THE LAW SOCIETY
OF NEW SOUTH WALES

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Strata Laws Online Consultation Forum
Global Access Partners Pty Limited
Attention Ms Helen Hull
53 Balfour Street
Chippendale NSW 2008

Email: hhull@openforum.com.au

Dear Ms Hull

Re: Strata Laws Online Consultation

Thank you for the invitation to provide comments as part of the Strata Laws Online Consultation Forum ("Forum").

The four questions for comment raised in the Forum have been considered by the Law Society's Property Law Committee ("Committee").

The Committee advises the Council of the Law Society on developments in the area of property and strata law and is comprised of experienced and specialist practitioners drawn from the ranks of the Society's members who act for various stakeholders in the conveyancing process.

At the outset, the Committee would like to congratulate the Government for taking the initiative in this important area of the law.

The Committee has voiced its concern in the past about the way in which strata reform has been addressed and welcomes the opportunity to participate in the current review of NSW strata and community title laws.

Turning first to the four questions raised in the Forum:

Question 1. What are the main areas of the existing strata and community scheme laws you would like to see changed?

The Committee considers there should be a wholesale examination of the manner in which the legislation is administered and reviewed. (In the Committee's opinion, the system under a Strata Titles Commissioner was a good working model.)

Question 2. Can you see any future issues that need to be addressed in the legislation?

Strata law reform will always be an ongoing issue; the more relevant question is how the need for that reform is identified and then addressed. For example, industry consultation is important. Also, strata reform should not take place in isolation, but rather take account of the need to update other legislation (for example planning and stamp duty legislation).

Question 3. How could the management of strata and community schemes be improved?

Management could be improved by ensuring certainty and consistency in the legislation and in the decision making processes, both at the Committee level and at the Tribunal (or its equivalent) level.

Question 4. Are there any changes needed to the way disputes in strata and community schemes are resolved?

Yes. In the Committee's view, disputes and the manner in which they are settled require a complete review. Matters to be addressed include:

(a) the quality and consistency of decisions;

(b) the expertise of the adjudicators and members hearing strata disputes;

(c) the manner of reporting decisions; and

(d) the re-examination of the orders which can be made; for example:

  (i) including provision for an owners corporation to apply for an order terminating the appointment of a strata managing agent; and

  (ii) including provision for the Board to make an order in connection with identified disputes arising out of strata management statements if the statement directs for disputes to be dealt with that way.

Further comments

The Committee considers it may assist to identify several specific areas of strata law which in the preliminary view of the Committee require reform, as set out in the attached table. This list provides examples of the need for reform; it is not intended to be an exhaustive list.

The Committee's comments relate to strata reform only. The Committee notes that community titles legislation requires a complete review.

The Committee would welcome being included in any future consultation process the Government may establish in connection with strata and community title law reform.

Conclusion

The Committee appreciates the opportunity to participate in the *Strata Laws Online Consultation.* If you have any questions arising from the Committee's comments above, please contact Gabrielle Lea on (02) 9926 0375 or email: gabrielle.lea@lawsociety.com.au.

Yours sincerely

Justin Dowd
President

AREAS THAT REQUIRE REFORM - STRATA SCHEMES MANAGEMENT ACT 1996

This is not an exhaustive list. It provides examples of why reform is needed.

SUBJECT	AREA FOR REFORM	OBSERVATIONS/COMMENTS
General	1. Terminology	1. There should be consistent terminology between the *Strata Schemes (Freehold Development) Act 1973* ("Development Act") and the *Strata Schemes Management Act 1996* ("Management Act"). For example, the Committee's preferred position is to revert to the use of "body corporate" and "original proprietor", as presently contained in the Development Act.
Chapter 2 **Management of strata schemes**	2. Strata managing agents (Chapter 2 Part 4).	2. For new schemes, the relationship between the strata managing agent and the developer has caused concern in some quarters resulting in an over reaction to the issue (banning strata managing agents who are "connected" to the developer has been a suggestion). Simple disclosure obligations would address most concerns.
	3. Caretakers/building managers (Chapter 2 Part 4A).	3. The role, manner of appointment, identity, powers, duties and responsibilities of caretakers/building managers have been inadequately addressed in the past. The concept of caretaker agreements and building management agreements is a continuing issue and requires a complete review. Some issues are: (a) the differences between, and consequence of being, a caretaker or a building manager; (b) in new schemes, the association with the developer (is this relevant? should there be disclosure? if so, when and how?); and (c) whether an owners corporation for a new scheme should share in a management rights payment.
	4. Registering amendments to or repeal of by-laws (section 48).	4. The two year limit should be reduced (consider three months).
	5. Companion animals (section 49(4)).	5. The exemption in the section for guide or hearing dogs should be extended to assistance animals (as defined by the relevant assistance animals legislation).

