INVESTIGATION OF THE STRATA-TITLED TOURISM ACCOMMODATION SECTOR IN AUSTRALIA
legal context and stakeholders views

By Chris Guilding, Allan Ardill, Jan Warnken, Kelly Cassidy & Kimberley Everton-Moore
Technical Reports

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National Library of Australia Cataloguing-in-Publication

Investigation of the strata titled tourism accommodation sector in Australia: legal context and stakeholder views.

Bibliography.
ISBN 1 920704 88 4 (pdf.).


338.479194

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INVESTIGATION OF THE STRATA TITLED TOURISM ACCOMMODATION SECTOR IN AUSTRALIA

PREFACE/ABSTRACT

This report comprises three main parts, the first defines the nature of strata titled tourism accommodation. The second provides an overview of the strata title legal provisions applying in each Australian state and territory. The third part identifies the parties involved in the strata titled tourism accommodation (STTA) sector and STTA complex management issues arising. These parties are classified as primary and secondary STTA sector stakeholders. The primary stakeholders include: owners, resident managers and tourists that use strata titled tourism accommodation. The secondary stakeholders comprise: real estate agents, state tourist offices, developers, financiers, body corporate committees, body corporate service providers, hotels with a strata title interest, and management rights brokers. The report also describes the nature of the relationships of the STTA stakeholders to the tourism industry and develops a model of the relative advancement of the STTA sector in each of the Australian states and territories.

Acknowledgements

The Sustainable Tourism Cooperative Research Centre, an Australian Government initiative, funded this research.

The many interviewees that provided their time and perspectives on aspects of the strata titled tourism accommodation sector are thanked.

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SUMMARY

Tourism and economic boom periods have seen the construction of a large number of strata titled accommodation complexes in regions widely recognised for their significance as tourist destinations. Many of these developments now occupy highly desirable sites, a factor that underlines their potential to significantly affect the character, amenity tone, taste and physical appearance of a tourism destination as well as the lifestyle and perceptions by the community of ‘tourism’.

Nowadays, strata titled tourism accommodation (STTA) represent the most important type of tourist accommodation in many tourist destinations – if not in terms of bed spaces provided, then certainly in terms of land use (e.g. space on the beachfront) and investment. This type of accommodation is now recognised as a key aspect of Australia’s tourism product, and an important way in which capital is attracted from small, medium sized and larger investors. Over the past five to ten years, the distinctions between ‘hotels’ and ‘tourism apartment complexes’ have been becoming increasingly blurred.

Growth in the STTA sector has also been fuelled by changes in the aspirations of residential owners and an increase in privately held investment funds. Prior to the 1990s, most Australians chose houses as their ‘castle.’ That trend is rapidly shifting to unit accommodation. At the same time, compulsory superannuation funds, and investors seeking independence for their retirement, have poured billions of dollars into the supply side of unit accommodation.

As a result, the economic, environmental, social and political significance of strata titled schemes is on the rise. This has culminated in important changes to the laws governing community titles schemes in many Australian states and territories.

Despite the significance and value of the strata title industry to Australian society and economy, there has been minimal prior effort directed to documenting the sector’s regulatory framework from an Australia-wide perspective. The relative paucity of information is problematic due to the daunting task of finding one’s way through a complex maze of regulation across jurisdictions. This factor is further confounded by the challenging nature of the technical language used by legislators. It was therefore viewed as important that clarity is provided to the confusion surrounding Australian strata title legal provisions. This objective has been pursued in this report’s chapter 2 where a comparison of the strata title legislative terminology and provisions applying in each Australian state and territory is provided. It is noted that there is no compelling reason why each State or Territory should continue to reform their laws without including jurisdictional uniformity as a regulatory goal. Uniformity would be desirable in terms of both nomenclature and the structure of the legislation and associated regulations.

In chapter 3, the interests of a breadth of stakeholders that comprise the STTA sector are reviewed. Three stakeholders are identified as comprising primary STTA stakeholders. These are: unit owners, resident managers and tourists. Secondary stakeholders are viewed as those parties who are not essential to a STTA complex’s survival. They can, however, cause significant damage, as they may be opposed to the programs and policies that the corporation has adopted. The following parties have been identified as STTA secondary stakeholders: real estate agents, state tourist offices, developers, financiers, body corporate committees, body corporate service providers, hotels with a strata title interest, and management rights brokers. Chapter 3 also provides insights into management issues arising in STTA complexes, describes the nature of the relationships of the STTA stakeholders to the tourism industry and develops a model of the relative advancement of the STTA sector in each of the Australian states and territories.

The range of operational arrangements applying in the STTA sector, its fragmented nature with a plethora of stakeholders involved, combined with the different legal strata title provisions applying in each state combine to provide a daunting set of impediments to research in this area. It was in light of this limited prior research concerned with Australian STTA complexes that the research behind this technical report was conducted. The report can be seen to provide an important foundation for our understanding of the STTA sector and a basis for building further research into the growing, yet challenging STTA sector.
Chapter 1

BACKGROUND TO AN INVESTIGATION OF THE STRATA TITLED TOURISM ACCOMMODATION SECTOR’S LEGAL ENVIRONMENT AND STAKEHOLDERS’ VIEWS

Setting the Context

Tourism and economic boom periods in Queensland have seen the construction of a large number of strata titled tourism accommodation (STTA) complexes in regions widely recognised for their significance as tourist destinations. Many of these developments now occupy highly desirable sites, a factor that underlines their potential to significantly affect the tone and physical appearance of a tourism destination. Today, STTA complexes represent the most important type of tourist accommodation in many coastal destinations, if not in terms of bed spaces provided, then certainly in terms of land use (e.g. space on the beachfront) and investment value. It is therefore surprising that this type of accommodation has not received more research attention as a key aspect of Australia’s tourism product, and an important vehicle by which large amounts of capital is attracted from small, medium and larger investors.

The current Australian STTA scenario raises several significant management and long-term planning issues. From a management perspective, it appears pertinent to question whether an appropriate governance structure has been established for STTA complexes. This question is being investigated in a Sustainable Tourism CRC funded research project that is currently underway. The research documented in this report can be seen to constitute a scoping study that will greatly facilitate further research enquiries such as the investigation into the relative merits of different governance structures used in the STTA sector. This aspect of the project is important as there is a dearth of prior research concerned with the STTA sector. This lack of research attention may well stem from the breadth of operational arrangements evident in the sector. The confusing operational arrangements represent a daunting impediment to research concerned with managerial and operational aspects of the STTA sector. It was in light of this limited prior research that the scoping study reported on herein has been conducted. The study’s broad objective is to provide an important foundation for our understanding of the nature of the STTA sector and to provide a basis for further research. More specifically, the following two distinct points of focus have been pursued in the study:

1. The first point of focus concerns developing an overview of the Australian legislative framework in which STTA complexes operate. Despite the significance and value of the strata title industry to Australian society and economy, it appears there has been minimal prior effort directed towards outlining the regulatory framework of the sector from an Australia-wide perspective. The relative paucity of information is problematic due to the daunting task of finding one’s way through a complex maze of regulation across jurisdictions. This factor is further confounded by the challenging nature of the technical language used by legislators. It was therefore viewed as important that clarity is provided to the confusion surrounding Australian strata title legal provisions. This objective has been pursued in the next chapter by comparing the strata title legislative terminology and provisions applying in each Australian state and territory.

2. The study’s second point of focus concerns an identification of the stakeholders involved in the STTA sector. In chapter 3 the interests of a breadth of stakeholders that comprise the STTA sector are reviewed. Three stakeholders are identified as comprising primary STTA stakeholders. These are: unit owners, resident managers and tourists. Secondary stakeholders are viewed as those parties who are not essential to a STTA complex’s survival. They can, however, cause significant damage, as they may be opposed to the programs and policies that the corporation has adopted. The following parties have been identified as STTA secondary stakeholders: real estate agents, state tourist offices, developers, financiers, body corporate committees, body corporate service providers, hotels with a strata title interest, and management rights brokers. Chapter 3 also describes the nature of the relationships of the STTA stakeholders to the tourism industry and develops a model of the relative advancement of the STTA sector in each of the Australian states and territories.

Defining the Strata titled Tourism Accommodation Complex

STTA complexes are part of what has traditionally been called the ‘holiday home’ market or ‘holiday home’ category in many tourist accommodation surveys. Based on brochures collected from relevant tourism agencies at the 2003 Internationale Tourismus Börse in Berlin, for most destinations in Europe and other parts of the World, the ‘condominium’ sector of the tourist accommodation market can be broadly defined as offering accommodation in privately owned properties that offer largely self-service facilities for short-term stays, i.e.,
for travellers whose principal place of residence is in another location. There are three primary types of holiday home accommodation:

- A single detached dwelling fully owned by one owner or single party, erected on one or sometimes several lots without any links to a community lot/title.
- Holiday villages of multiple dwelling units sharing a community title, the whole complex being privately owned by a single owner or a syndicate.
- Strata titled multiple dwelling units sharing a community title, privately owned by up to as many different owners as there are lots in the scheme.

Categories 1 and 2 are common in Europe and other parts of the developed world. Single detached dwellings form the bulk of the traditional British holiday home market in the UK, Gites in France, Fincas in Spain, summerhouses in Scandinavia, or even traditional Bessos in Japan. Most of these holiday homes are located in isolated country spots that afford a tranquil or scenic environment. Holiday villages owned by a single owner or a syndicate can be found in popular seaside locations, particularly in Northern Europe, e.g. The Netherlands, Belgium and Denmark.

The last category, i.e. larger strata titled complexes, can be subdivided into at least three further subcategories:

1. detached villas, duplexes or townhouses combined in a holiday complex;
2. low rise apartment complexes (2-3 storeys) from 4,6,8 units per building up to around 100 or more units in a large complex; and
3. high rise apartment complexes of usually 8 or more storeys and comprising many units (can be up to 500 or more units).

All three subclasses of strata titled holiday accommodation can be found in Australia, particularly in more mature destinations along the eastern seaboard, e.g. the Sunshine and Gold Coasts, Cairns and northern New South Wales. In some of these areas, STTA represents the most rapidly growing segment of the tourist accommodation market. These same three subclasses of strata titled buildings also provide accommodation for long-term tenants, often resulting in a mix of residential and tourism uses of the same complex. In theory, this tourism use versus residential use can range from a one to one hundred per cent mix in a single building. At the high and low end of this spectrum it is relatively easy to determine whether the building should be viewed as a tourism complex, and therefore whether it should be of interest to tourism or destination managers. Although there are no strict ‘tourism’ criteria for the middle part of this tourism/residential spectrum, previous research undertaken by the authors identified a number of aspects of strata titled apartment complexes that resulted in a greater focus on tourism use, i.e. the majority of apartments being used for short-term (holiday) stays only. This research was based on interviews with resident managers, property managers of major resort management companies (Quest, Outrigger) and a survey of 114 complexes between Byron Bay and Noosa. According to this research, the following aspects and components were considered typical for, or were supportive of, a greater focus on holiday lettings for a strata titled resort with 50-100 units.

**Location (in order of importance)**

- Close proximity to ocean beaches (preferably walking distance without having to cross a busy road);
- Walking distance to a tavern (which can operate as a café or small restaurant/bistro), alternatively a café, pizzeria etc. or an al fresco/bistro restaurant; and
- Walking distance to convenience store, shops.

**Typical Layout and Building Components**

**Mandatory**

- One single major and impressive entry point leading to a reception area;
- One secure (preferably undercover) car parking space per unit, if possible clearly marked or separated for permanent and short-term visitors;
- Reception area organised to accommodate tour desk (with internet access if not provided in rooms/apartments) and linked to housekeeping room and maintenance room;
- A large heated pool (shallow in some parts for smaller children) with associated hot spa section;
- Lush green landscaping providing several shaded or partly shaded areas for relaxation during the course of the day;
- One 80 m² or larger meeting/board room for informal meetings;
- Gym or workout facilities; and
- Games room.
Optional

- An additional entry/exit point for registered guests is desirable;
- Food and drink vending machines;
- Tennis court (preferably flood lit);
- Sauna; and
- Golf driving nets (particularly for international tourists from South East Asia).

Room Facilities

Mandatory

- Separate reverse cycle air conditioning (individual units per apartment that can be shut down if not in use);
- Fully equipped kitchen (stove, oven, ducted vent, microwave, dishwasher, fridge, freezer, toaster, kettle, functional crockery, cutlery and kitchen utensils);
- Laundry (washing machine, dryer and sink);
- Complete furniture (lounge suite, dining table and chairs, main bedroom: at least 1 queen size bed, additional bedrooms: 2 single beds/room, 1 radio/alarm clock/bedroom);
- Television set with cable TV (if available in district);
- Ensuite (large vanity basin, mirror, air vent) plus second shower and toilet for apartments with more than one bedroom;
- Bed linen and towels;
- Built-in wardrobes in each bedroom plus extra cupboard for cleaning equipment;
- Functional fly/mosquito screens for each window and all doors open to the outside (depending on resort location);
- Balcony with drying facilities for beach towel/bathers and balcony furniture (at least two seats or chairs, etc.) – with a view, but largely protected from the view of others;
- Separate light fittings for kitchen, dining, lounge, balcony areas, bedroom lights with dimmers; and
- Telephone (and internet access for upmarket resorts).

Optional

- Logic key (swipe card) entry with central power switch;
- Gas stove (if gas is available);
- Moving partitions;
- Video or DVD player;
- Board and card games; and
- Spa baths.

Management Aspects

- Management rights that are established to provide incentives for resident managers or managing companies to increase their income by renting out holiday apartments; and
- Appointment of resident managers with a background in tourism or marketing.

The factors listed above should be viewed as indicative and not comprehensive characteristics of a STTA complex. It should also be noted that some holiday apartments are always fully serviced (regular room cleaning and bed preparation, etc.), and others are partly serviced (room cleaning only), or services can be optional or unavailable.

The Significance of STTA Complex Size

The ability to use a strata titled complex for tourist accommodation appears to be significantly affected by the complex’s size. It is helpful to think of three distinct complex sizes: small, medium and large.

For smaller complexes of up to 25 apartments it appears that if the body corporate, the resident manager, or both decide to set up a holiday letting pool of units, then this is only viable if most apartments are in the holiday letting pool. In smaller complexes there appears to be greater potential for conflict between long-term residents and short-term (holiday) residents. In the smaller common property space associated with small complexes, the sometimes boisterous behaviour of a few tourists can have a significant impact on a large proportion of the complex’s residents. If a change to a tourism accommodation focus is sought, the complexes are typically
recently added to the tourist accommodation inventory can be classified as serviced apartments. Further, all of the 335 rooms of the 931 tourist accommodation units that are planned to be completed by late 2006 are strata titled structures. This represents a 28% increase in three years (Gibson 2005). It appears that a major factor that is driving the growth of the STTA sector concerns the installation of pools, spas, etc. For newer complexes, operating costs would prevent a small building from providing a large range of recreational and other facilities, as these have to be supported through body corporate fees collected from a relatively small number of apartment owners and would be excessive on a per capita basis. Accordingly, a competitive tourist edge for units in small complexes can only be achieved through the provision of extras attached to units rather than the common property. Such extras would have to be financed by each unit owner independently from other unit owners.

Although the range of facilities available in medium sized complexes (between 25 and 60 units) tends to be greater than in small complexes, it appears this is not mirrored by an increase in the relative number of apartments assigned to the complex’s holiday letting pool. The larger size of these complexes will provide more space to better facilitate the coexistence of short-term and long-term residential uses. For holiday lettings to be a viable proposition for the resident manager, at least 60% of the units will need to be assigned to the holiday letting pool. Overall though, the number of holiday units per complex is probably still too low to attract managers or companies that have a particular interest in seeking a specialised tourism focus.

In large complexes comprising more than 60 apartments, there appears to be a greater potential to adopt a specific tourism focus. This stems from the more extensive common facilities available to residents and the marketing economies that can be achieved by the resident manager. Data collected in this investigation suggest that these larger complexes are likely to attract resident managers that have a background in tourism and see holiday letting as the principal type of building use. Unfortunately though, a number of resident managers for complexes in this category refused to comment on whether holiday bookings provided a major source of their income.

Overview of the Most Pertinent Literature

As is evident from the review just provided, one of the major challenges confronted when attempting to conceive of STTA complexes revolves around the fact that they can cover a wide range of accommodation types and mixed uses. Also, as will be noted in chapter 3, the sector is highly fragmented in terms of the number of distinct players involved. It appears that in combination, these factors have resulted in the STTA sector being largely ignored, overlooked or accidentally excluded in the research literature. This signifies that any review of the literature most pertinent to the STTA sector is bound to be brief.

In Australia, in the recent past, the STTA sector has been securing a greater proportion of the total tourism accommodation market. Since 2001, hotel and motel room numbers have remained relatively static at approximately 79,000 and 85,000, respectively, since 2001. The number of serviced apartments has increased dramatically from 32,000 in 2001 to 41,000 units in 2004. This represents a 28% increase in three years (Gibson 2005). This trend is particularly evident in south east Queensland. On the Gold Coast, all of the 335 rooms recently added to the tourist accommodation inventory can be classified as serviced apartments. Further, all of the 931 tourist accommodation units that are planned to be completed by late 2006 are strata titled structures (Jones Lang LaSalle 2005). It appears that a major factor that is driving the growth of the STTA sector concerns dissipating the risk associated with owning a large complex. By dividing a building or complex into individual titles and securing early returns by selling titled units ‘off the plan’, developers can spread the risk of complex ownership and make it much easier to secure loans from banks (Gustafson 2000).

The first and only academic paper concerned with the STTA sector that was in print at the time this report was drafted is Guilding, Ardill, Fredline and Warnken’s (2005) analysis of the agency relationships existing between resident managers, resident unit owners and investor unit owners. In this study it was noted that in those STTA complexes where an individual purchases the rights to manage the property, some highly idiosyncratic agency relationships arise as the principals (unit owners) who manage the agent (resident manager) are represented by two distinct groups, i.e. resident owners and investor owners. The interests of the these two groups can diverge significantly, for example the investor owner is interested in securing a high occupancy of tourists staying in units, while a resident owner may well be seeking reduced tourist occupancy levels.

Cassidy and Guilding (forthcoming) conducted a study concerned with appraising the way in which STTA resident managers set room letting prices for short-term stay tourists. It was found that despite a large literature providing suggested techniques for hotel room price setting, the price setting strategies used by resident managers appeared to be intuitive, unsophisticated and applied in an ad hoc manner. It was also noted that the sector is characterised by significant price discounting and that the approach to price setting is heavily influenced by a complex’s location. A lack of accountability to investor owners with respect to pricing policy was also observed.
Chapter 2

INVESTIGATING THE FRAMEWORK OF AUSTRALIAN STRATA TITLED LEGISLATION

Introduction

This chapter provides an overview of the various strata title legislative frameworks in the eight Australian States and Territories. The chapter commences by providing a brief description of the development of the law of strata title in Australia and explaining its diverse nomenclature. This is followed by a jurisdictional analysis where each State or Territory is benchmarked against Queensland and, where possible it flags important similarities and differences between jurisdictions. The areas of emphasis for the jurisdictional analysis include, but are not confined to:

- The legislative framework including plans for reform;
- Governance arrangements distributing power and responsibility;
- Establishment / creation of schemes; and
- Dispute resolution.

