

PROPOSAL FOR A STRATA COMMITTEE SUPPORT SERVICE



RECOMMENDATION

Residential strata living has become a key housing option for people in NSW. Under NSW strata law most of the responsibility for successful outcomes falls on voluntary Strata Committees.

Many Strata Committee members are ill equipped to adequately address and manage the range of issues confronting strata schemes such as professional service providers, compliance with multiple and complex legal obligations, difficult residents and major building rectification and maintenance obligations. It is clear that 2016 reforms have not filtered down to the committee level.

To address this situation, OCN proposes to establish a Strata Committee Support Service to provide support to Strata Committees and committee members. The service should ideally be funded by a levy on strata schemes similar to other government advocacy schemes in the housing sector.

If the situation confronting Strata Committees and committee members is not addressed the attractiveness of strata living will be eroded as a housing option in NSW. Failure to address the issue could see other jurisdictions such as Victoria become more attractive to purchasers.

THE CHALLENGES FOR STRATA COMMITTEE AND COMMITTEE MEMBERS

The Strata Committee of elected owners is at the heart of pleasurable strata living and success relies upon the capability and motivation of each voluntary committee member. Providing Strata Committee members with ready access to sound independent support, information, training and representation enhances their capability and helps maintain motivation.

At present the lack of independent support means there can be a significant power (including knowledge) imbalance between the strata owners, their Strata Committee and various other counter parties in regard to a growing list of issues such as:

- Finding, engaging and managing good quality suppliers e.g. strata managers, building managers, legal advisers, insurance brokers, technical consultants and trades
- Addressing sometimes serious building defects in new buildings
- Managing sometimes complex rectification and capital upgrade projects

- Practical implementation of, and compliance with, complex legislation e.g. strata act, fire safety, WHS and more
- Effective dispute resolution processes
- Managing increasingly larger and more complex sites involving sophisticated asset management and other non-residential strata on the same site (mixed use adds complex Community Title and Building Management Committee arrangements)
- Lack of resources to engage expert support for smaller scale strata schemes

The ongoing failure to lift the performance of many Strata Committees in NSW is undermining the attractiveness of strata living, and therefore government policy which bases the state's economic growth on increased strata living.

It is also clear to OCN that awareness and uptake of the government 2016 reforms is not up to expectations. OCN supported the reforms but is concerned that Committees are not delivering on the promises of the reform to the detriment of owners and residents. ...Continued over

There are around 80,000¹ residential strata schemes in NSW suggesting that there are more than 300,000 voluntary Strata Committee members².

The proportion of people living in strata schemes is increasing, as result of strata schemes being a lower cost option for people seeking to become home owners, and longstanding government policy encouraging strata living as a suitable housing option. Seniors are increasingly opting for strata living

too for both financial and lifestyle reasons.

The Strata Committee members in smaller developments warrant particular assistance. This is because small scale strata complexes cannot afford key professional help from dedicated building and strata managers available to larger, more complex buildings. Of the approximately 80,000 schemes in NSW ninety percent involve 20 apartments or less.

STRATA COMMITTEE SUPPORT SERVICE

OCN proposes to establish a Strata Committee Support Service (the service) to provide the following to Strata Committees and committee members:

- Training and development for Strata Committee members on their rights and responsibilities;
- A centralised, independent and public accreditation and rating scheme of strata services and strata services providers;
- Assistance and representation for Strata Committees and committee members to resolve disputes as considered appropriate;
- Referrals to relevant authorities; and
- Community education activities.

A recent NSW Fair Trading review of its Mediation Unit confirmed the significant skill deficit among Strata Committee members and the cost of uninformed and/or unnecessary mediation to government, the community and strata owners. In May 2017 it was reported that there had been an eighty per cent spike in mediations handled by Fair Trading relating to strata bylaws.

The appointment of strata managers and/or building managers is the sole responsibility of the Strata Committee, for which the Committee has no independent source of information. OCN's ongoing engagement with strata

owners provides a valuable and knowledgeable source of data on the performance of various service providers (if made available via the service) which can only assist Strata Committees to make better decisions.

OCN proposes that the service would prioritise provision to the following categories of Strata Committee members:

- seniors - most notably pensioners;
- persons for whom English is a second language; and
- first home buyers - most notably younger buyers.

The NSW government itself recognised that pensioners who are strata owners need support when it established the Strata Collective Sales Advocacy Service .

OCN has identified younger first home buyers as a priority for the service given many have no or very little experience and understanding of strata schemes and their regulation. However, as members of a strata scheme they will be required to participate in the governance and business of the scheme including resolving many of the complex issues outlined above.

Only residential Strata Committees would be eligible to use the service. Services would not be provided to members of commercial strata schemes. The service would only be provided in and to NSW based and registered residential Strata Schemes and Committees.

CASE STUDY 1 STRATA COMMITTEE MEMBERS HAVE A FIDUCIARY DUTY TO ALL OWNERS – WHETHER THEY LIKE IT OR NOT

A Strata Committee wisely and properly raised money from all the strata owners to replace leaky common property windows in their building.

However, four years later the windows are still leaking, there is no plan and the owners' money has not been spent on the necessary repairs. Instead the Strata Committee has advised owners that it will take another two years and another special levy to finish fixing the windows.

The ongoing delay represents a significant opportunity cost for the owners as well as an ongoing inconvenience and danger. As a result four owners lodged a complaint with NSW Fair Trading but the Strata Committee refused to mediate. Despite NCAT finding in favour of the four owners, the Strata Committee has not yet complied.

The members of this Strata Committee have failed in their duty to always act in the interests of all owners and to comply with the law.