SUBJECT	AREA FOR REFORM	OBSERVATIONS/COMMENTS
Chapter 3 **Key management areas**	6. Level of damage policy insurance (section 87(2)).	6. The regulations are the better place for items such as insurance levels for damage policies.
	7. Items to be included in the strata roll (section 98(2)).	7. The records to be kept by owners corporations should be expanded to include all items which are of interest to owners and owners corporations. These items include: (a) plans and approvals for all building work to common property in the possession of the owners corporation (for example, if a resolution under section 65A is passed and the resolution includes plans and specifications, those plans and specifications should be kept with the books and records of the owners corporation); (b) a copy of each licence and unregistered lease granted by the owners corporation for the use of common property; and (c) details of loans to the owners corporation. The strata roll should also include an index of the documents held by the owners corporation.
Chapter 4 **Owners, occupiers and other persons with interests in lots**	8. The requirement for further information.	8. The powers of the owners corporation to obtain additional information from owners and occupiers should be expanded.
Chapter 5 **Disputes and orders of Adjudicators and Tribunal**	9. Dispute resolution processes	9. Disputes and the manner in which they are settled require a complete review. Matters to address include: (a) quality and consistency of decisions; (b) expertise of the adjudicators and members hearing strata disputes; (c) the manner of reporting decisions; and

SUBJECT	AREA FOR REFORM	OBSERVATIONS/COMMENTS
		(d) re-examination of the orders which can be made (as examples: (i) including provision for an owners corporation to apply for an order terminating the appointment of a strata managing agent; and (ii) including provision for the Board to make an order in connection with identified disputes arising out of strata management statements if the statement directs for disputes to be dealt with that way).
	10. Enforcement of orders by Adjudicators and the Tribunal.	10. The mechanisms to enforce orders require re-examination and review.
	11. Rights and remedies in addition to applications to the Tribunal (section 226)	11. Any review of the dispute procedures should: (a) examine introducing more precise guidelines as to which matters can be heard direct by a court rather than the Tribunal at first instance; and (b) expand the matters which a court can take into consideration when determining whether or not to hear the dispute and in determining costs.
Chapter 7 Part 3 **Service of documents**	12. Service of notices on owners corporations.	12. The procedures for serving notices require a complete review. This includes on whom notices are to be served, service by electronic means, whether and how the title deed to the common property should be updated in connection with the service of notices.
Schedule 2 Part 1 Division 1 **Requirements relating to holding of first annual general meeting**	13. Agenda items for meeting (clause 3).	13. Item (e) in clause 3 (relating to the by-laws) is confusing, of no effect and should be removed as an agenda item.

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	14. Documents and records which must be produced at the first annual general meeting (clause 4).	14. The procedures for producing documents and records, the type of documents which must be produced, the format and content of the documents, the obligation of the original owner and the penalties on the original owner for non compliance require revision.
Schedule 2 **Part 2** **General provisions relating to procedure for meetings**	15. Procedures at meetings of owners corporation	15. The mechanics of what occurs before and after general meetings of owners corporations require review and revision in some areas. These include: (a) an obligation to provide to the secretary or the strata managing agent signed proxies before the meeting; (b) unpaid levies to be paid in cleared funds before the meeting; (c) restricting the timing for demanding a poll (for example, the right should only arise after the relevant motion has been passed and before the next agenda item); and (d) motions put forward by a lot owner for inclusion on the agenda for an annual general meeting must be accompanied by prescribed information (including the name of the owner, the lot number, background to the motion, reasons for the motion).
	16. Proxies	16. The procedures for proxy holding require complete review. In particular, the "harvesting" of proxies and the holding of multiple open proxies must be addressed (and in the opinion of the Committee abolished).
Schedule 3 **Part 2** **Provisions relating to meetings of executive committee**	17. Procedures for holding executive committee meetings	17. Expand the manner in which executive committee meetings can be held (such as by telephone).

AREAS THAT REQUIRE REFORM - STRATA SCHEMES (FREEHOLD DEVELOPMENT) ACT 1973

This is not an exhaustive list. It provides examples of why reform is needed.

SUBJECT	AREA FOR REFORM	OBSERVATIONS/COMMENTS
Permitted development	1. Greater flexibility for development, while at the same time providing consumer protection.	1. The concept of a "Developer Disclosure Contract" (similar to a strata development contract) should be considered, disclosing and permitting the registration of dealings which are otherwise presently prohibited for registration. 2. The same concept could be adopted in the Management Act to permit agreements such as long term management agreements in strata title hotels and long term service contracts (such as energy saving agreements).
Execution of documents		3. The legislation requires wholesale review as to the signing of certain documents. For example: (a) some documents must be executed by the consent authority when that may not necessarily be required or appropriate; (b) in some instances (such as the signing of strata development contracts) there are inconsistencies between the planning laws and the strata laws which only permit the signing of the document by a council when the consent authority is a different entity; and (c) consideration should be given to allowing the execution of certain documents by accredited certifiers rather than the consent authority.
Termination of Strata Schemes		The law relating to termination of strata schemes requires a complete review.