

# STRATA LAWS

ONLINE CONSULTATION FINAL REPORT

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## ONLINE CONSULTATION

### FINAL REPORT

April 2012



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**COVER:** A residential building at the corner of Sussex and Druiett Streets in Sydney CBD, courtesy of *michael40001* / Creative Commons via flickr.

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## EXECUTIVE SUMMARY

This report is based on material gathered during the **Strata Laws Online Consultation** which was hosted by Global Access Partners (GAP)<sup>1</sup> on Open Forum<sup>2</sup> from 15 December 2011 to 29 February 2012.

Developed by the GAP team in consultation with the NSW Government in accordance with government guidelines<sup>3</sup>, the consultation engaged a broad cross-section of the community in a conversation about New South Wales strata and community title laws.

The consultation went live at [www.openforum.com.au/strata](http://www.openforum.com.au/strata) at 3:00pm Australian Eastern Daylight Time (AEDT) on Wednesday, 14 December 2011 and ran for 11 weeks. It was closed to public commentary at 5:00pm AEDT on Wednesday, 29 February 2012.

The consultation offered a unique opportunity for strata owners, Executive Committee members, managing agents, tenants and other interested individuals and organisations to contribute to the debate on reform. Open Forum also featured articles and blogs from a host of experts, including the Hon. Anthony Roberts MP, Minister for Fair Trading, the Hon. Greg Pearce MP, Minister for Finance and Services, and Lord Mayor of Sydney Clover Moore MP.

Four questions were posed on Open Forum to stimulate debate:

**Question 1** - *“What are the main areas of the existing strata and community scheme laws you would like to see changed?”*

**Question 2** - *“Can you see any future issues that need to be addressed in the legislation?”*

**Question 3** - *“How could the management of strata and community schemes be improved?”*

**Question 4** - *“Are there any changes needed to the way disputes in strata and community schemes are resolved?”*

To raise public awareness and encourage participation, GAP organised an extensive publicity campaign which included promotion through mainstream and community media, partner networks, Open Forum’s subscriber base and social media. This was complemented by a broad promotional campaign run by the NSW Government.

All comments submitted to the consultation were moderated by the GAP team in accordance with Open Forum’s Moderation Guidelines (<http://openforum.com.au/moderation-guidelines>).

<sup>1</sup> Global Access Partners Pty Ltd is a not-for-profit organisation which initiates high-level discussions on the most pressing social, economic and structural issues and challenges across a broad range of Australian economic sectors. Through its pioneering ‘Second Track’ Process programme of initiatives and online think-tank, Open Forum, GAP seeks to foster links between community, government and academia to streamline the process of ‘fast-tracking’ solutions to key issues, increase stakeholder participation in policy formation and develop novel, cross-disciplinary approaches to regulatory problems.

<sup>2</sup> Open Forum ([www.openforum.com.au](http://www.openforum.com.au)) is an independent, not-for-profit collaborative virtual think-tank facilitated by GAP. The site was launched in July 2007 with the mission of increasing citizen participation in public policy debates. Having grown organically since then, the forum enjoys an impressive blogger database and a very high level of readership comprising senior business executives, government policy makers, academics, thought leaders and community advocates, as well as interested private citizens. The participation in online debates is free and open to people of all ages, backgrounds and political views.

<sup>3</sup> Australian Government Online Consultation guidelines - <http://webguide.gov.au/web-2-0/online-consultation/>

In its 11 weeks of operation, including a traditionally quiet period over the Christmas holidays, Open Forum received **19,138 visits** from **13,558 unique visitors**, while the consultation recorded **1,230 individual comments** on four key questions and **25 blogs**. The total number of **pageviews** was **62,348**, with an average of **3.3 pages** viewed for **4.01 minutes**. The active **participation rate** was **9%**, with every 11<sup>th</sup> visitor leaving a comment.

The Strata Laws Online Consultation enabled an impressive range of experts, owners and tenants to raise a diverse range of issues, with testimony often backed by long personal experience. These topics are organised and summarised as “Recurring” or “Other” issues in this report. The most cited issues concerned the procedures and standards of governance in strata, antisocial behaviour, pets, smoking and parking. There were also calls for more effective enforcement of by-laws and improved dispute resolution mechanisms amid widespread dissatisfaction with the status quo. Potential measures to ease the process of urban renewal by addressing the requirements to dissolve existing strata were also discussed.

Overall, almost **600 suggestions** for procedural change or law reform were put forward by the participants through online commentary.

Detailed submissions from a range of interest groups and organisations were also received and are linked to in the Appendix, for further consideration by the NSW Government in addition to the report.

The general consensus within the community was clear. Reformed legislation, procedures and enforcement should be:

**S**streamlined - **T**ransparent - **R**elevant - **A**ccountable - **T**railblazing – **A**chievable

The Strata Laws Online Consultation will remain online indefinitely as a ‘read-only’ forum and a free information resource which can be used for educational and historical purposes.

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## SUMMARY OF MAJOR LEGISLATIVE ISSUES

### GOVERNANCE

Many contributors considered the Executive Committee system to be hampered by widespread owner apathy and concerns were raised that small groups of people can dominate decision making in their own interest. There was also considerable dissatisfaction with the standards and conduct of professional strata managers. There were calls to reform the proxy vote system to prevent proxy farming and for Executive Committee members to be offered improved education in the intricacies of strata management.

A range of measures regarding the conduct of Executive Committees were offered to encourage involvement, transparency and accountability. The electronic distribution of all agendas, minutes, financial documents and voting papers to keep owners informed and encourage enlightened participation was generally supported.

Higher standards of professional training, conduct and ethics for strata managers were thought necessary by many correspondents, while tighter accounting requirements, a ban on strata managers receiving contract commissions, the elimination of service roll over contracts and the re-purposing of sinking funds were also widely discussed.

The provision of more information for owners regarding the responsibilities and potential pitfalls of strata schemes, and for tenants regarding the etiquette of communal living, was also suggested.

### COMMUNITY LIVING

Despite some concerns that Executive Committees were already too powerful, there was general agreement that more nimble procedures and more effective sanctions are required to prevent irresponsible actions by a small minority of residents impinging on the quality of life enjoyed by their neighbours. There were calls to simplify and accelerate the enforcement of by-laws and to strengthen sanctions against tenants and owners who continually and consciously flout the rules regarding parking, smoking and other contentious issues.

Various schemes were suggested to protect strata car spaces from illicit use, while many people requested smoking be banned on balconies and in common areas to prevent second hand smoke drifting into nearby apartments.

Opinion was divided on the question of companion animals, although the majority wished to allow responsible pet ownership by default, with sanctions or bans reserved for pet owners whose animals actively disturbed their neighbours.

There was support for the reform and strengthening of zoning laws to ban holiday and short-term letting in most strata, while allowing owners in selected properties to let their units to holiday makers, students and international visitors on a short-term basis.

## **DISPUTE RESOLUTION**

The effectiveness of the existing dispute resolution mechanisms was discussed by many contributors. The efficacy of mediation, the fairness of adjudicator decision making and the procedures of CTTT<sup>4</sup> hearings were all questioned to some extent, and the CTTT was encouraged to actively investigate misleading evidence or dubious practices at individual strata schemes.

Many people believed that CTTT operations should be simplified where possible, and the organisation should be empowered to take a wider range of sanctions against proven offenders.

## **URBAN RENEWAL**

Several industry groups urged a reduction in the majorities required in owner ballots to allow the dissolution of existing plans and the redevelopment of the site. Given the need to increase housing density to reduce urban sprawl and traffic congestion as Sydney inevitably grows, many people accepted that reform should be considered so long as the rights of the minority were protected.

There was support for improving and guaranteeing building standards to minimise noise and other problems in new high-density developments, and for the laws regarding mixed residential and commercial strata to be reviewed to protect the interests of residents and owners in relation to developers.

## **STREAMLINING LEGISLATION AND ADMINISTRATION**

Several correspondents argued that reform should radically consolidate and simplify existing regulation, while at the same time recognising the increasing numbers of small strata by differentiating the law where required.

The rationalisation of existing legislation into a single Act with clear and consistent definitions and provisions was suggested.

It was hoped that laws and by-laws could be drafted in clearer English with the needs of the general public in mind.

## **KEY RECOMMENDATION**

That all comments received through the Strata Laws Online Consultation be considered by the NSW Government in developing the next stage of the Strata and Community Title Law review.

<sup>4</sup> The Consumer, Trader and Tenancy Tribunal



# NSW STRATA LAWS ONLINE CONSULTATION

## BACKGROUND

The NSW Government is undertaking a comprehensive review of the State's strata and community title laws. In December 2011, public policy think-tank Global Access Partners was engaged to host an online community consultation on its Open Forum website to give individuals and businesses an opportunity to voice their opinions, share their experiences, raise specific issues or concerns and suggest possible solutions. Comments were invited in relation to four questions on the main areas of existing laws which require reform, future issues, ways to improve the management of strata and community schemes, and the resolution of disputes, as well as on a range of blogs written by experts and representatives of interest groups.



NSW Minister for Fair Trading, the Hon Anthony Roberts opened the online debate by recounting that New South Wales had originated strata and community title laws in 1961 and 1989 respectively, and that over 70,000 strata schemes and 1,500 community schemes in New South Wales now provide accommodation for more than two million people. He saw the importance of strata and community schemes continuing to grow, with perhaps half the state's population living in such developments within thirty years. He argued that *"an improved, modern and more flexible framework for strata and community schemes is essential"* and acknowledged that *"many people waste thousands of dollars in legal fees because the law is not simple and clear."*

The original strata law's 29 sections have since been augmented by five separate Acts and five associated Regulations, with more than 1,000 provisions regulating the development and management of strata and community schemes. Minister Roberts believed that reform could improve housing provision and *"make NSW number one again"*.

In recognising the importance of strata and community title legislation to the state's economy, NSW Minister for Finance and Services, the Hon Greg Pearce, noted in his blog that one quarter of the population owns, lives or works in strata buildings. He underlined the Government's commitment to ensuring *"strata and community scheme laws are flexible enough to encourage development of the homes, workspaces and recreational properties needed to supply our growing population yet at the same time encourage harmonious living for the many strata and community residents."*

The Strata Laws Online Consultation was open to the general public and engaged owners, tenants, strata agents, developers, surveyors, valuers, real estate agents, lawyers, builders, insurers, industry bodies and academics in a spirited debate. Many people related detailed histories of their own experience with strata and community schemes, committees and managers and the framework of law and enforcement which surrounds them.

Comments fell into several broad categories, including governance, community living, dispute resolution, urban renewal and the streamlining of legislation. Several people thanked the Minister for initiating the online consultation process, though others expressed a degree of skepticism that the comments offered would influence any revised legislation in any meaningful way.

*Some called for the online consultation forum to remain open on a permanent basis to become, in the words of "Strataspheric", a "meeting place for strata dwellers (owners, investors, tenants) to become aware of issues and exchange ideas... NSW Fair Trading can sponsor this site and let it be an ongoing "blog" or place to find answers and ask questions from the many talented people who have already contributed greatly to this site. It will also act as a bellwether for government authorities to become aware of new issues and changing trends straight from those affected, rather than via biased reporting from CTTT or newspapers."*

Contributions to the consultation closed on 29 February 2012.

This report identifies the 'Recurring Issues' which generated the greatest number of comments, widest variety of commentators and most involved or heated debate. The individual issues raised by the participants are summarised in alphabetical order under these respective headings. Each section offers quotes from interested parties, a summary of the main points of contention and a list of solutions offered by participants. Such remedies cover the full range of opinions and are inevitably contradictory in parts. Quotes from comments are attributed either to the named writers of featured blogs, or the username registered by the commentator and have been minimally edited for punctuation.

## PROMOTION

Global Access Partners' publicity campaign for the Strata Laws Online Consultation consisted of four main promotional strands:

- ▶ Government channels
- ▶ Mainstream media
- ▶ Social media
- ▶ Community outreach

The consultation was launched by the Hon. Anthony Roberts, NSW Minister for Fair Trading, at the Strata Community Australia (SCA) NSW event held on 14 December 2011 which was attended by over 150 strata managers, owners and key stakeholders. Flyers were distributed by Global Access Partners at the event. Press releases were put out by the Government, and SCA sent emails highlighting the consultation to its 1,500 members.

The key part of the promotional strategy was a continued stream of information and commentary provided on Open Forum during the consultation. By approaching high-profile bloggers, members of stakeholder organisations and experts, GAP successfully promoted the consultation and gained a high number of submissions. The strategy of harnessing the contributors' networks, including social media, helped create a 'buzz' around strata law reform and raised awareness. Strong and continued reinforcement of the consultation and the ability to contribute created a 'snowball effect'.

All enquiries, including phone calls and emails from the general public, were answered by the consultation team within 48 hours. Comments were uploaded to the website within 48 hours and in general within five hours of posting. On peak weekends of the consultation, comments were uploaded more frequently. Conversation played a key role in the consultation and notification of replies to comments and timely posting of comments was a contributing factor in the success of the consultation.

Technical support was also offered, and for those unable to navigate the online system, the consultation team uploaded the comments on their behalf. This was particularly important for the users with limited computer literacy or no access to a computer. GAP also received letters and faxes and they were uploaded to the website on behalf of the contributor.

### **Promotion through government channels**

Promotion of the consultation by NSW Fair Trading played a crucial part in its awareness. The department provided a clear indication to users that Open Forum was a powerful medium through which they could share their views with the NSW Government. At the beginning of the consultation, the department sent out correspondence inviting 2,270 people, including those who had previously contacted the department on strata issues and all licensed strata managers, to comment. Strata managers were also encouraged to post information about the consultation on the notice boards of the strata schemes that they manage. Over the 11 weeks of the project, the department also informed all further correspondents concerning strata issues of the ability to participate in the online consultation. The majority of telephone enquires received during the consultation process were from recipients of the department's invitation to participate.

As outlined above, all questions from the general public surrounding the consultation were responded to in a personal and caring manner. The response of gratitude for the running of the consultation and the ability to have their say was overwhelming. Those who had had previous issues were the most vocal and by listening to their concerns and providing support another layer of awareness was generated. It is understood that many involved took it upon themselves to post their invitations within their buildings and canvas other residents to have their say about issues concerning strata law.

The following Members of Parliament promoted the consultation through their websites:

- ▶ Rob Stokes MP, Member for Pittwater; [http://www.robstokes.com.au/news\\_and\\_events/media\\_releases/nsw\\_strata\\_laws\\_open\\_for\\_inspection.html](http://www.robstokes.com.au/news_and_events/media_releases/nsw_strata_laws_open_for_inspection.html)
- ▶ Lord Mayor Clover Moore MP, Member for Sydney; <http://www.clovermoore.com.au/strata-law-under-the-microscope/>
- ▶ Gabrielle Upton MP, Member for Vaucluse; <http://www.gabrielleupton.com.au/news/submissions-called-for-on-strata-law-consultation/>

#### Other media releases/company blogs

- ▶ Chris Harris City of Sydney Council; <http://chrisharrissydney.wordpress.com/2012/02/24/strata-law-reform-long-overdue-finally-a-chance-for-change/>
- ▶ Strata Community Australia (SCA); <http://nsw.stratacommunity.org.au/resources/1445/>; media release was sent to 1,500 SCA members; article appeared in the February issue of *Inside Strata* (circulation – 3,000)
- ▶ Urban Development Institute of Australia NSW; <http://www.udia-nsw.com.au/resource/stratareview.pdf> - included in its newsletter to 3,000 members
- ▶ Real Estate Institute of NSW (REINSW) – newsletter to 600 strata managers <http://www.reinsw.com.au/Government-calls-for-input-on-strata-laws-reform/default.aspx>; <http://reinsw.typepad.com/ceo/2012/01/strata-reform-to-recognise-lifestyle-changes.html>
- ▶ McCormacks Strata Management Blog; <http://www.mccormacks.com.au/strata-law-reform-%E2%80%93-have-your-say>
- ▶ Francesco Andreone Blog; <http://francescoandreone.blogspot.com.au/2012/01/nsw-strata-law-reforms-are-on-again.html>  
<http://francescoandreone.blogspot.com.au/2012/01/future-proofing-nsw-strata-laws.html>
- ▶ The Quinn Group blog; <http://www.quinns.com.au/blog/2012/02/15/nsw-government-to-review-strata-laws/>
- ▶ Living in Strata forum; <http://www.livinginstrata.com.au/forum/topic/177>;  
<http://www.livinginstrata.com.au/forum/topic/176>
- ▶ Strata Agency News; <http://www.thestrataagency.com.au/page/news/strata-laws-online-consultation/>
- ▶ Strata Choice News; <http://www.stratachoice.com.au/blog/news/strata-laws-review>
- ▶ Westside Industrial News - <http://www.westsideindustrial.com.au/media/detail.aspx?MID=136&MenuID=>
- ▶ Norwest Business Park News - <http://www.norwestbusinesspark.com.au/media/detail.aspx?MID=133&MenuID=>
- ▶ Home Port Property - <http://www.homeportproperty.com.au/sydney-investment-property/nsw-planning-for-strata-law-review.html>

- ▶ Action on Smoking and Health (ASH) Australia; [NSW strata law consultation - closed Feb 29](#); ASH submission on [Tobacco smoke drift in multi-unit housing](#); <http://www.ashaust.org.au/lv4/StrataForumNSW2012.htm>; ASH also contributed a blog; <http://www.openforum.com.au/content/smoke-free-guide-clears-air-strata-dwellers>
- ▶ ASH Smoke-free multi-unit housing: a guide for owners, tenants, agents, authorities and governments; <http://www.ashaust.org.au/pdfs/SFhousingGuide.pdf>
- ▶ ASH TV community service ad from residents, health groups calling for input; <http://www.youtube.com/watch?v=0HCquD6xQnQ&context=C3b3b3d3AD0EqsToPDskLovdbhXCSYv1HLJeSAlYJk>

### Mainstream Media

Media coverage resulting from the promotion of the consultation included:

- ▶ Strata Laws up for review – by Alexandra Smith, The Domain, 15 December 2011, <http://news.domain.com.au/domain/real-estate-news/strata-laws-up-for-state-review-20111214-1ouup.html>
- ▶ NSW plans 21st century makeover for strata laws - Australian Financial Review, 15 December 2011; [http://www.afr.com/p/national/state\\_plans\\_st\\_century\\_makeover\\_rGprPo3d63FMGQ9QiaVSoJ](http://www.afr.com/p/national/state_plans_st_century_makeover_rGprPo3d63FMGQ9QiaVSoJ)
- ▶ Strata laws a dog's breakfast: All eyes on NSW review of by-laws – by Ben Hurley, Australian Financial Review, 17 December 2011; [http://afr.com/p/national/strata\\_laws\\_dog\\_breakfast\\_ASidiFCsCeJF8yBA3AEvmN](http://afr.com/p/national/strata_laws_dog_breakfast_ASidiFCsCeJF8yBA3AEvmN)
- ▶ Strata laws review seeks feedback this summer - by Marianna Papadakis, St George & Sutherland Shire Leader, 5 January 2012; <http://www.theleader.com.au/Keitnews/local/news/general/strata-laws-review-seeks-feedback-this-summer/2410197.aspx>
- ▶ Strata board bullies can turn community living into a proxy war – by Keith Jackson, Sydney Morning Herald, 5 January 2012; <http://www.smh.com.au/opinion/strata-board-bullies-can-turn-community-living-into-a-proxy-war-20120104-1p15l.html>
- ▶ Strata units: Have your say - by Carleen Frost, Manly Daily, 10 January 2012; <http://manly-daily.whereilive.com.au/news/story/strata-units-have-your-say/>
- ▶ Strata fear and loathing: time to stick by rules – by Jimmy Thomson, Sydney Morning Herald, 14 January 2012; <http://www.smh.com.au/opinion/society-and-culture/strata-fear-and-loathing-time-to-stick-by-rules-20120113-1pzdy.html>
- ▶ Interview with Minister Anthony Roberts - Radio 2UE 954am - Legal Matters with Tim Shaw, 15 January 2012; <http://www.2ue.com.au/legalmatters>
- ▶ Monthly Chronicle Hornsby, January 2012; [http://www.monthlychronicle.com/files\\_fordl/MCjanuary2012.pdf](http://www.monthlychronicle.com/files_fordl/MCjanuary2012.pdf)
- ▶ When your neighbours hang you out to dry – by Jimmy Thomson, Sydney Morning Herald, 11 February 2012- <http://smh.domain.com.au/real-estate-news/when-your-neighbours-hang-you-out-to-dry-20120210-1s5vx.html>

### Specialist Media

- ▶ Real Estate Business; <http://www.rebonline.com.au/breaking-news/4647-outdated-strata-laws-need-overhaul> - newsletter circulation - 14,000
- ▶ Property Observer; <http://www.propertyobserver.com.au/residential/nsw-begins-consultation-on-overhauling-complex-strata-rules/2011121452845>

- ▶ Accomnews; <http://www.accomnews.com.au/industry/1326-nsw-strata-laws-due-for-shake-up-in-2013>
- ▶ Street Corner Western Sydney; <http://www.streetcorner.com.au/news/showPost.cfm?bid=23323&mycomm=WC>
- ▶ Flat-chat; <http://www.flat-chat.com.au/archives/1935>
- ▶ The Fifth Estate; <http://www.thefifthestate.com.au/archives/31067>
- ▶ Smart Property Investment; <http://www.spionline.com.au/2012/01/strata-laws-do-need-overhaul-reinsw/>

## Social Media

Social media played a key role in bringing a fresh audience to the Strata Laws Online Consultation. Promotion of the consultation through existing online communities proved highly efficient as it captured the interest of Australians already active in the discussion of social issues.

Twitter, Facebook and LinkedIn were the most influential social media tools.

### Twitter

*@openforum\_au* updated its 1,500 followers (93 tweets) regarding the consultation. Blogs were tweeted to the community and in turn the message was re-tweeted to their followers. Twitter proved to be an outstanding success for the consultation. It was also used to target those individuals who mentioned strata or apartment living on twitter and they were sent personal invitations to participate in the consultation.

### Facebook

A Strata Laws Online Consultation page was created on Facebook to promote the consultation. Updates on the Strata Laws Consultation complemented those by Open Forum which has an established Facebook presence of 210 “likes”. The Strata Laws Online Consultation page gave the consultation a voice on a number of Facebook pages, including Domain which holds regular debate about strata living. Facebook was used by contributors to share their Open Forum strata blogs and in turn reached an even broader network. GAP also tapped into the *No Thank You - I don't want to share the cigarette smoke from your apartment*, which generated content from those voicing their concerns against smoking in strata complexes.

### LinkedIn

Using Open Forum editor Helen Hull’s LinkedIn network, the consultation was distributed to a wide variety of specialist strata groups and general interest readers. Personalised and targeted messages were created for individual groups.

- ▶ Australian Computer Society (ACS) - 7,468
- ▶ Australian Marketing Group - 3,026
- ▶ Australian New Media - 4,997
- ▶ Deloitte Leadership Academy - 233
- ▶ Digital Women Connect – 900
- ▶ Executive Women Australia - 4,902
- ▶ Marketing First Forum - Open Group – 390
- ▶ Online Community Engagement – 582
- ▶ Online reporters and editors - 11,745
- ▶ The Futures Project - 133

- ▶ Talking Real Estate 188
- ▶ First 5000 - 243
- ▶ Leadership Think Tank - 6,682
- ▶ Strata Management Australia - 144
- ▶ Affordable Housing Network - 18,858
- ▶ Open Forum Bloggers – 58

### Community Outreach

Community organisations were identified, contacted and invited to promote the consultation through their networks. Particular effort was made to engage those identified by NSW Fair Trading as key stakeholder groups. These promotional efforts succeeded in reaching a broad cross-section of the community attracting visitors who were keen to spend more time on the site and contribute. With more resources allocated, this model of promotion could play an even more powerful role in engaging a bigger and more representative selection of citizens in future government consultations.

Broadcasters which promoted the consultation included:

- ▶ NSW Strata Law Review ABC 702 Sydney Radio – Weekends with Ian Rogerson - The review of strata and community scheme – with Cathy Sherry;  
<http://www.youtube.com/watch?v=fLKjKUYTR64>
- ▶ Smoke Drift Community Service Announcement, TVC -  
<http://www.youtube.com/watch?v=0HCquD6xQNQ&feature=relmfu>

A 10-minute documentary was produced and published on YouTube by Penelope L. Hill at

- ▶ Strata Strife: Pitfalls of strata ownership and mismanagement;  
<http://www.youtube.com/watch?v=8hnrZG83NMY&context=C42dcf18ADvjVQa1PpcFOhuBNc4dUQgwGOBBToocE1M0jr7iXkxQM=>

### Ethnic Media

GAP contacted a range of ethnic media to ensure that non-English speaking strata owners or those with an interest in strata would be aware of the ability to participate. A total of 105 ethnic media organisations were contacted, representing Arabic, African, Chinese, Russian, German, Greek, Italian, among other communities.

- ▶ Africanoz - <http://africanoz.com/wordpress/strata-laws-consultation>
- ▶ The IndoAusTimes - <http://www.theindoaustimes.com/community/new-south-wales/2353-strata-consultation.html>
- ▶ Hindigaurav - <http://www.hindigaurav.com>
- ▶ Express Wiecezorny - Milliyet Australia / Turkish Newspaper
- ▶ Unification - <http://unification.net.au/articles/read/1295>

GAP also approached major Chinese media outlets, including five newspapers, two websites and two radio stations, through phone calls and email contact. A Chinese-speaking intern at GAP translated the consultation's media release into Chinese and sent it out to media outlets. 2OR Australia Oriental Radio and Australia Chinese Daily responded.

- ▶ *2OR Australia Oriental Radio* - First Mandarin speaking radio station with origins directly from mainland China, catering for the local Chinese audience. It operates 24 hours a day, seven days a week. Listeners: more than 100,000. Broadcast date: 20 Feb 20 8.00-10.00 am
- ▶ *Australian Chinese Daily* - Largest Chinese newspaper in Australia. It is published daily and has a special added edition in weekends; average circulation: 17,000 to 20,000 per day. Publishing date: December 2012.

NB: All the above links were active at time of publication of this report.



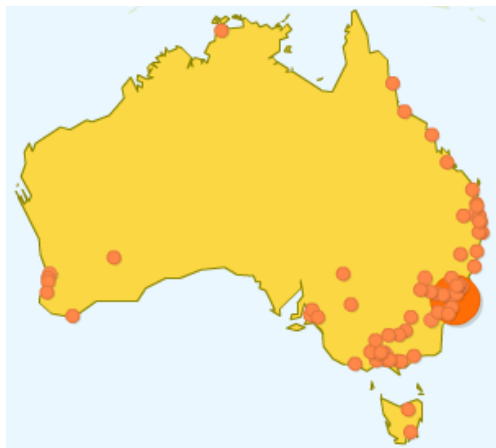
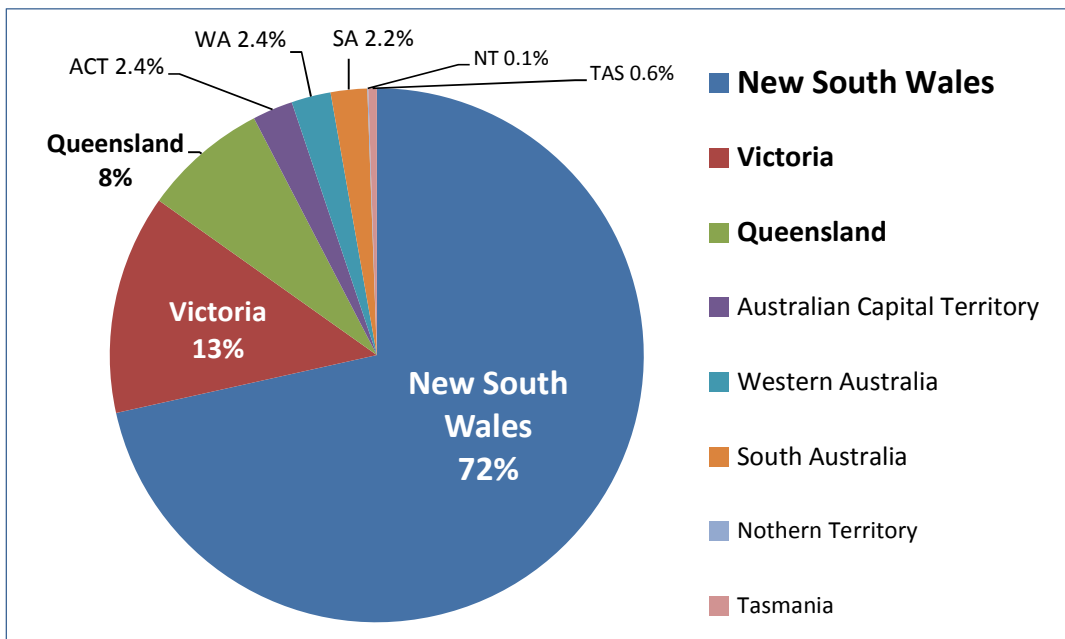
## PARTICIPANTS

### DEMOGRAPHICS

Success of any online, interactive discussion forum is generally measured in terms of site visits, demographics and participation, including the number and quality of comments and submissions.

The Strata Laws Online Consultation brought together **13,558 people** from across **all 8 Australian states and territories** in the course of the eleven weeks of its operation.

**Chart 1. Respondents by State**



The overwhelming majority of visits originating in New South Wales came from Sydney (96%, or **10,577 visits**).

The remaining 4% of visits were divided between Dubbo (1%, or 156 visits), Newcastle (0.36%, or 40 visits), Wollongong (0.25%, 27 visits) and other locations (2%, or 191 visits).

