

# Simplified dispute resolution

## Current problems with strata dispute resolution

Currently, strata disputes in WA are heard in four different forums (three different courts and the State Administrative Tribunal – the Tribunal), which generates confusion for strata owners about which forum they can resolve their strata dispute in.

The current dispute resolution provisions within the *Strata Titles Act 1985*:

- are complex and
- limit the power the Tribunal has to make decisions

This has resulted in a dispute resolution framework that is ineffective and inefficient. Strata disputes will only increase as strata schemes become more common in Western Australia.

## Making the State Administrative Tribunal the one-stop-shop for strata disputes

The two major reforms to dispute resolution are:

- making the State Administrative Tribunal the one-stop shop to resolve strata disputes
- strengthening the Tribunal's powers to efficiently resolve strata disputes.

### Cost-effective forum

Channelling strata disputes into the State Administrative Tribunal will provide all strata stakeholders with access to a cost-effective strata dispute resolution forum, which has the specialist strata expertise and statutory power to efficiently resolve strata disputes.

## Strengthening State Administrative Tribunal powers

In order to make the State Administrative Tribunal the specialist forum which can effectively resolve strata disputes, the *Strata Titles Act 1985* (the Act) will be amended to give the Tribunal broader powers.

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## Limit on Tribunal monetary orders will be removed

Currently the maximum amount that the Tribunal is able to order one party to pay to another in a strata matter is \$1,000. Reforms will remove the limit on monetary orders that the Tribunal can make to resolve a strata dispute.

## Tribunal will be able to order compensation be paid

The reforms will give the Tribunal the power to order the payment of money as compensation for financial losses suffered as a result of a breach of a statutory duty. An example is where a strata manager breaches one of the new statutory duties imposed upon them and causes the strata company to suffer a financial loss.

Compensation awarded by the Tribunal will not be subject to a monetary limit and can only be awarded to compensate for financial losses. The Tribunal will not award compensation for personal injury claims.

## Enforcing by-laws

Enforcing by-laws is difficult under the current legislation for a number of reasons:

- the Tribunal may only make an order imposing a penalty for breach of a by-law, if that by-law specifically states that a penalty is to be paid. Most by-laws do not have any penalties, which means most schemes cannot enforce those by-laws by applying to the Tribunal to impose a penalty
- before the Tribunal can order for a penalty to be imposed upon a person for breach of a by-law, the strata company must establish that the owner has wilfully and persistently breached the by-law.

Reforms will give the Tribunal the power to:

- make an order imposing a penalty for breaching any by-law (whether or not that by-law specifies a penalty for breach)
- make an order that the person who breached the by-law:
  - do or not do something to stop breaching the by-law or
  - do something to fix the breach of the by-law.

The strata company, owners and occupiers can apply to the Tribunal for an order to enforce a by-law (including an order that a penalty be paid).

The Tribunal can order a penalty should be paid if the Tribunal finds that the strata company served notice on the person requiring compliance with the by-law and the person has since contravened the by-law or if the breach of the by-law has been serious (including a single breach) or persistent.

## Power to make, amend and repeal by-laws

By-laws are easy to create, particularly at the start of a scheme when the scheme land is owned by a developer (original proprietor). In such cases, the developer can very easily introduce an entire set of by-laws which differ from the 'model by-laws', by lodging a management statement with Landgate when they register the strata plan.

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While the current Act provides for the amendment or repeal of by-laws through appropriate resolution or as a result of a court or Tribunal order, by-laws are relatively difficult to amend once they are in place.

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- was the by-law properly made?
- is the by-law inconsistent with the *Strata Titles Act 1985* or any other WA legislation?
- is the by-law unreasonable or oppressive when considering the interests of all owners in the use and enjoyment of their lot and the common property?
- is the by-law unfairly prejudicial or discriminatory to one or more owners when considering the interests of all owners in the use and enjoyment of their lot and the common property?

The Tribunal will also be able to repeal or amend any by-law which is inconsistent with the *Strata Titles Act 1985* or any other WA legislation.

## Power to make, amend and repeal resolutions

The *Strata Titles Act 1985* (the Act) has eleven separate powers given to the Tribunal and the District Court dealing with resolutions.

