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12 March 2008

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**SUBMISSION ON REGULATORY IMPACT STATEMENT – PROPOSED
CHANGES TO BODY CORPORATE REGULATIONS (“REGULATIONS”)**

The Australian College of Community Association Lawyers Inc. (“College”) thanks the Government for inviting the College to make a submission in relation to the Regulatory Impact Statement (“RIS”) concerning the proposed changes to the Regulations.

The College notes that the RIS is as a result of the Regulations relating to the *Body Corporate and Community Management Act 1997* (“Act”) expiring on 1 September 2008. Those Regulations are –

- *Body Corporate and Community Management (Accommodation Module) Regulation 1997* (“Accommodation Module”)
- *Body Corporate and Community Management (Standard Module) Regulation 1997* (“Standard Module”)
- *Body Corporate and Community Management (Commercial Module) Regulation 1997* (“Commercial Module”), and
- *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* (“Small Schemes Module”)

Accordingly, the Government has made a comprehensive review of the Regulations and proposes to re-make the Regulations and also to make an additional regulation relating to two-lot schemes.

Introduction

The College is a not for profit association of specialist lawyers established in 2006.

The principal objects of the College are to –

- establish and administer to the highest Standards a system of specialist accreditation for lawyers skilled in the Discipline
- promote the highest Standards of professional practice
- facilitate research and dissemination of research materials on all aspects of the Discipline
- foster a collegiate relationship among accredited specialists and other members
- promote public awareness and knowledge of the Discipline, and
- work in a non-political way to improve laws relevant to the Discipline.

The “Discipline” is defined as *“the law and practice associated with Common Interest Subdivisions”*. In turn, *“Common Interest Subdivisions”* are defined as *“the subdivision of land (with or without airspace) into lots and common areas whether or not a body corporate or association is established to administer the common areas, including, without limitation, subdivisions commonly known as strata titles and community titles. This includes community titles schemes in Queensland.*

One of the objects of the College is *“to work with State and Federal governments to ensure that legislation related to the Discipline or having the potential to impact on Associated Persons is relevant, effective and of the highest quality so as to ensure the best possible outcomes for such persons”*. *“Associated Persons”* means persons who live in, work in, or have a legal or equitable interest in all or part of a Common Interest Subdivision development”.

The College has a public interest focus and over time it is expected to build a substantial body of knowledge and skills in this important and expanding area of the law.

The College’s Legislative Issues Paper

In 2007, after consultation sessions with its members, the College prepared a Legislative Issues Paper (“LIP”) setting out its policies on laws relating to the Discipline.

A copy of the LIP is **attached** and this submission is made consistently with those policies.

Response to RIS

The College makes the following comments about the matters set out in the RIS.

Whilst the College supports option 3 of clause 9.1 of the RIS, the College believes that the Government could have gone further. Given that the Regulations expire on 1

September 2008, it was an opportunity for the Government to undertake a complete review of the Regulations.

There have only been 13 changes to the Accommodation Module and 14 changes to the Standard Module. The Standard Module represents almost three quarters of all schemes in Queensland. Whilst there have been 67 changes to the Commercial Module and 55 changes to the Small Schemes Module, these mainly relate to changes that were made to the Accommodation Module and Standard Module in 2003.

In relation to the key statistics for community titles schemes in Queensland specified in clause 2 of the RIS, it is noted that although only 8.7% of schemes have more than 21 lots, they represent 49.1% of all lots in Queensland, whilst 91.3% of schemes have less than 20 lots, they represent 50.9% of all lots in Queensland.

The College acknowledges that community title schemes come within a wide range of configurations and uses (see clause 5 of the LIP) and that the Government has acknowledged this with the range of regulation modules that are currently in place. However, the College believes that there is also a range of differences within those modules and that the Government needs to recognise this. This is not currently apparent within the current Regulations.

It is also interesting to note that over one third of the schemes in Queensland are in the 3 to 6 lot category. One of the policy objectives under the Act is to "*provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within community titles schemes*". The College is of the opinion that the current Regulations and even the proposed Regulations do not sufficiently provide the flexibility they need in their day to day operations.

For example what is commonly known as the ubiquitous 'six pack' can range from a two storey brick and tile in the suburbs with a value of \$250,000.00 per unit to a six storey single level per unit development on the river with a value of over \$1,000,000.00 per unit. The same rules and regulations apply to these two developments. Whilst the existing expenditure limit for the first mentioned scheme may be satisfactory, it ends up being completely frustrating for the second scheme.

One set of circumstances for a 'six pack' does not necessarily apply for another 'six pack'. Currently, both have the same Regulations applying to them. It is noted that the proposed reforms address this issue to some extent. (ie, the body corporate being able to annually review the committee expenditure limit), but the Government needs to create more flexible arrangements for the differing schemes within a Regulation Module. This can be achieved by allowing the body corporate to 'expand' the powers and functions of the committee, which can be reviewed on an annual basis in the same way as the committee expenditure limit.