Chart 2. Visitor Loyalty

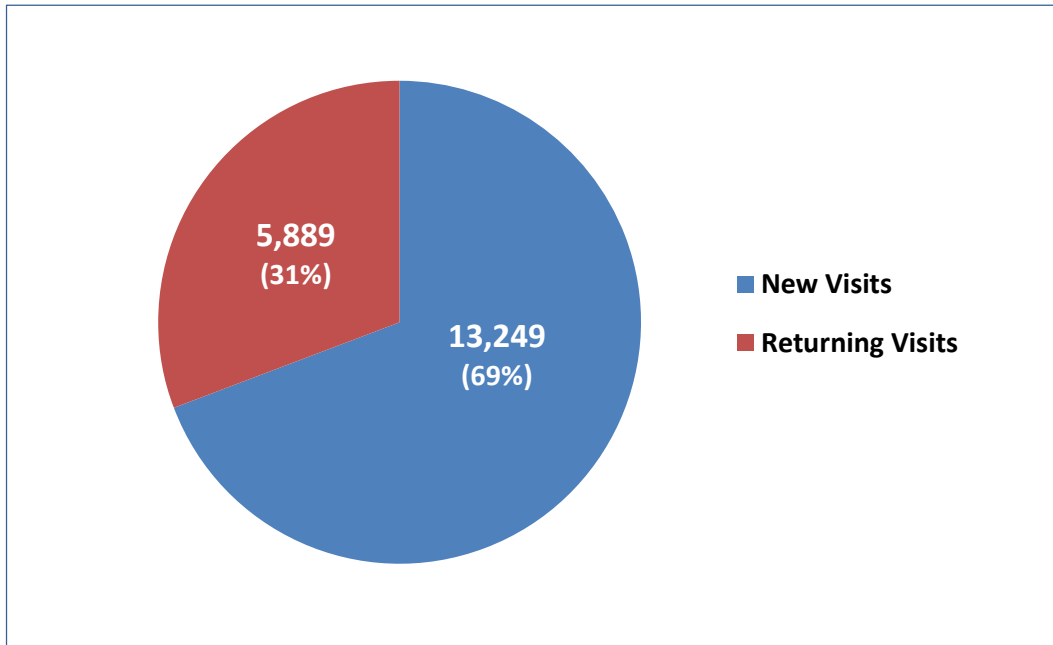
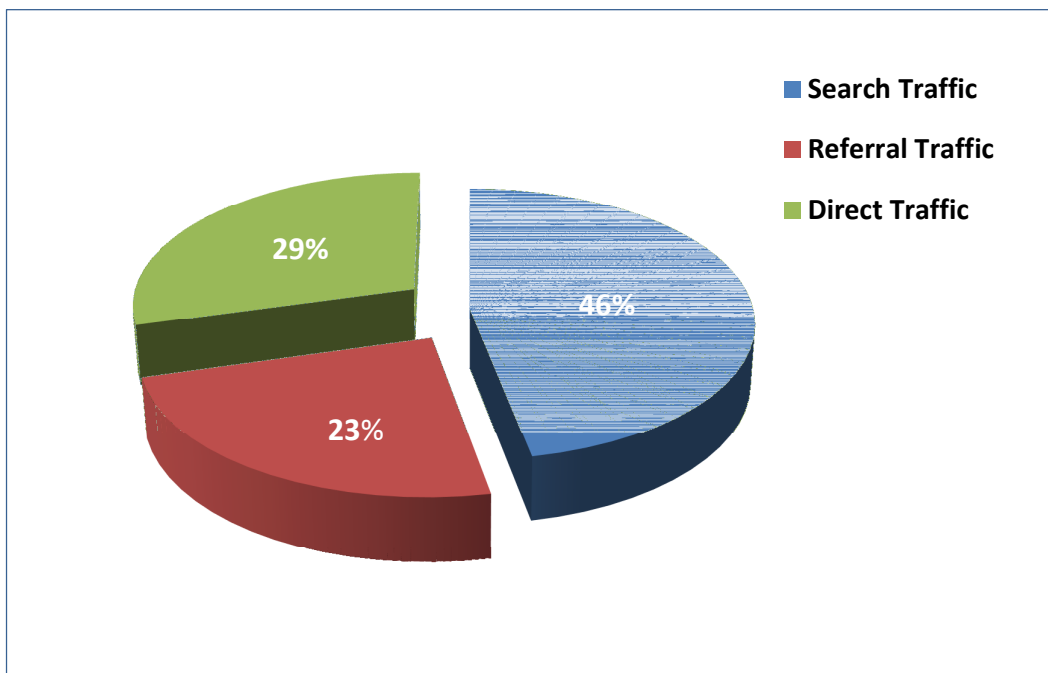


Chart 3. Traffic Sources<sup>5</sup>



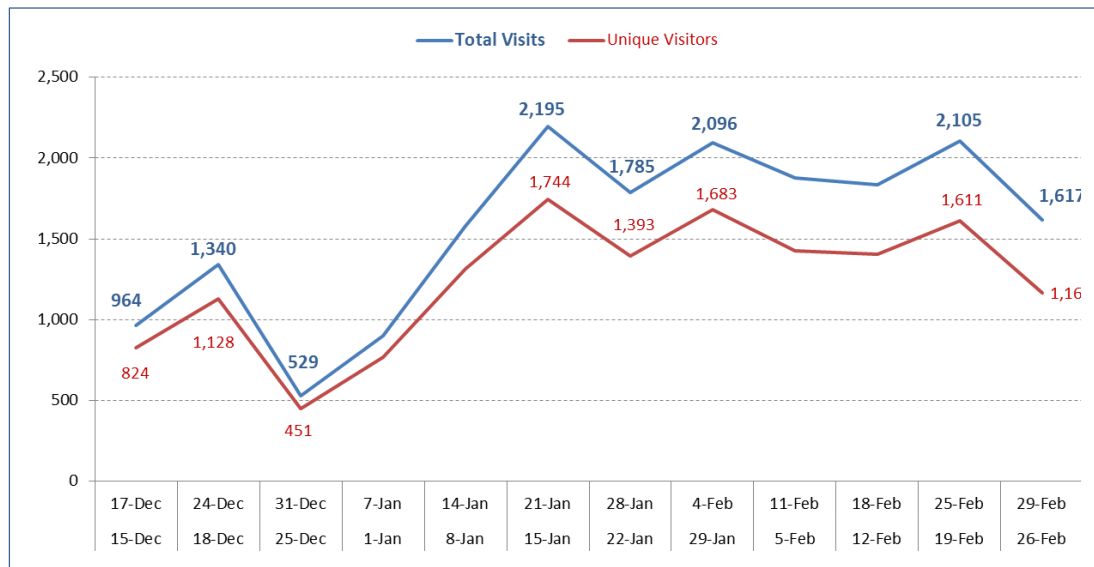
<sup>5</sup> 2% of traffic came from other, unidentifiable sources.

## PARTICIPATION STATISTICS

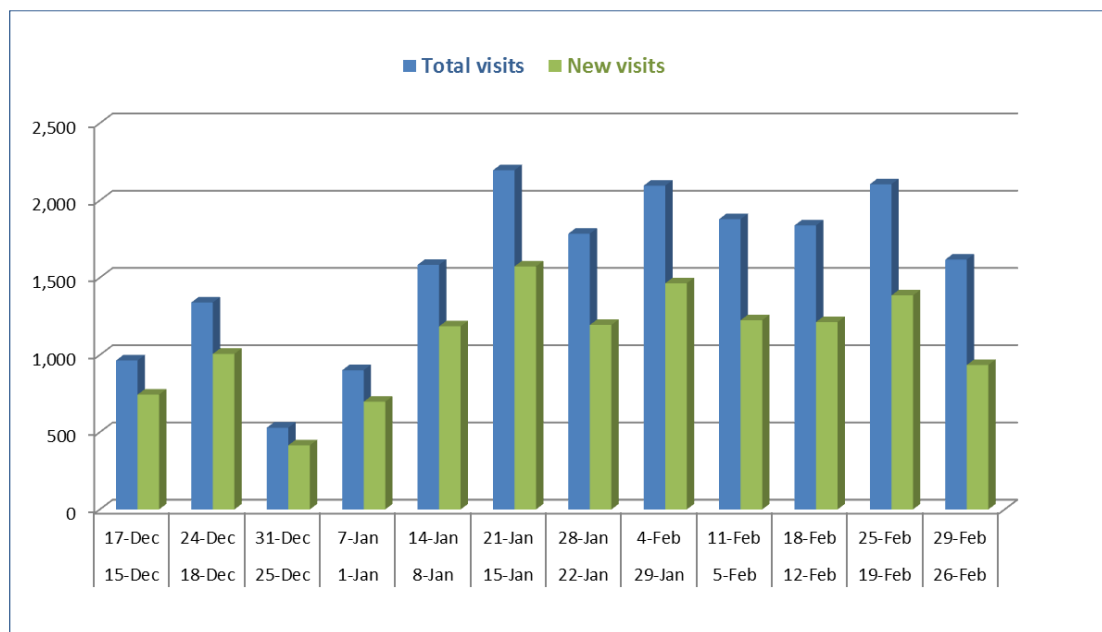
Between 15 December 2011 and 1 March 2012, **13,558 people** visited the Open Forum site **19,138 times** and viewed **62,348 pages** in total, an average of 3.3 pages and 4.01 minute per visit. A surge in visits was registered on Week 6, following the holiday period.

The consultation generated **1,230 comments and submissions** amounting to **445,702 words**, which, to put in context, is almost the length of J.R.R. Tolkien’s *Lord of the Rings* trilogy.

**Chart 4. Traffic – Weekly Dynamics**

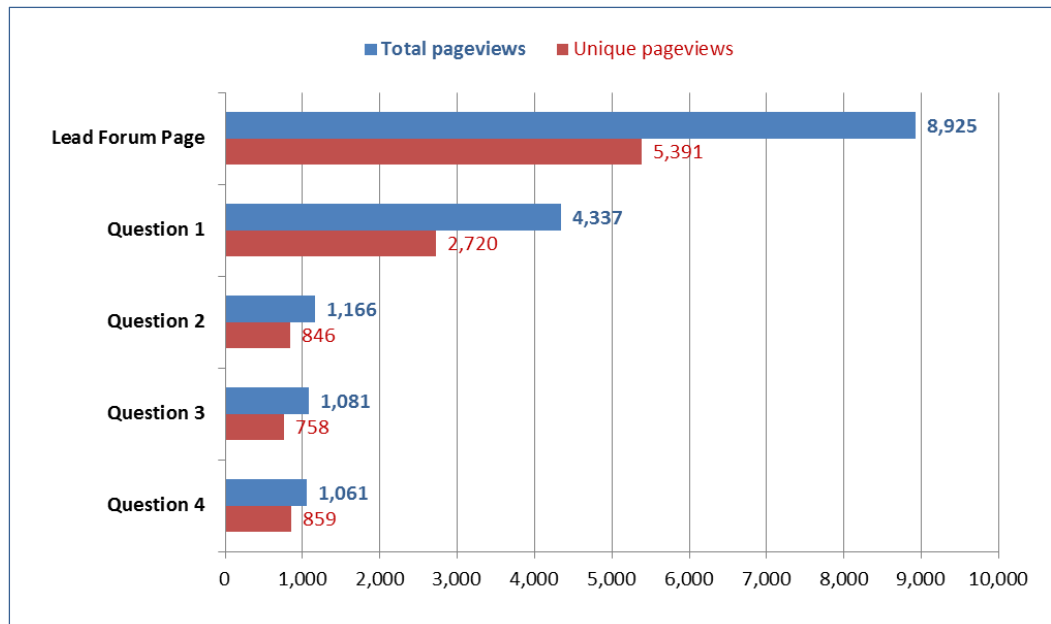


**Chart 5. Visitor Gain – Weekly Dynamics**

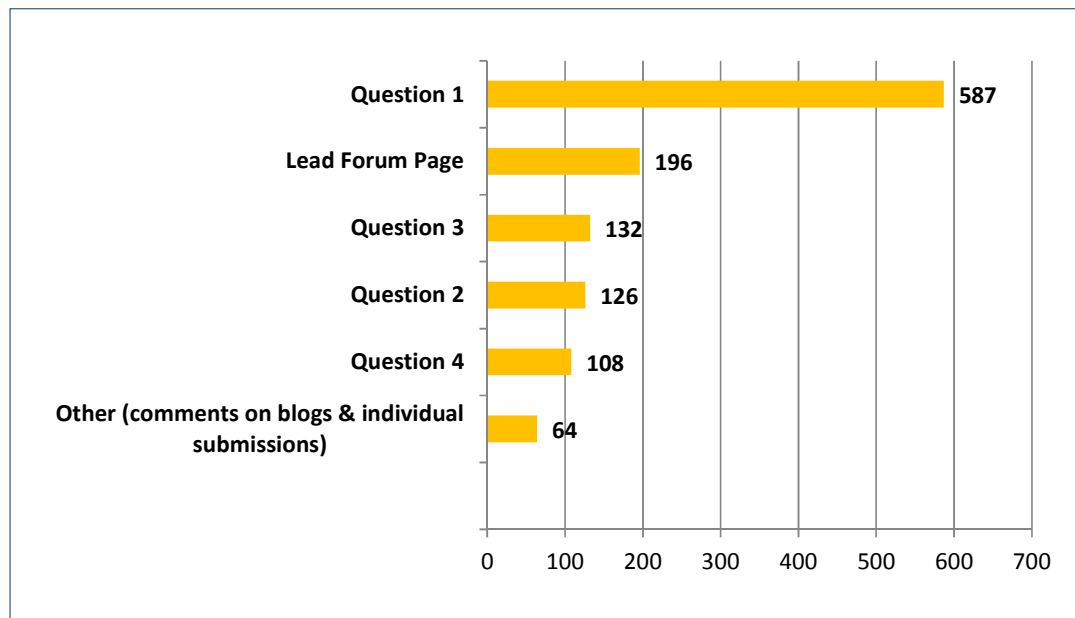


The most popular pages were the lead page of the consultation ([www.openforum.com.au/strata](http://www.openforum.com.au/strata), **8,925 page impressions**) and Question 1: “What are the main areas of the existing strata and community scheme laws you would like to see changed?” ([www.openforum.com.au/content/strata-laws-online-consultation-question-1](http://www.openforum.com.au/content/strata-laws-online-consultation-question-1); **4,337 page impressions**). Question 1 generated the largest number of responses, with **587 comments**.

**Chart 6. Readership – No. of Pageviews (Consultation Pages Only)**



**Chart 7. Contributions (No of Comments)**



# SUMMARY OF ISSUES

## GOVERNANCE

### RECURRING ISSUES OF GOVERNANCE

#### Attendance and Quorums

*"There are too many people on committees with only self-interest in mind, who do nothing but sit on the committee until something turns up which affects them personally." - "phlebe"*

Problems with poor attendance and achieving quorums at Owners Corporation meetings were widely discussed. Owner attendance can suffer through lack of interest or the pressure of other commitments, while meetings may also be "stacked" with dominant figures encouraging friends to take office with no intention of active participation. There were calls to hold meetings at more convenient times, but "DT" observed that any particular time would always be inconvenient to someone - working people might prefer a Saturday morning meeting, for example, but this would be highly inconvenient to people with children. Public holidays would allow some to attend, but would also ensure that others were away.

If a quorum of one quarter of financial owners is not established, current NSW legislation requires the meeting be adjourned for seven days, but this penalises those who have attended, particularly if they live elsewhere, and breeds disenchantment with the system. Furthermore, if these owners are unable to attend a subsequent meeting, but have given their votes as proxies, then discussions at the rearranged meeting can be moot as the majority opinion is already entrenched. "Nigel Stewart" questioned the nature of quorums in two lot schemes where a meeting can be adjourned when one owner is "unfinancial".

#### *Options suggested by consultation participants*

- ▶ Abandon the requirement for a quorum, with decisions made by as many eligible members as attend the Annual General Meeting (AGM).
- ▶ Require at least half the eligible members to physically attend an AGM to ensure democracy.
- ▶ Section 29 of the Strata Schemes Management Act (SSMA) already allows the powers of an Executive Committee to be delegated to a strata manager and greater use of professional management would reduce the need for meetings.
- ▶ Follow the Victorian or ACT model, by which a meeting continues in the absence of a quorum, but all decisions are interim and can be blocked, if a given percentage of members (e.g. 25%) object within a month.

- ▶ Hold the AGM or an Extraordinary General Meeting (EGM) on Saturday, Sunday or a public holiday to allow strata residents to attend without sacrificing their work commitments. Meetings scheduled during weekday evenings may be highly inconvenient to people with working, commuting or family commitments.
- ▶ In schemes of five owners or less, if no voting members attend a reconvened General Meeting within 30 minutes of its start, then all statutory motions should be deemed passed and levies increased by 2%.
- ▶ Any Executive Committee member who fails to attend a majority of meetings in a year, or fails to respond to correspondence, should be automatically excluded from office the following year.
- ▶ Members who attend General Meetings should have their levies reduced by 2%. Those who vote by proxy should receive a 1% reduction.
- ▶ Reduce the one-third requirement for lot owners to prevent the Executive Committee making a decision to one quarter, in line with the number required to request an AGM or form a quorum at a General Meeting.

## Education

*"The number of people in NSW who live in strata schemes is now of the same order as the number who live in free-standing houses. Unfortunately, relatively few fully appreciate the differences between the two and tend to view the former as a version of the latter. Better public awareness of the nature of strata ownership is required to improve the quality of management of strata schemes, to reduce conflict and to improve conflict resolution." - "Kaunitzj"*

*"Many individuals who gravitate to committees have no management or financial skills, are incompetent or ignorant, inexperienced, unqualified and are on the committee simply because of the opportunity to wield power over others...Even well drafted laws are completely useless if there is no effective enforcement. It is impossible to legislate against human stupidity and incompetence, so effective administration and enforcement is essential. At present, this does not occur." - "Mike Oreilly"*

*"Education of the community is the key." - "PB"*

Several people highlighted the difficulties caused by laypeople, often with no professional background or formal training, managing large strata plans and substantial sums of money. Lord Mayor of Sydney Clover Moore agreed that "Executive Committee members do not always have the knowledge and expertise to manage the complex issues of strata schemes, particularly in larger buildings" and urged that "Mandatory Executive Committee training should be explored, particularly for larger sized schemes, with consideration of how it would impact on nominations and whether it could be funded by the strata scheme."

"Why ought any individual who puts their hand up at an AGM be entitled to act as an Office holder at Executive Committee - without any requirement at all for training, skills or knowledge? It just does not make sense that multi-million dollar properties could be managed by people who are "available" for Executive Meetings rather than "competent". - "Stratalink05"

The need to educate Executive Committee members, lot owners and tenants in all aspects of procedure, mediation, council responsibilities and law, perhaps under the auspices of NSW Fair Trading or the CTTT, was clearly a common theme. Some wanted these requirements extended to real estate agents and other involved parties. Education was also seen as vital in building better communities. As "Ancestor" wrote, "It is not merely a question of understanding the Act, but of inculcating a philosophy of responsible management, accountability to the owners and acceptance of a concept of service, not power."

### *Options suggested by consultation participants*

- ▶ Mandatory formal education for Executive Committee members. Such instruction should outline key responsibilities and relevant legislation in line with current requirements for company directors. Executive Committee members should attend annual NSW Fair Trading workshops on the roles of chairperson, secretary and treasurer to ensure they perform their functions in an efficient and effective manner. Executive committee members should not take office without completing an approved course such as those offered on the Strata Community Australia NSW website.

- ▶ Compulsory one-day information courses for strata buyers setting out their rights and obligations. The signing of a standard contract for a sale of property should require the presentation of a “strata driving licence” awarded upon the successful completion of this course.
- ▶ NSW Fair Trading should offer an online course in strata management similar to Queensland’s Justice Department’s Body Corporate and Community Management online training. This material should also be offered on DVD for those without internet access.
- ▶ TAFE courses should be developed for Executive Committee members and Office Bearers.
- ▶ The CTTT should produce a manual covering Executive Committee meeting procedures and guidelines for dealing with common problems. A copy should be provided to every strata manager and each member of an Executive Committee.
- ▶ Translate the *Strata Living* booklet into a wider range of community languages. Owners and tenants should be required to sign that they have read and understood the document. A copy of the by-laws should also be given to and signed by all new owners and tenants.
- ▶ Property managers and selling agents must also be trained in tenancy law, strata and community schemes as part of a revamped and more stringent Certificate of Registration. As the first point of contact, they should have a legal responsibility to inform potential strata purchasers of their rights and responsibilities. All current strata managing agents should be obliged to attend a comprehensive “refresher course” which includes advice on mediation and new legislation and be stood down if they are unable to prove their competence.
- ▶ Inform people buying into a strata plan that membership of the “corporation” exposes them to unlimited liability. Perhaps substitute the word “partnership” or “association” to underline the lack of limited liability protection.



## Proxy Voting

*"The objective should be to empower owners to participate in the decision making processes within their owners' corporation not to make committee members more powerful." - "John Anderson"*

*"Most of the problems seem to centre around the issue of "power" and the lengths that some owners will go to, to control a scheme and other owners for their own benefit and/or to boost their own selfish ego. Central to this is the misuse and abuse of the proxy system." - "Louise16"*

The issue of proxy voting, the process by which owners can cast votes on behalf of other owners, was one of the most hotly debated. Lord Mayor of Sydney Clover Moore argued in her blog for a limitation in proxy votes to prevent a small self-interested group taking control of an entire building. She argued that owners unable to attend should direct their proxy how to vote in their name and offered ballot voting as an option to allow non-attending owners to have their say. Another blogger, Colin Grace, Business Development & Client Management Director of Grace Lawyers, argued that no more than five proxy votes should be given to any person associated with the building manager.

The problem of proxy farming by which "certain individuals with agendas collect proxies from timid, lazy or non-English speaking residents" to gain majorities in AGMs was raised by many. "Amazed" said that many residents in his block of thirty units were bullied by the Secretary of the Owners Corporation into giving him proxy votes which enabled him to dominate decision making at the expense of other owners. Proxy farming of people with poor English skills, older people and people of a more retiring nature was seen as commonplace, with several commentators relating their own experience of how the proxy system is manipulated and abused to create voting blocs buttressing vested interests and blocking legitimate owner concerns. "Health Worker" noted that absent owners of holiday units in tourist areas inevitably gave their proxies to the manager, giving him complete power over everyone else.

A minority, however, argued in favour of the current proxy system. It was argued that many people lacked the time to study strata documentation or proposals and should be allowed to trust their vote to another member with a better understanding of events. "Richard Holloway" noted that proxies enabled meetings to go ahead and important decisions to be made by establishing an initial quorum, though he agreed that proxy votes per person could be limited. Others questioned how pre-written votes could apply when agenda items were amended during a meeting as a result of the discussion, and believed the mass production of "how to vote" cards would quickly replace proxy votes in the armoury of those determined to dominate the debate. Some argued that merely limiting proxies would not motivate more people to contribute to meetings, but result in them opting out of the decision making process entirely.

### *Options suggested by consultation participants*

- ▶ Limit the number of proxy votes any individual can hold to a given number or percentage of strata lots.
- ▶ Remove the restrictions on attendance at an "adjourned" meeting rearranged after failure to achieve an initial quorum.

- ▶ Distribute voting papers covering the agenda items to all owners in good time before each meeting. These papers should include all relevant information and arguments for and against each item, with the proviso that information provided in good faith should not be actionable. The meeting quorum should then be based on the number of voting papers returned, rather than physical presence or proxy votes. No votes should be taken at the meeting on matters not featured on the circulated agenda. If an amendment is deemed necessary, a new motion should be put on the agenda of the next General Meeting.
- ▶ Keep proxies, but limit them to financial owners. Notice of meetings should bear a list of all owners willing to accept proxies, rather than merely the chairperson of the Executive Committee. Proxies should include a written note giving assent with proof of identity to reduce fraud.
- ▶ Allow voting by electronic means, e.g. by teleconference or Skype, to reduce the need for absent owners to resort to proxy voting.
- ▶ Bar any person holding a paid office in the strata, such as a managing agent, from holding proxies or being a voting member of the committee.
- ▶ Prohibit the use of proxies on certain matters, for example, on motions to reduce the size of the Executive Committee or the election of officials.
- ▶ Prohibit any Executive Committee member from acting as a proxy on behalf of more than one other Executive Committee member.
- ▶ Limit each owner to holding proxy votes to no more than 5% of the total lots, including their own.
- ▶ Limit the sum of proxies controlled by Executive Committee members to no more than 10% of the total.
- ▶ Allow proxies to be counted to establish a quorum, but not to be used to vote on any agenda items.
- ▶ Allow no more than three proxies to be used as votes by any one person.
- ▶ Allow proxies to be counted towards a quorum only if the absent owner has directed in writing how they wish their vote on each matter to be recorded.
- ▶ Amend the law to prohibit proxies of indefinite validity. Require instead a fresh proxy for each General Meeting.
- ▶ Require the person appointing the proxy to indicate how the proxy is to vote on each and every motion at a General Meeting. The proxy votes cast should be recorded in the minutes to ensure these wishes are respected.
- ▶ Ban the solicitation of proxies or proxy outcomes.
- ▶ Abolish proxies altogether.

## The Role of Executive Committees

*"The existing provisions of the SSMA already provide a framework for the nomination (and) appointment of EC Members and for how they may collectively manage their Plan, and apart from the need for better training of such Members (which will probably make volunteers even harder to find), I don't support further "regulation." - "bastrata"*

*"The current SSMA ignores the fact that members of Executive Committees can find any number of loopholes to frustrate unit holders in a strata plan." - "Dafelan"*

*"How can a building valued at \$20-\$50M (as many of them are) be controlled by a rag-tag band of "accidental" allies whose only claim to stewardship is their joint or common ownership in a strata titled or community titled building?" - "Pip West"*

A host of points were raised about the role of the Executive Committee in managing strata schemes. Some correspondents wished merely to clarify the responsibilities of such groups, while others believed the basic structure of governance was fundamentally inadequate given its herculean task and the continued apathy of most owners.

In a lengthy dissertation, "Pip West" called the Executive Committee a "poor governance model... there by default not by design" hampered by a dearth of suitably qualified personnel and bereft of properly documented governance guidelines. She argued that its mandate was too demanding and claimed a legality it did not have, while others argued that many members were motivated to serve through self-interest, which should debar them from making decisions. Problems of bullying were raised by a number of people with some committees described as "dictatorial" and "argumentative" and open to manipulation by the unscrupulous. "helpless of manly" recounted "belligerence, self-interest, bullying and all-round unpleasantness". Well-meaning committee members, on the other hand, often felt overwhelmed by their responsibilities and lack of assistance from others. The fact that Executive Committees inevitably represent the interests of owners, rather than tenants, was also raised as problematic by some.

"George Gordon" offered an alternative view and argued for a relaxation of legislative red tape which he saw as unnecessarily adding to the cost and bureaucracy of running a strata scheme. He argued that the Executive Committee, duly elected at the AGM each year, should be allowed to fulfill its purpose and manage the strata scheme "without having to constantly report to every owner for everything it does, and without always having to call General Meetings to pass what it decides." He likened the Executive Committee to the board of directors of a commercial company, elected to run the business and held accountable to shareholders. He said that if the owners objected to its actions, they could always lodge a complaint with the Registrar or vote it out at the next AGM.

### *Options suggested by consultation participants*

#### **Replace Executive Committees**

- ▶ Abandon piecemeal reform and transfer the responsibilities of Executive Committees to a new triumvirate, comprising the existing Executive Committee chairperson, the strata manager and a "resident manager", all of whom would be required to hold minimum licences and qualifications and undergo ongoing training.

- ▶ Recognise the need for external professional management to become the norm in larger stratas, with self-management the exception, rather than the rule. Redefine “large stratas” at a lower number of lots than the current 100 or by the size of their budget. The training and ethical conduct of such external professionals would need to be correspondingly reinforced.

#### ***Reform Executive Committees***

- ▶ Add a note that “The Executive Committee should generally respect the wishes and implement the decisions of the Owners Corporation as expressed in the General Meeting. The Executive Committee should generally convene a General Meeting, if important or significant decisions need to be made during the year” in the clause in strata law dealing with the “duties and powers of the Executive Committee”.
- ▶ Remove the presumption that Executive Committee must be limited in size to nine members. A committee comprising the whole community should be allowed, if that is requested by owners in a democratic vote.
- ▶ Change the threshold of signatures required to block a decision by an Executive Committee to the same number of unit entitlements present when the Committee was elected. If there were ten financial owners present at the AGM which elected the Executive Committee, for example, then ten signatures from financial unit entitlements should be required.

#### ***Change the powers of Executive Committees***

- ▶ Limit the punitive powers of the Executive Committee. Any policing or enforcement should be undertaken by an independent entity, e.g. the strata manager or the Courts, rather than the Committee itself. The Executive Committee should merely exercise a caretaking function.
- ▶ Executive Committees should not be empowered to launch legal action exceeding the strata's existing legal budget without permission from property owners. All awarding of contracts, security matters and decisions regarding legal matters (excluding levy arrears) should be made at General Meetings.
- ▶ Amend Section 80A to give Executive Committees wider discretion as to how much money can be spent, and how it is to be spent.

## Transparency and Accountability

*"Nowhere does the SSMA require the Owners Corporation or an Executive Committee exercising its delegated powers, to follow normal business practices and standards. Nowhere does the Act impose a duty of fiscal responsibility, or the protection of the finances of the Corporation. The door seems completely open to the commission or permission of fraud..." - "Ancestor"*

*"The Act needs to be changed to ensure that Executive Committees are more accountable for the information they withhold from unit owners...unit holders throughout NSW are entitled to legislation that works for them and not just the few." - "Dafelan"*

*"Principles of Accountability and Transparency should apply to operations of Executive Committees as well as Management Agents." - "GINA"*

Developing the theme of the previous section, the accountability of Executive Committees and the transparency of their operations were of concern to many owners and tenants in the consultation. There were calls for revised legislation to hold Executive Committees accountable for withholding information, such as meeting minutes and contract quotes, from unit owners. Measures specifying and increasing the accountability of the Chair, Secretary and Treasurer were also urged. "gp" supported the creation of a code of conduct, backed by sanctions, to emphasise the fiduciary nature of the Executive Committee and the stipulation of legal requirement to act in the best interest of all members.

### Options suggested by consultation participants

#### Transparency

- ▶ Any delegations of power by the Owners Corporation or Executive Committee should be recorded and be available on request. The actions of the delegate should be subject to the same minuting provisions as the original Executive Committee.
- ▶ Adopt a "Code of Conduct for Voting Committees" as introduced by Clover Moore, Member for Sydney, in the NSW Parliament to ensure procedures are followed properly.
- ▶ All residents, tenants and owners alike, should be given timely information about strata activities, such as planned repairs, which affect them. The establishment of a website to offer such information should be compulsory.
- ▶ Unit owners should be allowed to sit in at any Executive Committee meeting to ensure procedures are properly followed.
- ▶ Prohibit two members of the same family serving on the same committee, regardless of the number of units they own.
- ▶ Members of Executive Committees should be required to attest that they are of "good fame and character", that is they should not have been previously disqualified from being a director or be bankrupt or charged with a criminal offence.
- ▶ Mandate the compulsory copying of all correspondence to all members of the committee.

***Accountability***

- ▶ All Executive Committee members should sign a pledge when taking office promising to protect the interests of all owners in an equal fashion and affirming they understand their obligations. This Code of Conduct would hold members accountable to specific criteria and allow issues to be raised in resolutions or addressed in mediation. Committee members who take no active role should be debarred from further participation.
- ▶ Executive Committee members should be personally accountable for their actions and, if proven guilty of deliberate or planned negligence, bear the financial consequences without access to common funds to defend themselves.
- ▶ Remove S.11 of the SSMA which expressly provides that the Corporations Act 2001 will not apply to Owners Corporations, and hold Executive Committees to the same standards of duty of care and good faith as other corporations.

## Strata Managing Agents

*"I don't have a great deal of confidence in the capabilities of the Strata Managers I have come into contact with. Lack of knowledge of relevant provisions of the Act, knowledge and forms not updated for newly changed provisions of the legislation, refusal or reluctance to follow the specific requirements of the legislation, rigid adherence to past procedures, sloppy clerical procedures, circumvention of best practice, and generally poor meeting chairmanship skills come to mind." - "rx"*

*"A transparent process of certifying and monitoring standards of Strata Management firms is needed. At the moment any Joe Blow can set himself up as a strata manager, including a developer who is still an owner." - "Ingrid Jackson"*

*"Real Estate Agents and Strata Managers as it currently stands have more rights over Strata Units than the Owners Corporation. Strata Managers have the power to arrange for repairs and make payments up to \$1000.00 without advising/consulting the Owners Corporation Representatives, even when they have been requested in writing to communicate with us. At the end of the day, it is our money and such powers must stop." - "Maria Silver"*

*"Strata agents must be strictly independent and stringently represent and pursue only the best interests of the Owners Corporation that they represent. Accepting commissions from suppliers is inconsistent with this view and represents a clear conflict of interest...Amend the Act to define the role of strata agents as independent professional advisers who must, at all times and under all circumstances, represent the interests of the owners corporation to the best of their abilities and without conflict of interest in carrying out their duties." - "Kaunitzj"*

*"Compulsory strata managers can and do keep owners completely in the dark." - "Inge Close"*

There were a litany of complaints about the competence, honesty and conduct of strata managers. Many owners raised questions of bullying, conflicts of interest and corruption in the handling of building and service contracts, and the need for greater accountability and transparency was a common theme. Others complained that managers proposed work which did not need doing, and were evasive or deceitful about quotes arranged for such work, in order to line their own pockets with kick-backs from tradespeople and contractors. "Morrison" condemned the 15% commissions given to agents by insurance companies, which can amount to many thousands of dollars, and argued that such payments should be banned.

