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# Stage 2 ACT Government Strata Reforms

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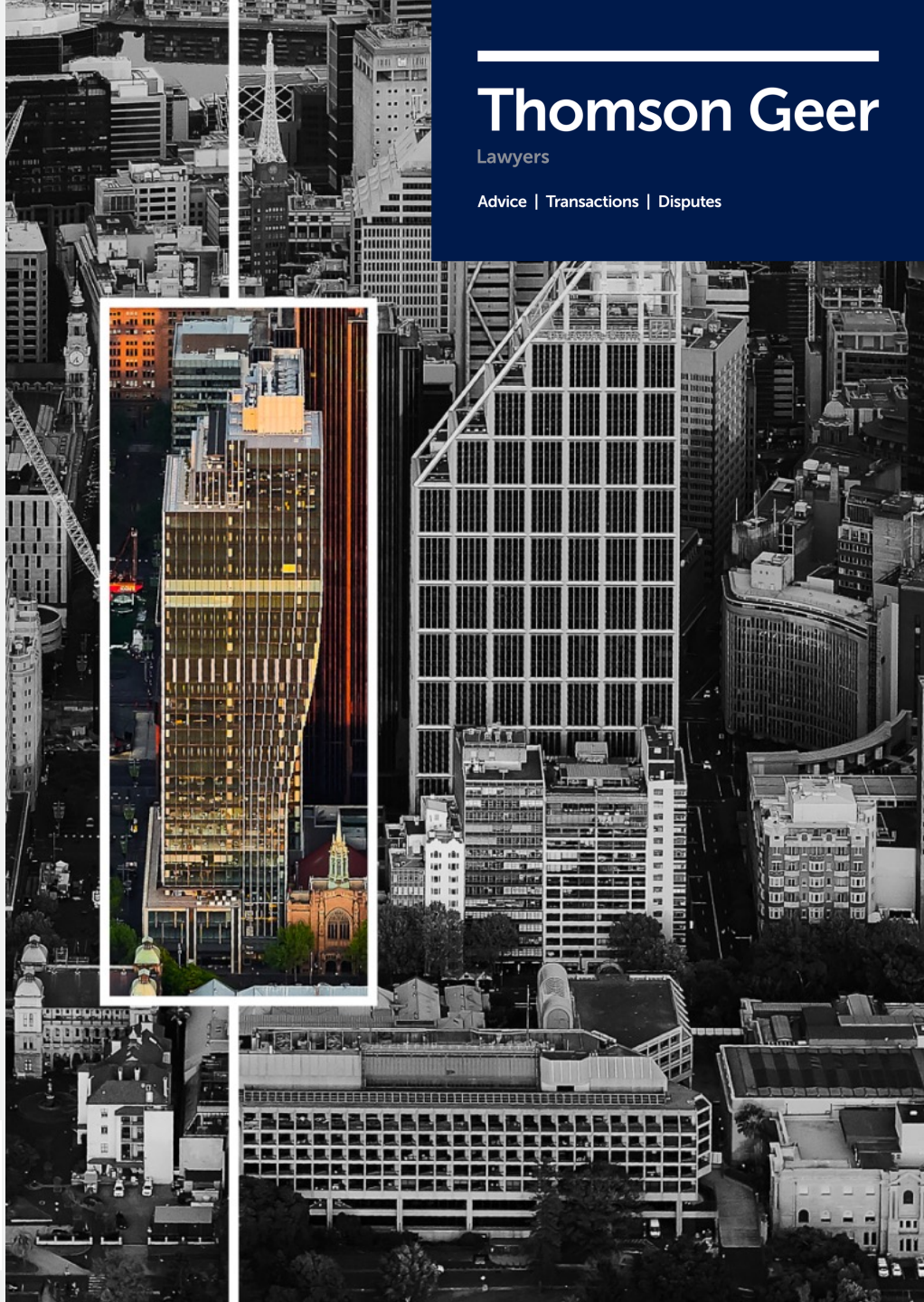
LookUpStrata

Signature Strata



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# Acknowledgement

*I'd like to begin by acknowledging the Traditional Owners of the land on which we meet today. I would also like to pay my respects to Elders past and present*

