

# Submission On Community Schemes Law Reform and Position Paper

This is a submission from Bannermans Lawyers addressing a number of issues raised in the discussion paper, based on our experience acting for community associations, lot owners, managing agents and contractors in relation to community scheme transactions and disputes.

We understand that the review process and discussion paper:

1. Are in response to a growing perception that the community title laws have failed to keep pace with change in community expectations and reforms to strata laws and no longer meet the needs of the sector.
2. Have the objective of making the community title laws simpler and more certain for all involved, while improving the governance of schemes.

In our view:

1. On the whole, the present system works well and there is no need for fundamental reform. This is particularly true when one takes into account the complexity of the relevant issues and the difficult balancing exercise required in relation to the competing interests of various stakeholders.
2. Much of the expressed dissatisfaction with the system can be attributed to factors which do not indicate the need for fundamental reform, including lack of information or understanding of the system and particular persons' dissatisfaction with the balance necessarily struck between the interests of competing stakeholders in relation to a particular issue.
3. That said, there is always room for improvement and this can be achieved by minor modifications, such as we have proposed in this submission.

### Chapter 3 - Table of Proposed Reforms

#### Chapter One: Consistency in Strata and Community Scheme Laws

	Current laws	Proposed change	Response
1.1	A vote can only be cast by proxy or in person at a general meeting of an association.	Associations will be allowed to hold meetings via social media, video and teleconferencing (or other methods which may become available in the future).  Associations will also be allowed to accept postal or electronic votes from members who are unable to physically attend the meeting.	Supported. Adoption of new technologies would increase convenience and reduce cost. A default position should be adopted, e.g. an owners corporation should be able to use electronic service, unless otherwise determined.
1.2	Documents are generally served in hard copy, but can be served by any manner agreed between the parties.  There are some provisions allowing electronic transmission of documents.	Associations will be allowed to store records and documents by electronic or other means.  Associations will be able to send any documents and serve notices electronically if this form of communication has been agreed by the parties.	Supported. See 1.1 above.
1.3	The laws are silent about secret ballots.	Procedures for the conduct of optional secret ballots will be introduced.	Supported.
1.4	The laws do not provide for any form of tenant participation.	Tenants will be allowed to attend AGMs, and elect a representative to a committee if tenants occupy more than half the lots in the scheme. Tenants will not be given any voting rights.	Not supported. In the absence of a right to speak or vote, there would be little point in this measure and it would involve expense and inconvenience.
1.5	The 'executive committee' does not have any executive powers.	'Executive committee' will be renamed to 'neighbourhood committee', 'precinct committee', or 'community committee' to better reflect its role.	Supported.
1.6	Nominations for committee members are usually made at	Written nominations for committee members will be	Supported.

	the AGM.	allowed ahead of an AGM and distributed with the meeting notice. It will still be possible for nominations to be made at the AGM.	
1.7	No specific obligation on committee members in undertaking their role.	Committee members will be required to carry out their functions without favour, for the benefit of their scheme and to act with due care and diligence.	Supported, but this is in tension with the reform proposed in paragraph 1.8 and the relationship between these two provisions requires consideration.
1.8	There is no provision to exclude personal liability. Associations can choose to take out personal liability insurance for executive committee members, but this is not compulsory.	An exclusion of personal liability clause will be introduced for committee members who act in good faith for the purpose of carrying out their functions.	Supported.
1.9	Community scheme laws are silent about legal costs.	Limits will be imposed on committees' expenditure on legal advice, services or action without the approval of the association.	Supported. However, a committee may need to take urgent action to protect the interests of the community association and requires power to act subject to ratification by the association.
1.10	Chairperson role partly defined.	Roles of chairperson, treasurer and secretary will be defined, but law will also allow for management statement to define roles.	Supported. The role of the chairman particularly needs to be defined, particularly in relation to determination of quorums and that motions are out of order.
1.11	No limits on the number of proxy votes that can be held by any one person.	The number of proxies able to be held by any person will be limited to five per cent of the lots if the scheme has more than 20 lots, or one if the scheme has 20 lots or less.	Supported. In our experience, the present position is frequently abused.
1.12	Motions are submitted to the secretary or managing agent before a general meeting with no need for an explanation or for the person moving the motion to be identified.	All motions to be considered at a meeting must be submitted in advance, circulated with the meeting notice, and accompanied by a short explanatory note that also identifies the person moving the motion.	Supported.