"Nello" berated the "closed shop attitude that strata managing agents convey", and "nmcgregor" called for greater regulation of the industry, regular auditing of managers and active investigation of the corruption which many felt was rife. There were some complaints that the CTTT, NSW Fair Trading and Executive Committees preferred to "pass the buck", rather than assume responsibility and act against delinquent managers. One person did defend the record of strata managers however, pointing to a lack of tradespeople and council bureaucracy as the reasons why work is commonly delayed. A host of suggestions regarding improved education, ethics, transparency and communication, contract terms, efficiency, powers, commissions, investigations and termination were offered and are recorded below.

### *Options suggested by consultation participants*

#### **Education**

- ▶ Mandate higher standards for strata manager qualification. Existing strata managers should be compelled to retake a new, more stringent exam regarding budgeting, administration and other matters.
- ▶ NSW Fair Trading should publish the syllabus and course notes used in the strata management training course. It should also investigate the quality of information conveyed to prospective strata managers at TAFE. All strata managers should have to hold a well accredited TAFE certificate in “Basic Strata Management”. Strata managers should have to prove their competence in English before passing this course. All managing agents should be obliged to attend and pass regular and comprehensive “refresher courses” covering mediation techniques and new legislation.
- ▶ Strata managers should display their rules of conduct, the rights and responsibilities of lot owners, their services fees and any commissions they receive in their meeting rooms for the benefit of owners and tenants.

#### **Ethics**

- ▶ Require strata managers to uphold qualities of honesty, fairness, care, diligence, integrity and conscionable conduct as in Schedule 1 (“General rules of conduct applying to all licensees and registered persons”) of the Property, Stock and Business Agents Act 2002.
- ▶ Abolish the SCA in favour of a more effective body with the power to confiscate strata manager licences and impose meaningful fines.<sup>6</sup>

#### **Transparency and Communication**

- ▶ Require the appointment of a strata manager to be undertaken by the Owners Corporation at a General Meeting, rather than the Executive Committee. Require the declaration of any actual or perceived conflicts of interest between strata management and the Owners Corporation. Require a draft strata management agreement to include a written quotation for strata management services and withhold payment if a copy of the contract is not provided with AGM agenda papers.
- ▶ Record all alternate names any strata manager may have used on the licence search facility at the NSW Fair Trading website.
- ▶ Ensure that information about the strata manager is given to each new resident. Create a legal requirement for strata managers to place a notice with their full contact details in strata common areas.
- ▶ Compel strata managers to make all accounts freely available online.

<sup>6</sup> It must be noted that the SCA is not a government body or an organisation which has regulatory powers.



**Contract Terms**

- ▶ As standard contracts drawn up by management interest groups favour their interests over those of the owners, NSW Fair Trading should introduce a standard form of strata management contract similar in principle to the Residential Tenancies Agreement.
- ▶ Ensure that managers agree to be paid a non-negotiable flat fee for services rendered to prevent levies being increased unfairly once the contract is secured. Strata managers should be prevented from charging fees for answering a phone or face-to-face inquiry from an owner.
- ▶ The manager's contract should be distributed to all owners prior to its discussion and clearly outline the manager's duties and responsibilities. Strata managing agents should provide correct advice and guidance regarding legislative requirements to Executive Committee members or face possible termination.
- ▶ No contract for a strata managing agent should be longer than two (or three) years and every contract must be explicitly, rather than automatically, renewed at the AGM. Mandate that at least two competitive quotes for management services be submitted to the AGM for discussion before a contract is entered into or renewed.
- ▶ Such contracts should stipulate that strata managing agents have legal liability for their actions and they should be prohibited from using Owners Corporation funds to pay legal or other expenses, if a case is brought against them for mismanagement.

**Efficiency**

- ▶ Compel the answering of letters, emails and other correspondence from owners within a stipulated time.
- ▶ Set performance based service standards for strata properties managed by agents to ensure that adequate effort is applied.
- ▶ Fine strata managers if they fail to arrange work agreed with the Owners Corporation within one month. Alternatively, they should gain demerit points, whose accrual would eventually lead to the loss of their licence.
- ▶ Limit the size of strata management commitments. Some Strata Agency staff manage in excess of 90 schemes, which leads to inefficient and poor service. The concentration of ownership of management firms should be investigated and the excess fees generated by such oligopolies reduced.
- ▶ Allow unit owners to contact the strata manager directly, rather than through the Executive Committee.
- ▶ Strata managers should be allowed to liaise with the responsible real estate agent to deal with urgent tenant or other issues when the owners cannot be contacted.

***Power of Managers***

- ▶ Prevent strata managers changing by-laws or making exclusive use by-laws without owner consent.
- ▶ Strata managers should not authorise any works without consulting the Executive Committee and should also acquire at least two quotes for any proposed work. Any major or costly work should require a meeting and majority consent of all owners.
- ▶ Strata managers should have more power to enforce maintenance and building standards in the face of opposition from owners unwilling to pay reasonable levies.

***Commissions and charges***

- ▶ Strata managing agents should be allowed to receive commissions up to 5% of contracted amount, but no more than \$1000 per contract and only if that commission is approved by the Owners Corporation at a General Meeting.
- ▶ Strata managers and agents should be prohibited by law from accepting any commissions from insurance companies, tradesmen and service providers to prevent conflicts of interest. Two competitive insurance quotes should be presented before any contracts are signed.
- ▶ Repairs and maintenance carried out by contractors should be inspected and approved by resident owners or the management committee prior to payment to prevent strata managers charging false expenses.
- ▶ Sinking fund accounts should not be held or controlled by a strata manager.

***Investigation and enforcement***

- ▶ Institute a specialised strata manager ombudsman empowered to investigate owner complaints and accusations of incompetence and corruption. This office would have powers of entry to investigate, audit and inspect records held by strata managers without prior warning. Any strata documentation "lost" by the strata manager should incur a substantial fine.

***Termination of strata managers***

- ▶ Empower unit owners to remove unsuitable strata managers in the face of apathetic or intransigent Executive Committees. A letter signed by a certain percentage of owners should be sufficient.
- ▶ If more than 10%-15% of owners for large scheme and 15%-20% of owners for small schemes support the removal of the existing managing agent, an application for a compulsory managing agent should be automatically handed down by an adjudicator.

## OTHER ISSUES OF GOVERNANCE

### Absentee Owners

*"In the unit next to me (it has a common wall) the plumbing is shot, and the pipes constantly hammer, with the noise reverberating into my place. Tenants say they've asked for it to be fixed. It bugs me when owners either deliberately, or through neglect, run down their properties. I don't understand why they do this, be we all suffer as a result. The Owners Corporation should have the power to force them to address issues that affect tenants and adjacent owners." - "MargS"*

*"Investors are driven by money only whereas occupier owners are driven to make the apartments a better place to live as well as not allowing the value of the apartments to decline." - "JCF 1"*

Many felt that absentee owners gave a lower priority to building maintenance than they did to saving money by keeping levies down. Absentee owners were also thought more likely to give their votes as proxies to individuals who might use them to buttress their own power. Absentee owners were regarded as less discerning in their choice of tenants when renting their units, a process often carried out by renting agencies whose interest was to move properties as quickly as possible, rather than find suitable tenants to live in harmony with others.

As a result of these concerns, "JCF 1" argued that occupier owners should have more votes at a meeting than investors, while "maeroero" called for higher levies for absentee owners. In contrast, "Strataspheric" held such extra levies to be illegal and argued that owner-occupiers were more of a problem as they tended to regard the entire building as their own personal fiefdom. "MargS" observed that owner occupiers did most of the informal voluntary work in keeping a building tidy, as absentee owners were by definition not there and tenants had no stake in improving the building.

#### *Options suggested by consultation participants*

- ▶ Owner occupiers should have more votes at meetings than absentee landlords or investors.
- ▶ Absentee owners should pay higher levies in view of the extra wear and tear imposed on common property by tenants moving in and out or behaving poorly.
- ▶ Executive Committees should be able to compel absent owners to maintain their units properly and pay for repairs and maintenance where a failure to do so adversely affects other residents.

## Accounting

*"If an EC member is so minded to do something within the books it is close to impossible to have the matter investigated and the dispute process is so weak and slow that you end up being worn out by the whole process and people get away with misappropriation of OC funds...if an owner has criminal tendencies, ingratiates himself with his neighbours and then should choose to become chairman in control of \$330k in funds and do some "diddling", and he is really good at it, the chances of his being detected are next to none. If discovered however, he can stare-down the petitioner and use the legal process to utterly frustrate their genuine inquiries." - "Ned Kelly"*

*"The determination of a large scheme based of the number of lots is flawed. Whilst a 120 lot scheme could have an annual budget of \$240,000, a 4 lot commercial schemes could have a budget of \$1,000,000." - "Richard Holloway"*

Several people expressed grave concerns regarding the quality and accuracy of accounting practices in strata schemes and related their personal experiences of fraud, misinformation and incompetence. "Ned Kelly" observed that cooperative societies of every size are compelled to undergo annual audits and meet company standards, while small strata schemes, which might operate budgets in excess of \$200,000, face far fewer stipulations. "RX" argued for clearer financial statements with simplified terms, full statements of levies paid and outstanding, and comparisons to previous accounts to allow owners to scrutinise expenditure more effectively.

### *Options suggested by consultation participants*

#### **Education**

- ▶ Ensure that strata managers and Executive Committee members receive improved training in financial management. Properly prepared accounts should be made available to owners with the minutes of every General Meeting.

#### **Transparency**

- ▶ S.106 currently requires the preparation of financial statements in a form unintelligible to many owners and residents. These statements should be simplified and clarified with additional requirements to include comparisons with previous periods and cash flow forecasts.
- ▶ All financial information must be freely available to all owners, rather than a handful of Executive Committee members. Information may be digital, rather than printed, to reduce administrative costs.
- ▶ The ambiguous interpretation of the term "particulars of items of expenditure/revenue" should be clarified in legislation.
- ▶ NSW Fair Trading should produce a set of model financial statements designed to be simple and understandable to laypeople.
- ▶ Ensure that any expenditure over \$10,000 require competitive quotes, as is the case in Queensland. Mandate that any spending decisions over a given amount must be decided at a General Meeting, rather than inside the Executive Committee.

- ▶ Enforce full financial reporting on a quarterly basis to all owners via secure web or paper spreadsheet. The document would contain all expenditures, reasons for spending or earning money, and the names of companies the bills were paid to.
- ▶ Compel the strata manager or Executive Committee Treasurer to provide a copy of the financial records of the scheme to all its members every three months in the form of a bank statement listing all transactions.

#### ***Accounting Standards and Enforcement***

- ▶ Schemes of more than ten units (or a budget of over \$200,000) should comply with company accounting standards. Audits every three years should be compulsory, unless a General Meeting requests a special audit more frequently.
- ▶ Mandate that all strata accounts are externally and independently audited. Payments to contractors should be through cheque or bank transfers only, to minimise cash in hand "kick-backs" and corruption.
- ▶ Amend S.61 of the SSMA to require responsible fiscal management according to acceptable business standards, with sanctions and penalties for non-compliance. Breaches of good practice would include undisciplined spending on un-budgeted items and irregularities regarding the sinking fund. The Act should impose a duty of fiscal responsibility on Executive Committee members and require them to protect the finances of the corporation.
- ▶ Create an inspectorate function under the Act to respond to matters of fraud without the need to go to dispute, orders, and enforcement in the civil courts or to the police.

#### ***Other Measures***

- ▶ Strata should be able to use online bank accounts to reduce fees and increase interest accrued.
- ▶ Limit the permissible borrowings of the Owners Corporation to an average of \$250 per lot, as mandated in Queensland.

## Building Management Committees (BMC)

As “Richard Holloway” observed, Part Strata Schemes are created under the Strata Schemes (Freehold) Development Act 1973 and refer to multiple stratum lots within one building. The management of such schemes is not covered by legislation, but managed by either a Building Management Statement or Strata Management Statement.

“Marsfield” complained that his BMC refused to hold meetings or issue statements and increased levies without consultation, while Mr Holloway outlined how the liquidation of a stratum lot owner placed huge financial burdens on the other members of the BMC.

### *Options suggested by consultation participants*

- ▶ Compel BMCs to meet minimum standards of accountability and financial transparency.
- ▶ Ensure all levies are payable according to the strata lot, rather than the strata owner.

## Community Associations

Community title legislation enacted in 1989 allows for land to be subdivided into private lots and communal land on which communal facilities can be built. "William" objected to the lack of representation of strata plans and Neighbourhood Associations on Community Association committees, with only one member allowed from each, regardless of whether they carry greater unit entitlement than other members represented. He also complained about a lack of financial transparency in their operations. There were calls for council rates for community estates to be reduced, given that community associations can be responsible for their own roads, lighting, power distribution cabling, drainage, and park and street maintenance. There was also concern that unscrupulous developers or owners manipulated existing regulations to minimise financial scrutiny by grouping strata plans into community associations whose small committees could be more easily dominated. Problems of inequitable taxation were also raised by several contributors.

There were complaints that local councils do not adequately understand or adhere to community title law and regularly overlook legitimate by-laws established under S.22 of the Local Government Act. Some believed councils fail to seek the consent of the Community Association to developments in a privately held lot within it. Private certifiers were also blamed for failing to understand or respect community title law, leading to unauthorised alterations or buildings being erected. Others objected to community schemes being treated as Torrens title properties for insurance purposes or the loss of property rights suffered by individuals outvoted by hostile Executive Committees.

There was also discussion of the proper minimum size of Executive Committees and for their differences from Strata committees to be respected. There were requests for greater transparency in the publishing of accounts and the protection of owner information. The responsibilities of Community Associations in regard to traffic management was also raised and their powers to control the sale of private shares. The acquisition or sub-division of land was also discussed, and it was suggested that the Government study the results of different types of schemes to determine which should be encouraged.

### *Options suggested by consultation participants*

#### **Representation**

- ▶ Subsidiary bodies (e.g. strata schemes) should be given votes proportional to their unit entitlements in electing an Executive Committee of a Community Scheme. Members should be able to call for an election at any time.
- ▶ Delete section 18 of the SSMA 1996 No 138 and amend the Community Land Management Act 1989 No 202 section 28 to require an Executive Committee of a Community Association to consist of at least three members.

#### **Transparency**

- ▶ Require a Community Association to publish annual statements of financial affairs to all lot owners in all strata plans that are members of that association, just as corporations publish annual statements for their shareholders.

- ▶ Ensure that private information collected from residents by Community Associations is kept confidential and not divulged to or used by third parties to send advertising or for any other purpose.
- ▶ Prior to its registration, every community management statement should be certified by a legally qualified practitioner to ensure its provisions are fair and reasonable, and do not unfairly favour the interests of developers over those of owners. Such statements must conform with the Community Land Development Act, the Community Land Management Act and support the owners' rights under property law.

#### ***Responsibilities***

- ▶ The Act should clarify responsibility for traffic regulation on private roads between the local council and RTA.
- ▶ The “initial period” for community and precinct schemes should be similar to that of a strata scheme, and there should be more flexibility in matters which can be changed during that initial period.
- ▶ The different powers vested in Community Associations as opposed to Executive Committees, as acknowledged by the Community Land Development Act and the Community Land Management Act, should be respected.

#### ***Land Use***

- ▶ Amend community legislation to allow for adjoining land to be added to a community, precinct or neighbourhood scheme.
- ▶ Community legislation should allow the subdivision of community and precinct association property in similar ways to the subdivision of neighbourhood association property and strata common property. Community legislation should also be aligned with strata legislation to require only a special resolution for matters dealing with association property.

#### ***Costs***

- ▶ Reduce council rates for residents in community associations which pay for much of their own service provision.
- ▶ Any commercial areas attached to a community estate should either be owned by the Community Association, or have no operating costs tied back to the Community Association.
- ▶ Require all community schemes to produce a sinking fund forecast for both association property and lot owner homes to maintain standards for all stakeholders.
- ▶ Prevent terrace-style housing or duplexes with a common dividing walls claiming community association status, as their physical structure and insurance and maintenance requirements are more suitable for strata schemes.



***Other Measures***

- ▶ Amend neighbourhood management statements to allow for some degree of collective control over the transfer of shares to better balance the needs of the community with the rights of individuals to sell their shares freely.
- ▶ The Government should undertake a study to model the optimum combination of different types of residences and common facilities such as open areas and social facilities sustainable from levies alone. It should similarly model the size and type of development that must be supported by additional commercial components allocated as common property. An alternative to the latter model would be to authorise a higher levy for any commercial or trading activity.

## Compulsory Voting

*"Buying into a strata building should be a joint agreement where owners have to be involved in the running and decision making for the building. Voting should be compulsory (we have owners who have never attended a meeting, never voted and never speak to anyone else in the block). There should be mandatory attendance at AGMs and fines should be imposed for those who don't attend (I like the suggestion that if owners don't show at meetings for 3 years then a fine is issued). It should be made very clear that buying into this kind of situation is a commitment to working cooperatively with the other owners." - "Tilly"*

*"What is wrong with "making" people express their opinion in person or in writing. It is at the heart of Australasian democracy "you vote in person or pre poll, or postal, or however; but you vote. Compulsory voting is not some neo-fascist idea I am throwing up; it is what our democracy is." - "billen ben"*

The fierce debate regarding proxy votes also generated discussion about the possibility of compulsory voting for strata owners. If strata schemes comprise Australia's "fourth tier of government", then some believed voting - either in person or by submitting a completed voting form - should be compulsory as it is in government elections. It was observed that if a quorum comprises 25% of eligible voters, then motions can be passed with just 13% support. It was argued therefore that only compulsion could improve strata participation, end proxy farming and prevent meetings being adjourned through lack of a quorum.

However, others believed that the Executive Committee would still wield too much power under such a system, as it controlled the content of the information relayed to owners. It was pointed out that mandatory attendance would be highly inconvenient to some owners which led to fears that "proxy shopping" would evolve, rather than die out, with partisan members collecting ballot papers completed according to their wishes from busy, apathetic or intimidated owners.

### *Options suggested by consultation participants*

- ▶ All owners should be compelled to vote in person or in writing at the AGM, regardless of their financial status.
- ▶ Members who do not vote should be fined.
- ▶ Proxy votes should not be permitted, except in exceptional circumstances.

## Conflicts of Interest

*"Democratic principles of open governance, freedom of information and just, impartial decision-making may too easily be flouted in pursuit of individual or clique interests." - "Ancestor"*

Perceptions of conflicts of interest in Executive Committees and other strata bodies were criticised, and a host of solutions offered to ensure that office holders made decisions in the interest of all owners rather than themselves. Such provisions would alternatively compel the disclosure of conflicts of interest before election, during service and before or during each meeting, and either prohibited people with conflicts of interest from taking office, or prevent them voting on matters in which they had an interest.

### *Options suggested by consultation participants*

- ▶ Explicit conflict of interest provisions should prohibit building managers, developers and strata managers from serving on Executive Committees, except when they are owners or appointed as owners representatives.
- ▶ When elected, Executive Committee members should submit statutory declarations that neither they, nor their families, have any business connections or interests in companies which service the building.
- ▶ All Executive Committee members should be required to provide yearly written declarations to the Owners Corporation confirming they have no conflict of interest to preclude them from serving. Members should declare any conflict of interest at the start of each meeting or before discussion of the relevant agenda item with the details appropriately minuted.
- ▶ All Executive Committee members should disclose in the agenda of the AGM all monies, gifts and work contracts received from the Owners Corporation throughout the year.
- ▶ S.138, S.61 and the "good faith" provision in S.17 of the SSMA should be reformed to prevent abuse.
- ▶ Under corporate law, a director must disqualify themselves from voting on a matter where a conflict of interest is clear. The same rules should apply to Executive Committee members, who should be compelled to disclose a direct or indirect interest in a discussed issue and prohibited from voting upon it.

## Differentiated Rules for Different Schemes

### Mixed Residential and Commercial Strata Schemes

*"...for a residential, commercial, retail and serviced apartments scheme to function as well as possible there needs to be a common purpose amongst the lot owners. However, the interests of lot owners from residential, commercial, retail and serviced apartments are different and are often in conflict." - "Howard Duncan"*

Des Mooney, General Manager of Land and Property Information NSW, acknowledged in his blog that both society and strata have changed greatly in the fifty years since the first strata legislation was introduced in New South Wales. He recognised that "many buildings now accommodate a variety of uses, mixing residential development with restaurants and shops", while "other schemes offer residents a range of communal facilities, from pools and tennis courts to options for environmental living." He observed that legislation had evolved as a result, allowing strata schemes to be developed in stages, more than one strata to operate within a single building and the subdivision of a building on land held under lease, but acknowledged that even greater flexibility would be required in the future. Francesco Andreone argued that the various property title regimes for medium and high-density real estate should be merged in the pursuit of consistency and to reduce costs. Several comments argued in favour of owners having a greater stake in the operation and management of large strata schemes within a shared facility.

There were complaints that real estate agents, conveyancers, lawyers and other professionals, through lack of knowledge or intention to deceive, fail to properly inform purchasers of residential units in mixed schemes of their financial obligations to the whole scheme. Such owners are informed they will need to pay levies to maintain their residential apartments, for example, but are not told in clear terms that they will also be subsidising the upkeep of retail and commercial buildings, sports facilities and medical and day centres in the scheme. It was felt by some that business entities in mixed strata were given unfairly advantageous terms or exploited residential owners in requiring them to pay for commercial improvements. There were also disputes about the definitions of common property in such schemes, with some calling for local councils, rather than Owners Corporations to control some aspects of maintenance for the common good. Many coastal towns in NSW rely on private individuals buying apartments in new mixed use strata plans, and it was argued that owners' rights in such schemes should be protected from manipulation by developers and commercial interests. Others highlighted the need for better education for residential strata purchasers regarding the difference between levies and contributions, underlining that contributions are added to levies to maintain the shared facility as per the strata management statement included in the sales deed.

### *Options suggested by consultation participants*

#### **Transparency**

- ▶ Before any deposit is taken from the purchaser by the real estate agents, such agents must be required to properly inform purchasers about the additional financial burdens they are likely to face in a shared facility. The conveyancer or lawyer should explain the Requisition on Title to the purchaser and provide a breakdown of levies and contributions. The purchaser's conveyancer or lawyer should demonstrate a "duty of care" to their client and obtain a certificate from the council regarding any future developments and the impact on amenity these may have.

- ▶ There should be a period of two or three years after the majority of residential unit sales are completed in which the Strata Agreement in mixed use schemes can be more easily contested and amended.
- ▶ The purchaser must be told if the developer has the power to increase contributions from residential owners towards the shared facility.

#### ***Equality***

- ▶ Ensure that retail and commercial tenancies in mixed strata are subject to the same conditions of compliance as apartment owners.
- ▶ Clearly define common property in mixed residential and commercial strata. Owners' levies should not pay for cleaning and utility services for shops inaccessible to apartment owners or for commercial expansions dressed as strata maintenance.
- ▶ New strata laws should stipulate that the roof of a mixed use strata complex is the common property and therefore responsibility of all units.

#### ***Differentiation***

- ▶ Have separate by-laws for residential and mixed use strata.
- ▶ Legislation should address the requirements of motels and serviced apartments which increasingly operate as strata schemes. A Community Management Statement, such as is used in Queensland, should be required to inform prospective buyers of their rights and responsibilities.
- ▶ Encourage separate strata plans for residential, retail and commercial parts of the same development.

#### ***Other Measures***

- ▶ Remove the power to approve a Development Agreement from the Owners Corporation in a mixed use strata, to prevent management committees rejecting minor refits and improvements unreasonably. Such requests should be handled by the impartial town planners of the local council.

## Retirement Villages

Several people discussed issues particular to retirement villages, with appeals for greater protection for residents and clear guidelines to ensure that developers address their safety and accessibility needs. "Robyn Rawling" raised a number of further concerns, notably the undue influence of the operator can wield over the Owners Corporation, while there were complaints that elderly residents were charged both by the council and strata scheme for certain maintenance fees. Concerns about proxy voting and the transparent dissemination of information were raised, as they had been in regard to other strata. In addition, there was a request that seniors be allowed to rent out their property to other seniors.

### *Options suggested by consultation participants*

- ▶ Ensure that common property, budgets and levies are the responsibility of the Owners Corporation, rather than the operator. The operator must be obligated to carry out the wishes of the Owners Corporation, rather than pursue its own interests and agenda. The operator and Owners Corporation should use separate accountants to ensure no conflict of interest.
- ▶ Reduce council rates for pensioners living in community title retirement villages where the owners, rather than the council, pay for road and other maintenance.
- ▶ Allow the negation of any retirement village by-law that allows an operator or caretaker an autonomous position which conflicts with the wishes of the Owners Corporation.
- ▶ Full details of all aspects of strata ownership and ensuing charges, fees and obligations need to be included in both the Disclosure Statement and the Deed for Provision of Services when lots are purchased in a retirement village. Deferred fees and charges and covenants which benefit any other owner of a village lot should be prohibited in strata title contracts.
- ▶ Allow properties in retirement villages to be rented to seniors.
- ▶ Where a large strata scheme is also a retirement village, as defined in the Retirement Villages Act 1999, then the same limitation of two proxy votes as mandated by the Retirement Villages Act should apply to limit proxy harvesting and encourage wider involvement. Similarly, the strata's audited financial statements should include a cash flow statement prepared in accordance with the relevant accounting standard to ensure transparency.
- ▶ The Owners Corporation should be explicitly responsible for cleaning inaccessible windows.
- ▶ Create a new section in the revised Act which applies exclusively to retirement villages to cover all relevant issues.

## Small Strata Schemes

*"The old Strata laws from the 1960s were targeted at blocks of flats and provided necessary control over Common Property. However today strata schemes are frequently 2 (or) 3 bedroom town houses with gardens and private yards and are much more like houses." - "Peter Denman"*

*"There appears to be a perception that one set of laws fits all in the field of Strata Law. This cannot be. How can you compare an estate with an average of 16 units with one which has 300 plus?" - "greystokes"*

Many people raised the need to differentiate between the rules, laws and procedures required for small strata and larger plans. Some bureaucratic provisions were seen as unnecessary for small strata or were felt to incur undue costs, due to a lack of economies of scale. Concerns were raised that "the odd one out" is often ignored in decision making in three-owner strata, with two owners ignoring the third, leading to repairs of common property which affect only that owner not being carried out and ostracism from meetings and long-term planning. Others said that rules requiring majority approvals for minor renovations in small strata were outdated and that modern improvements, such as air conditioning or cable television, should not need common approval to be installed.

The creation of a nominal square metre lot by developers to allow two houses on a corner block to claim community title was also criticised, as it forces owners to adhere to irrelevant architectural and other by-laws. One commentator observed that two-unit strata schemes comprise 40% of the total and complained that such schemes tend to have unequal voting rights, discriminating against the less powerful partner. Issues about the definition, land rights and governance of small strata were also aired.

### *Options suggested by consultation participants*

#### **Land**

- ▶ Set the minimum land parcel size to 350 square metres, as in the ACT. Convert two-villa communities schemes into separate Torrens titles.
- ▶ Discourage the creation of strata to subdivide blocks of land into two strata lots to allow the building of a new house in the former back yard. Encourage other sub-division options such as easements or covenants.
- ▶ Amend the Valuation of Land Act to allow objections from individual strata lot owners and encourage the Valuer General to notify owners of land value changes by email.
- ▶ Create a new section of the Act for town houses, allowing individual owners to own their house and land in their entirety and to be responsible for maintenance. Owners would have more autonomy to improve and personalise their dwellings and pay levies to cover shared mailboxes, driveway access, drainage/water pipes and any common garden.

**Governance**

- ▶ Revise small strata scheme laws, comprising up to ten residential lots, to avoid them being manipulated by small minorities of people in their own interest. Mandate a separate minimum size of Executive Committee for small strata, with all members required to be on the committee in strata of four owners or fewer.
- ▶ Make voting mandatory in small strata schemes, using email or paper voting if necessary.
- ▶ Ensure all Executive Committee members are resident owners or owners' proxies.
- ▶ In the event of no owners attending in person or by proxy at a reconvened AGM in strata of five lots or fewer, all statutory motions should be deemed passed and the levies increased by CPI plus 2%.
- ▶ Allow schemes with fewer than ten owners to opt out of the requirement to have office holders if they have a managing agent. Allow such schemes to hold an AGM only when required or requested, rather than annually.

**Regulation**

- ▶ Reduce strata red tape for small new single level developments with minimal common areas. Allow insurance agencies to insure such areas as terraces to reduce costs.
- ▶ Two-unit schemes should be allowed to change their title to Torrens title - minimising abuse or obstruction from the more powerful unit. If two-lot schemes do not agree to self-manage, then a strata manager with a casting vote should be appointed and given the power to approve repairs and maintenance, insurance and compliance with regulation.
- ▶ Any strata with a turnover of \$200,000 or more should be defined as a large scheme for accounting purposes.



## Election of Office Holders

*"If owners do not volunteer or attend ECMs, EGMs, or AGMs to assist in determining who should be a member then they should not complain and only have themselves to blame." - "cbx4"*

"Ingrid Jackson" criticised "committee stacking by power hungry committee officers" to prevent others gaining an appointment as Chairperson, Secretary and Treasurer. The need to inform owners about nominations for office in advance of the meeting was stressed by several correspondents, as was the desirability of candidates offering more information in regard to their background, interests and intentions. It was felt by some that candidates should disclose their records of service in terms of attendance and achievements if standing for re-election. There were other calls to prevent new owners immediately joining the Executive Committee, or to introduce term limits for committee members to prevent the formation of cartels or cliques of power. Protections were also sought to prevent a Committee limiting its own size or keeping vacancies open to prevent other people joining and perhaps offering a contrary point of view. However, "maeroero" pointed out the difficulty of finding people to undertake a "very thankless job" and warned against barring people who might be offering excellent and selfless service.

### *Options suggested by consultation participants*

- ▶ Adopt the provisions in the Queensland Act by which Chairperson, Secretary and Treasurer are elected directly by owners at an AGM before the elections for committee members are held.
- ▶ Mandate the distribution of nominations for office before the AGM.
- ▶ Require nominees to produce a written statement at least a week before the election, which details their name and status on the strata, their nominee and any relationship to them. If seeking re-election, they should also state their length of service on the Executive Committee, the number of meetings they attended and were absent from in the previous year and any qualifications relevant to their service. They should also state their reason for seeking re-election, matters they intended to address, any direct or indirect financial interests or conflict of interests and other relevant matters.
- ▶ Amend the law to limit the continuous holding of office by any committee member to two (or three or five) with a period of one year before becoming eligible for election.
- ▶ New owners should not become eligible for election as an executive within a year of their property settlement.
- ▶ The Executive Committee should not be allowed to limit the number of people elected to serve on it to fewer than the upper limit specified in legislation.
- ▶ Make service on the executive mandatory on a rotating or annual basis.
- ▶ The law should set a time limit on the requirement to fill a casual vacancy. It should also mandate that if the vacancy occurs within a set period of the election at the AGM (three or six months), then the vacancy should be filled by the unsuccessful candidate who had the next largest number of votes.