All of the provisions within the Act which give the Tribunal or the District Court power to make orders on meetings and resolutions will be replaced with simpler provisions which expand the Tribunal's power to make, amend and invalidate any type of resolution.

When the Tribunal considers whether to make or amend a resolution or declare a resolution is invalid, the Tribunal will ask:

- was the resolution properly made?
- is the resolution inconsistent with the *Strata Titles Act 1985* or any other WA legislation?
- is the resolution unreasonable or oppressive when considering the interests of all owners in the use and enjoyment of their lot and the common property?
- is the resolution unfairly prejudicial or discriminatory to one or more owners when considering the interests of all owners in the use and enjoyment of their lot and the common property?

The Tribunal will also be able to invalidate or amend any resolution that was made in contravention of the *Strata Titles Act 1985* or the by-laws (for example, notice of the resolution was not provided to owners prior to the general meeting as required).

## Resolving disputes between the strata manager and the strata company

Currently the Tribunal cannot hear a dispute between a strata manager and a strata company. The Tribunal will be given the power to:

- resolve disputes between the strata manager and the strata company involving:
  - alleged breaches of the statutory duties owed by the strata manager
  - disputes arising from the strata management contract
  - a review of the strata company's decision to terminate the contract with the strata manager

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- order a strata manager or strata company to do or refrain from doing something
- order compensation be paid by a strata manager to a strata company for the financial loss suffered by the strata company caused by:
  - the breach of the strata manager's statutory duties or
  - the breach of the strata management contract
- order compensation be paid by a strata company to a strata manager for financial loss caused by:
  - the strata company breaching the contract or
  - the strata company unreasonably terminating the strata management contract
- make an order terminating any contract for service or amenity where the Tribunal finds that:
  - the contract is unfair to 25 per cent or more of the strata owners or
  - the contract is for an excessively long period.

## Determining who pays a monetary order against a strata company

There are circumstances where:

- a proprietor within a strata company brings a successful application against a strata company and that proprietor then has to pay part of the monetary order imposed upon the strata company according to their unit entitlement
- the by-laws may specify that where a proprietor is involved in proceedings against the strata company, that proprietor will have to reimburse the strata company for all expenses associated with those proceedings whether or not the proprietor was successful.

When making a monetary order against a strata company the Tribunal will be given the power to apportion which proprietors within the strata company should pay the monetary order.

## Convert non-monetary orders into monetary orders

Enforcing a non-monetary order given by the Tribunal is relatively difficult. The person who has the benefit of the Tribunal order needs to file the Tribunal order and other documents with the Supreme Court before the person can then enforce the order under the procedures and practices of the Supreme Court.

Enforcing monetary orders of the Tribunal is relatively straight forward and can be done under the *Civil Judgments Enforcement Act 2004*.

Reform will allow the Tribunal to convert a non-monetary order to a monetary order. If a person is ordered by the Tribunal to do something and they do not comply, the Tribunal will be able to order that person to pay money to the other person equal to what it would cost to carry out the non-monetary order.

## Complicated strata disputes to be heard by legally qualified members

The reforms will provide that certain types of strata disputes (typically disputes involving complicated legal issues) will have to be heard and resolved by a Tribunal member who is legally qualified. The list of those types of disputes to be heard by a legally qualified member of the Tribunal will be provided in the Regulations.

## Some strata disputes to be heard by judicial members

The reforms will provide that certain types of strata disputes (which may involve complicated legal issues or large value monetary orders, for example) will have to be heard and resolved by a judicial

member of the Tribunal (Judicial members are also Judges). The type of strata disputes that must be heard by a judicial member of the Tribunal will be listed in the Regulations.

## Power to resolve disputes arising from installation of utility conduits

The Tribunal will be given the power to resolve disputes arising out of the new process (see Improved management) to install or alter utility conduits (pipes, wires, cables and ducts) on another lot or common property to enable an owner to connect their own lot to a utility service (electricity, water, etc.).

## Power to remove a strata council member

Members of a strata council will have a statutory duty to act honestly and in good faith imposed upon them. The Tribunal will be given the power to:

- resolve disputes arising out of alleged breaches of the statutory duty
- order that a council member who breaches that statutory duty is to be removed from the strata council. That order may also specify who is to replace the council member.

