



Articles

The law of strata title in Australia: A jurisdictional stocktake

*K Everton-Moore, A Ardill, C Guilding and J Warnken**

This article attempts to provide researchers, legal practitioners, industry participants and stakeholders with an overview of the various legislative frameworks in the eight States and Territories around Australia. The article commences by providing a brief description of the development of the law of strata title in Australia and explaining its diverse nomenclature. This is followed by a jurisdictional analysis where each State or Territory is benchmarked against Queensland. Where possible the article flags important similarities and differences between jurisdictions in terms of governance arrangements, the creation of community title schemes and dispute resolution mechanisms. The article concludes that there should be a trend toward uniformity as each jurisdiction seeks to reform community title laws. Uniformity would be desirable in terms of both nomenclature and the structure of the legislation and associated regulations.

Introduction

Community living is becoming an increasingly popular lifestyle option, with many Australians choosing to both live and holiday in unit accommodation.¹ The multi-billion dollar strata title industry is dynamic, continually immersed in debate, legislative review and development. Because legislation in each Australian jurisdiction has tended to be responsive to industry and stakeholder concerns it has developed in interesting ways, sometimes peculiar to each jurisdiction, and always to the detriment of uniformity.

Despite the significance and value of the strata title industry to Australian society and economy, very little attention has been afforded to the regulatory framework in the academic literature. The relative paucity of information is problematic because researchers are faced with the daunting task of finding their way through a complex maze of regulation across jurisdictions while stakeholders would be no better placed to make sense of the often technical language of law.

* Kimberly Everton-Moore, Researcher Griffith Law School; Allan Ardill, Lecturer Griffith Law School; Associate Professor Chris Guilding, Director Service Industry Research Centre, Griffith University; Dr Jan Warnken, Lecturer School of Environmental & Applied Science, Griffith University. The authors would like to acknowledge that this study has been facilitated by financial support provided by the Sustainable Tourism Cooperative Research Centre.

¹ ABS, Time Series Spreadsheet 8750.0 'Building Activity, Australia' (December 2002); ABS, Time Series Spreadsheet 8750.3 'Building Activity, Queensland' (December 2002); ABS, Time Series Spreadsheet 8635.0 'Tourist Accommodation, Australia' (December 2002); F Fitzpatrick, 'Body Corporate and Community Management: The Queensland Perspective', speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004.

This article attempts to provide researchers, legal practitioners, industry participants and stakeholders with an overview of the various legislative frameworks in the eight States and Territories around Australia. The article commences by providing a brief description of the development of the law of strata title in Australia and explaining its diverse nomenclature. This is followed by a jurisdictional analysis where each State or Territory is benchmarked against Queensland and, where possible it flags important similarities and differences between jurisdictions. Due to reasons of space and detail, the areas of emphasis for the jurisdictional analysis include, but are not confined to:

1. The legislative framework including plans for reform;
2. Governance arrangements distributing power and responsibility;
3. Establishment/creation of schemes;
4. Dispute resolution.

The article concludes that there is no compelling reason why each State or Territory should continue to reform their laws without including jurisdictional uniformity as a regulatory goal. Uniformity would be desirable in terms of both nomenclature and the structure of the legislation and associated regulations.

Historical diversity

The law of strata title in Australia developed as an ad hoc solution to emerging trends in urbanisation and an accompanying need to regulate tight clusters of independent owners.² While these challenges were initially addressed through existing legal frameworks designed for other purposes such as leasehold schemes, tenancy in common arrangements and home unit corporations, none of these measures proved entirely effective or popular amongst stakeholders.³ Hence the inception of strata title legislation in Australia, beginning with the Transfer of Land (Stratum Estates) Act 1960 (Vic).

Strata subdivision can occur horizontally and/or vertically with both land and buildings capable of forming a strata title.⁴ A strata title represents a title to a unit that has been created on a plan of strata subdivision.⁵ Strata subdivision means a 'subdivision of land and/or buildings into units, which can be owned separately, and common property, which is owned communally'.⁶ Therefore, a strata title scheme implicitly involves a combination of both individual and collective ownership of property. The units in a scheme are capable of being owned independently of each other, while the residue of the estate is owned in common by all unit proprietors.

2 A Christudason, 'Subdivided Buildings — Developments in Australia, Singapore and England' (1996) 45 *International and Comparative Law Quarterly* 343 at 346.

3 Ibid, at 346; and A Ardill, K Everton-Moore, L Fredline, C Guilding and J Warknen, 'Community Titles Reforms in Queensland: A Regulatory Panacea for Commercial, Residential, and Tourism Stakeholders' (2004) 25 *Queensland Lawyer* 13 at 14.

4 Subdividing a building often creates a title to a 'slice of defined area or cubic space, which is not grounded on the surface layer of the earth, and is divided not only horizontally, but vertically as well': Christudason, above n 2, at 343.

5 R Ball, 'What is a Strata Title?' (1984) *Law Institute Journal* 924 at 925.

6 Ibid, at 925 and Christudason, above n 2, at 343.

At the risk of sounding bias,⁷ Queensland is considered by many as a national leader in the establishment of effective yet flexible strata industry regulation.⁸ For this reason Queensland's legislative framework will be used as the benchmark for the analysis that follows, comparing the legislative regimes throughout Australia.

The diversity of community schemes is echoed in the diversity of legislative schemes that exist across Australia. One of the fundamental differences across jurisdictions is the terminology and legal jargon used to describe key features. This complexity poses practical problems for stakeholders in general and for practitioners required to operate across state borders. The table below provides an overview of the key terms used in each jurisdiction.

⁷ The authors are Queensland academics.

⁸ Fitzpatrick, above n 1, p 39. However, this is not to suggest that the Queensland system of regulation is ideal.

	Terminology for 'Scheme'	Terminology for 'Body Corporate'	Terminology for 'Management Committee'	Terminology for 'Manager'	Terminology for 'By-laws'
QLD	Community Title Scheme	Body Corporate	Committee	Body Corporate Manager	By-laws
NSW	Strata Scheme	Owners Corporation	Executive Committee	On-site-residential property manager, caretaker or strata managing agent	By-laws
VIC	Subdivision, Strata Subdivision or Cluster Subdivision	Body Corporate	Committee	Manager	By-laws
SA	Strata Scheme	Strata Corporation	Management Committee	Agent (STA) ¹	By-laws (CTA) ² or articles (STA)
WA	Strata Scheme	Strata Company	Strata Council	Strata Manager	By-laws
TAS	Strata Scheme	Body Corporate	Committee of Management	Manager	By-laws
NT	Unit Title	Management Corporation	Committee	Employee or agent	By-laws
ACT	Unit Title or Community Title	Owners Corporation (UTA) ³ or Body Corporate (CTA) ⁴	Executive Committee (UTA) or Committee of Management (CTA)	Agents, employees & contractors (UTA) or Manager (CTA)	Articles (UTA) or by-laws (CTA)

¹ *Strata Titles Act 1988* (SA).

² *Community Titles Act 1996* (SA).

³ *Unit Titles Act 2001* (ACT).

⁴ *Community Titles Act 2001* (ACT).

Queensland

Queensland has adopted an innovative and unique legislative framework comprising of one 'umbrella Act, supported by separate regulatory modules that are tailor-made for specific types of development'.⁹ The principle Act is called the Body Corporate and Community Management Act 1997 (Qld)¹⁰ (the BCCM) and is supplemented by the Body Corporate and Community Management (Standard Module) Regulation 1997 (Qld) (the Standard Module), the Body Corporate and Community Management (Accommodation Module) Regulation 1997 (Qld) (the Accommodation Module), the Body Corporate and Community Management (Commercial Module) Regulation 1997 (Qld) (the Commercial Module), and the Body Corporate and Community Management (Small Schemes Module) Regulation 1997 (Qld) (the Small Schemes Module). The BCCM provides a general legal framework for community title and acts to empower the Regulation Modules which contain the specific policies, procedures and rules for a community title scheme.¹¹

This regulatory structure is based on the fundamental recognition that different community title schemes have different requirements, problems and demands and that no single piece of legislation is apt to accommodate such diversity.¹² Consequently, each Regulation Module contains detailed and individualised provisions on the rules, policies and procedures for corporate governance, which includes amongst other things: the constitution of the Body Corporate Committee; the scheduling, conduct and reporting of committee meetings; and the regulatory requirements for financial and property management. The specific content of each Regulation Module is guided by the type of Community Titles Scheme it is intended to govern. For instance, the Standard Module is a generic module designed for residential schemes consisting mostly of owner/occupiers.¹³ By contrast, the Accommodation Module is appropriate for schemes consisting of residential complexes,

⁹ H Hobbs, *Hansard (Qld)*, 30 April 1997, p 1136.

¹⁰ The primary objective of the BCCM 'is to provide flexible and contemporary communally based arrangements for the use of freehold land': Body Corporate and Community Management Act 1997 (Qld) s 2.

¹¹ The BCCM and its accompanying Regulation Modules are administered by the Department of Tourism, Fair Trading and Wine Industry Development, available at <<http://www.dftwid.qld.gov.au/disputeres/bccm/> for more information>.

¹² Body Corporate and Community Management Bill 1997 Explanatory Notes, p 6. This legislative structure was also thought to be advantageous for government, providing an avenue for additional Regulation Modules to be developed and specific problems to be targeted in specific schemes without necessarily affecting other schemes.

¹³ 'Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997', p 2, at <http://www.dftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf> (accessed 14 February 2005). The Standard Module is the default where none is expressly stipulated in the Community Management Statement or the scheme predated the current legislative regime: Body Corporate and Community Management (Standard Module) Regulation 1997 (Qld) s 3.

serviced apartments, hotels or resorts.¹⁴ The Commercial Module is used where the lots are mainly for business purposes.¹⁵ While the Small Schemes Module is the least regulated,¹⁶ and is restricted to buildings where there are no more than six lots included in the scheme and there is no letting agent.

One of the objectives of the BCCM is to 'promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes'.¹⁷ The BCCM attempts to achieve this by providing for a management structure that is centered on the requirements of the community title scheme. At the primary level internal governance occurs through the body corporate, constituted by the owners of all lots included in the scheme.¹⁸ The body corporate is established automatically upon registration of a plan of subdivision and the recording by the registrar of the schemes Community Management Statement (the CMS).¹⁹ Section 94 of the BCCM imposes on the body corporate three principal functions, including administering the 'common property and body corporate assets for the benefit of the owners of the lots';²⁰ enforcing the CMS and by-laws; and carrying out any other functions bestowed on it by the BCCM or CMS.²¹ The body corporate also has an obligation to maintain the schemes

14 'Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997', p 2, at <http://www.dtftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf> (accessed 14 February 2005). An accommodation lot is defined as a lot that is the subject of, or immediately available to be the subject of, a lease or letting for accommodation for long or short term residential purposes, or part of a hotel: Body Corporate and Community Management (Accommodation Module) Regulation 1997 (Qld) s 3.

15 'Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997', p 3, at <http://www.dtftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf> (accessed 14 February 2005). A commercial lot is defined as a lot used for commercial or industrial purposes, that is not an accommodation or residential lot: Body Corporate and Community Management (Commercial Module) Regulation 1997 (Qld) s 3.

16 'Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997', p 3, at <http://www.dtftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf> (accessed 14 February 2005). The minimal regulatory requirements of the Small Schemes Module are aimed at establishing an informal management environment that encourages owners to self-manage their schemes: Hobbs, above n 14, p 1136. For example, under the Small Schemes Module the composition and election of the Body Corporate Committee is simplified (refer Pt 3 of the Body Corporate and Community Management (Small Schemes Module) Regulation 1997 (Qld)) vis a vis the extensive Committee provisions of the Standard Module (refer Body Corporate and Community Management (Standard Module) Regulation 1997 (Qld)).

17 Body Corporate and Community Management Act 1997 (Qld) s 4(b).

18 Body Corporate and Community Management Act 1997 (Qld) s 31. The body corporate can exercise its governing authority through general meetings provided the meetings conform with the procedural requirements contained in Pt 4 of each Regulation Module.

19 Body Corporate and Community Management Act 1997 (Qld) ss 24 and 30. A Community Management Statement is defined in the BCCM as a document that identifies the land and complies with the requirements of the Act: Body Corporate and Community Act 1997 (Qld) s 12. Section 66 of the BCCM outlines the requirements of a Community Management Statement, which includes such things as: naming the scheme and the body corporate; identifying the Regulation Module that applies to the scheme; and outlining the scheme by-laws. Refer s 66 of the BCCM for further details.