## Email and Communication

*"Only those buildings defined to be a 'large scheme' meaning they number more than 100 lots are obligated to provide minutes and agendas to all owners. With large schemes making up only approximately 0.08% of all strata schemes in NSW that's a lot of owner's left potentially in the dark...In the age of digital communication the distribution of information is simple and cost effective. There seems to be no reason not to keep all owners informed all of the time." - **Natalie Fitzgerald***

Strata manager, Natalie Fitzgerald, blog author, Francesco Andreone, and business development manager, Colin Grace, all called for the modernisation of communication methods to encourage wider owner participation and enhanced dissemination of information. Email, websites and teleconferencing could be used to distribute minutes, notices, agendas and other documents in strata just as they are in business and other aspects of modern life.

Commentators also hoped that modern digital methods would cut administrative costs, but the need to prepare minutes in a reasonable period after a meeting was stressed. The possibility of absentee owners attending meetings through Skype or other video conferencing methods was raised, as was the creation of a members-only website for their benefit, displaying information currently shown only on the strata noticeboard.

There were objections to meetings being recorded without the express permission of those present.

### *Options suggested by consultation participants*

- ▶ All residents should have the right to receive notice of meetings and minutes by email. Quotations, contracts, leases, management agreements, by-laws, accounts and audits could also be sent digitally and voting papers distributed and completed online. Members should still have the option to receive paper copies.
- ▶ All minutes of an AGM should be distributed to all lot owners (via email) within 21 days, as in Queensland. NSW law currently allows distribution to wait until notice is given of the next AGM.
- ▶ Webcams and Skype should enable members to participate in Executive Committee meetings, increasing attendance and cutting costs for those situated elsewhere.
- ▶ All the information currently required for noticeboards could also be hosted on a Strata Scheme's website or the website of the Strata Management Agency.
- ▶ Draft minutes (signed by the author) should be distributed to all meeting attendees within two weeks of a General Meeting. Attendees should then have two weeks to object to any inaccuracies. The minutes should then be vetted and approved by the Executive Committee after any necessary amendments are made. Final minutes should then be distributed to all owners within one further week.
- ▶ The use of recording devices should be banned unless permission is sought and granted at the start of the meeting.

## Financial Standing

*"Unfinancial owners should not be permitted to attend General Meetings. If they do attend, they should not be permitted to address the meeting." - "Strataman"*

The voting rights of owners who owe levies to the strata split opinion throughout the consultation. Some argued that any outstanding debts should debar owners from voting, while others believed that trivial sums should be ignored for this purpose or that owners in debt should retain their right to vote so long as that debt was actively pursued by the Executive Committee. While some believed that turning a blind eye to small debts merely encouraged others to default on payments, leading to potentially significant shortfalls in strata funds, others noted that if strata are Australia's "fourth tier of government", then indebtedness does not disenfranchise Australians in national, state or local elections. The question of whether owners should be allowed to serve on an Executive Committee if they owed money to the strata was also raised.

### *Options suggested by consultation participants*

- ▶ Prohibit "unfinancial" owners from voting at any strata meeting.
- ▶ Allow "unfinancial" members to vote, provided the Executive Committee is compelled to pursue overdue contributions within a specified period.
- ▶ Amend the SSMA to recognise any debt up to \$100 as being financial, as far as voting rights are concerned.
- ▶ Prohibit Executive Committee members from serving if they have been in debt for over two years

## Honorariums

*"It is my experience that most people seem to buy into a Strata Plan because they are downsizing and want less work, this includes paperwork. We are in a complex of 11 town houses and it is always the same people that put their hands up (willingly or unwillingly) to be on the OC committee - year after year. How do you entice newbies onto the committee? Pay them because time is money." - "muzza"*

*"If management work is to be paid for, it should be done by a building manager or strata manager who have no vote on the committee or the owners corporation." - "Ingrid Jackson"*

Some people argued for the statutory payment of a fee, stipend or expenses to Executive Committee members to reward them for their service and encourage others to participate. Others worried such remuneration would attract people with mercenary, rather than selfless, motivations. The withholding of such payments to punish non-attendance was also proposed.

### *Options suggested by consultation participants*

- ▶ Pay an honorarium to Executive Committee members out of general strata funds, with the sums agreed by owners at a General Meeting with no proxy votes allowed.
- ▶ Ban the payment of Executive Committee members. Paid management work should be carried out only by a properly qualified and appointed strata manager.
- ▶ Prevent the payment of members who fail to attend meetings.
- ▶ Apply Board rules to Executive Committees where members are paid for each attendance, with officers receiving higher remuneration. A limit of two years should be applied, after which board members would rotate to a newly elected group.

## Meeting Protocol

Measures to streamline meeting protocol were suggested by several people. "Roger" observed that commonly accepted meeting procedures were a matter of convention, rather than law, and believed all votes should be recorded in the minutes. "Ancestor" agreed that the strata law does not properly define the elements which must be included in meeting minutes. Most contributors wanted existing procedures properly documented, tightened up, or at least adhered to, while one person advocated allowing greater flexibility to encourage wider involvement. The problem of individuals disrupting meetings was raised by one correspondent.

### *Options suggested by consultation participants*

- ▶ Produce NSW Fair Trading guidelines regarding acceptable types of agenda motions. Information regarding quotes for contracts and specifics of repair should be included in such an agenda, with the proviso that inaccurate information provided in good faith is not actionable.
- ▶ The nature of decisions which must be made by special or unanimous resolutions at General Meetings should be clarified in legislation.
- ▶ All agenda items should indicate which member and lot number raised the specific item.
- ▶ Amend the law to require that discussion and debate, including contrary arguments, must be adequately summarised in the minutes and circulated to owners.
- ▶ Standardise meeting protocols to simplify and improve standards. Executive Committees should use approved templates for meetings to ensure all necessary details are included.
- ▶ The SSMA should make clear that only the Executive Committee sitting in a properly convened, advertised and minuted meeting (or when voting in writing to a properly constituted meeting) has the power to make official decisions. Meetings of Executive Committee members held in any other circumstances are unofficial and not in any way binding on owners.
- ▶ Allow all owners to attend Executive Committee meetings and speak on the matters under discussion. If an owner sends a letter prior to the meeting stating they wish to be heard, then the Executive Committee must hear the owner on the matter notified. Allow the Executive Committee to withdraw permission to speak in case of undue disruption.

## Mission Statements

*"Every apartment block should be obliged to devise their own 'mission statement' that goes on the front page of their by-laws and spells out what the majority of owners feel are the key elements of that community, positive and negative, based on their recent experiences." - Jimmy Thomson*

Jimmy Thomson, writer of the *Flat Chat* column in the Sydney Morning Herald and author of the 2004 book *Apartment Living*, advocated the publication of strata mission statements to allow prospective buyers and tenants to get a "feel" for the strata. He noted that the letter of by-laws was often ignored and that real estate agents habitually failed to inform people of underlying problems in their quest for a sale. He wrote that "Executive Committees have become very adept at "not mentioning the war" so heated disputes can rage for months without a word of it appearing on minutes or agendas."

Such mission statements could be relatively informal in nature and he offered a series of hypothetical examples. One might read "We welcome well-behaved pets, rigorously enforce parking by-laws and, while we promote a friendly and happy environment, take complaints about excessive and continuing noise very seriously." Another building might state "We encourage recycling and energy conservation. We've have had major issues with hard floors and our by-laws on that will be upheld. Also, this is not and never will be a 'party' building." Those seeking a more relaxed lifestyle might prefer a strata, which proclaims "In this block we live and let live. As long as you're not breaking the law, there's a lot of give and take here. Don't expect us to control either your life or anyone else's."

In the absence of mandatory enforcement of by-laws, such statements would allow prospective owners and tenants to choose a properly which suited them in reality as well as on paper and avoid many of the disputes which would otherwise erupt once people were already committed.

"rx" agreed with mission statements in principle, but noted that the character of a building might change over time and underlined the need for such documents to be flexible and kept up to date. He said the mission statement should be included with every copy of the by-laws and suggested that the general approach to maintenance and building improvements be added to the topics outlined.

"ckofsydney" suggested the "lifestyle statement" could mark whether the building was primarily comprised of investment properties or banned or encouraged short-term letting.

### *Options suggested by consultation participants*

- ▶ Require strata to publish on paper and online a short mission statement regarding general attitudes to noise, pets, smoking, by-laws, maintenance and other matters.

## Multiple Occupancy

*“Peter Smith”* asked for strata title conditions be applied to multiple occupancy schemes, noting that strata title was itself a form of multiple occupancy, allowing a number of people to live on the same lot of land. Shares in multiple occupancy do not gain individual title, however, and he believed that community title was the better option. He argued that banks are reluctant to lend money for property subject to other owners and speculated about creating a new form of individual title to allow shares to be bought and sold freely.

### *Options suggested by consultation participants*

- ▶ Ease the process of allowing multiple occupancy titles to transition to community title if they meet an agreed set of local council criteria for planning and good management. Such standards could include council approved dwellings, surveyed boundaries, Rural Fire Service approval, suitable access roads and compliance with sewage provisions. The restrictions imposed by a single mortgage currently means that the parties involved cannot use the equity to invest elsewhere or extend their borrowing.

## Notice of Meetings

Problems with the statutory notice of meetings were raised by several people. It was argued by some that existing provisions for notice of meetings to be given in good time through noticeboards and email were sufficient, but seldom enforced. Others argued that email notification should be mandatory, rather than voluntary, to prevent Executive Committees conducting business without the consent of lot owners residing elsewhere. Problems associated with the public disclosure of private matters on strata noticeboards were also highlighted, as was a perception that certain Executive Committees manipulate the timing of meetings to prevent owners participating in an informed manner.

### *Options suggested by consultation participants*

- ▶ Mandate that all owners be notified of pending meetings by email in good time. Currently Schedule 3 Part 2 Clause 6 requires that notices of Executive Committee meetings need only be placed on the buildings noticeboard in strata of less than 100 lots. The traditional mailing of documents, other than notices of the AGM, should be done at an owner's request to reduce administrative costs.
- ▶ Standardise notice of meetings to no less than seven days for both community and strata schemes.
- ▶ Waive the requirement for large schemes to send notices of Executive Committee meetings and minutes of those meetings to every owner if the notices and minutes are displayed on the Owners Corporation noticeboard, or the owners at a General Meeting agree that the requirement be waived or the notices and minutes are displayed on the Owners Corporation website.
- ▶ Eliminate noticeboards as a courtesy to absent landlords and to avoid embarrassment to owners and tenants through publicising internal disputes or confidential matters.
- ▶ Reform the law to prevent Executive Committees manipulating the timing of AGMs to evade items which owners wish to add to the agenda. The Queensland Body Corporate and Community Management Act, for example, ensures owners are notified and invited in advance to put motions to a General Meeting. The AGM should be held within a month of the end of the financial year.



## Owners' Titles

*"If any changes are to be made to the SSMA they should include better protection for owners' titles from the Owners Corporation and an obligation by the Owners Corporation to adhere to property approvals and registered strata plans." - "Bongodrum"*

"Strataspheric" advocated strengthening property rights in strata schemes and treating powers over by-laws as property rights to be decided by owners. He noted that the SSMA does not distinguish between Owners Corporations and beneficial owners, despite the former having no beneficial property rights.

"Bongodrum" agreed that the current act fails to adequately define or protect the property rights of owners and believed it should be strengthened.

### *Options suggested by consultation participants*

- ▶ Amend S.47 to allow owners the exclusive right to vote on changes to by-laws, regardless of their financial status.
- ▶ Limit the use of CTTT powers to grant exclusive use by-laws where opposed by the Owners Corporation.
- ▶ Amend S.52 to require the written agreement of all affected lot owners before making, amending or repealing a by-law in respect to property.

## Penalties

*"Under the present regime of SSMA 1996, the ultimate sanction on an Executive Committee for malfeasance is an order under S.162 to appoint a strata managing agent to exercise certain functions. This well-meaning section fails utterly in the present day" (There needs to be) "a more flexible yet rigorous and speedy mechanism for dealing with misdemeanours by an Executive Committee, whether they be flagrant disobedience of the Act, oppression of residents, manipulation of the proxy system, failure to communicate, or fiscal irresponsibility." - "Ancestor"*

Most people advocated greater penalties for members of Executive Committees who flout the law or consciously act against the interests of other owners. The habitual appointment of a compulsory strata manager might be a "sledgehammer to crack a nut" in regard to minor problems, or entirely inadequate where major problems have occurred. It was also noted that strata managers of the proper calibre are often unwilling to face the extra stress involved in tackling dysfunctional schemes. The failure of the CTTT to act in all but the most serious cases was a constant source of grievance, leading to the current SSMA being regarded as a "wish list", rather than guarantee of rights and responsibilities. Codes of conduct were generally encouraged, but also perceived as useless if they were not enforced, perhaps by investigative officers or "strata police" in a new regulatory system. To prevent Executive Committee members avoiding a summons, reform of their delivery was urged.

"Frankle" took a different tack, arguing that fines and jail sentences would only discourage participation from well-meaning owners with much to offer their strata community. He argued that voluntary service on committees is already an onerous and thankless task and if people fear, however illogically, that actions taken in good faith could ruin their lives they are unlikely to put themselves forward. This would achieve nothing, but leave the field open for those whose concerns range no wider than their own self-interest.

### *Options suggested by consultation participants*

- ▶ A wider range of penalties should be introduced to S.162 of the Strata Act and allow for a more graduated response to problems.
- ▶ Make it easier for the CTTT to issue preventative orders under S.138 and for owners to seek penalties for breaches by the Executive Committee.
- ▶ S.235 requires a summons on a member of the Executive Committee to be served personally. This should be amended to permit service by pre-paid postal delivery at the service address noted on the certificate of title for the common property.

## Sinking Funds

*"There is never enough in the sinking fund." - "jwalsh"*

*"It is mandatory to prepare a 10 year plan for the sinking fund for maintenance and repairs, but it does not require the Owner's Corporation to make any contributions to the sinking fund. It should be mandatory to make contributions that are in line with the 10 year plan. This needs to be a precise figure rather than a vague guideline that owners can ignore." - "strataliving"*

*"Some committee members are not exactly PhD material and some are totally ignorant of the requirements of the Act....It should be re-named, the 'Repairs and Maintenance Fund' to avoid any misunderstanding or ambiguity. - "Mike O'Reilly"*

The planning and protection of sinking funds was widely debated. Colin Grace called for a revamp of sinking fund forecasting, not least because the legislative requirement to prepare a plan is not matched by a legal duty to carry it out. Several correspondents pointed out that sinking funds are habitually starved of capital, due to developers and initial owners striving to minimise their levies in the knowledge that by the time problems appear they will have sold their units for a healthy profit. The reluctance of absent owners to cover future capital costs was noted, as deficiencies in the building affect the living standards of their tenants, rather than themselves. These short-term savings inevitably mean that special levies must be raised when significant repairs are required, the burden of which often falls unfairly on present owners.

Others pointed out that timely maintenance saves money in the long run as potentially disastrous problems, such as water leaks, can be nipped in the bud before they cause catastrophic harm. Others argued that sinking funds should be allowed more flexibility to reflect the needs of the specific strata scheme they cover. There was also some concern about fraud or the misuse of sinking funds for other purposes, particularly the need to differentiate it from administrative funds used for ongoing and minor maintenance. A variety of solutions to the setting, collection and use of sinking funds were offered, alongside a suggestion that such funds be renamed to make their purpose clear.

### *Options suggested by consultation participants*

#### **Sinking Fund Planning**

- ▶ Mandate that a professional building inspection must be carried out every five years, with its findings becoming part of the strata records and the base of the sinking fund plan. The implementation of this plan should be compulsory to ensure that owners have an incentive to maintain adequate funds, lest the value of their property fall as deficiencies in future maintenance provision become clear to prospective buyers.
- ▶ Maintain a minimum sinking fund levy based on a percentage of the insurable value of the building. This should be set at a reasonable level, as pressure will build for only the minimum stipulated amount to be paid. The fund should maintain a buffer of six months' worth of average contributions.
- ▶ Set fund contributions in the light of an independent assessment by professional quantity surveyors of work required over the next ten years, rather than theoretical building value or a generic report prepared by a consultancy firm. Such rolling ten-year plans should be subject to occasional independent audit.

- ▶ Add depreciation schedules to the requirements for strata plans.
- ▶ Impose a 10% sinking fund surcharge on owners who rent their units to tenants, given the extra wear and tear they impose on common property.
- ▶ Institute rolling 10-year plans which must be updated every year and can include provision for anticipated future expenditure beyond that period, e.g. major structural repairs due in twenty five years' time. This plan should be presented at every AGM for discussion.
- ▶ Require community associations to prepare ten-year sinking fund plans as well as strata plans. Require owners sharing common aspects which require repair, such as gutters on a roof spanning adjoining properties, to have the defect repaired at the same time and within a set time of the defect being brought to their attention.

### ***Sinking Fund Protection***

- ▶ Redraft the law to clearly differentiate between the administrative fund for day-to-day recurrent expenditure and the sinking fund for capital expenditure, as per the equivalent Queensland Act. If money is transferred, S.71(3) should be amended to require replenishment by special levy within a set period, be it three months, six months or one year.
- ▶ Allow special levies to be raised directly for the sinking fund, rather than insist on them being transferred from the administrative fund, as this affects capital gains tax deductibility for investor owners.
- ▶ Compel Owners Corporations to close any discrepancy between funds in hand and those required by the sinking fund plan to prevent current owners benefiting at the expense of future buyers.
- ▶ Mandate that money in the sinking fund should only be used for expenses above \$10,000, in consultation with the Owners Corporation and under the authorisation of an external authority appointed by the Government.
- ▶ Given the greater sums accruing to sinking funds since 2004, greater protections to prevent money being stolen by unscrupulous agents, managers or Executive Committee is required. The law which requires agents to log every function performed on behalf of the Owners Corporation is widely ignored, for example, and should be strengthened by requiring the log to be presented at every AGM.
- ▶ Outlaw the use of consolidated bank accounts and ensure that sinking fund monies are in a separate, protected account.
- ▶ Increase oversight of Executive Committees which fail in their duty to maintain and protect the sinking fund. Ban members of delinquent committees from office for three years.

### ***Other Issues***

- ▶ Rename sinking funds as the "capital works fund" as the term is currently often misunderstood.
- ▶ Prospective owners must be able to "examine the books" of a strata plan's sinking fund before buying their property to assess their future risks and liabilities.

- ▶ Ensure that owners pay sinking fund levies on time, with heavy fines for those who delay.
- ▶ Ensure that money in sinking funds is kept in high interest accounts to generate maximum funds for future repairs.
- ▶ Allow the Executive Committee wider discretion regarding how much can be spent, and how it is to be spent.
- ▶ Prohibit strata managers from accessing or controlling the sinking fund. Access should require two signatures, from the Executive Committee Treasurer and a non-committee member, after expenditure has been approved by a majority of owners.
- ▶ Allow excess money in a sinking fund to be returned to owners by a majority, rather than unanimous vote.
- ▶ Amalgamate the administrative and sinking funds into a single fund.

## Tenant Representation

*"Governance models and hierarchy need to be re-thought and re-structured based on policy positions about whether owners should always overrule elected committees. Long term (non-owner) residents' interests in strata buildings need to be recognised. They form almost half the strata constituents in New South Wales and are critical to the future." - **Francesco Andreone***

*"Owners tend to act in the best interest of the property in terms of the value of it whereas tenants tends to act in their best interest in the enjoyment of their relatively short term stay. If tenants can vote and have a say in the AGM, apartment blocks will be run like a backpacker hostel." - **"bbb111"***

*"I do not agree with tenants attending general meetings of a strata or community scheme. An owners corporation is basically a corporation and customers do not attend shareholder meetings. Discussions of owners are at times delicate and contain many privileged items. An alternative would be to have a meeting with all residents either before or after the AGM. This will encourage a community spirit." - **"Richard Holloway"***

Chris Martin, Senior Policy Officer for the Tenants' Union of NSW, called for greater tenant involvement in framing the by-laws that govern their home lives. He championed consideration of whether tenants should have voting rights regarding by-laws, as opposed to financial matters, or limiting the by-law making powers of Owners Corporations to protect the rights of all residents. *"fineline"* agreed that all strata occupants should be invited to attend meetings to raise concerns and be informed of their obligations, not in the name of democracy, but to nip potential disputes in the bud and create a stronger sense of community. He also noted that urgent matters of direct relevance to tenants might be discussed at an AGM which excludes them. *"GeoffWhere"* pointed out that tenants make a major contribution to levies and other costs through the rent they pay to the owners and appealed for renters to have at least some voting representation on issues which directly affected their lives.

Despite these pleas, the debate was dominated by owners objecting to any tenant involvement whatsoever in decision making. They argued that the owners of their units were able to represent the interests of strata tenants and believed tenants' lack of permanence and financial involvement made them ill-suited to involvement in long-term planning. *"Ingrid Jackson"* asserted that "tenants should not be allowed to attend any more than any person off the street", while *"cbox4"* believed that "tenants rights are more than protected under tenancy legislation and should not be given any powers to interfere how the Strata is administered." *"ExChairman"* termed the concept of tenant enfranchisement "absurd" and argued "they have no skin in the game, they do not pay Owner's Corporation fees, they do not volunteer their time to sit on committees and do the work, they have no long-term financial interest in the building. It is called an OWNER's Corporation for very good reasons." He did, however, accept that tenants were perfectly entitled to obtain the proxy vote of their landlord and participate in that capacity.

### *Options suggested by consultation participants*

- ▶ Consider allowing tenants limited voting rights over by-laws which directly affect them.
- ▶ Allow tenants of two years standing to attend strata meetings and act as proxy for the owner if requested. Such tenants could also accompany owners to meetings as an observer.
- ▶ Hold a meeting before the AGM to which all residents, tenants and owners alike, are invited to raise concerns, express opinions and suggest remedies.
- ▶ Maintain the prohibition of tenants having any voting rights.

## Owner Voting Rights

There was some debate as to the number of votes each lot owner should have in AGMs or EGMs. Some argued that owner-occupiers should have greater voting powers than absentee owners, given their greater interest in maintaining the physical integrity of the building. As previously mentioned, it was felt that investment or absentee owners tended to favour lower sinking fund levies to maximise their total income, because they did not have to live with the problems which a lack of repair might cause. Others believed that each owner in a strata should be entitled to just one vote, regardless of how many unit entitlements they owned, to prevent a small number of investors with several properties in a building dominating the wishes of the majority of owner-occupiers.

### *Options suggested by consultation participants*

- ▶ Allow each lot owner one vote at the AGM or an EGM, regardless of their allotted units, to prevent decisions being made to the detriment of the majority of owners. Strata fees should still be levied on the basis of allotted units.
- ▶ Bar any person without voting rights through ownership from serving on an Executive Committee.
- ▶ Use a secret ballot for all votes at Executive Committee meetings, with the votes being counted by an independent party.
- ▶ Give owner-occupiers two votes per lot to encourage responsible maintenance decisions and adequate sinking fund provisions.
- ▶ Give no extra votes for lot entitlements.
- ▶ Give owners of neighbourhood lots within community schemes their own vote for both the Neighbourhood and Community General Meetings
- ▶ Unify the definition of voting entitlement across the Act.

## Titles and Roles of Office Holders

*"The position of non-owners who assist strata corporations needs to be better defined as traditional roles and business models change to meet owner, committee and building needs." - Francesco Andreone*

*"I am sick of ego driven, bullying office bearers who seem to feel this is their opportunity to be in the limelight. If you want to shine then represent the views of all owners at EC meetings and not just your own! Office bearers particularly the chairperson must understand that at EC meetings they are engaged to represent all owners; it is only at Owners Corp meetings that they can represent their own views." - "Stratabasket"*

There were several appeals for the roles of office holders to be clarified, with particular attention given to the duties of the chairperson beyond chairing the AGM or EGMs. Clearer definitions, argued "Sam Kharman", would prevent chairpersons from overstepping their authority and unduly dominating proceedings. The use of "Horsley's Meetings" was recommended in explaining the proper role of the chairman and underlining the importance of the post's impartiality. The possibility of renaming the Executive Committee and its executive roles to emphasise collegiality, rather than autocracy, was also raised, as were methods to encourage a smooth succession of personnel.

### *Options suggested by consultation participants*

- ▶ Properly define the roles and responsibilities of the chairperson in the Strata Act, underlining the importance of impartiality and the copying of all correspondence to all Executive Committee members.
- ▶ Remove the voting rights of the chairperson in Executive Committee decisions or reduce voting rights to a casting vote in the event of a tie.
- ▶ Compel large strata plans to use external, professional chairpersons for AGMs.
- ▶ Remove the ability of chairpersons to unilaterally deny a petition from an owner.
- ▶ The law should be revised to guarantee that appointments are made at the General Meeting and not any subsequent gathering to ensure that owners are allowed to elect the officeholders.
- ▶ Rename the "Executive Committee" in all legislation to emphasise service, rather than authority. The new term could be "Council of the Body Corporate", "Service Committee", "Operations Committee or" or "Coordinating Committee". The titles of the three positions of chairpersons, Secretary and Treasurer could be restyled as Primary Coordinator, Administrative Coordinator and Financial Coordinator.
- ▶ The usual composition of Chairperson, Treasurer and Secretary may overlook potential talent among owners and does not encourage or allow for succession. The roles could be expanded or amended although un-elected members should not be co-opted onto the Executive Committee.



## Unit Entitlements

Unit entitlements determine the relative proportion of voting rights, council rates payable and levies charged within a strata scheme and are discussed in relation to many issues in this report. Some correspondents raised specific complaints about how unit entitlements are calculated in their particular strata and offered alternative methods of calculation. Others criticised the method by which initial determinations of unit entitlements in strata or community schemes are made, given their propensity to create anomalies in later years. A unit owner may make an application to CTTT for a reallocation of unit entitlements, but is also required to provide the CTTT with a valuation certificate of all strata units in the whole strata plan regardless of its size or whether the valuations on some units are relevant or not. Some felt this imposes an unfair expense on the applicant and should be abolished for residents of large strata schemes.

### *Options suggested by consultation participants*

- ▶ The NSW Valuer General or similar independent organisation should periodically review the value of the property and reset unit entitlements accordingly.
- ▶ Unit entitlements in single building strata schemes should be based on the total floor area of the lot, including its courtyard, garage and balcony, rather than its property value at the date of registration.
- ▶ Calculate unit entitlements with a formula which takes into account the use of common property. Units of entitlement would then comprise a standard fixed base rate accounting for everyone's right to use common property, plus a percentage based on the size of the owners lot.
- ▶ Unit entitlements should relate to current market value and the schedule of unit entitlements for a strata plan should be certified by a registered valuer.
- ▶ Abolish the requirement for owners in large schemes to provide full details of all unit entitlements to the CTTT in matters of dispute.

## COMMUNITY LIVING

### RECURRING ISSUES OF COMMUNITY LIVING

#### By-laws and Enforcement

*"The power of the majority to write laws for their neighbours is potentially dangerous and oppressive. If misused, it can foster disharmony and resentment in communities, which in turn makes everyone's life a misery." - "Cathy Sherry"*

*"There should be a simple and effective way the EC can enforce its by-laws. Current methods are time consuming, expensive, and mostly unenforceable." - "chrislevy"*

*"Make the enforcement of by-laws obligatory." - "JimmyT"*

*"There are enough rules and regulations in place now to cover the majority of issues that arise without making them mandatory." - "Hookc"*

Issues arising from strata by-laws generated a great deal of impassioned commentary, with the overwhelming majority appealing for greater enforcement of existing by-laws to curb antisocial behaviour. "Rod Kefford" noted that "by-laws exist to regulate arrangements that apply in strata situations to ensure that all residents can optimise the benefits of the amenities of a building and ensure that all residents respect the needs and rights of fellow residents", but "Tilly" and many others wondered "what is the point of having them if they can't be enforced?" Although it was argued every owner has an equal responsibility to monitor and observe the by-laws agreed for their strata building, problems with aggressive or non-compliant residents often led to people suffering in silence.

Frustration with the difficulties of enforcing current by-laws was widespread, with complaints about the bureaucracy, expense and time it took for action to occur, the lack of sanctions faced by persistent wrong doers and the failure of other organisations to care or intervene effectively. Several people agreed that warning letters from Owners Corporations are habitually ignored and considered action through the CTTT to be futile. "JOHNLEIVINGSTON" offered a detailed plan for streamlining the dispute process and a host of other suggestions were forthcoming. Amid the calls for greater powers for Executive Committees to punish offenders, however, there were some concerns that dysfunctional or rogue Committee members would only use them to find new avenues of abuse.

Cathy Sherry, Senior Lecturer at the Faculty of Law at the University of New South Wales (UNSW), also advocated limiting the number of by-laws and their extent. She noted that other people in privately owned property were free to do as they pleased, be it holding a barbecue, partying until dawn or "painting their house pink", and although she acknowledged that the greater density of strata housing increased the inconvenience such activities might cause to others, this did not mean that "any and all regulation is justified". She noted that courts in the USA now hold that by-laws and covenants must be "reasonable", although that term is not defined, and argued for a similar stipulation in New South Wales. She thought that by-laws that regulate activities that do not significantly affect other residents should be rendered invalid. She was supported by "Hookc", who argued that an owner's unit was their home and should not be micro-managed "out of existence" by numerous rules and regulations, which would not be countenanced for owners of free standing accommodation.

There were also calls for making by-laws easier to understand, more uniform in nature and cheaper to amend by reducing fees and voting requirements. An argument was made that residents of nearby properties should also be allowed to take action against residents of a strata building who break its by-laws over matters such as undue noise. The difficulty of forcing an Executive Committee to take action against one of its own members for a breach of a by-law was also commented upon. Other issues included the responsibilities of owners in relation to wrongdoing by their tenants.

Problems encountered with the enforcement of by-laws through the current mediation and dispute process were plentiful. Many owners recounted their inability to gain satisfaction through the CTTT and other organisations, and a host of suggestions were made to speed the imposition of sanctions and increase the severity of penalties.

### *Options suggested by consultation participants*

#### **Education**

- ▶ Ensure that each tenant receives a free copy of the by-laws under Section 42 (Schedule 1 By-laws) which they must sign to indicate they have read and understood them. By-laws could also be emailed to all tenants and owners. Ignorance of by-laws should not be a defence in the event of a breach.
- ▶ A copy of the by-laws should also be included in every contract for sale and signed by the prospective owners.
- ▶ The by-laws should be summarised in the form of a check list, and every real estate agent should ensure their tenants read, understand and sign each of the items in the check list before an agreement is signed. The summary list should also detail the penalty for any breach.

#### **Fairness and Flexibility**

- ▶ Introduce a stipulation that by-laws must not be “oppressive or unreasonable”, as occurs in both Victoria and Queensland. In Queensland, a by-law cannot discriminate between types of occupiers, such as allowing the use of a pool by owners, but not tenants. The relevant acts in Victoria and Queensland impose obligations on various parties, including the Owners Corporation, to act “honestly and fairly”.
- ▶ Reform by-laws to model s.182 to s.188 of Queensland's Body Corporate and Community Management Act and impress upon owners their governing role.
- ▶ Reduce or remove entirely the \$1,000 fee for drafting and registering by-laws. Ensure that by-laws are properly worded to reduce ambiguity.
- ▶ Allow tenants more say in by-law formation, but require greater responsibility in return through the signing of an agreement to abide by the by-laws or risk being fined.
- ▶ Allow by-laws to be amended with 75% owner support, rather than unanimous approval.
- ▶ Remove the two-year limit of action regarding by-laws prohibiting unauthorised building alterations.

