



# Additional Information

## Simplified Dispute Resolution

12 August 2019,  
Version: 00001

# Simplified Dispute Resolution

## Current problems

Currently, strata disputes in WA are heard in four different forums (three different courts and the State Administrative Tribunal), which generates confusion for strata owners about which forum they can approach to resolve their strata dispute.

The dispute resolution provisions within the *Strata Titles Act 1985* (the Act) are complex and limit the power the State Administrative Tribunal (the Tribunal) must resolve strata disputes.

The two major reforms to dispute resolution are:

- making the Tribunal the one-stop-shop to resolve most strata disputes
- strengthening the Tribunal's powers to efficiently resolve disputes.

## State Administrative Tribunal

### Cost-effective, one-stop-shop for disputes

Making the Tribunal the one-stop-shop for most strata disputes will provide the parties to a strata dispute with access to a cost-effective dispute resolution forum. The Tribunal will have the specialist strata expertise and statutory powers to efficiently resolve strata disputes.

### Enforcing by-laws

Enforcing by-laws is difficult under the current legislation for several reasons:

- The Tribunal can make an order imposing a penalty for breach of a by-law, only if that by-law specifically states that a penalty is to be paid. Most schemes do not have any penalties stated in their by-laws.
- Before the Tribunal can order a penalty be imposed for breach of a by-law, the strata company must establish that the owner has wilfully and persistently breached the by-law.

Reforms will give the tribunal the power to:

- make an order imposing a penalty for the breach of any by-law (whether or not that by-law specifies a penalty for breach)
- make an order that the person who breached the by-law must act to:
  - stop breaching the by-law or
  - fix the breach of the by-law.

The strata company, owners and occupiers can apply to the Tribunal for an order to enforce a by-law, including an order to pay a penalty.

The Tribunal can order the person who breached a by-law to pay a penalty to the strata company if it finds:

- the breach of the by-law is serious
- the by-law has been breached by that person on three occasions or
- the strata company served notice on a person notifying them they have breached a by-law and that person then breaches the same by-law again.

## Broader powers to resolve scheme disputes

The law will be amended to give the Tribunal broader powers to become the specialist forum for strata dispute resolution. The Tribunal will have the power to resolve many kinds of disputes including:

- a dispute between scheme participants (i.e. a strata company, an owner of a lot, an owner of a leasehold scheme, an administrator of a strata company, an occupier of a lot, the registered mortgagee of a lot, a member of the strata council or an officer of the strata company) about:
  - the scheme documents (scheme notice, scheme plan, schedule of unit entitlements scheme by-laws, including the validity of by-laws) and strata leases (if a leasehold scheme)
  - the performance of, or the failure to perform, a function conferred or imposed on a person by the Act or the scheme by-laws
  - an alleged contravention of the Act (other than an offence)
  - a resolution or decision of a strata company or the strata council (council of the strata company), including the validity of the decision or resolution
  - the appointment or election of a member of the council or an officer of a strata company, including its validity
  - any other matter arising under the Act or the scheme by-laws

Note that the occupier of a lot can apply for resolution of a scheme dispute listed above only if the dispute is about the scheme by-laws, if a resolution or decision of the strata company directly affects the occupier, or an obligation or right of the occupier under the Act or the by-laws.
- a dispute between an applicant and a person who must consent to an application for registration, or amendment, of a strata titles scheme
- a dispute between a strata company and a person (other than the Western Australian Planning Commission (WAPC) or a local government authority) about a refusal to give an approval or consent where the scheme by-laws require the approval or consent of a person (other than leasehold by-laws, staged subdivision by-laws and exclusive use by-laws)
- a dispute between an infrastructure owner (person who owns sustainability or utility infrastructure that has been installed on the common property through a contract with the strata company) and the strata company about the common property (utility and sustainability infrastructure) easement (an easement over the common property for that sustainability or utility infrastructure)
- a dispute between the scheme developer and a strata company about matters involving the first AGM, key documents of the scheme, disclosure of remuneration and other benefits and voting on resolutions concerning building defects
- a dispute between the strata company and a person having a proper interest in information about a strata titles scheme about the giving of contact information, inspection of material and the giving of certificates
- a dispute between a strata manager, or former strata manager, and the strata company about matters involving the authorised functions of a strata manager or the strata management contract.
- a dispute between a buyer or prospective buyer of a lot in a scheme and the seller of a lot about the giving of information to the buyer before or after the contract, the exercise of avoidance rights under the Act and other matters covered in the Protection of Buyers part of the Act.

The Tribunal can also resolve a dispute of a class or kind specified in the regulations.