Given that the existing Regulation Modules expire on 1 September 2008 (refer to clause 1 of the RIS), the College considers that the Government should have taken the opportunity to review all of the provisions of the Regulations, rather than just 'tinker' at the edges of the existing Regulations.

The College refers the Government to clause 2 of the LIP. The College encourages plain English drafting, the use of cross-referencing and explanatory notes to facilitate easy

comprehension of the legislation, particularly by non-legal persons and the use of uniform language through Australia in relation to strata and title community title legislation. The College also supports the same section numbering being used in any new Regulations and that any additional sections be numbered with A, AA, AB, etc, rather than new section numbers, which then renumbers all the existing sections.

The College also supports the use of terms that are 'relevant and obvious' to persons dealing with the Act and the Regulations. For example, the entity who is engaged by the body corporate as a caretaker, who is also the letting agent, is defined as a "caretaking service contractor". In fact, this person is the 'resident unit manager' or 'on-site manager' – a term recognised by almost all parties connected with the strata and community titles industry. It would seem sensible that the Act and the Regulations also use terms that are commonly used in the industry.

The College refers to clause 9 of the RIS. The College supports a sensible balance between the Act, the Regulations and Administrative Guidelines. In this regard, the Government is referred to clause 3 of the LIP.

Whilst the Act provides that the body corporate has certain functions and powers and that the committee elected by the members of the body corporate must work within the legislative constraints imposed under the Act or the Regulations, there must be more flexibility in relation to different types of schemes within the different categories of Regulation Modules.

For example, committees in large schemes (over 100 lots) can be hampered in undertaking their day to day functions, such as entering into service contracts which may be within its expenditure limit, however if it is a service contract (as that term is defined in the Act), then a general meeting must be convened, which is a time consuming and costly exercise for the body corporate. The College is of the view that committees in larger schemes (particularly those over 100 lots) must be given more flexibility.

The College acknowledges the need for more simplified regulations relating to two-lot schemes (see clause 2.4 of the RIS). In this regard, the Government is referred to clause 10 of the LIP. Further comment about two lot schemes is set out under the heading 'response to proposed reform'.

The College is concerned about the statements in the RIS that the appointment of a body corporate manager will "*increase the costs of a body corporate*" (see clause 10.2 of the RIS). The College acknowledges that the engagement of a body corporate manager is an additional financial burden on the body corporate, however on a cost/benefit analysis study, these costs will outweigh any negative impact because schemes that are professionally managed, on the most part, comply with Regulations, particularly the larger schemes, which comprise 50% of all lots in Queensland. Schemes that are not professionally managed generally do not comply with the Regulations, access to records can be difficult and they frequently have more disputes. Many of these disputes arise from lack of knowledge of the legislation, rather than any deliberate mismanagement.

The College does not object to the current fees under the *Body Corporate and Community Management Regulation 1997* (see clause 2.4 of the RIS). The College does concede that a 'full cost recovery' option would not be feasible, however, the College supports

fees that reflect a 'user pays' basis and, in this regard, does not oppose any reasonable increase in fees of the cost of the service provided by the Government.

The College also supports that other similar legislation, such as the *Sanctuary Cove Resort Act 1985* and the *Resort Development Act 1987* and all other legislation that is currently still governed by the *Building Units and Group Titles Act 1980* be brought under the umbrella of the *Body Corporate and Community Management Act 1997*.

The College prefers a less prescriptive approach to the Act and the Regulations and the Government is referred to clause 4 of the LIP.

The College is of the opinion that the Regulations are too prescriptive (examples of this are nominations, elections, and secret ballots to name a few) where the Regulations are so detailed it is difficult for non-legal persons to understand. The Government needs to bear in mind that the Act and Regulations are used on a daily basis by non-legal persons. Such prescriptive legislation is left wide open to incorrect or differing interpretations, including by legal persons, which inevitably leads to disputes.

For example, the procedures for nominating and electing the committee contained in the Standard Module are some 15 pages. If a small detail has been accidentally overlooked, then a 'pedantic' lot owner can make an application to resolve a dispute to have the election declared invalid when, in fact, the non-compliance did not affect the outcome. Such trivial applications are time consuming and waste the limited resources of the Office of the Commissioner for Body Corporate and Community Management.

A simple solution to some of these issues is to have an 'approved form' as prescribed under the Act or to have 'office forms' as provided for by the Commissioner for Body Corporate and Community Management. The approved or office form can then replace the several pages of the Regulations setting out what must be contained in the form.

