issued to unit owners as they have failed to control the actions of their tenants either directly or through managing agents. It is then the responsibility of the owner or agent to deal with the matter. Current body corporate management for collection processes are set up to be able to deal with this process. Sterling Management Services submits that this would encourage owners and agents to select appropriate tenants for a property that will maintain the living standard rather than selecting tenants solely on their capacity to pay rent.

5.4.3 Discussion

It may not be fair or reasonable to make landlords responsible for the actions of their tenants which are outside of their control. Accordingly, an amendment to this effect is not proposed.

For breaches alleged to have been committed by owners, it seems reasonable that unless the owner has challenged any infringement notice in court he or she should be liable for the debt and that the debt should have the status of an unpaid levy.

If the breach is challenged an application should be able to be made to the Local Court (or an appropriate tribunal) to hear the dispute. A civil court appears more appropriate than a criminal court.

If the offender is one of the owners the debt can be one that accumulates against the owner needing to be dealt with either by court enforcement action or payment when the unit is sold. For offenders who are not owners there would be need to take action in the court to enforce the payment of the debt. The compliance rules would be such as to ensure that the offender is aware of the allegation and is given an appropriate opportunity to either challenge in in court or pay the amount. Monies payable under orders regarding costs would have the same status as an unpaid levy.

5.4.4 Proposals

That the legislation be amended so that infringement notice debts or court imposed fines (including orders regarding costs) accumulate as if they are levies

5.5 Issue – simpler processes for making and changing by-laws and articles

5.5.1 Changing of articles and by-laws

Should the Acts be amended so as to simplify the process for changing by-laws and articles

5.5.2 Submissions

The Law Society supported the view that articles and by-laws should be changed by way of special resolution.

Mr Hawke (Chair, Skytower Apartments) considered that this proposal had merit.

Sterling Management Services supported amending the law to simplify the process for changing by-laws. They submitted that recording any motions to amend articles or by-laws in the meeting minutes should be adequate. The requirement for registration of the articles or by-laws under the Acts is onerous and unnecessary.

REINT also supported changes to the process of implementing by-laws. It noted the process for changing articles is relatively simple in contrast to the difficult process for changing by-laws. REINT submits that the process of amending by-laws should be the same as amending articles, so that a special resolution should be sufficient.

5.5.3 Discussion

It is important to note that there is a variety amongst the articles and by-laws under the two Acts.

Under the *Unit Titles Act* there is a deemed set of articles (contained in schedule 1 to the Act) that apply to all bodies corporate and their members unless they are changed by 'special resolution'¹. A change in the articles does not take effect until is lodged with and registered by the Registrar-General at the Land Titles Office. Articles operate as if there is an agreement or covenant between each of the owners regarding the matters spelt out in the articles. The articles do not provide for financial penalties (ie fines) for breach. However, civil action can be taken in the small claims jurisdiction of the Local Court (see section 106 of the *Unit Titles Act*).

¹ 66% of votes in favour with not more than 25% of unit entitlements being against).

Additionally, under the *Unit Titles Act* by-laws can be made for estate developments (see section 26ZD) and for building developments (section 26ZZA). An example of an estate development is a development such as the marina development around Bayview. An example of a building development is Old Admiralty Towers where there is mixed residential and office land use. Under these by-law making provisions offences can be created with prosecution through the courts for breaches of the by-laws. The maximum penalty that can be prescribed for breach of a by-law is 100 penalty units (currently \$14,400). By-laws are made by way of ‘special resolution’². As the by-laws operate as a form of subordinate legislation, they must be made in accordance with section 63 of the *Interpretation Act*. This means that they must be approved of by the Minister, but noting that the Minister has only limited power to not approve them.

Under the *Unit Title Schemes Act* articles do not exist. Similar provisions to the articles under the *Unit Titles Act* are however contained in the default by-laws set out in schedule 2 to the *Unit Title Schemes Act*. Section 96 of the *Unit Title Schemes Act* then provides a method of enforcing the by-law. This involves the alleged offender being given a contravention notice. If the alleged offender does not comply with the notice he or she may be prosecuted. The maximum penalty is 20 penalty units (\$2880). Additionally, sections 84-86 provide the Local Court (under its small claims jurisdiction) to deal with civil disputes).

The Discussion Paper noted that by-laws were difficult for bodies corporate to amend. Under the *Unit Titles Act* ministerial approval is required for any amendments to by-laws and under the *Unit Title Schemes Act* a change to the scheme statement of a development is also required. This process could be simplified, for example Articles (under the *Unit Titles Act*, applying only to corporations) can be amended, rescinded or added by the corporation committee by special resolution.

