

# Better Buyer Information

Every buyer of a strata title lot in Western Australia (WA) should receive information about the strata scheme before they sign a contract. It is very important the right information is provided to a buyer before they purchase a property. Strata owners are subject to by-laws, unit entitlement, common property and common agreements. These aspects of strata will impact on the use, ownership and obligations of the owner. Giving buyers information about strata ensures that a buyer understands they are buying a property that has different rules and obligations to a non-strata property.

The seller must also give the buyer information about certain variations (changes) to the scheme which happen after the buyer signs the contract and before settlement.

Under the current *Strata Titles Act 1985* (the Act) if the seller sells the lot off-the-plan, the buyer's deposit must be held by a solicitor, real estate agent or settlement agent and the plan must be registered within six months (or in the timeframe set out in the contract).

The reforms aim to:

- give the most relevant information to a buyer
- set out the information in a clear way
- make sure the buyer knows where they can get more information
- make sure the obligation on the seller to provide information is reasonable
- clarify on what grounds a buyer can avoid the contract if the seller fails to provide the information to the buyer.

## The current law: Information the seller must give the buyer before the contract is signed

Under the current Act the seller must give the buyer:

- a copy of the strata plan
- details of the unit entitlement
- by-laws
- other general information.

Where the seller is the original proprietor they also have to give the buyer information about service contracts, levies and dispositions of the common property.

The original proprietor is the person who is registered as the owner when a strata plan is first registered, in most cases this is the developer who built the scheme.

## After the reforms: Information the seller will need to give to the buyer before the contract is signed

After the reforms the following items must be provided by the seller to the buyer prior to the contract being signed for every sale of a strata / survey-strata lot:

- the name and address of the seller(s)
- a copy of the strata or survey-strata plan (or proposed strata or survey-strata plan) showing the location of the lot being sold
- any other document or information as prescribed in the regulations.

### When the strata or survey-strata lot being sold is a proposed lot (off-the-plan sales)

After the reforms the following items must be provided by the seller to the buyer prior to the contract being signed where the strata or survey-strata lot being sold is a proposed lot (ie. It is an off-the-plan sale):

- details of the proposed unit entitlement of each lot and the proposed aggregate unit entitlement of all lots within the proposed scheme
- the proposed by-laws for the scheme
- the estimated contributions that would be levied upon the proprietor of the subject lot under the Act during the period 12 months starting from the estimated date of settlement and
- any other document or information as prescribed in the regulations.

### When the strata or survey-strata lot being sold is a registered lot

After the reforms the seller of a registered lot must provide the buyer the following before the contract is signed:

- details of the unit entitlement of each lot in the scheme
- details of the aggregate unit entitlement of all lots within the scheme
- a copy of the by-laws that are in effect
- details of any proposed by-laws that are not yet in effect
- Where an annual general meeting has been held prior to the contract, the contributions (otherwise known as levies or strata levies) that that have been charged against the proprietor of the subject lot under the Act:
  - at the last annual general meeting and any subsequent extraordinary general meetings and
  - over the previous 12 months from the date of the contract.
- Where an annual general meeting has not been held prior to the contract, estimated contributions that would be charged upon the owner (seller) of the subject lot under the Act during the period 12 months starting from the estimated date of settlement
- the amount and due date of any unpaid contributions owed by the seller of the subject lot
- any other amounts the owner of the subject lot owes under the Act to the strata company.
- a copy of the minutes (if kept) from the most recent annual general meeting and any subsequent extraordinary general meeting
- a copy of the statement of accounts last prepared by the strata company as required by the Act.

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- the details of any termination proposal relating to the scheme that the seller is aware of
- the details of any application for an order to terminate the scheme that the seller is aware of
- any other document or information as prescribed in the regulations.

## Original proprietors

### The current law: Information an original proprietor must give the buyer

Under the current *Strata Titles Act 1985* (the Act) an original proprietor selling a lot should give a buyer:

- the information that every seller must give
- additional information about:
  - any service agreements
  - their interest in any service agreements
  - a 12-month estimate of scheme expenses and levies
  - any proposal to give a lease, licence or exclusive use right over the common property.

But, an original proprietor only has to give the buyer this additional information if:

- the plan hasn't been registered yet or
- they still own fifty per cent of the lots (or unit entitlement) or
- the first Annual General Meeting (AGM) has not yet been held.