20 Body Corporate and Community Management Act 1997 (Qld) s 94(1)(a).

21 The body corporate is required to perform these functions in a reasonable manner (Body

records and ensure that the records are accessible.²²

In addition to the body corporate there may also exist a 'committee',²³ often constituted by a chairperson, secretary, treasurer and ordinary members.²⁴ Part 3 of each Regulation Module prescribes in detail the required composition of a committee, how the committee members are to be selected and how the committee is to conduct its meetings.²⁵ Provided these provisions are adhered to, s 100 of the BCCM grants the committee authority to make decisions on behalf of the body corporate.²⁶

The final aspect of community title governance surrounds the engagement or authorisation of a body corporate manager, service contractor and/or letting agent.²⁷ Although the body corporate is expressly prohibited from delegating its powers²⁸ it is authorised to appoint a body corporate manager to deliver administrative services or exercise the authority of an executive member of the committee.²⁹ Under s 37F of the Standard Module a body corporate manager is required to draft quarterly reports detailing maintenance plans, balance and reconciliation statements for the schemes administrative and sinking funds,³⁰ the body corporate's expenses over the preceding three

Corporate and Community Management Act 1997 (Qld) s 94(2)) and is granted all powers necessary to do so under s 95 of the Body Corporate and Community Management Act 1997 (Qld).

- 22 This duty must be carried out in accordance with the Regulation Module applying to the scheme: Body Corporate and Community Management Act 1997 (Qld) s 204.
- 23 Section 8 of the Commercial Module and Small Schemes Module demands that there 'be a committee for the body corporate for a community titles scheme'. However, both the Standard Module (s 7(2)) and Accommodation Module (s 8(2)) state that a committee must be formed *unless* the body corporate engages a body corporate manager to carry out the functions of the committee.
- 24 As part of the more informal requirements of the Small Schemes Module a committee in a small scheme is only required to have a secretary and treasurer.
- 25 Chapter 3 Pt 1 Div 2 of the BCCM enlivens Pt 3 of the Regulation Module applying to the scheme.
- 26 Body Corporate and Community Management Act 1997 (Qld) s 100. The committee is however confined in the decisions it can make and is prohibited from deciding on issues nominated as restricted in the Regulation Module. For instance, under the Standard Module restricted issues include such things as changing levies or the rights and obligations of owners: Body Corporate and Community Management (Standard Module) Regulation 1997 (Qld) s 26.
- 27 'Body corporate manager' is defined in s 14 of the BCCM. 'Service contractor' is defined in s 15 of the BCCM. 'Letting agent' is defined in s 16 of the BCCM. These roles may often be combined.
- 28 Body Corporate and Community Management Act 1997 (Qld) s 97.
- 29 However, this delegation of authority must not curtail the executive members' ability to exercise their powers or direct the body corporate manager: Body Corporate and Community Management Act 1997 (Qld) ss 119 and 120. The body corporate's authority to engage a manager is echoed in the Standard Module (s 37B) and Accommodation Module (s 35A), which also contains further detail on the meeting and voting processes required. The developer is entitled to engage a body corporate manager before relinquishing control of the scheme, however in doing so they must exercise reasonable skill, care and diligence and act in the best interests of the body corporate: Body Corporate and Community Management Act 1997 (Qld) s 112.
- 30 There are additional provisions relating to body corporate managers who directly administer the schemes funds: refer Body Corporate and Community Management (Standard Module) Regulation 1997 (Qld) ss 100, 100A and 101A; and Body Corporate and Community Management (Accommodation Module) Regulation 1997 (Qld) ss 98, 98A and 99A.

months and a list of decisions made by the manager under the engagement.³¹ The actions of a body corporate manager are governed by the code of conduct contained in Sch 2 of the BCCM, which highlights the somewhat fiduciary nature of their role.³²

The Sch 2 code of conduct also extends to cover service contractor's, defined as persons appointed by the body corporate for a term of at least 12 months to carry out non-administrative functions such as caretaking or pool cleaning.³³ On the other hand, a letting agent is governed by a separate code of conduct contained in Sch 3 of the BCCM.³⁴ Essentially, a letting agent holds the management rights for a scheme, acting as the agent for the owner of a lot in securing leases or short-term occupancies.³⁵ If the body corporate identifies that a letting agent is breaching the code of conduct they can issue the offending party a code contravention notice.³⁶ If the letting agent continues to breach the code, the body corporate may ultimately require that the agent transfer their management rights to another party.³⁷ The benefit of the code contravention notices and forced transfers is that unit owners are no longer forced to permanently endure the incompetencies or unacceptable practices of letting agents.³⁸

Another express aim of the BCCM is 'to provide an efficient and effective dispute resolution process'.³⁹ In an effort to fulfill this objective, Ch 6 of the BCCM establishes the office of Commissioner of Body Corporate Management (the Commissioner).⁴⁰ The Commissioner is responsible for providing education, disseminating information and managing the dispute resolution service.⁴¹ An essential part of the Commissioner's role is to assess applications with a view to rejecting or dismissing, or alternatively referring the application onto one of the department's dispute resolution services.⁴² In

31 Section 37F of the Standard Module is mirrored in s 35E of the Accommodation Module.

32 Body Corporate and Community Management Act 1997 (Qld) s 118. For instance a manager must act in the best interest of the body corporate and must not put themselves in a situation where their duties or interests in the scheme are in conflict: Body Corporate and Community Management Act 1997 (Qld) Sch 2.

33 Body Corporate and Community Management Act 1997 (Qld) s 15.

34 Letting agents are also subject to the Property Agents and Motor Dealers Act 2000 (Qld) and the Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001 (Qld).

35 Body Corporate and Community Management Act 1997 (Qld) s 16.

36 Body Corporate and Community Management Act 1997 (Qld) s 139. This notice must set out the provision of the code allegedly in breach, details of the contravention and a time frame in which the agent is expected to remedy the infringement: Body Corporate and Community Management Act 1997 (Qld) s 139.

37 Body Corporate and Community Management Act 1997 (Qld) ss 138–143.

38 Ardill, Everton-Moore, Fredline, Guilding and Warknen, above n 3, at 22.

39 Body Corporate and Community Management Act 1997 (Qld) s 4(h).

40 The Commissioner is linked to the Department of Tourism, Fair Trading and Wine Industry Development.

41 Body Corporate and Community Management Act 1997 (Qld) s 232. Provisions pertaining to the resolution of disputes are contained solely in Ch 6 of the BCCM, with the Regulation Modules simply making reference to the Act. Refer to <<http://www.dtftwid.qld.gov.au/disputeres/bccm/>> (accessed 14 February 2005) for further information.

42 Body Corporate and Community Management Act 1997 (Qld) ss 241, 248 and 250. The Commissioner may also seek further information from the applicant: Body Corporate and Community Management Act 1997 (Qld) s 240. Any person who is a party to a dispute or

performing this duty the Commissioner may make an official dispute resolution recommendation for the applicant to attend one of the department's resolution services, which include the dispute resolution centre mediation; specialist mediation; specialist conciliation; department adjudication; and specialist adjudication.⁴³

Along with the Commissioner, adjudicators are appointed under the BCCM and are empowered to make orders to resolve disputes.⁴⁴ The type of orders an adjudicator is permitted to make are extensively outlined in Sch 5 of the BCCM.⁴⁵ In 2003 many of the disputes brought before an adjudicator centered around the conduct of meetings and improper nominations or election irregularities relating to the body corporate committee.⁴⁶ Section 271 of the BCCM further grants adjudicators' power to investigate an application through a variety of means including interviewing relevant parties or inspecting records and property.⁴⁷ An adjudicator's order can be enforced through the Magistrates Court or, if unsatisfactory, appealed to the District Court on a question of law.⁴⁸

The flexibility of the BCCM has been recognised through a series of reviews carried out since the inception of the Act in 1997.⁴⁹ The first such revision was completed in 2002⁵⁰ with another revision occurring in late 2003.⁵¹ The Department of Tourism, Fair Trading and Wine Industry Development (the Department) is currently in the midst of another review after releasing a Discussion Paper on 10 July 2004 which was primarily aimed to 'encourage continued growth in the BCCM industry over the next decade

who is directly concerned with a dispute may make an application, however it must be done in the form approved by the BCCM: refer Body Corporate and Community Management Act 1997 (Qld) ss 238–239. Upon receiving an application the Commissioner must give written notice to the applicant as well as the body corporate and all affected persons: Body Corporate and Community Management Act 1997 (Qld) s 243. The body corporate is then given the responsibility of forwarding this notice along with the application to all owners in the scheme: Body Corporate and Community Management Act 1997 (Qld) s 243(4).

43 Body Corporate and Community Management Act 1997 (Qld) s 248. Also refer to s 251 of the BCCM 'Preparation for making a dispute resolution recommendation'.

44 Body Corporate and Community Management Act 1997 (Qld) ss 236 and 276.

45 An adjudicator does not however have power to resolve a question about title to land: Body Corporate and Community Management Act 1997 (Qld) s 285.

46 Information based on Adjudicator's Decisions made in 2003. Decisions can be found at <<http://www.austlii.edu.au/au/cases/qld/QBCCMCmr/>>.

47 Body Corporate and Community Management Act 1997 (Qld) s 271.

48 Body Corporate and Community Management Act 1997 (Qld) ss 286, 287 and 289–294.

49 The BCCM was introduced under the promise that its innovative regime would be subject to legislative review: S Robertson MP, *Hansard*, Body Corporate and Community Management and Other Legislation Amendment Bill, 3 December 2002, p 5225.

50 This review resulted in a relatively large amount of amendments that took effect from 4 March 2003. For more details of both the 2002 and 2003 reviews refer to: Ardill, Everton-Moore, Fredline, Guiding and Warnken, above n 3.

51 This review focused on the Standard and Accommodation Modules, with amendments effective from 1 December 2003. The result of the review was the Body Corporate and Community Management Legislation Amendment Regulation (No 1) 2003. Similar amendments are proposed for the Small Schemes and Accommodation Modules. The proposal to amend these two modules is canvassed at the official departmental website, which can be found at <http://www.dftwid.qld.gov.au/disputeres/bccm/pdf/pa_com_small.pdf> (accessed 14 February 2005).

through a forward looking policy agenda'.⁵² In order to achieve this, the Discussion Paper calls for comment on a range of issues, including:

- The reader's experience with departmental and specialist adjudication, mediation and conciliation;
- How best to encourage negotiated settlements prior to accessing dispute resolution services;
- The adequacy of the compliance and enforcement provisions of the current legislative scheme;
- The problems associated with body corporate managers, restricted letting agents, and service contractors and the satisfactoriness of the current codes of conduct governing such persons;
- The interaction between the BCCM and the tourism industry; and
- How to address the problem of ageing buildings.

The Department received 177 submissions in response to the Discussion Paper, raising a wide range of issues.⁵³ At the time of writing, policy options and recommendations were being considered by Cabinet.

New South Wales

In New South Wales, the law of strata or community title is divided between three legislative frameworks. Firstly, the initial subdivision and subsequent sale of land is administered by either the Strata Schemes (Freehold Development) Act 1973 (NSW) or the Strata Schemes (Leasehold Development) Act 1986 (NSW). These two Acts provide for alternative systems of subdivision. The distinguishing feature is that under the Strata Schemes (Leasehold Development) Act 1986 the original owner is able to retain a fee simple interest in the entire estate, with subsequent purchasers obtaining only a leasehold interest in their respective lot. Under s 39 of the Strata Schemes (Leasehold Development) Act 1986 a leasehold strata scheme may be converted into a freehold strata scheme following a special resolution to that effect. These statutes are also supplemented by the Strata Schemes (Freehold Development) Regulation 2002 (NSW) and the Strata Schemes (Leasehold Development) Regulation 2002 (NSW). Both sets of Regulations detail the procedural requirements that are to be followed when submitting a plan. For example, the Regulations clearly delineate what is to be included on a floor plan or a strata plan of subdivision and set out the procedural requirements for a staged development.⁵⁴ In addition, Sch 6 of both the Strata Schemes (Freehold Development) Regulation 2002 (NSW) and the Strata Schemes (Leasehold Development) Regulation 2002 (NSW) contain a directory of fees.

Secondly, management of schemes and the resolution of disputes are regulated by the Strata Schemes Management Act 1996 (NSW) and the Strata

⁵² Department of Tourism, Fair Trading and Wine Industry Development, *Body Corporate and Community Management: into the 21st Century*, 2004, p 1.

⁵³ Email from David Reardon to Kimberly Everton-Moore, 22 February 2005.

⁵⁴ Strata Schemes (Freehold Development) Regulation 2002 (NSW) ss 8, 10 and 15–18. Also refer Schs 1 and 2. Strata Schemes (Leasehold Development) Regulation 2002 (NSW) ss 8, 10 and 15–18. Also refer Schs 1 and 2.