# Thomson Geer – who are we?

- **Thomson Geer is a major Australian corporate law firm.**

- We are trusted by companies, governments and institutions to act for their commercial and legal interests
- More than 650 people, including over 140 partners, operating out of our offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Canberra
- We are one of the 10 largest firms operating in Australia
- Thomson Geer is a full service firm and many of the firm's practitioners are acknowledged as leading lawyers in their fields
- We are known for:
  - Delivering outstanding legal skills and service
  - Focusing on achieving the commercial goals clients demand
  - Our commitment to the highest cultural and ethical standards

# Strata - the emerging profession

- Strata management continues to progress towards professional recognition across Australia
- Unique to Australia, a professional standards scheme is a legal instrument that caps the damages that participating members of an occupational association can be liable for if a court upholds a relevant claim against them
- Admission is limited to professions who can meet statutory reporting obligations and show that they regulate their members to improve their professional standards and protect consumers of their professional services
- The Strata Community Association nationally will move toward PSS accreditation, better protecting their members and consumers over the longer term

# Engaging with ACT Government on strata reform

- The aim of the ACT Government Unit Title Reform project was to look at unit title laws and policies and how they can be improved to better support those who live, work and invest in the ACT, and, in particular, to deal capably with mixed-use developments.

- Part of the Managing Buildings Better Agenda – Canberra is growing by around 7,000 people per year and around 100,000 new homes will be required in the next 25 years. The ACT Planning Strategy sets a target of 70 per cent of these homes to be built in **existing urban areas**, which means that **more people will be living and working in apartments, townhouses and mixed-use developments**.

- Significant consultation with industry since 2016

  - **Strata Community Association (ACT);**
  - ACT Law Society;
  - the Housing Industry Association;
  - Legal Aid ACT;
  - Master Builders ACT;
  - Owners Corporation Network (ACT);
  - Planning Institute of Australia (ACT);
  - Property Council of Australia (ACT Division);
  - Real Estate Institute of the ACT;
  - Surveying and Spatial Sciences Institute (ACT)

# Engaging with ACT Government

- The ACT Government unit titles reform project commenced in 2016
- The aim of the project was to look at unit title laws and policies and how they can be improved to better support those who live, work and invest in the ACT, and, in particular, to deal capably with mixed-use developments
- Extensive consultation with stakeholder groups was undertaken in 2016-17 to identify key issues, followed by an internal government review
- The reforms have been progressed in two stages. Stage 1 of the reforms, outlined in the Unit Titles Legislation Amendment Act 2020, commenced in November 2020
- Stage 2 commenced 1 July 2023

# Increasing legislative rigour in the ACT

## Stage 1 Reforms - Refresher

- Stage 1 Reforms – effected by the *Unit Titles Legislation Amendment Act 2020*
  - better decision-making processes for owners corporations to deal with financial matters and rules (ability to split budgets, raising levies other than on the basis of unit entitlements);
  - enhanced disclosure requirements for sellers of off-the-plan units, including more information up-front and updates (by s119) when important details in the development change;
  - Introduction of building management statements and building management committees to help coordinate shared facilities, access and easements in multi-lease buildings.
  - encouraging more pet-friendly units plans
- Commenced November 2020

# Key Stage 1 Reforms

## Building Management Statements – the ability to opt in

- In Stage 1 – Building Management Statements were introduced (BMS)
- A BMS is mandatory for new builds – but what about those owners in existing buildings who may have wanted to “opt in”?
- We now have a mechanism for existing multi-lease buildings with a units plan to opt in to a building management statement, via a special resolution.

# BMS

## What is it?

- If there is more than one Crown lease granted for a building, the Registrar-General of the Land Titles Office may register a building management statement (BMS) which sets out how the building and the common facilities of the building will be managed between the different types of lessees.
- A BMS must be registered to become binding on the parties
- From 1 November 2020, existing owners of multi-lease buildings could opt in to adopt a BMS
- From 1 July 2023 – it is clarified that a special resolution is required to do so! (BMSs are mandatory on new builds, but existing buildings can now opt in using this special res process).