Response to proposed reforms

There is very little difference between the Regulations for the Accommodation Module and the Standard Module other than the term limitation period.

Whilst the Regulations for the Commercial Module and the Regulations for the Small Schemes Module are less regulated, the proposed amendments bring them more into line with the Regulations for the Standard Module and the Accommodation Module. Many of the 2003 amendments to those modules are now being imposed on the Regulations for the Commercial Module and the Small Schemes Module.

The College opposes the substantial amendments to the Regulations for the Commercial Module and the Small Schemes Module, which brings them increasingly into line with the Regulations for the Accommodation Module and the Standard Module. The whole purpose of the Regulations for the Commercial Module and the Small Schemes Module was to have them highly de-regulated.

Reform of the Accommodation Module

There are 13 proposed amendments to the Accommodation Module. The College comments on these amendments as follows:

1. Section 11 (eligibility for committee membership)

The College supports this amendment.

2. Section 14 (nomination procedures for the election of the committee)

The College supports this motion to clarify the exiting position concerning membership of the committee by a lot owner who owns multiple lots in the scheme.

3. New provision (issues reserved for decision by ordinary resolution of the body corporate)

The College does not oppose this amendment, however prefers that this issue be overcome by providing a register of restricted issues (in the same manner as a register of engagements, assets, etc) to avoid having to re-affirm the issue at each general meeting.

4. Section 33 (voting outside committee meetings)

The College supports this amendment, however suggests that the time frame for responding to a resolution being passed by committee members outside of a committee meeting be flexible (depending on each particular circumstance). Whilst an issue may not be an emergency, it may require a response in less than seven days.

5. Section 38 (who may call general meetings)

The College supports this amendment.

6. Section 83 (payment of an amount on transfer of rights under a management rights agreement)

Whilst the College sees merit in this amendment, it believes that it could inadvertently lead to more disputes (the very thing it is trying to avoid). As there will be no discretion on the part of the committee to waive the transfer fee, then it is very likely that more requests for assignment will be met with a request to waive the transfer fee on the grounds of genuine hardship.

In the past, committees have been provided with medical certificates that are so vague that it is impossible to make an informed decision. If a transfer is being made on the grounds of genuine hardship, then at the time of the request for the assignment that the transfer fee be waived, the College is of the opinion that accurate and factual evidence be provided as to the reasons for genuine hardship.

The College also considers that in circumstances where new agreements are being entered into (where, for example, there is some defect in the existing agreements or on amalgamation of several bodies corporate, and the new agreements do not change the end date of the existing term), then it would be inappropriate for the body corporate to charge a transfer fee.

7. Section 90 (review of remuneration under engagement of a service contractor)

No comment necessary.

8. Section 101 (spending by the committee)
The Colleges supports this amendment.
9. Section 102 (spending that requires two quotes)
The College supports this amendment.
10. Section 112 (improvements to common property)
The College supports this amendment, however suggest that the Government considers the College's position in relation to the different types of schemes within a Regulation Module (see the six pack example referred to under the 'response to RIS').
11. Sections 113 and 123 (improvements to common property by lot owner)
The College supports in principle the amendment to these sections, however suggests that the value of the improvement that can only be approved by ordinary resolution of the body corporate be increased and that this issue be left to the committee, other than in exceptional circumstances. The College suggests that an improvement with an installed value of \$250.00 is very limited and that in almost all cases, the value of any improvement would be higher than this amount, which means that a general meeting must be convened, which only adds to the administrative costs of the body corporate. The College also suggests that the Government consider the College's position in relation to the different types of schemes within a Regulation Module (see the six pack example referred to under the 'response to RIS').
12. New provision (valuations to be obtained for the purpose of insurance)
The College supports this amendment.
13. Section 135 (public risk insurance)
The College supports this amendment.

Reform of the Standard Module

There are 14 proposed amendments to the Standard Module. The College comments on these amendments as follows:

1. Section 10 (eligibility for committee membership)
The College supports this amendment.
2. Section 13 (nomination procedures for election of committee)
The College supports this motion to clarify the exiting position concerning membership of the committee by a lot owner who owns multiple lots in the scheme. However, where there are six or less lots in the scheme, the maximum number should be reduced to two, rather than three as this could result in the committee either being deadlocked or controlled by one owner.
3. Section 20 (committee elections – conduct of ballots for positions on the committee)

The College supports this amendment.

4. New provision (issues reserved for decision by ordinary resolution of the body corporate)

The same comments apply as for the Accommodation Module.

5. Section 35 (voting outside committee meetings)

The same comments apply as for the Accommodation Module.

6. Section 40 (who may call general meetings)

The same comments apply as for the Accommodation Module.

7. Section 85 (payment of an amount on transfer of rights under a management rights agreement)

The same comments apply as for the Accommodation Module.