## Power to allow strata owner to apply on behalf of a strata company to pursue a Tribunal action

There are situations under the Act where a strata company is the only party who can pursue a case through the Tribunal (such as to terminate an unfair service contract). Where an owner asks their strata company to pursue a case and the strata company refuses to do so, the owner can apply to the Tribunal for an order to bring the case on behalf of the strata company. The Tribunal can make an order allowing the owner to pursue the case (make an application) on behalf of the strata company if the Tribunal finds that the strata company was unreasonable in refusing to pursue the case.

## Transfer of jurisdiction

Under the current legislation certain disputes can only be heard in the District Court. The reforms will transfer these disputes from the District Court to the Tribunal so that the Tribunal can make orders in relation to:

- the variation of a strata scheme upon damage or destruction of a building or taking (compulsory acquisition by a government agency) part of the land within a scheme
- the taking (compulsory acquisition by a government agency) of land within a survey-strata scheme
- the termination of a scheme
- unanimous resolutions or resolutions without dissent
- the appointment of a Public Trustee or other fit and proper person to exercise voting powers.

## Power to resolve strata disputes relating to title

The State Administrative Tribunal (the Tribunal) will be given the power to resolve strata disputes that relate to title (such as disputes about easements) provided that:

- the application is brought to resolve a strata dispute (and not just the land title issue); and
- a judicial member of the Tribunal hears the application.

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## Power to award costs

At present, The State Administrative Tribunal (the Tribunal) can only award costs in a strata dispute in two very limited types of disputes (where the application has been amended or where one person was unreasonable in an application to amend the schedule of unit entitlement).

The Tribunal will be given the power to award costs in all strata disputes, in accordance with the *State Administrative Tribunal Act 2004* (which provides that parties typically, but not always, pay their own costs).

## Streamlining Tribunal procedures

### Power to make summary decisions

The State Administration Tribunal (the Tribunal) will be given the power to make summary decisions (at the first hearing) to resolve simple disputes where the issues are clear.

### Applicants can apply to the Tribunal without first having to go through internal dispute resolution

Currently, if the by-laws set out a procedure to be followed to resolve disputes, the applicant has to prove that they have followed these steps before they are able to make an application to the Tribunal.

Stakeholders commented that in their experience, self-resolution by-laws do not work well. Reforms will allow a person to apply to the Tribunal without having to first prove they have followed the internal dispute resolution process. This will give people faster access to the expertise of the Tribunal to resolve the dispute.

### Power to vary an interim order

An interim order is an order that will stay in place until a final order is made. Interim orders made by the Tribunal under the *Strata Titles Act 1985* are:

- only made if there is perceived to be a degree of urgency
- usually based on submissions made by only one party
- as a result of the urgency underpinning the application, sometimes made without the Tribunal having access to all relevant information.

If, after making an interim order, the Tribunal becomes aware of information that requires the interim order to be varied, there is currently no power under the legislation to make the amendment. The Tribunal will therefore be given the power to vary an interim order.

### Power to make an order that is different from the one sought

Currently under the *Strata Titles Act 1985*, if the wrong order is chosen by the applicant, the Tribunal is only empowered to alter the order 'so long as it does not differ in substance from the order sought'. This operates as a major constraint upon the broad dispute resolution powers being conferred on the Tribunal by these strata reforms.

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To provide more flexibility, the Tribunal will be given the power to make an order which is different from the order sought by a party.

## Power to make an order before they provide the written reasons

Currently no Tribunal order can be served on any interested party unless the reasons for that order are attached. This means that the strata company has had to delay serving an order upon interested parties until the reasons for the decision have been prepared in written form (which can take a month or more). Reforms will remove the requirement for the reasons to be provided when the order is served (speeding up the service and enforcement of the order). Parties may still request that the Tribunal give its reasons in writing.

## Serving notice

There is currently a blanket requirement for every owner, mortgagee or affected occupant to get a notice of the application made to the Tribunal. This is even in the case of interim applications where there is often an element of urgency. Reforms will enable the Tribunal to exempt a strata company from serving notice on all the owners within a scheme, before the matter can be dealt with. This will enable the Tribunal to speed up the process of resolving disputes.