Historical Diversity

The law of strata title in Australia has developed as an ad hoc solution to emerging trends in urbanisation and an accompanying need to regulate tight clusters of independent owners (Christudason 1996). While these challenges were initially addressed through existing legal frameworks designed for other purposes such as leasehold schemes, tenancy in common arrangements and home unit corporations, none of these measures proved entirely effective or popular amongst stakeholders. Hence the inception of strata title legislation in Australia, beginning with the Transfer of Land (Stratum Estates) Act 1960 (Vic).

Strata subdivision can occur horizontally and/or vertically with both land and buildings capable of forming a strata title. A strata title represents a title to a unit that has been created on a plan of strata subdivision. Strata subdivision means a 'subdivision of land and / or buildings into units, which can be owned separately, and common property, which is owned communally.' (Ball 1984; 924, 925). Therefore, a strata title scheme implicitly involves a combination of both individual and collective ownership of property. The units in a scheme are capable of being owned independently of each other, whilst the residue of the estate is owned in common by all unit proprietors.

Queensland is widely regarded as a national leader in the establishment of effective yet flexible strata industry regulation. For this reason, Queensland’s legislative framework has been used as the benchmark in this cross-state strata title legislative analysis.

The diversity of community schemes is echoed in the diversity of legislative schemes that exist across Australia. One of the fundamental differences across jurisdictions is the terminology and legal jargon used to describe key features. This complexity poses practical problems for stakeholders in general and for practitioners required to operate across state borders. Table 1 provides an overview of the key terms used in each jurisdiction. Strata title legislative issues for each Australian state will now be presented in the same sequence that the states and territories are presented in Table 1.

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Table 1: Strata title legislative nomenclature by jurisdiction

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<tbody>
<tr>
<td>QLD</td>
<td>Community Title Scheme</td>
<td>Body Corporate</td>
<td>Committee</td>
<td>By-laws</td>
</tr>
<tr>
<td>NSW</td>
<td>Strata Scheme</td>
<td>Owners Corporation</td>
<td>Executive Committee</td>
<td>By-laws</td>
</tr>
<tr>
<td>VIC</td>
<td>Subdivision, Strata Subdivision</td>
<td>Body Corporate</td>
<td>Committee</td>
<td>By-laws</td>
</tr>
<tr>
<td>SA</td>
<td>Strata Scheme</td>
<td>Strata Corporation</td>
<td>Management Committee</td>
<td>By-laws (CTA)(^5) or articles (STA)(^5)</td>
</tr>
<tr>
<td>WA</td>
<td>Strata Scheme</td>
<td>Strata Company</td>
<td>Strata Council</td>
<td>By-laws</td>
</tr>
<tr>
<td>TAS</td>
<td>Strata Scheme</td>
<td>Body Corporate</td>
<td>Committee of Management</td>
<td>By-laws</td>
</tr>
<tr>
<td>NT</td>
<td>Unit Title</td>
<td>Management Corporation</td>
<td>Committee</td>
<td>By-laws</td>
</tr>
<tr>
<td>ACT</td>
<td>Unit Title or Community Title</td>
<td>Owners Corporation (UTA)(^6) or Body Corporate (CTA)(^7)</td>
<td>Executive Committee of Management (CTA)</td>
<td>Articles (UTA) or by-laws (CTA)</td>
</tr>
</tbody>
</table>

Queensland

Queensland has adopted an innovative and unique legislative framework comprising of one ‘umbrella act, supported by separate regulatory modules that are tailor-made for specific types of development.’\(^8\) The principle act is called the *Body Corporate and Community Management Act 1997* (Qld)\(^9\) (hereinafter the ‘BCCM’) and is supplemented by the *Body Corporate and Community Management (Standard Module) Regulation 1997* (Qld) (hereinafter the ‘Standard Module’), the *Body Corporate and Community Management (Accommodation Module) Regulation 1997* (Qld) (hereinafter the ‘Accommodation Module’), the *Body Corporate and Community Management (Commercial Module) Regulation 1997* (Qld) (hereinafter the ‘Commercial Module’), and the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* (Qld) (hereinafter the ‘Small Schemes Module’). The BCCM provides a general legal framework for community title and acts to empower the Regulation Modules which contain the specific policies, procedures and rules for a community title scheme.\(^10\)

This regulatory structure is based on the fundamental recognition that different community title schemes have different requirements, problems and demands and that no single piece of legislation is apt to accommodate such diversity.\(^11\) Consequently, each Regulation Module contains detailed and individualised provisions on the rules, policies and procedures for corporate governance, which includes, amongst other things:

- the constitution of the Body Corporate Committee;
- the scheduling, conduct and reporting of Committee meetings; and
- the regulatory requirements for financial and property management.

The specific content of each Regulation Module is guided by the type of Community Titles Scheme it is intended to govern. For instance, the Standard Module is a generic module designed for residential schemes consisting mostly of owner / occupiers.\(^12\) By contrast, the Accommodation Module is appropriate for schemes consisting of residential complexes, serviced apartments, hotels or resorts.\(^13\) The Commercial Module is used where the lots are mainly for business purposes.\(^14\) While the Small Schemes Module is the least regulated,\(^15\) and is restricted to buildings where there are no more than six lots included in the scheme and there is no letting agent.

One of the objectives of the BCCM is to ‘promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes.’\(^16\) The BCCM attempts to achieve this by providing for a management structure that is focused on the requirements of the community title scheme. At the primary level, internal governance occurs through the body corporate, constituted by the owners of all lots included in the scheme.\(^17\) The body corporate is established automatically upon registration of a plan of subdivision and the recording by the registrar of the schemes Community Management Statement (hereinafter the ‘CMS’).\(^18\) Section 94 of the BCCM imposes on the body corporate three principal functions, including administering the ‘common property and body corporate assets for the benefit of the owners of the lots’\(^19\), enforcing the CMS and by-laws; and carrying out any other functions bestowed on it by the BCCM or CMS.\(^20\) The body corporate also has an obligation to maintain the scheme’s records and ensure that the records are accessible.\(^21\)
In addition to the body corporate, there may also exist a ‘committee’, often constituted by a chairperson, secretary, treasurer and ordinary members.

Part 3 of each Regulation Module prescribes in detail the required composition of a committee, how the committee members are to be selected and how the committee is to conduct its meetings. Provided these provisions are adhered to, section 100 of the BCCM grants the committee authority to make decisions on behalf of the body corporate.

The final aspect of community title governance surrounds the engagement or authorisation of a body corporate manager, service contractor and/or letting agent. Although the body corporate is expressly prohibited from delegating its powers, it is authorised to appoint a body corporate manager to deliver administrative services or exercise the authority of an executive member of the committee. Under section 37F of the Standard Module, a body corporate manager is required to draft quarterly reports detailing maintenance plans, balance and reconciliation statements for the schemes administrative and sinking funds, the body corporate’s expenses over the preceding three months and a list of decisions made by the manager under the engagement. The actions of a body corporate manager are governed by the code of conduct contained in Schedule 2 of the BCCM, which highlights the somewhat fiduciary nature of their role.

The Schedule 2 code of conduct also extends to cover service contractors, defined as persons appointed by the body corporate for a term of at least 12 months to carry out non-administrative functions such as caretaking or pool cleaning. On the other hand, a letting agent is governed by a separate code of conduct contained in Schedule 3 of the BCCM. Essentially, a letting agent holds the management rights for a scheme, acting as the agent for the owner of a lot in securing leases or short-term occupancies. If the body corporate identifies that a letting agent is breaching the code of conduct they can issue the offending party a code contravention notice. If the letting agent continues to breach the code, the body corporate may ultimately require that the agent transfer their management rights to another party. The benefit of the code contravention notices and forced transfers is that unit owners are no longer forced to permanently endure the incompetencies or unacceptable practices of letting agents (Ardill, Everton-Moore, Fredline, Guilding & Warnken 2004).

Another express aim of the BCCM is ‘to provide an efficient and effective dispute resolution process.’ In an effort to fulfill this objective, Chapter 6 of the BCCM establishes the office of Commissioner of Body Corporate Management (hereinafter the Commissioner). The Commissioner is responsible for providing education, disseminating information and managing the dispute resolution service. An essential part of the Commissioner’s role is to assess applications with a view to rejecting or dismissing, or alternatively referring the application onto one of the department’s dispute resolution services. In performing this duty, the Commissioner may make an official dispute resolution recommendation for the applicant to attend one of the department’s dispute resolution services, which include the dispute resolution centre mediation; specialist mediation; specialist conciliation; department adjudication; and specialist adjudication.

Along with the Commissioner, adjudicators are appointed under the BCCM and are empowered to make orders to resolve disputes. The type of orders an adjudicator is permitted to make are extensively outlined in Schedule 5 of the BCCM. In 2003 many of the disputes brought before an adjudicator centered on the conduct of meetings and improper nominations or election irregularities relating to the body corporate committee. Section 271 of the BCCM further grants adjudicators’ power to investigate an application through a variety of means including interviewing relevant parties or inspecting records and property. An adjudicator’s order can be enforced through the Magistrates Court or if unsatisfactory appealed to the District Court on a question of law.

The flexibility of the BCCM has been recognised through a series of reviews carried out since the Act’s inception in 1997. The first such revision was completed in 2002 with another revision occurring in late 2003. The Department of Tourism, Fair Trading and Wine Industry Development (hereinafter ‘the Department’) is currently in the midst of another review after releasing a Discussion Paper on 10 July 2004 which was primarily aimed to ‘encourage continued growth in the BCCM industry over the next decade through a forward looking policy agenda.’ In order to achieve this, the Discussion Paper calls for comment on a range of issues, including:

- The reader’s experience with departmental and specialist adjudication, mediation and conciliation;
- How best to encourage negotiated settlements prior to accessing dispute resolution services;
- The adequacy of the compliance and enforcement provisions of the current legislative scheme;
- The problems associated with body corporate managers, restricted letting agents, and service contractors and the satisfactoriness of the current codes of conduct governing such persons;
- The interaction between the BCCM and the tourism industry; and
- How to address the problem of ageing buildings.

The Department received 177 submissions in response to the Discussion Paper, raising a wide range of issues. At the time of writing this technical report, policy options and recommendations were being considered by Cabinet.
New South Wales

In New South Wales, the law of strata or community title is divided between three legislative frameworks. Firstly, the initial subdivision and subsequent sale of land is administered by either the Strata Schemes (Freehold Development) Act 1973 (NSW) or the Strata Schemes (Leasehold Development) Act 1986 (NSW). These two Acts provide for alternative systems of subdivision. The distinguishing feature is that under the Strata Schemes (Leasehold Development) Act 1986, the original owner is able to retain a fee simple interest in the entire estate, with subsequent purchasers obtaining only a leasehold interest in their respective lot. Under section 39 of the Strata Schemes (Leasehold Development) Act 1986 a leasehold strata scheme may be converted into a freehold strata scheme following a special resolution to that effect. These statutes are also supplemented by the Strata Schemes (Freehold Development) Regulation 2002 (NSW) and the Strata Schemes (Leasehold Development) Regulation 2002 (NSW). Both sets of Regulations detail the procedural requirements that are to be followed when submitting a plan. For example, the Regulations clearly delineate what is to be included on a floor plan or a strata plan of subdivision and set out the procedural requirements for a staged development.52 In addition, Schedule 6 of both the Strata Schemes (Freehold Development) Regulation 2002 (NSW) and the Strata Schemes (Leasehold Development) Regulation 2002 (NSW) contains a directory of fees.

Secondly, management of schemes and the resolution of disputes are regulated by the Strata Schemes Management Act 1996 (NSW) and the Strata Schemes Management Regulation 1997 (NSW).53 The Strata Schemes Management Act 1996 (NSW) (hereinafter the ‘SSMA’) was aimed at not only professionals, but also the many people who run their own buildings.54 This design feature can be seen in the SSMA’s ‘use of plain language and its logical and sequential order. The Strata Schemes Management Regulation 1997 (NSW) (hereinafter the ‘SSMReg’) acts as an addendum to the SSMA and contains information such as mandatory retention periods for scheme documents, details on the procedure for nomination and election of an executive committee and a schedule of fees payable to the Registrar.55 The SSMReg also outlines the model by-laws, which are tailored for a particular type of scheme. Thus Schedule 1 of the SSMReg contains a separate set of by laws for residential, retirement village, industrial, hotel/resort, commercial/retail and mixed use schemes.

Thirdly, the actions of strata or community managing agents and onsite residential property managers are controlled by the Property, Stock and Business Agents Act 2002 (NSW). Strata law has a long history in NSW, however its current shape is largely the result of a major overhaul completed in 1997, which marked the introduction of the SSMA.56 This Act was introduced to ‘revolutionise the way strata schemes in New South Wales are administered.’57 It aimed to do this by modernizing and streamlining the existing strata laws, while achieving ‘a balance between [owners] corporations’58 having freedom to manage without undue interference and individual residents having their rights maintained.’59 Since its introduction, the SSMA has undergone a series of reviews, which have resulted in a wide range of reforms.60 Further reviews are planned, with the NSW Government releasing an additional discussion paper in late 2004 to assess the viability of the latest reforms and invite comment on pressing new topics.61

In its current form, the SSMA limits the management power of an original owner (which is usually the developer). For instance, whilst the original owner is often responsible for nominating an appropriate set of by-laws for the scheme,62 they are not allowed to make, amend or repeal a by-law in such a way that would advantage or disadvantage particular units.63 In addition, if the original owner retains 50 per cent or more of the unit entitlement, their voting rights are curtailed, especially in relation to the election of an executive committee.64 The result of such limitations is that the management of the scheme is principally vested in the owners’ corporation.65 Some of the owners corporations’ key management functions include maintaining and repairing common property, managing the scheme’s finances, sourcing insurance for the scheme and keeping accounts and records.66 The body corporate exercises its authority through the casting of votes at general meetings. Voting entitlements are shared between lot owners and those persons identified on the strata roll as having a priority vote.67 However, as in Queensland, the owners’ corporation is permitted to appoint others to assist in the administration of the scheme. For instance, the owners’ corporation may delegate its powers to the executive committee and/or a strata managing agent.68 While it is compulsory for the owners’ corporation to appoint an executive committee, they can reserve decisions on certain matters for the owners’ corporation.69 Nevertheless, decisions made by a properly appointed and duly constituted executive committee are taken to be decisions of the owners’ corporation.70 Similarly, the owners’ corporation may delegate its powers and functions and the powers of the executive committee to a strata managing agent.71 The body corporate may further appoint a caretaker (who is often referred to as a ‘building manager’ who may also be an on-site residential property manager) to fulfill the limited role of managing, and controlling the use of and/or maintaining the common property.72

Two of the distinguishing features of the NSW system are its licensing requirements and dispute resolution process. Under the Property, Stock and Business Agents Act 2002 (NSW), community managing agents and residential property managers must be licensed73 and carry a certificate of registration.74 In addition, agents must adhere to a long list of both general and specific rules of conduct contained within the Property, Stock and Business Agents Regulation 2003 (NSW).75 These rules emphasise the fiduciary nature of an agent’s role in the
scheme and involve such things as exercising reasonable care, skill and diligence; acting in the best interests of the scheme; and avoiding conflicts of interest. The NSW dispute resolution process has two distinctive features. Firstly, if an owner or occupier is in contravention of a specified by-law, section 45 of the SSMA empowers the owners’ corporation to serve a notice on the offending party requiring them to comply with that by-law. If the individual fails to comply with the notice, it can then be enforced through the NSW Consumer, Trader and Tenancy Tribunal, and the party in breach may face a pecuniary penalty. Secondly, parties to a dispute are required to attempt mediation before making an application for adjudication. This system has reportedly had success, with around 73 per cent of those who attend mediation reaching an acceptable outcome. However, this figure does not take account of those who simply refuse to attend a mediation session.

Victoria

Body corporate law in Victoria is currently contained within the Subdivision Act 1988 (Vic) (hereinafter ‘Subdivision Act’) and the Subdivision (Body Corporate) Regulations 2001 (Vic) (hereinafter ‘Subdivision Regulations’). The Subdivision Act expressly aims to set out procedures for the subdivision and consolidation of land and buildings, regulate the management of common property, and govern the operation of bodies corporate. However, the large majority of provisions relating to the functions, powers, duties and general operation of bodies corporate are contained within the Subdivision Regulations. Consequently, the major focus of the Subdivision Act is regulating the certification and registration of plans and the preliminary establishment of bodies corporate.

Pursuant to section 27 of the Subdivision Act, any plan of subdivision in Victoria may provide for the creation of one or more bodies corporate. However, if the plan includes common property, the establishment of a body corporate is mandatory. A body corporate is deemed to be incorporated upon registration of a plan, with all lot owners consequently becoming the first members of the body corporate. The major functions of the body corporate are to repair and maintain the scheme’s property, manage and administer the common property, insure the scheme, and make certain that the Subdivision Regulations and the rules of the body corporate are complied with. In order to carry out these functions, the body corporate is given a wide range of powers, including the setting and levying of fees, dealing with monies and accounts, and appointing or employing persons to assist in the performance of its functions.

The body corporate may share responsibility for the administration of a scheme with a committee and / or a manager. A committee must be elected if the body corporate is constituted of 13 or more members. In addition, a manager, who does not need be a member of the body corporate, may be appointed pursuant to rule 302 of the Subdivision Regulations. Although the Subdivision Regulations allows for the appointment of a committee and manager, it is silent as to their functions, rights or duties. Further, as the law currently stands in Victoria, managers are not subject to a licensing regime or a code of conduct. This means that lot owners are afforded very little consumer protection against unscrupulous managers.

Under the current dispute resolution scheme, persons with a body corporate dispute may apply to the Magistrates’ Court for a declaration or order determining the issue. The Court may make a number of different orders, including orders requiring the body corporate to perform or refrain from an act. Applications may also be made to the Victorian Civil and Administrative Tribunal (hereinafter ‘VCAT’) on a limited range of issues. For example, an application may be made for the VCAT to review a decision of a Council to refuse the certification of a plan. At a more general level, information or assistance in the resolution of a dispute can be obtained from Consumer Affairs Victoria, the Dispute Settlement Centre of Victoria or a community legal service.

