

Monday 8 January, 2018

Strata Titles Reform Team  
Landgate  
1 Midland Square  
MIDLAND WA 6056

Via email: [StrataTitlesActReform@landgate.wa.gov.au](mailto:StrataTitlesActReform@landgate.wa.gov.au)

To whom it may concern

## **STRATA TITLES ACT REFORM DISCUSSION PAPER: SELLER DISCLOSURE REGULATIONS**

Thank you for the opportunity to provide feedback in relation to the above *Strata Titles Act Reform Discussion Paper: Seller Disclosure Regulations*. The Urban Development Institute of Australia (UDIA) WA is the peak body representing the urban development industry in Western Australia. UDIA is a membership organisation with members drawn from the development, planning, valuation, engineering, environmental, market research and urban design professions. Our membership also includes a number of key State Government agencies and Local Government Authorities from across the state. Nationally, UDIA represents the interests of thousands of members, including all of the major land and built-form development companies, and consultancy firms.

UDIA welcomes the intent of the proposed amendments to the *Strata Titles General Regulations 1996* which seek to improve the seller disclosure regulations by ensuring that information requirements are reasonable and also clarifying the grounds on which a buyer can avoid a contract. Whilst generally supporting the principles of the proposed amendments, the Institute is concerned about the lack of clarity regarding avoidance rights for notifiable variations and in particular, the unreasonably low thresholds for which a buyer can avoid the contract.

Determinations by the courts relating to whether a party has been 'materially prejudiced' have considered the extent to which sale contracts permit notifiable variations. The proposed notifiable variations imply that a variation of a lot or the unit entitlement by 5% or more, is the threshold by which a seller is materially prejudiced (given that there is no need for the seller to prove this if notice is either given late or not all for Class A variations). However, the 'Avoidance Rights' table on page 8 states that where the seller provides notice within the time required, the buyer may only avoid the contract if they are also materially prejudiced. Accordingly, greater clarity is needed about how 'materially prejudiced' relates to variations of 5% or more.

In the absence of clarity and a clear definition of 'materially prejudiced' it is likely the same 5% threshold will be considered to assess avoidance for Class B variations, which includes variations which affect common property. As such, where common property is varied by as little as 5%, the Institute is concerned that buyers may use these rights to avoid contracts for reasons other than being adversely



affected by the variations. Therefore, as well as providing further clarity regarding avoidance rights for notifiable variations, the Institute recommends that a higher variation threshold of 10% for common property, would be more reasonable and appropriate.

Greater clarity regarding how variations which alter configurations, but not lot area or unit entitlement, will be assessed would also be beneficial.

In addition, it is also important to recognise that when a buyer purchases a property 'off the plan' there may be minor design changes that are imposed during the planning and building approvals process by government agencies, and which developers are required to comply with to obtain clearances. As such, fulfilling the requirements of government agencies should not trigger avoidance rights, particularly where these requirements do not affect lot area or unit entitlement.

Should the Department require any assistance or further information regarding this matter, the UDIA would be delighted to assist. Please do not hesitate to contact me at [ahailes@udiawa.com.au](mailto:ahailes@udiawa.com.au) or 9215 3400.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Allison Hailes'. The signature is fluid and cursive.

**Allison Hailes**  
**Chief Executive Officer**