# BMS

## What does it contain?

- A BMS must set out the following
  - the establishment of the building management committee consisting of each party to the statement;
  - the establishment and appointment of office holders for the implementation of the statement;
  - the functions of the building management committee and the office holders;
  - a process for resolving disputes between the parties to the statement;
  - a process for amending the statement;
  - the allocation of the costs of shared expenses relating to parts of the building, including the basis for that allocation;
  - a process for reviewing the allocation of the costs of shared expenses to ensure that the allocation remains fair (the allocation must be reviewed at least once every five years and as soon as practicable after any change in the shared facilities or services or their use);
  - an arrangement to insure the building in accordance with the regulation[6];
  - an address and process for serving documents on the building management committee; and
  - any other matter relating to the content of the statement prescribed by regulation.

# Enhanced developer disclosure

## Why are we talking about this – isn't this old news?

- The ACT Government had (and has) a consumer focussed agenda with respect to these reforms
- The ACT Gov (and most if not all of industry) want to:
  - Protect purchasers (who are our future lot owners, community living members)
  - Maximise transparency prior to consumers deciding to purchase
  - Ensure accountability in the conveyancing chain (developers, sellers, strata managers)

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# Stage 2 Reforms

# Increasing legislative rigour in the ACT

## Stage 2 Reforms

- The path to law reform – Stage 2:
  - Consultation with industry (SCA, OCN, Property Council, ACT Law Society and others - 2022)
  - The Bill – *Unit Titles Legislation Amendment Bill 2023* (presented by Min Gentleman)
  - The Act – *Unit Titles Legislation Amendment Act 2023*

- Commenced – 1 July 2023

# Delivering a fairer and easier way, to live and work together

- What did your industry association do?
  - The consultative group made suggestions for reform, reviewed the draft legislation, provided feedback on implementing the reforms and distributed permitted communication materials to their stakeholders.
  - It was a lengthy volunteer process and all stakeholders contributed significant time, assisting the ACT Government to understand the issues faced by our industry

# Increasing legislative rigour in the ACT

## Stage 2 Reforms

- What ACT legislation has been amended?

- *Unit Titles Act 2001*
- *Land Titles (Unit Titles) Act 1970*
- *Unit Titles (Management) Act 2011*
- *Civil Law (Sale of Residential Property) Act 2003*

# Key Stage 2 Reforms

## Rules and registering an up to date compilation

- Amending the *Land Titles (Unit Titles) Act 1970*
- **The new law:** requires all OCs to lodge the most up to date compilation of all of their alternative rules each time they change a rule or rules!
- **Why?** Previously, OCs were only required to register an amended rule.
- This change is designed to ensure that all prospective owners/purchasers will have access to a full (and up to date) set (or compilation) of rules when they are purchasing a unit.
- *Given rules govern an owners relationship with the OC and their property – this was an important consumer protection amendment supported by industry.*

# Key Stage 2 Reforms

## Rules and registering an up to date compilation

- **Who?** Well, strata managers primarily (sometimes with the assistance of lawyers, or the EC on behalf of self managed OCs)
- **When?** Effective now. And the three month requirement still applies – but now it relates to "lodging" rather than "registering". A win for all, and hopefully the change will result in less invalid rules, but reason of any delay in the registration process itself.
- **Lesson –** This is still an important process and the consequences for not lodging the compilation within three months remain the same! (Invalid rules!!)

# Key Stage 2 Reforms

## Insurance requirement exemptions (Class B only)

- Amending the *Unit Titles (Management) Act 2011*
- **The new law:** permits Class B unit owners to pass a unanimous resolution to exempt themselves from taking out building insurance – and – it requires that resolution to be registered (within 3 months)
- **Why?** Previously, any such a resolution had to be made annually, and in practice, often it wasn't. Leaving owners in Class B units at times unaware that they did not hold the required building insurance.
- **Also:** Class B owners are considered able to make decisions to cover their own unit, or not, and may not have any significant common property assets.
- This change is designed to ensure that all unanimously agreed class B owners in a complex can make such a decision about building insurance AND it will ensure prospective owners/purchasers will have access to the resolution if they are considering purchasing into the building.

# Key Stage 2 Reforms

## Insurance requirement exemptions (Class A and B)

- **Exemption from building insurance requirements**

(1) If the replacement value of all common property buildings (or parts of buildings) on the land is less than an amount prescribed by regulation, the owners corporation may, by unanimous resolution, exempt itself from the requirement to take out building insurance under section 100 (1) for any risk stated in the exemption resolution.