## Making orders under its general power

The *Strata Titles Act 1985* gives the Tribunal a broad power to resolve strata disputes (under section 83 of the Act). However, the Tribunal cannot currently make an order under this section if the dispute actually falls under another section of the legislation. As the focus of the reforms is to make the Tribunal the one-stop-shop for strata disputes and to give the Tribunal sufficient power to effectively and efficiently resolve strata disputes, this restriction will be removed.

The Tribunal will be able to make an order under its broad power provision and also under a specific power provision provided the applicant could have applied under the specific power provision.

The Tribunal will also have the power to make a combination of orders to resolve a strata dispute including:

- an order to do something
- an order to not do something
- an order for one person to pay another person money
- an order for one person to pay another person compensation for financial loss suffered
- impose conditions with an order
- direct that the order must be complied with within a specified time
- direct that the order has effect as if it were a decision, a resolution or a by-law of the strata company.

## Other Tribunal powers

The Tribunal will be given additional powers to:

- enforce non-monetary orders beyond the current limit of two years set out under the legislation
- make a declaration (confirm something has or hasn't happened or is or isn't valid) if that declaration is made by a legally qualified member. Currently this power can only be exercised by a judicial member.

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## Staged strata development

### New elements for staged strata developments

Reforms to staged strata development will involve a number of new elements including:

- the introduction of a deemed consent process
- a broadening of the definition of a minor variation in a staged scheme.

The deemed consent process will apply to people with a registered interest or caveat over a lot within the scheme, whose consent is required under the *Strata Titles Act 1985* to the variation of a staged scheme.

The process will specify that the registered interest holder:

- can only withhold their consent where it is reasonable
- can be deemed to have given consent where they do not respond to a proposed variation of the staged scheme within 30 days.

The definition of minor variations allowed under *Strata Titles General Regulations 1996* (STGR) is being expanded to allow a more flexible arrangement for the variation of staged schemes.

### The State Administration Tribunal (the Tribunal) powers

The Tribunal will be given the power to:

- resolve disputes between registered interest holders (including caveators) and original owners in relation to failure to give consent or the deeming of consent having been given
- declare whether adequate notice of the proposed re-subdivision has been given to the registered interest holder
- declare whether the registered interest holder to the re-subdivision is reasonable or not in withholding their consent
- award compensation (to a maximum amount limited by the Regulations) be paid by a person to a registered interest holder where that registered interest holder has suffered a financial loss as a result of:
  - the person failing to give proper notice of the re-subdivision and
  - the re-subdivision going ahead.

The Tribunal will also be given the power to review the Registrar of Titles decision on whether a variation to a staged scheme is minor or not.

## Resolving disputes between buyers and sellers of strata

Reforms are being undertaken to the type of information that has to be disclosed by sellers of strata lots and what rights a buyer has to avoid a strata lot sale contract where the seller breaches the statutory duty of disclosure under the *Strata Titles Act 1985*.



The Tribunal will be given the power to resolve disputes between the seller and the buyer in a sale of a strata / survey-strata lot. The Tribunal will:

- decide whether a seller has breached the statutory duty of disclosure imposed on sellers by Part 5 of the Act and
- resolve disputes about whether a buyer can avoid the contract if the seller has breached their statutory duty of disclosure.

## Community title schemes

[Community title schemes](#) are a new form of tenure being introduced by these strata reforms. The State Administration Tribunal's (the Tribunal's) power to resolve disputes will be extended to provide for this new type of scheme.

### Resolve disputes between corporations and companies

Community title schemes envisage a diverse range of owners, tenants, types of buildings and types of uses all co-existing within a single community title scheme under the umbrella of a management structure with multiple tiers of corporations and companies.

The Tribunal will be given the power to make orders to resolve disputes between a community corporation, secondary community corporation and a community strata company within a single community title scheme.