These rules will apply to staged strata developments and the new forms of strata, namely, community title and leasehold strata.

### After the reforms: Information an original proprietor must give the buyer

After the reforms the following items must be provided to the buyer, prior to the contract being signed, by a seller who is an original proprietor:

- details of agreements to provide an amenity or service to the strata company or to any part of the strata or survey-strata scheme (including the terms and conditions of the agreements and estimated cost to the buyer)
- the estimated receipts and expenditure of the strata company for the 12-month period starting on the later of:
  - the day of registration of the strata/survey-strata plan; or
  - the day of the last annual general meeting or
  - the estimated day of settlement if no annual general meeting has been held during the 15 months preceding the date of the contract
- details of every lease, licence, exclusive right of use or enjoyment, restricted right of use or enjoyment or special privilege relating to the common property granted, or proposed to be granted, to the buyer or any other person
- any other document or information as prescribed in the regulations.

## Disclosure

### Changes to the format of the disclosure forms

New disclosure forms will be developed for strata and survey-strata schemes. There will also be new disclosure forms developed for leasehold strata and community title schemes. The new disclosure

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forms will be clearly set out, easy to read, and will give the buyer some guidance on relevant issues they might want to consider.

Reforms recommend four disclosure forms.

1. Strata and survey-strata disclosure form; this will replace current Forms 28 and 29.
2. Strata and survey-strata disclosure form for use by an original proprietor; this will replace Forms 28 and 29.
3. Community title disclosure form: this will only apply to community title schemes.
4. Leasehold strata title disclosure form; this will only apply to leasehold strata title schemes.

The original proprietor will have a different disclosure form to the seller of a lot in an established scheme. This is because an original proprietor has to disclose different types of information.

The community title disclosure form will include information about community title schemes including member schemes and the Community Development Statement.

The leasehold disclosure form will include information about the lease and expiry date.

## Changes to the content of the disclosure forms

- The buyer will only receive one disclosure form as the general information about strata, which is currently found in a separate form (Form 29), will be incorporated into the single disclosure form given to the buyer
- The unit entitlement for the lot and scheme will be in the body of the disclosure form
- The disclosure form will have a check box to show if there is any exclusive or restricted use by-law, that benefits the lot the buyer is proposing to buy
- The disclosure form will give the buyer some basic information about staged strata developments
- There will be a checklist of general things the buyer should consider
- The general information will highlight that the Real Estate Institute of Western Australia (REIWA) contract includes warranties for strata sales
- The terms 'vendor' and 'purchaser' will be changed to 'buyer' and 'seller' to be consistent with the REIWA contract

## The seller will be able to give the buyer the information electronically

The seller will be able to provide the disclosure electronically as long as:

- the seller and buyer both agree to that method of providing the information
- the buyer gives the seller an electronic address to send the information to
- the buyer provides some acknowledgement that they have received the information.

The seller will still have to prove what and when files were sent to the buyer and keep records of the disclosure they provide electronically.

## The seller will highlight disclosure to the buyer where it is included in the contract

The seller will still be able to give the buyer the information in the contract, rather than in the prescribed disclosure forms. Reforms will however specify that if the information is included in the contract, the seller must highlight the information to the buyer by:

- putting the information at the front of the contract
- using certain formatting (eg larger text)

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- including a warning to the buyer that the disclosure information is included in the contract and they will not get a separate copy of the disclosure forms.

## Notifying buyers of a certain variations to the information

### What are notifiable variations?

After the buyer and seller have signed a contract to transfer the strata lot, if certain changes occur, the seller has to tell the buyer. For example, if there is a change in the unit entitlement, the by-laws, any service agreements and rights over the common property or the plan. The seller has to tell the buyer about the variation, as soon as the seller finds out about it.

Currently, if the change has a negative impact on the buyer, or the seller waits too long to tell the buyer, or doesn't tell the buyer at all, then the buyer may notify the seller that they want to avoid the contract.

Under the current *Strata Titles Act 1985* the seller has to tell the buyer about changes to:

- agreements for amenity or service with the strata company
- the by-laws
- a material particular on the strata plan
- the individual and aggregate unit entitlement and
- any rights over the common property.