The Department of Consumer Affairs has been conducting an extensive review of Victoria’s body corporate law since 2003. The review is a response to the enormous growth of medium density housing in the Victorian region since the inception of the Subdivision Act in 1988 and aims to evaluate the effectiveness of the current legislative scheme. The terms of the review initially focused on the dispute resolution provisions of the Subdivision Act and the collection of fees, however the breadth of the evaluation was quickly extended given the quantity and variety of responses to the first Issue Paper released on 21 October, 2003. Of particular concern to stakeholders who responded was the complexity of the body corporate regulatory framework, the non-accountability of body corporate managers and committees, the lack of information available to lot owners concerning their rights and responsibilities, and difficulty of gaining access to important body corporate documents.

Nonetheless, the minimisation of disputes, appropriate dispute resolution mechanisms and the prudent management of body corporate funds have remained the most pressing topics of the review. Consumer Affairs Victoria released the ‘Future Directions Paper, Bodies Corporate’ in March 2004 which outlined a number of proposals for a new prospective regulatory scheme. The proposals include such things as:

- Increasing the provision of information in an effort to inform consumers of their rights and obligations and thus reduce the scope for disputation;
• Introducing a four-tiered dispute resolution process, involving internal attempts at resolving the dispute, resolution with the assistance of an expert body corporate conciliator, establishment of a body corporate person or body to resolve day-to-day disputes, and the establishment of an expert Court or Tribunal to resolve more complex issues;
• Allowing, or perhaps requiring, bodies corporate to establish an administration fund (to cover recurrent expenses), a contingency fund (to cover extraordinary expenses), and a maintenance fund (to cover future maintenance of the property); and
• Requiring body corporate managers to be licensed or self-regulated by the industry through the establishment and enforcement of certain standards of performance.

At the time of writing this review was still underway.

South Australia

Strata title law in South Australia (hereinafter ‘SA’) can be traced back to Part 19b of the Real Property Act 1967 (SA), which remained in operation until replaced by the Strata titles Act 1988 (SA) (hereinafter ‘STA (SA)’). The STA (SA) is divided into three main sections covering the division of land by strata plan, scheme management and dispute resolution. The STA (SA) is supplemented by the Strata titles Regulations 2003 (SA) and the Strata titles (Fees) Regulations 2001 (SA). The Strata titles Regulations 2003 (SA) operate to delineate several sections of the STA (SA), particularly in relation to the procedural requirements surrounding the calculation of unit entitlements, the operation of the strata corporation, and the maintenance of the trust account by an agent. Further, Schedule One through to Schedule Four of the Strata titles Regulations 2003 (SA) contains the templates for certificates and notices which must be issued when lodging / amending a plan or amending the scheme’s articles.

The STA (SA) also currently operates in conjunction with the Community Titles Act 1996 (SA) (hereinafter ‘CTA (SA)’). The South Australian Parliament introduced the concept of community titles in 1995 in an effort to ‘fill a vacuum between conventional subdivision and strata subdivision’. The CTA (SA) aimed to achieve this by extending the notion of strata title to include subdivision of vacant blocks of land, staged developments and mixed developments consisting of parks, resorts, rural cooperative developments, industrial developments, etc. Initially the STA (SA) and the CTA (SA) were to be integrated into the one Act, however public opinion at the time of its introduction demanded that the Act’s remain independent. To overcome some of the difficulties in having two distinct yet similar Acts, no new applications have been accepted under the STA (SA) since 1st January 2002. The CTA (SA) is accompanied by the Community Titles Regulations 1996 (SA), which provides more detail on the requirements relating to plans, administration of the scheme and agent’s trust accounts.

In a strata title scheme under the STA (SA), the chief management body is the strata corporation. The strata corporation’s functions are outlined in section 25(1) of the STA (SA) and include administering and maintaining the scheme’s property and enforcing the corporation’s articles. The general powers of the strata corporation are more extensively outlined in sections 26 and 27 of the STA (SA) and largely reflect the powers afforded to a natural person, with the caveat that these powers be exercised for the purpose of the corporation or for the benefit of the strata community. The strata corporation is also endowed with special powers to maintain the integrity of the strata scheme. In particular, the strata corporation has the power to enforce a unit owner’s duties of maintenance and repairs by issuing the owner with a notice and if necessary entering the property to carry out the repairs. The strata corporation also has a duty to insure the scheme’s buildings and insure against possible tortious liability. Under section 35 of the STA (SA), the strata corporation is entitled to appoint a management committee to carry out most of its duties, functions and powers. The strata corporation is also permitted to appoint or engage a ‘person to assist its management committee in the performance of the committee’s functions.’ The STA (SA) does not offer any further prescription or regulation on the person(s) engaged to perform this function.

One of the major differences between the STA (SA) and the CTA (SA) centres on the development and management of the scheme. In comparison to strata title schemes, management in a community title scheme under the CTA (SA) can often be complicated and is regularly organised through a multi-tiered structure. Layered management arrangements are required to accommodate the multiple division of land provided for in the CTA (SA). That is, pursuant to section 7 of the CTA (SA), one parcel of land may be divided into primary, secondary and tertiary lots. A primary community plan consists of two or more community lots and common property, which can be further divided by a secondary plan into secondary lots. Similarly, a secondary lot can be divided into two or more tertiary lots by a tertiary plan of subdivision.

The decision as to which development and management structure is best suited to the schemes is vested in the developer. While most schemes will not go beyond primary subdivision, a three tiered division of land and management is often appropriate for large resorts or a mixed use development. The level of subdivision carried out on the scheme is largely a development concern; however consumers are affected to the extent that the position of an owner’s lot in a scheme determines his / her voting entitlements. More specifically, the owner of a lot in a secondary or tertiary corporation is not necessarily entitled to a vote in a primary corporation matter.
This can often have significant implications, particularly in multi-use buildings consisting of both commercial and residential lots. For instance, under this system a developer can effectively partition residential interests into secondary or tertiary corporations with the result that the commercial interests vested in the primary corporation can never be outweighed by the residential interests.\textsuperscript{119}

Upon registration of a community plan, the community corporation comes into operation.\textsuperscript{120} Similar to a strata corporation, a community corporation largely functions to administer, manage, maintain and control the common property and enforce the scheme’s by-laws.\textsuperscript{121} Under section 76 of the CTA (SA), a community corporation must, by ordinary resolution, appoint a presiding officer, treasurer and secretary.\textsuperscript{122} The community corporation may also establish a management committee to carry out its functions and perform its duties.\textsuperscript{123} The community corporation is also subject to a range of provisions governing the financial management of the scheme.\textsuperscript{124} Analogous to the more recent financial obligations introduced in Queensland, a community corporation in SA must prepare and present a statement of expenditure at an annual general meeting, outlining the estimated recurrent and non-recurrent expenses the corporation may have to meet.\textsuperscript{125} Community corporations are also required to establish both an administrative and sinking fund.\textsuperscript{126}

The STA (SA) and the CTA (SA) contain somewhat parallel provisions concerning the resolution of disputes.\textsuperscript{127} Both Acts provide that a corporation or owner of a lot may make an application to the Magistrates Court, or the District Court with leave, to resolve a dispute arising under the legislation or the scheme’s by-laws.\textsuperscript{128} The courts’ powers in relation to the application are outlined in the relevant Act and are guided by an obligation to act according to equity, good conscience and the substantial merits of the case.\textsuperscript{129} The courts’ powers include such things as an authority to attempt to achieve settlement, or order that a party take a specified action or refrain from a specified action.\textsuperscript{130}

Western Australia

The history of strata titles legislation in Western Australia (hereinafter ‘WA’) begins with the Strata titles Act 1966 (WA), which was introduced to allow proprietors to obtain title to a specific part of a building, a possibility previously unavailable in WA.\textsuperscript{131} Following legislative review and a report by the Law Reform Commission of Western Australia identifying some major deficiencies in the exiting legislation, the Strata titles Act 1985 (WA) (hereinafter ‘STA (WA)’) was introduced.\textsuperscript{132} Since its inception, the STA (WA) has been continually evaluated, with fairly extensive amendments effected throughout 1995 and 1996.\textsuperscript{133}

The STA (WA) operates in conjunction with the Strata titles (Resolution of Disputes) Regulations 1985 (WA) (hereinafter ‘Resolution of Disputes Regulations’) and the Strata titles General Regulations 1996 (WA) (hereinafter ‘General Regulations’). The Resolution of Disputes Regulations outline the fees payable to the Commissioner of Consumer Affairs upon making an application for an order or an appeal, or making an inquiry to a Strata titles Referee. As the title suggests, the General Regulations are more extensive, containing detailed provisions on a range of issues such as planning, easements, common property, strata companies, and management statements.

The STA (WA) accommodates two types of scheme: strata schemes and survey-strata schemes.\textsuperscript{134} The defining feature of the two types of scheme is the manner in which lot boundaries are determined. A strata scheme must contain a building and the boundaries of the lots must be defined by reference to that building.\textsuperscript{135} In contrast, a strata-survey plan does not show any buildings (even if they are present) and lot boundaries are determined by a licensed surveyor, much like a regular plan.\textsuperscript{136} Contrary to the requirement in Queensland that a community title scheme contain common property, a strata-survey scheme does not have to include any lots of common property, although it may.\textsuperscript{137} Apart from these obvious surveying differences, much of the STA (WA) applies equally to both strata schemes and survey-strata schemes.

As in other states, a strata company in WA is established upon registration of a scheme’s plan.\textsuperscript{138} Section 35 of the STA (WA) prescribes the strata company’s duties, including enforcing by-laws, managing the scheme’s property, recording minutes of meetings, keeping books of account, managing important scheme documentation, and insuring the scheme.\textsuperscript{139} The strata company is also required to establish a fund to cover administrative expenses and levy proprietors accordingly.\textsuperscript{140} While it is not mandatory, the strata corporation is also entitled to establish ‘a reserve fund for the purpose of accumulating funds to meet contingent expenses.’\textsuperscript{141} In addition to imposing duties on the strata company, the STA (WA) also instills in it a range of powers.\textsuperscript{142} For example, the strata company has the power to carry out work required by a public authority, local government or the scheme’s by-laws and an associated power to enter the lot to perform this work.\textsuperscript{143}

Pursuant to section 44 of the STA (WA), the functions of a strata company may be performed by the council of the strata company, which is governed by the legislation and the scheme’s by-laws. The council largely assumes the role of the strata company; however it is restricted in its power of expenditure to an amount fixed according to the number of lots in the scheme.\textsuperscript{144} The strata company may further divide management of a scheme by engaging a professional strata manager to perform its functions. However, it must be noted that all the management provisions in the STA (WA) relate to the internal management of a scheme by the proprietors and not to external strata managers. Thus, ultimate responsibility for complying with the STA (WA) rests with each
individual owner, despite the engagement of a professional strata manager. Significantly, section 39A of the STA (WA) provides relief for owners who find themselves encumbered by contracts instigated by the original developer and the contract has been operative for five years or more. Strata / survey-strata schemes are also governed through the by-laws contained in Schedules 1 and 2 of the STA (WA).

There are more than 120 strata managers in WA, managing 4,000 – 5,000 schemes. While some of these managers are licensed Real Estate Agents, there is no requirement per se that strata managers be licensed or hold any specific qualifications. The absence of licensing requirements was one of the major topics of concern in the ‘Inquiry into the Western Australian Strata Management Industry’ performed by the Economics and Industry Standing Committee (hereinafter ‘the Committee’) in 2002 and 2003. The Committee traversed a range of issues and identified significant risk factors for lot owners, the public and the industry as a whole. The Committee’s findings and recommendations were outlined in a Report released in 2003 and included such things as:

- Finding 7 – ‘The roles and responsibilities of strata managers are not defined, and strata managers are not licensed or regulated, under the Western Australian Strata titles Act 1985’;
- Finding 9 – ‘There is a potential risk for the misuse and/or mismanagement of strata company funds in the absence of regulation of the handling, recording and protection of funds’;
- Recommendation 12 – ‘The Strata titles Act 1985 includes a definition of a strata manager, and provides for the establishment of key minimum competencies of a strata manager’;
- Recommendation 13 – ‘Strata companies in Category 2 and Category 3 schemes be required to appoint a licensed strata manager’;
- Recommendation 14 – ‘The proposed licensing body, in conjunction with other regulatory agencies and industry peak organisations, develop a system of training and accreditation for strata managers.’

In response, the WA Government released a paper calling for further industry and public consultation before the implementation of any of the Committee’s recommendations. The Government seemed particularly concerned with the potential financial and administrative burden associated with implementing a compulsory licensing scheme.

WA contains considerably more consumer protection provisions within its strata title legislation compared to other States. For instance sections 69 and 69A require that every purchaser be given information concerning the vendor’s details, the schemes plan and by-laws, and the unit entitlement of every lot within the scheme. If lots are being sold off the plan, the original proprietor has additional obligations. For example, the original proprietor must inform a purchaser of any contracts of service already entered into, as well as the particulars of any direct or indirect pecuniary interest that the vendor has in that agreement. Failure by the vendor to provide such information gives the purchaser a legislative right to avoid the contract of sale.

Strata title disputes in WA are governed principally by Part VI of the STA (WA), in connection with the State Administrative Tribunal Act 2004 (WA). The State Administrative Tribunal (hereinafter ‘the SAA’) is given extensive powers under the STA (WA) and is entitled to make a broad range of orders covering all aspects of scheme management. However, the SAA does not have jurisdiction in cases where title to land is in question. An order made by the SAA can be appealed to the Supreme Court on a question of law.

Tasmania

Tasmania has witnessed substantial developments in the law of strata titles in the past 10 years. The most significant change to occur has been the introduction of the Strata titles Act 1998 (Tas) (hereinafter the ‘STA (Tas)’), which replaced and updated the existing and somewhat archaic strata title legislation. The STA (Tas) is the principal piece of legislation in Tasmania and is accompanied by the Strata titles (Fees) Regulation 1998 (Tas) and the Strata titles (Insurance) Regulations 1999 (Tas). The Strata titles (Fees) Regulation 1998 (Tas) outlines a schedule of fees payable when lodging, amending, consolidating or cancelling a strata plan. The Strata titles (Insurance) Regulations 1999 (Tas) works in conjunction with section 101(1) of the STA (Tas) to set the minimum public risk insurance that the body corporate must maintain (currently set at $5,000,000).

The STA (Tas) was thought to be an innovative piece of legislation in comparison to its predecessor, with many of the more progressive provisions aimed at accommodating the increasingly elaborate strata schemes that exist in contemporary Tasmania. For instance, under the STA (Tas), units may be assigned a special unit entitlement that operates to fix ‘the proportionate contribution to be made by the owner of the lot to the body corporate’. Therefore, an owner’s financial liability for the maintenance of common property may be proportionally calculated to reflect their use of that property. For example, the owner of a first floor unit, whose only access is via the stairs, will not be required to contribute as much to the body corporate for the maintenance of an elevator to which only penthouse owners have access.

Three types of schemes exist in Tasmania: strata schemes, staged development schemes and community development schemes. A strata scheme is a generic development similar to those found in other states. It is defined under the STA (Tas) as a ‘complex of lots and common property (together with the system of administration and management) created on the registration of a strata plan.’ The STA (Tas) further defines a staged development scheme as a ‘scheme for the development of land by registration of a series of strata claims or a complex of lots and common property, created as a result of the registration of a series of strata claims or a complex of lots and common property.’
The incremental nature of the staged development scheme requires that the developer be given more extensive rights in relation to accessing and controlling the scheme as compared to the other types of schemes. A community development scheme on the other hand is more multifaceted and may contain a combination of conventional housing, retirement accommodation, shopping amenities and recreational facilities. The notion of a community development scheme therefore 'enables a number of independent developments to be brought together to function as a single entity to meet particular community needs.' Under section 51 of the STA (Tas), a community development scheme must include two or more: strata schemes, approved subdivisions, some other form of land division, retirement village or marina or water-based development.

The STA (Tas) instils overall control and management of a scheme in the body corporate. Section 81 of the STA (Tas) describes the functions of the body corporate, including: enforcing the scheme’s by-laws; controlling, managing and maintaining the common property; and maintaining appropriate levels of insurance. The body corporate is entitled to establish and operate a business on the common property or a lot, provided the business is conducted legally, is related to the use and enjoyment of the scheme, is not conducted outside the site and it does not preclude owners or occupiers from the reasonable use and enjoyment of the site.

A body corporate is also permitted to divide into multiple bodies corporate on the proviso that 'constituent documents' are lodged with the Recorder of Titles (hereinafter the Recorder). The constituent documents must define the functions and responsibilities of each body corporate, provide for the resolution of disputes between bodies corporate and ensure that each lot is only subject to the powers of one body corporate. In schemes with multiple bodies corporate, membership of the body corporate and owners’ voting rights at general meetings are determined in accordance with the constituent documents. However, if there is a single body corporate the STA (Tas) grants each lot owner membership and entitlement to vote at general meetings.

The body corporate may, by ordinary resolution, appoint a committee of management to transact business on their behalf. In general the committee of management may exercise any powers of the body corporate. However, the committee is subject to any limitations or directions imposed by the body corporate and are forbidden to exercise powers reserved exclusively for the body corporate. In addition, the body corporate may delegate management of the common property to a manager. The body corporate retains control over the manager and may direct their actions through general meeting or the committee of management. There is no requirement for strata managers to be licensed and they are not subject to a code of conduct. However, experience in the strata industry in Tasmania would suggest that the vast majority of strata managers are real estate agents or surveying businesses.

The first step in the resolution of disputes under the STA (Tas) is analogous to the dispute resolution procedure in NSW. That is, section 95 of the STA (Tas) grants the body corporate a right to issue an owner or occupier, who is in breach of a by-law, a notice requiring the offending party to either refrain from further contravention or take action to remedy the contravention. If the recipient of the notice fails to comply, the body corporate may apply to the Tribunal for an enforcement order. In fulfilling this application the Tribunal may make any order it considers appropriate, including the imposition of a fine. Notwithstanding this, the body corporate has discretion not to issue the notice and may immediately seek relief under the dispute resolution provisions of the STA (Tas).

The remaining sections on dispute resolution are contained in Part 9 and 10 of the STA (Tas). Part 9 extensively outlines the procedural requirements of the dispute resolution process and provides for a range of different orders that can be made by the Recorder. For instance, under section 105 of the STA (Tas), aggrieved parties must make an application for relief to the Recorder in writing, detailing the grounds on which they are seeking relief as well as the general nature of the relief sought. Additionally, sections 113 through to 134 of the STA (Tas) specify the considerations that must be made by the Recorder and the types of orders that can be declared. Any person who contravenes an order faces a financial penalty in the form of a fine or requirement that they reimburse the relevant party the costs of amending the default. In accordance with Part 10 of the STA (Tas), if a party is unsatisfied with an order made by the Recorder they may appeal the matter to the Tribunal, which can confirm, vary or revoke the order.