### Enforce by-laws

The legislation will enable a community corporation, secondary community corporation and a community strata company to enforce the by-laws which apply within community title schemes. The Tribunal will be given the power to make orders to enforce the by-laws of a higher level corporation upon a member corporation or scheme. Members include a:

- member corporation
- member company
- owner
- lessee
- occupier or mortgagee in possession

### Amend by-laws

Community schemes will involve each corporation / company within a community title scheme utilising by-laws that are specific to each corporation / company within that scheme.

The Tribunal will be given the power to make orders in relation to ensuring consistency between the by-laws within a community title scheme, where desirable or necessary.

## Remove council members who breach statutory duty

Members of a council of a corporation or company within a community title scheme will have a statutory duty that includes acting honestly and in good faith imposed upon them. The Tribunal will be given the power to:

- resolve disputes arising out of alleged breaches of the statutory duty; and
- order that a council member who breaches that statutory duty is to be removed from the strata council.

## Review of discretionary decisions made in relation to a Community Development Statement

The subdivision and development of lots and common property in a community scheme is to be in accordance with the Community Development Statement (CDS).

The Tribunal will be given the power to review discretionary decisions made in relation to community development statements.

Those reviews will include:

- review of discretionary decisions arising from a draft CDS, including:
  - approval of the draft CDS
  - approval of the draft CDS subject to terms and conditions
  - the terms and conditions (including the amendment, insertion or deletion of proposed content of the CDS)
  - the refusal to approve the draft CDS
  - the deemed refusal to approve the draft CDS

The proprietor of the land or the person making the Development Application (the DA Applicant) may apply to the Tribunal for a review of the decision-making concerning a draft CDS, where the Commission exercises a discretionary power.

- review of an amendment of a CDS which has not been registered but has been approved by the WA Planning Commission. The proprietor of the land may apply to the Tribunal for a review of the condition imposed on the approval of subdivision or development to amend or replace the CDS
- review of a decision on subdivision or development in a community scheme after registration of the CDS. The person who submits a development application in a registered community scheme may apply for review of a decision on a subdivision or development application by a decision-maker (WA Planning Commission) where that decision is inconsistent with a registered CDS
- amendment of a registered Community Development Statement
  - the person who submits the proposal to amend the CDS to the Commission may apply to the Tribunal for review of a decision of the Commission to refuse the amendment or replacement of a registered CDS or in connection with any condition imposed on the approval
  - the owners of lots in a community title scheme may apply to the Tribunal for review of a decision of the Commission to amend a registered CDS where:
    - the amendment to the CDS that the Commission approves is substantially different from the proposed amendment to the CDS that the community corporation agreed to; and
    - the owner is materially affected by the Commission's approval of the amendment to the CDS.

## Leasehold strata schemes

[Leasehold strata](#) schemes are the second new type of strata being introduced by the strata reforms. The State Administration Tribunal's (the Tribunal's) power to resolve strata disputes will be extended to leasehold strata schemes.

### Renewal of a leasehold scheme

Leasehold schemes may be renewed either by:

- the lessees exercising an option to renew which is within the strata leases
- agreement between the lessor (owner of the freehold land) and the lessees.

The Tribunal will be given the power to resolve disputes arising from a proposed renewal of a leasehold scheme including:

- an order altering the proportion of the renewal fee payable by each lessee to a lessor so that the renewal fee is set in proportion to each lessee's unit entitlement
- an order that a lessor is to consent to the renewal.

### Re-entry of strata leases

For normal leases, the lessor has a right of re-entry if the lessee breaches the lease. This right of re-entry will be controlled in leasehold schemes because there are fundamental differences between leasehold strata scheme leases (called strata leases) and normal leases:

- a strata lease is for a long-term (at least 20 years and up to 99 years)
- a leasehold strata scheme typically involves the lessee 'purchasing' the long-term strata lease by paying a single large payment equivalent to the purchase of a freehold lot.

Re-entry of a leasehold strata lease may only be by order of the Tribunal.