These items are referred to as "notifiable variations".

### Current law

Under the current *Strata Titles Act 1985* the seller has to tell the buyer if there is any change to the plan or unit entitlement between when the contract is signed and when settlement happens. This can mean that a buyer might be able to get out of a contract if there is a change to the plan that impacts on a lot on the other side of the scheme but doesn't have any direct impact on them.

Currently the seller has to tell the buyer about these notifiable variations as soon as the seller becomes aware of the change.

### Reform to notifiable variations

The notifiable variations (changes to the scheme that the seller must tell the buyer after the contract is signed) will be updated so the seller will only have to tell the buyer about changes to the plan or unit entitlement which have a direct impact on the buyer's interest.

Reforms will specify the seller will only have to tell the buyer about the change to the plan, unit entitlement or by-laws if:

- the strata company or original proprietor enter into an agreement for the provision of any amenity or service to the strata company or vary an existing agreement of that kind in a way which is likely to affect the rights of the buyer
- a by-law is made, amended or repealed (unless it is amended to correct a minor error)
- the registered or proposed strata/ survey-strata plan differs from the proposed strata/survey-strata plan in a way which materially affects the subject lot or the common property

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- the registered or proposed strata/survey-strata plan differs from the proposed strata/survey-strata plan in a way which reduces the area of the subject lot by five per cent or more
- the unit entitlement of the subject lot is varied by five per cent or more in proportion to the total unit entitlement for the scheme
- a lease, licence, right or privilege in relation to the common property is granted or varied
- a notifiable variation in relation to a termination proposal occurs or
- a notifiable variation as provided in the Regulations occurs.

## The seller will give the buyer sufficient information

Currently the seller has to give the buyer 'full particulars' about the change. Sellers and buyers are often confused about what full particulars are.

The reforms will require the seller to tell the buyer enough information about the change for the buyer to figure out if they have been negatively impacted by the change (have they been materially prejudiced)

## The seller must tell the buyer about the variation within five working days

Under the current *Strata Titles Act 1985* the seller has to tell the buyer about the change as soon as they find out about it. This has led to buyers avoiding a contract, claiming they were not notified within minutes of the seller finding out. The new requirement will mean the seller has to give the buyer information about a notifiable variation within five working days of the seller learning about the change (and the seller must give the information before settlement).

## Warning of likely variations

If the seller uses the contract to inform a buyer of a potential change before settlement, the seller will need to confirm with the buyer if the variation actually happens.

The current *Strata Titles Act 1985* already allows the seller to give the buyer notice in writing that there may be a variation in the future. Currently if the variation matches what was in the original notice, the seller doesn't have to tell the buyer about it again.

The reforms will make it clear that:

- notice about intended possible future variations can be included in the contract
- if the buyer agrees to the variation in the contract this will mean they are bound and can't avoid the contract if the variation goes ahead and the seller tells the buyer about the variation.

## The seller will have to substantially comply

Under the current *Strata Titles Act 1985* if the seller tells the buyer about a variation (change) less than seven business days before settlement, the seller only has to provide the buyer with information which partially complies with the usual disclosure requirements. At any other point the seller has to substantially comply. The reforms will mean that any information given to the buyer must always substantially comply so that any buyer getting information close to settlement isn't disadvantaged.

### Example of partial compliance

Disclosure: A new pool cleaning contract has been signed

### Example of substantial compliance

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Disclosure: A new pool cleaning contract has been signed with Ace Pool Cleaners, for 12 months at \$100 per month.

## Community title schemes: variation to the Community Development Statement

The seller of a lot in a community title scheme will tell the buyer about any of the variations to the Community Development Statement (CDS). The CDS will impact every lot in the community title scheme. There will be a specific process for changing the CDS. The seller will tell the buyer about any variations to the CDS.

## Leasehold strata schemes: changes to the lease, or any proposals for change

The seller of a lot in a leasehold strata title scheme will tell the buyer about changes to the lease as well as any proposal to convert, renew or replace the scheme. The seller of a lot in a leasehold strata title scheme will have to tell the buyer about all the same variations that the seller of a lot in a freehold strata scheme would tell a buyer. The seller of a lot in a leasehold strata scheme will also have to tell the buyer about any changes to the proposed or registered original lease or strata lease for that lot, as well as if there is any proposal or application to convert (to freehold), renew or replace the strata leases in the scheme.