Schemes Management Regulation 1997 (NSW).⁵⁵ The Strata Schemes Management Act 1996 (NSW) (the SSMA) was aimed at not only professionals, but also the many people who run their own buildings.⁵⁶ This design feature can be seen in the SSMA's use of plain language and its logical and sequential order. The Strata Schemes Management Regulation 1997 (NSW) (the SSMReg) acts as an addendum to the SSMA and contains information such as mandatory retention periods for scheme documents, details on the procedure for nomination and election of an executive committee and a schedule of fees payable to the Registrar.⁵⁷ The SSMReg also outlines the model by-laws, which are tailored for a particular type of scheme. Thus, Sch 1 of the SSMReg contains a separate set of by-laws for residential, retirement village, industrial, hotel/resort, commercial/retail and mixed use schemes.

Thirdly, the actions of strata or community managing agents and onsite residential property managers are controlled by the Property, Stock and Business Agents Act 2002 (NSW).

Strata law has a long history in New South Wales, however its current shape is largely the result of a major overhaul completed in 1997, which marked the introduction of the SSMA.⁵⁸ This Act was introduced to 'revolutionise the way strata schemes in New South Wales are administered'.⁵⁹ It aimed to do this by modernising and streamlining the existing strata laws, while achieving 'a balance between [owners] corporations⁶⁰ having freedom to manage without undue interference and individual residents having their rights maintained'.⁶¹ Since its introduction, the SSMA has undergone a series of reviews, which have resulted in a wide range of reforms.⁶² Further reviews are

55 According to s 3, the objectives of the Strata Schemes Management Act 1996 (NSW) are: '(a) to provide for the management of strata schemes created under the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986, and (b) to provide for the resolution of disputes arising in connection with the management of strata schemes.'

56 F Lo Po MP, *Hansard (NSW)*, 13 November 1996, p 5916. The SSMA is administered by the Department of Commerce, Office of Fair Trading. Refer to <<http://www.fairtrading.nsw.gov.au/>> for more information.

57 Strata Schemes Management Regulation 1997 (NSW) ss 5, 13–17 and 23.

58 P Berry, 'Strata Schemes in New South Wales', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004. New South Wales strata legislation can be traced back to the Conveyancing (Strata Titles) Act 1961 (NSW), which was repealed and replaced by the Strata Titles Act 1973 (NSW). The Strata Titles Act 1973 (NSW) remained largely in force until the more recent introduction of the SSMA.

59 Lo Po MP, above n 61, p 5923.

60 The SSMA does not use an apostrophe after the word 'owners'.

61 D Beamer, *Hansard (NSW)*, 21 November 1996, p 6417.

62 For example, various refinements to the legislation were made following the National Competition Policy Review of the Strata Schemes Management Act 1996, carried out during 2001. The most recent reforms resulted in the Strata Schemes Management Amendment Act 2004 (NSW), which was assented to on 17 March 2004, however at the date of writing was not in force. The recent amendments aimed to build on previous reforms and cater for the more sophisticated issues faced by modern owners' corporations: J Hatzistergos MP, *Hansard (NSW)*, 10 March 2004, p 6966. One of the most significant developments from the recent review was the introduction of s 75A, which requires the owners' corporation to prepare a 10-year plan for sinking funds.

planned, with the NSW Government releasing an additional discussion paper in late 2004 to assess the viability of the latest reforms and invite comment on pressing new topics.⁶³

In its current form the SSMA limits the management power of an original owner (which is usually the developer). For instance, while the original owner is often responsible for nominating an appropriate set of by-laws for the scheme,⁶⁴ they are not allowed to make, amend or repeal a by-law in such a way that would advantage or disadvantage particular units.⁶⁵ In addition, if the original owner retains 50% or more of the unit entitlement their voting rights are curtailed, especially in relation to the election of an executive committee.⁶⁶ The result of such limitations is that the management of the scheme is principally vested in the owners' corporation.⁶⁷ Some of the owners' corporations key management functions include maintaining and repairing common property, managing the schemes finances, sourcing insurance for the scheme and keeping accounts and records.⁶⁸ The body corporate exercises its authority through the casting of votes at general meeting. Voting entitlements are shared between lot owners and those persons identified on the strata roll as having a priority vote.⁶⁹

However, as in Queensland, the owners' corporation is permitted to appoint others to assist in the administration of the scheme. For instance, the owners' corporation may delegate its powers to the executive committee and/or a strata managing agent.⁷⁰ While it is compulsory for the owners' corporation to appoint an executive committee, they can reserve decisions on certain matters for the owners' corporation.⁷¹ Nevertheless, decisions made by a properly appointed and duly constituted executive committee are taken to be decisions

63 Refer J Hatzistergos MP, *Hansard (NSW)*, 10 March 2004, p 6966. The discussion paper was released in August 2004 and identified a series of fresh issues including whether the new sinking fund provisions should extend to cover existing schemes and, if so, which schemes would fall within the ambit: NSW Government (2004) *Strata Schemes in 2004 — the further issues*, Discussion paper, <<http://www.fairtrading.nsw.gov.au/pdfs/corporate/stratadiscussionpaper04.pdf>> (accessed 14 February 2005).

64 This is done when lodging the strata plan: Strata Schemes Management Act 1996 (NSW) s 41.

65 Strata Schemes Management Act 1996 (NSW) s 50.

66 If the original owner has half (or more) of the aggregate unit entitlement and a motion is presented for the nomination of an executive committee their voting power is reduced to one vote for every three units owned: Strata Schemes Management Act 1996 (NSW) Sch 2 Pt 2 cl 17(2). If a poll is called for the election of an executive committee their unit entitlement is reduced to a third of the total entitlement: Strata Schemes Management Act 1996 (NSW) Sch 2 Pt 2 cl 17(4).

67 Strata Schemes Management Act 1996 (NSW) s 8. Further functions are set out in Ch 3 Pt 6 of the SSMA.

68 Strata Schemes Management Act 1996 (NSW) s 61.

69 For example, a mortgagee may have a priority vote on a motion that relates to insurance, budgeting or fixing of a levy that will require expenditure above the prescribed amount, or any matter that requires a special or unanimous resolution: Strata Schemes Management Act 1996 (NSW) s 7(1)(a). Therefore, providing the mortgagee gives the owner notice of their intention to cast their priority, a vote by the lot owner on the same matter does not count. This can be contrasted to Tasmanian legislation which only affords a mortgagee the right to vote if their in possession of the lot under the mortgage: Strata Titles Act 1998 (Tas) s 74(3).

70 Strata Schemes Management Act 1996 (NSW) s 9.

71 Strata Schemes Management Act 1996 (NSW) ss 16 and 21.

of the owners' corporation.⁷² Similarly, the owners' corporation may delegate its powers and functions and the powers of the executive committee to a strata managing agent.⁷³ The body corporate may further appoint a caretaker (who is often referred to as a 'building manager' and who may also be an on-site residential property manager) to fulfil the limited role of managing, controlling the use of and/or maintaining the common property.⁷⁴

Two of the distinguishing features of the NSW system are its licensing requirements and dispute resolution process. Under the Property, Stock and Business Agents Act 2002 (NSW), community managing agents and residential property managers must be licensed⁷⁵ and carry a certificate of registration.⁷⁶ In addition, agents must adhere to a long list of both general and specific rules of conduct contained within the Property, Stock and Business Agents Regulation 2003 (NSW).⁷⁷ These rules emphasise the fiduciary nature of an agent's role in the scheme and involve such things as exercising reasonable care, skill and diligence; acting in the best interests of the scheme; and avoiding conflicts of interest.⁷⁸

The NSW dispute resolution process has two distinctive features. Firstly, if an owner or occupier is in contravention of a specified by-law, s 45 of the SSMA empowers the owners' corporation to serve a notice on the offending party requiring them to comply with that by-law.⁷⁹ If the individual fails to comply with the notice it can then be enforced through the NSW Consumer, Trader and Tenancy Tribunal and the party in breach may face a pecuniary penalty.⁸⁰ Secondly, parties to a dispute are required to attempt mediation before making an application for adjudication.⁸¹ This system has reportedly had success, with around 73% of those who attend mediation reaching an

72 Strata Schemes Management Act 1996 (NSW) s 21. Refer to Sch 3 of the SSMA for provisions relating to the constitution of executive committee, appointment of office holders and meetings of executive committee.

73 The owners' corporation cannot delegate those powers that are exclusively reserved for the owners' corporation: Strata Schemes Management Act 1996 (NSW) ss 28–29. However, the executive committee can otherwise exist in parallel with a strata managing agent: Strata Schemes Management Act 1996 (NSW) s 29.

74 Strata Schemes Management Act 1996 (NSW) s 40A.

75 Property, Stock and Business Agents Act 2002 (NSW) s 8. Exactly who must be licensed to perform duties on behalf of the owners' corporation has created some confusion. To combat this, s 29A of the Strata Schemes Management Amendment Act 2004 (NSW) lists a range of functions that may only be delegated to the executive committee or a licensed strata managing agent. Many of these functions centre around financial management and record keeping. This makes it clear that persons appointed to carry out basic maintenance tasks are not required to be licensed strata managing agents: J Hatzistergos MP, *Hansard (NSW)*, 10 March 2004, p 6966.

76 Property, Stock and Business Agents Act 2002 (NSW) s 10.

77 All licensees are subject to 19 general rules outlined in Sch 1 of the Property, Stock and Business Agents Regulation 2003 (NSW). More specific rules for on-site residential property managers are contained within Sch 2 and rules specific to strata, community and residential managers are contained in Sch 6.

78 Property, Stock and Business Agents Regulation 2003 (NSW) Sch 1.

79 The Strata Title Act 1998 (Tas) makes similar provision for the enforcement of by-laws. Refer to discussion of Tasmanian legislation below.

80 Strata Schemes Management Act 1996 (NSW) s 203.

81 Strata Schemes Management Act 1996 (NSW) s 125.

acceptable outcome.⁸² However, this figure does not take account of those who simply refuse to attend a mediation session.⁸³

Victoria

Body corporate law in Victoria is currently contained within the Subdivision Act 1988 (Vic) (Subdivision Act) and the Subdivision (Body Corporate) Regulations 2001 (Vic) (Subdivision Regulations).⁸⁴ The Subdivision Act expressly aims to set out procedures for the subdivision and consolidation of land and buildings, regulate the management of common property,⁸⁵ and govern the operation of bodies corporate.⁸⁶ However, the large majority of provisions relating to the functions, powers, duties and general operation of bodies corporate are contained within the Subdivision Regulations.⁸⁷ Consequently, the major focus of the Subdivision Act is regulating the certification and registration of plans and the preliminary establishment of bodies corporate.

Pursuant to s 27 of the Subdivision Act any plan of subdivision in Victoria may provide for the creation of one or more bodies corporate.⁸⁸ However, if the plan includes common property, the establishment of a body corporate is mandatory.⁸⁹ A body corporate is deemed to be incorporated upon registration of a plan, with all lot owners consequently becoming the first members of the body corporate.⁹⁰ The major functions of the body corporate are to repair and maintain the scheme's property, manage and administer the common property, insure the scheme, and make certain that the Subdivision Regulations and the rules of the body corporate are complied with.⁹¹ In order to carry out these functions the body corporate is given a wide range of powers, including

82 P Berry, 'Strata Schemes in New South Wales', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate Conference, Melbourne, 5 April 2004.

83 Ibid.

84 The Subdivision Act applies to strata or cluster plans originally established under the repealed Strata Titles Act 1967 (Vic) and the Cluster Titles Act 1974 (Vic); Subdivision Act 1988 (Vic) Sch 2. The Subdivision Regulations are made under ss 28A, 29, 31 and 43 of the Subdivision Act: Subdivision (Body Corporate) Regulations 2001 (Vic) r 102.

85 Section 28A of the Subdivision Act provides that the body corporate deal with common property in accordance with the requirements of the Subdivision Regulations. For specific examples of the way the body corporate must deal with common property refer to rr 206, 207 and 218 of the Subdivision Regulations.

86 Subdivision Act 1988 (Vic) s 1.

87 The objectives of the Subdivision Regulations are outline in s 101 and include: specifying the functions, powers and duties of bodies corporate; making further provision for the establishment and operation of bodies corporate; specifying the rights and duties of members of bodies corporate; providing for forms and procedures for the recording or giving of information required by the Subdivision Act; and making further provision for plans of strata and cluster subdivision.

88 Subdivision Act 1988 (Vic) s 27(1). If multiple bodies corporate are created, it must be done in such a way that any single lot is not affected by more than one body corporate: Subdivision Act 1988 (Vic) s 27(2B).

89 Subdivision Act 1988 (Vic) s 27(2). The plan must also specify the details of lot entitlement: Subdivision Act 1988 (Vic) s 27(3).

