

**A DRAFT FRAMEWORK FOR
NEW TENURE LEGISLATION
CONSULTATION PAPER**

September 2008

Acknowledgement

This consultation paper has been developed by a committee that has been providing specialist advice as to how State legislation governing land tenure might be improved. The convening of the committee was agreed to during 2006 by the-then Minister for Land Information, the Hon Michelle Roberts MLA.

Representatives of the following organisations have contributed to the paper:

Property Council of Australia (WA Division)

Urban Development Institute of Australia

Spatial Sciences Institute WA (SSIWA)

Western Australian Local Government Association

Department for Planning and Infrastructure

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Landgate has provided administrative assistance to the committee for the preparation of this paper and public consultation upon it. The ideas in this paper are presented for public debate and do not necessarily reflect the views of Landgate.

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1. INTRODUCTION

Background

In Western Australia, the creation of title is governed by several Acts and associated regulations (referred to in this paper as “tenure legislation”). These include the *Strata Titles Act 1985* and the *Transfer of Land Act 1893*.

This tenure legislation regulates the land development processes that follow the granting of planning and subdivision approvals and is an integral component of the body of legislation that regulates land development in Western Australia.

Ensuring the legislation is responsive to industry and community needs is a key to maintaining an efficient and effective land development system that in turn supports the economic and social well being and prosperity of the State and its residents.

The aim of this review is to consider ways to:

1. simplify current processes and requirements; and
2. address government and industry concerns with the operation of the existing legislation.

Assisting the review is a committee of industry and community representatives ¹ (referred to in this paper as “the Committee”). This Committee has identified concerns relating to the operation of existing tenure legislation and has proposed a new framework for tenure legislation.

¹ The Committee includes representatives of the Property Council, Urban Development Institute of Australia, Spatial Sciences Institute, Department for Planning and Infrastructure and Western Australian Local Government Association

Purpose of paper

The purpose of this paper is to invite broad community input into this proposed framework.

Specifically the paper seeks to:

1. confirm the Committee's understanding of community and industry needs in relation to tenure legislation;
2. test the suitability of the proposed framework to address community and industry needs; and
3. identify improvements to the proposed framework.

The aim is to develop best practice legislation that will meet the needs of users now and into the future.

Content of consultation paper

The consultation paper has three other parts.

Part 2 examines industry and community concerns and needs in relation to tenure legislation.

Part 3 examines how the new framework could address these concerns and needs.

Part 4 explains how members of the community can contribute to the review.

Terms, abbreviations and questions

For brevity and convenience, the following terms and abbreviations are used in Parts 2 and 3. The terms in bold letters are especially relevant to an understanding of the proposed framework.

"building lot" may include land abutting a building

"common property" means real property that is jointly owned by the owners of lots within a community development scheme

“community development scheme” means a land development that creates two or more lots and common property

“LAA” means the *Land Administration Act 1997*

“land development” includes the subdivision of real property

“PDA” means the *Planning and Development Act 2005*

“real property” includes land and buildings

“STA” means the *Strata Titles Act 1985*

“TLA” means the *Transfer of Land Act 1893*

Questions in Parts 2 and 3 are prompts only and are not intended to limit comment in any way.

2. TENURE LEGISLATION: INDUSTRY AND COMMUNITY NEEDS

On the basis of inputs from industry and community representatives, the Committee has identified the following legislative needs.

Integrated legislation

In Western Australia, more than six Acts² regulate the tenure creation process, the key ones being:

- Strata Titles Act
- Transfer of Land Act
- Planning and Development Act
- Land Administration Act

This is in contrast to some jurisdictions. In Victoria for example, the *Subdivision Act 1988* regulates both the subdivision and subsequent tenure creation processes³.

WA surveyors and developers report that it is often necessary to comply with regulations from different legislation within the same planning work. Developers also report that the lack of integration adds to the complexity of tenure creation making it necessary to engage professional assistance with significant costs.

As a consequence there is a demand for tenure legislation to be consolidated to make it more accessible to users and make tenure creation less costly and more

² Includes *Land Boundaries Act 1841*, *Standard Survey Marks Act 1924* and *Licensed Surveyors Act 1909*

³ The *Transfer of Land Act 1958* also regulates some aspects of these processes.

efficient.

Simple, easy-to-use legislation

Some tenure creation Acts are structured and expressed in language and styles very different to contemporary legislation. The TLA is notably structured and written in the language and style of 19th century legislation. Users report that some key sections are long and difficult to read and understand.