The Tribunal will be given the power to resolve disputes arising from re-entry or attempted re-entry of a strata lease including making orders:

- for damages against the lessee as reasonable compensation for losses suffered by the lessor as a result of the breach of the lease
- for the lessee to do or not do something to remedy the breach of the lease
- for the lessor to re-enter only in very specific circumstances where re-entry or forfeiture is the only recourse
- for damages against the lessor as compensation for losses suffered by the lessee, as a result of the lessor re-entering without first obtaining an order from the Tribunal to do so
- for the lessor to give possession of the lot back to the lessee
- vesting (transferring), for the remaining term of the lease or a shorter term, the lease of the parcel or the lot in the mortgagee or the under-lessee on just and equitable conditions.

### Amend the management statement

The management statement for a leasehold scheme must not be inconsistent with the strata lease which binds the leasehold scheme lessees. The Tribunal will be given the power to resolve disputes arising from any inconsistencies between the strata lease and the management statement including an order to amend, insert or repeal a by-law (or part of a by-law) within a leasehold scheme management statement.

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## Value of improvements

The Tribunal will be given the power to resolve disputes about the value of improvements in a leasehold strata scheme, where there is a provision in the strata lease that the lessor is to pay the lessee compensation for the improvements made to the lot by the lessee. That power will include deciding the compensation payable and apportioning that compensation to each owner.

## The continuation of a leasehold strata company

The Tribunal will be given the power to continue the operation of the strata company beyond the expiry of the lease for a specified time and for specified purposes, including disposing of property of the strata company, discharging the liabilities of the strata company and distributing the strata company assets.

## Conversion of a leasehold scheme into a freehold scheme

The leasehold scheme reforms will provide a process for the lessor and lessees to agree to the conversion of the leasehold strata scheme to a freehold strata scheme. The conversion will require the WA Planning Commission's approval, endorsement by the leasehold strata company by 75 per cent resolution before the scheme is terminated, acceptance by the proprietor of the freehold estate and approval by holders of registered interests in the affected land.

The Tribunal will be given the power to resolve disputes arising from the conversion or attempted conversion of a leasehold strata scheme into a freehold strata scheme including:

- conducting a fairness and procedure review of a conversion proposal that has been approved by more than 75 per cent of the owners of lots within a leasehold scheme
- making an order that the leasehold scheme is to convert to a freehold scheme according to the conversion proposal
- making an order revising a conversion proposal (and such revision will then need to be voted on again by the leasehold strata company)
- making an order that the conversion proposal is void.

The Tribunal will only be able to make an order for a leasehold scheme to convert if:

- the procedural steps within the *Strata Titles Act 1985* to convert have been followed (and at least 75 per cent of the owners have voted in favour of the conversion proposal); and
- that each strata lease proprietor will pay a reasonable fee to the lessor to acquire the freehold interest in their lot; and
- that the conversion proposal is just and equitable to the interests of the majority of owners within the scheme and the lessor.

A conversion (and an order that the scheme be converted) is subject to the WA Planning Commission's approval.

## Power to provide governance over strata leases

There is very limited governance provided for the operation of strata leases in leasehold schemes other than all strata leases must have the same expiry date.

The Tribunal will be given the power to review and amend a condition within a strata lease that requires the lessee to contribute, financially or otherwise, towards the maintenance, improvement or otherwise of common property, personal property or other lots within the scheme.

## Internal review of Tribunal decisions

The Tribunal decisions may be appealed, provided the appeal is brought on a question of law. As the Tribunal is being positioned through these reforms as the specialist strata dispute resolution forum and their powers are being expanded to resolve more complicated strata disputes, it is sensible to provide an additional mechanism to appeal decisions.

Parties to a Tribunal application will be given the right to apply for an internal review of the decision, provided that it was not made by a judicial member of the Tribunal. The review may affirm, vary or set aside the Tribunal order, but must be made within 30 days of the order being made. Parties may still appeal a Tribunal order by applying to the Supreme Court. It should be noted that this internal review will not apply to a review of planning decisions. Internal reviews will also be limited to a certain class of disputes, which will be listed in the Regulations.

## Unpaid Levies

Unpaid levies will still be enforced through the Courts rather than the Tribunal. The *Strata Titles Act 1985* specifies that actions for recovery of unpaid levies and contributions must be brought through the courts. Unpaid levies will still be dealt with by the Magistrates Court. Strata companies will not be able to bring an application in the Tribunal for an order to recover unpaid strata levies and contributions.

## 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 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.