Under the *Unit Title Schemes Act*, by-laws (other than the default by-laws) form part of the scheme statement. For the purposes of ensuring that schemes remain easy to understand in relation to matters such as, in particular, boundaries each scheme statement is replaced each time a scheme is amended. This means, for a change in by-laws that they must not only be registered by the Registrar-General but a new scheme statement has to also be created and lodged. There seems to be no particular need for the entire scheme to be replaced each time a by-law is amended.

5.5.4 Proposal

It appears appropriate to remove the requirement that by-laws be approved by the Minister under section 63 of the *Interpretation Act*. This would be replaced by a requirement that they be certified by a lawyer (as being lawful) and that they be registered by the Registrar-General (but removing the need for the replacement of the whole scheme statement).

² 66% of votes in favour with not more than 25% of unit entitlements being against).

5.6 Issue – on line and email meetings

5.6.1 On-line meetings/email meetings

Should the Unit Titles Act and Unit Titles Schemes Act be amended so as to allow for bodies corporate (and their committees) to meet via email in order to make it easier and more convenient for them to amend and enforce by-laws and articles.

5.6.2 Submissions

The Law Society submitted that this proposal was reasonable and potentially workable for the majority of unit complexes but was cautious to support this process due to lack of detail.

Mr Hawke (Chair, Skytower Apartments) considered that the proposal had merit.

Mr MacDonald (Chair, Evolution Apartments) did not support the proposal to allow committees and bodies corporate to meet via email but was of the view that, if necessary, telephone and conference options should be available for committee members if it is appropriate in the circumstances.

5.6.3 Discussion

The Management Modules under the Regulations for unit plans and schemes allow committee members to attend committee meetings via teleconference. They also allow eligible voters to attend AGMs via teleconference.

5.6.4 Proposal

It would seem reasonable to permit online meetings or for email exchanges that constitute a meeting.

5.7 Issue – car parking

5.7.1 Car parking

Is there a special need to deal car parking issues?

5.7.2 Submissions

Mr Hawke (Chair, Skytower Apartments) considers that option 7 has merit.

Mr MacDonald (Chair, Evolution Apartments) noted issues with parking were common in many bodies corporate. The body corporate committee of Evolution Apartments has researched this problem and suggested a solution whereby council parking regulation systems are enforced in common parking areas within unit plans and schemes. The Council would then be responsible for the enforcement and regulation of parking and the collection of debt (which would be retained by the council, not the body corporate). Bodies corporate would be responsible for reporting to the council and assisting in dispute resolution.

Sterling Management Services is of the view that the general ability to enforce articles and by-laws will assist in overcoming problems related to abandoned vehicles and outsiders parking in car parks on common property.

Sterling Management Services suggested the creation of an enforceable by-law or an amendment to the Act to protect the storage of unregistered vehicles on common property or in private parking spaces would be a good first step to dealing with issues of abandoned vehicles. This could involve provisions that allow unit owners to park unregistered vehicles in their own private parking spaces provided it is well maintained and under special conditions (e.g. extended overseas trips). This could be dealt with by an internal approval process. There should also be the ability for unapproved unregistered vehicles to be removed from the premises with 90 days notice. In instances where outsiders are parking in the private car park of unit owners, the owners should have the ability to take action by applying to the body corporate to enforce the by-laws by engaging a contractor to clamp the vehicle.

5.7.3 Discussion

This reform option refers specifically to breach of parking by-laws and was debated by Parliament in both 2005 and 2007 in the Unit Titles Amendment Bill (serial 31 and 96).

If a car is unlawfully parked in a common area within the body corporate managed area, the body corporate currently has the capacity to request that the owner refrain from doing so. If the unlawful parking continues, the body corporate should be empowered to obtain the contact details of the registered owner of the vehicle from the Motor Vehicle Registry and issue a penalty notice (for example, for 1 penalty unit). As the law currently stands, a body corporate is not entitled to obtain this information from the Motor Vehicle Registry. The body corporate could issue a penalty notice for each day the car is in breach of the by-law.

A further enforcement measure would be to allow the body corporate to issue a seven-day notice to the registered owner of the vehicle stating that the vehicle will be removed from the premises. Finally, the body corporate would be able to recover from the registered owner all the associated costs including the penalty for the breach of the by-law and the cost of removing the unlawfully parked vehicle.