The STA (Tas) is currently subject to a review with an Issues Paper released in October 2004. The aim of the review is to 'identify problems with the practical application of the Act that have been encountered since its implementation in 1998.' The Issues Paper identified 12 key issues regarding the operation of the STA (Tas) ranging from planning requirements to terminology changes. One of these issues focused on the potential need for the STA (Tas) to increasingly assist in the establishment of functional bodies corporate. At present the original proprietor (which may be the developer) is regarded as the initial secretary of the body corporate and is required to call the first meeting within three months of registration of the plan. However, in practice the original proprietor rarely fulfils this duty, which means that the new lot owners are often given the responsibility of activating the body corporate. The difficulty is that many owners are unaware of their duties and responsibilities under the STA (Tas), leaving many schemes with inoperative bodies corporate. The Issues Paper discusses two possible options for addressing this problem: (1) enacting a series of amendments to the legislation; or (2) establishing an education program for lot owners to increase awareness of their responsibilities under the STA (Tas). The potential amendments incorporate:

- Financial penalties where the original proprietor fails to call a first meeting;
• Requirements that the original proprietor submit the body corporate insurance policies at the first meeting;
• Details of an agenda for the first meeting;
• A stipulation that the first meeting of the body corporate be held following the sale of more than 50% of the lots or within six months of registration of the plan, which ever comes first; and
• Provisions allowing lot owners to call a meeting with the authority of the Recorder if the original proprietor fails to do so.  

The Issues Paper received 22 responses from a variety of stakeholders and is currently under consideration by the Department.  

Northern Territory

The subdivision of land into units and common property in the Northern Territory (hereinafter ‘NT’) is regulated by the Unit Titles Act (NT) (hereinafter ‘UTA (NT)’) and the Unit Titles Regulations (NT) (hereinafter ‘UTRegs (NT)’). As in many other States, the UTRegs supplement the principal legislation providing additional direction in select areas of scheme construction and management. The UTRegs also contain the templates for all documentation associated with unit titles and a ‘Model Dispute Resolution Procedure’. The registration of unit titles is governed by a separate legislative scheme consisting of the Real Property (Unit Titles) Act (NT) and the Real Property (Unit Titles) Regulations (NT). Both of these Acts contain very detailed requirements for the drafting and lodging of unit title plans.

A units plan under the UTA (NT) can encompass a number of different forms of subdivision apart from the typical unit development, including condominium developments, estate developments and building developments. A condominium development is simply a unit plan subdivision that occurs in stages. An estate development creates common property and a management corporation in a similar fashion to a strata subdivision in other states. In comparison, a building development allows for ‘two or more units plan developments within a single building’ or group of buildings. Each ‘building lot’ may have a separate body corporate, however there must be an overarching corporation to assume responsibility for the common properties and obligations of the building. The UTA (NT) expressly provides for the conversion of units into building units and the further subdivision of a building lot into units and common property. The possibility of further subdividing building lots was thought to be a key aspect of the 2001 amendments to the UTA (NT), which more generally saw the introduction of building developments in an effort to minimise the interaction and thus potential conflict between owners of different parts of multi-use buildings who may have conflicting priorities and interests.

All types of unit title schemes in NT are governed by a body corporate, which is established upon registration of a plan and titled a corporation, an estate management corporation, or a building management corporation, corresponding to the type of development. The general duties of the body corporate include enforcing the corporations’ articles, managing the scheme’s common property and maintaining the corporation’s property. The UTA (NT) also confers on the body corporate wide powers, some of which may only be exercised following a unanimous resolution. Further, the corporations’ powers are restricted during the ‘initial period’. This period ends when more than one third of the unit entitlements have been allocated to proprietors other than the developer. Until such time, the body corporate must seek an order of the Court if it wishes to:
• amend, rescind or add to its articles, or make articles in the place of articles rescinded, in such a manner that a right is conferred or an obligation is imposed on one or more, but not all, proprietors or in respect of one or more, but not all, units;
• alter common property forming part of a building, or erect a structure, on the common property; or
• borrow moneys or give securities.  

Pursuant to section 32 of the UTA (NT), the body corporate must act through a committee. The committee is comprised of ‘committee-men’ and assumes all the functions, responsibilities and powers of the corporation. Despite the almost complete delegation by the corporation, the committee’s power to effect improvements to the common property is restricted by section 53 of the UTA (NT), in that costly improvements must be approved by a general meeting of the corporation. Further, the corporation may, in general meeting, decide that certain matters or a class of matters, be determined only by the corporation in general meeting.

Notwithstanding these limitations, the committee is entitled to delegate its duties, functions and powers to one or more of the committee-men or an employed agent / servant, such as a licensed managing agent. The conduct of a managing agent is regulated by the Agents Licensing Act (NT) (hereinafter the ‘ALA’), which defines a real estate agent to include a corporation manager under the UTA (NT). In order to be licensed under the ALA, a managing agent must be deemed a fit and proper person by the Agents Licensing Board of the Northern Territory and hold appropriate educational qualifications. Section 65 of ALA outlines the rules of conduct governing a managing agent and expressly prohibits actions such as: misusing information against the principal; failing to perform his / her duties; failing to exercise due skill, care or diligence in carrying out his / her duties; failing to disclose a conflict of interest; etc.
Contrary to many other States, the NT does not have a specialist dispute resolution body that deals with unit title issues. As such, applications for the resolution of a dispute must be made to the Local Court under its small claims jurisdiction. An application may be made under section 106 of the UTA (NT) by a committee member who claims that there has been: a breach of the Act or the corporation’s articles; that the corporation has prejudiced an occupier by a wrongful act or omission; that the corporation has made an unreasonable, oppressive, or unjust decision; or if a dispute arises concerning the occupation or use of a unit or common property. The court is empowered to:

- attempt to settle the proceedings by mediation or arbitration;
- require a party to provide reports or other information;
- order that a party take action necessary to remedy a breach or default, or to resolve a dispute;
- order that a party refrain from a further specified action;
- alter the articles of a corporation;
- confirm, vary or reverse a decision of the corporation or committee;
- give judgment on a monetary claim;
- order that a corporation refund to a member money paid; or
- make such incidental or ancillary orders as it thinks fit.

Building developments are subject to a different dispute resolution scheme, which must be outlined in the schemes disclosure statement, or by default, in Schedule 5 of the UTRegs (NT). The ‘Model Dispute Resolution Procedure’ contained in the UTRegs (NT) requires a panel of Referees to be appointed, who must attempt to resolve the dispute with as little formality and technicality as possible, while still adhering to the rules of natural justice. An order of the Referees may be enforced as if it were an order of the Local Court.

**Australian Capital Territory**

The Australian Capital Territory (hereinafter ‘ACT’) has two principal bodies of legislation, namely the Community Title Act 2001 (ACT) and the Unit Titles Act 2001 (ACT). The Community Title Act 2001 (ACT) (hereinafter the ‘CTA’) is supplemented by the Community Title Regulations 2002 (ACT), which sets out additional requirements regarding the sketch, site plans, management statements, insurance and fees charged for inspecting a community title certificate or body corporate records. The Unit Titles Act 2001 (ACT) (thereinafter the ‘UTA’) operates in conjunction with the Unit Titles Regulations 2001 (ACT) and the Land Titles (Unit Titles) Act 1970 (ACT). The Unit Titles Regulation 2001 (ACT) has four main functions. Firstly, the regulation contains a list of approved unit subsidiaries. Secondly, it outlines the procedural requirements for unit title applications. Thirdly, it prescribes the price of various fees that can be charged by the owners’ corporation and the amount of insurance that must be obtained. Lastly, it outlines the default articles for an owners’ corporation according to size. The Land Titles (Unit Titles) Act 1970 (ACT) outlines the requirements and procedures for registering: unit plans and their alterations, cancellation or lease termination; owners’ corporation easements and charges; and changes to owners’ corporations articles and addresses.

Whilst both the CTA and UTA provide for the shared ownership of land, they each govern distinct types of schemes. A unit title plan under the UTA is limited to housing, common property and unit subsidiaries, while a community title plan under the CTA may include unit plans, different forms of housing, recreational facilities, shops, parks, car parking, etc. Further, the term community title is used to describe schemes that contain a number of leased blocks, whereas the term unit title describes the subdivision of one block into multiple units.

The CTA was thought to represent the first clear legal framework for the ownership and management of common land and facilities. However, despite the enthusiasm with which it was launched, to date no community title schemes have been registered. Nevertheless, the CTA aims to offer great flexibility in the size, form, use, variation and management of community title schemes. A natural consequence of fostering such diversity within a scheme is that there may often exist multiple bodies corporate. The CTA recognises this fact and makes provision for the separation of a body corporate or the potential merger of multiple bodies corporate into one entity. The management of the scheme remains vested in the body corporate, however it is entitled to appoint a committee of management to carry on its business and a manager to administer and control the common property.

Unit title schemes are more common throughout the ACT and often consist of three different types of landholding: units (Class A or B), unit subsidiaries and common property. The defining feature of a unit is the manner in which its boundaries are determined. In particular, the boundary of a Class A unit is established by reference to the floors, walls and ceiling of the building in which it forms a part. Comparatively, a Class B unit may share a common wall with another unit, however it is always single story and its boundaries therefore include the airspace above and the soil beneath the building. Thus, in simple terms, a Class A unit is a part of a building, whereas a Class B unit is a block of land. An individual’s unit ownership may also incorporate a unit subsidiary consisting of a building or part of a building that is annexed to, but not necessarily adjoining, the unit. Permissible unit subsidiaries are outlined in the Unit Titles Regulations 2001 and include such things as balconies, corridors, gazebos, sheds and garages.
The owners’ corporation is the central body of management in unit title schemes and is ‘responsible for the enforcement of its articles and the control, management and administration of the common property.’ However, much of the everyday functioning of the owners’ corporation is conducted by the executive committee, which is established automatically upon the creation of the owners’ corporation. The constituent of the executive committee is then decided upon at the first annual general meeting. The executive committee’s duties may arise directly under the UTA or via decisions made by the owners’ corporation at general meeting. Some of the executive committee’s functions under the UTA involve administering the schemes finances, calling and documenting meetings, keeping records of the owners’ corporation activities, and maintaining public liability insurance. Further, under the UTA the executive committee is permitted to engage people to assist in the exercise of its functions, which may include a professional managing agent. At present neither the UTA nor the CTA requires that managers be licensed, however this is an issue that will be considered by the ACT Government in the future.

Unlike other States, the ACT does not have a tribunal or adjudication system specifically designed to deal with unit title or community title disputes. The CTA makes limited provision for interested persons to apply to the Supreme Court for a variety of different orders. Under the UTA owners or anyone with an interest in the scheme do have some recourse if the owners’ corporation or executive committee fails to exercise a function. Following section 55 of the UTA, an interested party may apply to Magistrates Court for an order requiring the owners’ corporation or executive committee to exercise that function. The most distinguishing feature of unit and community title schemes in the ACT spawns from the Crown leasehold system under which it operates. The vast majority of land in the ACT is leased by the Executive to an individual for a fixed period (commonly 99 years) and purpose (e.g. residential, commercial, community, etc). Thus each individual unit owner holds their land on lease from the Crown, while the owners’ corporation holds a lease over the common property. This system of landholding sets ACT strata schemes apart from those present in other areas of Australia and places a unique burden on the lessee to abide by the requirements of the lease, the unit plan and the scheme.

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Conclusion

This chapter has provided an overview of the nature of strata title law in each of the Australian states. The holistic picture that emerges is confusing due to inconsistent legal frameworks across the country. This factor can be seen to be a likely inhibitor to Australian STTA sector development as it renders the pursuit of large country-wide operations by developers, body corporate service providers and other key players in the industry problematical. The nature of the players involved in the STTA sector is the subject of the next chapter.
Chapter 3

IDENTIFYING THE PARTIES THAT COMPRISe THE AUSTRALIAN STRATA TITLED TOURISM ACCOMMODATION SECTOR

Introduction

Drawing on exploratory interview data collected, this chapter describes how stakeholder theory has been used to provide an outline of the network of stakeholders comprising the strata titled tourism accommodation (STTA) sector. Phillips (2003) work is the main model drawn upon for this purpose. In providing this outline, an examination will be made of the relationships existing between the stakeholders and STTA organizations and also the nature of the inter-relationships existing between the different STTA sector stakeholders. Insights concerning management issues arising in STTA complexes are also provided.

The chapter also describes how Clarkson’s (1995) model has been drawn upon to distinguish between primary and secondary STTA sector stakeholders. The chapter concludes with a consideration of the degree to which the stakeholders identified see themselves as associated with the tourism industry and a commentary on the relative maturity of the STTA sector in each of the Australian states and territories.

Methodology

The empirical data was collected over a two month period spanning May and July 2004. On site interviews were conducted in New South Wales, Victoria and Western Australia. In addition to conducting interviews, this research phase was informed by a series of meetings held with an industry reference group (IRG) in 2004. This IRG comprised mainly of Queensland representatives. It included representatives from the Queensland Resident Accommodation Managers Association (QRAMA), Unit Owners Association of Queensland, Gold Coast City Council, Pacific International Hotels, the office of the Commissioner of Body Corporate Queensland, Queensland Department of Tourism, Fair Trading and Wine Industry Development, Tourism Queensland, and the Western Australia Tourism Commission. This group met formally on three occasions in 2004 and communication was supplemented with many instances of informal email and telephone contact. This industry reference group was appointed by following leads already established by the research team. Although a Queensland bias is evident in the composition of the IRG this factor is not believed to have compromised the generalisability of the study’s findings to a cross-Australia setting. The representative of Pacific International Hotels has a responsibility that spans Australia, and the representative of QRAMA lived in Victoria at the time the study was undertaken. It should also be noted that QRAMA is the only association of resident managers in Australia. Further, the IRG’s main role was to act as a sounding board for the direction undertaken in the study and also to provide suggested contacts across Australia. As will be noted below, the interview data that has been analysed was collected by interviewing individuals across Australia.

This industry reference group provided important contacts in connection with developing the initial listing of subjects targeted for the exploratory interviewee sample. Thirty four exploratory interviews were conducted, of which eighteen were tape recorded and transcribed (see Table 2). As some venues were not conducive to tape-recording, not all interviews were transcribed, however notes were taken during and after the interview process. The interviews were semi structured and in-depth, which had a one to two hour duration. Those interviews that were tape-recorded, took place at the participant’s place of work. The interviews were predominantly conducted face-to-face and supplemented by telephone interviews with those parties who were unable to attend meetings on the interstate visits. Confirmation of information, facts or data was also collected by follow up phone calls lodged with the interviewees after the initial meeting.
Table 2: Overview of interviewees who provided interviews that were transcribed

<table>
<thead>
<tr>
<th>INTERVIEWEE</th>
<th>STAKEHOLDER GROUP</th>
<th>STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Developer</td>
<td>Qld/Vic</td>
</tr>
<tr>
<td>B</td>
<td>Hotel group with strata title interest</td>
<td>All Australia</td>
</tr>
<tr>
<td>C</td>
<td>State Tourism Office</td>
<td>Vic</td>
</tr>
<tr>
<td>D</td>
<td>Publicly listed company</td>
<td>Qld, NSW, Vic.</td>
</tr>
<tr>
<td>E</td>
<td>Body corporate service provider Hotel group with strata title interest</td>
<td>NSW</td>
</tr>
<tr>
<td>F</td>
<td>Developer</td>
<td>NSW and Australia</td>
</tr>
<tr>
<td>G</td>
<td>Developer Property investment fund Financier Commercial property management</td>
<td>NSW and Australia</td>
</tr>
<tr>
<td>H</td>
<td>Management rights broker</td>
<td>NSW, Qld</td>
</tr>
<tr>
<td>I</td>
<td>Body corporate service provider Institute of strata title managers – President</td>
<td>NSW</td>
</tr>
<tr>
<td>J</td>
<td>Focus group of eight resident managers</td>
<td>NSW</td>
</tr>
<tr>
<td>K</td>
<td>Management rights broker Lawyer</td>
<td>Vic</td>
</tr>
<tr>
<td>L</td>
<td>Financier</td>
<td>NSW</td>
</tr>
<tr>
<td>M</td>
<td>Institutional investment fund</td>
<td>NSW and Australia</td>
</tr>
<tr>
<td>N</td>
<td>Hospitality consultant</td>
<td>WA</td>
</tr>
<tr>
<td>O</td>
<td>Tourism Task Force – STO Regional manager Local MP as chairperson Department of planning and infrastructure</td>
<td>WA</td>
</tr>
<tr>
<td>P</td>
<td>Institute of strata title managers – President and Vice President Body corporate service provider Lawyer</td>
<td>WA</td>
</tr>
<tr>
<td>Q</td>
<td>Body Corporate service provider Real Estate Institute representative</td>
<td>WA</td>
</tr>
<tr>
<td>R</td>
<td>Developer</td>
<td>WA</td>
</tr>
</tbody>
</table>

A number of informal discussions also took place with other parties who have been interested in the research and keen to relate their experiences, whether as professionals or as owners, resident managers (RMs) or tourists involved in the industry.

By its very nature, this chapter focuses primarily on the problematic issues surrounding the strata title industry. Indeed it is very apparent that within the above themes, threads of ambiguity, dissonance and incongruence abound, as is evidenced by some tension that was apparent between the different stakeholder groups.

The findings have been organised under stakeholder headings. Inevitably, however, some findings overlap as issues arise that are pertinent to more than one stakeholder group. In such cases, the finding has been associated with what appears to be the most relevant stakeholder group. Excerpts from the transcribed interviews are provided as support or exemplifications of issues described. In some cases, it has been necessary to reduce the length of the quote cited. In such instances, three full stops (…) have been inserted into the text to signify that words provided by the interviewee have been excluded.

**Outlining the STTA Sector Using Stakeholder Theory**

The individuals and parties involved in the STTA sector are extremely diverse and fragmented. The majority of the key players have distinctly different perspectives and varying degrees of interest in each STTA complex and the whole sector.

Freeman (1984) provided a particular representation of stakeholder theory as a map in which the firm is depicted as the hub of a wheel and stakeholders are identified as ends of the spokes around the wheel. More recently, Phillips (2003) operationalised Freeman’s model by identifying the following stakeholders as spokes in the wheel: competitors, natural environment, customers, financiers, employees, media, activists, communities and suppliers. The spokes of the wheel have bi-directional lines indicating that each stakeholder can affect or be affected by the organisation. An adaptation of this model that is tailored to the STTA context is presented as
Figure 1. In this model the hub of the wheel represents the STTA complex. The following amendments have been made to the stakeholders represented in the model:

1. The competitors can be defined as other short-term accommodation providers such as hotels.
2. The customers are tourists.
3. The key financiers are unit owners as unit owners fund the purchase of the complex.
4. Resident managers have been inserted in the place of employees.

It should be noted that compared to the conventional corporate sector, activists and the media are not significant players in the STTA sector; nevertheless, in the interests of completeness, they have been included in Figure 1.

