

Improved Management

The *Strata Titles Act 1985* (the Act) provides the regulatory framework for the management of strata companies. It also sets out the establishment, constitution, duties and powers, meeting and voting arrangements for strata companies and strata councils.

Reforms to the management framework of the Act will introduce more flexibility and also require people who manage the scheme do so in a more accountable and transparent way.

Reforms include:

- regulating strata managers to make them more accountable
- making original proprietors and members of a strata council more accountable
- simplifying management processes
- allowing electronic notices, voting and record keeping
- broadening the powers of the strata company to improve the scheme
- making it easier to enforce by-laws
- ensuring by-laws are not unreasonable or oppressive
- making it easier to install sustainability infrastructure.

Regulating strata managers and making them accountable

Strata managers will be regulated to provide the same type of consumer protections that licensing could provide. The regulation of strata managers will:

- impose comprehensive statutory duties on strata managers
- empower strata companies to enforce those statutory duties on their strata manager, and
- require strata managers to lodge an information statement with Landgate.

Requiring strata managers to provide information to Landgate

The reforms will require strata managers to lodge an information statement with Landgate providing information such as the:

- nature and extent of the strata management services provided by the strata manager

- details about the schemes managed by the strata manager which will include the number of lots in each scheme
- the insured replacement value of the buildings in the scheme
- the annual expenditure turnover of the strata companies under management, and
- the aggregate amount of money held by the strata manager on behalf of all the strata companies that the strata manager provides management services to.

This information supplied by strata managers will be kept confidential. Landgate will use the information provided by strata managers to develop policy and provide the government with information to design the best possible solution for regulating strata managers based on industry and consumer needs.

The *Strata Titles General Regulations 1996* (the Regulations) will:

- give Landgate the power to require the information statement be provided annually or within an alternate timeframe
- give Landgate the power to publish a list of strata managers that have lodged the information statement with Landgate (note that Landgate will only publish the names of the strata managers who have provided the information statement, not the details contained in that statement as such details contain commercially sensitive information).

Statutory duties that will be imposed on strata managers

The reforms will impose a comprehensive set of statutory duties on strata managers, as listed below. The strata manager:

- must act honestly, with loyalty and in good faith to the strata company
- must exercise a reasonable degree of skill, care and diligence
- must hold minimum education requirements as set out in the Regulations (the Regulations will list what qualifications a strata manager must have and the timeframe by which they must have obtained that qualification)
- must hold a current police clearance
- must have a good working knowledge of the Strata Titles Act
- must not make improper use of information acquired as manager for a strata company to gain an advantage for themselves or someone else, or cause a detriment to the strata company
- must not make improper use of the position of strata manager to gain an advantage for themselves or someone else, or cause a detriment to the strata company
- must take reasonable steps to ensure that the strata manager's employees comply with the Act when performing strata management functions
- must have professional indemnity insurance to cover the consequences of any act or omission of the strata manager in performing strata management functions
- must inform the strata company in writing as soon as they are aware that they will obtain a financial benefit which conflicts with their duty to the strata company (ie: a conflict of interest)
- must inform the strata company in writing as soon as they are aware that they:
 - have received a commission or
 - are likely to receive a commission (such commission will have to be above a specified value and won't include a small gift, such as a box of chocolates)
- must have a written contract with the strata company containing details including:
 - the strata manager's name and address for service
 - the duration of the strata manager's contract
 - the duties and tasks the strata manager is to perform
 - the basis of payment of the strata manager
 - the details of which account the strata manager will operate for the money received on behalf of the strata company

- the requirements for a strata manager to give written reports to the strata company about the functions performed and
- the statutory grounds for termination (which are detailed below)
- must control the funds of the strata company in;
 - a separate trust account for the strata company,
 - a pooled trust account for several strata companies (that the strata manager provides management services to), or
 - the strata company's own account
- must be able to account separately for money that the strata manager pays or receives on behalf of the strata company
- must provide the strata company, within a reasonable timeframe, with accounting information about:
 - the name and number of each account operated by the strata manager on behalf of the strata company
 - the balance of money held in those accounts
 - details of money paid to or received by the strata manager on behalf of the strata company, and
 - details of any transaction that the strata manager enters into on behalf of the strata company
- must give the strata company's auditor access and information in relation to accounts operated on behalf of the strata company.