90 Subdivision Act 1988 (Vic) s 28.

91 Subdivision (Body Corporate) Regulations 2001 (Vic) r 201. The body corporate must also keep proper books of account and prepare proper financial statements: Subdivision (Body Corporate) Regulations 2001 (Vic) r 203.

setting and levying of fees, dealing with monies and accounts, and appointing or employing persons to assist in the performance of its functions.⁹²

The body corporate may share responsibility for the administration of a scheme with a committee and/or a manager. A committee must be elected if the body corporate is constituted of 13 or more members — less than 13 members and a committee is optional.⁹³ In addition, a manager, who need not be a member of the body corporate, may be appointed pursuant to r 302 of the Subdivision Regulations. Although the Subdivision Regulations allows for the appointment of a committee and manager, it is silent as to their functions, rights or duties. Further, as the law currently stands in Victoria, managers are not subject to a licensing regime or a code of conduct. This means that lot owners are afforded very little consumer protection against unscrupulous managers.⁹⁴

Under the current dispute resolution scheme, persons with a body corporate dispute may apply to the Magistrates' Court for a declaration or order determining the issue.⁹⁵ The court may make a number of different orders, including orders requiring the body corporate to perform or refrain from an act.⁹⁶ Applications may also be made to the Victorian Civil and Administrative Tribunal (VCAT) on a limited range of issues. For example, an application may be made for the VCAT to review a decision of a council to refuse the certification of a plan.⁹⁷ At a more general level, information or assistance in the resolution of a dispute can be obtained from Consumer Affairs Victoria, the Dispute Settlement Centre of Victoria or a community legal service.

The Department of Consumer Affairs has been conducting an extensive review of Victoria's body corporate law since 2003. The review is a response to the enormous growth of medium density housing in the Victorian region since the inception of the Subdivision Act in 1988 and aims to evaluate the effectiveness of the current legislative scheme.⁹⁸ The terms of the review initially focused on the dispute resolution provisions of the Subdivision Act and the collection of fees, however the breadth of the evaluation was quickly extended given the quantity and variety of responses to the first Issue Paper released on 21 October, 2003.⁹⁹ Of particular concern to stakeholders who responded was the complexity of the body corporate regulatory framework, the non-accountability of body corporate managers and committees, the lack

92 Subdivision (Body Corporate) Regulations 2001 (Vic) r 202.

93 Subdivision (Body Corporate) Regulations 2001 (Vic) r 305.

94 It must be noted that r 304 of the Subdivision Regulations provides that a manager can be removed by resolution at an annual general meeting or special general meeting.

95 Subdivision Act 1988 (Vic) s 38(1). If appropriate, the Magistrates' Court may refer the dispute to the County Court: Subdivision Act 1988 (Vic) s 38(2).

96 Subdivision Act 1988 (Vic) s 38(3).

97 Subdivision Act 1988 (Vic) s 40(1)(a). Refer generally to ss 40 and 41 of the Subdivision Act.

98 D Cousins, 'Vision for Bodies Corporate', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004. Refer to the 'Future Directions Paper, Bodies Corporate' for the Terms of Reference of the review, at <[http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines/\\$file/futuredirections_bodies_corporate.pdf](http://www.consumer.vic.gov.au/CA256902000FE154/Lookup/CAV_Publications_Reports_and_Guidelines/$file/futuredirections_bodies_corporate.pdf)>.

99 Cousins, *ibid.* Consumer Affairs Victoria, 'Issues Paper, Bodies Corporate — Review of the effectiveness and efficiency of the Subdivision Act 1988 as it relates to the creation and operation of bodies corporate'.

of information available to lot owners concerning their rights and responsibilities, and the difficulty of gaining access to important body corporate documents.¹⁰⁰

None the less, the minimisation of disputes, appropriate dispute resolution mechanisms and the prudent management of body corporate funds have remained the most pressing topics of the review.¹⁰¹ Consumer Affairs Victoria released the *Future Directions Paper, Bodies Corporate* in March 2004 which outlined a number of proposals for a new prospective regulatory scheme. The proposals include such things as:

- Increasing the provision of information in an effort to inform consumers of their rights and obligations and thus reduce the scope for disputation;
- Introducing a four-tiered dispute resolution process, involving internal attempts at resolving the dispute, resolution with the assistance of an expert body corporate conciliator, establishment of a body corporate person or body to resolve day-to-day disputes, and the establishment of an expert court or tribunal to resolve more complex issues;
- Allowing, or perhaps requiring, bodies corporate to establish an administration fund (to cover recurrent expenses), a contingency fund (to cover extraordinary expenses), and a maintenance fund (to cover future maintenance of the property); and
- Requiring body corporate managers to be licensed or self regulated by the industry through the establishment and enforcement of certain standards of performance.

At the time of writing, this review was still underway with a final report yet to be produced.

South Australia

Strata Title law in South Australia (SA) can be traced back to Pt 19b of the Real Property Act 1967 (SA), which remained in operation until replaced by the Strata Titles Act 1988 (SA) (STA (SA)).¹⁰² The STA (SA) is divided into three main sections covering the division of land by strata plan, scheme management and dispute resolution. The STA (SA) is supplemented by the Strata Titles Regulations 2003 (SA) and the Strata Titles (Fees) Regulations 2001 (SA).¹⁰³ The Strata Titles Regulations 2003 (SA) operate to delineate several sections of the STA (SA) particularly in relation to the procedural requirements surrounding the calculation of unit entitlements, the operation of

¹⁰⁰ Cousins, above n 103.

¹⁰¹ D Cousins, *Hansard (Vic)*, 15 October 2003, p 829. Consumer Affairs Victoria, 'Future Directions Paper, Bodies Corporate', p 1.

¹⁰² The Strata Titles Act 1988 (SA) is to be read in conjunction with the remainder of the Real Property Act 1886 (SA): Strata Titles Act 1988 (SA) s 4.

¹⁰³ The Strata Titles (Fees) Regulations 2001 (SA) specify the fees payable to the Registrar-General for a range of matters, including the lodging and examination of applications, the issuing of certificates of title, as well as the amending of unit entitlements, plans or articles.

the strata corporation, and the maintenance of the trust account by an agent.¹⁰⁴ Further, Sch One through to Sch Four of the Strata Titles Regulations 2003 (SA) contains the templates for certificates and notices which must be issued when lodging/amending a plan or amending the schemes articles.¹⁰⁵

The STA (SA) also currently operates in conjunction with the Community Titles Act 1996 (SA) (CTA (SA)).¹⁰⁶ The SA Parliament introduced the concept of community titles in 1995 in an effort to ‘fill a vacuum between conventional subdivision and strata subdivision’.¹⁰⁷ The CTA (SA) aimed to achieve this by extending the notion of strata title to include subdivision of vacant blocks of land, staged developments and mixed developments consisting of parks, resorts, rural cooperative developments, industrial developments, etc.¹⁰⁸ Initially the STA (SA) and the CTA (SA) were to be integrated into the one Act, however public opinion at the time of its introduction demanded that the Acts remain independent.¹⁰⁹ To overcome some of the difficulties in having two distinct yet similar Acts, no new applications have been accepted under the STA (SA) since 1 January 2002.¹¹⁰ The CTA (SA) is accompanied by the Community Titles Regulations 1996 (SA), which provides more detail on the requirements relating to plans, administration of the scheme and agent’s trust accounts.¹¹¹

In a strata title scheme under the STA (SA) the chief management body is the strata corporation. The strata corporation’s functions are outlined in s 25(1)

104 For example, pursuant to s 6(1) of the STA (SA) a unit in a strata plan must be assigned a unit entitlement number that reflects the unit’s value in proportion to the cumulative capital value of all units. In addition, s 6(3) of the STA (SA) dictates that the aggregate unit entitlement of the units in a scheme may be fixed by the regulations. Section 4 of the Strata Titles Regulations 2003 (SA) operates in conjunction with s 6(3) of the STA (SA) to set the aggregate unit entitlement of all units at 10,000.

105 The schemes ‘articles’ are what would be called in other States the schemes ‘by-laws’. The default articles are set out in Sch 3 of the STA (SA) however a scheme may, by special resolution, adopt a substitute set: Strata Titles Act 1988 (SA) s 19(2). The articles are binding on the corporation, unit holders and occupiers: Strata Titles Act 1988 (SA) s 20.

106 The SA Government had originally intended to deposit the STA (SA) into the CTA (SA) leaving only one Act. However, community consultation revealed that those who were already subject to the STA (SA) preferred to remain subrogated from the new legislative framework: S Sody, ‘SA Bodies Corporate’, Speech delivered at the ‘Building Communities: An Insight into Governing Bodies Corporate’ seminar, Melbourne, 5 April 2004.

107 K Griffin A-G, *Hansard (SA)*, 30 November 1995, p 683: ‘It is the hope of the Government that this legislation will open up the possibility for a range of innovative projects, encourage diversity in development, attract the interest of developers and allow land owners to better utilise their assets’. *ibid*, p 685.

108 Griffin A-G, *ibid*, p 683. ‘The greatest advantage of community titles over the strata title is that the ownership is of the land rather than of a space inside a building’: *ibid*, p 684.

109 Those operating under the STA (SA) expressed a preference for the Act to remain as it was: S Sody, ‘SA Bodies Corporate’, Speech delivered at the ‘Building Communities: An Insight into Governing Bodies Corporate’ seminar, Melbourne, 5 April 2004.

110 K Griffin A-G, *Hansard (SA)*, 30 November 1995, p 684. At present there are more than six times as many bodies corporate operating under the STA (SA) than the CTA (SA), however this difference will reduce over time with all new applications being made under the CTA (SA): S Sody, ‘SA Bodies Corporate’, Speech delivered at the ‘Building Communities: An Insight into Governing Bodies Corporate’ seminar, Melbourne, 5 April 2004.

111 Similar to the Strata Titles Regulations 2003 (SA) Schs 1 and 2 of the Community Titles Regulations 1996 (SA) contains the templates for forms required under the CTA (SA) and the prescribed fees.

of the STA (SA) and include administering and maintaining the scheme's property and enforcing the corporation's articles. The general powers of the strata corporation are more extensively outlined in ss 26 and 27 of the STA (SA) and largely reflect the powers afforded to a natural person, with the caveat that these powers be exercised for the purpose of the corporation or for the benefit of the strata community.¹¹² The strata corporation is also endowed with special powers to maintain the integrity of the strata scheme. In particular, the strata corporation has the power to enforce a unit owner's duties of maintenance and repairs by issuing the owner with a notice and, if necessary, entering the property to carry out the repairs.¹¹³ The strata corporation also has a duty to insure the scheme's buildings and insure against possible tortious liability.¹¹⁴ Under s 35 of the STA (SA) the strata corporation is entitled to appoint a management committee to carry out most of its duties, functions and powers.¹¹⁵ The strata corporation is also permitted to appoint or engage a 'person to assist its management committee in the performance of the committee's functions'.¹¹⁶ The STA (SA) does not offer any further prescription or regulation on the person(s) engaged to perform this function.

One of the major differences between the STA (SA) and the CTA (SA) centres on the development and management of the scheme. In comparison to strata title schemes, management in a community title scheme under the CTA (SA) can often be complicated and is regularly organised through a multi-tiered structure. Layered management arrangements are required to accommodate the multiple division of land provided for in the CTA (SA). That is, pursuant to s 7 of the CTA (SA) one parcel of land may be divided into primary, secondary and tertiary lots. A primary community plan consists of two or more community lots and common property, which can be further divided by a secondary plan into secondary lots.¹¹⁷ Similarly, a secondary lot can be divided into two or more tertiary lots by a tertiary plan of subdivision.¹¹⁸

The decision as to which development and management structure is best suited to the schemes is vested in the developer.¹¹⁹ While most schemes will

112 The powers of the strata corporation include dealing with real and personal property, borrowing money, maintaining accounts, investing money, entering contracts and raising funds: Strata Titles Act 1988 (SA) ss 26 and 27.

113 Strata Titles Act 1988 (SA) s 28.

114 Strata Titles Act 1988 (SA) ss 30 and 31. The strata corporation also has duties in relation to record keeping and maintenance, which include such things as keeping records of its meetings, keep accounting records and preparing statements of accounts: Strata Titles Act 1988 (SA) s 40.

115 If the scheme includes non-residential units, the management committee may consist of people who are not unit owners: Strata Titles Act 1988 (SA) s 35(1a). The management committee must keep minutes of its proceedings and ensure that proper accounting records are kept: Strata Titles Act 1988 (SA) s 35(8).

