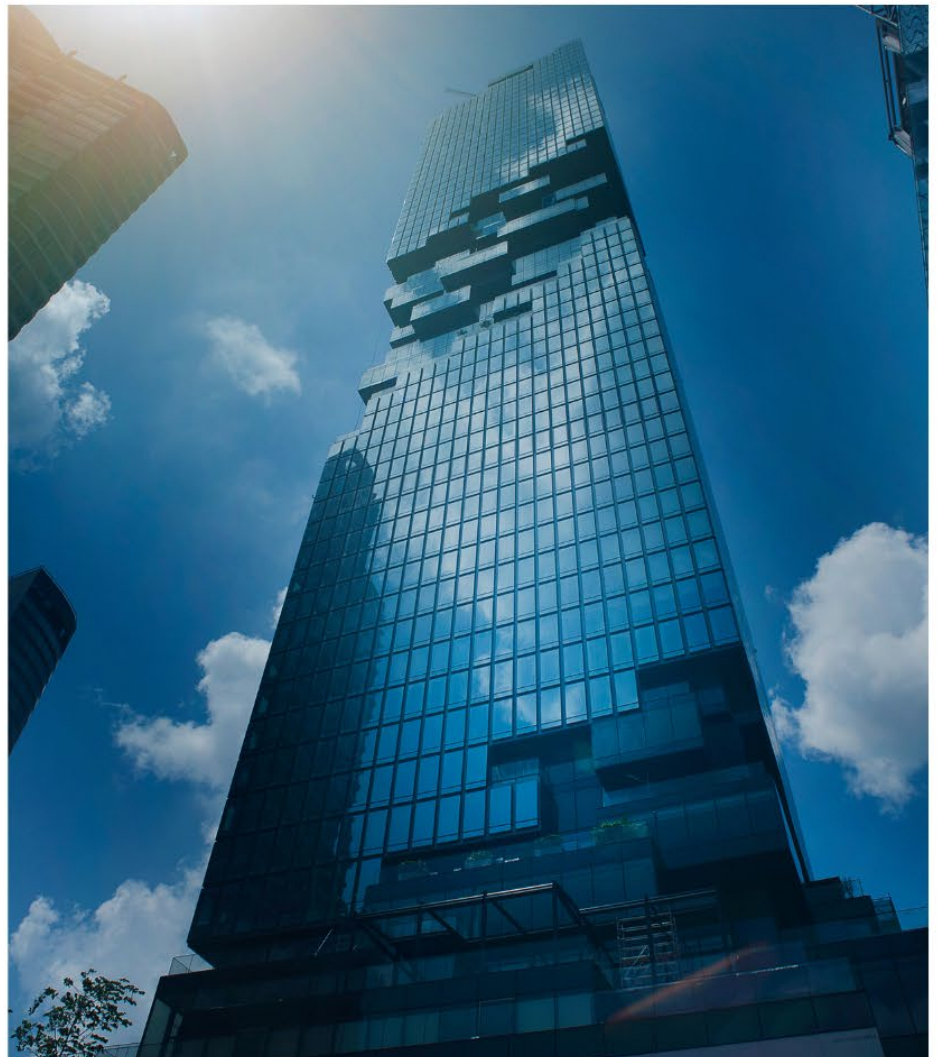


JANUARY 2023

COMMUNITY AND STRATA TITLES LEGISLATION AMENDMENTS

STRATA COMMUNITY ASSOCIATION (SA/NT)
SUBMISSION



PREPARED FOR

The South Australian
Attorney-General's
Department

About Strata Community Association (SA/NT)

Our 5,000 individual and corporate members include strata/body corporate managers, support staff, owners' representatives and suppliers of products and services to the industry. SCA proudly fulfils the dual roles of a professional institute and consumer advocate.

Direct employment in specialist strata management companies is approaching 10,000 people. More significantly, they are pivotal in an estimated \$6.7 billion in annual economic activity.