Enforcement of the statutory duties: contract termination and damages claim

A breach of any of these statutory duties by a strata manager is grounds for the strata company to terminate the contract as set out below.

Furthermore, if a strata manager does breach a statutory duty and the strata company suffers a financial loss, the strata company may apply to the State Administrative Tribunal (the Tribunal) for an order for damages (for financial losses only). The Tribunal may award damages, provided the strata company can prove:

- the strata manager breached the statutory duties
- that the breach caused the strata company to suffer a financial loss.

Non-disclosure of a commission

If the strata manager fails to inform the strata company of any commission received, the strata company can apply to the State Administrative Tribunal (the Tribunal) for the commission to be paid by the strata manager to the strata company. This is not intended to prohibit commissions being paid, but to ensure strata managers disclose the commissions they receive.

Terminating a strata manager contract

The strata company may serve notice of a breach (a show cause notice) on the strata manager if a strata manager:

- breaches the statutory duties under the Strata Titles Act 1985
- breaches the contract
- becomes bankrupt or insolvent, is wound up or goes into liquidation, goes into voluntary administration or enters into an arrangement or compromise with creditors
- is convicted of an offence punishable by imprisonment for twelve months or longer (in WA or elsewhere) and the strata company believes the conviction affects the strata manager's suitability to perform the strata manager's functions.

The strata manager will have 14 days to fix the breach and/or provide written reasons for why the contract should not be terminated.

14 days after serving the show cause notice, the strata company can then serve a termination notice on the strata manager stating that the contract will terminate after 30 or more days, if:

- The strata manager provided no written response within the 14-day period or
- The strata company has considered the written response provided by the strata manager (for example, the strata company may believe the breach is too serious to be rectified or that the attempts to rectify the breach are insufficient) and the strata company believes there are proper grounds for terminating the contract.

The strata manager can apply to the State Administrative Tribunal to review the strata company's decision to terminate the contract with the strata manager. If the strata manager makes such an application, the termination is postponed until the Tribunal makes a decision. Disputes between a strata manager and the strata company will be heard and resolved by the Tribunal.

Where a strata manager's contract has been terminated, the strata manager must deliver to the strata company any of the strata company's records, keys and property the strata manager has under its control within 30 days of the termination of the contract.

Definition of Strata Manager

The *Strata Titles Act 1985* does not currently refer to strata managers, and doesn't provide a definition of the term. In the new legislation a strata manager will be defined as: **a person who is authorised by a strata company to perform the functions of the strata company.**

A person who supplies services to the strata company, such as gardening or maintenance will not be considered a strata manager because they are not authorised to perform the functions of the strata company.

The council or member of the council of the strata company is not regarded as a strata manager when they perform the functions of a council member.

Strata manager cannot perform certain functions of the strata company

The strata company will have the power to contract with a strata manager and delegate functions of the strata company to a strata manager. Strata managers will not be permitted to perform these functions of the strata company:

- deciding how much money is required for the administrative fund of the strata company
- deciding whether to establish a reserve fund of the strata company
- entering into, varying, extending or terminating a contract with a strata manager
- deciding whether to terminate a contract for amenities or services where that contract has run for more than 5 years
- making a decision on behalf of the strata company to delegate a function of the strata company to a strata manager
- deciding whether to give a show cause notice to a strata manager
- commence an action on behalf of the strata company in a court or the Tribunal
- authorising the common seal of the strata company to be applied to a document
- authorising a person to sign documents on behalf of the strata company, the council or an officer of the strata company

If the Act requires the strata company to pass a resolution in a general meeting of the strata company before the strata company can perform a specific function, that function can only be performed by the strata manager if the required resolution has been passed.

Exemption for volunteer strata managers

The statutory duties on strata managers will not apply to an owner who serves as a strata manager for the scheme in which they own a lot, if they do so:

- as a volunteer (for no fee) or
- for an honorary payment or reward only.

To avoid discouraging owners from volunteering to provide management services to a scheme on a voluntary basis (or for an honorary payment), there will be an exclusion of liability in any civil proceedings for any act done in good faith when that person performs the role of volunteer strata manager.

Exemption for lawyers and administrators

The statutory duties on strata managers will not apply to:

- a certificated legal practitioner providing legal services under the Legal Profession Act 2008 (WA) or
- an administrator.

