

Australian Property Institute Limited

SUBMISSION

RESPONSE TO PROPOSED AMENDMENTS TO THE STRATA TITLES ACT 1998 (TASMANIA)

Date	28 July, 2018	
Contacts	Mel Nelson National Manager – Membership Services and Advocacy	Melanie McMeekin Member Services Manager - Tasmania
Email	mnelson@api.org.au	mmcmeekin@api.org.au
Phone	03 9644 7500	03 6223 3011

Introduction

About the API

The Australian Property Institute (API) is the leading membership organisation for property professionals. It is impartial, objective and independent. With more than 8,000 members, API represents a wide range of property professionals who have a significant impact on the wider property industry.

API sets and maintains the highest standards of professional practice, education, ethics and professional conduct for our members. In turn, the work of the Institute raises the bar for the entire property profession.

API membership requires minimum qualifications and experience and ongoing professional development and education, ensuring a highly qualified, highly skilled profession.

API members can be found across all sectors of the property profession, including private practice, public sector and academia. This broad base of qualified and skilled professionals is unique to the Australian Property Institute. The Institute is committed to building and maintaining a strong base for the future of the property profession through broadening the expertise and knowledge of membership.

In response to the call for comment, the API has provided feedback on three of the Key Issues raised in the Consultation Paper, where we believe our members can provide professional direction based on their expertise in those areas.

1. Division of Land by Strata Plan

The issue raised relates to how land can be divided by way of a strata plan.

When the Act was initially drafted, the majority of strata developments were in the form of high-rises or conjoined.

However as strata development has evolved strata may now also take the form of separate villas.

There are numerous ways a strata plan can be divided, which has been problematic for the LTO due to the technical nature of how plans are drafted.

Section 4 of the Act states:

(1) Land under the Land Titles Act 1980 may be divided.....

(4)both vertically and horizontally under this Act but vertical division of land into strata is not a necessary feature of a division of land by strata plan.

The words “but vertical division of land into strata is not a necessary feature of a division of land by strata plan” is considered by the Recorder to be unnecessary and confusing.

The person preparing the strata plan is best positioned to determine if vertical division or vertical and horizontal division of the land is required.

Option 1 – Status Quo

This option would involve no amendment to the Act.

This would result in section 4(4) of the Act remaining the same and not removing any unnecessary confusion arising from “*but vertical division of land into strata is not a necessary feature of a division of land by strata plan*”.

Option 2 – Amend the Act by omitting the words “but vertical division of land into strata is not a necessary feature of a division of land by strata plan” from section 4(4)

This option would remove the unnecessary confusion arising from the words “but vertical division of land into strata is not a necessary feature of a division of land by strata plan”.

This option recognises that the person preparing the strata plan for the division of land is best placed to determine what is required in the circumstances depending on whether the development is conjoined, high-rise, villas, or a mix of these.

Question: Does the Act need to include any statement about vertical and horizontal division in addition to that in the proposed amended Section 4(4)?

Answer:

Yes. The API believes that the Act should be clear on the definitions, also on the application of both vertical and horizontal division of land in the strata plan. The API would welcome the opportunity to contribute to the development of a definition to provide clarity in the Act.

Recommendation:

The API agrees that no change is required to the Act but recommends the inclusion of a definition to ensure clarity.

5. Insurance

Under section 99 of the Act, the body corporate must insure all buildings and other improvements (if any) on the strata site.

In many circumstances it has become clear that insurance companies are willing to provide individual insurance rather than body corporate insurance. However this is not required insurance for the purposes of the Act.

The Recorder of Titles does not regulate the insurance industry and control what insurance cover it provides to clients.

Strata lot owners wishing to comply with the Act can find it very difficult to engage other lot owners to obtain the appropriate body corporate insurance where those lot owners have obtained individual insurance.

This can be due to, for example, a lack of understanding of the requirements of the Act and/or an inactive body corporate.

Under section 103 of the Act, if the body corporate does not obtain the required insurance, a lot owner may obtain the insurance and recover the cost of the premium from the body corporate.

Whilst the Recorder of Titles cannot regulate the insurance industry or determine what products they wish to provide to their clients, the provision of individual products could lead to significant problems for strata schemes when an accident or other issue occurs on the strata development.

This is due to the common property not being properly covered by individual insurance policies which creates problems not only for the lot owner with regard to public liability, but also with regard to Applications for Relief.

Option 1 – Status Quo

This option would involve no change.

Legislative amendment would not be required on the basis that the Act is currently clear that insurance taken out by the body corporate is required for the benefit of the lot owners within the strata scheme.

Option 2 – Amend the Act to enable a strata lot owner to take out individual insurance for their lot and their share in the common property

This option replicates the approach taken by Victoria with regard to individual policies that are separate to that of a body corporate policy.

Option 3 – Amend the Act by removing the requirement for specific insurance to be taken out

This option would involve amendment of the Act to remove the requirement for insurance and lot owners can take out whichever insurance they wish (if any) depending on the advice of the insurance industry.

What policies that are provided to lot owners would be a matter for the Insurance industry to determine.

Option 4 – Clarify Strata Living

This option would result in a review of the information provided in Strata Living in Tasmania.

The intention being to raise awareness of the need to obtain body corporate insurance and the more clearly explain the risks associated with ignoring section 99 of the Act.

Recommendation:

The API supports Option 2 in conjunction with Option 4. It is vital to ensure the document, 'Strata Living in Tasmania', contains current, relevant and comprehensive information for strata title owners to ensure they are fully educated as to their insurance requirements, options and consequences of insufficient insurance coverage.

8. Meaning of Common Property

Common property is owned by strata lot owners, each having an undivided interest in a common space which can be used for the enjoyment of all lot owners.

Common property in a strata development may include areas such as gardens, driveways, recreational spaces and is also inclusive of shared infrastructure such as water pipes.

The Act currently contains multiple references to the meaning of common property which are in part different complicating the practical application of these sections, particularly in relation to applications for relief.

Applications for relief continue to be made where a degree of confusion remains as to what does and does not form part of common property in a strata development.

A singular and consistent meaning is required to provide certainty in interpretation and application.

Option 1 – Status Quo

This option would involve no change.

This would result in the meaning of common property remaining inconsistent and does not address the practical issues faced by the strata community and the LTO.

Option 2 – Amend the Act to include a consistent meaning of common property

The introduction of a consistent meaning of common property would promote better interpretation and application of the term which is of benefit to both the strata community and the LTO.

It would enable a body corporate to identify what is common property within its strata development.

Question: Have you encountered any problems with defining the common property within a strata development?

Answer: The API observes that the identification of Common Property on some Strata Plans can be difficult to determine. Clear identification of the Common Property within a Strata Development would greatly assist API members in their identification and full understanding and comprehension of the Common Property within a development when making an assessment.

Recommendation: The API supports Option 2 for clarity and identification purposes. The API would welcome the opportunity to contribute to the development definitions and consistent language.