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GPO Box 2388  
Darwin NT 0801

Level 3, 9 Cavenagh Street  
Darwin NT 0800

Dr Jennifer Buckley  
Committee Secretary  
Economic Policy Scrutiny Committee  
Legislative Assembly of the Northern Territory  
GPO Box 3721,  
DARWIN NT 0801



T (08) 8981 5104  
F (08) 8941 1623

[lawsoc@lawsocietynt.asn.au](mailto:lawsoc@lawsocietynt.asn.au)  
[www.lawsocietynt.asn.au](http://www.lawsocietynt.asn.au)

ABN 62 208 314 893

Email: [EPSC@nt.gov.au](mailto:EPSC@nt.gov.au)

Dear Dr Buckley

### **Agents and Land Legislation Amendment Bill 2018**

Law Society Northern Territory (the Society) welcomes the opportunity make a submission into the inquiry into the Agents and Land Legislation Bill (Bill).

On 7 August 2018, the Society provided comment to the Department of Attorney-General and Justice limited to clauses 25 and 26 of the Bill. Clauses 25 and 26 of the Bill expand the functions of the schemes supervisor under the *Unit Title Schemes Act* (UTSA) and provide for the funding of that expanded role to be obtained from the Fidelity Fund established under the *Agents Licensing Act* (ALA).

The Society supports the expansion of the schemes supervisor's role under the UTSA. However, the Society would question the use of the ALA Fidelity Fund (the Fidelity Fund) to fund this role.

The Fidelity Fund established by the ALA receives its funds from annual contributions and special levies paid by licensed agents, the interest on their trust accounts, licensing or registration fees from licensed agents together with fines imposed on licensed agents. The ALA allows the Minister to approve payments from the Fidelity Fund for limited purposes including specified amounts for educational purposes<sup>1</sup>. It also makes provision for grants to be provided to Industry Bodies<sup>2</sup> to improve regulatory compliance and the quality of services provided by persons regulated under *that Act*.

In September 2013, the Department of Attorney-General and Justice issued Report 2 – Unit Titles Issues<sup>3</sup> (the Report) containing the Consultation Outcomes from a review into the enforcement of By-Laws under the UTSA and the *Unit Titles Act* (UTA) and the possibility of combining of the two Acts. It was clear from the Report that due to the complexity of the UTSA and the UTA, it was proposed that the Government, in cooperation with industry, should develop informational materials. The information materials were to ensure that owners and occupiers were aware of their rights and responsibilities under the articles or by-laws and to provide a general understanding about communal living. Most of the complexities raised were in regard to the making of appropriate by-laws and the enforcement of such.

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<sup>1</sup> Meaning a course relating to *laws applying to and in relation to* the practice and procedure to licenced agents in and their business.

<sup>2</sup> Real Estate Institute of the Northern Territory and the Australian Institute of Conveyancers.

<sup>3</sup> [https://justice.nt.gov.au/data/assets/pdf\\_file/0007/270988/report2\\_unit\\_titles\\_issues.pdf](https://justice.nt.gov.au/data/assets/pdf_file/0007/270988/report2_unit_titles_issues.pdf)

The issue of amending the ALA so that one of the purposes for which monies of the Fidelity Fund could be spent for the establishing a dispute and advice service similar to Queensland but that proposal was signified to be the subject of another report or reports<sup>4</sup>. The Society is not aware of any further consultation or reports prepared on this issue.

The Society questions if sufficient nexus exists between the ALA and the UTSA, particularly having regard to the source of funds that have accumulated in the Fidelity Fund that would warrant the substantial repurposing of monies held in the Fidelity Fund as proposed. The beneficiaries of the information and conciliation services to form part of the revised scheme supervisor's role appear to be directed at body corporate managers and members of the general public who do not contribute to the Fidelity Fund, rather than benefiting the licensed agents who are a substantial source of the funds held in the Fidelity Fund.

The Bill provides that on application, NTCAT can appoint an administrator. The party making the application provides NTCAT with the name of person who has consented to act as the administrator. The administrator has broad powers including the power to delegate all or any of the duties, functions and powers to *any person*. The Explanatory Statement provides that the proposed section is based on section 90 of the UTA. We cannot find any cases where this section has been judicially considered by the Court. Given the significant powers of an administrator we are of the opinion that it would be of assistance to NTCAT if the Bill was amended to provide criteria necessary to satisfy the appointment of an administrator and what qualifications that administrator may need to hold.

If you have any questions in relation to this submission, please don't hesitate to contact me.

Yours faithfully



**KELLIE GRAINGER**  
CHIEF EXECUTIVE OFFICER  
[ceo@lawsocietynt.asn.au](mailto:ceo@lawsocietynt.asn.au)

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<sup>4</sup> Ibid page 22