Lawyers are already subject to a stringent regulatory system. If a lawyer is providing legal services to a strata company, the lawyer will not need to comply with the statutory duties imposed on strata managers.

More accountability for original proprietors

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 developed the scheme.

Duty to disclose commission obtained from service contracts

Service contracts entered into by original proprietors (essentially, the developer) in the strata context are unique because such contracts:

- are typically signed by the original proprietor on behalf of the strata company when they control the strata company (i.e. prior to the units being transferred to buyers)
- bind the strata company – meaning that once the original proprietor sells the units, the new proprietors become responsible for paying for this service contract, and may have to wait years before they can shop around for a better price and or service.

In this context, there is an incentive for the original proprietor to commit the newly created strata company to expensive service contracts to obtain a commission for the original proprietor.

As part of the reforms:

- The original proprietor (developer) will be required to inform the strata company of any commission the original proprietor will make or intends to make as a result of committing the strata company to a service contract.
- The original proprietor will have the onus of proving they have provided proper disclosure of this

information to the strata company.

- If the original proprietor breaches this duty to disclose the commission they receive (or expects to receive) from such a service contract, the strata company may apply to the Tribunal for an order that the original proprietor pay the commission to the strata company.

Giving key scheme documents to the strata company

The original proprietor will be required to:

- retain all key scheme documents they receive
- then deliver the key scheme documents they have received to the strata company at the first Annual General Meeting (AGM).

If a key scheme document is received by the original proprietor after that first AGM, the original proprietor will have to give that document to the strata company as soon as reasonably practicable.

If the original proprietor is developing the scheme in stages, the original proprietor will be required to:

- retain all key scheme documents for stages in the development they receive
- deliver the key scheme documents for stages in the development to the strata company at the next Annual General Meeting

Key scheme documents include:

- the registered scheme plan
- the management statement (if there is one)
- the staged development statement (if there is one)
- the unit entitlement schedule for the scheme
- certificates of development approval, subdivision approval, building approvals and occupancy permits for the scheme
- official notices for the scheme
- specifications, diagrams and drawings for the scheme and buildings within the scheme (including any specifications, diagrams and drawings that show utility conduits, utility infrastructure or sustainability infrastructure)
- warranty documents and operational and servicing manuals for equipment and infrastructure on the common property
- certificates and schedules of insurance for the scheme
- contracts, leases or licences that will bind the strata company
- accounting records of the strata company
- the registered plan of re-subdivision for each stage of development
- any other document relating to a stage of development that would be a key scheme document.

These key scheme documents are essential for the operation of a scheme. There are occasions where key scheme documents are not supplied to the scheme at the first AGM, which can cause great difficulties and lead to unnecessary expense for the strata scheme. If the original proprietor fails to deliver the key scheme documents, the strata company may apply to the Tribunal for an order that

the original proprietor provide these key scheme documents to the strata company.

More accountability for strata council members

A council of a strata company (strata council) is the council elected by the lot owners to manage the scheme for the benefit of all. The council varies in size depending on the number of lots in the scheme. In small schemes all the registered owners may form the strata council.

A common complaint received from strata owners is that some strata councils make poor decisions, sometimes due to a council member's self-interest. The legislation does not currently require council members to act in the best interests of the strata company. Under the new legislation this will change.

The strata council members will have a duty to the strata company

Members of a strata council will have these statutory duties imposed upon them:

- a duty to act honestly, with loyalty and in good faith in the performance of their functions
- a duty to exercise due care and diligence in the performance of their functions
- a duty to ensure they do not make improper use of their position as a member to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the strata company
- a duty to inform the strata council in writing of any conflict of interest as soon as is practicable after they become aware of the conflict. The duty to disclose a conflict of interest does not relate to the council member's ownership of a lot in the scheme.

Council members who breach their duties may be removed from the council, on application to the State Administrative Tribunal.

Strata council members are protected if they act in good faith

To avoid discouraging people from volunteering for the council, the Act will state that a council member is not liable in any civil proceedings for any act that they do in good faith when performing the role of a council member.

The use of common seals and executing documents

A strata company will be able to execute a document either by:

- applying the strata company's common seal to the document or
- having the document signed by a person who is authorised by a resolution of the strata company to sign documents on behalf of the strata company. That person could be a member of the council, an owner or a strata manager.

