

## The Strata Titles Act

### Terms of Reference

In 1974 the *Strata Titles Act 1966–1978* (WA) was referred to the Commission for general review.

### Background of Reference

The *Strata Titles Act 1966* (WA) (“the Act”) was enacted in response to the growing demand in Western Australia for occupation of individual units in the one building on an ownership basis and the generally unsatisfactory methods of dealing with that demand. The Act was modelled on the *Conveyancing (Strata Titles) Act 1961* (NSW). In 1973 New South Wales enacted new legislation<sup>2</sup> to address perceived problems with the previous regime. In light of this complete revision of the model legislation and the increased popularity of ownership of strata title units, the Commission was asked to perform a full review of the Western Australian legislation.

In September 1975, in order to help identify the problems in relation to the Act, the Commission issued an invitation to the public to make preliminary submissions. Eighty-three submissions were received, many from proprietors of strata title units. The submissions identified a number of perceived inadequacies with the existing legislative scheme, particularly in respect of:

- (a) resolution of disputes between unit proprietors;<sup>3</sup>
- (b) the allocation by a developer of unit entitlements;
- (c) matters dealing with unit ownership and common property;
- (d) the assessment of rates on strata titles;
- (e) the extent of the powers and duties of a strata company and the manner in which those powers and duties should be exercisable;
- (f) controlling tenants;
- (g) disclosure to purchasers of relevant information and protection of intending purchasers; and
- (h) the application of the Act to duplexes.

The Commission released a working paper in February 1977. Apart from presenting an analysis of issues raised by commentators in the preliminary submissions, the working paper also examined the provisions of the 1973 New South Wales strata titles legislation and discussed their suitability for adoption in Western Australia.

### Nature and Extent of Consultation

Sixty-nine commentators responded to the working paper including banks, local councils, government departments and authorities, relevant professional institutions and property owners. During the course of the project Mr Charles Ogilvie, the Commissioner in charge of the project, visited Sydney and Melbourne to discuss their respective legislative schemes with strata titles officials, solicitors, land agents and other persons with practical knowledge of the schemes. The Commission also corresponded with officials in Queensland where strata titles legislation providing for cluster (or group) titles<sup>4</sup> had been introduced.<sup>5</sup>

1 This included by means of tenancy in common and using the home unit company system.

2 *Strata Titles Act 1973* (NSW).

3 Under the Western Australian legislation disputes between unit proprietors were litigated in the ordinary courts. The 1973 New South Wales legislation established a scheme whereby disputes could be referred to the Strata Titles Commissioner or the Strata Titles Board.

4 A cluster titles system involves the subdivision of land into an area of small lots (on which dwellings can be erected) and common property. The proprietors of the lots become a statutory company and through that company control the common property which they own as tenants in common.

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Many aspects of the Queensland and New South Wales schemes were used by the Commission in making its recommendations. The Commission delivered its final report in December 1982.<sup>6</sup>

### Recommendations

In making its recommendations, the Commission's aim was to retain the basic framework of the existing legislation whilst at the same time recommending refinements designed to increase the flexibility of the strata title concept, to remove anomalies, to enable the more efficient management of strata schemes and generally to improve the working of the system. The Commission recommended that the Act be repealed and replaced with a new Act that retained many of the features of the existing legislation but which further provided for:

- An increased range of possible strata title developments by removing certain impediments to registration.
- The facilitation of more efficient administration of strata schemes by improving the existing election and voting systems and providing for the establishment of a reserve fund for the purpose of accumulating money for non-routine expenses.
- The clarification and extension of powers and duties of strata companies.
- The requirement that a detailed unit entitlement plan be lodged with the strata plan upon registration.
- The increased control of tenants by requiring that they be bound by the relevant by-laws of the strata company.
- The establishment of an office of Strata Titles Referee with wide powers to make orders in respect of disputes between unit proprietors. The Referee would act in an administrative fashion and appeal would lie to the proposed Administrative Division of the Local Court.<sup>7</sup> Further there should be power to remit a matter from the Referee to the Supreme Court.
- Certain improvements in the method of assessment of rates and taxes.
- The requirement that developers give prospective purchasers written notice of certain details of the strata scheme before they enter into a contract.