116 Strata Titles Act 1988 (SA) s 35(10).

117 Community Titles Act 1996 (SA) s 7.

118 Community Titles Act 1996 (SA) s 7(3). South Australia's multi-tiered schemes are similar to basic, principle and subsidiary schemes provided for in the Body Corporate and Community Management Act 1997 (Qld). Refer to Sch 1 of the Body Corporate and Community Management Act 1997 (Qld) for an illustration of the types of schemes available in Queensland.

119 This decision is expressed in the 'scheme description' lodged with the Lands Titles

not go beyond primary subdivision, a three-tiered division of land and management is often appropriate for large resorts or a mixed use development. The level of subdivision carried out on the scheme is largely a development concern; however, consumers are affected to the extent that the position of an owner's lot in a scheme determines his or her voting entitlements. More specifically, the owner of a lot in a secondary or tertiary corporation is not necessarily entitled to a vote in a primary corporation matter.¹²⁰ This can often have significant implications, particularly in multi-use buildings consisting of both commercial and residential lots. For instance, under this system a developer can effectively partition residential interests into secondary or tertiary corporations with the result that the commercial interests vested in the primary corporation can never be outweighed by the residential interests.¹²¹

Upon registration of a community plan the community corporation comes into operation.¹²² Similar to a strata corporation, a community corporation largely functions to administer, manage, maintain and control the common property and enforce the scheme's by-laws.¹²³ Under s 76 of the CTA (SA), a community corporation must, by ordinary resolution, appoint a presiding officer, treasurer and secretary.¹²⁴ The community corporation may also establish a management committee to carry out its functions and perform its duties.¹²⁵ The community corporation is also subject to a range of provisions governing the financial management of the scheme.¹²⁶ Analogous to the more recent financial obligations introduced in Queensland, a community corporation in SA must prepare and present a statement of expenditure at an annual general meeting, outlining the estimated recurrent and non-recurrent expenses the corporation may have to meet.¹²⁷ Community corporations are also required to establish both an administrative and sinking fund.¹²⁸

The STA (SA) and the CTA (SA) contain somewhat parallel provisions concerning the resolution of disputes.¹²⁹ Both Acts provide that a corporation or owner of a lot may make an application to the Magistrates Court, or the District Court with leave, to resolve a dispute arising under the legislation or

Registration Office: Community Titles Act 1996 (SA) ss 11 and 30. The scheme description is similar to the Community Management Statement required in Queensland.

120 Community Titles Act 1996 (SA) s 86. S Sody, 'SA Bodies Corporate', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004.

121 Sody, *ibid*.

122 Community Titles Act 1996 (SA) ss 10 and 71.

123 Community Titles Act 1996 (SA) s 75. A community corporation also has power to maintain the integrity of the community scheme (refer Community Titles Act 1996 (SA) s 101) and is under a duty to insure the scheme (refer Community Titles Act 1996 (SA) ss 103–108). Part 5 of the CTA (SA) outlines what may be included in a community title scheme's by-laws and allows considerable breadth for the laws to be tailored to the individual scheme.

124 If the community scheme is comprised of 10 lots or less all of these offices may be held by one person. If the scheme consists of 11 or more lots a maximum of two of these offices may be held by one person: Community Titles Act 1996 (SA) s 76(3).

125 Community Titles Act 1996 (SA) ss 90 and 92.

126 Refer generally to Community Titles Act 1996 (SA) Pt 11.

127 Community Titles Act 1996 (SA) s 113.

128 Community Titles Act 1996 (SA) s 116.

129 Refer generally: Strata Titles Act 1988 (SA) Pt 3A and Community Titles Act 1996 (SA) Pt 14.

the schemes by-laws.¹³⁰ The court's powers in relation to the application are outlined in the relevant Act and are guided by an obligation to act according to equity, good conscience and the substantial merits of the case.¹³¹ The court's powers include such things as an authority to attempt to achieve settlement, or order that a party take a specified action or refrain from a specified action.¹³²

Western Australia

The history of strata titles legislation in Western Australia (WA) begins with the Strata Titles Act 1966 (WA), which was introduced to allow proprietors to obtain title to a specific part of a building, a possibility previously unavailable in Western Australia.¹³³ Following legislative review and a report by the Law Reform Commission of Western Australia identifying some major deficiencies in the existing legislation, the Strata Titles Act 1985 (WA) (STA (WA)) was introduced.¹³⁴ Since its inception the STA (WA) has been continually evaluated, with fairly extensive amendments effected throughout 1995 and 1996.¹³⁵

The STA (WA) operates in conjunction with the Strata Titles (Resolution of Disputes) Regulations 1985 (WA) (Resolution of Disputes Regulations) and the Strata Titles General Regulations 1996 (WA) (General Regulations). The Resolution of Disputes Regulations outline the fees payable to the Commissioner of Consumer Affairs upon making an application for an order or an appeal, or making an inquiry to a Strata Titles Referee. As the title suggests the General Regulations are more extensive, containing detailed provisions on a range of issues such as planning, easements, common property, strata companies and management statements.

The STA (WA) accommodates for two types of schemes: strata schemes and survey-strata schemes.¹³⁶ The defining feature of the two types of schemes is the manner in which lot boundaries are determined. A strata scheme must contain a building and the boundaries of the lots must be defined by reference to that building.¹³⁷ In contrast, a strata-survey plan does not show any buildings (even if they are present) and lot boundaries are determined by a

130 Strata Titles Act 1988 (SA) s 41A(1)–(3); and Community Titles Act 1996 (SA) s 142(1)–(3).

131 Strata Titles Act 1988 (SA) s 41A(7) and (9); and Community Titles Act 1996 (SA) s 142(7) and (8).

132 Strata Titles Act 1988 (SA) s 41A(9); and Community Titles Act 1996 (SA) s 142(8).

133 *Strata Titles Manual 2001*, p 27.

134 For a list of some of the deficits of the Strata Titles Act 1966 (WA) refer to *Strata Titles Manual 2001*, p 27. The STA (WA) is administered by the Department of Land Administration.

135 R Comberger, 'Overview of Strata Titles in Western Australia', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004.

136 Single tier strata schemes registered before 1 January 1998 can be converted to survey-strata schemes under Pt III Div 3 of the Strata Titles Act 1985 (WA).

137 Strata Titles Act 1985 (WA) s 5. Contrary to previous legislation, the boundary of a lot may include space outside the building or the building structure.

licensed surveyor, much like a regular plan.¹³⁸ Contrary to the requirement in Queensland that a community title scheme contain common property, a strata-survey scheme does not have to include any lots of common property, although it may.¹³⁹ Apart from these obvious surveying differences, much of the STA (WA) applies equally to both strata schemes and survey-strata schemes.

As in other States, a strata company in Western Australia is established upon registration of a scheme's plan.¹⁴⁰ Section 35 of the STA (WA) prescribes the strata company's duties, including enforcing by-laws, managing the schemes property, recording minutes of meetings, keeping books of account, managing important scheme documentation and insuring the scheme.¹⁴¹ The strata company is also required to establish a fund to cover administrative expenses and levy proprietors accordingly.¹⁴² While it is not mandatory, the strata corporation is also entitled to establish 'a reserve fund for the purpose of accumulating funds to meet contingent expenses'.¹⁴³ In addition to imposing duties on the strata company, the STA (WA) also instills in it a range of powers.¹⁴⁴ For example, the strata company has the power to carry out work required by a public authority, local government or the scheme's by-laws and an associated power to enter the lot to perform this work.¹⁴⁵

Pursuant to s 44 of the STA (WA) the functions of a strata company may be performed by the council of the strata company, which is governed by the legislation and the scheme's by-laws. The council largely assumes the role of the strata company; however, it is restricted in its power of expenditure to an amount fixed according to the number of lots in the scheme.¹⁴⁶ The strata company may further divide management of a scheme by engaging a professional strata manager to perform its functions. However, it must be noted that all the management provisions in the STA (WA) relate to the internal management of a scheme by the proprietors and *not* to external strata managers. Thus, ultimate responsibility for complying with the STA (WA)

138 Department of Land Information, 'A Guide to Strata Titles in Western Australia', 2005, p 3. A copy of the guide can be found at <http://www.landonline.com.au/PracticeManualsList.asp?product_group_id=29>.

139 Ibid, p 3.

140 Strata Titles Act 1985 (WA) s 32. The original proprietor is required to convene and hold the strata schemes first annual general meeting within three months of registering the strata/survey-strata plan: Strata Titles Act 1988 (SA) s 49. Refer Strata Titles Act 1985 (WA) Pt IV Div 3 for the rules regarding the conduction of meetings.

141 Strata Titles Act 1985 (WA) s 35. Refer Strata Titles Act 1985 (WA) Pt IV Div 4 for provisions relating to insurance. The strata company is under a further obligation to keep a roll detailing the plan number and the details of all proprietors, tenants and mortgagees: Strata Titles Act 1985 (WA) s 35A. Certain provision within ss 35 and 35A do not apply to schemes containing only two lots: refer Strata Titles Act 1985 (WA) s 36A.

142 Strata Titles Act 1985 (WA) s 36(1). Section 36(1) does not apply to a scheme containing only two lots: Strata Titles Act 1985 (WA) s 36A.

143 Strata Titles Act 1985 (WA) s 36(2). The WA Government is currently considering whether to establish compulsory reserve funds following a recommendation to that effect by the Economics and Industry Standing Committee, Inquiry into the Western Australian Strata Management Industry.

144 Refer Strata Titles Act 1985 (WA) ss 37–39A.

145 Strata Titles Act 1985 (WA) ss 38 and 39.

146 Strata Titles Act 1985 (WA) s 47.

rests with each individual owner, despite the engagement of a professional strata manager.¹⁴⁷ Significantly, s 39A of the STA (WA) provides relief for owners who find themselves encumbered by contracts instigated by the original developer and where the contract has been operative for five years or more.¹⁴⁸ Strata/survey-strata schemes are also governed through the by-laws contained in Schs 1 and 2 of the STA (WA).¹⁴⁹

There are more than 120 strata managers in Western Australia, managing 4000–5000 schemes.¹⁵⁰ While some of these managers are licensed real estate agents, there is no requirement per se that strata managers be licensed or hold any specific qualifications.¹⁵¹ The absence of licensing requirements was one of the major topics of concern in the *Inquiry into the Western Australian Strata Management Industry* performed by the Economics and Industry Standing Committee (the Committee) throughout 2002 and 2003. The Committee traversed a range of issues and identified significant risk factors for lot owners, the public and the industry as a whole.¹⁵² The Committee's findings and recommendations were outlined in a Report released in 2003 and included such things as:¹⁵³

- Finding 7 — 'The roles and responsibilities of strata managers are not defined, and strata managers are not licensed or regulated, under the Western Australian Strata Titles Act 1985';
- Finding 9 — 'There is a potential risk for the misuse and/or mismanagement of strata company funds in the absence of regulation of the handling, recording and protection of funds';
- Recommendation 12 — 'The Strata Titles Act 1985 includes a definition of a strata manager, and provide for the establishment of key minimum competencies of a strata manager';
- Recommendation 13 — 'Strata companies in Category 2 and Category 3 schemes be required to appoint a licensed strata manager';¹⁵⁴

147 Economics and Industry Standing Committee, *Inquiry into the Western Australian Strata Management Industry*, Proceedings of a Public Forum, 8 November 2002, p 8.

148 To attract this power, the contract must relate to the provision of services to the strata company and either be entered into by a proprietor holding 50% or more of the lots or been deemed unfair to 25% or more of the proprietors by the State Administrative Tribunal.

149 The strata company is granted legislative authority to make additional by-laws for matters concerning its corporate affairs, the common property and any matter specified in Sch 2A: Strata Titles Act 1985 (WA) s 42. By-laws created by the strata company may attract a penalty, which can be imposed by the State Administrative Tribunal: Strata Titles Act 1985 (WA) s 42A.

150 Economics and Industry Standing Committee, *Inquiry into the Western Australian Strata Industry*, 2003, p xix.

151 R Comberger, 'Overview of Strata Titles in Western Australia', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004.

152 For example, because strata managers are not regulated there is no requirement that they audit their records or maintain professional indemnity insurance, leaving lot owners with little recourse in the event of serious mismanagement: Economics and Industry Standing Committee, *Inquiry into the Western Australian Strata Industry*, Report No 4, in the thirty-sixth Parliament, 2003, p 50.

153 Refer generally to the *Inquiry into the Western Australian Strata Industry*, *ibid*.

154 The Committee also recommended the introduction of a classification system based on the

- Recommendation 14 — ‘The proposed licensing body, in conjunction with other regulatory agencies and industry peak organisations, develop a system of training and accreditation for strata managers’.