- ▶ Allow residents of neighbouring buildings to take action under the Act against lot owners or the Owners Corporation for actions covered by strata by-laws. To limit frivolous requests, they should be required to “seek leave” of the adjudicator or NSW Fair Trading before seeking legal redress.
- ▶ S.45 permits management to regulate the conduct of owners or occupiers, but does not facilitate action by owners and occupiers against a member or members of the Executive Committee for by-law breaches. As that committee may well refuse to pass a resolution against one of its own members, the section should be amended to permit an aggrieved owner or occupier to take such a breach directly to an adjudicator.

#### **Clarity**

- ▶ Provide standard by-law templates.
- ▶ Subdivide by-laws into four sections dealing with living guides, key responsibilities, lot alterations and common property.
- ▶ To encourage uniformity, model by-laws should become standard for all existing schemes after a two year grace period. If these require amendment in particular situations, they can be revoked and another version adopted.
- ▶ The CTTT should provide a list of by-laws whose validity has been questioned, and what the CTTT determined in each case.
- ▶ There should be compulsory adoption (with appropriate amendments) of Memorandum AG520000 which provides a comprehensive list of matters which should be considered in by-laws.

#### **Liability**

- ▶ Make owners liable for the behaviour of their tenants, with the sanction of fines for repeat offences added to strata levies. A percentage of such fines could be passed on to tenants from owners.
- ▶ Mandate that tenants must lodge a bond with the Owners Corporation to be forfeited after persistent breaches of by-laws.
- ▶ Amend the tenancy law to require tenants to abide by by-laws at all times on pain of breaching their lease and risking eviction.

#### **Dispute Process and Penalties**

- ▶ The by-laws dispute process should involve mandatory mediation between the parties at the plan with minutes taken of proceedings. If this fails, then written advice of the breaches, a notice to comply and a penalty invoice should be issued in turn, with the option to appeal to the CTTT or local court if required.
- ▶ To balance the need for speedy and effective resolution with the rights of the parties involved, an officer of the Owners Corporation should be able to serve a warning notice on an offender requiring compliance with the relevant by-law within seven days, without the need for an Executive Committee meeting. If the offender does not desist, the Owners Corporation should file an application to CTTT for redress. If the offender does not comply within a week, an adjudicator should direct the parties to mediation or hold a hearing, with penalties and costs to be applied.

- ▶ Offenders who fail to desist after a warning letter should be served with a notice to attend a meeting of the registrar, in which an immediate decision would be made. The CTTT should dispense justice, rather than exist to parse the letter of the law.
- ▶ Allow applicants to make ex parte applications for an interim order through the CTTT. The alleged offender could then accept the order or oppose it by filing evidence within three to seven days. The applicant would then have the right to reply to the alleged offender's evidence and a final hearing by the CTTT adjudicator would either make a final order or set it aside.
- ▶ Instruct the CTTT to adjudicate a case only on the question of whether a lawfully passed by-law has been breached, rather than the justifiability of the by-law in question.
- ▶ Amend the law to allow an aggrieved owner or occupier to take a breach of by-laws by an Executive Committee member direct to an adjudicator.
- ▶ Prescribe penalties for the breaching of a by-law with a progressively larger penalty defined for successive breaches (e.g. first offence - one penalty point, second offence - two penalty points, third offence - five penalty points). The Executive Committee should be authorised to impose a prescribed penalty, but the alleged offender should have the right of written appeal within 14 days of receiving notice of the penalty. If the meeting confirms the penalty, then it becomes a debt to the relevant owner. If the lot is tenanted, then the owner may recover the penalty through the bond or other means. Provision can be made for an appeal to the CTTT against the decision of a General Meeting within 14 days, if there is clear evidence of a breach of procedural fairness.
- ▶ To prevent abuse, requests for By-Law and Strata Act compliance should be made only by independent, licensed and fully trained strata managers in accordance with the Act and by-laws applicable to the building. Managers should be accountable for their actions through the Act's penalty system. Any owner who alleges a breach by another owner may provide a complaint along with supporting evidence to the strata manager. The strata manager, if satisfied that a breach appears to exist, should then notify the owner. If the owner in breach persists, the matter should be brought up at the next meeting (or a decision by the association should be made as to whether the matter is to be referred to the CTTT or a similar body). Mediation by the CTTT should be offered, but not demanded.
- ▶ Mandate obligatory enforcement of by-laws by Executive Committees.
- ▶ To reduce antagonism and undue escalation, include a note in the Act which indicates that the Owners Corporation or Executive Committee may request mediation before or after issuing a notice to comply with by-law. The Owners Corporation or Executive Committee should directly issue a letter to the "transgressor" to the effect that they are willing to attend mediation on the matter, and encouraging the recipient to participate.
- ▶ Give greater power to the Owners Corporation or Executive Committee to enforce by-laws and punish those who breach them. Repeated breaches/non-payment of fines should be handled by the Executive Committee applying for an order of court with possible prison sentences.

- ▶ Breaches of by-laws should be subject to fines after three written notices issued by the strata manager. These fines should be added to levy payments in the manner of interest on overdue levies at present.
- ▶ Allow councils to issue fines and enforce by-laws for illicit parking and other public nuisance offences.
- ▶ Strata laws should override the tenancy laws with tenants who consistently flout by-laws given one week's notice to leave. Tenants whose rental agreement is terminated by the owner due to persistent breaches of a by-law must be compelled to leave within the allotted notice time. Tenants can now ignore such notices, knowing the owner must then apply to the court for a notice to vacate, and if that is ignored, apply to the Sheriff to evict the tenant.
- ▶ Allow the Executive Committee to issue "on the spot" fines for breaches of by-laws in the manner of parking tickets. Such tickets would be signed by an Executive Committee member and a non-member resident to prevent abuse, with 70% of the sum going to the sinking fund and 30% to the local council.
- ▶ Increase the powers of Executive Committees regarding breaches of by-laws which refer to alterations and additions to lots such as air conditioning with an embedded statutory requirement to return the lot to its prior state at the lot owner's expense.

## Noise and Antisocial Behaviour

Problems of antisocial behaviour were raised throughout the consultation and “the selfishness and lack of respect that many people hold for their neighbours” was roundly criticised. Such disturbances included the playing of loud music, illegal parking, rubbish dumping, barbecues on balconies, talking loudly on mobile phones, swearing and aggression, drug taking, drinking on stairwells, inconsiderate smoking, barking dogs, door slamming and loud parties. Noise was the disturbance most often alluded to, with the gratuitous use of leaf blowers highlighted by “sfoots” and the ownership and playing of pianos condemned by “cinerama”. However, some parents were concerned that there is currently no provision to allow for unavoidable noise from infants, leading to unreasonable complaints from unsympathetic neighbours.

Though it was noted that personal intervention could be effective, fears of retribution had dissuaded several people from challenging antisocial behaviour directly or using the standard channels of recourse. Complaints of Executive Committee inactivity were countered, however, by “Ingrid Jackson” who argued that owners were entirely responsible for their tenants and that “it is not appropriate or logical for the Owners Corporation or Committee to deal formally with tenants on behalf of the landlord owners. Owners legally wear responsibility for their choice to be landlords.” “Willgill” complained that “tenancy laws and strata laws are 99% stacked in favour of the occupant” and considered the process to remove bad tenants “too one-sided, too onerous, too slow and tiresome”.

### Options suggested by consultation participants

- ▶ Limit the use of high volume entertainment devices. Ban “sub woofer” music sound systems from strata buildings and impose strict limits on the amount of noise a resident can produce during set hours. When faced with a complaint, the onus should be on respondents to prove they are not making undue noise.
- ▶ Limit the times people can play musical instruments to between 9:00am and 9:00pm.
- ▶ Dedicate separate rubbish bins to each unit, to discourage mass dumping of boxes and waste when tenants move.
- ▶ Exempt parents from unreasonable persecution regarding noise from babies and small children.
- ▶ Require letting agents to give accurate information to prospective tenants about parking, rubbish disposal, pet conventions and other by-laws. Increase the responsibility of real estate agents to check tenant references to ensure that antisocial tenants are not accepted into strata properties. Increase the liability of real estate agents when their tenants fail to meet their responsibilities as laid out in strata by-laws.
- ▶ Impose a bond on tenants to cover damage to common property of four week’s rent. Allow the Owners Corporation to claim restitution from the tenant’s bond with the owner for damage to common property caused when moving in or out.
- ▶ Fine tenants who refuse access for routine building maintenance.
- ▶ Give Executive Committees the power to issue a “cease and desist” notice for antisocial behaviour backed by an enforceable fine.
- ▶ Widen police powers to deal with “breaches of the peace” in strata buildings.
- ▶ Allow any resident, not merely the landlord, to take a tenant to the CTTT to be warned, fined or ultimately evicted.

## Parking

*"We are frequently inconvenienced by a minority of residents who ignore and openly flout the property by-laws and illegally park a vehicle in a visitor car space. The law seems to be strongly biased towards the tenant, it being a long and tedious process to have the vehicle removed and to impose a fine. Even then the fine is little more than a slap on the wrist even if the vehicle has been continually offending for several months." - "Bert Sheridan"*

*"Cars parked in our spaces are trespassing and should be towed" - "Tilly"*

*"I can't understand the clamour for wheel-clamping rights. You would be stranding a vehicle in the exact spot you don't want it to be!" - "Kangeroo"*

Unauthorised parking on strata property was a pressing and vexatious issue for many, and the ineffectiveness of current powers to prevent or punish it was universally condemned. Clover Moore, Lord Mayor of Sydney, outlined that strata car parking places allocated by the council for visitors or emergency and other services should not be appropriated by owners without express council permission. She urged the exploration of clamping and other measures to tackle illegal parking, an idea supported by Colin Grace, who believed the current prohibition on wheel clamping should be removed from the Local Government Act for strata schemes. He said Owners Corporations should be empowered to clamp cars and require payment for their removal, provided a proper system of notification is observed and warning signs displayed. Without such sanctions, he saw the current dispute provisions as "meaningless" and "totally unenforceable". He also urged greater powers for Owners Corporations to remove abandoned vehicles.

Parking problems were not only caused by residents, but by people parking on strata property while visiting nearby tourist attractions or accessing transport hubs, a problem the police appeared powerless to prevent. Spaces reserved for strata visitors were regularly misused in this way, while the permanent appropriation of common areas by owners for personal parking spots was also criticised. The use of existing strata regulations or the common law against trespass was seen as cumbersome and impractical, with a host of steps to be taken before any effective action could be launched. Warning letters were usually ineffective in dealing with offenders, while the identification of car ownership was also problematic.

Many urged that Executive Committees be given a variety of greater powers, but concerns that Executive Committee members were often parking offenders themselves and so would not use such powers against themselves were raised. A small minority were also concerned that wheel clamping would strand a car in an inconvenient position and invite antagonism or retaliation by its owner. "Scrubby" termed the current enforcement system as "incredibly costly, time-consuming" and inefficient. He suggested reforming the entire system so that it focused on the offending vehicle, rather than the owner who was invariably absent or protected by privacy laws.

There were also many suggestions regarding improving the equality of access to designated parking places and preventing the abuse of existing parking provisions by residents.



### *Options suggested by consultation participants*

#### **Access**

- ▶ Prohibit residents from selling or lending their personal car spaces or car park access keys to others.
- ▶ Prohibit residents from habitually using visitor car spaces for their second car.
- ▶ Prohibit owners from converting carport or garage space to habitable accommodation. Owners who convert their car parking space should be barred from parking on common strata property.
- ▶ Allow residents to use a proportion of visitor car places for an annual fee.
- ▶ Ensure that all new developments allocate one car parking space for every bedroom.
- ▶ Allow owners to use chains or removable bollards to protect their personal parking space. Protect visitor spots with similar measures, with the keys available from a responsible party on request.
- ▶ Formally define parking. Moving one's car to wash it or clean out a garage should not infringe by-laws if it can be immediately moved on request.
- ▶ Amend the SSMA to allow S.45 notices to be issued to the "vehicle", rather than its owner. Extend Act to cover "foreign" vehicles not belonging to owners and occupiers.
- ▶ Ban the parking of any car on common strata property outside designated car parking spaces.
- ▶ Ensure that all strata residents have equal parking rights to prevent a majority with personal car places denying adequate provision to a minority without it.
- ▶ Limit the number of vehicles which can be associated with any lot owner.
- ▶ Allow commercial tenants to let out their car parking spaces on the same terms as resident owners.

#### **Process**

- ▶ Streamline existing provisions to expedite action against offenders. Currently a breach of parking by-law notice cannot be issued, unless a resolution approving it has been passed by the Owners Corporation or Executive Committee.
- ▶ Mandate improved warning signs in concert with increased powers of action. Warnings that improperly parked vehicles are liable to fines, clamping or removal should be prominently displayed.
- ▶ Give the Owners Corporation, the Executive Committee, the strata manager or any strata resident the right to apply for an order to the CTTT to tow the offending vehicle to a storage yard, with its owner obliged to apply to the CTTT for its release and pay costs. The order would be actioned immediately by a CTTT registrar or adjudicator in chambers, with the vehicle being sold at auction if not reclaimed.
- ▶ Allow strata properties to delegate enforcement of parking by-laws to the local council, to be enforced by council patrols and ranges, with the display of warning notices to this effect. Fines could be retained by the council to cover costs.

- ▶ Empower Executive Committees to affix a warning notice to an offending vehicle, providing 72 hours of notice of removal. Recovery costs would be borne by the owner. Should the offence reoccur within three months, the Executive Committee should be able to obtain an order from the CTTT and impose a fine of \$500.
- ▶ Issue all Executive Committees with the parking infringement devices possessed by council parking inspectors to record an infringement. Both an Executive Committee member and non-member resident would have to "sign" the ticket, which would then be forwarded to the council who would issue a parking fine.

#### **Penalties**

- ▶ Amend the Local Government Amendment (Parking and Wheel Clamping) Act 1998 (NSW) to allow strata managers and Executive Committees to wheel clamp offending vehicles trespassing on private land. Allow property owners to clamp cars on their property on the first offence, providing warnings and release fees are prominently displayed. Allow cars to be clamped on common property by officers of the Owners Corporation after three prior warnings have been ignored on separate days. Allow the clamping of residents' cars illicitly parked in visitors' parking spots on a similar basis.
- ▶ Allow strata managers and Executive Committees to fine offending owners, if an initial warning notice is ignored, but stipulate a maximum fine or release fee in legislation to prevent abuse.
- ▶ Allow strata managers and Executive Committees to issue "on the spot" infringement notices with immediate fines.
- ▶ Allow strata managers and Executive Committees to remove offending cars, if warning notices are continually ignored or the car is impeding access.
- ▶ Conduct trials of various parking solutions under the auspices of NSW Fair Trading or CTTT to determine which, if any, are effective.

## Pets

*"All buildings should be open to pets, in the same way they're open to small children...If and when there is damage done, then it comes out of the bond. Simple. If the dog is a barker, take it up with the neighbour at a meeting (in most instances owners want to prevent their dog from being stressed or unhappy) and give the person 8 weeks to solve the problem, or they're out. Pet owners need to be given a chance to prove they're responsible. At the moment, we're not even given that." - "MKK"*

*"We live in a society that no longer can either afford to own a house or choose a lifestyle that is more amenable to unit living. I would like to see the by-law changed so that each case can be based on the suitability of the pet. You cannot pigeon hole a particular animal, so each case should be individually assessed." - "Meerkat"*

*"Perhaps none of these people have ever actually had to deal with co-owners or tenants who allow their animals to run rampant on the common property, damage it and soil it, or allow them to bark without end. There is enough conflict in strata-land with managing the myriad of issues that arise without having to manage intransigent owners who really do think that little Fluff or little Scotty has the right to relieve itself wherever it wants. Actually, the behaviour of animals is not really the problem here - the underlying problem is the behaviour of their owners." - "ExChairman"*

*"I have lived with many pets in a strata building for the last 25 years...and I cannot think of any issue that was not sorted out with a little bit of helpful advice." - "bellevuevet"*

The issue of pets in strata buildings was one of the most fiercely debated, with opinion divided between those who wished to ban all animals and a rather larger number who backed responsible pet ownership, believing that pets should be regulated, rather than prohibited, as the majority of animals cause no problem to other strata residents.

Susie Willis, NSW Consultant for the Petcare Information and Advisory Service, summed up the arguments made by many in favour of pet ownership in a blog which observed that pets are a "popular part of the lives of most Australians" and needed to be accommodated by strata, given the push for higher density metropolitan housing. She believed that the blanket bans now permitted under current strata law were unreasonable, given that 63% of Australian households own pets. She recognised that the benefits pet owners derive from their pets should not come at the expense of non-pet owning residents, but appealed for a balance to be made, particularly as "pets can contribute positively not only to the health and well-being of their owners, but also to the strata communities as a whole, by helping to bring people together". Model by-law 16 requires residents to gain written permission from their Owners Corporation to keep an animal, with the proviso that the Owners Corporation cannot unreasonably refuse permission, and Ms Willis advocated following the ACT in preventing Owners Corporations from imposing all-encompassing bans. She agreed that managers and committees could require pet owners to comply with set conditions regarding common property, noise and waste and that pet owners failing to comply could lose the right to keep their pet.

Lord Mayor of Sydney Clover Moore wrote that "Most apartments impose outright bans on pets irrespective of problems or complaints, and make little distinction between different pets and potential impacts. This can cause significant distress to people with much-loved pets moving into a new apartment". She argued that "outright pet bans should not be allowed. Instead, bans should be based on cases where an animal causes unreasonable problems such as noise or amenity impacts." There were calls from some contributors for a more "European" approach to

pet ownership, as renters with small pets find it hard to secure "pet friendly" accommodation, while "EmilyM", of the Healthy Built Environments Program at UNSW, argued that pets are desirable as they benefit their owner's health by encouraging exercise and social engagement. She believed that total bans on pets contribute to isolation and stress, while others pointed to the benefits of communication and empathy which children reap through contact with companion animals. It was pointed out that stereo systems are not uniformly banned because they can cause problems in a small minority of cases. Overly restrictive strata laws were also seen as a significant contributor to the 250,000 dogs and cats killed by shelters and pounds each year.

Other people were less sanguine, pointing to the nuisance caused by barking dogs and their waste. The difficulty of persuading a pet owner to give up their pet if others deemed it a problem led some to believe that less emotional stress would be caused by a clear ban on all pets in the first instance. Others reported allergies which were exacerbated by the presence of any pets in the building. One person pointed to the problem of dogs being moved from larger homes with gardens into small apartments and being left to bark all day, while their owners were away at work.

### *Options suggested by consultation participants*

- ▶ Make Schedule 1 by-law number 16 (Keeping of pets) compulsory for every strata plan regardless of their current by-law. Requests for the keeping of a pet should be determined by a mediator in the case of disagreement. Owners should still be required to inform the Owners Corporation of pet ownership and take all reasonable steps to prevent nuisance to other residents. The law should require the strata community to prove a pet is disruptive to the lives of others before a request for its removal can be made.
- ▶ Amend the model by law to allow certain types of animals (e.g. aquarium fish and certain small birds and animals) by default. Strata rules should not prohibit pets without a fair reason, especially if the property is owned by the occupier and the animal is retained within the private property causing no damage to any shared or external property.
- ▶ Alleviate concerns over potential damage to property by pet owners paying a "Pet Bond" and undergoing more frequent inspections. Cat owners should be allowed to install low-visibility cat mesh to their terrace or balcony at their own expense to ensure their cat stays within their lot.
- ▶ Mandate that cats be kept indoors at all times. Ban the keeping of snakes, given their propensity to escape. Ban the keeping of dogs in apartments due to their propensity to bark.
- ▶ Retain current legislation which allows a building to unilaterally declare itself an animal-free zone if requested by the owners. People wishing to own pets can move elsewhere. Buildings wishing to transition to "no animals" should be given an easy legal pathway to allow existing owners to retain pets, while prohibiting new residents from owning them. Alternatively, all pets should be prohibited from entering or being housed within residential Strata Developments, unless 100% of owners agree and create a by-law to this effect. The by-law may be reversed by 75% of owners provided six months' notice is given to remove pets.
- ▶ Ban all pets in all strata to avoid nuisance to other owners in view of the difficulty of removing a troublesome pet, once it has been allowed.

## Smoking

*"Risks to health from second-hand tobacco smoke (SHS) exposure, even at low dosage levels, are well established by medical research evidence. Tobacco smoke is a highly toxic, carcinogenic airborne contaminant with no safe level of exposure. It should not be trivialised as a minor irritant or dismissed as a matter of personal choice." - "Stafford Sanders"*

*"How is it that we are protected from passive smoking when in public places such as clubs, restaurants etc. yet can't be protected in our own homes? It is a known fact that passive smoking exposure to a pregnant mum or an infant increases the risk of SIDS. Young families need to be protected. We have by-laws which protect us from 'intrusions' such as loud music yet not against carcinogenic contaminants entering our homes. The Strata Schemes Management Act states 'An owner or occupier of a lot is not allowed to cause nuisance or disturbance to another lot owner by the use of their own lot'. So if smoking is disturbing somebody and smoke is entering their apartment - isn't that a breach of this?" - "Healthrights"*

*"It is currently already possible within the legal framework for Owners Corporations to ban smoking in some or all parts of a property. Why introduce changes? It is up to the Owner's Corporation to introduce by-laws. If there are no complaints, no by-law is needed." - "Quartz"*

Smoking was a significant bone of contention, generating more comments than any other single topic. The overwhelming majority of correspondents strongly objected to being subjected to second hand smoke in strata buildings and demanded that smoking be banned from communal areas and open air balconies.

Dr Andrew Penman, of the NSW Cancer Council, noted that parents of young children and people with chronic respiratory illnesses or other disabilities which kept them at home were particularly vulnerable to second hand smoke. He noted that requests to moderate smoking, or to encourage strata authorities to tackle the issue, were often ignored, although Owners Corporations can adopt smoke-free by-laws through the adoption of a special resolution.

"unit.dweller" observed that smoking is regulated in "almost every other area of life", while "sfoots" commented that if smoking could be banned in pubs and clubs, then the law should protect people against smoke penetrating their own homes. Anne Jones, CEO of Action on Smoking and Health (ASH) in Australia, argued that smoking related problems could be dealt with, just as loud music or barking dogs are handled, through a complaints process.

Many people raised similar health concerns and resented having to keep their doors and windows closed to prevent smoke drifting inside their homes. A wide variety of residents, most of whom commented on no other issue, complained their enjoyment of their own home was being ruined by others smoking on balconies nearby. Most people wished to confine smoking to apartments only, banning it in common areas and on balconies, while a significant minority wanted it banned altogether. Just one person believed existing safeguards were adequate, stating that Executive Committees already have the power to pass anti-smoking by-laws if requested, and expressed concern at the "targeting" of smokers.

### *Options suggested by consultation participants*

- ▶ Governments should provide resources to inform all parties about the problem of smoke drift and how to resolve complaints.
- ▶ Legislation should clearly assert that any tobacco smoke that drifts into any residential lot a person owns, leases or rents is a hazard and a nuisance.
- ▶ A smoking-related model by-law should be included in the Strata Schemes Management Regulation 2010 and smoking-related Orders should be included in Chapter 5, Part 4 (Orders of Adjudicator) of the SSMA 1996.
- ▶ Adopt in law the recommendation of the Commonwealth Government-appointed National Preventive Health Task Force that “All State Governments legislate to require leases for multi-unit apartment buildings and condominium sales agreements to include the terms governing smoking.”
- ▶ Introduce a requirement that all new strata developments have no smoking sections.
- ▶ Limit smoking to apartments only. Ban smoking in common areas, on private apartment balconies and anywhere it can be detected in an adjacent property or on common property.
- ▶ Any proposed strata by-law involving protection of residents from a physical hazard, such as second hand smoke, should require no more than a simple majority vote of residents to be passed. All residents, tenants and owners alike, should be able to vote on matters regarding such physical hazards.
- ▶ As retirement villages include a high proportion of aged residents with health conditions acutely susceptible to aggravation by even low levels of tobacco smoke, legislation should require all retirement villages to be 100% smoke-free in all indoor areas.
- ▶ All strata buildings should be non-smoking by default. The strata scheme should be allowed to change this status with a majority vote.
- ▶ Ban smoking in strata buildings completely. Mandate the display of signs warning visitors that smoking is not allowed.

## OTHER ISSUES OF COMMUNITY LIVING

### Building Standards

*"No matter how well meetings are run, how accurately records are kept and how promptly owners pay levies, if your strata building has construction faults that don't get fixed then everyone's experience of strata is seriously affected." - Francesco Andreone*

Francesco Andreone raised the importance of maintaining building standards in New South Wales, noting that many strata issues such as noise and nuisance could be prevented by improved building quality. He claimed that strata owners had suffered from a decline in construction standards, lax Building Code of Australia compliance levels and ineffective defect rectification mechanisms in the last fifteen years. He identified a number of reasons for this, including changing development, building and certification processes, economic pressures and, until recently, the buoyancy of the real estate market which prioritised quantity over quality.

He noted that protections available to strata owners had been eroded, with buildings over three storeys losing Home Owners Warranty insurance<sup>7</sup>. Time limits for defect claims have also been reduced, insurance exclusions widened and a variety of court decisions have further complicated the legal claims process. The most significant part of any strata scheme, the building itself, has increasingly become a problem in itself, rather than a source of stability. This in turn is triggered many of the complaints, including higher levies, conflicts in overburdened committees and stress and lower property values for owners.

He argued that strata construction quality should be improved and guaranteed by law, while rulings on building defects should be made by government appointed independent assessors, rather than courts, which are too costly for many smaller Owners Corporations. Should developers wish to appeal the independent assessor's decision, they can do so through the courts, but the assessors would serve as the defendant, thereby levelling the playing field that is currently skewed very much in favour of large developers.

*"Chris Harris"* agreed that many disputes caused by excess noise could be prevented by improved sound insulation and the creation of an acoustic pollution rating to serve as a baseline in the resolution of disputes. Modern apartments have thinner walls than older buildings, at a time when modern sound systems and televisions are much more powerful. *"Michael McCosker"* criticised the shoddy building standards employed by large scale developers and their lack of liability under the Home Owner Warranty protection system and feared that more conscientious single dwelling builders would be forced out of business as a result.

<sup>7</sup> It must be noted that the provisions of Home Warranty Insurance fall under the Home Building Act, which is being reviewed separately to the SSMA. There are also statutory warranties that apply to work on residential buildings over three storeys.

### *Options suggested by consultation participants*

- ▶ Provide better education for owners and other stakeholders about building quality issues.
- ▶ Expand the Building Code of Australia rules to set detailed minimum construction standards for multi-unit developments.
- ▶ Create a new building rating system for construction quality, completeness of documentation and integrity and defect rectification.
- ▶ Developers should be required to have all new apartments assigned an acoustic rating by a member of the Australian Association of Acoustical Consultants and make this rating known to prospective purchasers. All strata buildings should include standard noise reduction elements in their design including double glazing, efficient exhaust fans, double brick party walls and silenced plumbing.
- ▶ Developers should be encouraged or legislated to provide a 25 year Service and Management Blueprint for their buildings and be allowed to sell these "servicing" rights to a suitably qualified management team.
- ▶ To protect new owners and people "buying off the plan", developers should be compelled to carry building insurance and bank guarantees against insolvency for the first six years of any building's existence.
- ▶ Restore Home Warranty Insurance to residential buildings more than three storeys high and ensure owners receive prompt rectification for all structural and non-structural defects in a reasonable period (i.e. ten years for structural and five years for non-structural defects) from the date of the final occupation certificate for the particular building.



## Delineation of Lots and Common Property

*"Strata boundaries are not clearly defined in plans and unlike detached dwellings, Land and Property Information does not determine boundaries within strata schemes, making dispute resolution difficult. Boundary plans for apartments should be prepared in line with Land and Property Information standards giving the Registrar General power to resolve disputes." - Lord Mayor of Sydney Clover Moore*

*"If the professional people can't agree on common property, how can the average lot owner have any hope of understanding what they have to maintain?" - "RayD"*

There were unanimous calls for clearer definitions of owner lots and strata common property and for the rights and responsibilities attached to each to be clearly explained. Colin Grace termed the current definitions "antiquated", while "Ingrid Jackson" noted that the NSW Strata Schemes (Freehold Development) Act defines a "lot" as the space within its boundaries, but not its walls, floor or ceiling, leading to complex requirements for by-laws under Section 65A and constant arguments about whether the Owners Corporation or owner is responsible for repairs and maintenance. The ownership, repair and replacement of ceramic tiles on common walls emerged as a particular bone of contention, with damage caused by bathroom, shower and hot water system leaks and repairs to doors, locks and windows also generating several debates. The use of strata access ways by non-residents was also flagged, with the suggestion that councils be invited to contribute to the resulting maintenance costs.

"Peter Denman" noted that many laws date back to the 1960s and 1970s, when strata plans were generally larger. As many modern schemes are formed of small numbers of town houses, he argued that owners should have more freedom to personalise their properties by installing air conditioning, satellite TV and other features. He believed that rules should therefore permit changes to common property, such as the external wall of a building, where that wall remains wholly within the owner's lot.

### *Options suggested by consultation participants*

- ▶ Use the term "shared property", rather than "common property" to encourage shared responsibility amongst strata residents.
- ▶ Ensure the registration documents of strata plans contain a schedule of lots and common property to allow fixtures such as floor and wall tiles to be properly described and have their ownership determined.
- ▶ Define the boundary of a lot as the centre of the walls, floors and ceilings enclosing the particular lot, with the other half being part of the neighbouring lot or the Owners Corporation in the case of external walls or roofs.
- ▶ Tenants should be allowed greater autonomy in strata title gardens to maintain and improve them. Compost heaps should be encouraged to reduce waste and replenish the soil.
- ▶ Simplify regulations and procedures to allow lot owners to repair, replace and affix items to common walls and tiles. All internal wall and floor tiles should be lot property, with exceptions made where necessary when they protect a waterproofing membrane.

- ▶ The Management Act and Development Act should be revised and clarified to remove the inequity and anomaly of owners paying for private improvements for others. As any device, pipe or wiring installed for the exclusive use of the lot is not common property, any expense of repair and replacement of the electrical system from the switchboard must be at the lot owner's expense.
- ▶ The Owners Corporation must have the power to order and enforce the upgrading of services to current standards if the installation is old, sub-standard or has suffered damage. It may do so at its own expense and should be reimbursed by the owner in relation to the benefit received.
- ▶ Delete s.62(b) of the current SSMA or add "Upon written advice to the Owners Corporation outlining the proposed work owners may carry out repairs to common property provided it is done by licensed and insured tradespeople without consent of the Owners Corporation."
- ▶ Mandate that the Owners Corporation is responsible for outdoor common areas with individual owners responsible for internal areas and courtyard or garden accessible only from their space. External access doors, garage doors, locks and windows are part of the structural wall and so the Owners Corporation should be responsible for their cleaning and maintenance.
- ▶ Adopt the sample Common Property Memorandum, produced by Land and Property Information NSW to help define property ownership and responsibilities, as a compulsory by-law for all new strata schemes.
- ▶ Ease the permission granting process for alterations to units when proper documentation is submitted, along with a declaration that owners, rather than the Owners Corporation, are responsible for future maintenance.

## Disability Provision

Several people wrote of the difficulties they had experienced when trying to improve facilities for disabled people in their strata scheme. "garrychadwick" said that access improvements in his building were consistently blocked by an intransigent minority, despite ten residents requesting a ramp to enter the property. The reluctance to introduce disabled and aged friendly access was in part based on a perception that such features would mark the building as suitable only for pensioners and reduce property values accordingly.