Other tenure legislation, including the STA, while more recent in origin, can be lengthy, deal with a range of issues and be subject to substantial amendment. Users report that provisions in these Acts can be difficult to find and interpret because of the size of the legislation and the breadth and complexity of the issues covered. In the case of the STA, users also report that provisions can be difficult to understand because of a lack of standardisation of processes and requirements, exceptions to general principles and the qualification of provisions by other provisions.

As a consequence, surveyors and developers have demanded tenure legislation that:

- is well structured;
- is written in plain English;
- is limited to tenure creation matters;
- has greater standardisation of processes and requirements; and
- is generally easier to use.

Flexible legislation

In Western Australia, the STA is the only tenure creation legislation that provides for the establishment of community development schemes that create common property. These schemes are confined to strata and survey-strata developments and do not extend to freehold subdivisions or developments with a mixture of tenures. Where a scheme is created only one management body (known as a strata company) can be established to manage the scheme and the common property.

This is in contrast to legislation in other states. In Queensland, NSW and Victoria, for example, tenure laws allow for community development schemes of different tenures and uses and there is provision for more than one management body to be established within each development. This has contributed to a number of innovative

new developments⁴.

Industry in Western Australia reports that legislation is inhibiting its ability to utilise alternative land and building concepts to satisfy consumer demand for greater choice. The STA is considered to be out-of-date and to be unduly restrictive. As a consequence, it is demanding new legislation similar to the legislation operating in other states that will provide the flexibility needed to:

- create innovative community development schemes;
- implement staged subdivisions in a manner similar to other jurisdictions;
and
- implement management arrangements appropriate to the nature of the development (eg mixed or single use development).

Summary of needs

In summary, the Committee has identified a need for integrated, simple, easy-to-use, flexible new tenure legislation.

Q	Do you agree these are priorities for new tenure legislation?
Q	If not, why?
Q	Are there other priorities?
Q	If so, what are they?
Q	Why are they priorities?

⁴ Q1 and Ship Terminal developments in Brisbane

3. FRAMEWORK FOR NEW TENURE LEGISLATION

In order to address the legislative needs identified in Part 2, the Committee proposes the development of new tenure legislation that combines new and existing principles.

Existing principles

Many of the principles on which current tenure legislation is based have served the needs of industry and the community well for a number of years.

They include the following principles:

- That the subdivision of real property is effected by a survey plan signed by a licensed surveyor
- That the survey plan must accord with the approved development
- That real property is subdivided on approval of the survey plan at the office of titles (Landgate)
- That a plan to create lots within a community development scheme must be accompanied by the certificate of a licensed surveyor and licensed valuer
- That lots within a community development scheme may be subdivided, consolidated and created as common property
- That lots within a community development scheme have implied easements for support, shelter, access and services
- That the voting rights and financial contributions of lot owners within a community development scheme are based on unit entitlement
- That unit entitlement is based on the value of the owner's lot in proportion to the aggregate value of the lots within the community development scheme
- That a management body for a community scheme is created upon registration of the plan
- That real property within a certificate of title is described by reference to a lot on plan.

It is intended that these principles should continue as the foundations of new tenure legislation.

Q Do any existing principles need to be reviewed?

Q If so, which ones and why?

Proposed principles

To achieve the desired changes however, it is proposed that the new legislation incorporate new principles as follows:

- That there is a single Act (“tenure Act”) for the creation of tenure
- That the tenure Act provide for the extension of community development schemes to all types of land developments including freehold subdivisions
- That the tenure Act provide for one or more management bodies to be established within a community development scheme
- That the tenure Act provide for the staging of community development schemes
- That the tenure Act provide for a management statement to be lodged for each community development scheme
- That the tenure Act provide for management statements to adopt management rules appropriate to the nature of the community development scheme
- That the tenure Act provide that community development schemes established under the new Act may be terminated on the vote of less than 100% of affected owners
- That there is a separate Act to deal with the management of community development schemes
- That there is one form of plan to create tenure
- That only interests that can be spatially depicted over part of a lot or land within the plan are recorded on the plan
- That the tenure Act provide for existing strata and survey-strata schemes to be brought under the operation of the Act

These principles are examined below.

PRINCIPLE 1:

That there is a single Act (“tenure Act”) for the creation of tenure

Purpose

1. To make tenure legislation more accessible to users
2. To make the legislation easier to understand and apply
3. To facilitate administration of the legislation

Currently, the LAA, TLA and STA and their associated regulations regulate activities related to tenure creation. Each Act is large and complex and deals with a range of matters in addition to tenure creation. The STA, for example, has over 130 sections and deals with numerous issues relating to the management of strata and survey-strata schemes as well as issues related to tenure creation. A new tenure Act would make tenure provisions easier to access, interpret and apply. It would also facilitate administration by limiting the scope of the Act to tenure creation.