In response, the WA Government released a paper calling for further industry and public consultation before the implementation of any of the Committee’s recommendations.¹⁵⁵ The government seemed particularly concerned with the potential financial and administrative burden associated with implementing a compulsory licensing scheme.¹⁵⁶

Western Australia contains considerably more consumer protection provisions within its strata title legislation compared to other States. For instance, ss 69 and 69A require that every purchaser be given information concerning the vendor’s details, the scheme’s plan and by-laws and the unit entitlement of every lot within the scheme. If lots are being sold off the plan, the original proprietor has additional obligations. For example, the original proprietor must inform a purchaser of any contracts of service already entered into, as well as the particulars of any direct or indirect pecuniary interest that the vendor has in that agreement.¹⁵⁷ Failure by the vendor to provide such information gives the purchaser a legislative right to avoid the contract of sale.¹⁵⁸

Strata title disputes in Western Australia are governed principally by Pt VI of the STA (WA), in connection with the State Administrative Tribunal Act 2004 (WA).¹⁵⁹ The State Administrative Tribunal (the SAA) is given extensive powers under the STA (WA) and is entitled to make a broad range of orders covering all aspects of scheme management.¹⁶⁰ However, the SAA does not have jurisdiction in cases where title to land is in question.¹⁶¹ An order made by the SAA can be appealed to the Supreme Court on a question of law.¹⁶²

Tasmania

Tasmania has witnessed substantial developments in the law of strata titles in the past 10 years. The most significant change to occur has been the introduction of the Strata Titles Act 1998 (Tas) (the STA (Tas)), which replaced and updated the existing and somewhat archaic strata title

number of lots in the scheme. According to this system Category 2 encompasses schemes of six to 20 lots and all multi-storey schemes from two to 20 lots, while Category 3 includes all schemes of more than 20 lots.

155 Response to the Recommendations of the Legislative Assembly’s Economics and Industry Standing Committee Report on the Western Australian Strata Management Industry, 14 October 2003. The response can be found at <[www.parliament.wa.gov.au/.../502EDADFC9B74B4748256D5100086FCE/\\$file/Govt+Response_tabled+report.pdf](http://www.parliament.wa.gov.au/.../502EDADFC9B74B4748256D5100086FCE/$file/Govt+Response_tabled+report.pdf)>.

156 Ibid, p 8.

157 Strata Titles Act 1985 (WA) s 69B(2).

158 Strata Titles Act 1985 (WA) s 69D.

159 The State Administrative Tribunal Act 2004 (WA) was introduced to consolidate various administrative dispute resolution bodies into the one tribunal. Prior to its introduction strata title disputes were settled through the Office of Referee by specialist adjudicators.

160 Refer to Strata Titles Act 1985 (WA) Pt VI Div 3.

161 Strata Titles Act 1985 (WA) s 121.

162 State Administrative Tribunal Act 2004 (WA) s 105.

legislation.¹⁶³ The STA (Tas) is the principal piece of legislation in Tasmania and is accompanied by the Strata Titles (Fees) Regulation 1998 (Tas) and the Strata Titles (Insurance) Regulations 1999 (Tas). The Strata Titles (Fees) Regulation 1998 (Tas) outlines a schedule of fees payable when lodging, amending, consolidating or cancelling a strata plan.¹⁶⁴ The Strata Titles (Insurance) Regulations 1999 (Tas) works in conjunction with s 101(1) of the STA (Tas) to set the minimum public risk insurance that the body corporate must maintain (currently set at \$5,000,000).¹⁶⁵

The STA (Tas) was thought to be an innovative piece of legislation in comparison to its predecessor, with many of the more progressive provisions aimed at accommodating the increasingly elaborate strata schemes that exist in contemporary Tasmania.¹⁶⁶ For instance, under the STA (Tas) units may be assigned a special unit entitlement that operates to fix 'the proportionate contribution to be made by the owner of the lot to the body corporate'.¹⁶⁷ Therefore, an owner's financial liability for the maintenance of common property may be proportionally calculated to reflect their use of that property. For example, the owner of a first floor unit, whose only access is via the stairs, will not be required to contribute as much to the body corporate for the maintenance of an elevator to which only penthouse owners have access.

Three types of schemes exist in Tasmania: strata schemes, staged development schemes and community development schemes. A strata scheme is a generic development similar to those found in other States. It is defined under the STA (Tas) as a 'complex of lots and common property (together with the system of administration and management) created on the registration of a strata plan'.¹⁶⁸ The STA (Tas) further defines a staged development scheme

163 The notion of strata titling was legislatively introduced in Tasmania during the 1960s and was contained within Pt XIA of the Conveyancing and Law of Property Act 1884 (Tas). This relatively small section provided a very basic and flexible legislative framework for the division, registration and maintenance of strata titles: P Hodgman Strata Titles Bill 1997 (No 132), *Hansard*, Second Reading, Thursday 11 December 1997, p 37. The Strata Titles Act is primarily administered by the Office of Recorder of Titles which operates within the Department of Primary Industries, Water and Environment, refer to <<http://www.dpiwe.tas.gov.au/inter.nsf/Home/1?Open>> for more information on the Department.

164 Strata Titles (Fees) Regulation 1998 (Tas) Sch 1.

165 Strata Titles (Insurance) Regulations 1999 (Tas) s 3.

166 P Hodgman Strata Titles Bill 1997 (No 132), *Hansard*, Second Reading, Thursday 11 December 1997, p 38 and G Peterson, 'State Overview Tasmania', Speech delivered at the 'Building Communities: An Insight into Governing Bodies Corporate' seminar, Melbourne, 5 April 2004.

167 Section 16 of the Strata Titles Act 1998 (Tas) dictates that each lot in a scheme be allocated a unit entitlement that is fixed on a fair and equitable basis. This unit entitlement may be general or special, with special unit entitlements operating to: fix the proportion of common property that a lot owner holds as a tenant in common with other lot owners (Strata Titles Act 1998 (Tas) ss 16(2)(b)(ii) and 10); fix the proportion of levies that are to be paid by a lot owner (Strata Titles Act 1998 (Tas) ss 16(2)(b)(i) and 83); fix the proportion of voting rights a lot owner holds at a body corporate meeting (Strata Titles Act 1998 (Tas) ss 16(2)(b)(iii) and 76); or fix the proportion of income that must be paid by a lot owner into the schemes administrative fund (Strata Titles Act 1998 (Tas) ss 16(2)(b)(iv) and 82). Also refer to s 17 for how to change unit entitlements.

168 Strata Titles Act 1998 (Tas) s 3. Also refer to Pt 2 of the Strata Titles Act, dealing exclusively with strata schemes.

as a 'scheme for the development of land by registration of a series of strata plans'.¹⁶⁹ The incremental nature of the staged development scheme requires that the developer be given more extensive rights in relation to accessing and controlling the scheme as compared to the other types of schemes.¹⁷⁰

A community development scheme on the other hand is more multifaceted and may contain a combination of conventional housing, retirement accommodation, shopping amenities and recreational facilities.¹⁷¹ The notion of a community development scheme therefore 'enables a number of independent developments to be brought together to function as a single entity to meet particular community needs'.¹⁷² Under s 51 of the STA (Tas) a community development scheme must include two or more: strata schemes, approved subdivisions, some other form of land division, retirement village or marina or water-based development.

The STA (Tas) instils overall control and management of a scheme in the body corporate.¹⁷³ Section 81 of the STA (Tas) describes the functions of the body corporate, including: enforcing the scheme's by-laws, controlling, managing and maintaining the common property, and maintaining appropriate levels of insurance.¹⁷⁴ The body corporate is entitled to establish and operate a business on the common property or a lot, provided the business is conducted legally, is related to the use and enjoyment of the scheme, is not conducted outside the site and it does not preclude owners or occupiers from the reasonable use and enjoyment of the site.¹⁷⁵

A body corporate is also permitted to divide into multiple bodies corporate on the proviso that 'constituent documents' are lodged with the Recorder of Titles (the Recorder).¹⁷⁶ The constituent documents must define the functions and responsibilities of each body corporate, provide for the resolution of disputes between bodies corporate and ensure that each lot is only subject to the powers of one body corporate.¹⁷⁷ In schemes with multiple bodies corporate, membership of the body corporate and owners' voting rights at general meetings are determined in accordance with the constituent

169 Strata Titles Act 1998 (Tas) s 3. Also refer to Pt 3 of the Strata Titles Act, dealing exclusively with staged development schemes. Staged development schemes are not unique to Tasmania, with strata title legislation allowing for similar developments in all states except Western Australia.

170 Strata Titles Act 1998 (Tas) s 40.

171 Department of Primary Industries, Water and Environment, 'What You Should Know About Strata Schemes', 1998, p 14. Also refer to Pt 4 of the Strata Titles Act which deals exclusively with community development schemes.

172 Department of Primary Industries, Water and Environment, 'What You Should Know About Strata Schemes', 1998, p 14. A copy of the guide can be found at <[http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/JGAY-53L72E/\\$FILE/strata.pdf](http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/JGAY-53L72E/$FILE/strata.pdf)>.

173 The body corporate is established automatically on the registration of a strata plan: Strata Titles Act 1998 (Tas) s 71. The original proprietor (which may be the developer) is regarded as the initial secretary of the body corporate and is required to call the first meeting within three months of registration of the plan: Strata Titles Act 1998 (Tas) s 75.

174 Strata Titles Act 1998 (Tas) s 81.

175 Strata Titles Act 1998 (Tas) s 81(4). This provision is in direct contrast to s 91 of the Body Corporate and Community Management Act 1997 (Qld) which expressly prohibits the body corporate from carrying on a business.

176 Strata Titles Act 1998 (Tas) s 72.

177 Strata Titles Act 1998 (Tas) s 72(7).

documents.¹⁷⁸ However, if there is a single body corporate the STA (Tas) grants each lot owner membership and entitlement to vote at general meetings.¹⁷⁹

The body corporate may, by ordinary resolution, appoint a committee of management to transact business on their behalf.¹⁸⁰ In general the committee of management may exercise any powers of the body corporate.¹⁸¹ However, the committee is subject to any limitations or directions imposed by the body corporate and is forbidden to exercise powers reserved exclusively for the body corporate.¹⁸² In addition, the body corporate may delegate management of the common property to a manager.¹⁸³ The body corporate retains control over the manager and may direct their actions through general meeting or the committee of management.¹⁸⁴ There is no requirement for strata managers to be licensed and they are not subject to a code of conduct. However, experience in the strata industry in Tasmania would suggest that the vast majority of strata managers are real estate agents or surveying businesses.¹⁸⁵

The first step in the resolution of disputes under the STA (Tas) is analogous to the dispute resolution procedure in New South Wales. That is, s 95 of the STA (Tas) grants the body corporate a right to issue an owner or occupier who is in breach of a by-law a notice requiring the offending party to either refrain from further contravention or take action to remedy the contravention.¹⁸⁶ If the recipient of the notice fails to comply, the body corporate may apply to the Tribunal for an enforcement order.¹⁸⁷ In fulfilling this application the Tribunal may make any order it considers appropriate, including the imposition of a fine.¹⁸⁸ Notwithstanding this, the body corporate has discretion not to issue the notice and may immediately seek relief under the dispute resolution provisions of the STA (Tas).¹⁸⁹

The remaining sections on dispute resolution are contained in Pts 9 and 10 of the STA (Tas). Part 9 extensively outlines the procedural requirements of the dispute resolution process and provides for a range of different orders that can be made by the Recorder.¹⁹⁰ For instance, under s 105 of the STA (Tas), aggrieved parties must make an application for relief to the Recorder in writing, detailing the grounds on which they are seeking relief as well as the general nature of the relief sought.¹⁹¹ Additionally, ss 113 through to 134 of

178 Strata Titles Act 1998 (Tas) s 74(2).

179 Strata Titles Act 1998 (Tas) s 74(1).

180 Strata Titles Act 1998 (Tas) s 79.

181 Strata Titles Act 1998 (Tas) s 79(2).

182 Strata Titles Act 1998 (Tas) s 79(2).

183 Strata Titles Act 1998 (Tas) s 80.

184 Strata Titles Act 1998 (Tas) s 80(2).

185 Email from Gary Peterson to Kimberly Everton-Moore, 19 January 2005. Gary Peterson is a Senior Strata Adjudicator with the Tasmanian Office of the Recorder of Titles. As such many strata managers would be subject to the licensing and regulations requirements of the Auctioneers and Real Estate Agents Act 1991 (Tas).

186 Compare s 95 of the Strata Titles Act with s 45 of the SSMA.

187 Strata Titles Act 1998 (Tas) s 96.

188 Strata Titles Act 1998 (Tas) s 96(2).

189 Strata Titles Act 1998 (Tas) s 95.

190 The Recorder is required to keep a register of all dispute resolution proceedings taken under the Strata Titles Act: Strata Titles Act 1998 (Tas) s 140.