**Figure 1: Stakeholder map where a strata titled tourism accommodation complex is the focal organisation**

In an egalitarian world, stakeholder priority would not exist, as all stakeholders would have equal rights. The reality of STTA stakeholder relationships departs greatly from an egalitarian view, however. For example, a unit owner would have more of an affect on, and be more affected by, a STTA complex than would a swimming pool contractor who might visit the complex every second week to service the pool. The investor will have made a substantial financial investment, whereas for the contractor, the STTA complex might represent little more than ‘just another account’. Similarly, if there were low occupancy at the complex, the investors would be greatly affected by low or no returns whereas the pool cleaner’s visitation may be reduced to once a month. The affect is negative in both situations but the quantum of the effect varies greatly across the two types of stakeholder.

It should be noted that the stage in the life of a STTA complex will have a major impact on the nature of stakeholder involvement. For example, at the physical design and then construction phase, developers, architects and building engineers would be heavily involved in a complex. This underlines the degree of subjectivity that is bound to be exercised when attempting to conduct the type of stakeholder identification exercise being undertaken here.

It could be argued that the traditional stakeholder model with the hub and spoke conceptualisation has limited validity. This is because it depicts relationships as dyadic and independent of one another. The model is configured largely from the focal entity’s vantage point and defined in terms of actor attributes. A model that overcomes this problem of depicting relationships as dyadic and independent was developed by Rowley (1997). Rowley’s model is based on social network analysis and attempts to examine the characteristics of entire stakeholder structures and their impact on an organisation’s behaviour as a network of influences rather than
individual stakeholder relationships. Rowley’s model also recognises that a firm’s stakeholders are likely to have
direct relationships with one another. This represents an alternative way of conceiving of the STTA sector’s
players’ inter-relationships. It also highlights the potential for stakeholders to come into conflict with one
another. In the next section, an overview of the various STTA stakeholders, classified into primary and
secondary, is provided. The subsequent section then explores the nature of each stakeholder’s perspective on
STTA as well as a consideration of how some of their interests conflict.

Classifying Primary and Secondary Stakeholders

The classification of STTA stakeholders into primary and secondary has been pursued by drawing on Clarkson’s
(1995) primary and secondary stakeholder classification model. Clarkson sees the corporation as comprising a
system of primary stakeholder groups and a complex set of relationships between and among groups with
different interests, objectives, rights, responsibilities and expectations. He sees the corporation’s management as
responsible for creating sufficient wealth, value or satisfaction for each stakeholder group to ensure the
corporation’s continued success and survival.

The definition of a primary stakeholder is ‘one without whose continuing participation the corporation cannot
survive as a going concern’ (Clarkson 1995, p.106). Applying this criterion to the STTA sector, it appears that
the primary stakeholder groups are: unit owners, resident managers (RMs) and tourists who purchase the STTA
service.

It could well be that Clarkson’s (1995) representation of primary stakeholders is broader than the
interpretation given here in identifying primary STTA stakeholders. In this first identification of primary STTA
stakeholders, it was decided to keep the model relatively simple. It is believed that if any of the three stakeholder
groups listed above were not involved, the lack of participation on their part would not allow the dynamics of the
STTA entity to survive.

The definition of a secondary stakeholder is:

Those who influence or affect, or are influenced or affected by, the corporation, but they are not in
transactions with the corporation and are not essential for its survival (Clarkson 1995, p.107).

Secondary stakeholder groups are not essential for the corporations’ survival. They can, however, cause
significant damage, as they may be opposed to the programs and policies that the corporation has adopted to
fulfil its responsibilities or to satisfy the expectations and needs of, its primary stakeholder groups. As Freeman
commented:

Some groups may have as an objective simply to interfere with the smooth operations of our business. For
instance, some corporations must count ‘terrorist groups’ as stakeholders. As unsavory as it is to admit that such
‘illegitimate’ groups have a stake in our business, from the standpoint of strategic management, it must be done.

Following Clarkson’s definition, the following parties have been identified as STTA secondary stakeholders:
real estate agents, state tourist offices, developers, financiers, body corporate committees, body corporate service
providers, hotels with a strata title interest, and management rights brokers. At different stages in the life of a
STTA complex, all of these groups have the power to cause significant damage to the primary stakeholders.

Primary Stakeholders

In the interests of parsimony and clarity of exposition, the decision has been made to restrict this investigation to
the supply side of the STTA sector. For this reason, tourists as a primary STTA stakeholder group will not be
investigated further. To include consumers in the modeling of the industry would have detracted from an attempt
to develop an appreciation of the key stakeholder networks involved in the provision of STTA. So, only owners
and managers will be described and discussed as examples of primary STTA stakeholders.

Unit Owners

Unit owners comprise two distinct sub-sets: investor owners and resident owners. The interests of these two
groups are sufficiently different to warrant them being considered separately. In addition, separate consideration
will be given to the collective body representing strata title unit owners as a whole.

Resident owners

Resident owners use their units as their principal place of residence. A resident owner gains no financial
advantage from the success of the resident manager’s sub-letting performance. In fact, many resident owners
might desire that the condominium complex have a low occupancy level, and therefore derive satisfaction from a
resident manager proving to be ineffective with respect to sub-letting activities (Guilding et al. 2005). With
respect to their relationship with resident managers, resident owners can be expected to be primarily interested in
a resident manager’s performance with regard to efficiently and effectively completing the care-taking
responsibilities contracted for (i.e., maintenance and cleaning of the condominium complex and grounds). As resident owners are in closer physical contact with a condominium complex than investor owners, the former can be expected to take a greater interest in the aesthetic appearance of the complex than the latter. The distinct interests of the resident owners relative to the investor owners can result in a power struggle with respect to representation on body corporate committees (Guilding et al. 2005).

**Investor owners**

Investor owners are primarily interested in seeking maximum economic gain from owning a unit. This gain is achieved by managing the balancing act between attempting to maximise the sub-letting occupancy level of a unit with maximising the rate charged when sub-letting (i.e., maximising the unit’s rental yield), minimising the cost associated with maintaining the unit, and seeking the maximum capital gain upon sale of the unit. The problem of getting owners to invest to maintain the economic viability of their unit was noted in the exploratory interviews. Interviewee D comments on investors:

… the problem is they buy them, then don’t want to spend any money to maintain them.

That’s the biggest dilemma in our industry, getting them to upgrade their apartments.

Given an investor owner’s economic perspective on his investment, he can be expected to be primarily focused on the resident manager’s sub-letting performance. It was noted that this stakeholder group receives extensive criticism from a range of other stakeholder groups in regard to their choice of investment. Interviewee G described developers who:

… are selling a product to Mums and Dads, who to their credit are probably a little naïve and they are probably thinking they are buying a residential product or a very sexy, fantastic part of the tourism industry and how fantastically strongly that’s growing and they are going to make a lot of money. But, the reality is that the unit they purchased is a risk they are taking on.

**Unit owners associations**

Queensland appears to have the most developed strata titled unit owners association. This may be directly attributable to the relative maturity of the market and the number of Queensland units that are purchased and then placed in a short-term letting pool.258 The only other Australian unit owners association that has been identified is the Owners Corporation Network (OCN) of Australia which is based in NSW. This group represents residents in large complexes (usually located in central business districts). It has a history of addressing strata titled complex problems, many of which appear to originate from actions taken by the complex developer(s). The management problems resulting from the sheer size of these developments appears to be at the root of some of the problems addressed by the OCN. Currently, it also appears that a major problem concerns owners offering their unit for short term leasing in a resident designated complex. Several interviewees noted that local councils are trying to address this problem.

The president of the Institute of Strata title Management (NSW) advised that the institute was attempting to develop a unit owners association. Also, there was a unit owners association registered in Western Australia in 1986, however it ceased operation due to a lack of financial support. A representative of the real estate institute is currently attempting to reconstitute an active Western Australian unit owners association.

**Resident Managers**

Day-to-day maintenance of larger buildings requires the appointment of a caretaker. This person is primarily responsible for maintaining the complex’s good technical working order and upkeep of the common property, which usually includes gardens, pools, hallways, undercover car parks, walkways, stairways, etc. Tourism complexes with a number of units in the short-term letting pool also require an onsite resident manager with a limited letting agent’s license for renting out apartments to holiday makers. In Queensland, in many cases, these two functions are covered under a single management rights contract. These contracts are generally drawn up by the building’s first owner (the developer) on behalf of the body corporate, and can be purchased by individuals or companies with the necessary qualifications.

A resident manager can earn a return on his investment in the management rights from three main sources:

a. from any capital gain earned upon sale of the management rights;

b. from commissions earned through sub-letting (holiday or long-term stays) investor owner units;

c. from remuneration earned in connection with general building service and maintenance functions performed.

It is particularly apparent with respect to his or her function as a letting agent that the resident manager’s interests are closely aligned with the tourism role of a complex (Guilding et al. 2005). This is because higher occupancy rates result in higher commissions earned by the manager.
As a result, management rights for a building with a high proportion of units in the letting pool tend to sell for more than management rights in buildings with a lower proportion of units in the letting pool. The way that a resident manager structures day to day operations and the use of sub-contractors can also enable him to boost his business’s profitability.

Interviewee H outlined some of his concerns and issues for the industry:

There’s not much in the way of security of tenure for management rights and that’s one of the concerns for the people forking the money out. The other one is real estate agents that are continually undermining and competing to take on the rent roll to the developer selling them out. … Look, it’s difficult enough for people to borrow the funds anyway and it’s a case where you are taking multi-million dollar businesses or fairly solid businesses so they’ve got to either have access to the funds or be able to borrow, and if you’ve only got a 10 year term, there’s not a great deal that excites the banks to be able to finance them.

Interviewee A provided the following comments that provide an insight into the skill set need to be a resident manager:

A lot of our managers come from New Zealand; seems to be a very popular way of immigrating to Australia. Once you are here, you buy some management rights and instantly have made an investment into a business in Australia. You have income from day one and you have a place to live and something to do. You have fulfilled your requirements for immigration and you get to live on the Gold Coast and have a good lifestyle … and it doesn’t take … any difficult skills to run a management rights business.

Secondary Stakeholders

Real Estate Industry

The Real Estate Institute of Australia was formed to serve and protect the interests of real estate agents. The Real Estate Institute has been heavily involved in the growth of the strata title owned property sector. This involvement does not always appear to have been for the good of the sector, and there is a widely-held perception that real estate agents tend to have a narrow focus on self-serving interests. Heavy involvement in the development of the strata title owned property sector has signified that real estate agents have always prospered regardless of other market factors.

Real estate agents’ STTA sector involvement occurs at many levels:

- Acting as agent in the sale of units and apartments in strata titled complexes.
- Acting as agent in the sale of management rights businesses required to operate these complexes.
- Developing and delivering training to resident managers via ‘on site managers’ courses required to gain accreditation (accreditation is then required to gain a licence from the office of fair trading to operate a management rights business).
- Acting as an industry advisory body on resident manager issues.
- Providing property management services to strata title complexes: holiday, short term and residential leasing.

All of the above activities provide a substantial source of income to the real estate agency profession, with many real estate agents specialising in the strata titled sector. Holders of a real estate dealer’s license under Queensland’s Property Agents and Motor Dealers Act 2000 are primarily involved in the sale of property for a commission that is generally paid by the property vendor as a certain percentage of the negotiated sale price. Therefore, real estate agents are motivated to seek a high volume of property sales at high prices.

Two forms of conflict of interest arising in connection with real estate agents’ strata title property sector involvement became apparent from the interviews conducted.

At the training course required to gain a licence to operate in Queensland, all new RMs are encouraged to join the Real Estate Institute. Once a license has been secured, if an RM experiences any problems with a real estate agent, the only professional body that the RM can approach with his grievance is the state Real Estate Institute office. Resistance to supporting the RM’s case can be expected as, the institute is established to serve and protect the interests of its members who are real estate agents, and not resident managers.

Conflict arises between a real estate agent and an RM in connection with real estate agents exaggerating expected rental returns when discussing a unit with a prospective investor. It appears that it is often left to the RM when an investor owner’s returns do not live up to expectation. It unfortunately appears that agents frequently omit to inform potential purchasers that there is a management fee levied for letting out, cleaning, maintenance and the caretaking of the apartments.

In those states where management rights are under-developed, considerable resistance to the possible development of management rights was expressed by estate agents. This resistance appears attributable to a number of reasons. Firstly, sale of management rights would take new business away from the real estate agency profession, as specialists from other states (presumably more mature markets) would likely be brought in to sell these very lucrative businesses. Secondly, once the management rights are sold, the manager of the complex will
take over day-to-day operations of the complex. Acting as an on site manager, the service provided can be expected to be superior to that provided by the current letting agent who is not based on site. This signifies resident managers acquiring the letting agency commissions that used to be earned by real estate agents.

Real estate agents can be expected to be strongly opposed to investment properties for tourism and residential purposes falling under the Managed Investments Act. In basic terms, if a complex is greater than 20 units and income is pooled or rentals are guaranteed, then the project falls under the Managed Investments Act (MIA) legislation. Along with very strict compliance rules, one of the stipulations of this act is that a conventionally-trained real estate agent cannot sell this type of product. If the project is registered as a managed investment, the agent must have an Australian Financial Services Licence. Holders of this license are ‘Financial Services Reform’ compliant under section PS146 of the Corporations Act, and can thus sell any type of managed investment, be it property or otherwise. Queensland has successfully managed to keep the majority of all strata titled complexes operating outside the jurisdiction of MIA guidelines. This is possibly due to the real estate industry’s involvement. These projects tend to be more professionally operated and appropriately support the interests of the investor, thereby providing a relatively sustainable model for the STTA sector.

The real estate industry in Victoria appears keen to avoid any change in management rights’ licensing requirements. Currently the requirement of a full real estate licence (equivalent to opening a real estate office) is needed to be a RM. This ensures that the number of new RM licences being issued is low due to the degree of difficulty involved in becoming licensed.

Interviewee N elaborated on the situation in Western Australia:

My only issue with any of it, because I believe if you put the right processes in place for the end product, it will work, but I do have an issue with it being driven by real estate policy, because I am an experienced operator and have a degree in hotel management but can’t operate a serviced apartment development under a management rights scheme because I don’t have a real estate licence. … The end product is being totally controlled by real estate.

The state offices of the Real Estate Institute in New South Wales, Victoria and Western Australia exhibited resistance to discussing strata title issues. New South Wales advised by email that they had limited resources and suggested that the researcher should conduct a web search using key words to find the relevant information required. Victoria initially denied that management rights were an issue for the institute however after some discussion they acknowledged that it was only a matter of time before management rights infiltration occurs. Western Australia indicated that management rights did not exist and that it was not an issue of concern.

Management Rights Brokers

Management rights brokers are real estate agents that exclusively sell management rights businesses. These brokers have been an integral part of the Queensland STTA sector for many years. They also exist in New South Wales and have only recently started infiltrating other remaining Australian states and territories. There are one or two proactive brokers involved in establishing bases for their businesses in new states and territories, and it appears likely that once the market has been established, others will follow. It appears these brokers present themselves as selling a lifestyle product to potential RMs, not necessarily a business. Supporting some of the early commentary concerning Victoria real estate agents’ resistance to management rights development, one broker (Interviewee K) commented:

Now our problem is, real estate agents, in the Institute of Victoria are very much opposed to the introduction of management rights, for obvious reasons. We get no support from them.

Body Corporate Committee

It was seen in chapter 2 that the body corporate committee is elected by the unit owners to represent their interests. The resident manager is accountable to the body corporate committee. As already noted, because investor owners’ interests can conflict with the interest of resident owners, a power struggle can result with regard to who has representation on a body corporate committee.

Most of the work as a body corporate committee member is voluntary and involves regular input on decisions about ‘restricted issues’ (BCCM s. 99-101). Under such legal and administrative arrangements there are, in most cases, little or no incentives for members of the body corporate committee to take on a more active role. This can detract from the extent to which the body corporate closely supervises the resident manager’s performance and other matters affecting the building. This problem has been recognised with s.119 of the BCCM, which allows a body corporate to authorise a body corporate manager to exercise some or all of the powers of an executive member of the body corporate committee.
Body Corporate Service Providers

Body corporate service providers are also known as body corporate management companies or strata title management companies. Body corporate and community management has become a complex legal and administrative matter. As a result, a number of specialist consultancy firms have developed over the last 20 years providing services to bodies corporate and their committees, property developers and any other party with an interest in body corporate management. This professional body has grown sufficiently to have a national body (National Community Title Institute) and most Australian states also have a state based representative body. The national and state based representative bodies all hold well-attended national conferences.

Body corporate service providers have developed expertise in drafting community management schemes for new buildings, advising existing body corporate committees on legal and administrative matters, compiling required documentation for body corporate AGMs and other body corporate matters. These firms also provide body corporate management services that include administering the collection of sinking and operational fund levies, setting operational budgets, the design of sub-contractor contract specifications, the conduct of maintenance reviews, insurance matters, etc.

Interviewee E expands on the cash management role of body corporate service providers in the following manner:

It’s purely administrative. We put together a budget, we have the budget passed and then we set the levies, the levy notices are sent out, they in turn pay the levies and at the same time send us a copy of the bills that they have paid on behalf of the Owners Corporation for reimbursement; so you’ve got that constant cash in, cash out.

Strata titled Hotels

This is a recently emerging and rapidly growing accommodation provision sector in Australia. The growth in strata titled hotels appears to be driven by a combination of factors including a trend in the way that banks and other financiers are willing to lend to property developers, and also developments in the nature of demand for hotel ownership.

This stakeholder group has been defined as ‘strata title hotels’, because of what appears to be a consumers’ perception that the accommodation provided is commensurate with a traditional hotel operation. The most significant difference, which is not visible to a guest, is the distinct ownership structure. Hotel properties have traditionally been established with a single legal title. In a strata titled hotel, there can be as many titles as there are accommodation units. The management of the property is out-sourced to either independent managers or contracted to a hotel management company, both of which assume responsibility for the daily operations of the hotel.

The management companies vary from the well known 3-5 star chain operators, with several branding options, to the niche markets of corporate, specialist or boutique accommodation providers. The level of involvement or co-operation of the body corporate management company varies depending upon the original governance model established by the developer. Examples of companies involved in strata titled hotels in Australia include: Quest Apartments, Mirvac, Sebel, Pacific International Hotels, Breakfree and S8.

Interviewee B explained the nature of this type of operation as follows:

We build businesses. We operate them so we are a franchise operator and we are a business system franchise, so it’s not just branding. When you come to us you physically buy a full package of how to run the show and how to make money.

With respect to custom building their own properties, interviewee B stated:

In fact that’s why we build them ourselves now, because the margins that the developers want to make are unsustainable in terms of room rates.

The following interview extract highlights some of the key facets of the operations of interviewee D’s organisation:

Interviewer: So for the majority of your properties, you buy the management rights?
Interviewee D: Yes.
Interviewer: Then you put a manager in and pay him a salary?
Interviewee D: A salary plus a profit share. We have an individual agreement with each owner in the letting pool so we have nearly 4,000 owners; 4,000 individual agreements with each owner. … The average salary for a couple is $65-70k a year plus the unit. … Then they get a share of the profits over budget, so that can work out $10-40k, depending on how they go.