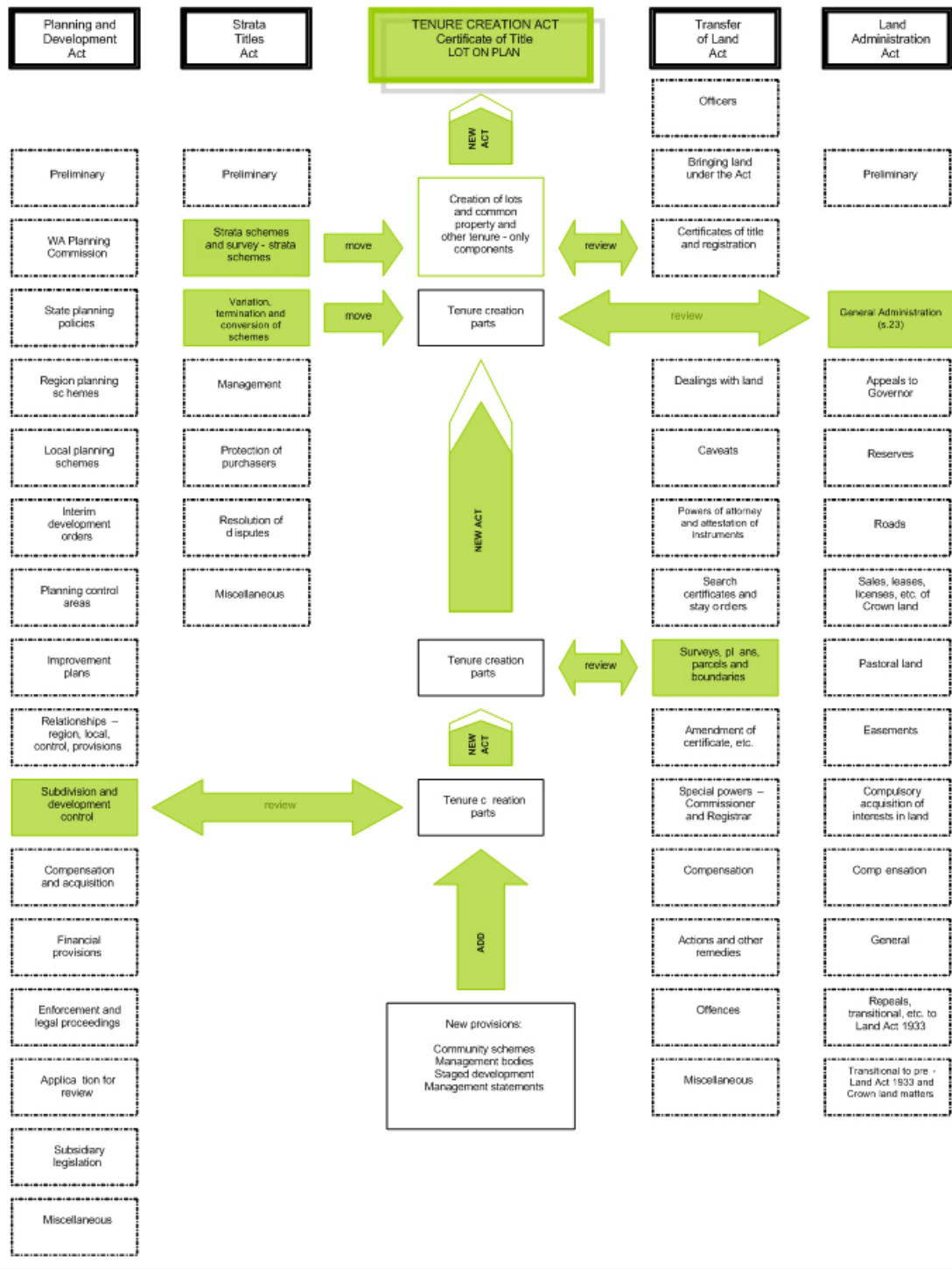
Effect

1. Integration of tenure provisions
2. STA likely to be repealed

Diagram 1 illustrates the parts of existing Acts that could be incorporated into a stand-alone tenure Act. Also illustrated are new provisions that could be included in the Act. These new provisions are discussed under other principles.

The inclusion of the tenure creation provisions of the STA in the new Act would leave the STA with the parts dealing with the management of strata and survey-strata schemes, dispute resolution and other consumer protection provisions. Under a separate framework principle, it is proposed that the management provisions be included in a separate management Act. Stripped of the tenure and management provisions, the STA would become redundant and is likely to be repealed.