1.13	There are no limits on the use of priority votes.	Priority votes will be limited to budgeting, insurance, levies, matters exceeding a certain financial threshold, or motions that require special or unanimous resolution.	Supported.
1.14	Executive committee members do not have to disclose any conflict of interest.	Committee members will be required to disclose any conflict of interest in a matter to be considered by the committee.	Supported.
1.15	No restrictions on who can serve on the committee provided they have been nominated by an association member.	Non-owners with a financial interest in the scheme will be prohibited from being committee members unless they are owners.	Supported.
1.16	No specific provisions for managing agents receiving commissions, benefits or gifts from third parties.	Managing agents will need to disclose commissions at AGMs and seek approval to continue receiving them. Agents will also be prohibited from receiving benefits or gifts.	Transparency is desirable, but this proposed reform has the potential to impact adversely on community schemes, in terms of increased costs and potentially inferior attention to insurance issues.  The disclosure requirements to be imposed should be linked to the process of negotiating the agency agreement.
1.17	No limits on management contracts after initial period, and automatic roll-over clauses are allowed.	Management contracts will be limited to a maximum term of three years, with no automatic roll-over clauses allowed.	Not supported, particularly given the provision in the <i>Property Stock and Business Agents Act 2002</i> for a right of termination of three months' notice following expiry of the initial term.
1.18	There are no requirements for setting of levies for the first year of the scheme.	Developers will be required to set realistic levies in the initial period and first year of a scheme.	Supported.
1.19	For neighbourhood schemes, the original owner determines the allocation of unit entitlements. Precinct and community schemes have unit	When a neighbourhood scheme is registered, determination of unit entitlements will be based on an independent valuation.	Supported.

	entitlements based on independent valuation.		
1.20	General meeting notices must include the last set of financial statements.	Committees will be required to prepare and distribute key financial information to all owners ahead of each AGM. The full set of financial statements will be provided on request.	Supported.
1.21	Handover documents must be provided to an association at the first AGM.	Handover documents will have to be provided to the association of each subsidiary scheme within a reasonable timeframe after it is completed.	Supported.
1.22	Only large strata schemes must have the accounts audited annually.	Large community, precinct and neighbourhood schemes, and those with annual budgets over \$250,000, will be required to have their accounts audited each year.	Supported.
1.23	Unanimous resolutions required for various matters.	Reduce the matters that require unanimous resolutions by replacing with a requirement for special resolution.	Supported.
1.24	AGMs must be held within one month (before or after) of the anniversary of the first AGM.	Schemes will be allowed to hold the AGM at any time during the financial year.	Supported.
1.25	If after 30 minutes, a quorum has not been achieved, the meeting is adjourned for one week.  If there is no quorum 30 minutes into the second meeting, the chairperson can declare a quorum.	The chairperson will be allowed to declare a quorum, if after 30 minutes a quorum has not been achieved.  The chairperson will still have the option of adjourning the meeting for one week.	Supported.
1.26	Any income earned by an association not specifically for the administrative fund must be paid into the sinking fund.	Certain income earned by an association can be paid into either the administrative fund or sinking fund.	Supported.
1.27	Schemes can hold personal property, but not intangible property such as trademarks.	Allow schemes to hold a trademark.	Supported.
1.28	The developer has the right to vote on defects matters, albeit with a reduced entitlement.	The right of developers or anyone connected to the developer to vote on matters relating to building defects will be removed.	Supported.

1.29	No requirement for preparation of maintenance schedules.	The builder/developer will be required to prepare a maintenance schedule for the association property and provide it to the association at the first AGM.	Supported.
1.30	Associations are generally required to repair any damage to association property.	Associations will be able to seek an order for the repairs to be made by the party who caused the damage.	Supported.
1.31	The law is silent about abandoned goods.	Processes will be established for dealing with abandoned goods similar to those that exist under residential tenancies law.	Supported. This is a frequent source of expense and inconvenience and could be addressed easily.
1.32	Parking by-laws only apply to residents.	A framework will be established to allow schemes to better manage disputes about parking, including allowing agreements with local councils to issue penalties for non-compliance.	Supported. Again, this is a frequent source of expense and inconvenience.
1.33	The owners corporation must serve a notice on a person requiring them to comply with a by-law before taking a matter to mediation and then to the Tribunal.	If a by-law has been breached and the Tribunal has imposed a penalty in the last twelve months, the owners corporation will be able to apply to the Tribunal for a further penalty without having to issue a new notice to comply or undertake mediation.	Supported.
1.34	The Tribunal can impose a penalty of up to five penalty units (\$550) for the breach of a by-law.	The Tribunal will be able to impose a penalty of up to 10 penalty units (\$1,100).	Supported.
1.35	Penalties are usually paid to the Commissioner for Fair Trading.	The Tribunal will award most penalty payments directly to an association.	Supported.
1.36	The Tribunal only has power to appoint managing agents.	The Tribunal will be able to make orders about managing agent and caretaker/building manager contracts.	Not supported. The position regarding managing agents is entirely different, going to the mechanism by which the community scheme itself functions.
1.37	The law does not formally recognise internal dispute	Dispute resolution mechanisms within schemes will be formally recognised	Supported.