### *Options suggested by consultation participants*

- ▶ Require Owners Corporations to meet their obligations under anti-discrimination laws to accommodate the disability-related needs of owners and occupiers, including assistance animals, access to premises, storage for disability-related equipment, accessible parking, use of chemicals and provision of AUSLAN interpreting of General Meetings.
- ▶ Reduce the voting requirements to pass disabled access improvements to a simple majority.
- ▶ Ease restrictions faced by the infirm, disabled and elderly wishing to retrofit bathroom and other facilities.
- ▶ CTTT members should be provided with professional development in disability rights and disability discrimination issues to improve dispute resolution in regard to disability issues.

## Drying Clothes on Balconies

*"I believe drying clothes in the sun should be 100% encouraged. The new strata by-law (2010) which gives back all residents the rights to dry in their balconies should be enforced onto all residential apartments as it is everyone's responsibility to save our planet from dryers!" - "uajjc"*

*"The laundry drying practice should be deregulated completely. Stupid rules encourage petty tyranny by bored and miserable types who get off on exercising power and are often selectively applied... People who have paid their rent or otherwise bought their apartment and been granted exclusive use of a balcony, should be able to conduct legal activities upon it as long as there is no real and serious threat of harm or nuisance to a neighbour." - "brokenriver"*

*"Washing not to be dried on balcony railings - only on approved lines or on approved Body Corporate area." - "A Gosling"*

The drying of clothes on balconies was mentioned by many people, with the vast majority in favour of relaxing by-laws prohibiting the practice. The environmental benefits of drying washing naturally were stressed, with the noise and energy consumption of automatic dryers reduced for the benefit of all. Most people believed that by-laws mandating that washing be hidden from view were "ridiculous", given that it caused no harm to others and was commonly accepted in other countries. They also pointed to the practical difficulties encountered by people, often women with small children, carrying heavy washing up and down stairs in large apartment buildings to common drying lines.

A small minority supported current prohibitions, arguing that washing could still be dried on approved lines on common property, although others feared the theft of expensive clothes from such unprotected lines. The transience of many strata residents, and the lack of community in many buildings, were also seen as increasing the likelihood of clothing theft. The drying of underwear in sight of others was debated, with some arguing it should be kept out of sight, while others saw nothing intrinsically offensive about it.

### *Options suggested by consultation participants*

- ▶ Allow all drying of washing on unit balconies without restriction.
- ▶ Allow the drying of clothes on balconies during certain times during the day.
- ▶ Allow the drying of all clothes except underwear, which should be dried on racks below the rail and out of sight of others.
- ▶ Forbid all drying of washing on balconies.

## Energy and Environmental Issues

A wide range of environmental and energy conservation issues were raised. "*Rancherkody*" called for greater protection for residents against noxious poisons sprayed on weeds on communal land, for example, while others requested the easing of barriers to the adoption and installation of energy conservation methods and equipment. Several people reported that their Executive Committees had objected to the installation of solar panels to generate electricity or heat water or had restricted access to common property to allow such technology to be introduced. This was thought to fly in the face of the State Government's commitment to renewable energy sources and the Commonwealth's measures to combat global warming. Residents were also asked to remain mindful of the inconvenience caused to others through the use of washing machines during the night to take advantage of cheap rate energy tariffs. Over the longer term, the Government was urged to factor in possible rises in sea levels due to climate change into their planning decisions.

### *Options suggested by consultation participants*

- ▶ Written and verbal requests to avoid the use of toxic chemicals on common gardens should be respected by Executive Committees and individual owners.
- ▶ Adopt provisions similar to the Queensland Energy Act to prevent intransigent owners or Executive Committees blocking the installation of energy saving devices. The Owners Corporation should "not unreasonably refuse" modifications which reduce energy consumption and should be required to produce a plan to moderate energy use in the building.
- ▶ Allow occupants to respond to increasing energy costs and noise by easing restrictions on the installation of double glazing and improved doors, in sympathy with, but not necessarily identical to, the existing façade. Environmental and energy saving improvements to lots, such as window tinting, solar panels, water tanks, whirlybirds, window shutters and water saving devices, should be generally exempted from by-laws prohibiting changes in the appearance of lots.
- ▶ Require strata managers and committees to allow prompt access to the roof for the installation of solar panels, hot water and insulation.
- ▶ Provide a framework for managing threats to strata and other buildings due to rising sea levels and changing flood prone zones.
- ▶ Pursue a whole-of-government approach to environmental sustainability incentives for apartment buildings (see <http://www.greenstrata.com.au/>).

## Fire Safety

*"If the Owners Corporation (via the Executive Committees) are going to be made responsible for implementing fire safety regulations, OH&S regulations, etc. then the Executive Committees must be given the power to make owners and residents to comply with the By-Laws and the regulations without having to endure the extreme amount of endless and useless bureaucracy we currently have." - "Maria Silva"*

Discussions about fire safety precautions raised a number of points, not least widespread dissatisfaction with alleged price gouging by fire security firms. "GNS" noted that accredited fire safety companies charged three times more than other accredited plumbers and electricians for remedial work, and believed they should only be used to inspect and certify work done by others as a result. "Anthony R" said that a threat to use other tradesmen in his strata scheme had prompted the fire safety company to offer competitive quotes. He said that fire companies habitually replace entire emergency and exit light fittings, rather than merely replace a broken globe, to profit at the expense of strata owners.

"Exstrata" noted that self-proclaimed fire safety inspectors do not have to be licensed in NSW and criticised their exorbitant call-out rates, while "Pmb" pointed to grave deficiencies in fire alarms and other devices a fire safety firm had installed and certified for itself. There were calls for new forms of fire signs to reduce energy costs, the better placing of sprinkler systems to reduce water damage and financial restitution for owners and residents affected by sprinkler water infiltration. Some raised the danger of gas bottles, balcony barbecues and space heaters, while others expressed confusion about current requirements regarding fire alarms. Owners and committee members were reminded that a copy of its Certificate of Compliance should be placed on all noticeboards for a strata building to comply with Australian Standards AS1851-2005a. Each unit should be supplied with a fire escape plan, including easy access to exit points and these plans should also be displayed in common areas.

A few people questioned the value of new fire regulations however, wondering if their expense was justified. They advocated improving the training of residents to avoid and extinguish fires, rather than pay for expensive equipment which nobody knew how to use. "Strataliving" argued that "Fire safety regulations should take into account the age of the building and the fact that old buildings do not comply with the current building code. Fire upgrade regulations should focus on saving lives, rather than making old buildings compliant with current building standards."

### *Options suggested by consultation participants*

- ▶ Fire safety companies should be properly licensed or registered, as in Queensland and Victoria. Mandate that quotes from other contractors are sought before remedial work is done.
- ▶ Use energy efficient or non-electrical emergency exit and fire signs.
- ▶ The use of barbecues on balconies should be banned as a fire hazard. Gas-powered portable outdoor heaters are also a fire hazard. The resultant storage of many bottles of liquid gas in the building poses a danger to all residents.

- ▶ Under current legislation, landlords must ensure working fire alarms are fitted in rented properties. However, there is no stipulation for the Owners Corporation to make this mandatory in owner-occupied properties, nor is there a mechanism which allows the Owners Corporation to enforce their installation. Fire alarms should also be tested to ensure they are audible in all parts of the building.
- ▶ Improve training and fire drills to ensure people know how to act in the event of a fire. Instruct people in the use of fire suppression devices.
- ▶ An expert in fire prevention should advise on better locations of the sprinkler heads to avoid the flooding, which can occur when sprinkler heads are badly located.
- ▶ The Act should itemise exactly which items of fire safety equipment require regular testing and certification, as there is confusion regarding which types of sprinklers (e.g. room or drenchers) require testing. Councils or water authorities should pay for the testing of fire sprinkler systems to ensure compliance with standards given reduced water pressure.
- ▶ Clarify that damage to property from sprinklers should be shared fairly by all the unit owners. Current legislation mandates that the Owners Corporation is liable for costs incurred with the failure of common property, but the position regarding the accidental triggering of sprinkler systems is, in the eyes of some Executive Committees, unclear.

## Floor Covering and Noise

*"The problem with carpeting being replaced with floating floorboards, or being taken up to expose floorboards, is significant and extremely difficult to rectify...I believe that there is no place for flooring other than carpet in multi-level strata buildings." - "Rsopp"*

*"Timber floors should be prohibited in unit blocks. Anyone living below a timber floor knows how much noise there is and it seems that all the padding used still does not match the acoustic capability of carpet." - "sfoots"*

Intrusive floor noise caused by the replacement of carpets with wooden or tiled floors was raised several times in the debate. All agreed with Lord Mayor of Sydney Clover Moore that "standard by-laws should clarify that flooring must provide acoustic insulation to a minimum defined standard." There were also complaints that owners could reconfigure floor plans to change the location of a kitchen or bathroom which is not required to have floor insulation, increasing noise over living areas for people living below. The difficulty of forcing owners who had installed unauthorised hard flooring to restore the original carpeting was also raised. "Cato" noted that the model by-laws make specific reference to noise and disturbance originating from floor coverings, but did not cover noise from slamming doors.

### *Options suggested by consultation participants*

- ▶ By-laws should mandate minimum noise insulation standards for upper floors in strata buildings. Carpet with insulating underlay, or an equivalent insulated floor surface, should meet the Association of Australian Acoustical Consultants' 5 or 6 star rating.
- ▶ Floating or fixed timber flooring should not be permitted in upstairs units. Tiles used in bathrooms or kitchens should meet strict noise insulation standards. Any reconfiguration of floor plans should ensure proper sound insulation is maintained and be passed by an accredited sound engineer.
- ▶ Sound insulation standards should reflect the different needs of various buildings. Multi-storey blocks require higher standards than single level villas.
- ▶ By-laws should stipulate that owners must completely cover the floor or treat it to prevent noise which may disturb another resident, to stop people merely laying a mat in the middle of a hard floor.
- ▶ Problems with stepped buildings, where an upper balcony forms the roof of the unit below, and roof top recreation areas should be addressed through clearer wording of regulations and improved building standards.
- ▶ Allow the CTTT to impose "per day" fines where a floor noise by-law is being ignored. Adjudicators should specify that floor treatments should be permanent.
- ▶ Legislate to limit noise from entry and internal doors and their door frames.



## Insurance

"gordonbell1", writing on behalf of CHU Underwriting Agencies Pty Ltd, a major strata insurance company, favoured greater spending by strata on insurance cover. He discussed the differences between strata insurance and household insurance, highlighted the need for full replacement value and stressed the unlimited liability of lot owners. He believed that many strata owners were unaware of these dangers and encouraged the purchasing of a more comprehensive level of insurance for Owners Corporations.

Some private owners raised concerns that their insurance cover suffered through a failure of other owners to adequately insure their property. Insurance companies often refuse to cover one unit in a two unit strata development and, if one party refuses to insure, the other is often forced to insure both properties to cover themselves. Problems over the insurance of common property in small strata schemes were also noted, with insurance companies reluctant to insure part of a common wall, for example, if the other parties were not insured or chose to use another company.

### *Options suggested by consultation participants*

- ▶ Ensure valuations for insurance purposes as required by SSMA S.85 are completed every three years.
- ▶ Mandate a minimum level of annual indexing on Building Sum Insured amounts.
- ▶ Commence the 18 month term stipulated in Strata Schemes Management Regulations 2010 (REGS) 12 (b)) from the last day of the damage policy instead of the current start date to allow more time for the assessment and reinstatement of damaged strata buildings.
- ▶ Increase the current minimum of \$10 million liability cover to \$30 million.
- ▶ Mandate the purchase of "Office Bearers Liability cover" to protect Executive Committee members.
- ▶ Compel both parties in two-lot strata schemes to insure their property.
- ▶ Require lot owners in community schemes to use the same insurance company for common walls. Ensure that all community scheme properties are revalued for insurance purposes every five years.
- ▶ Remove the requirement to have insurance for community property where the size of the lot is less than 5m<sup>2</sup> and contains no structures. Such small undeveloped lots are common on two-villa schemes on corner blocks to allow them to claim community scheme status.
- ▶ Building insurance should cover the damage caused by movement of the footing in clay areas.

## Legal Costs

Colin Grace argued for the consideration of emergency provisions for legal representation. Strata schemes are currently making ad-hoc decisions in pressing circumstances which later leads to disputes arising when such legal expenses have to be paid for.

*"Penelope Hill"* complained about the exorbitant fees charged to strata schemes by lawyers and asked that new strata legislation inform owners of their existing rights to challenge unreasonable fees.

There were also calls to prevent Executive Committee members using Owners Corporation funds to engage solicitors to defend themselves against legal action.

### *Options suggested by consultation participants*

- ▶ Sections dealing with engagement of lawyers should include an emergency provision for the engagement of legal representation.
- ▶ Strata legislation should inform owners that, as co-payees of legal costs, they are entitled to have solicitors' costs assessed in the Supreme Court.
- ▶ Ensure that lawyers comply with S.309 of the Legal Profession Act 2004, ss.80D and 230A of the SSMA 1996 in properly explaining their proposed actions to clients.
- ▶ Clarify S.80D SSMA 1996 regarding an Executive Committee's right to raise legal costs.

## Maintenance and Repairs

A range of issues concerning the ongoing maintenance and repair of strata buildings were raised, with people concerned about inflated quotes, poor workmanship and self-interested caretakers. There were calls for more regular inspections of strata property, to ensure that problems were identified in good time. *"Kathy Trelease"* advocated the keeping of better records of building construction and repairs to inform future work. The costs of such work, and the inadequate requirements for quotes for such work, were also commented upon.

Questions about the responsibilities of owners to maintain parts of common systems, such as plumbing or electrical circuits, which they solely benefited from, were also posed. There were also worries about work being carried out in strata buildings which affected common property or other owners without the permission of the Owners Corporation.

Many correspondents expressed dissatisfaction with the standard of work that had been carried out in their building, and there were several calls for tradespeople to be required to demonstrate technical competence to gain acceptance onto lists of approved contractors and to guarantee the quality of their workmanship.

### *Options suggested by consultation participants*

#### **Inspections**

- ▶ Government should enact legislation to require regular inspections of strata property. These could be undertaken every five or seven years by properly certified or State appointed inspectors. Owners Corporations should be required to act on such reports, raising levies if the sinking fund is inadequate for their completion. A number of competitive quotes should be gained for recommended work.
- ▶ As owners have a duty of care to maintain their lots to help preserve the amenity and value of other owners' properties an annual inspection report should be obtained from their property manager and recorded in the strata book, with the Owners Corporation having the right to insist that urgent remedial work is done if it affects the rest of the strata scheme.
- ▶ Allow the CTTT to appoint building inspectors to make physical, on-site inspections of problems with the power to make speedy and readily enforceable orders for repair.

#### **Permissions**

- ▶ All work in strata buildings by tradesman and firms should require permission from the Owners Corporation. Prohibit real estate agents from arranging repairs that affect common property without permission from the Owners Corporation.
- ▶ Ensure that once repairs and maintenance have been approved by the Executive Committee or Owners Corporation, the work is carried out and completed in a timely fashion.
- ▶ Enforce mandatory technology upgrades, such as digital TV and internet cables, to strata buildings.

- ▶ Section 65A(1) should be modified to make clear that it refers to works that change or modify common property as it is defined for the scheme and not to works that simply repair, replace, renew or restore the condition of common property as it is currently defined. The following change in wording of s.65A might offer a model provision: “65A Owners corporation may make or authorise changes to common property (1) For the purpose of improving or enhancing the common property, an Owners Corporation or an owner of a lot may take any of the following action, but only if a special resolution has first been passed at a General Meeting of the Owners Corporation that specifically authorises the taking of the particular action proposed: (a) add to the common property, (b) alter or modify the common property, resulting in departure from the strata plan, currently applicable architectural drawings or other specifications (c) erect a new structure on the common property.” A new clause could read (7) The provisions of this section do not apply to works and renovations, which merely repair, renew, restore common property or replace parts of common property without changing the nature of the common property involved.”
- ▶ To prevent disputes regarding utilities, such as plumbing which may be seen as both common and private property, the legislation should include a concept and definition of “implied exclusive use”, with owners obligated to maintain equipment which they use to the exclusion of others.
- ▶ A schedule of "maintenance by-laws" should be established in the Strata Management Regulations. Responsibility for unsecured paving stones in an outdoor area of a private lot would be recorded as the responsibility of the owners, for example, while the maintenance and replacement of a timber deck in existence at the time of registration of the strata plan would be the responsibility of the Owners Corporation.

#### ***Quotes and Payments***

- ▶ Introduce a requirement for the Owners Corporation to decide the amount for which multiple quotes are required. At present, ss.80A and 80B only apply to large corporations. The amount of money involved in any one transaction may be larger in a large corporation, but the impact on individual owners can be greater in small corporations.

#### ***Standards***

- ▶ Legislation should clarify the obligations of owners and tenants when poor quality work leads to problems affecting other units or common property. No work should be carried out without obtaining a warranty from the firm involved guaranteeing good workmanship. Warranties should commence from the day the initial owners buy their property, rather than the certificate of occupation issued by the local authority. Warranties should be extended to seven years for compliant work and indefinitely for non-compliant work.
- ▶ All contractors should be specially registered with NSW Fair Trading or similar government appointed body to ensure they possess the necessary skills. Strata managers should only use contractors from that approved pool.
- ▶ Engineers should be legally liable for any woefully incorrect information or misleading advice supplied to lot owners.

## Records and Data

*"A register of strata buildings and key information should be created, with regular updates so that everyone can know more about what is (and is not) happening in those buildings." - Francesco Andreone*

The need to maintain a complete set of records was emphasised by many people, with pleas for improved access to such information where possible. Clover Moore, Lord Mayor of Sydney, noted that the initial owners of a property must provide the Owners Corporation with specific plans, specifications, certificates, diagrams, insurance policies and accounting records at the first AGM, but observed that many developers fail to produce or release such documents to owners, preferring to risk a fine for non-compliance than meet their responsibilities. She also argued that the range of documents required was too narrow and specified a range of further papers to be produced as detailed below. There were calls for the creation of strata information packs, an online NSW Fair Trading repository of information and for greater documentation regarding owners, tenants and Executive Committee members and their activities. However, "letmein" worried about the security of sensitive financial details held by Executive Committees.

### *Options suggested by consultation participants*

- ▶ Expand the range of required documentation to include the following:
  - a certificate by the principal certifying authority that the building was constructed in accordance with the development consent, all applicable Australian Standards and Building Codes, and the construction certificate;
  - a sanitary drainage diagram;
  - a ten-year sinking fund plan;
  - valuation of the replacement costs of the building;
  - a diagram of all hot and cold water pipes, isolation points and all drainage lines;
  - a diagram of all electrical and communication cabling;
  - as-built architectural plans noting all variations from the construction certificate and development consent drawings;
  - diagrams showing the location of all hydraulic, fire and lift services;
  - a schedule of equipment belonging to the Owners Corporation with maintenance manuals and other documentation provided by the supplier;
  - all maintenance contracts binding on the Owners Corporation;
  - suppliers' details and a maintenance schedule of electrical equipment and all other mechanical equipment;
  - warranties and guarantees of items belonging to the Owners Corporation;
  - an asset register of the Owners Corporation; and
  - a valuation of the replacement costs of the building addressed to the Owners Corporation and compliant with section 85 of the SSMA.
- ▶ Increase the penalties faced by developers who fail to deliver necessary documentation to owners from the current \$11,000 to a punitive sum.
- ▶ Introduce a disclosure document, registered on title, covering long-term energy saving agreements, hotel management agreements and dealings, such as easements, which are presently prohibited in the initial period even though they may benefit, rather than burden a strata scheme.

- ▶ Create a mandatory and regularly updated register of strata buildings and key information. Plans should include such matters as electrical wiring, sewer drainage lines, fire alarms and common areas and be held both by the local council and the strata scheme.
- ▶ Create an easily accessible, dedicated database for strata residents. It should be hosted by NSW Fair Trading and include all CTTT decisions. It should be searchable, list decisions in date order and explain contradictory decisions where they exist. NSW Fair Trading should also host an "open forum" enabling owners to discuss strata issues and receive support and advice. It should also publish an online "Dictionary of Commonly Used Strata Terms and Phrases" as defined in strata law.
- ▶ NSW Fair Trading should contact every current strata scheme and record the names and contact details of current members of each Executive Committee. These members could then be automatically informed via email about changes in legislation or relevant rulings from Adjudication, Tribunals or CTTT.
- ▶ S.108 should ensure that an owners' access to the strata roll and financial records is free and unimpeded on request. Alternatively, viewing fees could be waived for up to two viewings of the strata plan documentation per year. Existing third party fees should remain, with the funds paid into the Owners Corporation, rather than be retained by the strata manager.
- ▶ Owners should be required to update the strata manager with changes to the strata roll, while non-resident owners should advise the Owners Corporation of the names of tenants and the length of their lease, plus the details of the real estate agent. All owner details should be given to each member of the Executive Committee to facilitate communication.

## Seniors in Strata

Waldemar Niemotko, President of the Australian International Research Institute, called for strata reform to help seniors live independently, rather than move to retirement villages and nursing homes increasingly overburdened by Australia's ageing population. He said that many seniors had downsized their homes and invested their life savings in strata units, only to find their limited resources stretched by levies passed by younger investors seeking to increase the value of their property. He believed that many seniors felt intimidated and marginalised in decision making, particularly as they tend to be “asset rich and cash poor” and so ineligible for free Legal Aid if they wished to contest an unfair decision. They also tend to be less computer literate at a time when information is increasingly distributed online.

### *Options suggested by consultation participants*

- ▶ Offer guidance to large strata schemes on provisions necessary for older people.

## Service Contracts

*“The Owners Corporation signs contracts with the Caretaker and the Strata Managing Agent when the strata scheme begins, but owners don't necessarily have the knowledge or experience to understand the implications of these contracts. Owners should be given 18 months after the first AGM or three Executive Committee meetings to discuss and assess contracts in order to understand relevant issues before signing contracts. Schemes that commenced prior to legislative changes limiting caretaker contract periods to 10 years still have caretakers on perpetual contracts and there are many complaints from owners. The CTTT should have power to set aside such contracts if they are improvident or unconscionable.” - Clover Moore, Lord Mayor of Sydney*

In addition to the points raised by Ms Moore, there were also complaints about contracts with clauses for automatic renewal, with lift companies a particular focus of discontent. Such firms often require notice of 90 days before they automatically renew their cover, making the contracts intentionally difficult for Executive Committees to terminate. The Property Stock and Business Agent Act has long made such roll-over provisions unacceptable.

### *Options suggested by consultation participants*

- ▶ Schemes that began before legislative changes limiting caretaker contract periods to ten years still have caretakers on perpetual contracts. The CTTT should have power to set aside such contracts if they are proven improvident or unconscionable. Alternatively, render all residential strata agreements made before September 2003 null and void to force renegotiation of contracts to include a three year limitation.
- ▶ End service contracts with automatic roll over clauses. Such contracts are anti-competitive, leading to charges well above the market rate. In the event that the roll-over provision cannot be deleted, the strata or community scheme should pass a resolution following the acceptance of the agreement to terminate the agreement at the end of the contract period, with the contractor notified in writing.
- ▶ NSW Fair Trading should create guidelines for what constitutes an “unconscionable” clause in strata management contracts. A contract should be deemed unconscionable if it contains excessive fees or lacks explanations of contractor duties, performance guarantees or cancellation processes.
- ▶ Permit the agent or Executive Committee to sign contracts of no more than one year's duration, with longer contracts requiring permission of an AGM or EGM.
- ▶ Resident manager contracts should be shortened from the current maximum of 10 to no more than three years in length. Applications for a new contract should not be permitted prior to three months before the end of the current contract. However applications for new contracts should be lodged well ahead of an AGM, rather than the current minimum of 72 hours. Caretakers should not have access to proxy votes through intermediaries voting on contracts on their behalf.



## Short-Term Stays and Overcrowding

*"We have increasing population, increasing immigration and increasing housing demand which makes it a lucrative business to sublet and sell short term stays with no respect for locals." - "Teresa Kiernan"*

*"Short-term leasing of residential apartments to backpackers and other transient residents can have a negative impact on the community of a building and are likely to become more common in the future. These residents can be loud and have little stake in a building, therefore resulting in them being disrespectful of common property and other occupants." - "chris harris"*

Lord Mayor of Sydney Clover Moore acknowledged that short-term rentals in strata schemes can adversely affect residential amenity and owners' costs. She highlighted the problems of noise from ever changing residents who are always on holiday, damage to common property from frequent movement of luggage, overcrowding and increased use of common facilities and concerns about neighbourhood security.

"JOHNLEIVINGSTON" saw an inconsistency in council land use zoning (s.149 certificates) which prohibit commercial use of apartments without development consent from Sydney Council and provisions of the SSMA that by-laws which attempt to restrict an owner's right to let on a short-term basis for a "lucrative" rent are invalid. He favoured enforcing the zoning certificates and offered his own list of problem behaviours caused by short-term letting, including extra cleaning, vandalism, lewd behaviour, drinking and drug use and illegal parking. He outlined how one non-resident in his building rented five apartments under different names and then sub-let them in breach of his tenancy agreement to international visitors for a few days at exorbitant rates.

"Jocelyn Nott" highlighted problems on the northern beaches where many owners rented out their properties on a holiday or short stay basis, often advertising stays shorter than the seven days required by Warringah zoning laws. Such owners commonly fill their units with bunk beds, with two-bedroom units accommodating six or more people. Such holiday makers have no knowledge or interest in by-laws regulating their conduct, park where they please and are careless of any damage they may cause. She also objected to extra noise caused early on weekend mornings when owners returned to clean the unit in preparation for the next group of holiday makers. She complained that, when a majority of unit owners abuse their property in this way, owner-occupiers are powerless to mobilise the Executive Committee to take action.

"Emily Empire" offered another perspective, believing that short-term tenants on holiday only used the apartment to sleep in and that long-term tenants could just as troublesome, not least with parking multiple cars, and were equally likely to clean on weekends.

There were calls to limit the number of people allowed to live in units of a given size, given the extra utility costs imposed on other residents and an increasing incidence of "hotbedding". "Bill Wedderburn" agreed that most public nuisance and offensive noise incidents are caused by short-term renters, while other correspondents raised the issue of fire safety in overcrowded apartments. "Unscrupulous landlords and fly-by-night operators" were also blamed for causing major problems in the larger residential buildings of the CBD through using residential units as short-term hostel accommodation advertised on "almost every lamppost in Chinatown". "inner city resident" related how an inner city apartment block with 112 units was rife with overcrowding, unauthorised conversion of flats to crowd in more bedrooms and flagrant disregard of zoning laws due to its use as highly priced, illicit backpacker accommodation. He believed such activities left a poor impression of Australia with international visitors.

Although many newer strata buildings have caveats placed on their development approvals to limit the number of people allowed per bedroom and prohibit short-term or tourist rentals, there is currently no effective method of enforcement. It was argued that local councils have effectively required the Owners Corporation to police the Development Agreement without sanctions, while the council can only fine the Owners Corporation, rather than the owner responsible. However, while contributors such as "*plazable*" requested that residential blocks be protected from de facto conversion into backpacker hotels, others such as "*ckofsydney*" believed "lot owners should be allowed to use their lots, or change use, as they see fit, provided they don't cause any undue disturbance to other lot owners, with the approval of the Owners Corporation... if the majority of lot owners permit short-term residential letting, then it should be permitted."

### *Options suggested by consultation participants*

- ▶ Legislation which currently prevents Owners Corporations from banning short-term leases should be overturned.
- ▶ Allow the Owners Corporation to seek orders in the CTTT, rather than the Land and Environment Court to enforce compliance with Local Council zoning laws without recourse to compulsory mediation.
- ▶ Limit the number of adults allowed to stay in a unit to two per bedroom or three per bathroom/en-suite. Council rating systems should record the number of legal bedrooms and bathrooms/en-suites and calculate rates, at least in part, on that basis. Such a requirement was featured in the former Ordinance 70, but then abandoned.
- ▶ Inspections of strata units suspected of overcrowding should be carried out without warning, as scheduled inspections merely allow extra residents to vacate the property for their duration.
- ▶ Mandate by-laws to prevent investment apartments being let as very short-term holiday units. Impose a minimum rental period of at least three months.
- ▶ Executive Committees should be able to apply for sanctions against owners of properties that change lessees or sub-lessees unreasonably often. Sanctions could include cutting off utilities, issuing fines to the owner or imposing higher levies on owners.
- ▶ Prevent individuals or groups of investors changing the development approval of a residential block to enable short term or daily rental of residential units
- ▶ Compel owners and investors to supply a copy of every lease or rental agreement entered into to the Owners Corporation. The purported lease should then be authenticated by cross referencing its details with those held on the Rental Bond Board database to prevent bogus leases being used to masquerade overcrowded backpacker accommodation.
- ▶ Councils should be empowered to fine owners in breach of zoning, safety or other relevant regulations, rather than the strata scheme itself.
- ▶ Permit lot owners to offer their units for short-term accommodation with the approval of the Owners Corporation.

## Utility Metering

Questions of water and other utility metering centred on environmental concerns, cost and equity. Although the price of water has risen substantially in recent years, Sydney Water and other supply authorities calculate a strata building's total water consumption at a single point at its boundary, with few strata developments having individual meters. There were calls for individual lot water metering to encourage responsible use and ensure fairness, with payments based on use, rather than unit entitlements. The legality of strata plans charging residents for water, including GST, when they do not directly supply it was also questioned.

### *Options suggested by consultation participants*

- ▶ The SSMA should require all new strata developments to install individual water meters for each lot and separate metering for common property use. And an associated by-law should empower Sydney Water or other supply authorities to specify standards, adopt new regulations, or extend their area of responsibility to the individual lot, as with electricity providers.
- ▶ Sydney Water and other local supply authorities should develop suitable policies and regulations to assist in individual metering.
- ▶ The SSMA should provide for a standard by-law to enable Owners Corporations of existing schemes to convert to individual metering with minimal legal expenses. A special resolution should be required to pass such a by-law.
- ▶ Older strata schemes should be encouraged to convert to individual water meters within ten years where practical. Where individual metering in older buildings is not possible due to plumbing limitations, the Government should require all water utilities to print a note on SCA invoices sent to individual owners noting the average water usage per lot.
- ▶ In buildings without individual meters, all absentee owners should pay a minimum fee for the water usage of their tenants of no less than \$20.

## Windows and Health and Safety

Window security and a variety of other health and safety issues generated much debate. The right of strata plans to vote against undergoing an occupational health and safety report to save money was questioned, given that showing due diligence is the best defence against claims made under the new Work Health and Safety Act. A range of other concerns was raised, including the safety of hot water systems, stairwell lighting, insurance and asbestos. "*letmein*" discussed the plethora of security and entrance keys some strata buildings require and the problems this might cause people in the event of a fire or accident, if a resident could not gain access to part of the building to help someone in need. Problems with unduly hot water, Executive Committees refusing to sanction safety provisions, asbestos and insurance cover were also aired.

"*Candace Douglass*", representing the Children's Hospital at Westmead Working Party for the Prevention of Children Falling from Residential Buildings, recommended that landlords be obliged to install safety devices such as window guards, durable and sturdy mesh screens, locks and window opening limiters. She wanted to include these requirements in a revised Residential Tenancies Act or SSMA to protect children from harm. She noted that similar legislative changes in New York had led to a 96% reduction in hospital admissions.