- The resolution is valid only until the next AGM
- The amount prescribed by the Regulations is currently $10k

# Key Stage 2 Reforms

## Insurance and the question of excess

- Stage 1 reforms saw the introduction of section 100A(2) of the UTMA
- The responsible entity for a units plan is required to lodge an insurance claim and pay any excess in relation to the claim.
- However - there was some confusion about the interaction of this section with section 31 of the UTMA, which allowed an owners corporation to recover expenses due to a wilful or negligent act or omission. The Stage 2 amendment clarified that OCs **may recover insurance excess costs where the requirements of section 31 are met.**

# Key Stage 2 Reforms

## Insurance excess – s100A

UNIT TITLES (MANAGEMENT) ACT 2011 - SECT 100A
Lodgment of insurance claims
(1) This section applies to an insurance claim made in relation to a building on the land in relation to a units plan.

(2) The responsible entity for the units plan must—

(a) lodge the insurance claim; and

(b) pay any excess payable in relation to the insurance claim.

**Note An expense incurred because of a wilful or negligent act or omission, or a breach of an owners corporation's rules, by a member of the owners corporation or an occupier of the member's unit, may be recoverable from the member as a debt (see s 31).**

(3) In this section:

"responsible entity"—see section 100 (5).

# Key Stage 2 Reforms

## Insurance excess – when can it be recovered from an owner

- The amendment at Stage 2 was to include the relevant note circling back to section 31.
- Section 31 is the primary legislative tool for recovery by OCs against owners.

UNIT TITLES (MANAGEMENT) ACT 2011 - SECT 31

Recovery of expenditure resulting from member or unit occupier's fault

- **(1) This section applies if an owners corporation for a units plan has in carrying out its functions incurred an expense, or carried out work, that is necessary because of—**
- **(a) a wilful or negligent act or omission of a member of the corporation, or an occupier of the member's unit; or**
- **(b) a breach of its rules by a member of the corporation, or an occupier of the member's unit.**
- (2) The amount spent or the cost of the work is recoverable by the owners corporation from the member as a debt.
- (3) If the owners corporation recovers an amount under subsection (2) from a member for an act, omission or breach of an occupier of the member's unit, the member may recover the amount from the occupier as a debt.
- (4) In this section:
- "expense", includes a reasonable legal expense reasonably incurred, including a legal expense relating to a proceeding in the ACAT.
- "work", carried out by an owners corporation, means maintenance or anything else the corporation is authorised under this Act to do.

# Key Stage 2 Reforms

## Developer's unit title applications

- **The new law:** makes life a little easier for developers seeking to lodge a unit title application because they can now apply without having certain "required information"
- **Why?** Previously, Developers faced delays in obtaining the "required material" including material only available from the ACT Government itself.
- This change is designed to facilitate unit title applications while still requiring all "required material" to be provided to ACT Government before the unit title application will be granted.
- Significant delays in the approval of DAs or UTAs can negatively affect the Canberra economy. This change was considered an important economic reform for the Territory.

# Key Stage 2 Reforms

## Subleasing Common Property

- Amending the *Unit Titles (Management) Act 2011*
- **The new law:** takes a bold step forward for OCs – who can now take steps to permit commercial activities on the common property
- **Why?** Well, many would say – why not? Provided the OC obtains a **special resolution**, and provided the CP is not already subject to a special privilege, and of course provided the use does not **unreasonably interfere** with the use or enjoyment of a unit
- ACT Government has said: "It will be a decision for the owners corporation to determine what businesses or activities best suit their complex, common property and residents"
- Sublessees must take out and maintain public liability insurance for the affected part of the common property.
- The arrangement can be for a period up to 5 years

# Key Stage 2 Reforms

## Subleasing Common Property – why not?

- At law, all the owners own the common property
- As such, there is no reasonable justification for preventing owners from putting assets they own, to a commercial or business use that can support, facilitate or enhance their community living arrangements
- Other jurisdictions permit subleasing of CP, to the enhancement of those living and working in community title schemes
- Will people argue about “unreasonable interference”? Probably –
  - But the new law provides examples at s20 and, that’s what the Tribunal is for, if reasonable minds cannot agree!