The following are not scheme disputes:

- a dispute with WAPC or some other planning authority or a dispute that can be the subject of a review under Part 14 of the *Planning and Development Act 2005*
- a dispute with the Registrar of Titles, the Valuer-General or a rating or taxing authority
- a dispute about a contract of mortgage insurance
- a contractual dispute, or a dispute about an estate or interest in land, between:
  - a scheme participant and a person who is not a scheme participant (other than a dispute arising out of termination of a contract for services or amenities under the Act)
  - the owner and a buyer or mortgagee (or prospective buyer or mortgagee) of a lot (other than a dispute regarding the supply of information and protection of buyers)
  - a dispute about an amount owed as a debt
  - a dispute of a class or kind that is declared not to be a scheme dispute in the regulations.

## Procedure of the Tribunal

The Tribunal may authorise an owner in the scheme to make an application on behalf of the strata company if it finds that the strata company has unreasonably refused to make an application to the Tribunal. In addition, the Tribunal can authorise expenditure up to a specified amount, from strata company funds, to be used for legal advice and/or legal action for the proceeding.

Each lot owner, mortgagee and occupier, that would be affected by a Tribunal order, is entitled to a copy of the application.

## Dismissing an application

The Tribunal may dismiss an application if it is satisfied that:

- the dispute or the applicant's interest in the matter is trivial
- the purpose of the application is to harass or annoy, or to cause delay or detriment, or is otherwise wrongful
- the nature and gravity of the dispute is such that it is reasonable to expect the parties to resolve the dispute without referral to the Tribunal.

## Summary decision

The Tribunal may make a final decision in proceedings under the Act at a directions' hearing if it considers that appropriate.

## Declarations the Tribunal can make

The Tribunal may make a declaration concerning a matter in the proceeding.

Without limitation, the Tribunal may make these declarations:

- a specified person has or has not contravened a specified provision of the Act, the scheme by-laws or a strata lease
- a specified clause of a strata lease is or is not invalid
- a specified scheme by-law is or is not invalid
- a specified decision or resolution of a strata company is or is not invalid
- a specified appointment or election of a member of a strata council, or an officer of a strata company is or is not invalid

- a settlement date for a contract for the sale and purchase of a lot was or was not validly postponed
- a contract for the sale and purchase of a lot was, or was not, validly avoided.
- Only a legally qualified Tribunal member can make a declaration.
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## Orders the Tribunal can make

The Tribunal will be able to make any order it considers appropriate to resolve the dispute or proceeding.

Without limitation, the orders the Tribunal may make include:

- requiring a scheme document be amended in a specified manner (including an amendment that effects a subdivision)
- requiring a structural element (that is used to define the boundary of a lot in a strata scheme) to be reinstated following its damage, destruction or removal
- determining the form and location of utility conduits (pipe, wire, cable or duct) to provide specified utility services subject to a utility service easement
- requiring the scheme developer pay a specified amount to a strata company, being the whole or part of a remuneration or benefit that the scheme developer failed to disclose to the strata company
- determining action that must be taken, or refrained from being taken, by a member of a strata company to enable the strata company to obtain required insurance
- authorising a specified person to convene and preside at a general meeting of a strata company:
  - as the first Annual General Meeting
  - to appoint or elect members of the strata council or officers of the strata company or
  - for some other specified purpose
- authorising a specified person to convene and preside at a meeting of the strata council:
  - to appoint or elect officers of the strata company or
  - for some other specified purpose
- removing a specified person from office as a member of the strata council or as an officer of a strata company
- appointing a specified person as a member of the strata council or as an officer of a strata company
- varying or terminating a strata management contract
- requiring a strata manager to pay a specified amount to a strata company, being the whole or a part of the remuneration or the value of a benefit that the strata manager failed to disclose to the strata company
- requiring a strata company to take or refrain from taking specified action when performing or exercising its functions, including orders:
  - to sell or acquire real or personal property
  - to enter into, vary or terminate a contract, including a contract for services or amenities to the strata company or its members
  - to pursue an insurance claim
  - to vary the amount of insurance cover
  - to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal
  - requiring a person to take or refrain from taking specified action to remedy or prevent further contraventions of the Act, scheme by-laws or a strata management contract

- that the strata company is taken to have passed / not passed a specified resolution required under the Act or the scheme by-laws as an ordinary resolution, special resolution, resolution without dissent or unanimous resolution
- requiring a party to pay money as compensation to a person for loss or damage suffered
- requiring a party to pay money to another party to adjust the position or rights on the termination or variation of the contract under the order
- requiring a person who is holding a deposit or other moneys in trust to pay the deposit or other moneys to the former buyer
- appointing an administrator of a strata company to perform some or all scheme functions.