## Changes to the Staged Development Statement

As the Staged Development Statement (SDS), which sets out how the development is going to proceed, contains by-laws, the seller of a lot in a staged strata development will tell the buyer about changes to the SDS.

## Statement where the seller cannot provide all of the notifiable information

After the reforms, all sellers of strata lots will have to provide more notifiable information to buyers before the contract is signed. There may be situations where the seller is unable, after reasonable efforts, to obtain all of the notifiable information. Examples might be where the strata company has not held general meetings or kept minutes of the general meetings or the strata company has not kept the accounts up to date. The reforms will allow a seller who has been unable after reasonable efforts to obtain all of the notifiable information to provide a statement to the buyer. The statement will:

- identify which item of notifiable information is not given
- explain why the seller cannot give that item
- set out the seller's knowledge about the item, following reasonable enquiry, as would be relevant to a buyer.

## When does a buyer have the right to avoid a contract?

### Avoidance for failure to give notifiable information to the buyer

Reforms will mean that if the seller fails to give the buyer the notifiable information prior to the contract being signed, the buyer may avoid the contract if the buyer has suffered material prejudice (ie. the buyer would be adversely affected).

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If the seller gives the buyer the notifiable information after the contract is signed (ie: later than the seller was required to by the Act), then the buyer must decide within 10 days of receiving that late notice of the notifiable information if they want to avoid the contract (and the buyer will also have to prove that they have suffered material prejudice).

## Avoidance arising from notifiable variations

Currently, a buyer can avoid the contract where:

- the seller fails to tell the buyer of the notifiable variation or
- the seller does tell the buyer of the notifiable variation and the buyer is then able to prove that they would suffer material prejudice as a result of the change.

Under the reforms to notifiable variations, buyers will still be able to avoid the contract where the seller tells the buyer of the notifiable variation and the buyer can prove that they would suffer material prejudice as a result.

In addition, the reforms will provide that buyers will be able to avoid the contract where the seller fails to tell the buyer of a notifiable variations.

There will be two classes of notifiable variations and the right to avoid depends on which class of notifiable information a buyer was not told about.

Class A - a notifiable variation where:

- the area of the subject lot is reduced in size by five per cent or more on the registered or proposed strata or survey-strata plan;
- the unit entitlement of the subject lot is varied by five per cent or more in proportion to the total unit entitlement for the scheme.

Where a seller fails to tell a buyer about a Class A notifiable variation the buyer may avoid without having to prove any material prejudice.

Class B – a notifiable variation where:

- the strata company or original proprietor enter into an agreement for the provision of any amenity or service to the strata company or vary an existing agreement of that kind in a way which is likely to affect the rights of the buyer
- a by-law is made, amended or repealed (unless it is amended to correct a minor error)
- the registered or proposed strata or survey-strata plan differs from the original proposed strata or survey-strata plan in a way which materially affects the subject lot or the common property
- a lease, licence, right or privilege in relation to the common property is granted or varied
- a notifiable variation in relation to a termination proposal occurs.

Where a seller fails to tell a buyer about a Class B notifiable variation the buyer may avoid where the buyer can prove they have suffered material prejudice.



## Buyer's obligations when avoiding a contract

### Information in the notice to avoid a contract

If the buyer gives the seller notice they want to avoid the contract, the notice must set out information about why the buyer is avoiding. If the seller doesn't give the buyer information before the buyer signs the contract, or if there is a change to the scheme that the seller must tell the buyer about, the buyer might have the right to avoid the contract.

Currently buyers sometimes don't tell sellers why they are avoiding the contract.

Reforms will mean the buyer must set out sufficient detail as to the basis on which they're avoiding in the notice of avoidance they give the seller. This might either set out how the buyer has been negatively impacted or where the seller didn't give the information at the required time.

### Notice of intention to avoid the contract

Reforms will specify the buyer will have 10 working days, from the time they find out about a change (variation), to give the seller notice that they are avoiding the contract. Under the current Act the period is only seven working days, however feedback indicated this does not give the buyer enough time to consider their position, seek advice if necessary, and put their reasons for avoiding in writing.