8. Section 92 (review of remuneration under engagement of service contractor)

No comment necessary.

9. Section 103 (spending by the committee)

The same comments apply as for the Accommodation Module.

10. Section 104 (spending that requires two quotations)

The same comments apply as for the Accommodation Module.

11. Section 113 (improvements to common property by the body corporate)

The same comments apply as for the Accommodation Module.

12. Section 114 (improvements to common property by lot owner)

The same comments apply as for the Accommodation Module.

13. New provision (valuations to be obtained for the purpose of insurance)

The same comments apply as for the Accommodation Module.

14. Section 136 (public risk insurance)

The same comments apply as for the Accommodation Module.

Reform of the Commercial Module

There are 67 proposed amendments to the Commercial Module. The College does not propose to comment on each and every amendment, but makes the following comments:

1. Many of the amendments are the same or substantially similar to the 2003 amendments that were made to the Accommodation Module and the Standard Module (eg, issues in relation to committee eligibility, attendance at committee meetings, secret ballots, motions with alternatives, explanatory material, engagement of body corporate manager, service contractor and letting agent).
2. Other amendments reflect the proposed amendments to the Accommodation Module and the Standard Module.

3. The result is that the Commercial Module is now much closer in content to the Accommodation Module and the Standard Module, whereas it was always intended that it be highly de-regulated given the nature of the types of schemes under this Module.

Reform of the Small Schemes Module

There are 55 proposed amendments to the Small Schemes Module. The College does not propose to comment on each and every amendment, but makes the following comments:

1. Many of the amendments are the same or substantially similar to the 2003 amendments that were made to the Accommodation Module and the Standard Module (eg, eligibility, motion with alternatives, explanatory material, recovery of levies, administrative and sinking funds, engagement and termination of body corporate manager and service contractor, etc).
2. Other amendments reflect the proposed amendments to the Accommodation Module and the Standard Module.
3. The result is that the Small Schemes Module is too prescriptive and now much closer in content to the Accommodation Module and the Standard Module, whereas it was always intended that it be highly de-regulated given the nature of the types of schemes under this Module.

Inclusion of the *Body Corporate and Community Management (Two-lot Schemes Module) Regulation*

The College acknowledges that almost all two-lot schemes operate outside the existing Regulation Modules (indeed, some are not even aware they are part of a community titles scheme). In this regard, see clause 10 of the LIP. The College considers that, as an alternative to a new module being introduced, the Small Schemes Module could be further simplified so that it better accommodates small schemes generally.

The College would like to see the issue of the keeping of records properly addressed in relation to small schemes. Where these schemes are self-managed, access to and searching of records can be difficult. It is vital for lawyers acting on behalf of a buyer of a lot in a small scheme (or the buyer themselves) being able to ascertain whether the implied warranties under the Act and given by the seller to the buyer of a lot can be established.

Other

The College notes that no consideration has been given to the re-development/termination of schemes. The existing termination provisions in the Act are not workable as it only takes one lot owner to object and the scheme cannot be re-developed. In this regard, the Government is referred to clause 15 of the LIP.

Meeting about issues

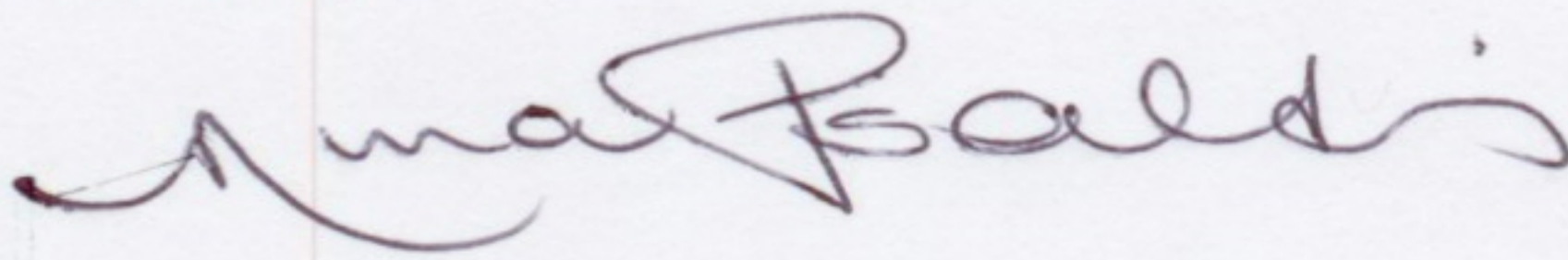
In accordance with clause 1.1 of the LIP, the College would also like to meet with the Government about this submission and the proposed reforms. In this regard, the Government may contact:

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The College looks forward to working with the Government on the proposed reforms to the Regulations.

Sincerely



Nina Psaltis
General Manager