Once the vehicle has been removed from the premises, the vehicle will be a matter to be decided by general law. Neither police nor local council should be involved in the imposition of the penalty notice or removal of the vehicle.

This option empowers bodies corporate to enforce their by-laws. However, this option permits the body corporate to impose penalties without any weight or consideration being given to the rights of the vehicle owner, even if the owner believed that they were not wrongfully parked. As the penalties imposed will have the status of debts, collection of the debt will occur via the small claims jurisdiction of the Local Court. It is arguable that not all bodies corporate may be equipped with the resources or skills necessary to fairly manage an infringement notice scheme and the enforcement processes. This reform option has the capacity to be abused by the body corporate by the arbitrary imposition of penalties and improper use of the information obtained from the Motor Vehicle Registry.

See also discussion elsewhere for general submission on enforcing by-laws and articles.

5.7.4 Proposal

Amend the legislation so that bodies corporate are entitled to be provided with ownership details by the Registrar of Motor Vehicles for the purpose of dealing with alleged illegal parking.

Amend the default articles and by-laws so that the body corporate has, for alleged illegal car parking, powers to issue infringement notices, clamp vehicles, remove vehicles and receive payment for the costs of these actions.

5.8 Issue – short term rentals

5.8.1 Short term rentals

Are there any workable options to deal with overcrowding and short-term rentals. Should the Local Court be given the power to prohibit certain letting arrangements for a unit where there is a proven pattern of anti-social behaviour. Should there be a law setting the maximum number of persons per bedroom.

5.8.2 Submissions

Mr Hawke (Chair, Skytower Apartments) supported the suggestion to enable bodies corporate to make and enforce by-laws to deal with overcrowding issues.

Sterling Management Services submitted that making by-laws enforceable will resolve overcrowding issues. Sterling Management Services noted that by-laws already exist to prohibit improper conduct and disturbing common property. It is their view that issues of overcrowding would breach these by-laws. Consequently a greater ability to enforce those by-laws would be an adequate solution to overcrowding issues.

Mr Hawke (Chair, Skytower Apartments) supported the suggestion to give the Local Court power to prohibit certain letting arrangements for a unit where there is proven pattern of anti-social behaviour.

Mr Hawke (Chair, Skytower Apartments) supported the suggestion that there be a by-law that limited the maximum number of persons per bedroom.

Mr Hibbert (Chair, Baywatch Apartments) suggested that prominent and appropriately placed displays of the 'house rules' (the articles) would assist in sustaining a considerate and neighbourly culture. The implementation of such measures at Baywatch Apartments has been successful in achieving this.

The DCLS Tenants Advice Service expressed support to measures that alleviate high homelessness rates prevailing in the NT. As such they suggested that there is a need to balance the regulation of overcrowding with the need not to contribute towards greater homelessness.

5.8.3 Discussion

Schedule 2 of the *Unit Title Schemes Act* outlines the by-laws that govern a scheme. Part 1 of Schedule 2 prohibits improper conduct such as making loud noises and affecting enjoyment of the land. These are broad provisions. The Articles in Schedule 1 of the *Unit Titles Act* have similar

broad provisions relating to disturbance of other unit owners. Therefore it is possible that issues associated with overcrowding may fall under already existing by-laws and articles. However, there may be merit in providing specific by-laws to limit the number of people staying in a unit (measured by person per bedroom or person by square meter).

5.8.4 Proposal

It is recommended that a new default by-law and article under the Acts is introduced to prohibit overcrowding in unit complexes which would specify what constitutes overcrowding (measures by person per room or by person per square meter). The limit should be relatively high to account for concerns of increasing rates of homelessness.

5.9 Issue – complexity and education

5.9.1 Lack of knowledge of the legislation and of the obligations

5.9.2 Submissions

Many submissions commented on the complexity of the Acts and the confusion this creates. It is apparent that parties affected by the Acts need greater awareness of their rights and responsibilities under the Acts. For any amendments made to the legislation to be effectively implemented, an educational campaign should be launched informing stakeholders of the changes as well as the general operation of the Acts.

Sterling Management Services was of the view that an educational campaign as a short term solution would not be a useful mechanism to inform stakeholders of their rights and responsibilities. They submitted that the ambiguity and duplication in the Acts as well as the current uncertain political environment and the confusion regarding the harmonisation of various legislation affecting real estate agents licensing, work, health and safety and the employment of contractors mean that it is unlikely that simple and accurate information could be provided to unit owners. It is their concern that it would create further confusion.