Based on the 2020 Australasian Strata Insights Report, more than 2.2 million people live in flats and apartments, the vast majority being strata titled.¹ This figure does not include other forms of strata title such as townhouses and community titled developments. Nor does it include businesses operating in strata titled commercial buildings. The estimated value of property under strata title in 2020 exceeds \$1.3 trillion.²

As the growth of apartment and strata living has intensified over the last decade, the strata management strata services industry has grown in lockstep to serve it. Strata managers navigate through a maze of Commonwealth, State and Territory legislation and regulation ranging from actual strata specific legislation, regulation, workplace, health, and safety issues and building codes as well as measures applicable to the management of body corporate funds.

A strata manager is expected to be knowledgeable on a range of issues relating to the management of a strata scheme.

¹ Hazel Easthope, Sian Thompson and Alistair Sisson, *Australasian Strata Insights 2020*, City Futures Research Centre, UNSW, Accessed at <https://cityfutures.be.unsw.edu.au/research/projects/2020-australasian-strata-insights/>

² Ibid, p6

Introduction

SCA (SA/NT) is pleased to respond to the proposed legislative changes and make a few brief opening points about the legislation and our submission:

- SCA (SA/NT) believes that overall that changes are positive to the *Strata Titles Act* (STA) and *Community Titles Act* (CTA) and are supportive of most, but not all, provisions.
- The provisions addressed in the following submission refer to those provisions that we think could be amended or improved, as well as several suggestions for inclusions in this round of legislation, or in future rounds of legislation relating to the STA and CTA.
- As a result, any proposed change not commented on is taken as accepted.

Strata Community Association's Response to the Proposed Community and Strata Titles Legislation Amendments

How our submission is structured

In order to provide a response to the proposed amendments, SCA (SA/NT) will draw from the *Explanation of draft Statutes Amendment (Community and Strata Titles) Bill 2022* document.

We will provide feedback to each explanation point from the *Explanation of draft Statutes Amendment (Community and Strata Titles) Bill 2022* document that requires feedback, and reference back to the STA and CTA to details specifics.

Explanation Provision Feedback 1

“Amend the CTA and STA to make it clear that the caps on fees that apply to corporations also apply to a manager providing information and copy documents on behalf of the corporation to an owner or prospective owner under STA section 41 and CTA section 139.”

SCA Response

SCA (SA/NT) is satisfied with the proposed amendments to the CTA and STA outlined.

SCA (SA/NT) has additional feedback regarding fees in the Community Titles Regulations (25(1)) and Strata Titles Regulations (31 (2)) that we will address in this section.

The changes we would like to see implemented are not currently in the proposed amendments.

We see them as of critical importance to have them included, given the legislation changes so infrequently.

SCA Recommended Additional Change 1

The Community Titles Regulation should be updated to match the Strata Titles Regulation as far as the fees charged. SCA (SA/NT) notes that the difference is a legacy error due to the Strata Titles Regulations being more recently updated than the Community Titles Regulation.

Having an equal set of fees makes sense for consumer consistency as well as streamlining administrative efforts for committees, managers and regulators.

SCA Recommended Additional Change 2

Strata Title fees need to be increased 25 per cent from the level they were set at more than four years ago due to several factors:

- The Consumer Price Index (CPI) has risen 13 per cent from September 2018 to September 2022.
- There will be additional work required under the proposed changes to carry out tasks such as a plan of division and statement of expenditure/sinking fund plan.
- The fees will likely not be adjusted for a number of years, as has happened previously.

This change can be enacted by incorporating the following changes:

Strata Titles Regulations

- s31(2)(a)(ii) replace “40” with “50”
- s31(2)(b)(i) replace “8” with “10”
- s31(2)(b)(ii) replace “40” with “50” and replace “16” with “20”
- s31(2)(c)(ii) replace “8” with “10”

Community Titles Regulations

- S25(1)(a)(ii) replace “25” with “50”
- S25(1)(ab) replace “25” with “50”
- S25(1)(b)(i) replace “5” with “10”
- S25(1)(b)(ii) replace “25” with “50” and replace “10” with “20”
- S25(1)(c)(ii) replace “5” with “10”

SCA Recommended Additional Change 3

SCA (SA/NT) proposes that a new section should be added to both the Community Titles Reg 25(1) and Strata Titles Reg 31(2), which increases these fees automatically on an annual basis.

This fee increase can be either in line with CPI or at a chosen annualised rate so amendments are not required in the future and reasonable and representative fees are ensured in the future.