If the common seal is used to execute a document on behalf of the strata company up to two owners must sign the document to confirm that the common seal was correctly applied. If the strata company is:

- constituted by one owner, that owner must sign
- constituted by two owners, both owners must sign
- constituted by more than two owners, two owners must sign.

The common seal of the strata company may be electronic.

New powers and obligations for the strata company

The strata company is automatically created when a strata or survey-strata plan is registered and the titles are issued. All lot owners are automatically members of the strata company.

Conduct affairs electronically

Technology has changed significantly since the *Strata Titles Act 1985* (the Act) was written. Email, word processing, memory storage, 'the cloud', teleconferencing, voice/video calls over the internet, are now widely used. Reforms will allow schemes to take advantage of new technologies, such as storing scheme documents online and conducting meetings by teleconference. However, the Act often requires physical copies of documents and for meetings to be conducted in person.

Reforms will enable the use of electronic means to perform the strata company's functions by specifically providing that the *Electronic Transactions Act 2011 applies to the STA*. For example, the common seal of the strata company may be electronic. Each scheme will still need to perform their obligations (for example storing information for a certain period) and will need to consider whether the different electronic options help them carry out their obligations.

Schemes will be able to tailor their methods to their own requirements and abilities, however, the obligations to keep and provide certain information will still apply.

- An individual lot owner will be able to indicate a preferred method of communication, either using hard copy or electronic means. A mix of paper and technology is possible, as long as it is clear which medium they prefer, so the strata company can accommodate it.
- Votes, both for resolutions put forward at a meeting and for the election of the strata council, can be received via email or in real time such as Skype or teleconferencing, if the strata company has provided for electronic voting in the notice of the meeting.
- The option to use electronic methods will not be mandatory. Any lot owner can still insist on receiving a hard copy of the information, if they wish. Use of electronic means will also be limited to the resources available to a strata company.

Connecting to a utility service after the scheme has been created

Currently, after a strata or survey-strata scheme is registered, it is very difficult to connect to a utility service (such as water, electricity, sewerage or telephone service) if the pipes, wires, cables or ducts required to connect to that service have not been installed. This is because the utility conduits (such as pipes, wires, cables or ducts) will often need to be installed on common property or even another owner's lot. Getting approval to install a utility conduit after a scheme has been registered is difficult.

The reforms will introduce a streamlined process to install utility conduits.

The Act will provide that:

- each lot in a scheme is entitled to access utility services by means of utility conduits that are reasonably necessary and
- each lot in a scheme has an implied statutory easement for utility conduits. The easement states that owners and occupiers must not interfere with (damage, remove) utility conduits.

Utility conduits through common property

If an owner needs to install a utility conduit (for example, a water pipe) to access a utility service (water) and that utility conduit needs to go through the common property the owner simply serves notice on the strata company stating what type of utility conduit they need to install (a water pipe) and where on the common property it needs to be installed (across the common property driveway)

The owner then waits 30 days (or earlier, if the strata company agrees) before installing the utility conduit.

If the owner damages the common property when installing the utility conduit (for example, digs up part of the driveway), the owner has an obligation to fix the common property (for example, replace any part of the driveway) as soon as practicable.

Utility conduits through another lot

If an owner needs to install a utility conduit (for example, a telephone cable) to access a utility service (telephone service) and that utility conduit needs to go through another lot the owner simply serves notice on the owner of the other lot stating what type of utility conduit they need to install and where in the lot it needs to be installed.

The owner then waits 30 days (or earlier, if the other lot owner agrees), before installing the utility conduit.

If the owner damages the other lot when installing the utility conduit, the owner has an obligation to fix the common property (for example, replace any part of the driveway) as soon as practicable.

Common property utility services

The Act will also provide that:

- the common property can have access to utility services by means of utility conduits that are reasonably necessary and
- the common property has an implied statutory easement for utility conduits. The easement states that owners and occupiers must not damage or remove utility conduits.

The strata company will have similar rights to install utility conduits through a lot so that the strata company can connect the common property to a utility service: the owner of a lot must be given notice, the strata company then needs to wait 30 days before installing the utility conduit and the strata company needs to repair any damage caused by the installation of the utility conduit.