# Key Stage 2 Reforms

## Subleasing of Common Property

- But – an OC can't run a business?
  - True – section 71 UTMA
  - But – new law permits leasing and is silent on income which could be generated
  - Approach with caution, take good advice

What else should the OC do in considering an offer to lease part of the common property –

GO AND SEE A QUALIFIED AND PRAGMATIC PROPERTY LAWYER.

# Key Stage 2 Reforms

## Audit Requirements

- Prior to the Stage 2 Reforms –
  - The UTMA prescribed that an audit must be completed if the annual budget of the owners corporation was more than $250,000
  - However - It was unclear whether this applied to the budget of the general fund, the sinking fund or both.
- Post the Stage 2 Reforms –
  - The amendment clarifies that the “annual budget” includes levy contributions, owners corporation income and any other amounts held.
  - Take into account all funds held in calculating the $250,000 amount
  - This is similar to the approach taken in New South Wales

# Key Stage 2 Reforms

## Sustainability infrastructure

- Amends the *Unit Titles (Management) Regulation 2011*
- **New law:** adds further examples where **permission for the installation of sustainability infrastructure may be withheld**, being financial considerations or equity of access to common property, easements, utility services, or facilities (Regulations, Sch 1, part 1.4)
- **Why?** To help address circumstances where the installation by one owner of sustainability infrastructure may impede another unit owner's equal access to similar sustainability infrastructure in the future, or impose a large cost on unit owners.
- **Because of EV charging?** Sort of, yes. The installation of an electric vehicle (EV) charging point for a unit owner may result in a significant impact on the electrical loading for existing electrical conduits, and prevent another unit owner from installing an EV charger as it may overload the electrical system. Or, it may require a major upgrade to the existing electrical network within a units plan, which could be prohibitively expensive for owners.

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# Key Stage 2 Reforms

## Sustainability Infrastructure – s23

- **Installation of sustainability and utility infrastructure on common** property
- (1) An owners corporation for a units plan may, if authorised by an ordinary resolution—
- (a) approve the installation of sustainability or utility infrastructure on the common property; and
- (b) approve the financing of the installation of the sustainability or utility infrastructure; and
- (c) grant an easement or any other right over any part of the common property for the purpose of the installation, operation or maintenance of the sustainability or utility infrastructure.
- (2) The owners corporation may only approve the installation, and financing, of sustainability or utility infrastructure under this section if satisfied, after considering the following, the long-term benefit of the proposed infrastructure is greater than the cost of installing and maintaining the infrastructure:
- (a) a site plan of the proposed infrastructure;
- (b) a maintenance plan for the proposed infrastructure;
- (c) if the proposed infrastructure is to be financed by a third party—the terms of the financing arrangements;
- (d) the direct and indirect costs of the proposed infrastructure;
- (e) the long-term environmental sustainability benefits of the proposed infrastructure;
- (f) any other matter prescribed by regulation.
- (3) The owners corporation may, by ordinary resolution, decide to hold sustainability infrastructure (including existing sustainability infrastructure) installed on common property and any income earned from the operation of the infrastructure as trustee for—
- (a) if all the units are owned by the same person—the owner; or
- (b) in any other case—the unit owners as tenants in common in shares proportional to their unit entitlement.
- **Example—income**
- income from an electricity feed-in tariff scheme
- *Note* If the owners corporation does not decide to hold sustainability infrastructure as trustee for the unit owners, it holds the infrastructure as agent for the owners (see s 20 (1)).
- (4) For section 71, an owners corporation is not carrying on a business if it receives income from the operation of the sustainability infrastructure and the income is used only to pay—
- (a) costs, including financing costs, in relation to the installation and maintenance of the infrastructure; or
- (b) costs of utilities used by, or provided to, the owners corporation.

# Key Stage 2 Reforms

## Sustainability Infrastructure

- Decisions to install sustainability infrastructure on common property have the potential to impact on an owners access to the shared spaces, and may result in additional levies paid by owners to cover installation and maintenance costs.
- The new provisions will help make the owners corporation aware that these types of issues should be considered before any decisions are made.