191 The Recorder has the power to dismiss applications considered frivolous, vexatious,

the STA (Tas) specify the considerations that must be had by the Recorder and the types of orders that can be declared.¹⁹² Any person who contravenes an order faces a financial penalty in the form of a fine or requirement that they reimburse the relevant party the costs of amending the default.¹⁹³ In accordance with Pt 10 of the STA (Tas), if a party is unsatisfied with an order made by the Recorder they may appeal the matter to the Tribunal, which can confirm, vary or revoke the order.¹⁹⁴

The STA (Tas) is currently subject to a review with an Issues Paper released in October 2004. The aim of the review is to 'identify problems with the practical application of the Act that have been encountered since its implementation in 1998'.¹⁹⁵ The Issues Paper identified 12 key issues regarding the operation of the STA (Tas) ranging from planning requirements to terminology changes.¹⁹⁶ One of these issues focused on the potential need for the STA (Tas) to increasingly assist in the establishment of functional bodies corporate. At present the original proprietor (which may be the developer) is regarded as the initial secretary of the body corporate and is required to call the first meeting within three months of registration of the plan.¹⁹⁷ However, in practice the original proprietor rarely fulfils this duty, which means that the new lot owners are often given the responsibility of activating the body corporate. The difficulty is that many owners are unaware of their duties and responsibilities under the STA (Tas), leaving many schemes with inoperative bodies corporate.¹⁹⁸ The Issues Paper discusses two possible options for addressing this problem: (1) enacting a series of amendments to the legislation; or (2) establishing an education program for lot owners to increase awareness of their responsibilities under the STA (Tas).¹⁹⁹ The potential amendments incorporate:

-
- misconceived or lacking in substance: Strata Titles Act 1998 (Tas) s 109. The Recorder also has power to investigate the application or enter a lot to obtain further information: Strata Titles Act 1998 (Tas) ss 110 and 111.
- 192 For example, under s 114 of the Strata Titles Act the Recorder is empowered to make an order that the body corporate allow certain repairs or alterations be made to common property. However to make this order the Recorder must be satisfied that the body corporate has unreasonably failed to implement a proposal by an owner for (a) repairing damage to the common property or other property; or (b) making alterations to common property: Strata Titles Act 1998 (Tas) s 114.
- 193 Strata Titles Act 1998 (Tas) ss 136–137.
- 194 Strata Titles Act 1998 (Tas) s 144. Section 144(2) of the Strata Titles Act affords a right to appeal to an 'interested person', which includes: the applicant; a person who is entitled to make and actually made submissions to the Recorder in relation to the application for relief, the person who the order was made against; any other person classified by the regulations as an interested person in relation to a decision or order. Strata Titles Act 1998 (Tas) s 146 (power to revoke, etc.)
- 195 Department of Primary Industries, Water and Environment, 'Post Implementation Review of the Strata Titles Act 1998 Issues Paper', 2004, p 5.
- 196 Refer to Department of Primary Industries, Water and Environment, *ibid*, at <<http://www.dpiwe.tas.gov.au/inter.nsf/Attachments/KGIY-65R8DD?open>> (accessed 23 February 2005).
- 197 Strata Titles Act 1998 (Tas) s 75.
- 198 Department of Primary Industries, Water and Environment, *above n 200*, p 24.
- 199 The Issues Paper includes a third option of maintaining the status quo, acknowledging that this will not address the problem: Department of Primary Industries, Water and Environment, *ibid*, p 25.

- Financial penalties where the original proprietor fails to call a first meeting;
- Requirements that the original proprietor hand the body corporate insurance policies at the first meeting;
- Details of an agenda for the first meeting;
- A stipulation that the first meeting of the body corporate be held following the sale of more than 50% of the lots or within six months of registration of the plan, whichever comes first; and
- Provisions allowing lot owners to call a meeting with the authority of the Recorder if the original proprietor fails to do so.²⁰⁰

The Issues Paper received 22 responses from a variety of stakeholders and is currently under consideration by the Department.²⁰¹

Northern Territory

The subdivision of land into units and common property in the Northern Territory is regulated by the Unit Titles Act (NT) (UTA (NT)) and the Unit Titles Regulations (NT) (UTRegs (NT)).²⁰² As in many other States, the UTRegs supplement the principal legislation providing additional direction in select areas of scheme construction and management. The UTRegs also contain the templates for all documentation associated with unit titles and a 'Model Dispute Resolution Procedure'.²⁰³ The registration of unit titles is governed by a separate legislative scheme consisting of the Real Property (Unit Titles) Act (NT) and the Real Property (Unit Titles) Regulations (NT). Both of these Acts contain very detailed requirements for the drafting and lodging of unit title plans.

A units plan under the UTA (NT) can encompass a number of different forms of subdivision apart from the typical unit development, including condominium developments, estate developments and building developments. A condominium development is simply a unit plan subdivision that occurs in stages.²⁰⁴ An estate development creates common property and a management corporation, similar to a strata subdivision in other States and Territories.²⁰⁵ In comparison, a building development allows for 'two or more units plan developments within a single building' or group of buildings.²⁰⁶ Each 'building lot' may have a separate body corporate, however there must be an

200 Department of Primary Industries, Water and Environment, *ibid*, p 25.

201 Email from Gary Peterson to Kimberly Everton-Moore, 19 January 2005.

202 Both of these Acts are complex and, in the authors' opinion, are not suitably designed for use by the wide array of stakeholders within the strata industry. The UTA (NT) and the UTRegs (NT) are administered by the Department of Justice, <<http://www.nt.gov.au/justice>>.

203 Refer Unit Titles Act (NT) Schs 4 and 5.

204 Refer Unit Titles Act (NT) Pt IVA. Special conditions are placed on what must be included in the disclosure statement of a condominium development. For instance, the disclosure statement must include details on the location, expected commencement and completion dates, and the scheduled working hours for development: Unit Titles Act (NT) s 26C.

205 Email from Guy Riley to Kimberly Everton-Moore, 24 August 2005. The 'major difference between an estate subdivision and a normal units plan subdivision is that the parcels created under an estate subdivision do not have to have any improvements upon them that are fit for immediate occupation'.

206 J Burke Unit Titles Amendment Bill (No 27), *Hansard*, Second Reading, Thursday 1 March 2001, p 1. Pursuant to s 26ZK of the UTA (NT) building developments must be

overarching corporation to assume responsibility for the common properties and obligations of the building.²⁰⁷ The UTA (NT) expressly provides for the conversion of units into building units and the further subdivision of a building lot into units and common property.²⁰⁸ The possibility of further subdividing building lots was thought to be a key aspect of the 2001 amendments to the UTA (NT), which more generally saw the introduction of building developments in an effort to minimise the interaction and thus potential conflict between owners of different parts of multi-use buildings who may have conflicting priorities and interests.²⁰⁹

All types of unit title schemes in the Northern Territory are governed by a body corporate, which is established upon registration of a plan and titled a corporation, an estate management corporation, or a building management corporation, corresponding to the type of development.²¹⁰ The general duties of the body corporate include enforcing the corporation's articles, managing the scheme's common property and maintaining the corporation's personal property.²¹¹ The UTA (NT) also confers on the body corporate wide powers, some of which may only be exercised following a unanimous resolution.²¹² Further, the corporation's powers are restricted during the 'initial period'.²¹³ This period ends when more than one third of the unit entitlements have been allocated to proprietors other than the developer.²¹⁴ Until such time, the body corporate must seek an order of the court if it wishes to:

- amend, rescind or add to its articles, or make articles in the place of articles rescinded, in such a manner that a right is conferred or an obligation is imposed on one or more, but not all, proprietors or in respect of one or more, but not all, units;
- alter common property forming part of a building, or erect a structure, on the common property; or
- borrow moneys or give securities.²¹⁵

accompanied by a disclosure statement containing particular details prescribed by the UTA (NT). Any variation of the disclosure statement must be in accordance with Sch 6 of the UTRegs (NT).

207 *Ibid*, p 1. The boundaries of building lots may be determined by reference to the walls, ceilings and floors of the building or by reference to land in the Building Development Parcel: Unit Titles Act (NT) s 26ZG. Upon registration of a building development plan, the proprietor of the parcel obtains a fee simple interest in each building lot, while the body corporate acquires fee simple title in the common property: Unit Titles Act (NT) s 26ZQ. The corporation holds the common property on trust for the individual proprietors: Unit Titles Act (NT) s 26ZR.

208 Unit Titles Act (NT) ss 26ZU and 26ZV. This was thought to be a key aspect of the 2001 amendments introducing building developments: J Burke Unit Titles Amendment Bill (No 27), *Hansard*, Second Reading, Thursday 1 March 2001, p 2.

209 J Burke Unit Titles Amendment Bill (No 27), *Hansard*, Second Reading, Thursday 1 March 2001, p 1.

210 Unit Titles Act (NT) ss 27 and 28.

211 Unit Titles Act (NT) s 34.

212 For example, the body corporate may borrow moneys, acquire or alienate property, or lease common property if it has obtained a unanimous resolution to do so: Unit Titles Act (NT) ss 40, 42, 42A and 42B. Refer Unit Titles Act (NT) Pt 5 Div 2 for more detail on the duties, functions and powers of a corporation.

213 Unit Titles Act (NT) s 47A.

214 Unit Titles Act (NT) s 47A(3).

215 Unit Titles Act (NT) s 47A(1).

Pursuant to s 32 of the UTA (NT), the body corporate must act through a committee.²¹⁶ The committee is comprised of 'committee-men' and assumes all the functions, responsibilities and powers of the corporation.²¹⁷ Despite the almost complete delegation by the corporation, the committee's power to effect improvements to the common property is restricted by s 53 of the UTA (NT), in that costly improvements must be approved by a general meeting of the corporation. Further, the corporation may, in general meeting, decide that certain matters or a class of matters, be determined only by the corporation in general meeting.²¹⁸

Notwithstanding these limitations, the committee is entitled to delegate its duties, functions and powers to one or more of the committee-men or an employed agent/servant, such as a licensed managing agent.²¹⁹ The conduct of a managing agent is regulated by the Agents Licensing Act (NT) (the ALA), which defines a real estate agent to include a corporation manager under the UTA (NT).²²⁰ In order to be licensed under the ALA, a managing agent must be deemed a fit and proper person by the Agents Licensing Board of the Northern Territory and hold appropriate educational qualifications.²²¹ Section 65 of ALA outlines the rules of conduct governing a managing agent and expressly prohibits actions such as: misusing information against the principal; failing to perform his or her duties; failing to exercise due skill, care or diligence in carrying out his or her duties; failing to disclose a conflict of interest; etc.

Contrary to many other States, the Northern Territory does not have a specialist dispute resolution body that deals with unit title issues. As such, applications for the resolution of a dispute must be made to the Local Court under its small claims jurisdiction.²²² An application may be made under s 106 of the UTA (NT) by a committee member who claims that there has been: a breach of the Act or the corporation's articles; that the corporation has prejudiced an occupier by a wrongful act or omission; that the corporation has made an unreasonable, oppressive or unjust decision; or, if a dispute arises concerning the occupation or use of a unit or common property.²²³ The court is empowered to:

- attempt to settle the proceedings by mediation or arbitration;
- require a party to provide reports or other information;

216 Unit Titles Act (NT) s 32.

217 The decisions of a committee on a matter, other than a restricted matter, are deemed to be a decision of the corporation: Unit Titles Act (NT) s 52.

218 Unit Titles Act (NT) s 53A.

219 Unit Titles Act (NT) ss 54 and 55. Note that contracts of employment of an agent or servant by the corporation of a condominium or estate development may be terminated on 14 days notice following a general meeting's decision to do as such: Unit Titles Act (NT) s 55(2).

220 Section 5 of the Agents Licensing Act (NT) further defines a corporation manager under the UTA (NT) as 'a person who for reward (whether monetary or otherwise), and whether or not the person carries on any other business, exercises a power or performs a function on behalf of a corporation or members of a corporation'. The ALA is supplemented by the Agents Licensing Regulations (NT).

221 Agents Licensing Act (NT) ss 20, 22 and 31. The educational requirements for a real estate agents license is outlined in Pt 1 of Sch 5 of the Agents Licensing Regulations (NT).

222 Unit Titles Act (NT) s 106(2).

223 Unit Titles Act (NT) s 106(1).

- order that a party take action necessary to remedy a breach or default, or to resolve a dispute;
- order that a party refrain from a further specified action;
- alter the articles of a corporation;²²⁴
- confirm, vary or reverse a decision of the corporation or committee;
- give judgment on a monetary claim;
- order that a corporation refund to a member money paid; or
- make such incidental or ancillary orders as it thinks fit.