DIAGRAM 1 –NEW TENURE CREATION ACT



[Note: The Planning and Development Act would continue to be the legislation under which planning and subdivision approval was granted for new land developments. A few provisions of the PDA might need to be reviewed as a result of the new tenure Act.]

Q Do you support the creation of a single tenure Act?

Q If not, why?

Implementation options

1. Create a stand-alone tenure creation Act
2. Incorporate the tenure provisions from the STA & other Acts into the TLA
3. Create a community titles Act and leave title creation in TLA

Tenure creation is an important activity for industry and the community. Option 1 would recognise this by facilitating user access to the tenure creation provisions and the effective administration of the legislation. Option 2 would combine tenure creation and registration functions in the same Act. While this could affect ease of access to the tenure creation provisions, access difficulties could be minimised if all tenure creation provisions were included in a discreet and identifiable part of the TLA. The third option would consolidate all community development scheme provisions in one Act in keeping with the legislative approach in Queensland, NSW and SA. Other title creation provisions would remain in the TLA.

Q Which option should be implemented?

Q Why?

PRINCIPLE 2:

That the tenure Act provide for the extension of community development schemes to all types of land developments including freehold and leasehold subdivisions

Purpose

1. To provide flexibility for developers to create innovative community development schemes

Under current tenure legislation, common property can only be created as part of a strata or survey-strata scheme. This limits the types of community development schemes that can be created. The new tenure legislation would provide for the establishment of community development schemes that could include:

- a mix of tenures (eg freehold, leasehold or strata lots);
- a mix of land uses (eg commercial, holiday accommodation and residential); and/or

- a mix of common property (eg car parking, clothes drying, tennis courts, swimming pools, etc).

Effect

1. More innovative community development schemes
2. Community development schemes based on freehold subdivisions

Based on experience in other states, more innovative community development schemes could be expected including schemes with a mix of tenures, uses and densities⁵. Community development schemes based on conventional freehold subdivisions could also appear bringing changes in the nature and character of these developments through for example, the creation of areas of private open space or recreation facilities.

The actual effect of these proposals would depend largely on market demand and whether planners and developers were able to secure the support of the relevant planning authorities. While the tenure legislation would provide an enabling framework, community development schemes would first need to comply with the zoning and land use requirements of the relevant planning schemes and the approval of the relevant planning authorities would need to be obtained.

Q	Do you support the extension of community development schemes to all types of land developments?
Q	If not, why?

Implementation options

1. Provide for the establishment of community development schemes in tenure legislation

This is the approach commonly used in other states.

PRINCIPLE 3:

That the tenure Act provide for one or more management bodies to be established within a community development scheme

Purpose

⁵ Emerald Lakes on the Gold Coast has a mix of uses and densities.

1. To provide flexibility for developers to create innovative community developments
2. To give owners control over the common property for which they are responsible

Under current legislation⁶, a management body (a strata company) can only be established to manage a strata or survey-strata scheme and only one management body can be established for each such scheme.

In some developments, developers have used complex legal agreements to create alternative management arrangements to overcome current restrictions. However, these arrangements have proved to be inefficient and difficult to enforce. In mixed use developments (eg retail and residential) established under current legislation, it has been observed that the relationship between the different classes of owners can become strained because of different and sometimes competing interests.

The new tenure legislation would provide the flexibility for the establishment of one or more management bodies to manage common property within a community development scheme.

Effect

1. More management bodies
2. Management bodies for conventional land subdivisions
3. Possible higher administration/management costs for owners
4. More management control for owners

⁶ STA

More management bodies could be expected to be created to manage community development schemes across the State. This should not necessarily result in more management disputes or in other adverse community consequences as many management bodies would be expected to be based on groups of owners that share common interests (eg owners of commercial lots within a commercial/residential development).

Management bodies are also expected to be created in developments that traditionally have not had management bodies (eg conventional land subdivisions). This would not be entirely novel since residents associations have already been established under the *Associations Incorporation Act 1987* in some land developments.

Based on experience in other states, it is likely that the cost of administering community development schemes could be higher in schemes with multiple management bodies. Owners belonging to management bodies responsible for managing only some of the lots and common property within a community development scheme could also contribute more if management costs are not shared among all owners within the scheme. However, such owners would enjoy more control over the use and management of common property within their part of the development. This could be advantageous in developments where owners have different interests (eg commercial/residential development).