Disputes

If there are any disputes about whether the utility conduit is even needed or whether it could be installed in another part of the strata scheme, the State Administrative Tribunal will have the power to resolve the dispute.

Making improvements to common property

Currently a strata company only has a duty to maintain and repair the common property.

Reforms will give strata companies the power to modify (improve) common property in the following circumstances:

- where expenditure required for the modification of common property does not exceed the amount allowed under section 47(1) of the Act
 - as set out in the Regulations (currently \$65 per lot) or
 - a higher amount, if the strata company has set a higher amount through a special resolution
- Where the expenditure required for the modification of common property is authorised by the strata company at the AGM as part of the annual budget of the strata company (the annual budget is approved by an ordinary resolution, which is a simple majority) – please note that details of the proposal to improve common property must be given to all proprietors before the general meeting or
- Where the expenditure required for the modification of common property is approved by way of the

notice process under section 47(3) of the Act. This process works as follows:

1. The strata council serves a written notice on all proprietors and first mortgagees setting out the expenditure required and details of the proposal to improve common property.
2. The proprietors and first mortgagees have 14 days to respond to the notice.
3. The expenditure is approved unless, within 14 days:
 - written objections are made by the proprietors or first mortgagees of more than 25 percent of the lots or
 - written objections are made by the proprietors or first mortgagees of lots of which the unit entitlement is at least 25 percent of the aggregate unit entitlement of the lots in the scheme.

Disputes about the improvement of common property will be resolved by the State Administrative Tribunal.

Easier to install sustainability and utility infrastructure on common property

Reforms will also make it much easier to install sustainability or utility infrastructure on common property within a strata or survey-strata scheme.

The strata company can approve the installation of sustainability or utility infrastructure on common property by passing an ordinary resolution.

The infrastructure (such as solar panels) can be owned by:

- the strata company (as personal property)
- all of the owners jointly (as common property)
- some of the owners or
- a third party (such as a renewable energy supplier)

If the infrastructure is owned by a third party or some of the owners, a statutory licence will apply over the area of the common property where the infrastructure is installed.

Power to audit the accounts

A common problem for strata companies is the quality of their financial records. The lack of an express power to audit can make it difficult to quickly identify situations where financial mismanagement has occurred. A strata company will be given the power to audit the strata company's accounts.

Power to enforce a breach of a by-law

Preventing breaches of by-laws is problematic under the current *Strata Titles Act 1985* because the State Administrative Tribunal (the Tribunal) may only make an order imposing a penalty for breach of a by-law if the by-law being breached specifically says that a penalty is to be paid. Similarly, the standard by-laws contained within the *Strata Titles Act 1985* do not have any penalty stipulations. This means all schemes that rely on the standard by-laws cannot enforce those by-laws by applying to the Tribunal to impose a penalty.

Reforms will ensure penalties can apply to breaches of any by-laws, and that the by-law does not need to specify for a penalty to be imposed in order for the Tribunal to impose such a penalty.

The strata company will have the power to serve notice for the breach of a by-law, requiring the

offender to stop and/or rectify the breach.

The strata company, a proprietor or an occupier will be able to apply to the Tribunal for a penalty to be imposed for the breach of a by-law. The Tribunal can order a penalty be paid if it finds:

- the strata company served notice and the breach continued, or
- the breach was serious or
- the breach was persistent.

For more information on new powers of the Tribunal see '[clearer and easier ways to resolve strata disputes](#)'.

Power to enter a lot and authorise inspections

A strata company and its agents, employees and contractors will be given the power to enter any part of a scheme for the purpose of:

- carrying out any work that the strata company is required or permitted to carry out
- inspecting any part of the scheme or
- ascertaining whether a by-law or provision of the Act has been, or is being, complied with.

The strata company and its agents, employees and contractors may enter any part of the scheme:

- at any time when it is an emergency, or
- in other cases, after reasonable written notice (at least 7 days) has been given to an occupier of the lot.

Power to carry out functions generally

Strata companies have specific powers listed in the *Strata Titles Act 1985*. This list isn't always wide enough for some strata companies to carry out all their functions. A new general power, which sets out that strata companies have all the powers necessary to carry out their functions, will ensure the strata company is acting within its power, even where it performs a wide range of activities.