Interviewee E outlined facets of his operation in the following manner:

There are different agreements, but usually the agreement is a fixed rate, fixed rent which tends to be set initially on a return, so the developer sets the rent as a percentage of the purchase price, so they may get 6-7%, its usually 6% return on their investment.
Residential investment in the city generally shows a 3-5% return, probably a bit low at the moment, towards the lower end whereas this type of development at 6% is quite attractive, so its an incentive to give the purchasers … The hotel will factor into their costs, their business operation costs, the cost of refurbishing and when its needed and its usually carpets within 2-3 years, paint within the same timeframe, change of furniture 3-5 years.

**Financiers**

Australian financial institutions such as banks and credit unions have considerable interest in stimulating building activity and, also, tourism development. The interest rate and loan covenants prescribed by a bank seeking to finance property developments determine how accessible capital will be for property developers. Banking and investment guidelines also dictate how many units must be sold ‘off-the-plan’ before property developers will extend further funds for the construction phase of a new building. Interviewee L commented:

Banks are imposing on the developer the same conditions that they want you to do in a strata apartment block – 25-40% presales, feasibility must have 25-30% profit on cost and the developer must be strong enough to stand behind any potential loss on the development.

Such guidelines vary in accordance with perceived levels of risk with respect to factors such as the type and location of the development, and the economic climate pertaining at the time of the development. Interviewee L commented:

From a financier’s point of view, tourism has always been a dirty word, especially after the financial losses in the 80s. Hotels have still never recovered; the only reason hotels are being built today is because they’ve been ‘strataed’, that’s the only reason.

There appears to be a widely held view that developments intended solely for tourism purposes are considered of lower value per square metre of floor space than flexible use purpose developments (i.e., a combination of tourism and residential). In light of this, more restrictive loan covenants are likely to be in force when the potential use of a building is restricted. Interviewee A commented:

90% of our market in Queensland is investment sales and its all financed so the banks are much more stringent when it comes to investment selling because … investment sales aren’t as solid as owner/occupier sales.

In addition to making loans to developers, financial institutions also provide loans to the purchasers of units. In many cases, the bank lending to the developer negotiates a position that gives it privileged access to the first purchasers of units. Also, financial institutions extend loans to the purchasers of management rights, using the resident manager’s unit as security. As a relationship with a developer can provide a financial institution with considerable long-term loan related business over the lifetime of a building, there would appear to be a significant incentive for the lending institutions to court the business of property developers. Despite this, Interviewee F commented:

The more component of tourism related operation you are going to have, it’s always hard on finance.

**State Government Tourist Offices**

The government tourist offices (GTOs) appear primarily concerned with the marketing of their own state, with a strong focus on new product and up-coming campaigns. To the outside observer, it appears obvious that STTA constitutes a substantial proportion of tourism accommodation provided within the states, and one might thus anticipate it would be of interest to the state government tourist offices. This does not appear to be the case, however. Interviewee C commented:

Strata titling as long as I have been here is not an issue. Management contracts have not been an issue as they have been in Queensland.

Of the state based tourism commissions, the Western Australian Tourism Commission (WATC) stood out as the most proactive body and the one most aware of strata title issues and the potential implications that strata title growth carries for Western Australia. Part of their proactive drive initiative involves participating in a Ministerial Task Force executive established by the Western Australian state government to specifically address strata title issues and the implications of combining tourist and permanent residential accommodation on tourist zoned land. This task force comprises the South West Manager, WATC; the local Member of Parliament for the South West who has been appointed as chair of the Taskforce, and the co-ordinator for strategic planning from the Department of Planning and Infrastructure. This Ministerial taskforce is endeavouring to integrate the interests of all stakeholders and provide some strategic policy to guide future planning and development proposals. To date, the key to their proactive approach is a proposed zoning of land for tourism only purposes (this has not been legislated or implemented in any other state/territory).
Developers

Developers represent the initial owner of a STTA complex and, as a result are responsible for setting up the first community management scheme, sinking fund and operating fund contribution levels, and contractual arrangements for management rights. Developers frequently draw on the consulting expertise of specialist body corporate service companies in connection with establishing these administrative arrangements. As the first owner of a building, the developer also collaborates extensively with real estate agents when selling units, retail space (if provided) and management rights. A special working relationship develops between these two parties when managing the sale of units in large, multi-storey condominium complexes. As already noted, financing the construction of large complexes, necessitates the sale of a certain proportion of the units ‘off-the-plan’, i.e., before they are built. This highlights the early involvement of real estate agents at the pre-construction phase. This initial capital flow can be critical to the developer securing further loan funding to finance the complex’s completion.

Through strata titling, developers are able to minimise their risk by selling apartments (usually off the plan) to investors that are willing to accept an expected income return in the vicinity of 4% before construction commences. The units are primarily sold as capital growth investments which offer a lifestyle component (sometimes with guaranteed returns) or where the income is pooled and distributed equally or even leased (Gibson 2005, p.6).

It should be noted that comments made in interviews conducted suggest a widely held perception that developers set initial sinking fund contribution fees at unsustainably low levels, as highlighted by the following extract from Interviewee N’s interview:

Interviewee N: 3% … from day one
Interviewer: Do you believe the developer should be contributing to start the kitty off?
Interviewee N: No, because if he finishes it off as a good product, and where they all go wrong is they don’t put it in from day one. So they think they have got a new product, we won’t need the sinking fund until year 4 or 5.

The incentive for developers to set a negligible sinking fund contribution level stems from their motivation to market the units. This marketing effort is also frequently supplemented by developer guarantees of a certain minimum percentage rental return in the first three years of unit ownership. This appears to represent a relatively successful marketing ploy, however in many cases it actually provides the unit owner with little over the long term. By guaranteeing a rental income for the first few years of ownership the developer stands to gain all of a potentially inflated price resulting from the guarantee. The new owner will only benefit from the guaranteed income for a small portion of the unit’s life. This highlights that purchasers are ill-informed if they believe the initially guaranteed rate of return will be maintained over the life of the complex.

Developers with different specialisations were interviewed, some specialising in tourist accommodation, and some focused on a mix of residential and tourism accommodation. Two interviews conducted were with developers who had developed complexes with an exclusive tourism use.

For those developers specialising in mixed use buildings, if a project presented a tourism opportunity, then this aspect was viewed as an additional facet and not a core factor in guiding the building’s design or marketing. Some developers referred to the tourism dimension in buildings as a necessary ‘loss leader’. Interviewee L explains:

X (hotel brand) is the most recent example. … There’s an office component and the developer made a fortune out of the commercial. The hotel probably just broke even, but because he got this, this is where he made his money. … So the hotel is the loss leader in this development.

It appeared that several developers believed it is inappropriate to pursue tourism specific developments, due to the low returns provided. Interviewee F commented:

Look it’s probably fair to say development of tourism assets is something most risk adverse developers will want to keep away from.

As already noted, the sale of management rights is a recent development in Victoria. This is a big concern for developers in this state. One developer indicated he would not be developing tourist based properties until management rights became mainstream. He felt that it was not worth his while completing a development if the sale of management rights was not factored in. When asked whether tourism developments in regional areas were considered, Interviewee A commented:

It’s a tough market cause you’ve got the same construction costs as Melbourne but you don’t have the level of property because the end prices are so much lower than Melbourne. We looked at developments in Bendigo but they didn’t work because the prices in Bendigo are so much lower than Melbourne, and the construction costs are about the same. But if you had management rights there and you could attract people to a regional centre somehow, that would be worth it.
This view of management rights as being potentially important to developers as an asset to be sold was evident in several interviews. Interviewee A commented:

The last 10 years in Queensland has been our bread and butter. It’s been very lucrative. When I say that – it’s been the cream on top of the development cut. … In Queensland we normally sell management rights prior to the completion of the project, sometimes we have a waiting list. At the commencement of a project, we’ll get enquiries almost immediately.

Similarly, Interviewee K said:

Well that’s often because the sale of management rights off the plan is like icing on the cake.

Stakeholder Involvement in Tourism

STTA complexes and their stakeholders are clearly a very important component of the tourism industry, particularly as they appear to be a growing element of the tourism accommodation sector. As tourism is such a diverse and fragmented industry, the stakeholders involved are also part of other industries independently and professionally (i.e., real estate industry, finance industry) and as such they frequently don’t identify with their tourism connection. One reason for this perception is that the majority of stakeholder groups do not have direct contact or are not directly associated with tourists.

Adverse implications for tourism planning and forecasting at government levels arise when the significant tourism stakeholders do not see themselves as strongly aligned to the sector. Tourism strategy development and implementation is rendered particularly challenging when key stakeholders feel disassociated.

A review of the perspective of STTA stakeholders is now provided. In this perspective, the stakeholders relative allegiance to the tourism industry is commented upon.

From a real estate agent’s perspective, it is irrelevant whether the investment strategy of a new STTA unit owner is consistent with the long-term management strategy of a building. Accordingly, apart from pointing out the rental possibilities associated with a property, real estate agents have minimal incentive to be concerned with tourism industry issues.

State government tourist organisations clearly have a significant stake in tourism policy formulation. Interview findings suggest, however, that marketing tends to be their priority.

Developers are concerned with building properties and selling them off as quickly as possible so they can secure their return and move onto the next project. Many appear to prefer the lower level of risk associated with residential properties relative to tourist based products. This underscores the developers appearing to have little interest in the tourism industry.

Investor owners are purchasing units and seeking short term rental returns. They represent one of the few stakeholder groups that have a strong tourism perspective. Most investor owners are not, however, large corporations and therefore any incentive for them to become involved in the promotion of tourism is bound to be muted. Even if they were seeking to become more actively involved in tourism related activities, their small size signifies that they are unlikely to provide a powerful voice.

It has already been noted that resident owners appear to frequently view tourists in a negative light as their interests can depart significantly from those of investor owners. This signifies that resident owners may well be more averse than supportive of tourism development.

The majority of resident managers do not believe that they are part of the tourism industry, both their training and skill sets reflect this. Their focus appears to be confined to the scale of the building that they manage and not at the level of a destination’s tourism management strategy.

Financiers are primarily concerned with lending money in order to secure a maximum level of return for a given level of risk. It has already been noted that financiers view tourism projects as riskier than residential projects. Some banks insist on modifying the tourism/residential mix so that the tourism content and consequent exposure is reduced. It appears that the stigma of the poor performing tourism developments in the 1980s is still present with many banks continuing to be resistant to tourism projects. This highlights financiers’ lack of alignment with the tourism industry.

Body Corporate Committees are made up of owners who reflect their building’s relative mix of resident and investor owners. The nature of this mix can be expected to reflect their degree of tourism orientation. It appears, however, that the main focus of body corporate committees is on operational and management issues of a building and not tourism destination management.

Body Corporate Service Providers appear to see themselves as associated with the property management industry and do not perceive themselves as having a tourism orientation.

Hotels with a strata title interest are made up of a group of investors and a hotel management company. Interviews with representatives of these groups have revealed little active participation in the tourism industry. It appears that an exception to this can occur if tourism-based properties are managed by a branded management company.
Management Rights Brokers are selling businesses. There appears to be little incentive for them to be concerned whether a purchasing resident manager will be good for the tourism industry. Similar to real estate agents, they make their commission regardless of the nature of the party sold to.

Although the above outlines a picture of minimal active participation in the tourism industry by STTA sector stakeholders, one significant change may well be underway. As management rights are becoming increasingly consolidated in corporate entities such as Breakfree and S8, the fragmentation of the industry will lessen. Managers in companies such as Breakfree and S8 are in a position to command greater ‘lobbying clout’ and the corporations will grow to be of a size that justifies their more active participation in the tourism industry. This tourism industry active participation can be expected to be more than the displaced ‘Mum & Dad’ operators, which as a function of their size, are bound to have more of a day to day operational focus rather than an industry wide, strategic focus.

**Degree of STTA Development Across Australia**

Although Australia is considered to be well advanced in terms of using strata titled accommodation as an investment vehicle for development (Gibson 2005), the relative level of development varies greatly across the Australian states and territories. In light of this, in concluding this technical report, a depiction of the relative level of STTA development in each Australian state is provided in Table 3. The first column of the table identifies the relative level of development with ‘1’ signifying low development and ‘4’ signifying an advanced level of development. The table’s second column provides a descriptive term of degree of development and the third column identifies the characteristics associated with each level of development. Each stage displays distinct characteristics. The fourth column depicts the nature of stakeholder involvement and the final column indicates the relative STTA developmental standing of each Australian state and territory.

<table>
<thead>
<tr>
<th>Life Cycle Stage</th>
<th>Descriptor of relative level of development</th>
<th>Characteristics</th>
<th>Stakeholder’s involved</th>
<th>Australian state / territory where the stage is reflected</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Under-developed</td>
<td>Strata title complexes exist, however primarily residential usage only.</td>
<td>Financiers, developers, body corporate committees, body corporate service providers, real estate agents.</td>
<td>SA, TAS, NT</td>
</tr>
<tr>
<td>2</td>
<td>Mid-development</td>
<td>Selling of management rights has begun. Minimal penetration of strata titled complexes for tourism purposes.</td>
<td>All of the above plus: management rights brokers, state government departments for licensing, zoning and regulating</td>
<td>VIC, WA, ACT</td>
</tr>
<tr>
<td>3</td>
<td>Approaching mature development</td>
<td>Strata titled complexes exist for residential / tourism and / or mixed purposes. Problems arise result in the development of unit owners associations or similar bodies. Resident managers join forces when faced with uniform problems, giving rise to the establishment of resident manager associations.</td>
<td>All of the above plus: Unit owners Association, resident unit manager associations, state government tourist offices.</td>
<td>NSW</td>
</tr>
<tr>
<td>4</td>
<td>Mature development</td>
<td>Complexity of issues increases facing majority of stakeholder groups.</td>
<td>All</td>
<td>QLD</td>
</tr>
</tbody>
</table>

The involvement level of each stakeholder group can be seen to be dependent on the relative level of advancement of a state’s STTA sector. The further each state or territory progresses along the strata title development cycle, the greater the stakeholder involvement becomes. Further STTA development also appears to signify more complex relationships and dynamics for each stakeholder group.

Western Australia; appears to be proactive with respect to the planning roles and responsibilities associated development. This is highlighted by the creation of the Tourism Task Force (TTF). The TTF’s objective is to
ensure the same problems encountered by other states and in particular, Queensland, are not repeated in Western Australia. Western Australia has much to gain by identifying these issues at a very early stage and transforming a potentially problematic developmental situation into a positive, sustainable outcome for all of the stakeholder groups involved.

South Australia, Tasmania and the Northern Territory are all identified with the first stage of STTA development. Interestingly, all three of these states and territories, have been targeted by a private company selling management rights, with a plan to open offices and have representation by 2005. This is essentially a stage two characteristic, and signifies the continued advancement of the STTA sector across Australia.
Chapter 4

CONCLUSION

As community living has become an increasingly popular lifestyle option, with many Australians choosing to both live and holiday in unit accommodation, this report has shown how the industry has been regulated with ever-increasing complex legal regimes across the eight States and Territories without a concern for consistency. Because legislation in each Australian jurisdiction has tended to be responsive to industry and stakeholder concerns, it has developed in interesting ways, sometimes peculiar to each jurisdiction, and always to the detriment of uniformity. Coupled with the absence of comparative information, the Australian regulatory regime is problematic for those who are interested in more than one jurisdiction. Stakeholders are faced with the daunting task of finding their way through a complex maze of technical legal regulation across eight jurisdictions.

Chapter 2 outlined the law in each jurisdiction with an emphasis on a few key areas such as governance arrangements and dispute resolution. The chapter also provided an illustration of the degree of complexity facing stakeholders in the absence of any concern for consistency or uniformity in terms of nomenclature or the nature of the legislation underpinning community titles schemes. Apart from the problems posed by upsetting tradition, there are no compelling reasons why each Australian jurisdiction should not seek to make their laws more consistent. This is exhorbed by the fact that the regulation in each jurisdiction is rarely dealing with nuances peculiar to a jurisdiction and is more often just a different way to tackle a common problem.

Chapter 3 moved the focus to a consideration of the stakeholders involved in the STTA sector. Also some of the dynamics existing between these parties were explored. It was found that the sector provides particular challenges that are not present in other forms of tourism accommodation provision. For example, in the STTA sector there is the problem of managing the conflicting interests of resident owners and investor owners. Resident owners are frequently residing next door to units that are repeatedly rented out to short term guests on holiday. There is also the body corporate problem of managing the administration associated with a multitude of owners having a stake over common property. Such an arrangement gives rise to the need to manage sinking fund levy contributions and also disputes that are bound to arise given the number of owners involved. Not only is the STTA complex the focus of many owners, it is also the focus of many more stakeholders than a hotel that provides a similar service. For instance, a hotel has little reason to have an on-going working relationship with real estate agents. In a large STTA complex, real estate agents can be expected to be a permanent fixture. This is because at any one time, it is highly likely that one or more units will be for sale. Real estate agents can also become involved in sub-letting units and also the sale of management rights. All of these factors combine to highlight the highly complex nature of the stakeholder network associated with the provision of STTA.

The growth of the STTA sector is clearly changing the nature of the mix of tourism accommodation products available. It appears that this form of tourism accommodation, which generally signifies a self-catering facility, is increasing the affordability of tourism for families and members of lower socio-economic groups. This is particularly apparent given the rise of low cost ‘no frills’ air flight provision. The advent of cheaper air travel and also accommodation that serves cheaper family holidays can be expected to change the nature of the tourist profile in many destinations. It may be that the growth of the STTA sector does not represent a major threat to the occupancy levels of 4 and 5 star hotels which can be seen as operating in a different premium ‘full service’ market. It is notable, however that we now appear to be seeing the beginnings of branded hotels operating strata title owned complexes. Gleeson (1994) notes that the strata titling of hotels provides the small investor with the opportunity to ‘become a part owner of a total operation that has historically been the exclusive preserve of the big-time entrepreneurs’ (p. 12).

A further noteworthy issue arising from the growth of the STTA sector concerns the fact that conventional STTA properties provide little ‘tourism capital’ to a destination, other than accommodation provision. Consider the case of hotels that provide tourism capital in the form of restaurants that can be used by non-residents and also bars that are often attractively appointed close to a foyer which frequently provides considerable aesthetic appeal. Relative to hotels, it appears that the STTA sector provides little in the form of aesthetic appeal that adds to the tourism capital of a tourist destination. This signifies, however, that hotels can stand to benefit from increased STTA occupancy levels, as STTA users may well increase the food and beverage sales of hotels.