<p>Q Do you support the establishment of multiple management bodies within a community development scheme?</p>

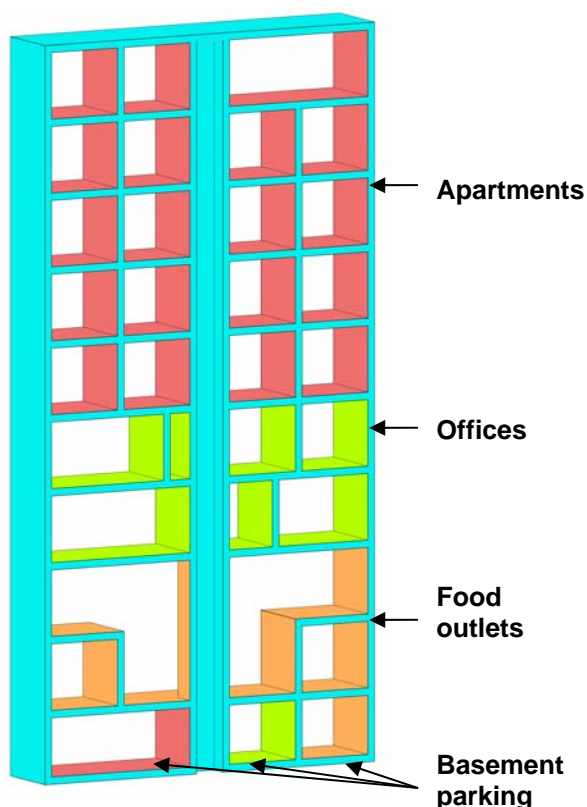
<p>Q If not, why?</p>

Implementation options

1. Provide for the establishment of limited and unlimited management bodies
2. Provide for the establishment of management bodies within “layered” community development schemes

In Victoria, one or more owners' corporations can be created by a single plan of subdivision as illustrated in Diagram 2 below. Corporations can be unlimited (applying to all lots and common property on the plan) or limited to certain lots and common property within the plan. The types of owners' corporation are specified on the plan. Lots can be a member of more than one owners' corporation, providing one of the corporations is an unlimited corporation. Where unlimited and limited owners' corporations are created by a plan of subdivision, the unlimited corporation holds the title to all common property. Limited corporations have exclusive use, and are responsible for the maintenance, of the common property allocated to them.

DIAGRAM 2 – LIMITED AND UNLIMITED OWNERS' CORPORATIONS



[In this example, a building is subdivided into lots of different uses. The plan of subdivision creates four owners' corporations as follows.

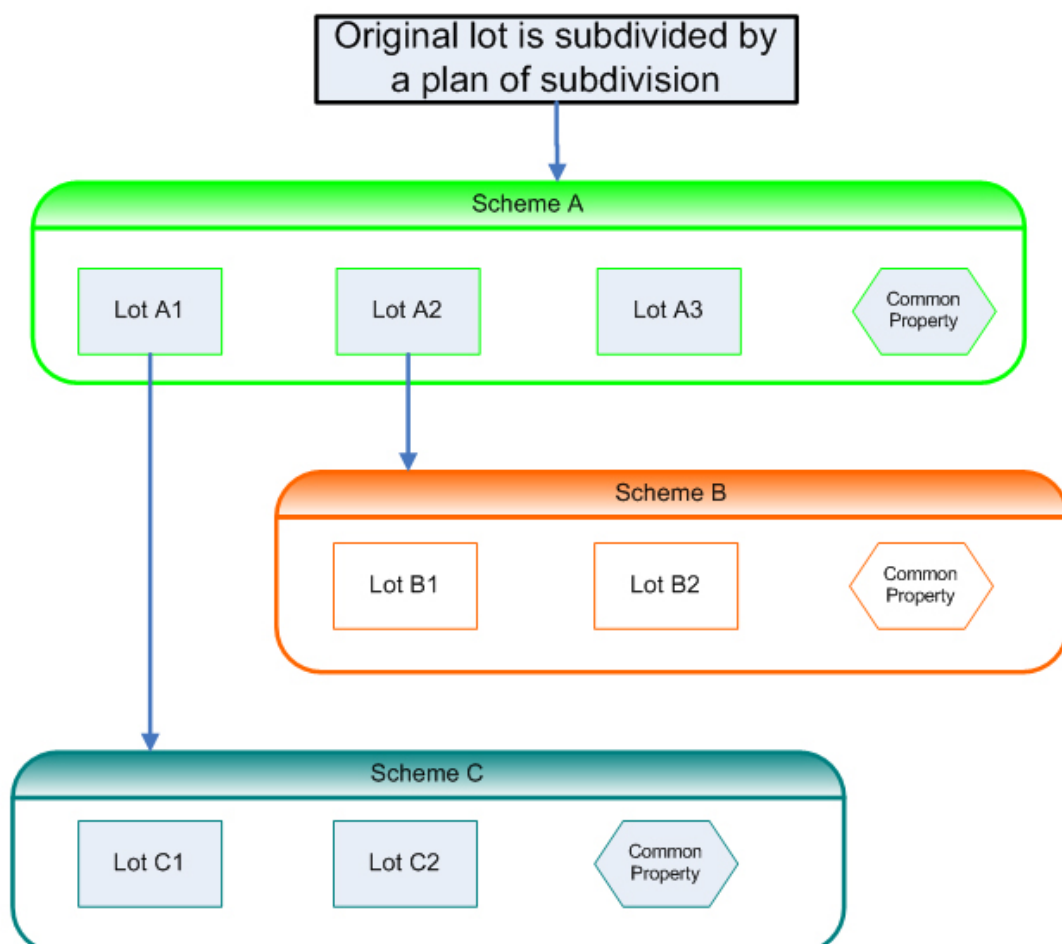
- *Owners' Corporation No. 1 is unlimited and includes all lots and common property.*
- *Owners' Corporation No. 2 is limited and includes all the apartment lots and the basement parking (common property) in pink.*
- *Owners' Corporation No. 3 is limited and includes all the office units and the basement parking (common property) in green.*