If a Tribunal order is inconsistent with scheme by-laws, the order prevails.

## Interim orders of the Tribunal

The Tribunal may make an interim order if it is satisfied the urgency is justified. An interim order remains in force for the period specified in the order (not exceeding three months) and may be renewed by further Tribunal order for subsequent periods not exceeding, in any case, three months.

## Judicial or legally qualified member

The Tribunal's power to make an order is exercisable only by a judicial member if the order:

- affects a title to land
- is an order confirming a termination resolution under the Act or,
- is of a class required by the regulations to be made by a judicial member.

## Limitations on orders

The Tribunal cannot make an order:

- requiring a change to the schedule of unit entitlements, unless the Tribunal is satisfied that the current schedule of unit entitlements does not meet current unit entitlement requirements set out under the Act
- that the strata company is taken to have passed a resolution:
  - for termination of the scheme
  - for postponement of the expiry date for a leasehold scheme
  - fixing or varying contributions unless satisfied that the contributions are inadequate or excessive
  - fixing or varying the interest rate applicable to contributions unless satisfied that the rate is unreasonable
  - determining arrangements for payment of contributions in instalments unless satisfied that the arrangements are unreasonable
- that the amount of insurance cover be varied unless satisfied that the amount is inadequate or excessive
- to allow or prohibit the keeping of an animal unless satisfied that the strata company has acted unreasonably
- for compensation for personal injury or death
- for the payment of money to resolve a dispute between a buyer or prospective buyer and the seller of a lot (other than repayment of the deposit to the buyer)
- make an order in circumstances prohibited under the regulations.

## Administrator of strata company

An order of the Tribunal, appointing an administrator of a strata company, may specify conditions, such as:

- only the administrator may perform a function stipulated under the order
- the administrator represents the person or body who would have performed the function
- the Tribunal may vary or revoke the appointment.

An administrator of a strata company appointed by the Tribunal must make a written record of any action taken and provide it to the strata company.

## Contributions for money payable by strata company

If the Tribunal makes an order that requires a strata company to pay money, it may:

- direct that the money (and any costs) to be paid out of contributions is levied in the proportions, specified in the order
- direct the strata company to levy contributions in accordance with the order
- prohibit the strata company from levying a contribution that would be payable by another party to the dispute.

## Enforcement of order to act

If the Tribunal is satisfied that an order to act has not or has been only partially complied with by the person to whom the order was given, it may:

- vary, revoke or substitute the order to act
- make an order that the person, to whom the order to act was given, pay the applicant money as compensation for the failure to act or refrain from acting.

## Internal review of orders or declarations

If the Tribunal makes an order or declaration without a judicial member and it is of a kind specified in the regulations, a party to the proceeding may apply for internal review if leave is given by the Tribunal and the application is made within 28 days after the initial order or declaration is made or within an extension of that period given by the President of the Tribunal.

An internal review of an order or declaration requires the Tribunal to consist of:

- a judicial or senior member who is legally qualified and
- other such members as the President of the Tribunal considers appropriate.

On an internal review of an order or declaration, the Tribunal may affirm, vary or set aside the order or declaration and substitute it with another.

## Ordering a person to act for lot owner

The Tribunal may make orders where the owner of a lot cannot be located or the owner lacks capacity to vote or consent to a matter to:

- dispense with the requirement for the owner to vote or consent on a matter or
- authorise the Public Trustee under the *Public Trustee Act 1941* or another specified person (with that person's consent) to exercise all or specified powers of the person under this Act as the owner of a lot.

## Order dispensing with approval for structural alteration of a lot

The Tribunal may exempt the owner of a lot from gaining approval to do a structural alteration to their lot where it is satisfied:

- that the structural alteration of the lot is reasonable, having regard to the merits of the alteration and the interests of all the owners of the lots in the use and enjoyment of their lots and the common property and
- if the structural alteration has already been carried out, it will not cause any significant inconvenience or detriment to the owners of other lots.

This order may be made whether or not the necessary approval for the alteration has been sought and even if there has been a valid refusal to give the necessary approval.

## Variation of strata titles schemes

The District Court's jurisdiction to make orders relating to the variation of a strata scheme on damage or destruction of a building or on the taking of part of the strata scheme by a government agency will be transferred to the Tribunal.

The District Court's jurisdiction to make orders relating to the variation of a survey-strata scheme on the taking of part of the survey-strata scheme by a government agency will be transferred to the Tribunal.