	resolution mechanisms.	and guidance material issued to help schemes establish processes for resolving disputes internally.	
1.38	There is no penalty for failing to attend mediation.	Encourage attendance at mediation by allowing the Tribunal to issue cost orders against the party that does not attend when they have previously agreed to.	Supported.
1.39	Many of the Tribunal's processes are duplicated.	Provisions relating to Tribunal processes and how matters are heard will be moved to the Tribunal's legislation.	Supported.
1.40	Some disputes can be dealt with by the Tribunal, but other matters must be referred to the courts.	Extend the jurisdiction of the Tribunal to deal with the majority of disputes.	Not supported. More complex matters are appropriately the subject of court proceedings.
1.41	Parties have an assumed right to legal representation at mediation or in the Tribunal.	The implied right to legal representation will be removed. Instead, parties will be allowed to apply for leave to be legally represented.	Not supported and it is unlikely that the intended objective would be achieved. Given the complexity of the legislation and issues involved, lack of representation could in fact increase costs, by reducing efficiency with which processes progress. Further, parties having less need of representation (e.g. developers, strata managers and lot owners who have legal qualifications) would have considerable advantage over parties having greater need of representation.
1.42	The Commissioner for Fair Trading cannot issue penalty notices in relation to community schemes.	Allow the Commissioner for Fair Trading to issue penalty notices for appropriate offences.	Supported.

## Chapter Two: Community Land Development

	Current laws	Proposed laws	Response
2.1	There is no approved form for a community or precinct development contract. Development contracts are very rarely given in community and precinct schemes, resulting in limited formal disclosure.	Formally allow disclosure of proposals the developer will guarantee to complete and others that are authorised, but cannot be compelled.  This will make the development contract a more useful document and may encourage its use. It will align development contract provisions with the strata legislation.	Supported.
2.2	No land can be added to a community or precinct scheme.	Allow the developer to add land to a community or precinct scheme, provided there has been appropriate disclosure in the development contract.	Supported.
2.3	Contributions to levies are calculated according to unit entitlement.  Developers currently use informal mechanisms of adjusting payment for expenses during this period.	Allow the developer to include a schedule of contributions in a development contract which will itemise expenses and identify who is responsible for payment.	Not supported. This would be open to abuse.
2.4	Community or precinct association property cannot be created in a community or precinct plan of subdivision.	Allow additional association property to be created by a community or precinct plan of subdivision, provided there has been appropriate disclosure in the development contract.	Supported.
2.5	Current legislation has no formal mechanism for giving effect to the matters identified in a development contract.	Require meetings to be called to authorise matters identified in a development contract as 'development concerns' (being things like the creation of easements). Provided matters have been fully disclosed, the vote of the developer will be sufficient to pass a motion.	Supported.
2.6	A development contract must be provided with all neighbourhood schemes, even	Remove red tape by only requiring a neighbourhood development contract where	Supported.



	though most neighbourhood schemes are not intended to be developed in stages.	the neighbourhood scheme is intended to be developed in stages. Align requirements for neighbourhood development contracts with those applying to community and precinct schemes.	
2.7	Unanimous resolution required to authorise most transactions with association property.	Allow an association to transfer, lease or otherwise deal with association property by special resolution. Termination will still require unanimous resolution.	Supported.
2.8	Registrar General can only terminate a standalone neighbourhood schemes.	Extend the power of the Registrar General to terminate community, precinct and subsidiary neighbourhood schemes, with the approval of all owners.	Supported.
2.9	An association can lease additional association property, but only if the land is adjoining land, not part of the scheme.	Will allow an association to create additional association property for a temporary period by allowing the association to lease a lot within the scheme.	Supported.
2.10	In effect, Section 23G of the <i>Conveyancing Act 1919</i> prevents an association from leasing part of its property for more than five years.	Ensure an association can lease part of association property for more than five years.	Supported.
2.11	A revised schedule, based on the Valuer General's schedule of values, can be lodged only by a community association, on behalf of all subsidiary schemes, or by a stand-alone neighbourhood association.	Allow subsidiary schemes to lodge a revised schedule of unit entitlements when development of the relevant scheme is complete.	Supported.
2.12	Service authorities can take the benefit of a statutory easement.	Amend section 36 of the CLDA to enable an association to take the benefit of a statutory easement.	Supported.
2.13	No land can be added to a community, precinct scheme or subsidiary neighbourhood scheme.	Allow land to be added as association property or as a lot in the scheme, following approval of the association by special resolution.	Supported.
2.14	Community or precinct association property cannot be created or subdivided by a community or precinct plan of	Enable a community plan of subdivision to subdivide or create association property, by special resolution.	Supported.

	subdivision.		
2.15	A subsidiary neighbourhood association or strata scheme cannot subdivide association property or common property.	A neighbourhood scheme or strata scheme within a community scheme will be able to approve the subdivision of association property or common property, by special resolution.	Supported.
2.16	Legislation makes no provision for amalgamation of schemes.  This can leave numerous small associations within a community association, increasing the burden of management.	Allow subsidiary neighbourhood schemes to be wound up and to vest association property in the parent community scheme. This will assist in streamlining management arrangements and reduce duplication of expenses.	Supported.

**By Bannermans Lawyers**

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