Obligation for the strata company to act reasonably

There is a general obligation on lot owners to act reasonably. The strata company will now also be required to act reasonably when dealing with and making decisions that affect the owners.

Obligation to have a reserve fund and maintenance plan

Sometimes strata companies don't set aside enough money to cover foreseeable maintenance. This can cause distress when maintenance becomes urgent, resulting in large special levies. Where maintenance has been deferred for a long time, it can lead to so much deterioration that the cost increases substantially.

Reforms will require that any scheme which:

- has ten or more lots or
- has a building replacement value as set out in the Regulations (there are some schemes with less than 10 lots which have a very high building replacement cost)

must:

- have a reserve fund. The Act will not specify how much money needs to be held in a reserve fund.
- prepare a maintenance plan every 5 years to set out:
 - the maintenance, repairs and renewal or replacement of common property in the scheme and the personal property of the strata company likely to be

- needed over the next five years, and
- the estimated cost for the maintenance, repairs and renewal or replacement.

Forecasts like this maintenance plan are required in other States and may guide the strata company in deciding how much money they need to set aside in the reserve fund. The maintenance plan must be presented at each Annual General Meeting (AGM). This requirement will also apply to community title schemes.

Insurance

Increase the public liability insurance minimum from \$5 million to \$20 million

At present, a strata company is required to insure the scheme against public liability for at least \$5m. This minimum will be increased to \$20m.

It was found most managed schemes already do have at least \$20 million cover, and \$5 million, imposed in 1995, is no longer considered sufficient to cover potential liabilities and costs in the case of damage, injury or death claims. In WA many strata insurance companies do not offer public liability cover for less than \$10m. The difference in annual costs for cover to increase from \$5m to \$20m is minimal for each lot.

Every scheme must also discuss the insurance arrangements at each Annual General Meeting (AGM). This is to make sure the proprietors have to regularly consider whether or not their insurance is adequate for the risks faced by their scheme.

Note that there will be a twelve-month transitional period, where strata companies will not be committing an offence if they do not meet the new minimum requirements for public liability insurance.

Making recovery of premiums easier

Currently, the strata company can apply to recover any unpaid insurance premium from a non-paying owner. This will be changed so that where owner A is not paying their share of the strata company's insurance premium and owner B then pays owner A's share of the premium, owner B will be able to apply to the State Administrative Tribunal to recover the share of the premium from owner A.

Insurance monies don't have to be used to restore the building

Currently when a strata company receives money from an insurer, it must be used to rebuild, replace, repair or restore the building. Reforms will mean the strata company can decide (through a resolution without dissent) not to apply the money to rebuild, replace, repair or restore the building. The decision must include how the money will be used or distributed amongst owners and the location of the damaged / destroyed building must be made safe.

Owners must not prevent a strata company from insuring a scheme

If an owner is using part of the scheme (a lot or common property) in a way that means the strata company can't obtain insurance, the strata company will be able to issue a notice to the owner to stop that activity or to do work on the lot or common property, so that the strata company can have the scheme insured. If an owner does use the exclusive use common property in a way that makes

the strata company's insurance premium higher, that owner is responsible for the difference in the premium.

Clarifying insurance requirements generally

Currently, the State Administrative Tribunal can grant a strata company an exemption from the need to obtain public liability insurance for common property. It will be made clear this power also applies to survey-strata schemes and single-tier strata schemes (a strata scheme where no lot is above any other lot).

Terminology in the *Strata Titles Act 1985* will be made consistent so that all insurable buildings and improvements (such as driveways) within the scheme are appropriately insured.

Insurance in single tier schemes

Decisions about insurance in a single tier strata scheme will be decided by simple majority. In the case where there has been a previous resolution not to insure a building on the common property, this can also be revoked by serving a written notice on the strata company or other owner.

By-laws

By-laws are the rules which the strata company, owners, occupiers and other residents within the scheme need to abide by. The strata company has broad powers to make and change by-laws.

By-laws cannot be unreasonable or oppressive

Having regard to the interests of all the owners and their use of the lots and the common property, reforms will provide that the by-laws must not be:

- oppressive or unreasonable or
- unfairly prejudicial to or discriminatory against one or more owners

In addition, by-laws cannot be inconsistent with the *Strata Titles Act 1985*, Regulations or any other WA legislation.