Building developments are subject to a different dispute resolution scheme, which must be outlined in the scheme's disclosure statement or, by default, in Sch 5 of the UTRegs (NT).²²⁵ The 'Model Dispute Resolution Procedure' contained in the UTRegs (NT) requires a panel of referees be appointed, who must attempt to resolve the dispute with as little formality and technicality as possible, while still adhering to the rules of natural justice. An order of the referees may be enforced as if it were an order of the Local Court.

Australian Capital Territory

The Australian Capital Territory has two principle bodies of legislation, namely the Community Title Act 2001 (ACT) and the Unit Titles Act 2001 (ACT).²²⁶ The Community Title Act 2001 (ACT) (the CTA) is supplemented by the Community Title Regulations 2002 (ACT), which sets out additional requirements regarding the sketch, site plans, management statements, insurance and fees charged for inspecting a community title certificate or body corporate records. The Unit Titles Act 2001 (ACT) (the UTA) operates in conjunction with the Unit Titles Regulations 2001 (ACT) and the Land Titles (Unit Titles) Act 1970 (ACT). The Unit Titles Regulation 2001 (ACT) has four main functions. Firstly, the regulation contains a list of approved unit subsidiaries.²²⁷ Secondly, it outlines the procedural requirements for unit title applications.²²⁸ Thirdly, it prescribes the price of various fees that can be charged by the owners' corporation and the amount of insurance that must be obtained.²²⁹ Lastly, it outlines the default articles for an owners' corporation according to size.²³⁰ The Land Titles (Unit Titles) Act 1970 (ACT) outlines the requirements and procedures for registering: units plans and their alterations, cancellation or lease termination; owners' corporation easements and charges; and, changes to owners' corporations articles and addresses.

While both the CTA and UTA provide for the shared ownership of land, they each govern distinct types of schemes. A unit title plan under the UTA is

²²⁴ This power is subject to s 106(5) of the UTA (NT) which requires that the corporation be a party to the proceedings or have been given a reasonable opportunity to become a party to the proceedings and that the court be satisfied that the order is essential to achieve a fair and equitable resolution of the matter.

²²⁵ Unit Titles Act (NT) s 26ZK.

²²⁶ The Community Title Act 2001 (ACT) and the Unit Titles Act 2001 (ACT) are administered by the ACT Planning and Land Authority, refer at <<http://www.actpla.act.gov.au/>> for more information.

²²⁷ Unit Titles Regulations 2001 s 3.

²²⁸ Unit Titles Regulations 2001 Pt 2.

²²⁹ Unit Titles Regulations 2001 Pt 3.

²³⁰ Unit Titles Regulations 2001 Pt 4 and Sch 1.

limited to housing, common property and unit subsidiaries, while a community title plan under the CTA may include unit plans, different forms of housing, recreational facilities, shops, parks, car parking, etc.²³¹ Further, the term community title is used to describe schemes that contain a number of leased blocks, whereas the term unit title describes the subdivision of one block into multiple units.²³²

The CTA was thought to represent the first clear legal framework for the ownership and management of common land and facilities.²³³ However, despite the enthusiasm with which it was launched, to date no community title schemes have been registered.²³⁴ Nevertheless, the CTA aims to offer great flexibility in the size, form, use, variation and management of community title schemes.²³⁵ A natural consequence of fostering such diversity within a scheme is that there may often exist multiple bodies corporate.²³⁶ The CTA recognises this fact and makes provision for the separation of a body corporate or the potential merger of multiple bodies corporate into the one entity.²³⁷ The management of the scheme remains vested in the body corporate, however it is entitled to appoint a committee of management to carry on its business and a manager to administer and control the common property.²³⁸

Unit title schemes are more common throughout the Australian Capital Territory and often consist of three different types of land-holding: units (Class A or B), unit subsidiaries and common property.²³⁹ The defining feature

231 Brendan Smyth (formerly Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services and now Leader of the Opposition) described the difference between the types of schemes administered by the Community Title Act and the Unit Titles Act to be: 'The Community Title Bill 2000 provides for a wider mix of land uses in one scheme. For example, a community title scheme may contain different types of housing, including units, recreational facilities, shops, parks, car parking and a community centre, whereas a units plan may only contain units, common property and unit subsidiaries.' B Smyth MP, *Hansard (ACT)*, 3 May 2001, p 1401.

232 ACT Planning and Land Authority, 'Community Title Schemes', ACTPLA Information Series, 2003. There is a minimum requirement that a community title scheme consist of at least three Crown leases, one of which is to be allocated as common property and that it forms a single area that is undivided except by a road or body of water: Community Title Act 2001 (ACT) s 5.

233 S Corbell, *Hansard (ACT)*, 7 August 2001, p 2447.

234 Although enquiries have been made to the ACT Planning and Land Authority by a variety of individuals and companies, no applications have been formally lodged: Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.

235 B Smyth MP, *Hansard (ACT)*, 3 May 2001, p 1401.

236 A body corporate is established upon registration of a scheme and exists to manage the common land. Community Title Act 2001 (ACT) s 30 and B Smyth MP, *Hansard (ACT)*, 3 May 2001, p 1402. The CTA uses the term 'body corporate' to describe the owners of the lots at any point in time (refer Community Title Act 2001 (ACT) s 32). However, the UTA adopts the term 'owners' corporation' (refer Unit Titles Act 2001 (ACT) ss 38–40).

237 Community Title Act 2001 (ACT) s 33. The existence of multiple bodies corporate will foreseeably complicate the management regime of a community title scheme. The CMA attempts to counter this by prescribing that the functions and responsibilities for each body be clearly defined and allowing for the creation of an administrative hierarchy of bodies corporate: Community Title Act 2001 (ACT) s 33(6).

238 Community Title Act 2001 (ACT) ss 43 and 44.

239 Unit Titles Act 2001 (ACT) ss 11–13. No mixed class A and class B unit developments have been approved since 5 April 2001 following the UTA being notified in the *Government Gazette*.

of a unit is the manner in which its boundaries are determined. In particular, the boundary of a Class A unit is established by reference to the floors, walls and ceiling of the building in which it forms a part.²⁴⁰ Comparatively, a Class B unit may share a common wall with another unit, however it is always single storey and its boundaries therefore include the airspace above and the soil beneath the building.²⁴¹ Thus, in simple terms, a Class A unit is a part of a building, whereas a Class B unit is a block of land.²⁴² An individual's unit ownership may also incorporate a unit subsidiary consisting of a building or part of a building that is annexed to, but not necessarily adjoining, the unit.²⁴³ Permissible unit subsidiaries are outlined in the Unit Titles Regulations 2001 and include such things as balconies, corridors, gazebos, sheds and garages.²⁴⁴

The owners' corporation is the central body of management in unit title schemes and is 'responsible for the enforcement of its articles and the control, management and administration of the common property'.²⁴⁵ However, much of the everyday functioning of the owners' corporation is conducted by the executive committee, which is established automatically upon the creation of the owners' corporation.²⁴⁶ The constituent of the executive committee is then decided upon at the first annual general meeting.²⁴⁷ The executive committee's duties may arise directly under the UTA or via decisions made by the owners' corporation at general meeting.²⁴⁸ Some of the executive committee's functions under the UTA involve administering the scheme's finances, calling and documenting meetings, keeping records of the owners' corporation activities and maintaining public liability insurance.²⁴⁹ Further, under the UTA the executive committee is permitted to engage people to assist in the exercise of its functions, which may include a professional managing agent.²⁵⁰ At present neither the UTA nor the CTA requires that managers be licensed,

240 Unit Titles Act 2001 (ACT) s 18(1).

241 Unit Titles Act 2001 (ACT) s 18(2). 'A Guide for the Unit Titles Act', Prepared by Planning and Land Management Department of Urban Services with the assistance of the ACT Parliamentary Counsel's Office Justice and Community Safety, October 2001, p 6.

242 'A Guide for the Unit Titles Act', Prepared by Planning and Land Management Department of Urban Services with the assistance of the ACT Parliamentary Counsel's Office Justice and Community Safety, October 2001, p 6.

243 Unit Titles Act 2001 (ACT) ss 12 and 19. 'A Guide for the Unit Titles Act', Prepared by Planning and Land Management Department of Urban Services with the assistance of the ACT Parliamentary Counsel's Office Justice and Community Safety, October 2001, p 6.

244 Refer Unit Titles Regulations 2001 s 3 for a full list of permissible unit subsidiaries.

245 Unit Titles Act 2001 (ACT) s 51. The owners' corporation is also commonly referred to as the body corporate. The owners' corporation is established automatically upon registration of the scheme: Unit Titles Act 2001 (ACT) s 38.

246 Refer Unit Titles Act 2001 (ACT) ss 81–82. The executive committee's functions include such things as administering the schemes finances (Unit Titles Act 2001 (ACT) Div 5.4), calling and documenting meetings (Unit Titles Act 2001 (ACT) s 91 and Div 6.2–6.4), keeping records of the owners' corporation activities (Unit Titles Act 2001 (ACT) s 91), and maintaining public liability insurance (Unit Titles Act 2001 (ACT) s 131).

247 Refer Unit Titles Act 2001 (ACT) s 84 for the detailed manner in which the executive committee is formed. Also refer Unit Titles Act 2001 (ACT) ss 85–88 pertaining to the organisation and administration of executive committee meetings.

248 Unit Titles Act 2001 (ACT) s 82.

249 Unit Titles Act 2001 (ACT) ss 91 and 131 Divs 5.4 and 6.2–6.4.

250 Unit Titles Act 2001 (ACT) s 90. The executive may also solicit other persons, for example, they may appoint a contractor to carry out maintenance or repairs.

however this is an issue that will be considered by the ACT Government in the future.²⁵¹

Unlike other States the Australian Capital Territory does not have a tribunal or adjudication system specifically designed to deal with unit title or community title disputes. The CTA makes limited provision for interested persons to apply to the Supreme Court for a variety of different orders.²⁵² Under the UTA owners or anyone with an interest in the scheme do have some recourse if the owners' corporation or executive committee fails to exercise a function. Following s 55 of the UTA, an interested party may apply to the Magistrates Court for an order requiring the owners' corporation or executive committee to exercise that function.²⁵³

The most distinguishing feature of unit and community title schemes in the Australian Capital Territory spawns from the Crown leasehold system under which it operates. The vast majority of land in the Territory is leased by the Executive to an individual for a fixed period (commonly 99 years) and purpose (eg, residential, commercial, community, etc).²⁵⁴ Thus each individual unit owner holds their land on lease from the Crown, while the owners' corporation holds a lease over the common property.²⁵⁵ This system of landholding sets ACT strata schemes apart from those present in other areas of Australia and places a unique burden on the lessee to abide by the requirements of the lease, the unit plan and the scheme.²⁵⁶

Conclusion

As community living has become an increasingly popular lifestyle option, with many Australians choosing to both live and holiday in unit accommodation, the industry has been regulated with ever-increasing complex legal regimes across the eight States and Territories without a concern for consistency. Because legislation in each Australian jurisdiction has tended to be responsive to industry and stakeholder concerns it has developed in interesting ways, sometimes peculiar to each jurisdiction, and always to the detriment of uniformity. Coupled with the absence of comparative information, the Australian regulatory regime is problematic for those who are interested in more than one jurisdiction. Stakeholders are faced with the daunting task of finding their way through a complex maze of technical legal regulation across eight jurisdictions.

This article has provided a brief outline of the law in each jurisdiction with an emphasis on a few key areas such as governance arrangements and dispute

251 The ACT Planning and Land Authority, in conjunction with the Department of Justice and Community Safety, will work on changing the current licensing status. However, any such endeavours are 'still some time away': Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.

252 For example an interested person can apply for a mandatory injunction 'requiring the developer of a community title scheme to finish the scheme in accordance with the terms of the scheme': Community Title Act 2001 (ACT) s 28.

253 Unit Titles Act 2001 (ACT) s 55.

254 'A Guide for the Unit Titles Act', Prepared by Planning and Land Management Department of Urban Services with the assistance of the ACT Parliamentary Counsel's Office Justice and Community Safety, October 2001, p 7.

255 Sections 33(3) and 47.

256 Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.

resolution. It has also provided an illustration of the degree of complexity facing stakeholders in the absence of any concern for consistency or uniformity in terms of nomenclature or the nature of the legislation underpinning community titles schemes. Apart from the problems posed by upsetting tradition, there are no compelling reasons why each Australian jurisdiction should not seek to make their laws more consistent. This is exhorted by the fact that the regulation in each jurisdiction is rarely dealing with nuances peculiar to a jurisdiction and is more often just a different way to tackle a common problem.