# Key Stage 2 Reforms

## Updating section 119 Certificates – within a 4 month window

- There is a new s119(2) which states:
- *[However,] an eligible person may only request a unit title update certificate within 4 months after the day a unit title certificate is given.*
- ***Why?*** *To ensure strata managers were not burdened by repeated requests for updates, and to balance the need for an update in the course of a conveyance of a unit*
- ***Strata managers note*** *– this certificate is a central piece of disclosure material for buyers. It is critically important that your information is correct and current, as required by the Regulations. (And it is still required to be given within 14 days)*

# Q and A


# Contacts

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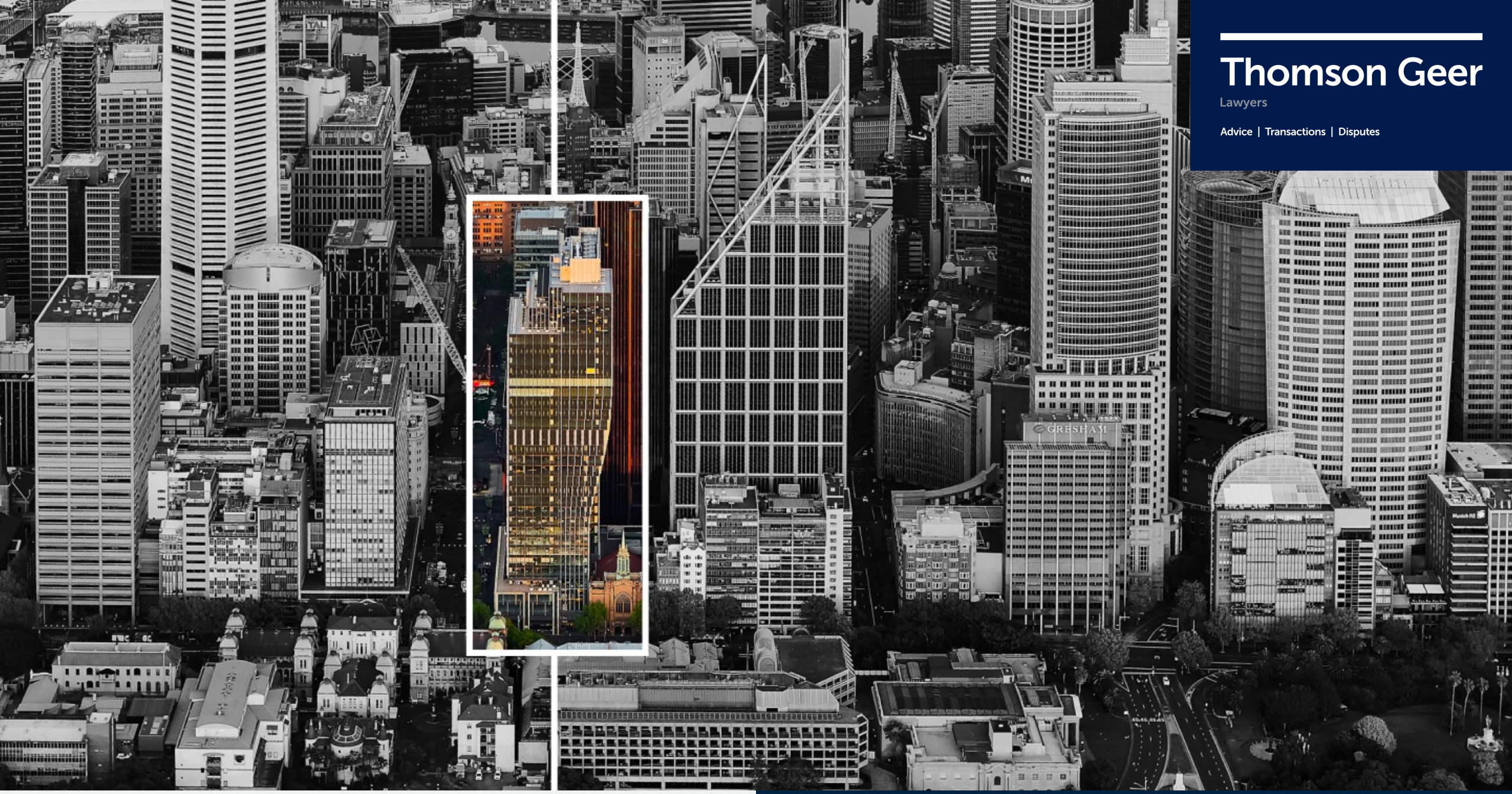

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