## Buying off-the-plan: Deposits

The current *Strata Titles Act 1985* requires that if the seller sells a lot off-the-plan, any deposit the buyer pays must be paid to a solicitor, real estate agent or settlement agent, to hold it in trust for the buyer, until the plan is registered. Reforms will clarify this to mean the deposit must be held in Australia, and that 'solicitor' means an Australian Legal Practitioner (as is the definition in the *Legal Profession Act 2008*).

## Getting information from the strata company

Under the current *Strata Titles Act 1985* (the Act) an authorised person can request information from the strata company. In most cases the strata council or strata manager supply the information on behalf of the strata company. The list of information that can be requested from the strata company is in the Act and includes meeting minutes, schematics for the building, resolutions, dealings with the common property and other documents. Accessing this information attracts a fee.

### Who is an authorised person?

An authorised person is a proprietor, mortgagee or someone with written authorisation from a proprietor or mortgagee.

### Requesting a summary of the strata manager contract

An authorised person can ask for a copy of the strata manager contract. However, in many cases the person asking only wants basic information; who the strata manager is, the cost, when the strata

manager contract started and how long it runs for. Reforms will provide that an authorised person can ask for a copy of this basic information from the strata company rather than the whole contract.

## Copy of the maintenance plan

The reforms will require strata companies for larger schemes (a scheme that has 10 or more lots or a scheme that has a high building replacement value as set out in the Regulations) to prepare a maintenance plan every five years (such a maintenance plan may guide the strata company in deciding how much money they need to set aside in the reserve fund). The reforms will also require larger strata companies to provide a copy of the maintenance plan if an authorised person makes a request for that information.

## Access to legally privileged documents

A strata company must keep certain records, but some of these records may include privileged legal advice to the strata company. The reforms will make it clear that the strata company is not required to allow an authorised person to see a document if the strata company believes the document contains privileged legal advice.

## Defence for providing access to information containing defamatory material

The reforms will provide that where a person is required by the Act to provide information relating to the strata company to an authorised person, the person who provides the information will have a defence from any claim for defamation.

## A buyer in a community title scheme or leasehold scheme can access information from the body corporate

An authorised person in a community title scheme or leasehold strata title scheme will be able to request additional information from the body corporate for their scheme in the same way an authorised person can in a strata scheme. This will include a buyer, as long as they have written permission and pay the prescribed fee.

## Buyer information for Community Title Schemes

### Information every seller will need to give to a buyer in a community title scheme

The seller of a lot in a community title scheme will have to give a buyer the same information that strata lot owners have to give, as it applies to the community title scheme. In a community title scheme the seller will also have to give a buyer a copy of the Community Development Statement.

The seller of a lot in a community title scheme might also have to give the buyer information about more than one scheme if the lot is part of a member scheme.

### Information an original proprietor will give a buyer in a community title scheme

The current definition of original proprietor doesn't cover a community title scheme which will have member schemes. In a community title scheme, the original proprietor is the person who is listed as the owner of the lots that are created when the community, secondary community or community

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strata/survey-strata plan is registered. The new definition will mean the original proprietor is the original proprietor of that particular scheme, not every scheme in the community title scheme.

An original proprietor in a community title scheme must give the buyer additional information including information about any service agreements, their interest in any service agreements, a 12-month estimate of scheme expenses and levies, and any disposition of the common property. The seller will only need to give this additional information in relation to the scheme if they are the original proprietor of that particular scheme. This means that a seller does not have to give the buyer information about every scheme within a community scheme.

## Seller to provide a copy of the Community Development Statement

Every community title scheme will have a Community Development Statement (CDS). Every seller will give the buyer a copy of the CDS, if they sell the lot at any time between when the CDS is approved by the WA Planning Commission and the end of the development period. When the development period is over, the seller won't have to give a copy of the CDS to the buyer, but will have to tell the buyer that there is one and that they can get a copy of it from the community corporation.

The CDS will show how the community scheme is going to be developed and after the development is complete, will control what future development can happen in the scheme. The CDS will apply to every lot and common property in the community title scheme. Anyone buying into the scheme during the development phase will need to be given a copy of the CDS.

## The seller will need to provide information about every scheme the lot is part of

A community title scheme will have member schemes; this means any buyer of a lot in that member scheme will need information about the member scheme and the community title scheme. The seller of a lot in a community title scheme will have to give the buyer information about every scheme their lot is part of. For example, they might have to give the buyer information about the community scheme, secondary community scheme and community strata or survey-strata scheme.