- Owners' Corporation No. 4 is limited and includes the food outlet lots and the basement parking (common property) in orange.

Owners' Corporation No. 1 holds the title for the common property of Owners' Corporations Nos. 1-4. Owners' Corporations Nos 2-4 have the exclusive use of, and maintenance responsibilities for, the common property allocated to each of them].

In Queensland, multiple bodies corporate can be established by creating layered schemes as illustrated in Diagram 3 below. This is similar in approach to NSW and SA and can be used to create multiple bodies corporate within horizontal and vertical subdivisions. Unlike the Victorian model, the body corporate for a layered (limited) scheme owns the common property within that scheme

DIAGRAM 3 - LAYERED SCHEME



[Lots A1 and A2 in scheme A are subdivided by further plans of subdivision to create basic schemes B and C. Accordingly, lots A1 and A2 in scheme A are themselves schemes. Representation on the body corporate of scheme A is the representative of Scheme B, the representative of Scheme C and the owner of lot A3.

As an example Lot A1 could be the commercial part of the development and lot A2 could be the residential part. Each would have a body corporate to manage their own matters and the body corporate for scheme A would only attend to matters that affected the development as a whole.]

Q	Which option should be implemented?
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Q	Why?
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PRINCIPLE 4:

That the tenure Act provide for the staging of community development schemes

Purpose

1. To provide a clear mechanism for the progressive development of community development schemes

Under the STA, there is no clear process or mechanism for the progressive development of strata and survey-strata schemes. This hinders developers and is a disincentive to the creation of mixed use and other innovative schemes that may lend themselves to staged development. The new tenure legislation would provide a clear process and mechanism for the staged development of community development schemes including the progressive subdivision of lots within a scheme and the expansion of a scheme to include additional lots.

Effect

1. More staged developments
2. More innovative community development schemes

Confident of the process for developing community development schemes progressively, developers could be expected to undertake more staged developments and to be more innovative in their development plans for community development schemes.

Q Do you support this principle?

Q If not, why?

Implementation options

1. Include provision for staged development of community development schemes in tenure Act

There are a variety of provisions relating to staged development in the legislation of other jurisdictions. In Queensland, NSW and SA development lots are created for future development stages facilitating “layered” community development schemes (see Principle 3). In NSW and SA developers enter into development contracts. In Victoria developers submit a master plan in the first stage of a development. In each of these jurisdictions there is recognition of the commercial rights of developers as well as the need to protect the interests of purchasers.

Q What should a developer’s statutory obligations be when undertaking a community development in stages?

PRINCIPLE 5:

That the tenure Act provide for a management statement to be lodged for each community development scheme

Purpose

1. To provide prospective purchasers with authoritative information about a community development scheme
2. To enhance the management of community development schemes

Currently it is optional for a management statement to accompany a strata or survey-strata plan when the plan is lodged for registration. With the exception of certain by-laws, it is also optional which by-laws and other information are included in the statement. This can make it difficult for prospective purchasers to source adequate independent information about the scheme. It can also mean that only minimal management arrangements are in place when a scheme commences. The new tenure legislation would provide that a management statement is to accompany any plan to establish a community development scheme. The statement would include details of the scheme, applicable management arrangements and any plans for the staged development of the scheme.

Scheme owners would be able to replace a management statement with a new statement at any time.