## Unpaid levies will remain with the courts

Any contribution levied for administrative and reserve funds, including interest accrued, may be recovered as a debt by the strata company in a court of competent jurisdiction.

# Reducing disputes in staged strata subdivision

## New elements for staged strata subdivision

Staged subdivision of strata / survey-strata schemes will be made more flexible. If scheme developers need to vary a stage of subdivision, they will need to obtain:

- a unanimous resolution of the strata company, or resolution without dissent (depending on the type of subdivision) and
- the consent of all people with a designated interest (defined to include mortgagees, etc).

The people with a designated interest will have 60 days to object to the variation in the stage of subdivision and if they do not object after 60 days, they will be taken to have consented. If a person with a designated interest objects within 60 days, the scheme developer can apply to the Tribunal to review the objection. If the Tribunal finds the basis of the objection is unreasonable, it can declare that the consent is taken to have been given.

This deemed consent process does not apply to owners (the requirement for a unanimous resolution or resolution without dissent as the case requires).

Note: A designated interest means: a registered mortgage; a registered lease; a caveat recorded under the *Transfer of Land Act 1893*; the interest of a judgment creditor named in a property seizure and sale order registered under section 133 of the *Transfer of Land Act 1893*; the interest of a person named in a memorial registered under the *Transfer of Land Act 1893* as having a statutory right requiring the consent of the person to any dealing with the land; a plantation interest registered under the *Transfer of Land Act 1893*; or a carbon covenant registered under the *Transfer of Land Act 1893*.

## The Tribunal's powers for staged subdivision

The Tribunal may order that an objection to the variation in a staged subdivision by a person with a designated interest be disregarded on the grounds that the objection is unreasonable. In considering whether an objection is unreasonable, the Tribunal may consider:

- the merits of the proposed variation
- the grounds for the objection
- any other factor it considers relevant.

## Leasehold schemes

Leasehold schemes are a new type of strata being introduced by the strata reforms. The Tribunal's power to resolve strata disputes will be extended to leasehold schemes. The above information involving strata title schemes will also apply to leasehold schemes. The Tribunal will also have the powers listed below for leasehold schemes.

## Re-entry of strata leases

For normal leases, the lessor has a right of re-entry if the lessee breaches the lease. This right of re-entry will be limited in leasehold schemes because there are fundamental differences between leasehold scheme leases (called strata leases) and normal leases:

- a strata lease is for a long-term (at least 20 years to no more than 99 years from registration of the scheme)
- a leasehold scheme typically involves the lessee (owner of a lot) purchasing the long-term strata lease by paying a single large payment equivalent to the purchase of a freehold lot.

Re-entry of a strata lease (which is where the owner of a leasehold scheme re-enters the lot) is only permitted when:

- ordered by the Tribunal
- allowed under leasehold by-laws (for non-payment of an amount of money for postponement of the expiry day for the scheme) or
- the owner of the lot in a leasehold scheme surrenders the strata lease to the lessor.

The Tribunal will be given the power to resolve disputes arising from re-entry or attempted re-entry of a strata lease including making orders:

- for damages against the owner of the lot (the lessee under the strata lease) as reasonable compensation for losses suffered by the owner of the leasehold scheme (lessor under the strata lease) as a result of a breach of the strata lease
- for the lessee to do or not do something to remedy a breach of the strata lease
- for the owner of the leasehold scheme to re-enter the strata lease if the covenant or condition breached by the owner of the lot is a fundamental covenant or condition and the Tribunal is satisfied that the owner of the leasehold scheme cannot be reasonably compensated by an order for damages or by an order that the owner of the lot rectify the breach
- for damages against the owner of the leasehold scheme as compensation for losses suffered by the owner of the lot as a result of the owner of the leasehold scheme re-entering without first obtaining an order from the Tribunal to do so
- for the owner of the leasehold scheme to give possession of the lot back to the owner of the lot
- vesting (transferring), for the remaining term of the strata lease or a shorter term, the strata lease of the lot in the mortgagee on just and equitable conditions.<sup>1</sup>

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## <sup>1</sup> Disclaimer

This information has been prepared for the purposes of informing stakeholders and the community on the nature and scope of the proposed reforms to the legislation relating to strata title. Every effort has been made to ensure the information presented is accurate at the time of publication. Because this information avoids the use of legal language, information about the law may have been summarised or expressed in general statements. This information should not be relied upon as a substitute for professional legal advice or reference to the actual or proposed legislation. The contents should not be relied on as a guide for current or future legislation relating to strata title in Western Australia or in relation to current or future subdivision or development proposals, commercial transactions or dealings in strata title.