Sterling Management Services submitted that if an educational campaign was launched at the enactment of new legislation it would be more beneficial and achieve the intended goal of informing stakeholders of their rights and responsibilities.

The Law Society supported the need for further education without further detail.

Mr Hawke (Chair, Skytower Apartments) considered that further education 1 had merit.

5.9.3 Discussion

Although owners and occupiers should be aware of the articles and by-laws that regulate the scheme they own or live in, many are not aware of their rights and responsibilities under the articles or by-laws (ie an owner should ensure that a tenant that has a copy of the by-laws). An educational campaign may assist in raising awareness of rights and responsibilities for community living with the possibility of reducing the number of breaches that occur in unit title schemes.

5.9.4 Proposal

The Government, in cooperation with industry bodies, should develop informational materials.

5.10 Issue – better infrastructure

5.10.1 Should bodies corporate be encouraged to invest in infrastructure that will minimise the ability to breach a by-law. For example, boom gate security access (or equivalent) to enter a car park and separate water connexions

5.10.2 Submissions

The Law Society expressed concern this proposal may not suit the financial or managerial capacity of the average body corporate. Given the current costs of maintaining common property and body corporate assets the Law Society does not consider this option a viable alternative, as those cost are then passed on to owners.

5.10.3 Discussion

Generally, cost was often a concern for bodies corporate in submissions on ‘other issues’ raised in the Discussion Paper. It is highly unlikely that smaller bodies corporate would have the finances to invest in infrastructure such as boom gates. Option 2 may be workable in some cases but as a solution to minimise breaches of by-laws generally it is not sufficient. If the Acts were amended and an educational campaign was launched it may worthwhile to implement this option as part of the campaign at that time.

5.10.4 Proposal

No legislative action is required concerning infrastructure.

5.11 *Is there a need to reform the provisions regarding the appointment and activities of body corporate managers*

5.11.1 The Acts are not prescriptive regarding most issues relating to body corporate managers.

5.11.2 Submissions

This issue was only raised in one submission (Alecia Tollner, Altitude Management). Ms Tollner put forward the suggestion that appointments should only last for one year.

5.11.3 Discussion.

Unit Title Schemes Act

The *Unit Title Schemes Act* contains only very light regulation of body corporate managers (as defined in section 87). In essence the regulation is:

- Limitations in section 87 as to what arrangements a developer can make for body corporate managers at the time or before when the first units are being sold. If

the basic principles are breached the body corporate or individual owners can seek compensation from the developer for losses;

- There is a code of conduct for body corporate managers set out in schedule 1, Part 3 of the *Unit Title Schemes Act*. The provisions of the Code of Conduct prevail over any contractual arrangements.
- The Code of conduct is written in very general terms (regarding honesty, fairness, keeping body corporate ensure others comply with the Act, not engaging in misleading or unconscionable conduct ensure supplies are obtained at competitive prices, avoiding conflicting obligations an producing records on request).
- An obligation to consider at annual general meetings whether a body corporate manager should be appointed (eg see clause 30, Schedule 1, Unit Title Schemes Regulations). However, there is nothing to specifically fill in the detail of whether body corporate managers can be appointed for periods beyond the annual general meeting.
- A default provision concerning terminations. Clause 64 of schedule 1, Unit Title Schemes (Management Modules) Regulations provides that unless the agreement been the body corporate manager and the body corporate provides for termination there is a default period of 3 months.

A body corporate manager only has the functions and powers that are delegated. Delegations can always be revoked. It follows that a body corporate can always act so as to remove functions and roles from a manager. There may, however, be remaining contractual/financial obligation. In the absence of issues regarding body corporate managers being raised in the discussion paper it seems inapproayte to further develop the issue as part of this paper. It needs to be dealt with in a stand alone paper and at a time when consideraytion can be had to any reforms or changes to the law emanating in NSW from NSW's review of strata titles laws.

6 OTHER ISSUES – FOR FURTHER REPORTS

A further report or reports will deal with the other issues that have been raised either in the NT, NSW or elsewhere.

These issues (in no order of significance) include:

- Should there be a mandated internal system for dealing with grievances and disputes
- Do the current laws work for all unit title developments or does the law need to provide more tailored regulation according to the size, use, type of construction or other distinguishing features of a development? If so how?
- Should a specialist Tribunal be established?
- Should the *Agents Licensing Act* be amended so that one of the purposes for which monies of the Fidelity Fund established under that Act can be spent is that of establishing a dispute and advice service along the lines in place in Queensland. Such a service could be operated by either a government agency or by a professional association.
- Should there be a restriction the number of proxy votes an individual is able to exercise at any one time in order to encourage more active participation by a greater number of owners?