Explanation Provision Feedback 2

“Amend STA section 33(5) for consistency with the CTA by adopting the formula for achieving a quorum at general meetings of corporations contained in CTA section 83.”

SCA Response

The amended provision in the CTA states:

12—Amendment of section 83—Procedure at meetings (CTA)

Section 83(4), (5) and (6)—delete subsections (4), (5) and (6) and substitute:

(6) If a quorum is not present after 30 minutes has elapsed from the time appointed for a general meeting of the corporation, the persons entitled to vote who are present at the meeting are taken to constitute a quorum for the purposes of that meeting but only matters that were listed in the meeting agenda distributed prior to the meeting in accordance with this Division may be voted on at the meeting.

Whilst SCA (SA/NT) is supportive of this provision, and the intention of achieving quorums at general meetings, we recommend the removal of the section **in bold** above.

SCA (SA/NT) strongly believes that this provision will likely cause arguments and confusion amongst members of the corporation.

Owners will likely misinterpret the provision, and SCA (SA/NT) foresees scenarios that unless every explicit issue is listed on the agenda, owners corporations will not allow it to be addressed at a meeting.

In addition, most common meeting agendas will have the provision for “any other business to be discussed,” which renders the inclusion of this provision moot in most cases.

SCA (SA/NT) believes that those who are interested and attend meetings should not be restricted from voting on items that only require an ordinary resolution.

If members of the corporation that do not attend are not happy with an ordinary resolution that is passed at a meeting, another meeting may be called to change that resolution.

Protections are already currently implemented in the Acts, whereby more significant items that require a special or unanimous resolution are already required to be stated in full on the agenda (refer to CTA s81(5)(a) and STA s33(4b)(a)).

SCA Recommendation Summary

Remove the words highlighted **in bold** in the provision above. (*‘...but only matters that were listed in the meeting agenda distributed prior to the meeting in accordance with this Division may be voted on at the meeting’*).

Explanation Provision Feedback 3

“Amend the CTA and STA to increase the prescribed minimum amount of mandatory public liability insurance that must be held by a corporation under STA section 31(2) and CTA section 104(2) from \$10 million to \$20 million.”

SCA Response

SCA (SA/NT) is overall supportive of the intention of the change.

SCA (SA/NT) is supportive of the increase to the prescribed minimum amount of mandatory public liability insurance.

In keeping with this support, SCA (SA/NT) has two additional recommendations.

SCA Recommendation 1 - That the minimum amount be adjusted to an increase of \$30 million, to ensure that corporations are adequately covered. This is consistent with the current progression of the strata industry, and at a minimal cost to consumers.

SCA Recommendation 2 - SCA (SA/NT) recommends the inclusion of Office Bearers Liability (OBL) as mandatory insurance.

Office Bearers Liability has direct similarities with Directors Liability in the corporate world. This insurance protects the Office Bearers and the Committee. It provides cover if an owner or third party makes a claim against one of the Office Bearers or Committee and covers the legal costs to defend. Strata matters are settled in court reasonably often, and the frequency of legal challenges is growing. As a result, SCA (SA/NT) believes that this insurance should be mandatory. The outcome if this is not the case will be that Office Bearers and/or Committee members may have to fund their own legal defence if a claim is made against them.

To carry this out, this would require the amendment of s104 of the CTA (and/or regulations) and s31 of the STA (and/or regulations).

SCA (SA/NT) recommends this is set to at least a minimum of \$100,000. Although industry recommends that coverage of \$500,000, it is important when considering a mandatory minimum to take into account the size of schemes and what is necessary on a per-scheme basis.

Explanation Provision Feedback 4

“Amend the CTA and STA to ensure that the pamphlet required under CTA section 78B and STA section 27B explaining owners’ rights under a proposed contract with a body corporate manager (including to inspect corporation documents held by the manager, to apply to the Magistrates Court to resolve disputes and the rights to terminate the contract) be required to be supplied to owners rather than merely ‘being made available for inspection’ prior to a meeting at which it is proposed to vote to appoint the manager.”

SCA (SA/NT) does not support this amendment to the CTA and STA as prescribed.

We propose the removal of these amendments on the grounds that it is:

- Impractical
- Reduces the choice of bodies corporate as to who they choose as their manager
- Makes all management and decision-making more difficult

Why does SCA (SA/NT) oppose this amendment?