Ongoing STTA Research

The study reported herein can be viewed as providing an important contextual appreciation of the legal and stakeholder environment in which STTA complexes operate. The Sustainable Tourism CRC is now funding ongoing research that is comparing the relative governance merits of different organizational structures used in STTA complexes. This research is due for completion in June 2006.
REFERENCES


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ENDNOTES

1. ABS, Time Series Spreadsheets 8750.0 and 8750.3 Building Activity (Australia and Queensland respectively), December 2002.
2. Note: terrace buildings fit between ii) and iii).
3. Fiona Fitzpatrick, ‘Body Corporate and Community Management: The Queensland Perspective’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004), p 39. However this is not to suggest that the Queensland system of regulation is ideal.
6. Unit Titles Act 2001 (ACT).
9. The primary objective of the BCCM ‘is to provide flexible and contemporary communally based arrangements for the use of freehold land. ’ Body Corporate and Community Management Act 1997 (Qld), s 2.
11. ‘Body Corporate and Community Management Bill 1997 Explanatory Notes’, p 6. This legislative structure was also thought to be advantageous for Government, providing an avenue for additional Regulation Modules to be developed and specific problems to be targeted in specific schemes without necessarily affecting other schemes. ‘Body Corporate and Community Management Bill 1997 Explanatory Notes’, p 6.
13. ‘Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997’, p 2 (refer http://www.dtftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf (viewed 14 February 2005). An accommodation lot is defined as a lot that is the subject of, or immediately available to be the subject of, a lease or letting for accommodation for long or short term residential purposes, or part of a hotel: Body Corporate and Community Management (Accommodation Module) Regulation 1997 (Qld), s 3.
14. ‘Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997’, p 3 (refer http://www.dtftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf (viewed 14 February 2005). A commercial lot is defined as a lot used for commercial or industrial purposes, that is not an accommodation or residential lot: Body Corporate and Community Management (Commercial Module) Regulation 1997 (Qld), s 3.
15. ‘Comparison of Regulation Modules under the Body Corporate and Community Management Act 1997’, p 3 (refer http://www.dtftwid.qld.gov.au/disputeres/bccm/pdf/module_comparison.pdf (viewed 14 February 2005). The minimal regulatory requirements of the Small Schemes Module are aimed at establishing an informal management environment that encourages owners to self-manage their schemes: H. Hobbs, Hansard (Qld), 30 April 1997, 12:11 p.m., page 1136. For example, under the Small Schemes Module the composition and election of the Body Corporate Committee is simplified (refer Pt 3 Body Corporate and Community Management (Small Schemes Module) Regulation 1997 (Qld)) vis a vis the extensive Committee provisions of the Standard Module (refer Body Corporate and Community Management (Standard Module) Regulation 1997 (Qld)).
16. Body Corporate and Community Management Act 1997 (Qld), s 4(b).
17. Body Corporate and Community Management Act 1997 (Qld), s 31. The body corporate can exercise its governing authority through general meetings provided the meetings conform to the procedural requirements contained in Part 4 of each Regulation Module.
18. Body Corporate and Community Management Act 1997 (Qld), ss 24 and 30. A Community Management Statement is defined in the BCCM as a document that identifies the land and complies with the requirements of the Act: Body Corporate and Community Act 1997 (Qld), s 12. Section 66 of the BCCM outlines the requirements of a Community Management Statement, which includes such things as: naming the scheme and the body corporate; identifying the Regulation Module that applies to the scheme; and outlining the scheme by-laws. Refer section 66 of the BCCM for further details.
20. The body corporate is required to perform these functions in a reasonable manner (Body Corporate and Community Management Act 1997 (Qld), s 94(2) and is granted all powers necessary to do so under section 95 of the Body Corporate and Community Management Act 1997 (Qld).
21. This duty must be carried out in accordance with the Regulation Module applying to the scheme: Body Corporate and Community Management Act 1997 (Qld), s 204.
22. Section 8 of the Commercial Module and Small Schemes Module demands that there ‘be a committee for the body corporate for a community titles scheme.’ However, both the Standard Module (section 7(2)) and Accommodation Module (section 8(2)) state that a committee must be formed unless the body corporate engages a body corporate manager to carry out the functions of the committee.
23. As part of the more informal requirements of the Small Schemes Module a committee in a small scheme is only required to have a secretary and treasurer.
24. Chapter 3, Part 1, Division 2 of the BCCM enlivens Part 3 of the Regulation Module applying to the scheme.

33
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25 *Body Corporate and Community Management Act 1997* (Qld), s 100. The committee is however confined in the decisions it can make and is prohibited from deciding on issues nominated as restricted in the Regulation Module. For instance, under the Standard Module restricted issues include such things as changing levies or the rights and obligations of owners: *Body Corporate and Community Management (Standard Module) Regulation 1997* (Qld), s 26.

26 ‘Body corporate manager’ is defined in section 14 of the BCCM. ‘Service contractor’ is defined in section 15 of the BCCM. ‘Letting agent’ is defined in section 16 of the BCCM. These roles may often be combined.

27 *Body Corporate and Community Management Act 1997* (Qld), s 97.

28 However, this delegation of authority must not curtail the executive members’ ability to exercise their powers or direct the body corporate manager: *Body Corporate and Community Management Act 1997* (Qld), ss 119 and 120. The body corporate’s authority to engage a manager is echoed in the Standard Module (section 37B) and Accommodation Module (section 35A), which also contains further detail on the meeting and voting processes required. The developer is entitled to engage a body corporate manager before relinquishing control of the scheme, however in doing so they must exercise reasonable skill, care and diligence and act in the best interests of the body corporate: *Body Corporate and Community Management Act 1997* (Qld), s 112.

29 There are additional provisions relating to body corporate managers who directly administer the scheme’s funds: refer *Body Corporate and Community Management (Standard Module) Regulation 1997* (Qld), ss 100, 100A and 101A; and *Body Corporate and Community Management (Accommodation Module) Regulation 1997* (Qld), s 98, 98A and 99A.

30 Section 37F of the Standard Module is mirrored in section 35E of the Accommodation Module.

31 *Body Corporate and Community Management Act 1997* (Qld), s 118. For instance a manager must act in the best interest of the body corporate and must not put themselves in a situation where their duties or interests in the scheme are in conflict: *Body Corporate and Community Management Act 1997* (Qld), sch 2.

32 *Body Corporate and Community Management Act 1997* (Qld), s 15.

33 Letting agents are also subject to the *Property Agents and Motor Dealers Act 2000* (Qld) and the *Property Agents and Motor Dealers (Restricted Letting Agency Practice Code of Conduct) Regulation 2001* (Qld).

34 *Body Corporate and Community Management Act 1997* (Qld), s 16.

35 *Body Corporate and Community Management Act 1997* (Qld), s 139. This notice must set out the provision of the code alleged to be breached, details of the contravention and a time frame in which the agent is expected to remedy the infringement: *Body Corporate and Community Management Act 1997* (Qld), s 139.

36 *Body Corporate and Community Management Act 1997* (Qld), ss 138-143.

37 *Body Corporate and Community Management Act 1997* (Qld), s 4(h).

38 The Commissioner is linked to the Department of Tourism, Fair Trading and Wine Industry Development.


40 *Body Corporate and Community Management Act 1997* (Qld), ss 241, 248 and 250. The Commissioner may also seek further information from the applicant: *Body Corporate and Community Management Act 1997* (Qld), s 240. Any person who is a party to a dispute or who is directly concerned with a dispute may make an application, however it must be done in the form approved by the BCCM: refer *Body Corporate and Community Management Act 1997* (Qld), ss 238-239. Upon receiving an application, the Commissioner must give written notice to the applicant as well as the body corporate and all affected persons: *Body Corporate and Community Management Act 1997* (Qld), s 243. The body corporate is then given the responsibility of forwarding this notice along with the application to all owners in the scheme: *Body Corporate and Community Management Act 1997* (Qld), s 243(4).

41 *Body Corporate and Community Management Act 1997* (Qld), s 248. Also refer to section 251 of the BCCM ‘Preparation for making a dispute resolution recommendation’.

42 *Body Corporate and Community Management Act 1997* (Qld), ss 236 and 276.

43 An adjudicator is does not, however, have power to resolve a question about title to land: *Body Corporate and Community Management Act 1997* (Qld), s 285.


45 *Body Corporate and Community Management Act 1997* (Qld), s 271.

46 *Body Corporate and Community Management Act 1997* (Qld), ss 286, 287 and 289-294.

47 The BCCM was introduced under the promise that its innovative regime would be subject to legislative review: Robertson, SMP, *Hansard*, *Body Corporate and Community Management and Other Legislation Amendment Bill*, 3 December 2002 p 5225.

48 This result varied in a relatively large amount of amendments that took effect from 4 March 2003. For more details of both the 2002 and 2003 reviews refer to: A Ardill et al. (2004).

49 This review focused on the Standard and Accommodation Modules, with amendments effective from 1 December 2003. The result of the review was the *Body Corporate and Community Management Legislation Amendment Regulation (No.1)* 2003. Similar amendments are proposed for the Small Schemes and Accommodation Modules. The proposal to amend these two modules is canvassed at the official departmental website, which can be found at [http://www.dtfwid.qld.gov.au/disputeres/bccm/pdf/pa_com_small.pdf](http://www.dtfwid.qld.gov.au/disputeres/bccm/pdf/pa_com_small.pdf) (viewed 14 February 2005).


51 Email from David Reardon to Kimberly Everton-Moore, 22 February 2005.

52 *Strata Schemes (Freehold Development) Regulation 2002* (NSW), ss 8, 10 and 15-18. Also refer Schedule 1 and 2. *Strata Schemes (Leasehold Development) Regulation 2002* (NSW), ss 8, 10 and 15-18. Also refer Schedule 1 and 2.
According to section 3, the objectives of the Strata Schemes Management Act 1996 (NSW) are: (a) to provide for the management of strata schemes created under the Strata Schemes (Freehold Development) Act 1973 or the Strata Schemes (Leasehold Development) Act 1986, and (b) to provide for the resolution of disputes arising in connection with the management of strata schemes.


Peter Berry, ‘Strata Schemes in New South Wales’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004). New South Wales strata legislation can be traced back to the Conveyancing (Strata titles) Act 1961 (NSW), which was repealed and replaced by the Strata titles Act 1973 (NSW). The Strata titles Act 1973 (NSW) remained largely in force until the more recent introduction of the SSMA.

Peter Berry, ‘Strata Schemes in New South Wales’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004). The SSMA does not use an apostrophe after the word ‘owners’.

For example, a mortgagee may have a priority vote on a motion that relates to insurance, budgeting or fixing of a levy that will require expenditure above the prescribed amount, or any matter that requires a special or unanimous resolution: Strata Schemes Management Act 1996 (NSW), s 29. If the original owner has half (or more) of the aggregate unit entitlement and a motion is presented for the nomination of an executive committee, their voting power is reduced to one vote for every 3 units owned: Strata Schemes Management Act 1996 (NSW), Schedule 2, Part 2, Clause 17(2). If a poll is called for the election of an executive committee their unit entitlement is reduced to a third of the total entitlement: Strata Schemes Management Act 1996 (NSW), Schedule 2, Part 2, Clause 17(4).

Strata Schemes Management Act 1996 (NSW), s 8. Further functions are set out in Chapter 3, Part 6 of the SSMA.

Strata Schemes Management Act 1996 (NSW), s 61.

For example, a mortgagee may have a priority vote on a motion that relates to insurance, budgeting or fixing of a levy that will require expenditure above the prescribed amount, or any matter that requires a special or unanimous resolution: Strata Schemes Management Act 1996 (NSW), s 7(1)(a). Therefore, providing the mortgagee gives the owner notice of their intention to cast their priority, a vote by the lot owner on the same matter does not count. This can be contrasted to Tasmanian legislation which only affords a mortgagee the right to vote if their intention to cast their priority, a vote by the lot owner on the same matter does not count. This can be contrasted to modern owners corporations. J. Hatzistergos MP, Hansard (NSW), 10 March 2004, 9:11 p.m., page 6966. One of the most significant developments from the recent review was the introduction of section 75A, which requires the owners’ corporation to prepare a 10-year plan for sinking funds.


This is done when lodging the strata plan. Strata Schemes Management Act 1996 (NSW), section 41.

Strata Schemes Management Act 1996 (NSW), section 50.

If the original owner has half (or more) of the aggregate unit entitlement and a motion is presented for the nomination of an executive committee, their voting power is reduced to one vote for every 3 units owned: Strata Schemes Management Act 1996 (NSW), Schedule 2, Part 2, Clause 17(2). If a poll is called for the election of an executive committee their unit entitlement is reduced to a third of the total entitlement: Strata Schemes Management Act 1996 (NSW), Schedule 2, Part 2, Clause 17(4).

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For example, a mortgagee may have a priority vote on a motion that relates to insurance, budgeting or fixing of a levy that will require expenditure above the prescribed amount, or any matter that requires a special or unanimous resolution: Strata Schemes Management Act 1996 (NSW), s 7(1)(a). Therefore, providing the mortgagee gives the owner notice of their intention to cast their priority, a vote by the lot owner on the same matter does not count. This can be contrasted to Tasmanian legislation which only affords a mortgagee the right to vote if their in possession of the lot under the mortgage: Strata titles Act 1998 (Tas), s 74(3).

Strata Schemes Management Act 1996 (NSW), s 9.

Strata Schemes Management Act 1996 (NSW), ss16 and 21.

Strata Schemes Management Act 1996 (NSW), s 21. Refer to Schedule 3 of the SSMA for provisions relating to the constitution of executive committee, appointment of office holders and meetings of executive committee.

The owners’ corporation cannot delegate those powers that are exclusively reserved for the owners’ corporation. Strata Schemes Management Act 1996 (NSW), ss 28-29. However, the executive committee can otherwise exist in parallel with a strata managing agent: Strata Schemes Management Act 1996 (NSW), s 29.

Strata Schemes Management Act 1996 (NSW), s 40A.

Property, Stock and Business Agents Act 2002 (NSW), s 8. Exactly who must be licensed to perform duties on behalf of the owners’ corporation has created some confusion. To address this, section 29A of the Strata Schemes Management Amendment Act 2004 (NSW) lists a range of functions that may only be delegated to the executive committee or a licensed strata managing agent. Many of these functions centre on financial management and record keeping. This makes it clear that persons appointed to carry out basic maintenance tasks are not required to be licensed strata managing agents.


All licensees are subject to 19 general rules outlined in Schedule 1 of the Property, Stock and Business Agents Regulation 2003 (NSW). More specific rules for on-site residential property managers are contained within Schedule 2 and rules specific to strata, community and residential managers are contained in Schedule 6.

Property, Stock and Business Agents Regulation 2003 (NSW), sch 1.

The Strata title Act 1998 (Tas) makes similar provision for the enforcement of by-laws. Refer to discussion of Tasmanian legislation below.

Strata Schemes Management Act 1996 (NSW), s 203.

Strata Schemes Management Act 1996 (NSW), s 125.

Peter Berry, ‘Strata Schemes in New South Wales’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate Conference, Melbourne, 5 April 2004).

Peter Berry, ‘Strata Schemes in New South Wales’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).
effectiveness and efficiency of the Bodies Corporate, Melbourne, 5 April 2004). Consumer Affairs Victoria, 'Issues Paper, Bodies Corporate - Review of the


Subdivision Act 1988 (Vic), s 1.

The objectives of the Subdivision Regulations are outline in section 101 and include: specifying the functions, powers and duties of bodies corporate; making further provision for the establishment and operation of bodies corporate; specifying the rights and duties of members of bodies corporate; providing for forms and procedures for the recording or giving of information required by the Subdivision Act; and making further provision for plans of strata and cluster subdivision.

Subdivision Act 1988 (Vic), s 27(1). If multiple bodies corporate are created, it must be done in such a way that any single lot is not affected by more than one body corporate: Subdivision Act 1988 (Vic), s 27(2B).

Subdivision Act 1988 (Vic), s 27(2). The plan must also specify the details of lot entitlement: Subdivision Act 1988 (Vic), s 27(3).

Subdivision Act 1988 (Vic), s 28.

Subdivision (Body Corporate) Regulations 2001 (Vic), r 201. The body corporate must also keep proper books of account and prepare proper financial statements: Subdivision (Body Corporate) Regulations 2001 (Vic), r 203.

Subdivision (Body Corporate) Regulations 2001 (Vic), r 202.

Subdivision (Body Corporate) Regulations 2001 (Vic), r 305.

It must be noted that rule 304 of the Subdivision Regulations provides that a manager can be removed by resolution at an annual general meeting or special general meeting.

Subdivision Act 1988 (Vic), s 38(1). If appropriate, the Magistrates’ Court may refer the dispute to the County Court: Subdivision Act 1988 (Vic), s 38(2).

Subdivision Act 1988 (Vic), s 38(3).

Subdivision Act 1988 (Vic), s 40(1)(a). Refer generally to sections 40 and 41 of the Subdivision Act.


David Cousins, ‘Vision for Bodies Corporate’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004). Consumer Affairs Victoria, ‘Issues Paper, Bodies Corporate - Review of the effectiveness and efficiency of the Subdivision Act 1988 as it relates to the creation and operation of bodies corporate’.

David Cousins, ‘Vision for Bodies Corporate’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).


The Strata titles Act 1988 (SA) is to be read in conjunction with the remainder of the Real Property Act 1886 (SA): Strata titles Act 1988 (SA), s 4.

The Strata titles (Fees) Regulations 2001 (SA) specify the fees payable to the Registrar-General for a range of matters, including the lodging and examination of applications, the issuing of certificates of title, as well as the amending of unit entitlements, plans or articles.

For example, pursuant to section 6(1) of the STA (SA), a unit in a strata plan must be assigned a unit entitlement number that reflects the unit’s value in proportion to the cumulative capital value of all units. In addition, section 6(3) of the STA (SA) dictates that the aggregate unit entitlement of the units in a scheme may be fixed by the regulations. Section 4 of the Strata titles Regulations 2003 (SA) operates in conjunction with section 6(3) of the STA (SA) to set the aggregate unit entitlement of all units at 10 000.

The schemes ‘articles’ are what would be called in other states the schemes ‘by-laws’. The default articles are set out in Schedule 3 of the STA (SA) however a scheme may, by special resolution, adopt a substitute set: Strata titles Act 1988 (SA), s 19(2). The articles are binding on the corporation, unit holders and occupiers: Strata titles Act 1988 (SA), s 20.

The South Australian Government had originally intended to deposit the STA (SA) into the CTA (SA) leaving only one Act. However, community consultation revealed that those who were already subject to the STA (SA) preferred to remain subrogated from the new legislative framework. Shane Sody, ‘S.A. Bodies Corporate’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).

K. Griffin A-G, Hansard (SA), 30 November 1995, 11:00 a.m., page 683. ‘It is the hope of the Government that this legislation will open up the possibility for a range of innovative projects, encourage diversity in development, attract the interest of developers and allow land owners to better utilise their assets’: K. Griffin A-G, Hansard (SA), 30 November 1995, 11:00 a.m., page 685.