- Should the references to “working days” in the various modules be changed so that either they as referred to as “days” or the time periods allowed be referenced to periods that align with ordinary concepts about working days. For example, should the reference to 21 working days in clause 9(1)(b) of schedule 1 of the Unit Titles (Management Modules) regulations be changed to three weeks or 15 working days.
- Should the legislation be amended so to make it clear when owners’ contact details can be given to executive committees and other owners / residents
- is there a need for annual elections?
- Is there a need for a mandatory number of meetings
- Is there a need to more clearly define the roles of body corporate manager and committee members
- Is there a need to provide power for the Local Court to appoint a compulsory administrator to take over management
- Should the meaning of common property / unit property be changed so that it is easier to identify?
- Should the obligation on the body corporate to maintain common property in a state of good repair under the *Unit Titles Act* be removed so the body corporate itself can decide the appropriate level of property maintenance?
- Under the Unit Titles Schemes Act should owners or occupants be responsible for any damage to common property they cause and / or should unit owners be responsible for repairs to common property that solely benefits their unit?
- Should the process for owners wanting to renovate or make changes to their unit be simplified and / or clarified?
- Should easy-to-read guidelines be produced giving information to owners on what they can and cannot alter / renovate?
- What would the content of these guidelines be?
- Is there a need for a maintenance schedule prepared by the developer
- Should building defects be a compulsory agenda item for discussion at the first AGM.
- should the law set clear rules for voting on action regarding building defects?
- Should any other changes be made to the unit titles laws to more adequately deal with building defects?
- Should land be able to be added to an estate development scheme under the Unit Title Act as only common property or should it also be able to be added as a separate lot?
- Should the procedure for revising unit entitlements for developments under the Unit Titles Schemes Act be expanded to developments under the Unit Titles Act?
- Should more flexibility be given to schemes to determine levies other than on the basis of unit entitlements?
- Should notices for AGM’s contain more details about proposed levy increases? If yes, what additional information do you suggest?
- Should the law require periodic issuing of levy notices that advise how much owners are to pay the body corporate?
- Is more regulation over the setting of levies and incurring expenses by developers during the developer control period required under the Unit Titles Schemes Act and should developers be liable for budget shortfalls in the initial period?

- Should the penalty interest rate on outstanding levies be set at the Supreme Court Rate or at a flat rate specified in the regulations so that is easy to calculate (ie 10%) or should bodies corporate be able to set their own penalty interest rate (up to a maximum)?
- Should the law require the body corporate to take recovery action for unpaid levies within a certain time? If so, what should the timeframe be?
- What hardship provisions for unpaid levies (if any) should be introduced? Should the recovery of expenses for outstanding levies be allowable or should this be built into the penalty interest rate?
- Should owners who owe levies continue to not have voting rights? Do you support any other practical punishments or deterrents and if so what?
- Should a minimum period of arrears (ie two levy payments) be required before loss of voting rights or other punishments are imposed?
- Should schemes be able to seek orders that tenants pay rent to them to cover debts owed by investor owners?
- Should the law require all schemes to establish and maintain a sinking fund for capital works, such as painting the common property and replacing carpets, to be undertaken in the year and in future years?
- Should the requirements for valuations every 5 years be introduced to ensure that common property is being insured for replacement value under the Unit Titles Act?
- Should insurance details be on the notice sent to unit owners for each AGM?
- Should unit title developments be encouraged or required to have a higher insurance excess?
- Should the cost of insurance be shared on the basis of unit entitlements or should it be shared on the basis of the use of the unit?
- Should the legislation be amended so that when (large) insurance premiums are being paid in instalments (premiums) it is clear that this is lawful (ie that it is not some kind of illegal loan);
- Is there a need to increase the minimum public liability cover for schemes? If so, what should be the amount?
- Should bodies corporate be able to obtain loans for insurance (ie premium funding) by ordinary resolution as opposed to resolutions without dissent for developments regulated under the Unit Titles Act?
- Should the Government launch an educational campaign informing bodies corporate, unit owners, unit occupiers and real estate and letting agents know of their rights and responsibilities regarding articles and by-laws that regulate unit title schemes.
- Should local councils be given more powers to deal with such matters (of overcrowding and noise)