### *Options suggested by consultation participants*

- ▶ Owners Corporations of large strata schemes should be compelled to arrange an annual health and safety report to protect residents and minimise insurance liabilities. The cost of remedying issues highlighted in such reports should be incorporated into the strata plan's budget.
- ▶ Owners Corporations should not prevent the fitting of security and safety measures, such as security shutters and child-safety balcony nettings allowable under By-Law 5, under normal circumstances.
- ▶ Legislation should clarify how occupational health and safety laws affect owners and members of the Executive Committee.
- ▶ Tempering devices should be compulsory to prevent injuries from scalding water. Common hot water supplies should be set no higher than 50 °c.
- ▶ As current occupational health and safety laws apply only to tradespeople working in strata buildings, additional measures should be adopted to protect residents.
- ▶ Prohibit major renovations and the removal of light fittings on property without an asbestos report.
- ▶ Improve required lighting on stairwells and other common property to meet the needs of the elderly and people with impaired sight.
- ▶ Amendments to the National Construction Code coming into force in May 2013 will require all windows in new homes and apartments more than two metres from the ground to be fitted with window locks or reinforced screens. The maintenance of these safety devices should be the responsibility of the lot owner, rather than the strata scheme.

- ▶ If the Owners Corporation has employed a contractor licensed in NSW, then the Owners Corporation should be obliged to disclose all relevant information to a third party in response to an insurance claim resulting from damage or injury caused by that work.
- ▶ The Residential Tenancies Act 2010 should be amended to require that landlords fit safety devices on windows located more than three metres above a surface below to allow occupants to restrict openings to a maximum of 100mm.

## DISPUTE RESOLUTION

### RECURRING ISSUES OF DISPUTE RESOLUTION

#### Consumer, Trader and Tenancy Tribunal (CTTT)

*"The role of the CTTT is to resolve disputes between tenants, landlords, traders and consumers in a timely and effective manner." The optimum words are "to resolve" not fob people off to seek legal advice." - "morrison"*

*"Last year the Shadow Minister for Fair Trading wrote to me that "The CTTT is a very low cost forum established to assist in rapid and inexpensive conciliation." Unfortunately, my experience with the CTTT over the past three years is the exact opposite." - "smiler12"*

*"There is no "strata" in Consumer, Trader and Tenancy - it's time there was no CTTT in strata." - "JimmyT"*

The structure, actions and future of the CTTT were a matter of heated debate. Kay Ransome, Chairperson of the CTTT, accepted as an unfortunate fact of life that disputes in strata schemes can and do occur and argued that the requirement in the present legislation for mediation of disputes is an important step in achieving equitable solutions which all parties can work with. She noted that if mediation fails to resolve a dispute, then other measures such as an adjudication or a hearing before the CTTT are available, depending upon the type of dispute. She accepted that as the adjudication process relies entirely upon written material, it can pose challenges in collating accurate and relevant material for people who are not proficient in English or have low literacy skills. The exchange of written submissions between the parties, while necessary to ensure fairness, can also take some time and therefore may result in a lengthier process.

Ms Ransome noted that some disputes are determined by the CTTT directly without first going through the adjudication process, but while this procedure may save time and reduce the need to produce evidence, it can raise issues about legal costs. She accepted that while there are rights of appeal from an adjudicator to the CTTT, the legislation imposes limits on what can be considered as part of the appeal process. She underlined that it is in the interests of all lot owners that disputes in strata and community schemes are dealt with fairly and effectively and that durable solutions are provided and saw the consultation forum as an opportunity to consider new ways of reaching resolution.

However, Clover Moore, Lord Mayor of Sydney, noted that "existing CTTT adjudicators are not necessarily experienced in strata law, and some applicants feel their case has not been properly heard or understood. Owners, occupiers and lawyers report frequent unfair or contradictory CTTT rulings."

*"plazable"* noted that the conflicting interests of owner-occupiers, renters, investment owners and owners renting out apartments for short-term stays inevitably generated complex disputes, particularly in large strata buildings, but criticised the lack of communication and transparency offered by administrators appointed by the CTTT. The non-binding nature of mediation was criticised by many contributors, while the lack of objective evidence presented saw disputes deteriorate into one person's word against another person's word.

Many people recounted long histories of festering strata problems which the CTTT had been unable to resolve. Some believed that much of the law is routinely flouted because the CTTT does not have the role of enforcing its orders. Others believed that legal professionals now dominate what was intended to be a simple and low-cost alternative to litigation. "*boganboy*" called the CTTT "a toothless tiger with no real power to address or redress significant by-law breaches after the event." At worst, the CTTT was seen as a "waste of time, money and energy and a statutory roadblock on the way to a sensible result at a District or Supreme Court." There were many calls for improved education, streamlined procedures, greater transparency, harsher penalties and stricter enforcement.

### *Options suggested by consultation participants*

#### **Education**

- ▶ Improve the training of CTTT personnel in strata issues. Improve communication between the CTTT and NSW Fair Trading regarding specific strata schemes and problems.
- ▶ Give adjudicators and tribunal members a publication similar to Alex Ilkin's "NSW Strata and Community Schemes Management and the Law" to guide them through understanding and interpreting the law.
- ▶ Upon request, offer an hour-long information session for people who are new to the system, prior to a CTTT hearing to ensure that applicants and respondents understand the relevant procedures and requirements.
- ▶ Train tribunal members to ensure procedural fairness. Improve the qualifications of adjudicators to the equivalent of magistrates and pay them accordingly to attract qualified occupants.

#### **Procedure**

- ▶ Ensure all tribunal members have all relevant documentation well in advance of a hearing. Allow parties to see each other's final submissions before their presentation to allow falsehoods to be challenged or questions answered.
- ▶ The CTTT should not accept disputed claims without investigating their veracity. Currently, the CTTT plays no regulatory or prosecuting role regarding false and misleading testimony. The CTTT should assume inquisitorial powers, rather than rely on the current adversarial system.
- ▶ Require any tribunal to contain a qualified person on the panel and reference a copy of the registered Strata Plan when considering disputes involving strata schemes. This could be achieved by setting up a structure similar to the Administrative Decisions Tribunal, which provides non-judicial experts to assist the Judge.
- ▶ Enforce the existing requirement that adjournments must be agreed by the other party before the meeting starts. Deny future applications to applicants who persistently fail to attend hearings.
- ▶ Return to the "open court" system used by the Strata Titles Commission before 1996.

- ▶ Adjudications on cases submitted in writing should only be used on minor matters or a choice left up to participants. The Owners Corporation may choose to submit in writing to save time, for example, while owners can represent themselves by turning up on the appointed day.
- ▶ End the submission of written applications to an adjudicator in favour of both parties directly presenting their case to a tribunal.
- ▶ Deal with minor and straightforward breaches, such as parking offences, with a specialised, simplified process within the CTTT.
- ▶ A panel comprising a strata lawyer or solicitor, strata manager and independent, experienced Executive Committee member should only examine whether a legal by-law has been broken, rather than the legitimacy of the by-law itself. Their verdict should be binding with the losing party in any future appeal bearing all costs.
- ▶ Limit the number of times a party to a dispute can object to the outcome of the same dispute.
- ▶ Allow interested parties to record proceedings, rather than pay large fees for a delayed transcript.
- ▶ Clarify the CTTT's willingness to act upon notices issued by single member Executive Committees.
- ▶ Ban solicitors from tribunals to reduce costs and speed up proceedings.
- ▶ Mandate legal representation for both parties to ensure due process.
- ▶ Allow legal representation only when the sums of money involved may total over a specified sum.
- ▶ Allow the CTTT to subpoena vital documents, if requested by a party to the dispute.

#### **Costs**

- ▶ Discourage frivolous litigants from unnecessarily prolonging cases and escalating costs by awarding costs against them. Allow successful appellants to claim costs incurred. Dismiss appeals against an adjudicator's decision unless a written case is made that the adjudicator erred in law.
- ▶ Reduce the \$76 cost of initial applications to remove financial impediments to justice.

#### **Transparency**

- ▶ Require the CTTT to deliver its reasoning regarding intended rulings, as per the Equity Division of the Supreme Court, to allow parties to respond before the final determination.
- ▶ Publish all rulings online, in the manner of the Australian Tax Office, to improve transparency and accountability, increase public confidence, refute allegations of bias or incompetence and provide precedents to improve predictability of outcomes.



**Enforcement**

- ▶ Dissolve Executive Committees which do not comply with CTTT orders within three months and oversee new elections.

**Ethics**

- ▶ Create an easier method to lodge complaints against CTTT members. Actively investigate suspicions of conflict of interest or nepotism within the CTTT. Remove the protection from personal liability for Registrars or Deputy Registrars to encourage responsible decision making.
- ▶ Form a strata council staffed by independent professionals to handle complaints about CTTT personnel or procedure. Monitor the actions of compulsorily appointed strata managers and administrators to prevent abuse.
- ▶ Make the CTTT accountable to an independent body. Existing legislation states that mandatory legal requirements should not be overridden at the discretion of adjudicators unless the complaint is frivolous or vexatious.
- ▶ Independently review a random selection of decisions after two years have elapsed, to encourage accountability of decision makers and uniformity of outcomes.

**Reorganisation**

- ▶ Form a division that deals with straightforward by-law and Strata Act infringement matters, such as parking, in a quick and inexpensive manner, with no legal representation allowed and with an independent adjudicator able to impose penalties.
- ▶ Create a dedicated strata ombudsman.
- ▶ Transfer all strata matters from the CTTT to a completely separate organisation, staffed by experts in strata law. This "Strata Living Tribunal" would have increased regulatory powers and be funded by a percentage of perhaps 2.5% of the CTTT budget, bolstered by a \$10 fee from every strata unit in NSW. It would use existing CTTT administrative services to reduce costs.
- ▶ Create a NSW Government Strata Department comprising all NSW Fair Trading strata operations including support, advice, mediation, adjudication and CTTT processes. Set up a new Strata Schemes Management Centre covering all of NSW, staffed by professional construction teams of supervisors and project engineers required to perform all required maintenance and replacement under the Act. Terminate all existing strata managing agents and replace them with this new authority.

## Levies and Debt Recovery

*"Levies are required for funding the expenditure of the building. Owners who pay late are taxing the other owners who pay on time. Penalties for late payment must exist, or slackness will and does occur." - "Ingrid Jackson"*

The setting of levies and the collection of debt by Owners Corporations was a much discussed topic, with a wide range of opinions expressed. There were several suggestions about how the calculation of levies could be revised, while many people wanted a "zero tolerance" policy towards unpaid levies, noting that these constituted an unfair burden on owners who did pay their levies on time and, in extreme circumstances, prevented necessary building maintenance being carried out. Alternatively, there were some requests for improved hardship relief provisions for owners who were unable to meet levies as a consequence of old age, unemployment, illness or other reasonable cause.

### *Options suggested by consultation participants*

#### **Levy Setting**

- ▶ Levies should be set on an equitable basis, rather than by unit entitlement. Owners who paid more for their unit because of improved views, for example, do not make more use of common property than those who paid a lower amount.
- ▶ Base levies on the value of the building to maintain adequate sinking funds without exploiting lot owners with inflated estimates.
- ▶ Charge non-resident owners higher levies than owner-occupiers.
- ▶ Improve processes by which inequitable, unfair or inadequate levies can be reviewed.
- ▶ Any reduction in key services to reduce levies should only be allowed by a special resolution with 75% in favour.
- ▶ Amend regulation 15(3), which demands the distribution of cost agreements to owners, to include S.230 of the SSMA to reduce the cost of collecting outstanding levies.
- ▶ The law should require the financial plans of large strata schemes to be prepared by a professional and the Owners Corporation should be compelled to set the levy in accordance with these projections. Provision for major capital expenditures should be made in good time, to prevent sudden and overwhelming special levies being imposed for predictable repairs. If Owners Corporation liabilities exceed the budget increase by CPI plus 2%, the Strata Managing Agent should be permitted to lodge an application with the CTTT for the appointment of a compulsory managing agent.
- ▶ In reference to S.78, if the Owners Corporation chooses periodic payments, then it should be required to issue owners with a copy of the AGM minutes prior to the date of the first levy payment. This will prevent owners becoming "unfinancial" without their knowledge.

- ▶ To prevent unjustly inflated levies being passed at a poorly attended meeting, every owner should receive a separate paper with the agenda for the AGM which states the anticipated levy and provides a box allowing the owner to accept or reject it. Such papers would be required to be returned to the Executive Committee and, in the event that the rejections are in the majority, those present at the meeting will have the right to determine a new levy at least 10% below the rejected amount.

### ***Recovery of Debt***

- ▶ Once an Owners Corporation has passed the budget and raised levies at the General Meeting, no defence should be admissible nor cross claim made against any action taken to recover that debt. Reasonable costs incurred in recovery should be entirely recoverable regardless of amount.
- ▶ Empower the CTTT to pursue the recovery of debt from owners and remove all such powers and responsibilities from the Executive Committee.
- ▶ Allow Executive Committees to charge tenants' rent for the debts owed by the owners of their property.
- ▶ Strata plans should have a legal duty to pursue any outstanding debt over 90 days old. Debts should not be allowed to accumulate to the point at which the owner is subjected to major confiscation of assets.
- ▶ Owners should be charged market or punitive rates of interest on outstanding debt.
- ▶ Allow Owners Corporations to take any outstanding debt or unpaid levies out of money paid for the lot in question when sold.
- ▶ Allow owners facing genuine financial hardship to apply for relief from levies, deferring part or all of the payment and allowing flexible repayment plans. An Owners Corporation or Executive Committee ought to be able to defer the whole or any part of the levies for a reasonable period and conditions as it thinks fit, or approve a flexible payment plan, in terms similar to s.601(2) of the Local Government Act 1993 (NSW). Accrued interest on debts should also be waived in certain circumstances. Allow owner occupiers to write off levies, repairs and maintenance costs against tax in the same way as absentee investors.
- ▶ Introduce a right for an owner in financial hardship to apply to the CTTT to arrange a payment structure to address a strata debt. Introduce a right for an owner to apply to the CTTT for a stay of enforcement action pending the hearing of an application for hardship relief by the CTTT.

## OTHER ISSUES OF DISPUTE RESOLUTION

### Compulsory Agents

The accountability and powers of compulsory strata managers appointed by the CTTT was questioned by several correspondents. "*Fernanda19*" argued that the CTTT should specify the duration of any order for a compulsory strata manager, itemise the work which should be carried out under this direction and ensure that at least two competitive quotes were gained for each item.

#### *Options suggested by consultation participants*

- ▶ A compulsory strata manager should not have the authority to borrow money from financial institutions on behalf of the Owners Corporation without the consent of lot owners.
- ▶ The compulsory strata manager should not raise excessive and unreasonable levies without the consent of lot owners.
- ▶ If a compulsory strata manager resigns or is dismissed, the CTTT should appoint a new manager from a different company.
- ▶ Allow a single owner to lodge a complaint against a managing agent, without the support of a strata Executive Committee.
- ▶ Allow the dismissal of an agent or re-election of an Executive Committee, rather than always appoint a compulsory agent under s.162.
- ▶ A compulsory strata manager should claim from an insurance policy to cover any damage to property or loss of rent before raising money from the lot owners.
- ▶ Compel the CTTT to specify the duration of any appointment and the work to be carried out.

## NSW Fair Trading

*"Fair-trading should have tougher laws to clamp down on incompetent, corrupt, unproductive Strata managers." - "citizen1"*

*"The Fair Trading Dept. should have all and any functions dealing with strata matters taken completely out of its/their hands. The procedures provided for are useless. The Dept. appears to have no ability to make any investigation of its own motion, or following a reasonably based request." - "David7783"*

The Commissioner for Fair Trading, Mr Rod Stowe, discussed NSW Fair Trading's role in providing advice and information and invited suggestions regarding how such provisions could be expanded and improved. He underlined the importance of ensuring compliance with the law and suggested that a shorter list of key offences would make better use of his department's limited resources, given that there are almost 70 offences in the current laws, many of which incur maximum penalties of only \$110 or \$220.

The organisation takes over 30,000 calls and receives hundreds of letters each year from people seeking information and advice. He predicted that, with many more schemes envisioned in coming years, the demand for such services will inevitably continue to grow. He revealed that *"Strata Living"* is one of Fair Trading's most popular publications and that a wide range of other information was also available on its website, while the educational seminars it conducts across NSW are also well attended and well received.

Mr Stove noted that people who buy into a scheme for the first time or those newly elected to an Executive Committee have particular information needs. He believed that producing an 'easy to read' brochure highlighting key issues to all new owners and committee members was an option the department was willing to consider. He highlighted the recent introduction of *"The Letterbox"*, a regular email newsletter sent to interested persons on the NSW tenancy laws focusing on a particular topic and answering questions sent in by readers, and believed it may be another way NSW Fair Trading can spread the message and help lift awareness and understanding of the strata laws. In closing, he suggested that innovative and practical remedies, beyond court action and fines, may be worth exploring.

*"Strataspheric"* advocated the creation of a YouTube channel for information videos covering renting a flat, signing a lease, repairs, acceptable behaviour and by-laws for residents, with further films for committee members covering meeting etiquette, accounting, mediation and dealing with other bodies. He also asked the department to maintain a website presenting sample documents of a typical 10 lot scheme with levy notices, annual accounts, motions and sample letters. There were other requests for the department to produce a wider range of educational materials and best practice guides, although one correspondent thought its powers regarding strata affairs should be vested in a new organisation.

### *Options suggested by consultation participants*

- ▶ Concentrate efforts on giving the public written advice on simple points of strata law to combat widespread public ignorance.
- ▶ Produce and distribute a "Best Practice Guide" or "Operating Guidelines for Executive Committees Manual" similar to the publication produced by the NSW Charities Administration.

- ▶ Review and if necessary revise the NSW Fair Trading *Strata Living* booklet to ensure it is legally sound and consistent with the relevant Acts. Require that the *Strata Living* booklet be given to all purchasers of strata units by strata managers along with the s109 certificate. Devise and implement a TV ad campaign to raise awareness of the nature of strata living and access to the *Strata Living* booklet.
- ▶ Create a YouTube channel with instructional videos for tenants and committee members covering vital issues.
- ▶ Maintain a website offering examples of sample documents.
- ▶ Promulgate a “Code of Conduct” for Executive Committees, owners and strata managers. It would have guideline status, and might be modelled on codes used in the NSW Public Service.
- ▶ Solicit feedback from customers on the usefulness of NSW Fair Trading advice.
- ▶ Publish all NSW strata law case judgments on the NSW Fair Trading website to offer “poor man's legal advice”.
- ▶ Require all schemes to furnish NSW Fair Trading with an annual strata management form, similar to a tax return, for review, advice and further action if necessary.
- ▶ An officer of NSW Fair Trading should be allowed, at their discretion, to observe a strata meeting at the request of a concerned unit owner.
- ▶ Coordinate with other bodies such as Land and Property Information NSW to develop a “whole of government approach”. This would aim to stop people with problems being shuffled from department to department without anyone taking responsibility for handling their problem or complaint.
- ▶ Establish an alternative Director General or department to investigate allegations of misconduct by Executive Committees and provide a more effective dispute resolution service.

## Harmony

*"Most of these issues relate to facilitating long term harmonious living in strata schemes. The issues are often compounded as the schemes become larger. The harmony issue needs to be addressed because otherwise it won't be a case of "build it and they will come". If people do not want to live in strata schemes, because the dispute resolution process cannot be addressed, then this could have a catastrophic effect on the real estate market with hundreds of units vacant because no-one wants to live there. There are some strata schemes, at this very time, which could be considered dysfunctional because harmony/control issues cannot be effectively resolved. Apart from good governance legislation, what is also needed is a focus on how to make the strata scheme a well-run community living environment for all those who live there." - "Strataman"*

*"Harmony in strata schemes, difficult to achieve, should nevertheless be the goal of the legislators and executive committees." - "Phillippa Russell"*

*"Strata Living is not about accepting the will of the majority it is about living co-operatively within the framework of the Strata Schemes Management Act and being reasonable in the application of the limited autonomy the Act gives Owners." - "Sam Helprin"*

Several people considered ways to improve harmony in strata plans with the aim of reducing disputes and recourse to mediation or other methods of resolution. The creation of "peace councils" was offered as a possible approach. Others believed that such attempts were futile, given the self-interest and unethical approach of some individuals, and that any supposition of good will was a fool's errand.

### *Options suggested by consultation participants*

- ▶ Limit self-management of large strata plans, with most functions turned over to independent and regulated professionals.
- ▶ Encourage strata plans to appoint a liaison officer to welcome new owners and tenants and advise on security, by-laws, parking, rubbish and other "house rules".
- ▶ Encourage Executive Committees to form small sub-committees or task groups to care for the garden or grounds or undertake other small, community building tasks to improve amenity and encourage community spirit.

## Mediation

*"A safety net for dispute resolution, such as Fair Trading/CTTT will continue to be required. There does need to be an independent umpire when "dictator syndrome" has set in at Executive Committee level." - "Stratalink05"*

*"Mediation is a chocolate wheel where the minority who contravene the Act appear to be favoured above those owners who wish to have their home, quality of life and investment protected. The costs involved in an OC pursuing the matter through lawyers is huge." - "thyme"*

There was widespread dissatisfaction with the current mediation process, with many comments examining the issue in the context of the CTTT, as covered previously in this report. Complaints included undue bureaucracy in arranging mediation, the failure of parties to attend mediation sessions and the lack of sanctions for those with no interest in finding a mutually satisfactory resolution. Colin Grace argued that mediation should be optional, rather than mandatory, not least because the Executive Committee has no power to overturn a general resolution decision if that is the case in point.

The Commissioner for Fair Trading Rod Stowe argued that, as the main regulator, NSW Fair Trading plays an important role in the management of strata and community schemes. He noted that 70% of cases handled in mediation are resolved and wondered if opening up the service to a wider range of matters might solve even more disputes. He suggested adopting the Community Justice Centre model of a free service to encourage more people to seek mediation.

Other respondents offered a comprehensive range of other suggestions to improve the mediation process and ensure it delivered results.

### *Options suggested by consultation participants*

- ▶ Before mediation requests go to NSW Fair Trading, a voluntary sub-committee should be formed without members of the Executive Committee within the strata scheme to review the case and propose solutions.
- ▶ Ensure that Executive Committees respond promptly to requests for mediation. Failure to respond should be held against them in future proceedings. An Executive Committee which habitually refuses mediation should take an approved course regarding their strata obligations. Any Executive Committee refusing to attend mediation should be required to submit documentation explaining their refusal to participate.
- ▶ Make it mandatory for a defendant to respond to a mediation request.
- ▶ Retain compulsory mediation, but compel at least one positive result. Mediation is currently regarded as successful if the dispute goes no further, rather than it being satisfactorily resolved.
- ▶ Ensure participants adhere to a strict Code of Conduct reinforced by CTTT and the mediator. Force parties to attend fortnightly mediation sessions until the problem is resolved, as in Western Australia.



- ▶ End compulsory mediation. Allow the mediation process to be skipped entirely on the discretion of the CTTT. Once correspondence has been exchanged between parties, allow either party to refuse mediation, but record this action for future reference. The Owners Corporation should be compelled to accept or decline mediation within a reasonable time frame, e.g. 14 days.
- ▶ Reject applications for mediation when the Owners Corporation has resolved the matter at a General Meeting and advise the applicant to seek an order instead.
- ▶ Train a new group of "Field Officers" with experience of building or management problems to act as a mediation "emergency service". People are more comfortable in their own surroundings and more likely to compromise in the presence of an outside authority. Alternatively, make an independent strata manager with accredited mediation skills available to assist residents in dispute for an hourly fee.
- ▶ Enforce successful mediation agreements with a financial penalty with unsuccessful mediation leading to a tribunal hearing without recourse to an adjudicator.
- ▶ Costs and fees for mediation or adjudication should be awarded against the proven transgressor.
- ▶ Create an independent strata schemes commissioner's office with experienced mediators, coupled with ongoing industry consultation to review management and legislative issues.

## URBAN RENEWAL

### Developers

*"Better building and planning of communities is desperately required, not just developers who throw up these cheap options and charge a fortune for badly designed and built buildings. These sorts of environments of living in close quarters causes a lot of stress and unhappiness as they are badly planned and poorly built and councils allow them as they just see more revenue coming their way, rather than thinking about the living impacts." - "nmcgregor"*

*"The wishes of property developers and real estate professionals should be third and fourth order concerns in any changes. These laws should be primarily about people's homes and their right to privacy, amenity and well-maintained residential environments." - "OC\_Secretary"*

The actions, responsibilities and shortcomings of property developers generated a spirited debate. There were many concerns raised about the planning of new and mixed developments, hidden costs imposed on residential owners and undue control exercised directly or indirectly by developers over strata schemes.

There were several complaints that developers increase the density of developments by degrees once an initial plan has been agreed. Such increases can be presented as small increments from the last increase, rather than major deviations from the initial plan, and common facilities are seldom bolstered to deal with the extra numbers of people involved. Developers were also accused of skimping on modern security provisions.

There was also criticism of developers using residential strata buildings in mixed developments to subsidise their continuing expansion of commercial and retail space or understating initial sinking fund levies and utility, maintenance and insurance costs to encourage owners to buy units under false pretences.

Other people criticised the practice of developers appointing strata managers to look after their own interests, rather than those of the new owners, and there were calls for developers' powers and voting rights to be reduced. The activities of "ruthless developers" who bought units in targeted buildings, dominated the committee, ran down services and forced out existing owners until the strata could be redeveloped for a handsome profit, were condemned.

Issues of developers using common property to advertise their services, buying political influence over planning decisions through party donations or dominating supposedly independent bodies which regulated their conduct were also raised.

"Alan D" spoke for many in demanding that developers improve the handover process and handle resident and community problems with greater fairness, promptness and efficiency.

### *Options suggested by consultation participants*

#### **Planning**

- ▶ Past deeds or agreements with negative covenants on the sale and transfer of land and strata development contracts should be submitted to Land and Property Information NSW for all staged development of shared facilities, whether current buildings exist on those adjacent lots or not.
- ▶ Initial sub-division plans should be submitted to Land and Property Information NSW before the commencement of residential development and finalized when the building is complete. Developers' Deposit Plans for shared facilities must include plans for the sub-division of lots, clearly identifying the stages of development to include the bulk, mass scale and size of the development.
- ▶ The number of residences within a development should not be increased except in exceptional circumstances. In such circumstances, the provision of common recreation facilities and car parking should be increased by the same ratio.
- ▶ Developers should address security issues by providing electronic vehicle and personal entry systems and video surveillance as a matter of routine.

#### **Costs**

- ▶ Developers should be required to obtain a realistic and independent sinking fund assessment and valuation for new schemes and attach these documents to the contract for sale. The developer should be prohibited from collecting levies from residential strata unless there is compliance with proper accounting standards.
- ▶ Developers should be required to have insurance cover for at least five years in any size of development to reimburse owners for problems which emerge in buildings over three storeys high.
- ▶ Devise a statutory formula for shared costs to prohibit residential strata subsidising commercial and retail stratum lots. The developer must advise owners of any intention to further develop the site when they sell apartments off the plan and at the First Annual General Meeting of the Owners Corporation.
- ▶ The developer's arrangements for the maintenance of the shared facility should not be subsidised by residential unit owners. The power of the Owners Corporation should be directly proportional to the financial contributions they make to the shared facility where multiple lots are owned by developers. If allocations within a Strata Management Statement are made based on floor space then so must the voting rights of the Owners Corporation.
- ▶ Legislation should prevent developers writing into the management statement any stipulation that the owners have the responsibility to maintain such utilities as water and electricity.

### ***Management and Control***

- ▶ Developers should be prohibited from appointing building or strata managers on contracts of more than one year. Developers should be compelled to provide full disclosure of any relationship with any service providers before strata owners ratify any agreement. Failure to disclose relevant facts or the discovery of any benefits to the developer should result in the agreement being declared void and allow for claims of damages. These remedies should be available alongside the existing rights in s.113 of the SSMA 1996.
- ▶ Introduce legislative prohibition against oppression of the minority, undue influence, unconscionable conduct and misuse of power by the developer and other majority strata owner groups. Legislation should prevent developers from exercising their influence, directly or by proxy, in the running of residential buildings beyond the first AGM.
- ▶ The community management statement should not contain provisions that give the developer any rights to the use and enjoyment of the common property after the property has passed into the control of the community association.
- ▶ Voting on the acceptance of the Strata Management Statement should occur at the first AGM of owners.
- ▶ Independent of the stock of apartments which remain unsold and which the developer retains, the developer's voting rights within the Owners Corporation should be no more than 20% at the inaugural AGM and abolished after the first year.
- ▶ The power of an Owners Corporation should not be limited to the operations and management of common property, but should extend to protect the interests of owners against developers.
- ▶ The Strata Management Statement should be contestable through dispute resolution in the CTTT, the Supreme Court, the Court of Appeal and in the High Court.
- ▶ The current provision for reducing the votes a developer can exercise after the initial period until the developer's unit entitlement falls below 50% is misleading. It should be abandoned in favour of permanently limiting the developer's vote.

### ***Other Issues***

- ▶ Developers should not be allowed to use common property to advertise their trading and commercial activities.
- ▶ Developers should be banned from making any political donations.
- ▶ The SCA should be an independent body, rather than reliant on relationships with developers, property councils and urban taskforce groups.

## Population Density

*"High density housing is vital to addressing sustainable population growth while protecting our environment. To ensure apartment living remains an attractive choice in the future, the law needs to keep pace with changes to apartment living and the needs and expectations of owners and residents." - Lord Mayor of Sydney Clover Moore*

*"Cities have to change and grow to remain vital, but if current residents work against change then they are making it more and more difficult for their kids and their grandkids to find somewhere to live." - Chris Johnson*

The Metropolitan Plan for Sydney envisions an extra 539,000 homes on existing sites in Sydney over the next twenty four years. Changes in the law to encourage the termination of existing strata schemes to allow such redevelopment were urged by several building industry representatives. Stephen Albin, head of the Urban Development Institute of Australia, an industry group representing building companies and dedicated to promoting urban development, identified current strata legislation as "the most significant hurdle to the urban renewal of our major population centres".

He urged the replacement of ageing buildings which "often do not comply with safety codes, are environmentally unsustainable, fail to offer amenity and contribute to urban blight" and argued that "the cost of rectifying poorly-maintained buildings is not viable in many cases, and approaches that of redeveloping the land." He criticised current strata policy for requiring a Supreme Court order or all residents to agree to dissolve the strata scheme and sell the site for redevelopment and believed the law "effectively sterilises sites in strategically important locations, such as transport hubs, from providing buildings that meet modern design and safety standards and allow far more efficient urban outcomes." He urged changes in the law to allow the dissolution of new strata schemes by a majority vote, with existing strata schemes being allowed to opt in to such new legislation.

"mark m" agreed that many older buildings were poorly suited to modern requirements and in dire need of redevelopment. Apartments were no longer a "stepping stone into a home", but had become a permanent solution for many. However, some were skeptical of the underlying assumption that increased population density in Sydney was either possible or desirable, believing that decentralisation and the expansion of other cities was preferable to further metropolitan growth. Fears were raised that developers would buy blocks of houses and build strata blocks with ten times the current population density, placing enormous strain on local infrastructure. The adverse effects of medium density housing developments were also highlighted, with noise being a particular issue. Other contributors believed that older buildings were actually built to a more robust standard than many modern ones and offered particular advantages with respect to noise insulation.