Effect

1. More information for prospective owners
2. Appropriate management rules in place when scheme commences

Buying property is a major financial commitment. For many people, it is the biggest financial commitment they will make. This principle would ensure that prospective purchasers have access to relevant information to enable them to make informed decisions whether to buy into community development schemes.

The inclusion of appropriate management arrangements in the management statement would enable the scheme to operate effectively from commencement.

Q	Do you agree that each community development scheme should have a management statement?
Q	If not, why?

Implementation options

1. Provide in tenure Act for the lodgement of a management statement for each community development scheme

Community management statements are required in Queensland and NSW. Victoria and SA also require the lodgement of documents that contain information similar to that contained in community management statements in other states.

PRINCIPLE 6:

That the tenure Act provide for management statements to adopt management rules appropriate to the nature of the community development scheme

Purpose

1. To recognise that different community development schemes have different management needs
2. To achieve greater standardisation of management rules

Currently the STA contains management provisions that are standard for all strata and survey-strata schemes. This does not recognise that some schemes have management needs that are different to other schemes. For example, a commercial scheme is not likely to need as many rules as a residential scheme. The STA is in the process of being amended to allow different management regulations to be prescribed for different types of strata and survey-strata schemes (eg residential, commercial, accommodation schemes etc). Consistent with these changes, the new tenure Act would provide for a community management statement to include management rules that are appropriate to the nature of the community development scheme.

Effect

1. Fewer and more relevant management rules
2. Better understanding of rules
3. Better compliance

Only rules relevant to a particular community scheme could be adopted. For most schemes, this would mean fewer rules than currently apply. As a consequence, there should be less administration and scheme owners should find it easier to understand and comply with the rules.

Q Do you support this principle?

Q If not, why?

Implementation options

1. Provide in tenure Act for management statement to adopt management rules appropriate to the scheme

Queensland has developed several regulation modules for different types of community development schemes (eg residential, commercial, holiday accommodation etc). The community management statement calls up the module appropriate to the scheme.

PRINCIPLE 7:

That the Tenure Act provide that community development schemes established under the new Act may be terminated on the vote of less than 100% of affected owners

Purpose

1. To enable high development and living standards to be maintained

A major aim of the proposed new legislation is to provide for new innovative community developments that will enhance development and living standards across the State. If these high standards are to be maintained it is important that there is a workable mechanism for scheme owners to bring community development schemes to an end when they have reached the end of their economic life. Under current legislation, it is difficult and costly to bring strata schemes to an end when there is no unanimous agreement among affected owners. This perpetuates developments that adversely affect the amenity and value of property within these developments and surrounding areas and that are no longer economic to maintain. The new Act would provide for community development schemes to be terminated on the vote of less than 100% of affected owners.

Effect

1. Fewer unresolved disputes
2. More timely re-development

A reduction in the percentage of owners needed to terminate a community scheme could be expected to lead to fewer disputes being referred to a third party for resolution. Fewer unresolved disputes should result in property within community development schemes being re-developed more quickly. This should ensure the maintenance of high development and living standards.

Q Do you support this principle?

Q If not, why?

Implementation options

1. Provide that community development scheme may be terminated by resolution without dissent
2. Prescribe a minimum percentage of owners required to vote in favour of terminating a community development scheme

In Queensland community title schemes can be terminated if a sufficient number of owners attend a general meeting of the body corporate and none vote against termination.

Q Which option should be implemented?

Q Why?

Q If you favour option 2, what should the percentage be?

Q Why?

PRINCIPLE 8:

That there is a separate Act to regulate the management of community development schemes

Purpose

1. To ensure the new tenure legislation has a single focus on land creation
2. To facilitate the effective administration of the management provisions

The management provisions for schemes with common property are currently contained within the STA. In view of the proposal to establish community development schemes of different tenures, it is not appropriate that the management provisions remain within the STA. Including them in the proposed new tenure creation legislation would distract from the primary focus of that legislation and would

not assist the effective administration of either the tenure creation or management provisions.

Effect

1. Transfer of management provisions from STA to new Act
2. Allocation of administrative responsibility for new Act

Parts IV to VI of the STA would be incorporated into the new management Act. Some amendment would be needed as a consequence of the new tenure legislation.

A decision would be needed as to which Minister and government agency should be responsible for administration of the new Act. It is generally the consumer protection Minister and department in other jurisdictions.

Q Do you support the concept of a separate management Act?

Q If not, why?

Implementation options

1. Include management provisions in stand-alone Act

Victoria and NSW have separate management legislation.

Q Are there any other matters (eg strata title managers), aside from currently regulated matters, that should be regulated under the proposed new management Act?