A buyer will only get information about the scheme(s) their lot is part of. The seller won't have to give the buyer information about other member schemes that the lot is not part of.

## A seller can authorise a buyer to ask for information and certificates

A seller can give a prospective buyer written authorisation to do due diligence, inspect community strata company records and ask for a certificate verifying certain information. A seller will be able to do this for a lot in a community title scheme, but they will only be able to authorise a buyer to apply to any community strata company or community corporation that the lot is part of, not every other member scheme.

## Buyer information for Leasehold Strata Schemes

### Information that every seller will need to give to a buyer in a leasehold strata scheme

A leasehold strata title scheme will be very similar to a strata or survey-strata scheme in how it operates. The same notifiable information (including the new requirements) will need to be supplied to the buyer of a lot in a leasehold strata title scheme.

In addition to this information, the seller of a leasehold strata title lot must give the buyer a copy of the proposed or registered strata lease. The seller must advise the buyer if the scheme is being renewed or converted to 'freehold' strata and whether there are any breaches of the strata lease.

### Information that an original proprietor will give to a buyer in a leasehold strata title scheme

In a leasehold strata scheme the original proprietor is the owner of the leasehold interest in the lots when the leasehold strata plan is registered. An original proprietor in a leasehold strata title scheme must give the buyer additional information including information about any service agreements, their interest in any service agreements, a 12-month estimate of scheme expenses and levies, and any disposition of the common property.

### The seller will give the buyer a copy of the proposed or registered strata lease

In a leasehold strata scheme the strata lease is an important document because it sets out how long the leasehold strata scheme will exist. In conjunction with the Management Statement, it will also set out the rights and responsibilities of the leasehold strata owner. The seller will give the buyer a copy of the proposed or registered lease over the whole parcel of land, or the proposed, or registered strata lease over the leasehold lot. This will mean the buyer will have a complete list of the relevant rights and responsibilities for their lot.

### The seller must tell the buyer if the leasehold scheme is going through a conversion, renewal or any other process

The strata lease for lots might include a clause which allows for the leasehold strata scheme to be converted to a freehold strata scheme, or for the lease to be extended. Even if the lease does not include a clause, the strata company may still negotiate with the lessor to extend the lease or convert the leasehold strata scheme to a freehold strata scheme. The lessor is the owner of the whole freehold parcel that the leasehold strata scheme sits on. Either of these will have a big impact on a buyer.

The seller will tell the buyer if an extension or conversion is underway. If the strata lease has an option to renew, and a lot owner or the leasehold strata company has breached the strata lease, the seller will tell the buyer about the breach.

## Buyer information for Staged Strata Developments

### Information every seller will give a buyer in a staged strata development

A staged strata development will be very similar to a strata or survey-strata scheme in how it operates once it is complete. The same information (including the new requirements) will need to be supplied to the buyer of a lot in a staged strata development. Every seller will also need to give the buyer a copy of the Staged Development Statement.

### Information an original proprietor will give a buyer in a staged strata development

An original proprietor is the person who is listed as the owner when a strata plan is first registered, in most cases this is the developer who built the scheme. An original proprietor in a staged strata development must give the buyer additional information including information about any service agreements, their interest in any service agreements, a 12-month estimate of scheme expenses and levies, and any disposition of the common property.

### The seller will give the buyer a copy of the Staged Development Statement

A new document called the Staged Development Statement (SDS) will set out how a strata development is going to proceed over time. The seller will give the buyer a copy of the SDS if they are selling the lot at any point, before the final stage is complete. After the final stage is complete the seller won't have to give the buyer a copy of the SDS but they will tell the buyer about it and let the buyer know that they can get a copy from the strata company.

## Disclaimer

These web pages have been prepared for the purposes of informing stakeholders and the community on the nature and scope of the proposed reforms to the legislation relating to strata title. Every effort has been made to ensure that the information presented in these web pages is accurate at the time of publication. Because these web pages avoid the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual legislation. The contents of these web pages should not be relied on as a guide for current or future legislation relating to strata title in Western Australia or in relation to current or future development proposals, commercial transactions or dealings in strata title.