

10 July 2019

NCAT Statutory Review  
Director, Courts Strategy  
Department of Justice  
GPO Box 5341  
SYDNEY NSW 2001

By email: [policy@justice.nsw.gov.au](mailto:policy@justice.nsw.gov.au)

**Dear Sir/Madam**

### **NCAT STATUTORY REVIEW**

Strata is the fastest growing form of residential property ownership in Australia. Over half the new dwellings to be built in our metropolitan areas over the next decades will be strata titled. The growth of this sector raises increasingly important questions over property ownership and governance.

The Owners Corporation Network of Australia Limited (OCN) is the peak consumer body representing residential strata and community title owners and residents. As such, OCN is uniquely positioned to understand the impact that the legislative framework has on day-to-day machinations and community living. We have a lived experience and a practical hands-on approach to strata administration, issues management and resolution, and harmonious living.

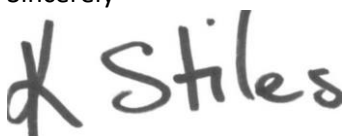
Strata apartment buildings are often referred to as 'the fourth tier of government' as they make laws (by-laws) and collect taxes (levies). Yet these increasingly complex buildings and communities, worth approximately \$350m in NSW alone, are managed by untrained volunteers with a wide range of skills and relevant experience.

There is little to no training available to committee members or to individual owners and, all too often, limited understanding of the demands of 'co-operative living'. As a result, disputes arise all too often and can involve malice and divisive behaviour.

The purpose of NCAT is to provide a simple, quick and effective process for resolving disputes. However, that is not what is often reported by OCN members and members of the public seeking OCN assistance.

As a key consumer voice in this review, OCN welcomes the opportunity to provide feedback and is eager to engage with the Department] on any aspect of this submission, and to be involved in the proposed face to face roundtables.

Sincerely



Karen Stiles  
Executive Officer

## Submission

### General Comments

1. **Jurisdiction** – NCAT does not have jurisdiction to hear cases where the parties reside in different states, leaving those parties with no option other than court action. Yet QCAT is set up to be able to do so. We consider this is an area for attention in NSW.
2. **Ensuring simple, quick and effective resolution of disputes** – the parties might benefit from a median step where NCAT accredited subject matter experts are appointed to audit scheme management in response to prima facie evidence of disputes involving mismanagement e.g. lack of building maintenance, inappropriate exercise of strata committee authority for personal benefit, poor financial management practices, or poor knowledge of the relevant legal requirements.

Audit reports could help inform both mediation and Tribunal decisions, reducing the cost and evidential burden on all parties, as well as reducing the time required to process applications. Audit reports could also be of assistance to NSW Fair Trading with its investigations and action where appropriate.

3. **Enforcement powers** – even when NCAT finds in favour of a lot owner against their owners corporation (e.g. failure to repair and maintain) there is no simple process to enforce non-financial Orders. OCN is aware of a number of protracted cases where the owners corporation has failed to act by the set deadline or carried out work in a manner contrary to orders. As a result, lot owners have had to repeat the process at considerable expense and ongoing inconvenience while their issues remained unaddressed. It would appear that NCAT requires increased powers for dealing with enforcement of non-financial orders. Once again, the ability to appoint an independent auditor to confirm compliance may have a role.
4. **Appointment of compulsory strata managers** – this process does not appear to be as clear or transparent as it could be, including the criteria applied in determining the suitability of strata managers to be appointed as compulsory managers by NCAT. Given the significance of their role, i.e. acting as the strata committee, it is important that there are clear reporting requirements and NCAT oversight to ensure that the compulsory manager effectively and cost-effectively deals with the issue/s that prompted their appointment.

OCN has received reports of strata managers charging higher fees than the incumbent manager, failing to deal with the issue that triggered their appointment, failing to communicate with owners as to their activity, and re-appointing themselves. It is essential that such a pivotal process is carefully managed to protect all owners in the strata scheme. Again, there appears to be a role for an independent auditor appointed by NCAT both in determining or otherwise the need for a compulsory manager and to monitor and report on the performance of that manager.

### Specific Comments

Please see attached our letter to NCAT dated 28 May 2019 which sets out some of the issues faced by parties and practitioners in the strata and home building lists.