Q How should these other matters be regulated?

PRINCIPLE 9:

That there is one form of plan to create tenure

Purpose

1. To simplify tenure creation requirements
2. To allow for greater standardisation of tenure creation processes

Currently different plan forms are used to create freehold lots, strata lots and survey strata lots. This adds to the complexity of tenure creation and helps to perpetuate differences in the tenure creation processes. Under the new tenure legislation it is proposed to prescribe a single plan form.

Effect

1. Plans easier to prepare and interpret
2. Tenure creation more efficient

A single plan form should make it quicker and easier to prepare plans and to access and interpret information from plans. It should also be easier to instruct surveyors, especially those new to the industry, on plan preparation and lodgement requirements. Tenure creation should be more efficient as a result.

Q Do you support a single plan format?

Q If not, why?

Implementation options

1. Provide for one plan form that can be prepared using existing methods

The legislation would provide for the plan to be prepared using existing methods for defining lots. In this respect it would closely reflect the Queensland approach where a plan of subdivision may define lots as follows:

- Standard – defines land using a horizontal plane and references to marks on the ground
- Building – defines land using structural elements of a building.
- Volumetric – defines land using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface.

Q Should the legislation permit lots of all types to be created on the same plan?

PRINCIPLE 10:

That only interests that can be spatially depicted over part of a lot or part of the land within a plan, are recorded on the plan

Purpose

1. To make plans easier to view and understand

One of the primary purposes of a plan of survey is to spatially depict interests that are created by the plan or as part of the tenure creation process. This enables

owners and other interested parties to see precisely what interests are created and where they are located in relation to lots on the plan. It is essential this information is clear and free from doubt. Currently, interests that are either not capable of being shown spatially or do not need to be shown spatially (eg restrictive covenants over all lots on plan) are recorded on the deposited plan. This can obscure information about the interests that are depicted on the plan (eg easements) and lead to confusion and uncertainty regarding property interests. Under the new tenure legislation it is proposed that only interests that are capable of being spatially depicted over part of a lot or part of the land within a plan are shown on the plan. This principle would not remove or replace the existing principle that a surveyor is required to bring forward to the new plan all interests created on previous plans.

Effect

1. Plan ceases to be a record of numerous registrable interests
2. Information about non-spatial interests obtained from other sources
3. Responsibilities of surveyors reduced

The plan would cease to be a record of numerous registrable interests. This should make it easier for owners and others to view and understand the information recorded on the deposited plan.

Information relating to non-spatial interests that can be registered on the title would be obtained through a search of the title.

Surveyors would only be responsible for recording information about interests depicted on the plan (eg easements).

Q	Do you support this principle?
Q	If not, why?

Implementation options

1. Tenure legislation specifies that only interests that can be spatially depicted over part of a land parcel are shown on the plan

Consideration would need to be given whether details of registrable interests (spatially depicted or not) should be recorded in a schedule of the title. The title already records the nature of interests affecting the land.

PRINCIPLE 11:

That the tenure Act provide for existing strata and survey-strata schemes to be brought under the operation of the Act

Purpose

1. To allow existing schemes to take advantage of the proposed new management arrangements under the tenure Act

The proposed new tenure Act provides flexible management arrangements that can be adjusted according to the needs of the scheme. It is proposed that there should be provision to bring existing schemes under the new tenure Act to take advantage of this flexibility.

Effect

1. Changes in the management arrangements of some existing strata and survey-strata schemes

Owners of existing schemes could choose to implement changes to the management arrangements including management structures and rules.

<p>Q Do you support this principle?</p> <p>Q If not, why?</p>

Implementation options

1. Provide in tenure Act for existing schemes to be brought under tenure Act
2. Let owners decide whether to bring existing schemes under tenure Act

Option 2 would provide owners with the choice of operating under the new legislation. Option 1 would remove this choice.

<p>Q Which option should be implemented?</p> <p>Q Why?</p>
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4. HAVE YOUR SAY

It was noted earlier in the paper that tenure legislation is an integral part of the body of legislation regulating land development in Western Australia. It follows that any changes to tenure legislation could have significant, far reaching implications. It is important to ensure that any new tenure legislation would have very positive effects for industry and the community.

To this end, industry and community members and groups are invited to provide their comments on the ideas put forward in this paper.

Submissions can be made by visiting Landgate's website at **www.landgate.wa.gov.au** and completing the submission form provided.

Alternatively comments can be forwarded in writing to:

Project Manager
New Land Tenure Legislation Proposal
Landgate
PO Box 2222
Midland WA 6936

Submissions should be lodged by **Friday May 15, 2009.**