CASE STUDY 2 STRATA BY-LAWS ARE NOT OPTIONAL – EVEN FOR THE CHAIRMAN

The long standing Chairman of a small strata scheme refused to comply with a properly constituted and passed by-law that requires any owner to advise the strata that they will be doing inside renovations. He told the strata manager and other Strata Committee members “my home is my castle and any renovations we do in our homes that do not impact on the others in our complex are no one’s business but ours.” The strata manager did not correct the Chairman, so the owners remain unaware of their responsibilities.

The Chairman went on to give as an example of a renovation that would not be advised to the strata - moving an air-conditioning unit off the building’s roof and into a side passage. The roof and the side passage are of course both common property owned by the strata and administered by the Committee.

The Chairman clearly has demonstrated by his words and actions a fundamental misunderstanding of the law.

FUNDING MECHANISM FOR STRATA COMMITTEE SUPPORT SERVICES

Ideally funding for the service should come directly from strata owners as they stand to benefit directly from improved services to committee members. Therefore OCN proposes that the Strata Committee Support Service be funded by a levy on all strata schemes.

Two possible approaches are proposed for consideration:

- a) A small charge (possible \$2 indexed) per strata lot per annum paid by each owner; or
- b) Each NSW residential strata scheme contribute 0.1% of its annual levy income.

It should be noted by way of comparison that the owner of one bedroom apartment could normally expected to pay an annual strata levy of some \$2,000 per year.

Either option is reliant upon the implementation of the decision by the NSW Finance Minister to establish a NSW register of strata schemes as this would be the most cost effective way to facilitate payment of the proposed levy by strata title owners or owners’ corporations. Until this is the case the ideal levy option is not available (see below for an interim alternative funding option).

It is estimated that either option would raise approximately \$3 million per annum which would adequately fund the proposed service to undertake the roles outlined above and fund the collection and administration of the levy by Land Registry Services.

The registry should include: The registered strata plan number, the street address of the strata scheme, address

for service of notices, the number of lots and their type (residential, commercial etc.), contact details for the secretary and chair of the strata committee. The registry would be updated annually and administered by Land Registry Services.

A registry would be of broader benefit to Government, permitting direct communications with each residential lot owner and/or each residential strata scheme. This could allow owners and/or schemes directly to be updated on policy changes affecting them as well as being able to support research into strata issues that could inform policy development.

This model already exists elsewhere. The Canadian province of Ontario has introduced legislation governing condominium developments that includes the establishment of a registry of condominium corporations (the equivalent of our owners corporations).

This registry will be maintained by a newly created ‘condo office’ that will operate at arm’s length from government but with authority delegated by government. It will be funded by a small levy (estimated at \$1-3 per month per unit) as well as user fees for the other services provided by the office.

A levy to finance a representative, educative and advocacy service such as OCN is proposing is not unprecedented.

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1. Speech by then Fair Trading Minister Anthony Roberts to Strata Community Association Convention in Sydney 2 December 2013 in which he stated “Today, there are more than 72,000 strata schemes in NSW, and it is estimated that more than 30 per cent of the State’s population live or work in strata. And these numbers are growing. On average, five new strata schemes are registered each day and it has been estimated that within 20 years approximately half of the state’s population will be living or working in strata.”

2. Assumes average of four committee members per strata scheme.

The NSW Government is already financing advocacy programs and services in the residential housing market.

PROGRAM	FUNDING PER ANNUM
Tenants Union (Tenants Advice & Advocacy Program)	\$1,300,000
Strata Collective Sales Advocacy Service (Marrickville Legal Centre & Senior Rights Service)	\$400,000

South Africa has introduced a Community Scheme Ombud Service (CSOS). CSOS was introduced in response to the large number of disputes experienced in community schemes and a recognised need for access to affordable justice services. The relevant legislation is the Community Schemes Ombud Services Act. Now that the regulations have passed, CSOS can begin collecting fees from property owners (these will be around 10-40 Rand per month per unit). CSOS is providing a mediation service and is also responsible to managing scheme governance documentation.

GOVERNANCE & ACCOUNTABILITY

OCN would established, manage and provide the Strata Committee Support Service.

OCN is best placed to provide the service based upon its long accepted role as the representative body of strata owners in NSW and has ready access to experienced and knowledgeable Committee members as well as a range of reputable service providers. Further, the proposed service

is not provided in NSW by any other voluntary, not-for-profit, commercial or bureaucratic organisation. While NSW Fair Trading is a natural partner in the provision of this service it does not have direct access to experienced Strata Committee members and may find some inherent conflict of interest in situations involving representation on behalf of strata owners.

ALTERNATIVE SHORT TERM FUNDING MECHANISM

However, a practical low cost implementation of the proposed levy on each strata scheme may not be immediately possible. This is because OCN understands up to date centralised data on the contact details and other key features (e.g. total annual budgets) of each scheme is not readily available.

OCN therefore proposes two alternative short term funding options for consideration.

One option might be to include the levy per lot as an add-on to council rates or water rates notices that go to each lot owner. The data bases and infrastructure

are already essentially in place for this as long as it is a simple matter to distinguish between a residential strata lot owner from other forms of residential ownership (e.g. Torrens Title) and non-residential strata lot owners. Furthermore an increasingly significant proportion of such payments are administered very inexpensively using the internet and direct debit facilities.

Another option is to provide funds is from consolidated revenue. This could be the initial source of funding pending the establishment of an efficient mechanism for direct collection from lot owners or each strata scheme.

http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Strata_schemes/Collective_sale_and_renewal/Strata_Collective_Sale_Advocacy_Service.page