K. Griffin A-G, Hansard (SA), 30 November 1995, 11:00 a.m., page 683. ‘The greatest advantage of community titles over the strata title is that the ownership is of the land rather than of a space inside a building.’ K. Griffin A-G, Hansard (SA), 30 November 1995, 11:00 a.m., page 684.

Those operating under the STA (SA) expressed a preference for the Act to remain as it was. Shane Sody, ‘S.A. Bodies Corporate’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).
The powers of the strata corporation include dealing with real and personal property, borrowing money, maintaining accounts, investing money, entering contracts and raising funds: Strata titles Act 1988 (SA), ss 26 & 27.

If the scheme includes non-residential units, the management committee may consist of people who are not unit owners: Strata titles Act 1988 (SA), s 35(1a). The management committee must keep minutes of its proceedings and ensure that proper accounting records are kept: Strata titles Act 1988 (SA), s 35(8).

This decision is expressed in the ‘scheme description’ lodged with the Lands Titles Registration Office: Community Titles Act 1996 (SA), ss 11 and 30. The scheme description is similar to the Community Management Statement required in Queensland.

Community Titles Act 1996 (SA), s 86. Shane Sody, ‘S.A. Bodies Corporate’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).

Community Titles Act 1996 (SA), s 35. Refer generally: Community Titles Act 1996 (SA), s 101) and is under a duty to insure the scheme (refer Community Titles Act 1996 (SA), ss 103-108). Part 5 of the CTA (SA) outlines what may be included in a community title scheme’s by-law and allows considerable breadth for the laws to be tailored to the individual scheme.

If the community scheme is comprised of ten lots or less, all of these offices may be held by one person. If the scheme consists of eleven or more lots, a maximum of two of these offices may be held by one person: Community Titles Act 1996 (SA), s 76(3).

For a list of some of the deficits of the Strata titles Act 1985 (WA), Part IV, Division 3 for the rules regarding the conduction of meetings.

Robert Kronberger, ‘Overview of Strata titles in Western Australia’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).

Single tier strata schemes registered before 1 January 1998 can be converted to survey-strata schemes under Part III, Division 3 of the Strata titles Act 1985 (WA).

Strata titles Act 1985 (WA), s 5. Contrary to previous legislation, the boundary of a lot may include space outside the building or the building structure.


Strata titles Act 1985 (WA), s 32. The original proprietor is required to convene and hold the strata schemes first annual general meeting within 3 months of registering the strata / survey-strata plan: Strata titles Act 1988 (SA), s 49. Refer Strata titles Act 1985 (WA), Part IV, Division 3 for the rules regarding the conduction of meetings.

Strata titles Act 1985 (WA), s 35. Refer Strata titles Act 1983 (WA), Part IV, Division 4 for provisions relating to insurance. The strata company is under a further obligation to keep a roll detailing the plan number and the details of all proprietors, tenants and mortgagees: Strata titles Act 1985 (WA), s 35A. Certain provisions within sections 35 and 35A do not apply to schemes containing only two lots: refer Strata titles Act 1985 (WA), s 36A.

Strata titles Act 1985 (WA), s 36(1). Section 36(1) does not apply to a scheme containing only two lots: Strata titles Act 1985 (WA), s 36A.

Strata titles Act 1985 (WA), s 36(2). The WA Government is currently considering whether to establish compulsory reserve funds following a recommendation to that effect by the Economics and Industry Standing Committee, Inquiry into the Western Australian Strata Management Industry.
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[142] Refer Strata titles Act 1985 (WA), ss 37-39A.


[144] Strata titles Act 1985 (WA), s 47.


To attract this power, the contract must relate to the provision of services to the strata company and either be entered into by a proprietor holding 50% or more of the lots or been deemed unfair to 25% or more of the proprietors by the State Administrative Tribunal.

The strata company is granted legislative authority to make additional by-laws for matters concerning its corporate affairs, the common property and any matter specified in Schedule 2A: Strata titles Act 1985 (WA), s 42. By-laws created by the strata company may attract a penalty, which can be imposed by the State Administrative Tribunal: Strata titles Act 1985 (WA), s 42A.


Robert Kronberger, ‘Overview of Strata titles in Western Australia’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).

For example, because strata managers are not regulated, there is no requirement that they audit their records or maintain professional indemnity insurance, leaving lot owners with little recourse in the event of serious mismanagement: Economics and Industry Standing Committee, Inquiry into the Western Australian Strata Industry (2003), Report No. 4, in the thirty-sixth Parliament, p 50.


The Committee also recommended the introduction of a classification system based on the number of lots in the scheme. According to this system, Category 2 encompasses schemes of six to twenty lots and all multi-storey schemes from two to twenty lots, while Category 3 includes all schemes of more than twenty lots.


Strata titles Act 1985 (WA), s 69B(2).

Strata titles Act 1985 (WA), s 69D.

The State Administrative Tribunal Act 2004 (WA) was introduced to consolidate various administrative dispute resolution bodies into the one tribunal. Prior to its introduction strata title disputes were settled through the Office of Referee by specialist adjudicators.

Refer to Strata titles Act 1985 (WA), Part VI, Division 3.

Strata titles Act 1985 (WA), s 121.

State Administrative Tribunal Act 2004 (WA), s 105.

The notion of strata titling was legislatively introduced in Tasmania during the 1960’s and was contained within the Part XI A Conveyancing and Law of Property Act 1884 (Tas). This relatively small section provided a very basic and flexible legislative framework for the division, registration and maintenance of strata titles. P. Hodgman Strata titles Bill 1997 (No. 132) ‘Hansard’ Second Reading Thursday 11 December 1997 page 37. The Strata titles Act is primarily administered by the Office of Recorder of Titles which operates within the Department of Primary Industries, Water and Environment. Refer to http://www.dpiwe.tas.gov.au/inter.nsf/Home/1Open for more information on the Department.

Strata titles (Fees) Regulation 1998 (Tas), sch 1.

Strata titles (Insurance) Regulations 1999 (Tas), s 3.

P. Hodgman Strata titles Bill 1997 (No. 132) ‘Hansard’ Second Reading Thursday 11 December 1997 page 38 and Gary Peterson, ‘State Overview Tasmania’ (Speech delivered at the Building Communities: An Insight into Governing Bodies Corporate, Melbourne, 5 April 2004).

Section 16 of the Strata titles Act 1998 (Tas) dictates that each lot in a scheme is allocated a unit entitlement that is fixed on a fair and equitable basis. This unit entitlement may be general or special, with special unit entitlements operating to: fix the proportion of common property that a lot owner holds as a tenant in common with other lot owners (Strata titles Act 1998 (Tas), ss 16(2)(b)(ii) and 10); fix the proportion of levies that are to be paid by a lot owner (Strata titles Act 1998 (Tas), ss 16(2)(b)(i) and 83); fix the proportion of voting rights a lot owner holds at a body corporate meeting (Strata titles Act 1998 (Tas), ss 16(2)(b)(iii) and 76); or fix the proportion of income that must be paid by a lot owner into the scheme’s administrative fund (Strata titles Act 1998 (Tas), ss 16(2)(b)(iv) and 82). Also refer to section 17 for how to change unit entitlements.

Strata titles Act 1998 (Tas), s 3. Also refer to Part 2 of the Strata titles Act, dealing exclusively with strata schemes.

Strata titles Act 1998 (Tas), s 3. Also refer to Part 3 of the Strata titles Act, dealing exclusively with staged development schemes. Staged development schemes are not unique to Tasmania, with strata title legislation allowing for similar developments in all states except Western Australia.

Strata titles Act 1998 (Tas), s 40.


The body corporate is established automatically on the registration of a strata plan: Strata titles Act 1998 (Tas), s 71. The original proprietor (which may be the developer) is regarded as the initial secretary of the body corporate and is required to call the first meeting within three months of registration of the plan: Strata titles Act 1998 (Tas), s 75.

Strata titles Act 1998 (Tas), s 81.
the common property or other property; or (b) making alterations to common property:

be satisfied that the body corporate has unreasonably failed to implement a proposal by an owner for (a) repairing damage to

Building Development Parcel:

of building lots may be determined by reference to the walls, ceilings and floors of the building or by reference to land in the

common property:

UTRegs (NT)

details prescribed by the

improvements upon them that are fit for immediate occupation'.

However to make this order, the Recorder must

with the Tasmanian Office of the Recorder of Titles. As such many strata managers would be subject to the licensing and regulations requirements of the

Auctioneers and Real Estate Agents Act 1991 (Tas).

Compare section 95 of the Strata titles Act with section 45 of the SSMA.

Strata titles Act 1998 (Tas), s 96.

Strata titles Act 1998 (Tas), s 96(2).

Strata titles Act 1998 (Tas), s 95.

The Recorder is required to keep a register of all dispute resolution proceedings taken under the Strata titles Act: Strata titles Act 1998 (Tas), s 140.

The Recorder has the power to dismiss applications considered frivolous, vexatious, misconceived or lacking in substance: Strata titles Act 1998 (Tas), s 109. The Recorder also has power to investigate the application or enter a lot to obtain further information: Strata titles Act 1998 (Tas), ss 110 and 111.

For example, under section 114 of the Strata titles Act, the Recorder is empowered to make an order that the body corporate allow certain repairs or alterations to be made to common property. However to make this order, the Recorder must be satisfied that the body corporate has unreasonably failed to implement a proposal by an owner for (a) repairing damage to the common property or other property; or (b) making alterations to common property: Strata titles Act 1998 (Tas), s 114.

Strata titles Act 1998 (Tas), ss 136-137.

Strata titles Act 1998 (Tas), s 144. Section 144(2) of the Strata titles Act affords a right to appeal to an ‘interested person’, which includes: the applicant; a person who is entitled to make and actually made submissions to the Recorder in relation to the application for relief; the person who the order was made against; any other person classified by the regulations as an interested person in relation to a decision or order.

Strata titles Act 1998 (Tas), s 146 (power to revoke, etc.).


Strata titles Act 1998 (Tas), s 75.


Email from Gary Peterson to Kimberly Everton-Moore, 19 January 2005. Gary Peterson is a Senior Strata Adjudicator with the Tasmanian Office of the Recorder of Titles. As such many strata managers would be subject to the licensing and regulations requirements of the Auctioneers and Real Estate Agents Act 1991 (Tas).

Both of these Acts are complex and are not well designed for use by the wide array of stakeholders within the strata industry. The UT (NT) and the UTRegs (NT) are administered by the Department of Justice, http://www.nt.gov.au/justice.

Refer Unit Titles Act (NT), sch 4 and sch 5.

Refer Unit Titles Act (NT), Part IVA. Special conditions are placed on what must be included in the disclosure statement of a condominium development. For instance, the disclosure statement must include details on the location, expected commencement and completion dates, and the scheduled working hours for development: Unit Titles Act (NT), s 26C.

Email from Guy Riley to Kimberly Everton-Moore, 24 August 2005: (the) ‘major difference between an estate subdivision and a normal units plan subdivision is that the parcels created under an estate subdivision do not have to have any improvements upon them that are fit for immediate occupation’.

J. Burke Unit Titles Amendment Bill (No. 27) ‘Hansard’ Second Reading Thursday 1 March 2001 page 1. Pursuant to section 26ZK of the UTA (NT), building developments must be accompanied by a disclosure statement containing particular details prescribed by the UTA (NT). Any variation of the disclosure statement must be in accordance with Schedule 6 of the UTRegs (NT).

J. Burke Unit Titles Amendment Bill (No. 27) ‘Hansard’ Second Reading Thursday 1 March 2001 page 1. The boundaries of building lots may be determined by reference to the walls, ceilings and floors of the building or by reference to land in the Building Development Parcel: Unit Titles Act (NT), s 26ZG. Upon registration of a building development plan, the proprietor of the parcel obtains a fee simple interest in each building lot, while the body corporate acquires fee simple title in the common property: Unit Titles Act (NT), s 26ZQ. The corporation holds the common property on trust for the individual proprietors: Unit Titles Act (NT), s 26ZR.

Unit Titles Act (NT), ss 26ZU & 26ZV. This was thought to be a key aspect of the 2001 amendments introducing building developments: J. Burke Unit Titles Amendment Bill (No. 27) ‘Hansard’ Second Reading Thursday 1 March 2001 page 2.
Legal Context and Stakeholder Views

207 J. Burke Unit Titles Amendment Bill (No. 27) ‘Hansard’ Second Reading Thursday 1 March 2001 page 1.
208 Unit Titles Act (NT), ss 27 & 28.
209 Unit Titles Act (NT), s 34.
210 For example the body corporate may borrow moneys, acquire or alienate property, or lease common property if it has obtained a unanimous resolution to do so: Unit Titles Act (NT), ss 40, 42, 42A & 42B. Refer Unit Titles Act (NT), Part 5, Division 2 for more detail on the duties, functions and powers of a corporation.
211 Unit Titles Act (NT), s 47A(3).
212 Unit Titles Act (NT), s 47A(1).
213 Unit Titles Act (NT), s 32.
214 The decisions of a committee on a matter, other than a restricted matter, are deemed to be a decision of the corporation: Unit Titles Act (NT), s 52.
215 Unit Titles Act (NT), s 53A.
216 Unit Titles Act (NT), ss 54 & 55. Note that contracts of employment of an agent or servant by the corporation of a condominium or estate development may be terminated on 14 days notice following a general meeting’s decision to do as such: Unit Titles Act (NT), s 55(2).
217 Section 5 of the Agents Licensing Act (NT) further defines a corporation manager under the UTA (NT) as ‘a person who for reward (whether monetary or otherwise), and whether or not the person carries on any other business, exercises a power or performs a function on behalf of a corporation or members of a corporation.’ The ALA is supplemented by the Agents Licensing Regulations (NT).
218 Agents Licensing Act (NT), ss 20, 22 & 31. The educational requirements for a real estate agents license is outlined in Part 1 of Schedule 5 of the Agents Licensing Regulations (NT).
219 Unit Titles Act (NT), s 106(2).
220 Unit Titles Act (NT), s 106(1).
221 This power is subject to section 106(5) of the UTA (NT) which requires that the corporation be a party to the proceedings or have been given a reasonable opportunity to become a party to the proceedings and that the court be satisfied that the order is essential to achieve a fair and equitable resolution of the matter.
222 Unit Titles Act (NT), s 262ZK.
223 The Community Title Act 2001 (ACT) and the Unit Titles Act 2001 (ACT) are administered by the ACT Planning and Land Authority. Refer http://www.actpla.act.gov.au/ for more information.
224 Unit Titles Regulations 2001, s 3.
225 Unit Titles Regulations 2001, part 2.
226 Unit Titles Regulations 2001, part 3.
227 Unit Titles Regulations 2001, part 4 and sch 1.
228 Brendan Smyth (formerly Minister for Urban Services, Minister for Business, Tourism and the Arts and Minister for Police and Emergency Services and now Leader of the Opposition) described the difference between the types of schemes administered by the Community Title Act and the Unit Titles Act to be: ‘The Community Title Bill 2000 provides for a wider mix of land uses in one scheme. For example, a community title scheme may contain different types of housing, including units, recreational facilities, shops, parks, car parking and a community centre, whereas a units plan may only contain units, common property and unit subsidiaries.’ B. Smyth MP, Hansard (ACT), 3 May 2001, 10:58 a.m., page 1401.
229 ACT Planning and Land Authority (2003) ‘Community Title Schemes’ ACTPLA Information Series. There is a minimum requirement that a community title scheme consist of at least three Crown leases, one of which is to be allocated as common property and that it forms a single area that is undivided except by a road or body of water: Community Title Act 2001 (ACT), s 5.
231 Although enquiries have been made to the ACT Planning and Land Authority by a variety of individuals and companies, no applications have been formally lodged. Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.
233 A body corporate is established upon registration of a scheme and exists to manage the common land. Community Title Act 2001 (ACT), s 30 and B. Smyth MP, Hansard (ACT), 3 May 2001, 10:58 a.m., page 1402. The CTA uses the term ‘body corporate’ to describe the owners of the lots at any point in time (refer Community Title Act 2001 (ACT), s 32). However, the UTA adopts the term ‘owners corporation’ (refer Unit Titles Act 2001 (ACT), ss 38-40).
234 Community Title Act 2001 (ACT), s 33. The existence of multiple bodies corporate will foreseeably complicate the management regime of a community title scheme. The CMA attempts to counter this by prescribing that the functions and responsibilities for each body be clearly defined and allowing for the creation of an administrative hierarchy of bodies corporate: Community Title Act 2001 (ACT), s 33(6).
235 Unit Titles Act 2001 (ACT), ss 43 & 44.
236 No mixed class A and class B unit developments have been approved since the 5th April 2001 following the UTA being notified in the Government Gazette.
237 Unit Titles Act 2001 (ACT), ss 18(1).
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242 Refer Unit Titles Regulations 2001, s 3 for a full list of permissible unit subsidiaries.

243 Unit Titles Act 2001 (ACT), s 51. The owners’ corporation is also commonly referred to as the body corporate. The owners’ corporation is established automatically upon registration of the scheme: Unit Titles Act 2001 (ACT), s 38.

244 Refer Unit Titles Act 2001 (ACT), ss 81-82. The executive committee’s functions include such things as administering the scheme’s finances (Unit Titles Act 2001 (ACT), division 5.4), calling and documenting meetings (Unit Titles Act 2001 (ACT), ss 91 and division 6.2-6.4), keeping records of the owners corporation activities (Unit Titles Act 2001 (ACT), ss 91), and maintaining public liability insurance (Unit Titles Act 2001 (ACT), ss 131).

245 Refer Unit Titles Act 2001 (ACT), s 84 for the detailed manner in which the executive committee is formed. Also refer Unit Titles Act 2001 (ACT), ss 85-88 pertaining to the organisation and administration of executive committee meetings.

246 Unit Titles Act 2001 (ACT), s 82.

247 Unit Titles Act 2001 (ACT), ss 91 and 131; divisions 5.4 and 6.2-6.4.

248 Unit Titles Act 2001 (ACT), s 90. The executive may also solicit other persons, for example they may appoint a contractor to carry out maintenance or repairs.

249 The ACT Planning and Land Authority, in conjunction with the Department of Justice and Community Safety, will work on changing the current licensing status. However any such endeavours are ‘still some time away’: Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.

250 For example, an interested person can apply for a mandatory injunction ‘requiring the developer of a community title scheme to finish the scheme in accordance with the terms of the scheme’: Community Title Act 2001 (ACT), s 28.

251 Unit Titles Act 2001 (ACT), s 55.


253 33(3) & 47.

254 Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.


256 33(3) & 47.

257 Email from Dulce Lander to Kimberly Everton-Moore, 29 November 2004.

258 Guilding et al., [2005] note that this facet of ownership can give rise to increased complexity and governance problems in strata titled complexes.
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