The State Administrative Tribunal will be given the power to amend or repeal a by-law on the basis that a by-law is:

- oppressive or unreasonable or
- unfairly prejudicial to or discriminatory against 1 or more owners

By-laws can't ban assistance animals

Currently the *Strata Titles Act 1985* prohibits by-laws that ban the keeping of a guide dog on a lot or using a guide dog as a guide on a lot or common property. This will be expanded to include that by-laws cannot ban any assistance animal trained to assist a person with a disability who lives on the lot or visits it. Assistance animal has the meaning given in the *Disability Discrimination Act 1992* (*Commonwealth*) section 9(2).

Guidance about by-laws

Schedule 1 by-laws are about the operation of the strata company. Schedule 2 by-laws set out acceptable behaviour of proprietors and occupiers. Each schedule has a different voting protocol. A current problem for strata companies is where a new or amended by-law may be incorrectly classified resulting in the wrong voting protocol being applied. The amended *Strata Titles Act 1985* will provide clear guidance on what type of resolution is required to make, amend or repeal each by-law.

By-laws will be classified as one of two types:

- governance by-laws which can be made, amended or repealed by a resolution without dissent
- conduct by-laws which can be made, amended or repealed by a special resolution.

A governance by-law means any of the following:

- the by-laws set out in Schedule 1
- the by-laws that deal with the governance of a scheme or the corporate affairs of a strata company
- the by-laws that deal with the constitution or procedures of the council of a strata company
- the by-laws that deal with contributions, levies or money payable by a proprietor to a strata company
- an exclusive use by-law or restricted use by-law.

A conduct by-law means any of the following:

- the by-laws set out in Schedule 2
- a by-law which deals with specified conduct of a proprietor, occupier or other resident
- a by-law that deals with a matter relating to the management, control, use and enjoyment of a lot or common property.

Note that, as a result of this clear classification of the two types of by-laws, some by-laws previously in Schedule 1 will be moved to Schedule 2 to reflect their 'conduct' nature. These are:

- vehicles and parking
- use of common property and
- decoration of common property.

Compliance with exclusive use by-laws

A by-law that grants exclusive use rights over the common property to a person within the scheme is an exclusive use by-law. Exclusive use of common property is where the common property is used exclusively by:

- one owner or
- several owners.

Typically, an exclusive use by-law may impose conditions (to do certain things or pay specified sums of money) on the person(s) who is given the exclusive use of the common property.

The reforms will provide that:

- subject to the terms of the exclusive use by-law, the default position is that the owner who has the benefit of the exclusive use by-law has the responsibility of maintaining the portion of the common property that they exclusively use
- the strata company can serve a written notice specifying a breach of a condition on a person who benefits from an exclusive use by-law, if they breach the conditions of that exclusive use by-law. The person will not be entitled to use the exclusive use common property until they have rectified the breach (ie: done what the condition required them to do or pay the money specified in the condition).

Meetings

If a quorum isn't present owners can proceed with the meeting after thirty minutes

Owner apathy can sometimes make it quite difficult to convene a quorum for a meeting (a quorum is the minimum number of people who must be present before the meeting can go ahead, usually 50 per cent of the people entitled to be there). This can cause considerable delays and expense in re-booking strata managers to hold the reconvened meeting. The current provisions, which allow for a second meeting in one week's time, are ineffective as generally less people attend the second meeting.

Reforms will allow those owners who are present to declare a quorum thirty minutes after the appointed meeting time (note this does not apply to two lot schemes). This means the meeting can proceed and doesn't have to be reconvened. However, if those present determine that it is appropriate, the meeting can still be reconvened in a week's time.

Moving general meeting provisions out of the by-laws and into the Act

The requirements relating to general meetings of a strata company (including voting rights) are currently set out in Schedule 1. Schedule 1 by-laws are only default by-laws and such by-laws may be repealed or amended at any time.

The requirements relating to general meetings of a strata company will be moved into the Act so that the key governance of those general meetings (including voting rights) of owners will not be subject to change except by amendment to the legislation. This is consistent with how other States specify strata company meeting requirements in their legislation (instead of in the by-laws).