SCA (SA/NT) opposes the proposed amendments for several reasons:

- In effect, the changes will mean that a change of manager requires the co-operation of the incumbent manager, as it is the incumbent manager who will need to provide the pamphlet of the new proposed manager in the notice of the meeting. This is because the proposed new manager (or committee or active owner) cannot be expected to send the notice of a general meeting, particularly with larger groups.
- As a result, SCA (SA/NT) foresees a poor outcome whereby the termination of an incumbent manager may be effective (as termination does not require the pamphlet), but a second general meeting within a few weeks may need to then be called to appoint the new manager.
- The amendments now effectively remove the current power of committees to appoint/remove managers. Currently, committees can appoint/remove managers (unless for example the scheme’s instituted by-laws limit this). Requiring the pamphlet to be sent to all owners essentially implies/requires that this decision is now something that can only be done at a general meeting. If this is the intention, SCA (SA/NT) recommends it would be better to simply make clear that the appointment/removal of a manager must be at a general meeting (refer e.g. how this is done with contributions in s114(1) of the CTA). Doing it in that way would avoid the unintended negative impacts of the first bullet point above.
- SCA (SA/NT) has an organisational priority to protect consumers and freedom of choice for everyone involved in strata. When consulted, the majority of members have indicated that they would not support the limitation in their ability to appoint and remove managers, for which the implementation of this provision would likely result.

Explanation Provision Feedback 5

“Amend the CTA and STA to address the problem of inquorate corporation meetings by adopting an approach recently introduced in Western Australia, whereby a quorum may be declared from those present after 30 minutes of the appointed time for a duly convened meeting, avoiding the need to adjourn and reconvene the meeting at a later date. However, only matters listed on the meeting agenda may be voted on.”

As noted above, SCA (SA/NT) supports this provision however recommends the removal of the wording that states *“but only matters that were listed in the meeting agenda distributed prior to the meeting in accordance with this Division may be voted on at the meeting,”* for the reasons as previously outlined.

Explanation Provision Feedback 6

“Amend the CTA to increase the threshold for mandatory audits for community titled corporations to align the CTA more closely to the Victorian approach to audits, such that self-managed community corporations will be required to have their accounts audited where contributions exceed \$100,000 per year or there are over 100 lots in the group. Other community titled groups can still resolve to have their accounts audited if they wish, after balancing perceived risk against audit costs. The requirements for body corporate manager trust accounts to be audited are unchanged.”

SCA (SA/NT) is supportive of this provision, conditional that the regulations are adjusted to represent the prescribed \$20,000 is increased to \$100,000, and anticipate that these changes will be made in due course.

SCA (SA/NT) notes that the summary document outlines that this provision is applicable to “self-managed community corporations,” however we suggest that these changes are actually applicable to all schemes (for which we support).

Explanation Provision Feedback 7

“Amend the CTA to extend the prescribed time for lodgement of amendments to by laws with the Registrar-General from 14 to 21 days since 14 days has proved difficult to achieve and to create discretionary powers for the Registrar-General to dispense with the requirement for the consent of certain parties to minor prescribed technical amendments of, or to correct clear errors in, a scheme description for a staged development. This will improve efficiency and reduce the significant costs that can arise from the need to obtain consents from a broad range of parties to minor changes to the scheme description.”

SCA (SA/NT) is supportive of this provision.

SCA (SA/NT) Recommendation - That the time for the lodgement of amendments to by-laws with the Registrar-General be pushed to 28 days.

This takes into account the time needed to physically sign documents (as currently electronic signatures are not acceptable), and should offer improvements to the process.

Strata Community Association's Additional Feedback for Proposed Changes to Legislation

SCA (SA/NT) would also like to take this opportunity to provide additional feedback for critical areas of reform that need to be addressed in the changes to the legislation in the future.

Sinking Funds

SCA (SA/NT) recommends that it is mandated in the STA that strata-titled schemes have, and maintain a sinking fund (consistent with the CTA). Sinking funds are an extremely important reserve of money, that allows for the payment of major building repair and maintenance expensed in the event of an exogenous shock.

