



Landgate Submission – AES Prescribing Regulations Consultation

The Western Australian Land Information Authority, trading as Landgate, administers the *Strata Titles Act 1985* (STA) and the *Community Titles Act 2018* (CTA).

Landgate also receives feedback regarding the operation of the strata industry from a wide range of stakeholders. These views, as well as Landgate’s knowledge of strata governance, planning and operations, have shaped the content of this submission.

Regulation 3: Definition of “single property”

The current proposed definition of “single property” at regulation 3 has implications for the registration eligibility of property classified as a strata titles scheme or a community titles scheme. In contrast to government policy, the majority of strata or community titles schemes would not be subject to the prescribing regulations under the current definition.

Landgate notes that:

The definition of single property means

all adjoining land held by the same person, whether or not the land is —

- a) separated by a road or railway; or
- b) subdivided by a strata titles scheme (as defined in the *Strata Titles Act 1985* section 3(1)); or
- c) subdivided by a community scheme (as defined in the *Community Titles Act 2018* section 3(1));

While sub-clauses (b) and (c) intend to capture property classified as strata or community titles, the words “all adjoining land held by the same person” creates implications for applying this definition to both current and future strata and community titles schemes.

The phrase “held by the same person” introduces issues regarding the policy intent for strata titles schemes and community titles schemes to be eligible for registration. The key issue is that, in most circumstances, no single person or body corporate owns the multiple titles in a strata titles scheme. Similarly, a community scheme is comprised of up to three separate tiers of community titles schemes. The lots within these three community titles schemes are designed to be owned by multiple people.

There are only a small minority of circumstances in which a strata titles scheme may be owned by one person. One example is after the titles are created but before they are sold by the developer. Another is some retirement villages in which all titles are owned by a single owner who leases the lots on a “lease for life” basis. The only other circumstance in which the current definition of a single property would apply in respect to strata titles and community schemes is if indeed a single individual or body corporate owned every title.

Usually however, multiple persons own different titles in a strata titles or community titles scheme, and the adjoining land is not owned by “a single person.”

For clarity, the strata company or community corporation established under the STA or CTA as relevant, does not own the land in the scheme. However, it is given certain powers to control and manage the scheme. Consequently, the definition will not apply to most strata or community titles schemes.

This issue has been discussed between Energy Policy Western Australia and Landgate staff, and it is understood the intention of the policy will prevail and the definition will require amendment.

Registration Costs

Landgate receives feedback from industry that managing costs in strata continues to be challenging.

The anticipated cost recovery model referred to as “causer pays” in the *AES Registration Fee information paper*, will see providers pay an annual fee based on the work effort for each service type and size of the operator.

Landgate views this as a reasonable approach where the cost of registration scales with the size of the infrastructure. It is reasonable to assume a strata titles scheme consisting of a small number of lots would not be operating a single property network of the same size and scale as a large strata titles scheme, and would therefore pay less in registration fees.

However, in the short term the anticipated registration fee is proposed to be applied at a flat rate to all eligible single property networks. As a result of this approach, smaller strata titles schemes will, in the short term, incur charges equivalent to those of much larger schemes until the method can be refined.

Energy Policy Western Australia is expected to further develop and improve the model over time. Energy Policy Western Australia may wish to incorporate a defined review period, such as three years, into the Regulations. This approach would facilitate transparent assessment and clear communication of the fee structure.

Non-Compliance, Breaches and subsequent fines

The exposure draft cites *The Electricity Industry Act 2004* section 59E and 59D, which outlines fines for breaches and non-compliance. The fines are a maximum of \$100,000 and in the case of an ongoing breach, a daily penalty of \$5,000 for each day or part of a day during which the offence continues.

It is not known how many strata companies are owners of the infrastructure which supply a single property network as opposed to contracting to an industry specialist.

However, if a strata company does own such infrastructure and is therefore required to register, Landgate notes that the application of the fines by the Economic Regulation Authority described above would be challenging for many of these companies.

Regulation 5: Exclusions

The exclusions featured at regulation 5 may exclude small strata titles schemes from registration. However, it is also expressly stated in the exposure draft that this is not the policy intent.

The express exclusion at regulation 5(3) reads:

- (3) The supply of electricity within an SPN to the following is not an SPN AES —
 - (a) the supplier of the electricity within the SPN and, if the supplier is a body corporate, any other person who is a related body corporate of the supplier;
 - (b) if the supplier occupies a residence on the same single property on which the SPN is located — 5 or less consumers of the electricity, in addition to the supplier;
 - (c) if the supplier is a State agency — 1 or more State agencies;

Landgate considers that regulation 5(3)(a) may exclude a strata titles scheme where the strata company is the supplier and supplies itself as well as the lot owners. In addition, regulation 5(3)(b) may exclude strata titles schemes when the strata company is the supplier

and occupies a residence on the single property with five or less other consumers of the electricity.

It is recommended that the purpose of these exclusions is more clearly expressed and if they are not to apply to strata and community titles schemes this should be stated.

Thank you for the opportunity to provide feedback on the Alternative Electricity Services Prescribing Regulations. Should you wish to discuss any of these matters further, please contact Ms Bronwyn Henderson, Senior Policy Officer, at [REDACTED] or [REDACTED]