### *Options suggested by consultation participants*

- ▶ Compel developers to purchase three blocks of land if they wish to develop two to ensure a reasonable space between residential blocks.
- ▶ Allow more detached flats to be built in backyards, doubling the number of families on each block of land.

## Termination of Strata Schemes

*"Providing that the building is maintained, I disagree with strata schemes termination for old buildings unless 100% of the owners vote in favour. A lot of owners of old buildings reside in the units and don't have the units as investment." - "Maria Silva"*

*"This is becoming a very difficult problem with ageing buildings with the debate on urban renewal being discussed in many quarters. I am not convinced that any government has the fortitude to alter the 100% requirement to de-register a strata plan." - "Richard Holloway"*

Chris Johnson, Chief Executive Officer of the Urban Taskforce, an industry organisation representing property development interests, favoured changing the law to make it easier to terminate strata schemes and redevelop sites. He noted that many people preferred a smaller house or apartment closer to the CBD to a larger house on the fringes of the city. He urged the redevelopment of flats built in the 1960s and 1970s and suggested a 75% vote of owners should be sufficient to sell off the scheme, with owners receiving recompense based on the size of their unit. Other contributors agreed that inner city redevelopment would ease urban sprawl and transport problems, as well as improving safety and environmental standards. Other comments noted that Corporations Law does not allow a small minority of shareholders to obstruct a takeover favoured by the overwhelming majority, while at the same time it protects their rights by ensuring they are compensated on similar terms to those who initially accepted the takeover bid.

*"mark m"* argued that reducing the termination voting requirement to 80% would prevent an overwhelming majority of owners being frustrated and allow fresh development to increase social amenity, housing choice and make best use of scarce land resources. *"merylyn offord"* offered his own experience of an ageing strata building in urgent need of repairs which the owners could not afford. He noted the legal provision to force owners to pay for necessary maintenance when the majority agree and believed this should be expanded to allow the Owners Corporation to sell the whole building in such circumstances.

However, *"rx"* raised some further objections, noting that as resident and non-resident owners pay different amounts of capital gains tax they had different incentives to wind up or maintain an existing scheme. There were also questions asked of the availability or otherwise of replacement accommodation in the same area for people forced out of strata schemes by a majority vote to dissolve it. Such people might have lived in a building for decades, be old or infirm and be ill placed to change their living arrangements. He also expressed fears that developers would be encouraged by new voting rules to buy up units in a building merely to pass a majority vote to dissolve it against the wishes of the other owners. He noted that meetings to vote on dissolution could be manipulated by an Executive Committee or other interests to discourage the participation of dissenting owners through targeted scheduling or lax notification. He also raised concerns about "thuggery" and intimidation to force reluctant residents to vote in a particular way and wondered if extra compensation, perhaps another 50% over market value, should be offered as compensation, although this would obviously encourage everyone to become a "swing voter". He also observed that such a relaxation in the rules would convert a strata plan into little more than a long-term leasehold with an uncertain expiry date. Some believed it fundamentally unjust for owners of strata lots to be "kicked out" of their homes against their will and said any changes in legislation should only apply to new strata schemes.

### *Options suggested by consultation participants*

- ▶ Allow all newly-created strata schemes to be dissolved by a majority vote with a threshold (perhaps 75% or 80%) that represents the collective will of the owners. Existing schemes should be allowed to “opt in” to these new laws, via a majority vote of strata owners. Protections for dissenters should ensure the dissolution process is carried to the letter and that there are rights of appeal to an independent authority regarding issues such as fair and reasonable compensation.
- ▶ Vary the majority required to dissolve an existing strata plan on a sliding scale dependent on the age of the building. If the common asset is less than 20 years old then 100% agreement should still be required, with the required minimum majority dropping by 10% with every decade e.g. Between 20 and 30 years old - 90% agreement, 30 - 40 years - 80% agreement, 40 - 50 years - 70% agreement, 50 - 60 years - 60% agreement and 50% agreement for any building over 60 years old.
- ▶ Vary compensation payable to owners upon dissolution to account for modifications and improvements made to lots.
- ▶ Offer extra compensation to owners who oppose dissolution if defeated by the majority vote.

## STREAMLINING ADMINISTRATION

### Plain English Wording

*"Having tackled the Planning System Review's 230 questions, it would certainly help to be written in user friendly English." - "sparrowyarrow"*

*"Strata Legislation and Regulations are now at a point of such complexity that the average individual struggles to understand, comply with, and implement the letter and often the spirit of the Legislation, resulting in community-wide dissatisfaction and avoidable angst." - "Stratalink05"*

*"The strata laws are so unnecessarily complex and long that strata lawyers make a good living off it and some even write textbooks. You could cut half of the laws out overnight and most would not even notice they were gone." - "Mr Strata"*

*"Any new legislation should be in plain English and easily understood. It should reduce the need for legal advice on common matters not increase it." - "OC\_Secretary"*

*"Considering the Strata Schemes Management Act provides direction and governance over how people behave and what people do in their own home, there is definite need to keep language of the Act straight forward and easy to understand." - "RayD"*

There were many calls for strata law, financial data and all other relevant documentation to be written in more accessible English, especially for the benefit of new citizens from non-English speaking countries. People argued that archaic or overly complex language served only to benefit the lawyers employed to decipher it and increased the chance that confused owners or residents would fail to understand its meaning or implications. "*helpless of manly*", for instance, called for documentation from the LPI service to be rewritten "so that property owners without a law degree can understand it".

"*CommunityTitle*" complained that many management statements are written in such obscure or ambiguous terms that the by-laws they contain may be illegal or unable to be enforced in law. He complained that such statements are registered by Land and Property Information NSW without any check of their legality. "*Brent Madden*" observed that strata law was so convoluted and opaque that even the CTTT and NSW Fair Trading seemed unsure about many of its provisions and so were unable to give the public clear information or advice. There were complaints that legal documents were intentionally obfuscated to suit the pockets of lawyers and the plans of the unscrupulous. "*anon*" called for the translation of major strata documents into "key" community languages other than English.

#### *Options suggested by consultation participants*

- ▶ Rewrite strata legislation in clear and unambiguous language.
- ▶ Ensure that strata plan, CTTT, NSW Fair Trading and LPI documentation is written clearly and concisely.
- ▶ Test all language against a "Fog Index" to ensure clarity.
- ▶ Rewrite the Strata Living Code in simplified "layman's language" with the needs of the average Australian and new citizens in mind.



## Consolidation of Legislation

*"In my view, the development and management of schemes go hand in hand. Uniting the two main agencies into the one arm of government is an important step which should have many long term benefits. It means that all of the issues can be put on the table for consideration at the same time. The end result should be laws which are clear, consistent and cohesive. The problems that cause most disputes in strata and community schemes are fairly easy to identify...The hard part is finding answers that are balanced, innovative and practical. There are no easy solutions. If there was they would have been implemented a long time ago.*

*One area that needs more attention is the amount of red tape, particularly for smaller buildings and those that run their scheme without the services of a professional managing agent. Many thousands of people across NSW give up their time to sit on executive committees or become office bearers for their scheme. This is often a thankless task and some schemes have increasing difficulty in finding enough people willing to volunteer for these roles. The last thing they need are prescriptive rules and procedures to follow without any real reason or purpose. Cutting red tape would not only save costs for schemes, it would also remove the source of many nitpicking, technical disputes that arise when someone has simply forgotten to dot the i's and cross the t's."* –

**Michael Coutts-Trotter, Director-General of the Department of Finance and Services**

*"The current laws are a dog's breakfast with bits tacked on here and there to address the perceived issue of the day. You could knock out half the laws overnight and I bet most people wouldn't even notice they were gone. The drafters should go back to a plain canvas and start again from scratch." - "Mr Strata"*

There were several calls for the consolidation of existing legislation to reduce duplication and ambiguity and simplify the citing of relevant clauses. "A.Shareholder" called for the conversion of company title schemes into strata title, for example, arguing that company title was outmoded, undemocratic and acted against the interests of its members. Other comments called for the standardisation of strata law across the whole of Australia to reduce barriers to the free flow of services and help State Governments provide the public with comprehensive, well-drafted legislation accompanied by extensive supporting educational material.

"Mr Strata" noted that while the insurance provisions in the original 1961 Act contained three sections - covering the duty to insure the whole building, the interest of mortgage holders and the application of proceeds in the event of destruction - New South Wales now had twenty. He argued this served only to "complicate the very simple proposition that the whole building must be insured for the collective good for no discernible benefit. Indeed by trying too hard, for example in Queensland by allowing for adjustments of premium contributions for different use, the reforms promote disputation."

### *Options suggested by consultation participants*

- ▶ Standardise strata law on a federal basis.
- ▶ Consolidate the 10 Acts and other pieces of legislation relating to the establishment of strata schemes into a single Strata Schemes Establishment Act. This Act would assume the functions of the SSMA 1996, Strata Schemes Management Regulation 2010, Strata Schemes (Freehold Development) Act 1973, Strata Schemes (Freehold Development) Regulation 2007, Strata Schemes (Leasehold Development) Act 1986, Strata Schemes (Leasehold Development) Regulation 2007, Community Land Management Act 1989, Community Land Management Regulation 2007, Community Land Development Act 1989 and the Community Land Development Regulation 2007.
- ▶ Use a global set of definitions in a revised SSMA, rather than definitions local to each part.
- ▶ Move schedules 2 and 3, covering the rules concerning Executive Committees and General Meetings, to the main body of the Strata Act. Reserve such schedules for the recording of information of peripheral relevance, rather than issues of core concern.
- ▶ Merge legislation relating to strata and community title to ensure consistency.
- ▶ Convert company title to strata title to simplify legislation and safeguard the rights of owners.

## CONCLUSIONS

The consultation was designed to foster participation from the wider community in the discussion of the future direction of strata laws in New South Wales. The range and variety of views expressed, as well as participation statistics, indicate it was highly successful. 9% of people who visited the site, or every eleventh visitor, posted a comment. This is well beyond the average level of online participation.

The calls for urgent strata reform dominated the debate. Contributors spoke of their personal experience, however, notwithstanding the contentious nature of the issues raised, the discussion was largely civil. As was observed by one user, *“It actually looks like the collective knowledge is growing towards a better outcome for society.”*

One of the highlights of the consultation was the organic conversation between participants, enabled by Open Forum’s email alert functionality, e.g. the ability to request an email if someone replied to your comment. This encouraged the refinement of statements, saw participants further develop solutions or elaborate on the issues, and overall created a strong sense of community engagement. In some cases, comments were community policed, with participants calling order to statements, agreeing with or defending their fellow commentators. Future consultations could have an authorised panel of experts who are responsible for responding to questions or issues raised by participants. This would further strengthen the ability for quality debate.

It is critical for those who participated to see outcomes of the consultation, large or small. Many felt that they have been unheard by the Government when voicing their concerns around strata issues in the past. While the support of the consultation from the Government aided its success, the separation of the department from running the process was of considerable value to the general public who were to some extent disillusioned due to previous experiences.

A number of conclusions can be drawn from the structure and operation of the project, in addition to the points gathered from the content it generated, with lessons to be learnt to further improve the process in the future.

- ▶ ***Optimising Ease of Access while Maintaining Security***  
The registration process protected the consultation from “spam bots” without dissuading genuinely interested members of the public from recording their views.
- ▶ ***Moderation of Comments***  
All comments were moderated in accordance with Open Forum’s Moderation Guidelines to ensure the integrity of the website’s content and prevent any breaches of privacy. Comments were not moderated for criticism of the Government and other participants, of which there were few, to ensure freedom of speech and encourage debate. In many instances, there was overwhelming support for the consultation and the process involved.
- ▶ ***Ongoing Engagement of Expert Bloggers***  
The involvement of the key stakeholders was invaluable in providing context for the debate and clarification of issues and options. The blogs featured during the consultation played a key role in stimulating participation and ensuring continued flow of ideas.

- ▶ **Original and Individual Responses**  
Virtually all comments were made in consideration of the questions posed or in response to the debate raised in their wake.
- ▶ **Accountability and Trust**  
Citizens with concerns about the transparency of the process were able to air their criticisms in the consultation. Allowing such comments to remain on display was vital to building the trust of the online community and fostered increased participation. Challenges and questions regarding the process were answered in a timely fashion by Open Forum's editor Ms Helen Hull.
- ▶ **Independence and Transparency**  
By engaging an independent, third party host to facilitate and moderate the consultation, the NSW Government demonstrated the open nature of the debate and displayed a degree of independence that might not have been possible were it handled "in house" within a government department or agency or on a "nsw.gov.au" site.
- ▶ **Privacy and Risk**  
Open Forum treats all its registered users' details as private and will not supply them to government or any other party except where required by law. This policy encourages free debate. The risk management strategy was remarkably successful, given the contentious nature of the debate. Apart from a few duplicates, none of the comments were removed and no users were blocked.
- ▶ **Terms of Debate**  
The four key consultation questions were open-ended in the attempt to facilitate a wide ranging discussion. Feedback from participants show that the questions overlapped too much. However, in reality, the precise wording of the questions was largely irrelevant to most posters, who either expressed long-held opinions or responded to other posters in threads which quickly ranged across a wide range of issues and the interests of particular interest groups. Human nature dictates that the first question will always receive the largest number of comments. Limiting the number of consultation questions to three and keeping them broad and general in scope could be more beneficial in future consultations.
- ▶ **Reporting**  
Due to the strictly qualitative nature of the data collected, it is impossible to report on the exact level of community support for each option identified. The role of an online consultation complements, rather than replaces, statistically significant, demographically controlled opinion polling regarding a check list of issues.
- ▶ **Timing**  
The consultation benefited from prominent promotional support from official sources and GAP's own extensive campaign, and even the timing of its launch did not significantly affect participation numbers, which were remarkably high for the Christmas period. It can be reasonably assumed that participation and contribution would have been much higher if the consultation was run over a similar period of time at another point in the year.

► **Future consultation opportunities**

Many participants expressed interest in staying connected and informed about the progress of strata reform and consultation outcomes. Many would welcome the opportunity to become involved in future government consultations, including any discussion groups or working parties which might be established to move to the next stage in the review of strata and community titles legislation. GAP believes that a supplementary consultation on strata reform is necessary, focusing on strata professionals, including strata managers and operators, as well strata lawyers and academics, which would ensure that all parties involved in the process have had their say.

Overall, the Strata Laws Online Consultation was another successful chapter in engaging the Australian public in consultation with government. In addition to providing individual points of view, this method of collecting public opinion allowed interested parties from different backgrounds to hold a conversation with one another and at the same time be heard by government.

In conclusion, below is a testimonial from one of the consultation's most active participants, quoted with his permission:

*"I would like to thank the people and the organisation behind Open Forum for the excellent technology behind it and the smooth way that it ran. The ability to either comment on the forum or contact people directly was excellent. I contacted and helped a number of people with practical advice and I am sure it will be of benefit to them. The response has been extraordinary and hopefully the government will grab the bull by the tail as the issues raised are of great importance.*

*Thanks again to all your staff,  
**Jacob Grossbard, aka 'Strataspheric'**"*

## CONTACTS

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# APPENDICES

## LIST OF FEATURED BLOGGERS

**Stephen Albin** is head of UDIA NSW, an industry group dedicated to promoting urban development and housing affordability in NSW. Stephen is an economist and policy-maker with more than fifteen years' experience working in property and tourism industry associations. He began his career with the Australian Government and has worked as Deputy CEO of the Tourism Task Force, National Policy Manager for the Tourism Council of Australia, and a Director of the Banking and Property Group at Macquarie Bank. Stephen has a Master of Public Policy and a Bachelor of Administration, both specialising in economics.

- ▶ ***Unlocking land for urban renewal*** - by Stephen Albin;  
<http://openforum.com.au/content/unlocking-land-urban-renewal>

**Francesco Andreone** has been a lawyer for twenty five years specialising in high-density real estate. He created and ran Andreones Lawyers, Australia's leading strata law firm for ten years, employing and training over 130 people. He has helped thousands of clients, consulted to Government on strata matters and has been responsible for changing strata laws several dozen times. Over that time he has also been a leader of industry associations involving lawyers, managers, owners and other stakeholders. These days Francesco is helping clients in his private consultancy work at The Strata Experts, is an Adjunct Associate Professor at UNSW in their Faculty of the Built Environment assisting the City Futures Research Centre and is managing Griffith University's research project "Strata Title in a World of Climate Change". He is also blogging and tweeting about strata title issues.

- ▶ ***Turn your strata thinking forwards before making changes*** - by Francesco Andreone;  
<http://www.openforum.com.au/content/turn-your-strata-thinking-forwards-making-changes>
- ▶ ***Not seeing the (strata) woods for the trees*** - by Francesco Andreone;  
<http://openforum.com.au/content/not-seeing-strata-wood-trees>

**Michael Coutts-Trotter** was appointed Director-General of the Department of Finance and Services on 4 April 2011. He was the Director-General of the NSW Department of Education and Training for four years and before that Director-General of the NSW Department of Commerce for two and a half years. He worked as the Chief of Staff to the NSW Treasurer for seven years.

- ▶ ***Strata law reform: there's no easy fix*** - by Michael Coutts-Trotter ;  
<http://www.openforum.com.au/content/strata-law-reform-theres-no-easy-fix>

**Natalie Fitzgerald** is a Senior Strata Manager at McCormacks Strata Management where she is responsible for the management of large and complex strata schemes in Sydney's CBD and Lower North Shore. With her career in strata spanning over eleven years Natalie is an advocate of consumer rights and involvement within the strata sector. In 2011 she was awarded the ISTM (now SCA (NSW)) Schindler Strata Industry Awards for Excellence – Young Strata Manager of the Year.

- ▶ **Noticeboard Not Enough – Keeping Owners Informed** - by Natalie Fitzgerald;  
<http://www.openforum.com.au/content/noticeboard-not-enough-%E2%80%93-keeping-owners-informed>

**Colin Grace** is the Business Development & Client Management Director of Grace Lawyers and overseas corporate, property, planning and strata and community law practice areas. Colin began his career as a clerk with the Bureau of Consumer Affairs (now NSW Fair Trading) in 1978 in the Fair Rents and Strata Titles Board. While there he undertook the task of setting up the infrastructure for the implementation of the mediation services under the SSMA changes in 1996/7. At the end of his public service career he was the Registrar of the Strata Titles Board and manager of the Strata Titles Office. He has also been a part time member of the CTTT (2007). Since 1998 Colin has pursued his legal career with the same commitment to the strata and community title world by providing services to owners, owners corporations, developers and government.

- ▶ **Management changes missing from strata legislation** - by Colin Grace;  
<http://www.openforum.com.au/content/management-changes-missing-strata-legislation>

**Chris Johnson** is the CEO of Urban Taskforce, a non-profit industry organisation representing property development interests in Australia. He is a former NSW Government Architect and former Executive Director at the NSW Department of Planning. Chris has extensive experience in the planning system and the delivery of major projects. Chris was a member of the Central Sydney Planning Committee for ten years and the NSW Heritage Council and has represented New South Wales on many national bodies.

- ▶ **Ability to terminate strata schemes key for growth** - by Chris Johnson;  
<http://www.openforum.com.au/content/ability-terminate-strata-schemes-key>

**Anne Jones** OAM is the CEO of *Action on Smoking and Health Australia (ASH)* – a leading advocacy organisation aimed at reducing tobacco deaths, chronic diseases and the deceptive, misleading conduct of the tobacco industry. Anne has eighteen years experience in media advocacy, coordinating tobacco control coalitions and advocating for improved tobacco control laws. Anne has jointly authored several online guides on tobacco-free sports, tobacco-free campuses, multi-unit housing and how to counter tobacco tactics – a guide to identifying, monitoring and preventing tobacco industry interference in public health. ASH Australia was formed in 1994 and is funded by the Cancer Council Australia and the Heart Foundation.

- ▶ **Smoke-free guide clears the air for strata dwellers** - by Anne Jones;  
<http://www.openforum.com.au/content/smoke-free-guide-clears-air-strata-dwellers>



**Suresh Manickam** is the executive officer of Strata Community Australia (NSW), formerly known as the Institute of Strata Title Management. SCA is the leading professional body for the strata and community title sector in NSW.

- ▶ ***Have your say on Strata Law reforms*** - by Suresh Manickam;  
<http://openforum.com.au/content/have-your-say-strata-law-reforms>

**Dr Chris Martin** is the Senior Policy Officer for the *Tenants' Union of NSW*. He has worked in tenancy law for more than ten years and is the author of the fourth edition of the Tenants Rights Manual (forthcoming). His academic research is in the government of crime and disorder in public housing.

- ▶ ***Union calls for greater say from tenants on strata laws*** - by Chris Martin;  
<http://www.openforum.com.au/content/union-calls-greater-say-tenants-strata-laws>

**Tim McKibbin** is the Chief Executive Officer of the Real Estate Institute of New South Wales (REINSW) He was appointed to this role in 2008, after having acted as REINSW Legal Counsel from 2004. Prior to joining REINSW, Tim was a Partner of a multi-disciplinary accounting and law firm, where he specialised in property and taxation matters. As a solicitor and accountant, Tim brings a unique and refreshing perspective to his role and to the industry as a whole.

- ▶ ***Strata reform to recognise lifestyle changes*** - by Tim McKibbin;  
<http://www.openforum.com.au/content/strata-reform-recognise-lifestyle-changes>

**Des Mooney** has been the General Manager, Land and Property Information NSW since February 2001. He has extensive senior management experience in both the public and private sectors, including experience in surveying, mapping and valuation activities. He is a Director of Public Sector Mapping Agencies Australia (PSMA) and a member of the National Steering Committee for Electronic Conveyancing. Des is also a registered surveyor and registered valuer, and in October 2011 was appointed as Surveyor General and Register General of NSW.

- ▶ ***50 years of strata title in NSW*** - by Des Mooney; <http://openforum.com.au/content/50-years-strata-title-nsw>

**Clover Moore** has been State member for Sydney (formerly Bligh) since 1988 and Lord Mayor of Sydney since 2004. Clover is committed to making Sydney a green and sustainable liveable city, and has an extensive record advocating for sustainable urban development, public transport, increased parks, green spaces and public domain, and safer cycling and pedestrian activity, and social justice. Representing inner Sydney, which has the largest number of apartment dwellers of any area in Australia, Clover has introduced in Parliament the first in a series of bills for strata reform to ensure apartment living remains an attractive choice.

- ▶ ***Recommendations for strata law reform*** - by Clover Moore;  
<http://openforum.com.au/content/recommendations-strata-law-reform>

**Dr Waldemar Niemotko** is the President of the Australian International Research Institute, a not-for-profit community organisation promoting cultural awareness.

- ▶ **Support needed to encourage independent living** - by Waldemar Niemotko;  
<http://www.openforum.com.au/content/support-needed-encourage-independent-living>

**The Hon. Greg Pearce MP** is the Minister for Finance and Services and Minister for the Illawarra in the NSW Government. He is also a member of the Legislative Council of New South Wales representing the Liberal Party of Australia since 1 November 2000.

- ▶ **Have your say on Strata and Community Scheme Laws** - by The Hon Greg Pearce;  
<http://www.openforum.com.au/content/have-your-say-strata-community-scheme-laws>

**Dr Andrew Penman**, CEO of the Cancer Council NSW since 1998, is determined to not only improve the lives of cancer patients, but to work towards a goal that sees cancer defeated.

- ▶ **Controlling smoke drift in apartments: A need for greater regulation?** - by Dr Andrew Penman; <http://www.openforum.com.au/content/controlling-smoke-drift-apartments-need-greater-regulation>

**Kay Ransome** was appointed as Chairperson of the Consumer, Trader and Tenancy Tribunal in 2002. Kay has a background in dispute resolution and has worked in tribunals at the state and federal level since 1990.

- ▶ **Better solutions for dispute resolution** - by Kay Ransome;  
<http://www.openforum.com.au/content/better-solutions-dispute-resolution>

**The Hon Anthony Roberts MP** is the NSW Minister for Fair Trading. Prior to becoming the Member for Lane Cove, he was Mayor and Deputy Mayor of Lane Cove Municipal Council. Anthony proudly served with the Australian Army on peace keeping operations in Bougainville as part of Operation Bel Isi. He was also an adviser to former Prime Minister John Howard.

- ▶ **Strata and Community Scheme Laws: Making NSW number one again** - by the Hon. Anthony Roberts; <http://openforum.com.au/content/strata-and-cmmunity-scheme-laws-making-nsw-number-1-again>
- ▶ **Feedback vital for strata regulatory reform** - by the Hon. Anthony Roberts;  
<http://www.openforum.com.au/content/feedback-vital-strata-regulatory-reform>

**Phillippa Russell's** legal practice specialises in strata title and community title projects. Phillipa is a fellow of the Australian College of Community Association Lawyers Inc and a former Council member of the College, a member of the Property Law Committee of the Law Society of New South Wales, the strata title and community titles committee of the Urban Development Institute of Australia, the Strata Industry Working Group (an initiative established by Land and Property Information NSW to examine strata title law), and Strata Community Australia (NSW). She is the co-author of a report commissioned by the Council of the City of Sydney and The Property Council of Australia on the reform of legislation dealing with the termination of strata schemes, the former chairperson of the Property Services Advisory Council and former member of the Fair Trading Advisory Council, and a former member of the Law Council of Australia – General Practice Section, NSW Property Group.

- ▶ **Wholesale review of community titles legislation overdue** - by Phillipa Russell;  
<http://openforum.com.au/content/wholesale-review-community-titles-legislation-overdue>

**Cathy Sherry**, Senior Lecturer, Faculty of Law, UNSW, teaches postgraduate and undergraduate courses on strata and community title.

- ▶ **Importance of creating reasonable by-laws** - by Cathy Sherry;  
<http://www.openforum.com.au/content/importance-creating-reasonable-laws>

**Rod Stowe** was appointed as Commissioner for Fair Trading in July 2011. Rod has worked in the Fair Trading portfolio for over twenty two years where he has had a variety of roles including Policy Advisor, Director of Customer Services, Assistant Commissioner for Policy and Strategy and Deputy Commissioner. Some of his achievements while at NSW Fair Trading include national implementation of the Uniform Consumer Credit Code, overseeing the consumer protection strategy for the Sydney 2000 Olympic Games and managing completion of the portfolio's National Competition Policy (NCP) legislative review program. More recently, Rod has overseen implementation of the seven COAG national reform projects that directly impact on the functions of NSW Fair Trading, including implementation of the Australian Consumer Law and the National Occupational Licensing System.

- ▶ **NSW Fair Trading: What more could we do to help strata and community schemes?** - by Rod Stowe; <http://openforum.com.au/content/rod-stowe-blog>

**Strataman** has provided an online Strata Information Service (for NSW) since 1999 and makes that information available to strata managers, lot owners, residents, property managers and anyone else directly or indirectly involved in the Strata Industry.

- ▶ **Rethinking strata reform** - by strataman; <http://openforum.com.au/content/some-more-recommendations-strata-reform>

**Jimmy Thomson** is an author, scriptwriter and journalist who writes the weekly column Flat Chat in the Sydney Morning Herald's Domain section and hosts the Flat Chat readers' forum at [www.flat-chat.com.au](http://www.flat-chat.com.au).

- ▶ ***Mission Statements for strata plans*** - by Jimmy Thomson;  
<http://www.openforum.com.au/content/strata-mission-statements>

**Susie Willis** is the NSW Consultant for the *Petcare Information and Advisory Service (PIAS)* and has a Bachelor of Applied Science (Agriculture). Since 1995 Susie has enjoyed her role working with the media, local and State Governments as well as industry, welfare and community groups to promote socially responsible pet ownership.

- ▶ ***Pets in strata - recognising benefits and balance*** - by Susie Willis;  
[www.openforum.com.au/content/pets-strata-%E2%80%93-recognising-benefits-and-balance](http://www.openforum.com.au/content/pets-strata-%E2%80%93-recognising-benefits-and-balance)

NB: The issues raised by the bloggers and the comments received through the blogs have been included in the summary of issues in this report.

## ADDITIONAL SUBMISSIONS OUTSIDE THE ONLINE CONSULTATION

Thirteen interested organisations delivered submissions referencing various aspects of strata reform. As their remarks were not delivered in answer to the questions or blogs posed in the online consultation, and comments from users could not be directly appended to them, their submissions are referenced here.

- ▶ **PICA Group of Companies submission** - by Greg Freeman;  
<http://openforum.com.au/content/controlling-smoke-drift-apartments-need-greater-regulation>
- ▶ **Dynamic Property Services submission**- by Karen Belcher;  
<http://globalaccesspartners.org/Strata%20Law%20Review%20Submission%20-FINAL%20Feb%202012%20submission.pdf>
- ▶ **Planning Institute of Australia (NSW Division) submission** - by Greg Woodhams;  
<http://globalaccesspartners.org/Strata%20and%20Community%20Title%20Review%20Submission%20Feb%202012.pdf>
- ▶ **Kelly Partners submission** - by Peter Dawkins; <http://globalaccesspartners.org/Strata%20Legislation%20Review%20Submission%20February%202012%20.pdf>
- ▶ **The Law Society of NSW - Property Law Committee submission**- by Justin Dowd;  
<http://globalaccesspartners.org/DOC290212.pdf>
- ▶ **Retirement Villages Residents Association submission** - by Malcolm McKenzie;  
<http://globalaccesspartners.org/strataopenforumblog.pdf>
- ▶ **Makinson & d'Apice Lawyers** - by Suzie Broome & Beverley Hoskinson-Green;  
<http://globalaccesspartners.org/Submission%20to%20Strata%20Open%20Forum%20dated%2029%20February%202012.pdf>
- ▶ **NSW Ministry of Health submission**; <http://globalaccesspartners.org/Tab%20A%20-%20Approved%20Submission.pdf>
- ▶ **Property Council of Australia submission**; <http://globalaccesspartners.org/120229%20Strata%20review%20submission.pdf>
- ▶ **Property Owners Association of NSW submission**; <http://globalaccesspartners.org/Property%20Owners%20Assoc%20of%20NSW.pdf>
- ▶ **JBW Surveyors submission**- by Wayne Diver-Tuck; [http://globalaccesspartners.org/JBW\\_Surveyors\\_Pty\\_Ltd\\_.pdf](http://globalaccesspartners.org/JBW_Surveyors_Pty_Ltd_.pdf)
- ▶ **Strata Inspectors Association submission**; <http://globalaccesspartners.org/Strata%20Inspectors%20Association.pdf>
- ▶ **Ray Dowsett's submission** - Produced in consultation and cooperation with the Owners Corporation Network Inc., 2008;  
<http://globalaccesspartners.org/R%20Dowsett%20part%202.pdf>;  
<http://globalaccesspartners.org/R%20Dowsett%20part%201.pdf>

These extra submissions have been forwarded to NSW Fair Trading and will be considered in addition to this report.

## ABBREVIATIONS

ACT	Australian Capital Territory
AGM	Annual General Meeting
ASH	Action on Smoking and Health
AUSLAN	Australian Sign Language
BMC	Building Management Committees
CBD	Central Business District
CPI	Consumer Price Index
CTTT	Consumer, Trader and Tenancy Tribunal
EC	Executive Committee
ECM	Executive Committee Meeting
EGM	Extraordinary General Meeting
GAP	Global Access Partners
LPI	Land and Property Information NSW
MP	Member of Parliament
NSW	New South Wales
NT	Northern Territory
OC	Owners Corporation
RTA	Roads and Traffic Authority
SA	South Australia
SCA	Strata Community Australia
SSMA	Strata Schemes Management Act
TAFE	Technical and Further Education
UNSW	University of New South Wales
WA	Western Australia