The final report also included a consideration of the desirability of introducing a cluster titles system into Western Australia and recommended that appropriate legislation be enacted to enable this practice. A comprehensive outline of the Commission's recommendations may be found at pages 349–379 of the final report.

### Legislative or Other Action Undertaken

In 1985 Parliament passed the *Strata Titles Act 1985 (WA)* and the *Acts Amendment Act (Strata Titles) 1985 (WA)* (collectively "the new Act"). Most of the Commission's principal recommendations were implemented by the new Act.<sup>8</sup> However, in the absence of the establishment of separate divisions of the Local Court, the dispute resolution process that the Commission recommended was altered to allow that appeal lies

<sup>5</sup> *Building Units and Group Titles Act 1980–1981 (Qld)*.

<sup>6</sup> Law Reform Commission of Western Australia, *Strata Titles Act*, Project No 56 (1982).

<sup>7</sup> The establishment of an Administrative Division of the Local Court was proposed in the Commission's report on *Appeals from Administrative Decisions*, Project No 26(I) (1982). However, later reports recommended that Local Courts and Courts of Petty Sessions be merged to create a combined court of summary jurisdiction with separate divisions: see Law Reform Commission of Western Australia, *Courts of Petty Sessions: Constitution, Powers and Procedure*, Project No 55(II) (1986); *Local Courts: Jurisdiction, Procedures and Administration*, Project No 16(I) (1988).

<sup>8</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 16 April 1985, 2018 (Mr McIver, Minister for Lands and Surveys).

from a decision of the Strata Titles Referee directly to the District Court. Further, the Commission's recommendation to Parliament that detailed consideration be given to the issues of cluster titles and staged development has not been realised.

In 1995 a Strata Titles Taskforce was established by government to address problems perceived in respect of insurance of strata title units.<sup>9</sup> The recommendations of this taskforce led to the enactment of the *Acts Amendment Act (Strata Titles) 1996 (WA)* which addressed those issues and made minor administrative adjustments to the legislation but did not enact the Commission's outstanding recommendations.

### Currency of Recommendations

To the extent that the new Act did not implement the recommendations identified above, the Commission's recommendations remain current. However, it is clear that where minor differences can be seen between the Commission's recommendations and the provisions of the new Act, those differences were intended by Parliament.<sup>10</sup> Further, the new Act has been subjected to ongoing parliamentary scrutiny over the past 16 years.<sup>1</sup>

### Action Required

Implementation of the outstanding recommendations would require consideration of detailed amendments to the new Act to provide for a system of cluster titles and staged development in Western Australia. Given that a decade has passed since the Commission's recommendations on these matters, a further commissioned review may be necessary. Additionally, it may be beneficial to re-examine the existing process of appeal from decisions of the Strata Titles Referee in the light of the proposed introduction of the Western Australian Civil and Administrative Tribunal.<sup>12</sup>

### Priority – Low

This assessment is based on the fact that Parliament appears to have considered the strata titles scheme in some detail over the past 16 years and the outstanding recommendations are not integral to the workings of the existing legislative scheme.

<sup>9</sup> Western Australia, *Parliamentary Debates*, Legislative Assembly, 17 October 1996, 6786 (Mr G Kierath, Minister for Lands).

<sup>10</sup> For instance, the Commission suggest that the strata company could surrender a lease for common land by unanimous vote. However, the new Act prohibits any such vote being taken by the lessor of the land if they are also a proprietor. Thus the vote need only be a majority of the remaining voting parties. Further, the Commission suggested that the proceeds from any sales prior to the registration of a strata plan should be payed into a trust fund. This was not provided for in the new Act, as the Government believed that there were already enough safeguards against inappropriate use of funds. See Western Australia, *Parliamentary Debates*, Legislative Assembly, 17 April 1985, 2022 (Mr McIver, Minister for Lands and Surveys).

<sup>11</sup> See Western Australia, *Parliamentary Debates*, Legislative Assembly, 17 October 1996, 6782 (Mr G Kierath, Minister for Lands).

<sup>12</sup> The Government has recently given the Commission a further reference to investigate the judicial review of administrative decisions in Western Australia. A Civil and Administrative Review Tribunal Taskforce has also been established to advise and assist the government and to liaise with the Commission on the conduct of this reference. The final report on this reference, *Judicial Review of Administrative Decisions* (Project No 95), is expected in early 2002.