However, in order to avoid making the requirement too onerous on owners, SCA (SA/NT) recommends that the minimum amount of money to be required to maintain be \$1. Corporations may then choose to make additional payments to the sinking fund in whatever capacity they determine to be acceptable.

Valuations

SCA (SA/NT) recommends the addition of legislation that outlines a **mandatory** valuation of strata and community titled properties at a minimum of every three years, and a maximum of five years.

SCA (SA/NT) makes this recommendation due to the following provision in the *Strata Titles Act 1988*:

Part 3—The strata corporation

Division 4—Duty to insure

30—Duty to insure

(1) A strata corporation must keep all buildings and building improvements on the site insured to their replacement value.

If a strata property is not valued as frequently as every three to five years, then it is impossible to comply with this provision in the Act. The full replacement value of the building and building improvements on site will not be accurate without proper valuation.

Short-Term Letting

Due to Airbnb, there has been an increase in the use of apartments for short-term stays. Under the Strata Titles Act, there can be no restriction on short-term letting s19(4)(b).

Under the Community Titles Act s37(1)(a) and s37(2)(a), a corporation cannot prevent or restrict a lot owner from leasing their lot, or allowing someone to live in their lot, or otherwise dealing with their lot except that a by-law may prevent or restrict the owner of a lot from leasing or granting rights of occupation for a period of less than two months.

SCA (SA/NT) believes the 37(2)(a) exception in the Community Titles Act should be removed. The corporation shouldn't be restricted, and should be allowed to create those restrictions themselves within their own by-laws. Similarly, the logic is that owners should not be restricted as to the use of their lot, so long as that use does not infringe on the by-laws that relate to issues such as noise, rubbish and those other provisions that cross over with short-term letting experiences. This would further the consistency between the STA and the CTA.

Abandoned goods

Currently, there are no specific powers to deal with goods (including vehicles) that may be left behind or abandoned on the common property.

SCA (SA/NT) recommends that the legislation be amended to include that a corporation have the capacity and power to remove goods on common property that are in breach of by-laws, or block access for other residents on the property to common property or private lots. SCA (SA/NT) recommends that the time period be 7 days, for which the corporation then has the power to remove.

Amendment of Service

SCA (SA/NT) notes the proposed amendment of the STA that states:

29—Amendment of section 49—Service

Section 49(1)—delete subsection (1) and substitute:

(d) if the person consents to receiving the notice or other document by email—by transmitting the notice or other document by email to the email address provided by the person for that purpose;

SCA (SA/NT) recommends the addition of a provision within this amendment that states that if the person receiving the notice has already communicated via email previously, then that is an acceptable method of communication moving forward. This allows for a reduction in inefficiency, by way that if the given method of communication is email, then it removes the requirement to communicate via post.

Sale and redevelopment of apartment buildings

SCA (SA) recommends that the termination of corporations be changed from requiring a unanimous resolution to a special resolution. There are other models in other states, and SCA are happy to come back with further considerations, and at the right time consult with members and other jurisdictions for the most acceptable conditions.

Pets

Animal-friendly multi-unit buildings are on the rise. There is a trend towards pet-friendly apartment living. This trend will only increase with the ageing of the population, where companion animals will be important. 63 per cent of Australian households own a pet, one of the highest rates of pet ownership in the world.

SCA (SA/NT) recommends that as a default, pets should be allowed, unless it has been resolved not to allow that specific pet because it is a nuisance or poses a danger. This is the current law in Victoria. SCA (SA/NT) recommend that if this provision is considered for inclusion in the legislation, that it is done so on a delayed basis (12-24 months), so that those schemes that will choose not to allow for pets will have ample time to implement that provision into their by-laws.

SCA (SA/NT) notes that this may be a significant change to the legislation, and SCA (SA/NT) recommends that further consultation occur with consumers and industry prior to the change. SCA (SA/NT) is aware of several consultations currently being undertaken in other jurisdictions, including NSW.

Financial penalties in Schedule 3

Currently in schedule 3, there are no fining provisions. To comply, one must adopt the articles, add it in, submit it to LTO and get it registered etc. SCA (SA/NT) recommends that it is added in that there will be fines of up to \$500 for a breach as default. This would remove the associated fees that are currently required to be paid.