The requirements relating to general meetings that will become part of the Act are:

- the requirement to hold an annual general meeting (AGM) (except for 2 lot schemes)
- the following matters must be included on the agenda for each AGM:
 - election of council members
 - consideration of accounts
 - the presentation of copies of certificates and schedules for the insurance required under the Act, current as at the date of the meeting
 - the presentation of a valuation of the replacement value of the buildings, structures, fixtures and improvements (such as walls, fences, driveways, paths) that are within the scheme or on the common property that need to be insured;
 - if applicable, the presentation of the five-year maintenance plan.
- that an extraordinary general meeting (EGM):
 - may be convened by the council as the council thinks fit and
 - must be convened when owners, who have at least 25% of the unit entitlement, make a written request to the council
- every owner must be given at least fourteen days' notice of every general meeting
- the notice of a general meeting can set out the method of voting (by electronic communication or otherwise)
- no business may be transacted at a general meeting unless a quorum is present
- a quorum for a two-lot scheme is both owners
- a quorum for a scheme of more than two lots is 50% of the people entitled to vote
- if, after thirty minutes, a quorum is not present at a general meeting the people entitled to vote who are present are taken to constitute a quorum (this does not apply to two lot schemes)
- the chairperson may adjourn the general meeting with the consent of those present

- only people, who are entitled to vote, may move a motion at a general meeting
- resolutions may be passed at a general meeting by a simple majority unless the Act otherwise provides
- an owner is not entitled to vote at a general meeting where the resolution is an ordinary resolution or a special resolution unless the owner has paid:
 - all contributions payable for the owner's lot and
 - any other money payable by an owner to the strata company under the Act
- an owner is entitled to vote on a resolution without dissent or unanimous resolution even if they owe money to the strata company
- unless a poll is demanded by a person who is entitled to vote, and is present at a meeting, votes at a general meeting must be by show of hands
- a show of hands may be given by:
 - raising a hand at the meeting
 - making an oral statement at the meeting
 - giving a written statement to the chairperson or
 - a method set out in the notice of the meeting (eg: by voting electronically)
- if both an owner and the person the owner appointed as their proxy are at a general meeting, only the owner may vote.
- a proxy vote may:
 - only be exercised where the proxy has been appointed in writing
 - be exercised by a person who is not a proprietor.

Other issues raised in the consultation

Tenants

Tenants must abide by the by-laws that apply to owners as set out in the *Strata Titles Act 1985*. Many people have commented that enforcing by-laws on tenants is difficult. Reforms make enforcing the by-laws easier and more straightforward. More information about how by-laws will be enforced is set out in [clearer and easier ways to resolve strata disputes](#).

Pets

A number of respondents raised the issue of pets. Feedback was split between wanting a default by-law which allows pets and wanting one which bans pets. Given the lack of clear consensus and the fact that keeping pets and deciding what kinds of pets can be kept is different for each scheme, decisions on this issue should continue to be made by the strata company by amending their by-laws.

The reforms:

- introduce a requirement for by-laws to not be:
 - unreasonable, oppressive (referred to as a reasonableness test) or
 - unfairly prejudicial to or discriminatory against 1 or more owners
 - and
- strengthen the strata company's ability to enforce those by-laws.

Smoking

The issue of smoke drift was raised by some respondents who asked for default by-laws to ban this. In the same way that pet by-laws will differ on a scheme-by-scheme basis, every scheme will have a different view. Each scheme will need to decide whether or not to ban or limit smoking and may amend the by-laws.

Introducing a reasonableness test for by-laws and making it easier for owners to enforce by-laws should aid owners who feel their rights are being infringed either by being subject to smoke drift or being unable to smoke on their property.

Proxy votes

Concerns were raised in relation to certain people gathering enough proxy votes from absentee owners to have significant control of meetings and decisions made. While the use of proxies can cause a person to have an unfair degree of control, it is also true that people should have the right to give their proxy vote to someone else – and understand the significance of doing so.

The problem with proxies is closely linked with owner apathy. The new electronically enabled *Strata Titles Act 1985* should make it more convenient for owners to be involved in meetings, and to rely on proxies less.

If proxy votes are used to pass a resolution which is unreasonable or oppressive, owners can apply to the State Administrative Tribunal (the Tribunal) to amend or invalidate that resolution. If proxy votes are used to amend a by-law in a way which is unreasonable or oppressive, owners can apply to the Tribunal to repeal that by-law.

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.